

## OT12 Case List

Cases are sorted by sitting. 5-4 decisions are highlighted in red.

Docket	Case Name	Court	Argued	Decided	Vote	Author	Holding
<b><i>I. October (10)</i></b>							
11-626	Lozman v. Riviera Beach	CA11	Oct 1, 2012	Jan 15, 2013	7-2	Breyer	Reversed; Lozman's floating home is not a "vessel" for purposes of 1 U.S.C. § 3, and therefore federal maritime jurisdiction is not triggered, because -- except for the fact that it floats -- nothing about it suggests that it was intended to transport people or things over water.
10-1491	Kiobel v. Royal Dutch Petroleum Corp.	CA2	Oct 1, 2012	Apr 17, 2013	9-0	Roberts	Affirmed; The presumption against the extraterritorial application of U.S. law applies to claims under the Alien Tort Statute, and nothing in the text, history, or purposes of the statute rebuts that presumption.
11-184	Kloeckner v. Solis	CA8	Oct 2, 2012	Dec 10, 2012	9-0	Kagan	Reversed and Remanded; A federal employee who claims that an agency action appealable to the Merit Systems Protection Board violates an antidiscrimination statute listed in 5 U.S.C. § 7702(a)(1) should seek judicial review in district court, not the Federal Circuit, regardless whether the Board decided her case on procedural grounds or on the merits.
11-192	United States v. Bormes	CAFC	Oct 2, 2012	Nov 13, 2012	9-0	Scalia	Vacated and Remanded; The Little Tucker Act does not waive the government's sovereign immunity with respect to Fair Credit Reporting Act damages actions.
11-465	Johnson v. Williams	CA9	Oct 3, 2012	Feb 20, 2013	9-0	Alito	Reversed and Remanded; For purposes of 28 U.S.C. § 2254(d), when a state court rules against a defendant in an opinion that rejects some of the defendant's claims but does not expressly address a federal claim, a federal habeas court must presume, subject to rebuttal, that the federal claim was adjudicated on the merits.
11-597	Arkansas Game & Fish Comm'n v. United States	CAFC	Oct 3, 2012	Dec 4, 2012	8-0	Ginsburg	Reversed and Remanded; Recurrent flooding that is induced by the government and temporary in duration is not automatically exempt from liability under the Takings Clause. (Kagan, J., recused.)

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Docket	Case Name	Court	Argued	Decided	Vote	Author	Holding
10-930	Ryan v. Gonzales	CA9	Oct 9, 2012	Jan 8, 2013	9-0	Thomas	Reversed; 18 U.S.C. § 3599 does not provide a state prisoner with the right to suspend his federal habeas proceedings when he is adjudged incompetent.
11-218	Tibbals v. Carter	CA6	Oct 9, 2012	Jan 8, 2013			Reversed and Remanded; Consolidated opinion with Ryan v. Gonzales.
11-345	Fisher v. University of Texas	CA5	Oct 10, 2012				<i>Pending</i>
11-702	Moncrieffe v. Holder	CA5	Oct 10, 2012	Apr 23, 2013	7-2	Sotomayor	Reversed and Remanded; If a noncitizen's conviction for a marijuana distribution offense fails to establish that the offense involved either remuneration or more than a small amount of marijuana, it is not an aggravated felony under the Immigration and Nationality Act.

**II. November (12)**

11-697	Kirtsaeng v. John Wiley & Sons, Inc.	CA2	Oct 29, 2012	Mar 19, 2013	6-3	Breyer	Reversed and Remanded; The "first sale" doctrine, which allows the owner of a copyrighted work to sell or otherwise dispose of that copy as he wishes, applies to copies of a copyrighted work lawfully made abroad.
11-1025	Clapper v. Amnesty International USA	CA2	Oct 29, 2012	Feb 26, 2013	5-4	Alito	Reversed and Remanded; Respondents lack Article III standing to challenge FISA Amendments Act of 2008, 50 U. S. C. § 1881a.

