

U.S. Supreme Court Docket, October 2022 Term — Federal Securities Cases

Issued Opinions	Docket No.	Subject	Status, Transcript, Filings	Holding
Slack Technologies, LLC v. Pirani (6/1/23)	22-200	Registration statements and prospectuses	Oral argument 4/17/23 Certiorari granted 12/13/22 Petitioner brief 1/27/23 ; 11/21/22 Respondent brief 2/27/23 ; 11/2/22 Petition filed 8/31/22 Attorneys: Thomas G. Hungar (Gibson, Dunn & Crutcher LLP) for Slack Technologies, LLC. Lawrence Paul Eagel (Bragar Eagel Squire, P.C.) for Fiyaz Pirani. Supreme Court Docket	Held : Securities Act Section 11 requires a plaintiff to trace their shares to an allegedly misleading registration statement. The Court was faced with the question of whether “such security” in Securities Act Section 11(a) refers to a security issued pursuant to the allegedly misleading registration statement, or whether it can also encompass securities not issued under that registration statement, such as in a direct offering. The Court concluded that the context suggests that when it comes to “such security,” the law speaks to a security registered under the particular registration statement alleged to contain a misrepresentation; plus, the majority of courts have for years held that Section 11(a) liability extends only to shares that are traceable to an allegedly defective registration statement.

<p>SEC v. Cochran (4/14/23)</p> <p>And</p> <p>Axon Enterprise, Inc. v. FTC (4/14/23)</p>	<p>21-1239</p> <p>21-86</p>	<p>Jurisdiction, ALJ removal</p>	<p>Certiorari granted 5/16/21</p> <p>Oral argument 11/7/22 (Cochran)(Axon)</p> <p>Petitioner brief (FTC and SEC) 8/8/22 Respondent brief 6/30/22; 3/29/22</p> <p>Amicus briefs: Raymond S. Lucia; Chamber of Commerce; Cato Institute</p> <p>Petition filed 7/20/21 (Axon); 3/11/22 (Cochran) Attorneys: Elizabeth B. Prelogar for the SEC.</p> <p>Fifth Circuit decision (1/13/32)</p> <p>Supreme Court Docket</p>	<p>Held: District courts are not precluded from entertaining constitutional challenges to pending agency proceedings. Under Thunder Basin, preclusion of district court jurisdiction could foreclose all meaningful judicial review; no claim “directed at” a pending Commission proceeding can qualify as collateral to it, even if wholly disconnected in subject; and the claims were outside the Commission’s competence and expertise. Accordingly, there was a presumption that Congress did not intend to limit federal court jurisdiction over structural constitutional challenges.</p>
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Granted Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Murray v. UBS Securities, LLC (1/13/23)	22-660	SOX whistleblowers	<p>Certiorari granted 5/1/23</p> <p>Petitioner brief: 4/5/23 Respondent brief: 3/20/23</p> <p>Amicus briefs: Public Citizen; Senator Grassley</p> <p>Attorneys: : Robert L. Herbst (Herbst Law PLLC) for Trevor Murray; Eugene Scalia (Gibson, Dunn & Crutcher LLP) for UBS Securities, LLC.</p> <p>Supreme Court Docket</p>	<p>Whether under the burden-shifting framework that governs SOX cases, must a whistleblower prove his employer acted with a “retaliatory intent” as part of his case in chief, or is the lack of “retaliatory intent” part of the affirmative defense on which the employer bears the burden of proof.</p> <p>Second Circuit decision (8/5/23)</p>

Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Murphy v. SEC (22-1241)	22-1241	Civil penalties	<p>Response due July 27, 2023</p> <p>Attorneys: Justin M. Sher (Sher Tremonte LLP) for Jocelyn M. Murphy and Michael S. Murphy. Kara Rollins (New Civil Liberties Alliance) for Richard C. Gounaud. Elizabeth B. Prelogar, Solicitor General, for the SEC.</p> <p>Supreme Court Docket</p>	<p>Whether the courts below exceeded the statutory penalty caps established by Congress “for each violation” of the securities laws, depriving petitioners of fair notice of the potential consequences of their business conduct.</p> <p>Ninth Circuit decision (10/4/2022)</p>
Macquarie Infrastructure Corp v. Moab Partners, L.P (5/30/23)	22-1165	Regulation S-K	<p>Response due August 2, 2023</p> <p>Attorneys: Linda T. Coberly (Winston & Strawn LLP) for Macquarie Infrastructure Corp.</p> <p>Supreme Court Docket</p>	<p>Whether the Second Circuit erred in holding that a failure to make a disclosure required under Item 303 can support a private claim under Section 10(b), even in the absence of an otherwise-misleading statement.</p> <p>Second Circuit decision (12/20/22)</p>

