AMERICANS *for* PROSPERITY

Congress Has the Floor

Legislative Opportunities After Supreme Court Statutory Interpretations

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EXECUTIVE SUMMARY

Congress plays a critical role in the dialogue between the branches when it comes to interpreting federal statutes. After the Supreme Court says what “the law is,” Congress must review those decisions and amend federal statutes when it desires an outcome different than the one arrived at by the courts. This response is a necessary, but underutilized, step in the development of federal law.

This report examines the theory behind this ongoing dialogue, presents selected historical examples of Congress legislating in the aftermath of Supreme Court decisions, and provides a list of statutory-interpretation decisions from the October 2025 Term.

Americans for Prosperity ("AFP") believes that four recent decisions present particularly strong opportunities for legsilative engagement:

1. ***Learning Resources, Inc. v. Trump*****:** Congress should amend the International Emergency Economic Powers Act to further limit presidential emergency power authority over tariffs.
2. ***Federal Communications Commission v. AT&T, Inc.*****:** Congress should ensure that the Communications Act of 1934 does not allow the agency to demand payment from a defendant without a jury trial and that all questions of law are reviewed de novo.
3. ***Rutherford v. United States*****:** Congress should amend 18 U.S.C. § 3582 to clarify that the First Step Act's nonretroactive changes to sentencing law that create sentencing disparities may be considered when assessing compassionate release.
4. ***Sripetch v. Securities & Exchange Commission*****:** Congress should amend 15 U.S.C. § 78u(d)(7) to clarify that disgorgement is a legal remedy subject to the Seventh Amendment's jury-trial right, requiring the agency to identify individuals who have suffered pecuniary loss before disgorging funds, and limiting any disgorgement award to those individuals.

INTRODUCTION

To protect liberty and promote accountability, the Constitution separates powers between different branches of government. This separation facilitates an ongoing trilateral conversation between the branches as they push and pull to exert their institutional interests, assert their views as to constitutional meaning, and respond to actions by the other branches.[1]

This relationship is well understood in the context of congressional oversight of the executive branch, or judicial review of federal statutes or executive actions. But one overlooked dimension of the relationship is the proper way the elected branches should respond to judicial decisions. This is especially true when it comes to revising statutes after judicial interpretation.

The Supreme Court's role is to say what the law is, not what it ought to be. The Court's landmark ruling in *Loper Bright Enterprises v. Raimondo* reaffirmed that "federal statutes do—

1. *See* James Valvo & Ryan Mulvey, *A Healthy Constitutional Squabble*, Law & Liberty (June 23, 2026) (discussing departmentalism and the healthy interplay between the branches).

in fact, must—have a single, best meaning," which "is fixed at the time of enactment."[2] Courts determine what that single, best meaning is when they interpret statutes presented by cases and controversies.

"The Court's landmark ruling in *Loper Bright Enterprises v. Raimondo* reaffirmed that 'federal statutes do—in fact, must—have a single, best meaning,'"

At times, members of the elected branches react to judicial opinions with which they disagree by criticizing the Court, questioning its motives, or dismissing its reasoning as purely political. Instead, they should employ their primary policymaking tool: amending statutes. The Framers rejected the idea that the Supreme Court would be a council of revision; revision must start in Congress.

To serve this crucial role, Congress must consistently review how the federal courts have interpreted its legislative handiwork. When its members conclude that a different interpretation would better reflect congressional intent or if they do not like the consequences of a court's decision, Congress should debate the matter and amend the statutory language to clearly reflect what it wants the law to be.

If members of Congress would prefer a different policy outcome after Supreme Court decisions interpreting federal statutes, they should direct their concerns to their colleagues. And the public and civil society should likewise urge elected representatives to act. Commentators and legislators may better advance their policy objectives by focusing on legislative solutions rather than trying to shift blame to the Court for playing its constitutionally required role.

If a proposed policy solution is sufficiently popular to win enough votes to become law, it will prevail. Likewise, if Congress agrees that its policy goals would be served better by a statute with a meaning different than the Supreme Court's interpretation, it can amend the text to comport with its understanding.[3] The same holds true for many of the Court's constitutional rulings, which may identify areas for congressional or state legislative response. The

2. 603 U.S. 369, 400 (2024).
3. *See, e.g.*, *Shelby Cty. v. Holder*, 570 U.S. 529, 557 (2013) ("Congress may draft another formula based on current conditions."). Congress also proposed the 26th Amendment in response to *Oregon v. Mitchell*, 400 U.S. 112 (1970).

Constitution purposely makes it difficult to enact legislation to protect liberty and ensure that federal law reflects a genuine national consensus, as opposed to the desires of a fleeting majority.

"If members of Congress would prefer a different policy outcome after Supreme Court decisions interpreting federal statutes, they should direct their concerns to their colleagues."

As the examples below show, Congress has followed this path in a number of important areas. While these responses can come at any time and in reaction to decisions from various courts, the process should begin in earnest each July following the end of the Supreme Court term. Congress should take stock of the past year's decisions and respond when it believes statutory amendments are necessary.

This report prompts that conversation by highlighting past instances of Congress legislatively responding to Supreme Court rulings, cataloging the Court's statutory rulings from this Term, and identifying the decisions that AFP believes warrant legislative attention. Now, Congress has the floor.

EXAMPLES OF LEGISLATIVE RESPONSES TO JUDICIAL DECISIONS

The examples below highlight how a well-functioning interplay between Congress and the judiciary has worked in the past. While these examples are relatively high-profile, Congress should also implement more mundane statutory responses.

From *Employment Division v. Smith* to the Religious Freedom Restoration Act

One prominent example of a legislative response to a Supreme Court decision is in the context of religious freedom. In 1990, in *Employment Division v. Smith*,[4] the Court curtailed

4. 494 U.S. 872 (1990).

the extent to which the First Amendment protects the free exercise of religion from laws stated in neutral and generally applicable terms.[5]

In response to *Smith*, Congress enacted the Religious Freedom Restoration Act of 1993 ("RFRA").[6] In RFRA, Congress found that *Smith* "virtually eliminated" First Amendment protections against the government's ability to limit freedom of religion, as recognized in prior Supreme Court decisions.[7] RFRA's express purpose was to respond to Smith's constitutional holding by providing additional statutory protections of individual liberty aimed at "restor[ing] the compelling interest test as set forth in" prior Supreme Court precedent and "provid[ing] a claim or defense to persons whose religious exercise is substantially burdened by government."[8] As it stands now, the federal government cannot "substantially burden a person's exercise of religion" unless it shows that imposition both furthers "a compelling governmental interest" and "is the least restrictive means" to do so.[9]

This is an example of Congress legislating in response to a constitutional decision and establishing a higher floor to protect civil liberties.