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11-564	Florida v. Jardines	State	Oct 31, 2012	Mar 26, 2013	5-4	Scalia	Affirmed; A dog sniff at the front door of a house where the police suspected drugs were being grown constitutes a search for purposes of the Fourth Amendment.
11-817	Florida v. Harris	State	Oct 31, 2012	Feb 19, 2013	9-0	Kagan	Reversed; When, subject to challenge by the defendant, the police provide evidence of a drug-sniffing dog's satisfactory performance in a certification or training program, the dog's alert can provide probable cause to search a vehicle.
11-820	Chaidez v. United States	CA7	Nov 1, 2012	Feb 20, 2013	7-2	Kagan	Affirmed; The Court's decision in Padilla v. Kentucky, holding that the Sixth Amendment requires defense attorneys to inform criminal defendants of the deportation risks of guilty pleas, does not apply retroactively to cases already final on direct review.
11-770	Bailey v. United States	CA2	Nov 1, 2012	Feb 19, 2013	6-3	Kennedy	Reversed and Remanded; The rule in Michigan v. Summers that officers executing a search warrant are permitted "to detain the occupants of the premises while a proper search is conducted" is limited to the immediate vicinity of the premises to be searched and does not apply when a recent occupant of the premises was detained at a point beyond any reasonable understanding of the immediate vicinity of the premises in question.
11-1085	Amgen Inc. v. Connecticut Retirement Plans and Trust Funds	CA9	Nov 5, 2012	Feb 27, 2013	6-3	Ginsburg	Affirmed; Proof of materiality is not a prerequisite to certification of a securities-fraud class action seeking money damages for alleged violations of Securities and Exchange Commission Rule § 10(b) and Rule 1.
11-864	Comcast Corp. v. Behrend	CA3	Nov 5, 2012	Mar 27, 2013	5-4	Scalia	Reversed; The class action brought by respondents, subscribers to the cable television services provided by petitioner, was improperly certified under Federal Rule of Civil Procedure 23(b)(3), which requires a court to find that the "questions of law or fact common to class members predominate over any questions affecting only individual members," because the Third Circuit erred in refusing to decide whether the class's proposed damages model could show damages on a classwide basis. Under proper standards, the model was inadequate, and the class should not have been certified.

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11-1327	Evans v. Michigan	State	Nov 6, 2012	Feb 20, 2013	8-1	Sotomayor	Reversed; The Double Jeopardy Clause bars retrial following a court-directed acquittal, even if the acquittal was erroneous.
11-8976	Smith v. United States	CADC	Nov 6, 2012	Jan 9, 2013	9-0	Scalia	Affirmed; A defendant bears the burden of proving a defense of withdrawal from conspiracy.
11-1175	Marx v. General Revenue Corp.	CA10	Nov 7, 2012	Feb 26, 2013	7-2	Thomas	Affirmed; Under Federal Rule of Civil Procedure 54(d)(1), a prevailing defendant in a Fair Debt Collection Practices Act suit may be awarded costs when the lawsuit was not brought in bad faith and for the purpose of harassment.
11-982	Already, LLC v. Nike	CA2	Nov 7, 2012	Jan 9, 2013	9-0	Roberts	Affirmed; Nike's unconditional and irrevocable covenant not to enforce a trademark against a competitor's existing products and any future "colorable imitations" moots the competitor's action to have the trademark declared invalid.

**III. December (9)**

11-1160	Federal Trade Commission v. Phoebe Putney Health	CA11	Nov 26, 2012	Feb 19, 2013	9-0	Sotomayor	Reversed and Remanded; Because Georgia has not clearly articulated and affirmatively expressed a policy allowing hospital authorities to make acquisitions that substantially reduce competition, state-action immunity does not apply
11-556	Vance v. Ball State University	CA7	Nov 26, 2012				<i>Pending</i>

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11-1285	US Airways v. McCutchen	CA3	Nov 27, 2012	Apr 16, 2013	5-4	Kagan	Vacated and Remanded; In an action brought under Section 502(a)(3) of the Employee Retirement Income Security Act, which authorizes a civil action “to obtain . . . appropriate equitable relief . . . to enforce . . . the terms of the” ERISA plan, based on an equitable lien by agreement, the terms of the ERISA plan govern. However, when there are gaps in the plan, equitable doctrines may be used to properly construe it.
11-9307	Henderson v. United States	CA5	Nov 28, 2012	Feb 20, 2013	6-3	Breyer	Reversed and Remanded; Regardless whether a legal question was settled or unsettled at the time of trial, an error is “plain” within the meaning of Federal Rule of Criminal Procedure 52(b) so long as the error was plain at the time of appellate review.
11-338	Decker v. Northwest Environmental Defense Center	CA9	Dec 3, 2012	Mar 20, 2013	7-1	Kennedy	Reversed and Remanded; A provision of the Clean Water Act governing challenges to Environmental Protection Agency actions, 33 U.S.C. § 1369(b), is not a jurisdictional bar to this suit, which alleges that the defendants had not obtained National Pollutant Discharge Elimination System permits before discharging stormwater runoff into two Oregon rivers. That provision is the exclusive vehicle for suits seeking to invalidate certain agency decisions, such as the establishment of effluent standards and the issuance of permits. It does not bar a district court from entertaining a citizen suit, like this one, under Section 1365 when the suit is against an alleged violator and seeks to enforce an obligation imposed by the Act or its regulations. Moreover, the EPA’s recent amendment to the Industrial Stormwater Rule does not make the cases moot.
11-1059	Genesis Healthcare Corp. v. Symczyk	CA3	Dec 3, 2012	Apr 16, 2013	5-4	Thomas	Reversed; Because respondent had no personal interest in representing putative, unnamed claimants, nor any other continuing interest that would preserve her suit from mootness, her suit was appropriately dismissed for lack of subject-matter jurisdiction.
11-460	Los Angeles County Flood Control v. Natural Resources Defense Council	CA9	Dec 4, 2012	Jan 8, 2013	9-0	Ginsburg	Reversed and Remanded; The flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway does not qualify as a “discharge of a pollutant” under the Clean Water Act.
11-1231	Sebelius v. Auburn Regional Medical	CADC	Dec 4, 2012	Jan 22, 2013	9-0	Ginsburg	Reversed and Remanded; The 180-day statutory time limit for a hospital to appeal a final Medicare reimbursement is not “jurisdictional,” but it is also not subject to equitable tolling.