Cardone Capital, LLC v. Pino (4/14/23)	22-1016	Bespeaks caution	<p>Response due July 24, 2023</p> <p>Attorneys: Anne Margaret Voigts (King & Spalding, LLP) for Cardone Capital, LLC, Cardone Equity Fund V, LLC and Cardone Equity Fund VI, LLC.</p> <p>Supreme Court Docket</p>	<p>Whether the bespeaks caution doctrine imposes a categorical requirement that cautionary language be made after or at the same time as the challenged misstatements, and what standards apply.</p> <p>Ninth Circuit decisions (12/21/22 (1, 2))</p>
Jarkesy v. SEC (cross-petition) (4/10/23)	22-991	SEC enforcement	<p>Cross-Respondent brief: 5/12/23 Petitioner brief: 5/24/23</p> <p>Attorneys: Sidney Michael McColloch (S. Michael McColloch PLLC) for George R. Jarkesy, Jr. and Patriot28 LLC. Elizabeth B. Prelogar, U.S. Department of Justice, for the SEC.</p> <p>Supreme Court Docket</p>	<p>Whether circuit courts on a petition for review of an SEC final order resolving an enforcement adjudication may “remand” back to the agency after overturning the final order because the proceedings were conducted in violation of law or the Constitution, where §78y expressly vests only the jurisdiction to “affirm,” “modify” or “set aside” the order and does not confer jurisdiction to remand.</p> <p>Fifth Circuit decision (5/18/22)</p>
SEC v. Jarkesy (3/8/23)	22-859	SEC enforcement	<p>Petitioner brief: 6/6/23 Respondent brief: 5/23/23</p> <p>Attorneys: Elizabeth B. Prelogar, U.S. Department of Justice for the SEC.</p> <p>Supreme Court Docket</p>	<p>Whether the statutory provisions empowering the SEC to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment.</p> <p>Fifth Circuit decision (5/18/22)</p>

Denied Petitions	Docket No.	Subject	Status	Question Presented
Team Resources Inc. v. SEC (5/1/23)	22-1073	Disgorgement	Certiorari denied 6/26/23 Attorneys: Attorneys: Daniel Staroselsky for the SEC. Jacob Shaye Frenkel (Dickinson Wright PLLC) for Team Resources Inc. and Fossil Energy Corp. Supreme Court Docket	Whether a federal court may grant a disgorgement request from the SEC without granting a defendant's request for a live evidentiary hearing. Fifth Circuit decision (2/1/23)
Gramins v. U.S. (2/9/23)	22-759	Fraud	Certiorari denied 6/5/23 Respondent brief: 5/15/23 Petitioner brief: 5/30/23 Attorneys: Kannon K. Shanmugam (Paul, Weiss, Rifkind, Wharton & Garrison LLP) for Michael Gramins. Elizabeth B. Prelogar for the United States. Supreme Court Docket	Whether, for purposes of the federal fraud statutes, misstatements are immaterial when they pertain only to a party's negotiating position and all terms of the transaction are disclosed. Second Circuit decision (9/20/19)
Goulding v. SEC (1/20/23)	22-687	Disgorgement	Certiorari denied 6/5/23 Petitioner brief 5/12/23 Respondent brief 4/26/23 Attorneys: Bradley J. Bondi (Cahill Gordon & Reindel, LLP) for Randall S. Goulding. Supreme Court Docket	Whether a district court may shift to a defendant the burden of calculating disgorgement when the SEC contends it cannot make such a calculation. Seventh Circuit decision (7/7/22)

Doe v. SEC (3/29/23)	22-963	Whistleblowers	<p>Certiorari denied 5/30/23</p> <p>Waiver of response filed 5/1/23</p> <p>Attorneys: : Ezra M. Spilke (Law Offices of Ezra Spilke) for John Doe.</p> <p>Supreme Court Docket</p>	<p>Whether Dodd-Frank’s whistleblower award program excludes whistleblowers whose criminal conduct is only tangentially connected to the enforcement action and who have pleaded guilty but have not been sentenced.</p> <p>Second Circuit decision (11/15/22)</p>
Liu v. SEC (2/7/23)	22-751	Disgorgement	<p>Certiorari denied 5/22/23</p> <p>Petitioner brief 5/2/23 Respondent brief 8/12/23</p> <p>Attorneys: Michael K. Kellogg (Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.) for Charles Liu. Elizabeth B. Prelogar for the SEC.</p> <p>Supreme Court Docket</p>	<p>Whether the decision of the Ninth Circuit requiring petitioners to disgorge funds they raised and disbursed to unrelated third parties, but never personally received, complies with the Court’s mandate in <i>Liu v. SEC</i>.</p> <p>Ninth Circuit decision (8/24/22)</p>
Fife v. FINRA (3/20/23)	22-924	FINRA enforcement	<p>Certiorari denied 5/15/23</p> <p>Waiver of response filed 3/21/23</p> <p>Attorneys: Attorneys: Martin H. Kaplan (Gusrae Kaplan Nusbaum PLLC) for John M. Fife. John P. Mitchell (Faegre Drinker Biddle & Reath LLP) for Financial Industry Regulatory Authority, Inc.</p> <p>Supreme Court Docket</p>	<p>Whether Congress impliedly stripped federal district courts of their “exclusive jurisdiction” to determine whether FINRA violates the Exchange Act when it purports to exercise its disciplinary jurisdiction beyond the bounds set by Congress.</p> <p>Second Circuit decision (12/20/22)</p>