From *Food & Drug Administration v. Brown & Williamson* to the Family Smoking Prevention and Tobacco Control Act

Tobacco regulation is another example of Congress engaging in constructive dialogue with the Supreme Court. In 2000, in *Food & Drug Administration v. Brown & Williamson Tobacco Corp.*, the Court ruled that the Food, Drug, and Cosmetic Act did not authorize the FDA to regulate tobacco as a drug.[10] In 2009, after substantial debate, Congress legislatively responded by enacting the Family Smoking Prevention and Tobacco Control Act ("TCA").[11] The purpose of the TCA was "to provide authority to the [FDA] to regulate tobacco . . . by recognizing it as the primary Federal regulatory authority with

> **"This is an example of Congress using legislation to craft a moderating solution to a dispute, as opposed to the all-or-nothing decision that faced the court."**

5. *See Tanzin v. Tanvir*, 592 U.S. 43, 45 (2020) (citing *Smith*, 494 U.S. at 885–90).
6. Pub. L. No. 103-141, 107 Stat. 1488 (1993) (codified at 42 U.S.C. §§ 2000bb-2000bb-4).
7. 42 U.S.C. § 2000bb(a)(4).
8. 42 U.S.C. § 2000bb(b).
9. *Id.* § 2000bb-1(b).
10. 529 U.S. 120, 125–26 (2000).
11. Pub. L. No. 111-31, 123 Stat. 1776 (2009).

respect to the manufacture, marketing, and distribution of tobacco products[.]"[12] Subject to certain limits and exemptions, the TCA broadly empowered the FDA to regulate tobacco sale, distribution, and advertising. But the TCA prohibited the FDA from banning cigarettes or other tobacco products, which would have been one of the bizarre outcomes from *Brown & Williamson*, if the Court had ruled the other way.[13]

From *Ledbetter v. Goodyear Tire & Rubber Co.* to the Lilly Ledbetter Fair Pay Act

Yet another example of Congress responding to the Supreme Court's interpretation of a statute is the prohibition on gender-based pay discrimination found in Title VII of the Civil Rights Act of 1964. In 2007, in *Ledbetter v. Goodyear Tire & Rubber Co.*, the Court ruled that a "pay-setting decision"—as opposed to each time an employee receives a paycheck—triggers the deadline for suing.[14] This ruling limited the ability of employees to bring actions for unlawful past pay discrimination. In a dissenting opinion, Justice Ginsburg highlighted the possibility of a legislative response, writing that "the ball is in Congress' court . . . to correct this Court's parsimonious reading of Title VII."[15]

Two years later, Congress enacted the Lilly Ledbetter Fair Pay Act of 2009.[16] The Act's findings expressed disapproval of the Court's interpretation of Title VII in Ledbetter, concluding the decision "unduly restrict[s] the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress."[17] Congress then superseded *Ledbetter*'s holding, broadening the deadline under which Title VII discriminatory pay claims could be brought, providing that "an unlawful employment practice occurs . . . when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid[.]"[18] The Act extended these changes to other related statutes and made them retroactive.[19]

This example shows how Congress can respond to a statutory-interpretation decision by making the law operate the way that it wishes.

12. *Id.* § 3(1), 123 Stat. 1781.
13. 21 U.S.C. § 387g(d)(3).
14. 550 U.S. 618, 621 (2007).
15. *Id.* at 661 (Ginsburg, J., dissenting).
16. Pub. L. No. 111-2, 123 Stat. 5 (2009).
17. *Id.* § 2.
18. *Id.* § 3, 123 Stat. 6.
19. *Id.* §§ 5, 6, 123 Stat. 6–7.

From *National Horsemen's Benevolent & Protective Ass'n v. Black* to the Horseracing Integrity and Safety Act

Congress can also legislatively respond to lower-court opinions. In 2022, the U.S. Court of Appeals for the Fifth Circuit held in *National Horsemen's Benevolent & Protective Association v. Black* that the Horseracing Integrity and Safety Act ("HISA") was facially unconstitutional because "Congress has given a private entity the last word over what rules govern our nation's thoroughbred horseracing industry."[20] Shortly thereafter, Congress amended HISA to give the Federal Trade Commission additional authority over the private corporation charged with administering this law to remedy that particular constitutional problem.[21]

"…the Sixth Circuit described Congress's amendment process as '[a] productive dialogue' between the federal courts and the legislature that had addressed constitutional concerns."

This is an example of Congress constructively addressing a constitutional flaw that a court has found in its legislative handiwork. Indeed, in rejecting a subsequent challenge to the amended law, the Sixth Circuit described Congress's amendment process as "[a] productive dialogue" between the federal courts and the legislature that had addressed constitutional concerns.[22]

* * *

These examples are far from exhaustive. And in the past, Congress regularly responded to the Supreme Court's statutory-interpretation decisions by legislating. A 2013 study conducted by Professor Richard Hasen identified around thirty instances between 1991 and 2012 where Congress superseded by statute Supreme Court decisions in a host of areas, including by enacting major legislation.[23]

AFP would support Congress amending the following statutes in response to recent Supreme Court decisions.

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20. 53 F.4th 869, 872 (5th Cir. 2022).
21. Consolidated Appropriations Act of 2023 § 701, Pub. L. No. 117-328, 136 Stat. 4459, 5231–32 (2022).
22. *Oklahoma v. United States*, 163 F.4th 294, 300 (6th Cir. 2025).
23. *See* Richard L. Hasen, *End of the Dialogue? Political Polarization, the Supreme Court, and Congress*, 86 S. Cal. L. Rev. 205, 252–55 (2013) (Appendix I).

CONGRESS SHOULD AMEND THE FOLLOWING STATUTES IN RESPONSE TO SUPREME COURT STATUTORY-INTERPRETATION DECISIONS IN OT 2025

International Emergency Economic Powers Act

50 U.S.C. § 1702

The International Emergency Economic Powers Act ("IEEPA") grants the president additional powers if he declares an emergency. Section 1701 of IEEPA authorizes the president to unlock those powers by declaring a "national emergency" with respect to an "unusual and extraordinary" threat from abroad "to the national security, foreign policy, or economy."[24] Section 1702 then authorizes the president to "regulate" "importation or exportation" to address the emergency.[25] In *Learning Resources v. Trump*, the Supreme Court held that IEEPA's grant of authority to "regulate" "importation" does not include the power to impose tariffs or duties.[26]

Although the Court limited the negative economic and separation-of-powers harms from the president asserting unilateral, global tariff authority, AFP urges Congress to undertake a comprehensive review of IEEPA and the National Emergencies Act.[27] Congress should either eliminate or severely constrain any president's ability to invoke emergency economic powers. If Congress does deem such power necessary, it should limit both its scope and duration.

