

## U.S. Supreme Court Docket, October 2023 Term — Federal Securities Cases

Granted Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
<a href="#">Macquarie Infrastructure Corp v. Moab Partners, L.P</a> (5/30/23)	22-1165	Regulation S-K	Certiorari granted <a href="#">9/29/23</a>  Petitioner brief: <a href="#">8/28/23</a> Respondent brief: <a href="#">8/11/23</a>  Attorneys: Linda T. Coberly (Winston & Strawn LLP) for Macquarie Infrastructure Corp.; David C. Frederick (Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.) for Moab Partners, L.P.  <a href="#">Supreme Court Docket</a>	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.  Second Circuit decision ( <a href="#">12/20/22</a> )

<a href="#">SEC v. Jarkesy</a> (3/8/23)	22-859	SEC enforcement	<p>Certiorari granted <a href="#">6/30/23</a></p> <p>Petitioner brief: <a href="#">8/28/23</a>; <a href="#">6/6/23</a> Respondent brief: <a href="#">5/23/23</a></p> <p>Attorneys: Elizabeth B. Prelogar, U.S. Department of Justice for the SEC.</p> <p><a href="#">Supreme Court Docket</a></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><a href="#">Fifth Circuit decision</a> (5/18/22)</p>
<a href="#">Murray v. UBS Securities, LLC</a> (1/13/23)	22-660	SOX whistleblowers	<p>Set for argument on 10/10/23</p> <p>Certiorari granted <a href="#">5/1/23</a></p> <p>Petitioner brief: <a href="#">9/7/23</a>; <a href="#">4/5/23</a> Respondent brief: <a href="#">8/8/23</a>; <a href="#">3/20/23</a></p> <p>Amicus briefs: <a href="#">Public Citizen</a>; Senator Grassley</p> <p>Attorneys: : Robert L. Herbst (Herbst Law PLLC) for Trevor Murray; Eugene Scalia (Gibson, Dunn &amp; Crutcher LLP) for UBS Securities, LLC.</p> <p><a href="#">Supreme Court Docket</a></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><a href="#">Second Circuit decision</a> (8/5/23)</p>

Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
<a href="#">Smith v. SEC</a> (9/11/23)	23-240	Disgorgement	<p>Response due October 13, 2023</p> <p>Waiver of SEC right to respond filed <a href="#">9/26/23</a></p> <p>Attorneys: Archith Ramkumar for the SEC. Justin S. Weddle (Weddle Law PLLC) and Alex Lipman (Lipman Law PLLC) for David L. Smith.</p> <p><a href="#">Supreme Court Docket</a></p>	<p>Whether the petitioner is entitled to collateral relief from an extra-legal “disgorgement” order, which the SEC had no power to obtain, and the district court had no power to impose?</p> <p><a href="#">Second Circuit decision</a> (4/7/23)</p>
<a href="#">Lemelson v. SEC</a> (7/31/23)	23-98	First Amendment, Fraud	<p>Response due November 1, 2023</p> <p>Attorneys: Russell Gerard Ryan (New Civil Liberties Alliance) for Rev. Father Emmanuel Lemelson f/k/a Gregory Lemelson and Lemelson Capital Management, LLC. Elizabeth B. Prelogar, U.S. Department of Justice, for the SEC.</p> <p><a href="#">Supreme Court Docket</a></p>	<p>Whether, absent proof of fraud or deception, the First Amendment protects a securities market participant from being punished and enjoined by the government for intentionally or recklessly making untrue statements or omissions of material fact while criticizing a publicly traded corporation.</p> <p><a href="#">First Circuit decision</a> (1/3/23)</p>
<a href="#">Murphy v. SEC</a> (6/23/23)	22-1241	Civil penalties	<p>Respondent brief: <a href="#">9/27/23</a></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><a href="#">Supreme Court Docket</a></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 (<a href="#">10/4/2022</a>)</p>

Denied Petitions	Docket No.	Subject	Status	Question Presented
<a href="#">Laydon v. Cooperative Rabobank U.A.</a> (7/24/23)	23-80	Extraterritorial application of CEA	Certiorari denied 10/2/23  Petitioner brief: <a href="#">8/29/23</a> Respondent brief: <a href="#">8/14/23</a>  Attorneys: Paul Greenwalt, III (Arentfox Schiff LLP) for Cboe Futures Exchange, LLC. Michael Andrew Conley for the SEC.  <a href="#">Supreme Court Docket</a>	Whether, to decide if a claim involves a domestic application of a statute, courts may consider factors other than whether the conduct relevant to the statute’s focus occurred in the United States.  <a href="#">Second Circuit decision</a> (10/18/22)
<a href="#">Cardone Capital, LLC v. Pino</a> (4/14/23)	22-1016	Bespeaks caution	Certiorari denied 10/2/23  Petitioner brief: <a href="#">8/22/23</a> Respondent brief: <a href="#">9/5/23</a>  Attorneys: Anne Margaret Voigts (King & Spalding, LLP) for Cardone Capital, LLC, Cardone Equity Fund V, LLC and Cardone Equity Fund VI, LLC.  <a href="#">Supreme Court Docket</a>	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.  Ninth Circuit decisions (12/21/22 ( <a href="#">1</a> , <a href="#">2</a> ))