Terraform Labs Pte Ltd v. SEC (10/6/22)	22-332	Personal jurisdiction	<p>Certiorari denied 3/20/23</p> <p>Petitioner brief: 2/16/23 Respondent brief: 2/2/23</p> <p>Attorneys: Stephen Robert McAllister (Dentons US LLP) for Terraform Labs Pte, Ltd. and Do Kwon. Elizabeth B. Prelogar, U.S. Department of Justice, for the SEC. Supreme Court Docket</p>	<p>Whether the SEC properly exercised personal jurisdiction over a foreign company when it served process on its CEO, who was transiently attending a conference in the U.S.</p> <p>Second Circuit decision (6/8/22)</p>
Chanu v. U.S. (11/4/22)	22-419	Wire fraud, implied misrepresentation	<p>Certiorari denied 1/23/23</p> <p>Petitioner brief: 1/9/23 Respondent brief: 12/30/22</p> <p>Attorneys: Aaron Michael Katz for Cedric Chanu. Elizabeth B. Prelogar, U.S. Department of Justice, for the United States. Supreme Court Docket</p>	<p>Whether the federal wire fraud statute criminalizes any “implied misrepresentation” that induces another to enter into a financial transaction, even when the alleged misrepresentation relates to a fact extrinsic to the essential elements of the bargain.</p> <p>Seventh Circuit decision (7/6/22)</p>
Vorley v. U.S. (10/27/22)	22-402	Wire fraud, implied misrepresentation	<p>Certiorari denied 1/23/23</p> <p>Petitioner brief: 1/9/23 Respondent brief: 12/30/22</p> <p>Attorneys: Steven A. Engel (Dechert LLP) for James Vorley. Supreme Court Docket</p>	<p>Whether a “scheme or artifice to defraud” under the wire fraud statute, 18 U.S.C. § 1343, encompasses an “implied misrepresentation,” or requires an express statement that is either false or misleading.</p> <p>Seventh Circuit decision (7/6/22)</p>

Hong v. SEC (10/17/22)	22-368	Whistleblowers	<p>Certiorari denied 11/21/22</p> <p>Attorneys: Richard Scott Corenthal (Archer, Byington, Glennon & Levine, LLP) for Victor Hong. Elizabeth B. Prelogar, U.S. Department of Justice, for the SEC.</p> <p>Supreme Court Docket</p>	<p>What is an “action” within the Exchange Act’s securities whistleblower incentive program, 15 U.S.C. §78u-6(a)(1)?</p> <p>Second Circuit decision (7/21/22)</p>
Weller v. U.S. (10/5/22)	22-330	Insider trading	<p>Certiorari denied 11/14/22</p> <p>Attorneys: Nishay K. Sanan (Law Office of Nishay K. Sanan) for Eric Weller.</p> <p>Supreme Court Docket</p>	<p>Whether a remote tippee’s mere knowledge that a friendship exists between the insider and first tippee sufficient on its own to establish the remote tippee’s knowledge that the insider received a personal benefit, particularly where, as here, the insider received a pecuniary personal benefit, of which the remote tippee had no knowledge?</p> <p>7th Circuit decision (7/7/22)</p>
Arcaro v. Parks (10/21/22)	22-267	Statutory seller	<p>Certiorari denied 11/14/22</p> <p>Attorneys: Julianna Thomas McCabe (Carlton Fields, P.A.) for Glenn Arcaro.</p> <p>Supreme Court Docket</p>	<p>Whether the Eleventh Circuit’s opinion violates the Court’s decision in <i>Pinter v. Dahl</i> by creating a new test for statutory seller liability under the Securities Act which extends “seller” liability under Section 12 of the Securities Act beyond the plain language of the statute and congressional intent.</p> <p>11th Circuit decision (2/18/22)</p>