The Communications Act of 1934

47 U.S.C. § 503

The Communications Act of 1934, as amended, authorizes the Federal Communications Commission ("FCC") to investigate and seek monetary forfeitures for violations of the communications laws through a formal or informal administrative process. Under Section 503(b), the agency may impose penalties by issuing a notice of apparent liability, allowing for and responding to a recipient's response, and entering an order assessing a penalty. A recipient of such an order may either challenge it under the Hobbs Act or take no action at all. If the FCC wishes to collect, it must refer the matter to the Department of Justice, which then brings a lawsuit in federal court, subject to the jury-trial right de novo. In *Federal*

24. 50 U.S.C. § 1701.
25. *Id.* § 1702(a)(1)(B).
26. 607 U.S. 229 (2026).
27. *See* ICYMI: AFP sends letters to Congress supporting emergency powers reform, Americans for Prosperity (Sept. 24, 2024).

Communications Commission v. AT&T, Inc., the Supreme Court construed Section 503(b)(4) to not resolve the parties' legal obligations, not establish any facts, nor create any obligation to pay the penalty.[28] Therefore, Section 503(b) did not violate the Seventh Amendment's guarantee of jury trial or the Court's decision in *Securities & Exchange Commission v. Jarkesy*.[29]

Congress should amend Section 503(b) to require the FCC to notify respondents that apparent-liability notices do not establish facts or create an obligation to pay, and that respondents have a right to a jury trial in an Article III court. In other words, Congress should change the relationship between the FCC and its regulated community so that apparent-liability notices are properly characterized as mere allegations and respondents are protected from unfair administrative processes that are biased against them.

The First Step Act

18 U.S.C. § 3582

The First Step Act ("FSA") created a new statutory mechanism for district courts to assess whether "extraordinary and compelling reasons" warrant compassionate release from federal prison sentences, if such a "reduction is consistent with applicable policy statements issued by the Sentencing Commission." The FSA also changed mandatory minimum sentences, but those changes did not apply retroactively to individuals already in prison. This non-retroactivity has caused a disparity in sentence length between those convicted before and after the FSA became law. Under the 2023 Sentencing Guidelines, courts were permitted to consider this disparity when deciding whether to grant compassionate release.

In *Rutherford v. United States*, the Supreme Court held that, because Congress decided not to make the FSA retroactive, the disparity the prospective changes created could not be considered in deciding whether to grant compassionate release, even if the Sentencing Commission issued a policy allowing such consideration.[30]

Congress should amend 18 U.S.C. § 3582(c)(1) to clarify that the FSA's non-retroactive changes to sentencing law that create sentencing disparities may be considered when assessing whether to grant compassionate release.

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28. 146 S. Ct. 1418 (2026).
29. 603 U.S. 109 (2024).
30. 146 S. Ct. 1320 (2026).

The Securities Exchange Act of 1934

15 U.S.C. § 78u

The Securities Exchange Act of 1934, as amended, authorizes the SEC to seek "any equitable relief that may be appropriate or necessary for the benefit of investors."[31] In *Liu v. Securities & Exchange Commission*, the Supreme Court held that this provision authorizes disgorgement in some circumstances but with limitations.[32] Congress later added subsection (d)(7) to the statute, expressly authorizing the SEC to seek and obtain disgorgement as a remedy. The SEC may now seek "disgorgement . . . of any unjust enrichment by the person who received such unjust enrichment as a result of such violation."[33]

In *Sripetch v. Securities & Exchange Commission*, the Court held the SEC need not prove pecuniary loss to obtain disgorgement as a remedy.[34] The Court assumed without deciding that disgorgement is an equitable remedy that must comply with traditional equitable limits, including that it must benefit victims. In a concurring opinion, Justice Thomas suggested disgorgement under subsection (d)(7) may also be a legal remedy subject to the Seventh Amendment's jury-trial right.

Congress should amend 15 U.S.C. §§ 78u(d)(3)(A)(ii) and (d)(7) to limit the SEC's disgorgement power to circumstances in which victims of securities violations suffered actual monetary harm, and to require that the SEC establish such harm in an Article III court, subject to the jury-trial right. Any funds disgorged in such proceeding should be awarded to victims and not deposited in the federal treasury.

31. 15 U.S.C. § 78u(d)(5).
32. 591 U.S. 71 (2020).
33. 15 U.S.C. § 78u(d)(3)(A)(ii).
34. 146 S. Ct. 1403 (2026).

APPENDIX: FEDERAL STATUTES IMPLICATED BY U.S. SUPREME COURT OT 2025 DECISIONS[35]

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CIVIL RIGHTS

COURT RULES & JURISDICTION

CRIMINAL & SENTENCING

35. AFP does not necessarily take a position for or against the statutory changes listed in the appendix, which are included to equip Congress with a list of recent decisions.

FINANCIAL & INVESTMENT

IMMIGRATION

PRESIDENTIAL AUTHORITY

SOVEREIGN IMMUNITY

MISCELLANEOUS

CASE SUMMARIES

Bowe v. United States, No. 24-5438

FEDERAL HABEAS CORPUS ▪ 28 U.S.C. §§ 2254, 2255

Congress has limited the circumstances under which state and federal prisoners may file multiple federal habeas petitions. 28 U.S.C. § 2254 applies to state prisoners; 28 U.S.C. § 2255(h) applies to federal prisoners.

The Supreme Court held that Section 2244(b)(3)(E), which bars state prisoners from seeking Supreme Court review of court-of-appeals decisions denying permission to file multiple habeas petitions, does not apply to federal prisoners. The Court further held Section 2244(b)(1), which requires dismissal of second or successive habeas claims filed by state prisoners that were raised in a prior petition, does not apply to motions filed by federal prisoners.

Congress may wish to alter the circumstances under which federal prisoners may file second or successive habeas petitions to match the restrictions applicable to state prisoners; it may do so by amending Section 2255.

Barrett v. United States, No. 24-5774

MANDATORY MINIMUM SENTENCE ▪ 18 U.S.C. § 924

18 U.S.C. § 924(c)(1)(A) criminalizes and establishes mandatory minimum sentences for drug crimes and federal crimes of violence involving firearms. 18 U.S.C. § 924(j) separately criminalizes and establishes different—sometimes harsher—penalties for violations of that provision that also cause death.

The Supreme Court held that Congress did not clearly authorize convictions under both sections for a single act that violates both provisions. Therefore, a defendant who commits a single act that violates both provisions may only be convicted and sentenced under one provision or the other.

Congress can make a single act violating both provisions eligible for both convictions and a harsher sentence by amending the statute and referencing cumulative or concurrent punishments.

Coney Island v. Burton, No. 24-808

FEDERAL RULE OF CIVIL PROCEDURE 60(b)

Federal Rule of Civil Procedure 60(b)(4) allows a party to seek relief from a federal court judgment on the ground that it is void. Rule 60(c) does not set a specific deadline for seeking this relief. The Supreme Court ruled that Rule 60(b)(C) requires that a Rule 60(b)(4) motion be filed in a reasonable time.

Congress may respond by providing a statutory deadline that it believes is appropriate.