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11-1347	Chafin v. Chafin	CA11	Dec 5, 2012	Feb 19, 2013	9-0	Roberts	Vacated and Remanded; The return of a child to a foreign country pursuant to an order under the Hague Convention on the Civil Aspects of International Child Abduction does not render an appeal of that order moot.
<b>IV. January (12)</b>							
11-1450	Standard Fire Insurance Company v. Knowles	CA8	Jan 7, 2013	Mar 19, 2013	9-0	Breyer	Vacated and Remanded; A stipulation by a class-action plaintiff that he and the class that he purports to represent will seek damages that are less than the threshold for jurisdiction under the Class Action Fairness Act of 2005 does not defeat federal jurisdiction under the Act.
11-9540	Descamps v. United States	CA9	Jan 7, 2013				<i>Pending</i>
11-1274	Gabelli v. Securities and Exchange Commission	CA2	Jan 8, 2013	Feb 27, 2013	9-0	Roberts	Reversed and Remanded; The five-year statute of limitations for the SEC to bring a civil suit seeking penalties for securities fraud against investment advisers begins to tick when the fraud occurs, not when it is discovered.
12-98	Wos v. E.M.A.	CA4	Jan 8, 2013	Mar 20, 2013	6-3	Kennedy	Affirmed; The anti-lien provision of the federal Medicaid statute pre-empts North Carolina's irrebuttable statutory presumption that one-third of any tort recovery by a Medicaid beneficiary is attributable to medical expenses.
11-1425	Missouri v. McNeely	State	Jan 9, 2013	Apr 17, 2013	5-4	Sotomayor	Affirmed; In drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.

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12-25	Maracich v. Spears	CA4	Jan 9, 2013				<i>Pending</i>
11-9335	Alleyne v. United States	CA4	Jan 14, 2013				<i>Pending</i>
11-9953	Boyer v. Louisiana	State	Jan 14, 2013	Apr 29, 2013			Dismissed; The Court dismissed the writ of certiorari as improvidently granted.
11-1351	Levin v. United States	CA9	Jan 15, 2013	Mar 4, 2013	9-0	Ginsburg	Reversed and Remanded; The Gonzalez Act, 10 U.S.C. § 1089(e), which provides that the intentional tort exception to the Federal Tort Claims Act does not apply to “any cause of action arising out of a negligent or wrongful act or omission in the performance of medical . . . functions,” permits a suit against the United States alleging medical battery by a Navy doctor acting within the scope of his employment.
11-1447	Koontz v. St. Johns River Water Management	State	Jan 15, 2013				<i>Pending</i>
11-1118	Gunn v. Minton	State	Jan 16, 2013	Feb 20, 2013	9-0	Roberts	Reversed and Remanded; 28 U.S.C. § 1338(a), which provides for exclusive federal jurisdiction over an case “arising under any Act of Congress relating to patents,” does not deprive the state courts of subject matter jurisdiction over a state law claim alleging legal malpractice in a patent case.