Ellingburg v. United States, No. 24-482

MANDATORY VICTIMS RESTITUTION ACT OF 1996 ▪ 18 U.S.C. § 3663A

The Court held that restitution under the Mandatory Victims Restitution Act is criminal punishment for purposes of the Constitution's Ex Post Facto Clause. For that reason, the Act cannot apply retroactively to require restitution for crimes committed before it was passed in 1996. The Court left open whether, under other circumstances, restitution may be civil. Congress may wish to explore this.

Berk v. Choy, No. 24-440

RULES OF DECISION ACT ▪ 28 U.S.C. § 1652

The Rules of Decision Act, codified at 28 U.S.C. § 1652, is a choice-of-law statute directing federal courts to apply state substantive law when sitting in diversity jurisdiction—that is, adjudicating disputes between citizens of different states over the amount-in-controversy threshold—"except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide[.]" The Rules Enabling Act grants the Supreme Court "the power to prescribe general rules of practice and procedure" that apply in federal district courts. 28 U.S.C. § 2072(a). Where a Federal Rule of Civil Procedure applies, it displaces conflicting state law.

Applying these principles to a Delaware statute prohibiting medical malpractice lawsuits that are not accompanied by an affidavit of merit signed by a medical professional, the Court ruled that state law was displaced by Federal Rule of Civil Procedure 8. The Court rejected the argument that the Rules Enabling Act requires analysis of "whether the displaced state law is substantive."

Congress may expressly preempt state law on the question of accompanying affidavits.

Klein v. Martin, No. 25-51

THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 ▪ 28 U.S.C. § 2254(d)(1)

To respect federalism, the Antiterrorism and Effective Death Penalty Act limits the circumstances under which federal courts may grant habeas relief to prisoners convicted in state courts. 28 U.S.C. § 2254(d) only authorizes federal courts to grant relief in narrow circumstances when claims adjudicated in state court "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

In a series of cases, the Supreme Court has interpreted this language to require deferential review of state-court decisions for both legal and factual errors. Subsection (d)(1) was at issue in *Klein*. The Court held that the Fourth Circuit's decision to grant habeas relief for a state court ruling on a Brady claim did not meet this high standard.

Congress can broaden the jurisdiction of federal courts to make it easier to grant state prisoners habeas relief by amending 28 U.S.C. §2254(d)(1), subject to constitutional limits. If Congress wants to do that, it must do so clearly.

Learning Resources v. Trump, No. 24-1287

INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT ▪ 50 U.S.C. §§ 1701, 1702

The International Emergency Economic Powers Act is a statute that grants the president additional powers if he declares an emergency. 50 U.S.C. § 1701 authorizes the president to unlock those powers, set forth in 50 U.S.C. § 1702(a), by declaring a "national emergency" with respect to an "unusual and extraordinary" threat from abroad "to the national security, foreign policy, or economy." 50 U.S.C. § 1702(a)(1)(B) authorizes the president to, among other things, "regulate" "importation or exportation" to address the emergency.

The Court held that IEEPA's grant of authority to "regulate" "importation" does not include the power to impose tariffs or duties.

If Congress wishes to grant the President the power to impose tariffs under IEEPA or otherwise authorize tariffs, it must do so clearly and with careful constraints. Alternatively, if Congress wishes to reduce the President's authority to unilaterally make policy choices, it may narrow or repeal IEEPA.

United States Postal Service v. Konan, No. 24-351

FEDERAL TORT CLAIMS ACT ▪ 28 U.S.C. § 2680(b)

Sovereign immunity protects the United States against lawsuits, and it cannot be sued without its consent. Congress may statutorily waive sovereign immunity, but it must clearly say so.

The FTCA waives sovereign immunity for certain tort suits arising from the actions of government employees, with exceptions set forth in 28 U.S.C. § 2680. In Section 2680(b), Congress retained immunity from being sued for "[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter." In the past, the Supreme Court interpreted this provision to apply to late- or never-delivered or damaged mail. In *Konan*, the Court held it extends to intentional non-delivery of mail.

If Congress believes that the United States should be held liable when postal employees intentionally fail to deliver the mail, it may amend Section 2680(b). Or if it wishes to authorize broader accountability of postal employees for their actions, it may repeal that provision. Alternatively, Congress may eliminate qualified immunity for intentional non-delivery in any circumstances in which it believes personal liability may be appropriate.

GEO Group v. Menocal, No. 24-758

APPELLATE JURISDICTION OVER FINAL DECISIONS OF DISTRICT COURTS ▪ 28 U.S.C. § 1291

Under the Supreme Court's decision in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), federal contractors are shielded from liability for conduct that the Government has "authorized and directed," so long as the authorization is lawful and the contractor's conduct stays within the scope of it.

GEO Group contracted with ICE to operate a private detention facility for immigrants facing removal. A former detainee brought a class-action lawsuit against GEO Group, which invoked *Yearsley* to argue it was not liable. The district court denied GEO Group's motion to dismiss. GEO Group appealed under 28 U.S.C. §1291, which grants U.S. Courts of Appeals jurisdiction over "all final decisions of the district courts," arguing the district court's *Yearsley* ruling fit into an exception to the final-judgment rule.

The Supreme Court ruled that jurisdiction under Section 1291 did not lie because GEO Group was asserting a merits defense to liability, as opposed to asserting a form of immunity. But the Court left open interlocutory review under the discretionary certification process set forth in Section 1292(b).

If Congress believes that government contractors should have more robust protections against lawsuits or that *Yearsley* should be treated like "qualified immunity" in the Section 1983 context, it could enact legislation to that effect.

Olivier v. City of Brandon, No. 24-993

42 U.S.C § 1983

Section 1983 authorizes parties harmed by state and local officials who violate their constitutional or statutory rights to sue in federal court for damages and injunctive and declaratory relief. Plaintiffs may invoke this statute to challenge the constitutionality of state statutes. Under the Supreme Court's decision in *Heck v. Humphreys*, 512 U.S. 477 (1994), a person who has been convicted of violating a statute cannot later challenge the constitutionality of the statute and seek monetary damages or release from custody as a collateral attack on the conviction.

Olivier involved a street preacher who wished to argue that a statute he was previously convicted under violated the First Amendment, seeking forward-looking declaratory and injunctive relief so he could resume street preaching without fear of punishment. The Supreme Court found that the *Heck* bar did not apply under these circumstances, allowing the challenge to the state statute to proceed.

Congress can amend Section 1983 to clarify whether *Heck* should ever be a bar to collateral attacks on a conviction.

Zorn v. Linton, No. 25-297

QUALIFIED IMMUNITY ▪ 42 U.S.C. § 1983

Section 1983 authorizes parties harmed by state and local officials who violate their constitutional or statutory rights to sue in federal court for damages and injunctive and declaratory relief. However, under current precedent, state and local officials have "qualified immunity" for their actions unless they violate "clearly established" federal law.

In *Zorn*, the Court ruled an officer had qualified immunity for placing pressure on a protester's wrist and standing her up when she would not cooperate with the officer's request to leave a protest. The Court indicated that for a law to be clearly established there must be case law at a high level of specificity.

If Congress wishes to specify the circumstances under which the defense of qualified immunity may be raised, it can amend Section 1983 and should use clear language.

Cox Communications, Inc. v. Sony Music Entertainment, No. 24-171

COPYRIGHT ACT ▪ 17 U.S.C. § 501(a)

Claims of copyright infringement can arise in the context of sharing copyrighted materials on the Internet. The Copyright Act allows copyright holders to sue alleged infringers directly. Supreme Court precedent allows for secondary liability under contributory and vicarious liability theories. But the Digital Millennium Copyright Act, 17 U.S.C. § 1201 et seq., gives service providers a safe-harbor defense to secondary liability under certain circumstances if they have "a policy that provides for the termination in appropriate circumstances of subscribers and account holders" that are "are repeated infringers." 17 U.S.C. § 512(i)(1)(A). But "the failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense." 17 U.S.C. § 512(l).

In *Cox Communications*, the Court ruled that Cox could not be held contributorily liable by providing the Internet connection used to facilitate copyright infringement. It reasoned "a company is not liable as a copyright infringer for merely providing a service to the general public with knowledge that it will be used by some to infringe copyrights." The Court noted that when Congress wants to authorize secondary liability it usually does so expressly.

If Congress wishes to expand the ambit of liability for copyright infringement, it may amend the statute.

Urias-Orellana v. Bondi, No. 24-777

IMMIGRATION AND NATIONALITY ACT ▪ 8 U.S.C. § 1252(b)(4)

Under the Immigration and Nationality Act, a person is eligible for asylum if the applicant establishes that he is a "refugee." 8 U.S.C. § 1158(b)(1)(B) provides that "[t]he burden of proof is on the applicant to establish that the applicant is a refugee," who "must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." Under 8 U.S.C. § 1101(a)(42), an applicant qualifies as a "refugee" if he is "unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[.]"

The question in *Urias-Orellana* was what standard of review U.S. Courts of Appeals should apply to Board of Immigration Appeals persecution determinations. The Supreme Court held Section 1252(b)(4)(B) "requires courts to review the entirety of the agency's conclusions—both the underlying factual findings and the application of the INA to those findings—for substantial evidence." This means "the agency's determination whether a given set of undisputed facts rises to the level of persecution under §1101(a)(42)(A) is generally 'conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary'" under Section 1252(b)(4)(B). This is a deferential standard of review.

If Congress believes asylum rulings and persecution determinations should be subject to more rigorous oversight by federal courts, it may amend the INA.

Rico v. United States, No. 24-1056

SENTENCING REFORM ACT ▪ 18 U.S.C. § 3583

Federal criminal defendants sentenced to imprisonment often must serve a period of supervised release after they are released. If they violate the conditions of release during that period, a court may send them back to prison. After the period of supervised release ends, 18 U.S.C. § 3583(i) authorizes delayed revocation under limited circumstances. It provides that "[t]he power of the court to revoke a term of supervised release for violation of a condition of supervised release . . . extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation."

At issue in *Rico* was whether a defendant's failure to report to her probation officer and instead abscond extended the period of time for which she was under supervised release. The Court held a defendant's failure to report and decision to abscond did not automatically extend the supervised release period if no warrant or summons had been issued. The Court noted: "If the government thinks § 3583(i)'s warrant-or-summons requirement too demanding, the proper place to register that complaint is with those who drafted it. This Court is not free to rewrite the directions Congress has provided."

Chevron USA Inc. v. Plaquemines Parish, No. 24-813

FEDERAL OFFICER REMOVAL STATUTE ▪ 28 U.S.C. § 1442(a)(1)

The federal-officer removal statute protects against state-court interference with federal operations. It allows the federal government, its officers, and those "acting under" them, including government contractors, sued in state court to remove the case to federal court if the lawsuit is "for or relating to any act under color of such office" if they have a colorable federal defense.

In *Plaquemines Parish*, the Court broadly interpreted the "relating to" language in 28 U.S.C. § 1442(a)(1) to extend to conduct indirectly connected to government actions. This broadens the ability of private parties sued in state court to remove those lawsuits to federal court.

If Congress wishes to narrow the circumstances under which private parties and federal actors can transfer their cases to federal court, it may amend Section 1442(a)(1) to require a closer causal connection.

Hencely v. Fluor Corp., No. 24-924

FEDERAL TORT CLAIMS ACT ▪ 28 U.S.C. § 2680(j)

The Federal Tort Claims Act waives sovereign immunity for certain tort suits arising from the actions of government employees, with exceptions set forth in 28 U.S.C. § 2680. One of those exceptions is Section 2680(j), which applies to claims "arising out of" military combat activities during wartime. The law does not apply to federal contractors. Under Supreme Court precedent, state tort claims against government contractors are preempted if they involve a government decision the contractor merely executed.

In *Hencely*, the Court held state law claims against government contractors for conduct the federal government did not order or authorize are not preempted, even if it occurs in a war zone.

If Congress believes the military contractors should be broadly immune from liability under state law for actions occurring in combat zones, it may amend Section 2680(j) to extend further immunity.

Enbridge Energy, LP v. Nessel, No. 24-783

PROCEDURE FOR REMOVAL OF CIVIL ACTIONS ▪ 28 U.S.C. § 1446(b)(1)

Federal and state courts often have concurrent jurisdiction over legal claims. As a rule, federal law gives defendants sued in state court the right to remove the matter to federal court if the lawsuit could have originally been filed in federal court. 28 U.S.C. § 1446(b)(1) sets a 30-day time limit for doing so, starting from when the defendant first had notice of the lawsuit upon receipt of a pleading or summons.

In *Enbridge*, the Supreme Court ruled this deadline was not subject to "equitable tolling," meaning there are no exceptions, no matter how unfair the facts and circumstances. If Congress wishes to change this, it can amend the statute to direct courts to account for equitable factors.

Louisiana v. Callais, No. 24-109

VOTING RIGHTS ACT OF 1965 ▪ 52 U.S.C. § 10301

Section 2 of the Voting Rights Act prohibits voting practices that discriminate on the basis of race. 52 U.S.C. § 10301(a) prohibits states and localities from imposing any voting requirement that "results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color[.]" 52 U.S.C. § 10301(b) further provides that a "violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." The statute does not "establish[] a right to have members of a protected class elected in numbers equal to their proportion in the population."

In *Callais*, the Supreme Court construed Section 2 to "impose[] liability only when the evidence supports a strong inference that the State intentionally drew its districts to afford minority voters less opportunity because of their race." It ruled that, properly understood, even compliance with Section 2 of the VRA does not justify race-based discrimination.

Because *Callais* rested on statutory interpretation to avoid a constitutional problem, if Congress disagrees with the Court's ruling, it may amend the statute within constitutional limits.