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11-1545	Arlington v. Federal Communications Commission	CA5	Jan 16, 2013	May 20, 2013	6-3	Scalia	Affirmed; Courts must apply the Chevron framework to an agency's interpretation of a statutory ambiguity that concerns the scope of the agency's statutory authority ( i.e., its jurisdiction).
<b>V. February (10)</b>							
11-10362	Millbrook v. United States	CA3	Feb 19, 2013	Mar 27, 2013	9-0	Thomas	Reversed and Remanded; The law enforcement proviso to the Federal Tort Claims Act applies to all the activities of law enforcement officers within the scope of their employment, not just to their investigative or law enforcement activities.
11-796	Bowman v. Monsanto	CAFC	Feb 19, 2013	May 13, 2013	9-0	Kagan	Affirmed; Patent exhaustion does not permit a farmer to reproduce patented seeds through planting and harvesting without the patent holder's permission.
12-17	McBurney v. Young	CA4	Feb 20, 2013	Apr 29, 2013	9-0	Alito	Affirmed; Virginia's Freedom of Information Act, which grants Virginia citizens access to all public records, but grants no such right to non-Virginians, does not violate the Privileges and Immunities Clause, which protects only those privileges and immunities that are "fundamental." The Act also does not violate the dormant Commerce Clause: it neither prohibits access to an interstate market nor imposes burdensome regulation on that market; and in any event, a state does not violate the Clause when, having created a market through a state program, it "limits benefits generated by [that] state program to those who fund the state treasury and whom the State was created to serve."
12-43	PPL Corporation v. Commissioner of Internal Revenue	CA3	Feb 20, 2013	May 20, 2013	9-0	Thomas	Reversed; The one-time "windfall tax" imposed in 1997 by the United Kingdom on a group of companies privatized between 1984 and 1996 is creditable under Section 901 of the Internal Revenue Code, which (as relevant here) provides that any "income, war profits, and excess profits taxes" paid overseas are creditable against U.S. income taxes.

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11-10189	Trevino v. Thaler	CA5	Feb 25, 2013	May 28, 2013	5-4	Breyer	Vacated and Remanded; When, as here, a state's procedural framework, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise on direct appeal a claim that his trial counsel provided ineffective assistance, the good cause exception recognized in <i>Martinez v. Ryan</i> applies.
12-126	McQuiggin v. Perkins	CA6	Feb 25, 2013	May 28, 2013	5-4	Ginsburg	Vacated and Remanded; Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment to consideration of the merits of a constitutional claim is a procedural bar, as it was in <i>Schlup v. Delo</i> and <i>House v. Bell</i> , or expiration of the Antiterrorism and Effective Death Penalty Act statute of limitations, as in this case.
12-62	Peugh v. United States	CA7	Feb 26, 2013	Jun 10, 2013	5-4	Sotomayor	Reversed and Remanded; The Constitution's Ex Post Facto Clause prohibits federal courts from sentencing a defendant based on guidelines that were promulgated after he committed his crimes, when the new version of guidelines provides a higher sentencing range than the version in place at the time of the offense.
12-207	Maryland v. King	State	Feb 26, 2013	Jun 3, 2013	5-4	Kennedy	Reversed; When officers make an arrest supported by probable cause to hold a suspect for a serious offense and bring him to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.
12-96	Shelby County v. Holder	CADC	Feb 27, 2013				<i>Pending</i>
12-133	American Express Co. v. Italian Colors Restaurant	CA2	Feb 27, 2013				<i>Pending</i>

**VI. March (10)**

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12-71	Arizona v. Inter Tribal Council	CA9	Mar 18, 2013				<i>Pending</i>
11-1518	Bullock v. BankChampaign, N.A.	CA11	Mar 18, 2013	May 13, 2013	9-0	Breyer	Vacated and Remanded; The term “defalcation” in the Bankruptcy Code includes a culpable state of mind requirement involving knowledge of, or gross recklessness in respect to, the improper nature of the fiduciary behavior.
12-236	Sebelius v. Cloer	CAFC	Mar 19, 2013	May 20, 2013	9-0	Sotomayor	Affirmed; An untimely National Childhood Vaccine Injury Act petition may qualify for an award of attorney’s fees if it is filed in good faith and there is a reasonable basis for its claim.
12-142	Mutual Pharmaceutical v. Bartlett	CA1	Mar 19, 2013				<i>Pending</i>
12-123	Horne v. Department of Agriculture	CA9	Mar 20, 2013	Jun 10, 2013	9-0	Thomas	Reversed and Remanded; A farmer who is deemed to have violated an agricultural marketing order, is fined, has a fine assessed against him, and seeks to argue that the fine is an unconstitutional “taking” can bring his “takings” claim in a regular federal district court without first paying the fine; he is not required to bring that claim in the Court of Federal Claims.
12-52	Dan’s City Used Cars v. Pelkey	State	Mar 20, 2013	May 13, 2013	9-0	Ginsburg	Affirmed; Section 14501(c)(1) of the Federal Aviation Administration Authorization Act of 1994 does not preempt state-law claims stemming from the storage and disposal of a towed vehicle.