Montgomery v. Caribe Transport II, LLC, No. 24-1238

FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT ▪ 49 U.S.C. § 14501(c)(1)

Section 14501(c)(1) of the Federal Aviation Administration Authorization Act preempts state laws "related to a price, route, or service of any motor carrier . . . or broker, or freight forwarder with respect to the transportation of property." But Section 14501(c)(2)(A) specifies the FAAAA does not preempt States' "safety regulatory authority . . . with respect to motor vehicles."

In *Montgomery*, the Court held this exception allows state-law negligent-hiring claims against brokers for choosing unsafe trucking companies.

In a concurring opinion, Justices Kavanaugh and Alito wrote: “The brokers and their amici raise serious concerns about the repercussions of state tort liability against brokers, and they may of course (among other possibilities) ask Congress and the President to change federal law.”

If Congress disagrees with this outcome, it may amend Section 14501(c)(2)(A) to clarify it does not apply to brokers or authorize negligent-hiring claims.

Abouammo v. United States, No. 25-5146

18 U.S.C. § 1519

18 U.S.C. § 1519 makes it a federal felony to knowingly alter, destroy, or falsify documents with the intent to impede a federal investigation.

In *Abouammo*, the Supreme Court held the proper venue to try these offenses is the jurisdiction in which the document was altered, as opposed to the district where the investigation was located. The Court reasoned this was a standalone offense that occurs independent of whatever underlying crimes or other matters are the subject of an underlying investigation.

Subject to constitutional due-process limits, Congress may statutorily broaden the venue provision.

Federal Communications Commission v. AT&T, Inc., No. 25-406

COMMUNICATIONS ACT OF 1934 ▪ 47 U.S.C. §§ 503, 504

47 U.S.C. § 503(b) authorizes the FCC to investigate and seek monetary forfeitures for violations of the communications laws through a formal or informal administrative process. Under Section 503(b)(4), it may impose penalties by issuing a notice of apparent liability, allowing for and responding to a recipient’s response, and entering an order assessing a penalty. A recipient of such an order may either challenge it under the Hobbs Act or take no action at all. If the FCC wishes to collect, it must refer the matter to DOJ, which then brings a lawsuit in federal court, subject to the jury-trial right de novo.

In *AT&T*, the Supreme Court construed Section 503(b)(4) to not have legal effect, establish any facts, or create any obligation to pay the penalty. For that reason, it did not violate the Seventh Amendment’s jury-trial guarantee under *Securities & Exchange Commission v. Jarkesy*, 603 U.S. 109 (2024).

Rutherford v. United States, No. 24-820

FIRST STEP ACT ▪ 18 U.S.C. § 3582(c)(1)

As a rule, district courts may not modify or reduce sentences once they are imposed. But 18 U.S.C. § 3582(c)(1) authorizes a district court to grant compassionate release and impose a reduced sentence if it finds "extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." Under the 2023 Sentencing Guidelines, courts could consider non-retroactive changes to mandatory minimum and other sentences in deciding whether to grant early release.

The question presented in *Rutherford* was "[w]hether . . . a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if 'extraordinary and compelling reasons' warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i)." The Court held these non-retroactive changes could not be considered in deciding whether to grant compassionate release, even if the Sentencing Commission issued a policy allowing such consideration.

Congress may either amend the First Step Act to make its changes to mandatory minimum sentencing laws retroactive or, alternatively, amend 18 U.S.C. § 3582(c)(1) to specify the circumstances in which non-retroactive changes reducing the penalties for certain offenses create sentencing disparities that still qualify as "extraordinary and compelling" reasons for reducing sentences.

Fernandez v. United States, No. 24-556

FIRST STEP ACT ▪ FEDERAL HABEAS CORPUS STATUTE ▪ 18 U.S.C. § 3582(c)(1) ▪ 28 U.S.C. § 2255

As a rule, district courts may not modify or reduce sentences once they are imposed. But 18 U.S.C. § 3582(c)(1) authorizes a district court to grant compassionate release and impose a reduced sentence if it finds "extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

At issue in *Fernandez* was whether questions about the validity of a criminal conviction, including actual innocence claims, could qualify as "extraordinary and compelling" circumstances for compassionate release.

The Court held such circumstances are not cognizable reasons for granting early release under 18 U.S.C. § 3582(c)(1). Instead, collateral attacks on the validity of a conviction may only be brought under the federal habeas statute, 28 U.S.C. § 2255.

If Congress wishes to make it easier for federal prisoners to collaterally attack the validity of criminal convictions, it may amend 18 U.S.C. § 3582(c)(1) to include actual innocence.

Flowers Foods, Inc. v. Brock, No. 24-935

FEDERAL ARBITRATION ACT ▪ 9 U.S.C. § 1 ET SEQ.

The Federal Arbitration Act requires courts to enforce private arbitration agreements. 9 U.S.C. § 2 provides that arbitration agreements "in any . . . contract evidencing a transaction involving commerce . . . shall be valid, irrevocable, and enforceable." 9 U.S.C. § 1 defines "commerce" as "commerce among the several States or with foreign nations" but carves out an exception for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." This exemption has been broadly construed in numerous Supreme Court.

In *Flowers Foods*, the Court held that this exemption may apply to workers even if they do not cross state lines or interact with vehicles that do. The Court also noted that the FAA's definition does not reach to the extent of Congress's full Commerce Clause power.

If Congress wishes to narrow this exemption to further the public policy goal of enforcing private arbitration agreements, it may amend the statute to narrow the exemption.

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd., No. 24-345

INVESTMENT COMPANY ACT ▪ 15 U.S.C. § 80A-46(b)

Under the Investment Company Act, "(1) A contract that is made, or whose performance involves, a violation . . . is unenforceable by either party" and "(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this subchapter." 15 U.S.C. § 80a-46(b)(1)-(2).

The question in *FS Credit* was whether this language created an implied private right of action allowing private parties to sue and seek recission of contracts that violate the Act. The Court held the Act does not impliedly authorize private parties to sue and thus only the SEC may enforce the Act's requirements. The Court explained "Congress, not the Judiciary, decides who may enforce the law." The Court noted that Congress uses express language when it authorizes private parties to sue to enforce federal law.

Congress may add a private right of action to the statute if it wishes to expand access to its provisions.

West Virginia v. B.P.J., No. 24-43

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 ▪ 20 U.S.C. § 1681(a)

Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance," subject to certain exceptions.

At issue in *West Virginia v. B.P.J.* was whether this provision prohibits discrimination based on biology or gender identity. The Court ruled the word "sex" in Title IX refers to biological sex. In a concurring opinion, Justice Gorsuch emphasized that Title IX was passed under Congress's Spending Clause authority, which "does not allow Congress to regulate conduct; instead, it only authorizes Congress to spend money." This means that recipients of such funds must knowingly and voluntarily agree to any conditions that are attached for those conditions to have legal effect, requiring Congress to clearly and unambiguously spell them out in legislation.

If Congress wishes to add gender identity to the list of protected characteristics, it may amend Title IX, subject to constitutional limitations on the spending power.

M&K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund, No. 23-1209

EMPLOYEE RETIREMENT INCOME SECURITY ACT ▪ 29 U.S.C. §§ 1391, 1393

The Employee Retirement Income Security Act sets the measurement date to calculate the employer's liability for unfunded vested benefits "as of the end of the plan year preceding the plan year in which the employer withdraws."

The question in *M&K Employee Solutions* was how actuarial assumptions for multiemployer pension plans should be calculated under ERISA. This issue is practically important to employers who contribute to these plans because it affects what they must pay to leave a plan.

The Court ruled "[t]he statute governing the selection and use of actuarial assumptions in the withdrawal-liability context contains no requirement that actuaries use assumptions adopted prior to the measurement date." Thus, withdrawal liability may be determined by reference to actuarial assumptions post-dating the measurement date.

Congress is free to amend the measurement date used to calculate the employer's liability for unfunded vested benefits.

Exxon Mobil Corp. v. Corporación Cimex, S.A., No. 24-699

HELMS-BURTON ACT ▪ 22 U.S.C. §§ 6023, 6082

The Helms-Burton Act creates a cause of action for monetary damages against "any person" who "traffics in property which was confiscated by the Cuban Government[.]" 22 U.S.C. § 6082(a)(1). The statute defines "person" to "includ[e] any agency or instrumentality of a foreign state." 22 U.S.C. § 6023(11).

The question in *Exxon Mobil* was whether the Helms-Burton Act waives foreign sovereign immunity in cases against Cuban instrumentalities, standing alone, or if an exception to the Foreign Sovereign Immunities Act ("FSIA") must also apply. The FSIA generally bars U.S. courts from exercising jurisdiction over foreign sovereign foreign entities.

The Court held the Helms-Burton Act authorizes suits against Cuban instrumentalities and agencies, and therefore a plaintiff need not satisfy a FSIA exception as well to sue. The Court reiterated that, if Congress wishes to waive sovereign immunity, it must clearly do so, but the Helms-Burton Act expressly did so under these circumstances.

Watson v. Republican National Committee, No. 24-1260

2 U.S.C. §§ 1, 7; 3 U.S.C. § 1

The U.S. Constitution's Elections Clause grants state legislatures the power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives" of Congress. But Congress has the final word and may override state regulation of congressional elections by passing legislation. For presidential elections, "Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes." Congress set the day of federal elections as the Tuesday after the first Monday in November.

The question in *Watson* is whether those statutes preempt state statutes that allow ballots that are mailed on that date but not received until later to be counted. The Court upheld a Mississippi statute allowing ballots received up to five days after the federal election to be counted, holding that such state statutes were not preempted. The Court's ruling was narrow and did not address absentee or mail-in voting. As the Court explained, "this not a case about the Constitution" but rather "whether counting ballots postmarked by election day, but received up to five days later, violates the federal election-day statutes." The Court also noted it "cannot add to the words Congress chose" in these statutes to set ballot-receipt deadlines.

If Congress disagrees with this interpretation, it may choose to amend those federal laws, such as by setting a deadline for ballot receipt.

Mullin v. Al Otro Lado, No. 25-5

IMMIGRATION AND NATIONALITY ACT ▪ 8 U.S.C. §§ 1158, 1225

Under the Immigration and Nationality Act, would-be asylum applicants physically present and those who "arrive[] in the United States" are eligible to apply for asylum subject to inspection requirements. Those who are not cannot apply for asylum.

The question presented by *Al Otro Lado* is whether a migrant stopped on the Mexican side of the U.S.-Mexico border "arrives in the United States" for purposes of the INA and may apply for asylum. The Court held that would-be asylum applicants must be physically within the United States to apply for asylum. The Court construed "arrives in" to require entry into the United States. Those still in Mexico had not "arrived in the United States."

As the Court noted in rejecting "an impassioned argument against the administrations' policy choice," the Court "ha[s] neither the ability nor the authority to assess and countermand that choice." The Court's "authority is limited to interpreting and applying the law."

Congress is free to amend the INA to alter the universe of people who can apply for asylum.

Sripetch v. Securities and Exchange Commission, No. 25-466

SECURITIES EXCHANGE ACT OF 1934 ▪ 15 U.S.C. §§ 78U(d)(5), (d)(7)

15 U.S.C. § 78u(d)(5) authorizes the SEC to seek "any equitable relief that may be appropriate or necessary for the benefit of investors." In Liu v. SEC, 591 U.S. 71 (2020), the Supreme Court held that this provision authorizes disgorgement in some circumstances but with limitations. Six months later, Congress amended 15 U.S.C. § 78u to add subsection (d)(7), which expressly authorizes the SEC to seek and obtain disgorgement as a remedy for violations of the securities laws. Under 15 U.S.C. § 78u(d)(3)(A)(2), the SEC may seek as "disgorgement . . . any unjust enrichment by the person who received such unjust enrichment as a result of such violation."

In *Sripetch*, the Court held the SEC need not prove pecuniary loss to obtain disgorgement as a remedy for violations of securities laws. The Court assumed without deciding that disgorgement is an equitable remedy that must comply with traditional equitable limits, including that it must be for victims. In a concurring opinion, Justice Thomas suggested that disgorgement under subsection (d)(7) may be a legal remedy subject to the Seventh Amendment's jury trial right.

If Congress wishes to limit the SEC's disgorgement power to circumstances in which victims of securities violations suffered monetary harm, it may amend subsection (d)(7) to clarify this point. To address Justice Thomas's concerns, Congress may also amend the statute to provide that the jury trial right applies if the SEC seeks disgorgement.

Monsanto Company v. Durnell, No. 24-1068

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT ▪ 7 U.S.C. § 136V(b)

The Federal Insecticide, Fungicide, and Rodenticide Act preempts state laws that "impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under" FIFRA. 7 U.S.C. § 136v(b). This preemption limits state tort law.

The question in *Monsanto Company* was whether FIFRA preempts a state-law failure-to-warn claim or if pesticide labels that have been approved by the EPA can nonetheless give rise to state tort liability.

The Court ruled that FIFRA preempts state-law failure-to-warn claims based on labeling laws that are "in addition to or different from" labels required by EPA. State tort duties and failure-to-warn claims are labeling requirements.

Congress may limit the amount of state tort law that is preempted by amending FIFRA.

Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc., No. 24-889

HATCH-WAXMAN ACT ▪ 35 U.S.C. § 271(b)

Drugmakers may market generic drugs so long as they do not infringe patents. The Hatch-Waxman Act authorizes the use of a "skinny label" that carves out patented uses as one way of doing so. 35 U.S.C. § 271 provides that "[w]however actively induces infringement of a patent shall be liable as an infringer[.]"