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12-135	Oxford Health Plans v. Sutter	CA3	Mar 25, 2013	Jun 10, 2013	9-0	Kagan	Affirmed; When an arbitrator determines that the parties to an arbitration intended to authorize class-wide arbitration, that determination survives judicial review under § 10(a)(4) of the Federal Arbitration Act as long as the arbitrator was arguably construing the contract.
12-416	Federal Trade Commission v. Actavis	CA11	Mar 25, 2013				<i>Pending</i>
12-144	Hollingsworth v. Perry	CA9	Mar 26, 2013				<i>Pending</i>
12-307	United States v. Windsor	CA2	Mar 27, 2013				<i>Pending</i>

**VII. April (12)**

12-398	Association for Molecular Pathology v. Myriad Genetics	CAFC	Apr 15, 2013				<i>Pending</i>
12-167	United States v. Davila	CA11	Apr 15, 2013				<i>Pending</i>

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12-399	Adoptive Couple v. Baby Girl	State	Apr 16, 2013				<i>Pending</i>
11-798	American Trucking Association v. Los Angeles, California	CA9	Apr 16, 2013				<i>Pending</i>
12-246	Salinas v. Texas	State	Apr 17, 2013				<i>Pending</i>
12-418	United States v. Kobedeaux	CA5	Apr 17, 2013				<i>Pending</i>
11-1221	Hillman v. Maretta	State	Apr 22, 2013	Jun 3, 2013	9-0	Sotomayor	Affirmed; The Federal Employees' Group Life Insurance Act (FEGLIA), which establishes a life insurance program for federal employees, allows an employee to designate a beneficiary to receive the proceeds of the policy when the employee dies. That law preempts a Virginia law that allows the family of a deceased employee to sue the designated beneficiary for the proceeds if the beneficiary happens to be the employee's former spouse.
12-10	Agency for International Development v. Alliance for Open Society International	CA2	Apr 22, 2013				<i>Pending</i>

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11-889	Tarrant Regional Water District v. Herrmann	CA10	Apr 23, 2013				<i>Pending</i>
12-357	Sekhar v. United States	CA2	Apr 23, 2013				<i>Pending</i>
12-547	Metrish v. Lancaster	CA6	Apr 24, 2013	May 20, 2013	9-0	Ginsburg	Reversed; Because the Michigan Court of Appeals did not unreasonably apply clearly established federal law when it retroactively applied a decision of the Michigan Supreme Court rejecting the diminished-capacity defense to petitioner, who was charged with a murder that occurred several years before the Michigan Supreme Court's decision, petitioner was not entitled to habeas relief.
12-484	University of Texas Southwestern Medical Center v. Nassar	CA5	Apr 24, 2013				<i>Pending</i>

**VIII. Summary Reversals**

12-168	Lefemine v. Wideman	CA4	-	Nov 5, 2012	9-0	<i>Per Curiam</i>	Vacated and Remanded; In a lawsuit alleging that the conduct of government officials violates the Constitution, a plaintiff who obtains a permanent injunction but no money damages is a "prevailing party" because the injunction ordered the officials to change their behavior in a way that directly benefitted the plaintiff. The plaintiff is therefore entitled to receive his attorney's fees unless special circumstances would render such an award unjust.
11-1377	Nitro-Lift Technologies v. Howard	State	-	Nov 26, 2012	9-0	<i>Per Curiam</i>	Vacated and Remanded; The Oklahoma Supreme Court was wrong in preventing arbitration of a dispute over the scope of non-competition agreements in employment contracts.

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12-382	Marshall v. Rodgers	CA9	-	Apr 1, 2013	9-0	<i>Per Curiam</i>	Reversed and Remanded; Petitioner's claim that the state courts violated his Sixth Amendment right to effective assistance of counsel by declining to appoint an attorney to assist in filing a motion for a new trial notwithstanding his three prior waivers of the right to counseled representation was not "clearly established in federal law."
12-694	Nevada v. Jackson	CA9	-	Jun 3, 2013	9-0	<i>Per Curiam</i>	Reversed and Remanded; No prior decisions of the Supreme Court clearly establish the right of a criminal defendant to introduce evidence for the purpose of showing that a rape victim previously reported that the defendant had assaulted her despite the fact that those claims were unsubstantiated.