In *Hikma*, the Court ruled that for a plaintiff alleging infringement to obtain discovery it must allege inducement that is both affirmative and clear to the relevant audience; it may be implicit or explicit.

Landor v. Louisiana Department of Corrections and Public Safety, No. 23-1197

RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000 ▪ 42 U.S.C. §§ 2000CC-2, 2000CC-5(4)(a)

The Supreme Court has interpreted the phrase "appropriate relief" in the Religious Freedom Restoration Act to authorize individual-capacity claims against government officials for monetary damages.

At issue in *Landor* was whether the Religious Land Use and Institutionalized Persons Act could authorize plaintiffs to sue individuals who have no direct agreement with the federal government to receive money.

The Court ruled that this provision of RLUIPA exceeded Congress's authority under the Spending and Necessary and Proper Clauses. The Court explained that when Congress attaches conditions to the funds it distributes, it cannot authorize additional sanctions for violations of those conditions beyond termination of the funding unless the recipient consents to those conditions. While the Louisiana Department of Corrections did consent to certain RLUIPA lawsuits, the individual officers did not. Therefore, they could not be liable for sanctions under that statute.

Congress may wish to review its Spending Clause legislation attaching additional sanctions beyond termination to conditions of receipt of federal funding for compliance with this decision.

Blanche v. Lau, No. 25-429

IMMIGRATION AND NATIONALITY ACT ▪ 8 U.S.C. §§ 1101, 1182, 1229A

The Immigration and Nationality Act authorizes the federal government to remove as inadmissible a lawful permanent resident who has committed a crime involving moral turpitude or controlled substances under 8 U.S.C. § 1182(a)(2) at the time of their last reentry into the United States.

At issue in *Blanche* was what is the standard of proof that applies to this decision. The Court ruled that on reentry the government need not prove the crime by clear and convincing evidence to initiate removal proceedings.

Congress may amend the INA to supply a relevant standard of proof.

Cisco Systems, Inc. v. Doe I, No. 24-856

ALIEN TORT STATUTE ▪ 28 U.S.C. § 1350 ▪ TORTURE VICTIM PROTECTION ACT ▪ 28 U.S.C. § 1350 NOTE

Under the Alien Tort Statute, which was enacted as part of the Judiciary Act of 1789, federal courts have "jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. Congress enacted the Torture Victim Protection Act in 1991 to expand liability under the ATS to include torture. The TVPA provides that "[a]n individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture shall, in a civil action, be liable for damages to that individual." 28 U.S.C. § 1350 note § 2(a)(1).

At issue in *Cisco Systems* was whether these statutes authorized an implied private right of action to sue a company for aiding and abetting torture.

The ATS is a jurisdictional statute that does not create any new causes of action. The Court ruled that the TVPA does expressly create a cause of action under the ATS but does not authorize a suit based on the theory of aiding and abetting liability. In reaching this result, the Court emphasized "that the power to create causes of action belongs to Congress," which "is better positioned than courts to evaluate the policy tradeoffs of creating liability."

Havana Docks Corp. v. Royal Caribbean Cruises, No. 24-983

HELMS-BURTON ACT ▪ 22 U.S.C. §§ 6023, 6082

The Helms-Burton Act creates a cause of action for monetary damages against "any person" who "traffics in property which was confiscated by the Cuban Government[.]" 22 U.S.C. § 6082(a)(1). The statute defines "person" to "includ[e] any agency or instrumentality of a foreign state." 22 U.S.C. § 6023(11).

In *Havana Docks*, the Court interpreted the phrase "property which was confiscated" to refer to use of the property itself, not merely the property interest. "Trafficking" that may give rise to liability under the Act includes using property. For this reason, a company that leased a dock in Cuba that was later confiscated by the Cuban government was permitted to sue a cruise line that used the dock for events occurring after the lease expired.

Congress may wish to alter the scope of which property uses are covered by the Helms-Burton Act.

Mullen v. Doe, No. 25-1083

IMMIGRATION AND NATIONALITY ACT ▪ 8 U.S.C. § 1254a(b)(5)(A)

Congress created Temporary Protected Status in immigration law to grant humanitarian relief to noncitizens who cannot return home due to ongoing armed conflict, natural disasters, and similar conditions. The president has discretion whether to grant TPS and must end it if he determines that the conditions justifying it have ended.

The issue in *Mullen* was the extent to which cancellation of TPS could be challenged in court. 8 U. S. C. §1254a(b)(5)(A) provides that "[t]here is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state" for purposes of eligibility for temporary protected status and employment authorization.

The Court ruled that this provision bars judicial review of all nonconstitutional claims, which means the Executive Branch has very broad authority on TPS status.

Congress may enact legislation countering this ruling by expanding judicial review of TPS designations or granting this status to specific groups.

Slaughter v. Trump, No. 25-332

FEDERAL TRADE COMMISSION ACT ▪ 15 U.S.C. § 41

The Federal Trade Commission Act provides for-cause removal protections for its commissioners, insulating them from presidential at-will removal.

In *Slaughter*, the Court ruled Congress may not grant such removal protections to principal officers in agencies that wield executive power. The president has the constitutional power to fire these subordinates at will.

But the Court noted "not all offices created by Congress necessarily come with executive or even sovereign power attached." Congress may be able to shield principal officers from presidential removal if they do not exercise executive powers like rulemaking authority or enforcement powers.

If Congress is concerned that *Slaughter* grants the president too much power, it may respond by limiting the powers it has granted to erstwhile independent agencies. Congress may also consider narrowing its delegations of rulemaking power to these bodies, as well as repealing delegations of adjudicatory power.

Trump v. Cook, No. 25A312

FEDERAL RESERVE ACT ▪ 12 U.S.C. § 242

The Federal Reserve Act charges the bank with overseeing monetary policy with a dual mandate of maximizing both price stability and employment. Its members serve fixed 14-year terms "unless sooner removed for cause by the President." 12 U.S.C. § 242.

Cook concerns the President's decision to fire Federal Reserve Board Member Lisa Cook due to allegedly false statements she made on mortgage documents. The Supreme Court interpreted the statute to give federal courts a role in reviewing the President's decision to remove Board Members.

Jules v. Andre Balazs Properties, No. 25-83

FEDERAL ARBITRATION ACT ▪ 9 U.S.C. § 1 ET SEQ.

The Federal Arbitration Act generally requires courts to enforce private arbitration agreements. Section 3 of the FAA instructs federal courts to stay lawsuits that are referrable for arbitration, and Section 4 authorizes courts to compel arbitration in some circumstances. Sections 9 and 10 authorize parties to ask the court to confirm or vacate arbitration awards.

In *Jules*, the question was whether a district court that stays a case under Section 3 maintains jurisdiction to rule on applications under Sections 9 and 10 to confirm or vacate arbitration awards, even if the motion does not provide a basis for exercising jurisdiction. The Court unanimously ruled that it did.

Congress may alter the reach of federal jurisdiction over arbitration awards.