

**CASES HANDLED BY MAYER BROWN LLP
DURING THE 2009 U.S. SUPREME COURT TERM**

June 29, 2010

GRANTED CASES

No.	Caption and Status	Attorneys	Description
09-893	<i>AT&T Mobility LLC v. Concepcion</i> Cert. granted 5/24/10	K. Geller A. Pincus E. Tager D. Falk A. Parasharami K. Ranlett	The Court granted our petition for certiorari to address whether the Federal Arbitration Act preempts the Ninth Circuit's holding that a provision in AT&T Mobility's wireless service agreement that requires disputes to be arbitrated on an individual basis, thereby precluding class actions, is unconscionable under California law.
08-964	<i>Bilski v. Doll</i> Affirmed 6/28/2010	A. Pincus D. Himmelfarb	Section 101 of the Patent Act authorizes patents for "any new and useful process, machine, manufacture, or composition of matter." In this case, the Court addressed how processes should be assessed pursuant to Section 101. The Federal Circuit determined that a process is patentable only if it "(1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing." On behalf of the Business Software Alliance, we filed an amicus brief criticizing this standard, but agreeing with the court's ultimate result and explaining the ramifications of § 101 on the software industry. The Court agreed with our position that the machine-or-transformation standard was unduly narrow, and it recognized the continuing viability of business method patents. Consistent with our position, the Court affirmed the Federal Circuit's ultimate rejection of the patent at suit.
08-1301	<i>Carr v. United States</i> Reversed and remanded 6/1/2010	C. Rothfeld A. Pincus	In conjunction with the Yale Supreme Court Clinic, we filed a petition arguing that retroactive application of the Sex Offender Registration and Notification Act is inconsistent with the statute and violates the Ex Post Facto Clause. In particular, SORNA requires registration by a person convicted of specified sex offenses who

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			<p>“travels” in interstate commerce, and this case presents the question whether travel occurring before enactment of the statute triggers the registration requirement. The Court held that SORNA does not apply to sex offenders whose interstate travel occurred before SORNA’s effective date.</p>
08-1371	<p><i>Christian Legal Society v. Martinez</i> Affirmed and remanded 6/28/2010</p>	<p>A. Pincus C. Rothfeld</p>	<p>This case concerned the application of a public law school’s neutral non-discrimination policy to a Christian club seeking official recognition as a student group that was unwilling to abide by the policy insofar as it encompassed nondiscrimination on grounds of sexual orientation. In conjunction with the Yale Supreme Court clinic, we filed an amicus brief on behalf of a number of public universities and university systems, explaining the important public educational interests served by a program for recognizing official student groups and explaining the appropriate application of First Amendment doctrine to the restricted forum created by an official-groups program. The Court agreed with our position, and held that the non-discrimination policy was a reasonable, viewpoint-neutral condition for recognizing official student groups.</p>
08-1332	<p><i>City of Ontario v. Quon</i> Reversed and remanded 6/17/10</p>	<p>A. Pincus C. Rothfeld</p>	<p>This case concerned the privacy rights of a government employee in personal text messages sent on a government text pager (as well as the privacy rights of non-employee correspondents in their communications with the employee). In conjunction with the Yale Supreme Court clinic, we filed an amicus brief on behalf of the Electronic Frontier Foundation, Center for Democracy & Technology, American Civil Liberties Union, and Public Citizen, explaining to the Court the pervasiveness of personal use of employer-provided communications technology and the ways in which employers encourage, and benefit from, that use, as well as urging that the Court decide this case narrowly on grounds that would not unnecessarily implicate the private employer context. While the Court held that the search of text messages was</p>

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			reasonable, it cited our brief in agreeing to resolve the case narrowly.
09-559	<i>Doe v. Reed</i> Affirmed 6/24/2010	A. Pincus C. Rothfeld	In this case, supporters of a Washington State ballot initiative that would repeal a domestic-partnership law sought to prevent disclosure of the names of petition signers under the state's public records law. In conjunction with the Yale Supreme Court clinic, we filed an amicus brief on behalf of the National Conference of State Legislatures, International City/County Management Association, National Association of Counties, and International Municipal Lawyers Association, arguing that citizens signing such petitions are involved in direct legislative action, not First Amendment activity. As such, their actions are appropriately subject to state policies favoring disclosure of public records. We also argued that a contrary holding would endanger other non-anonymous election activity of longstanding legitimacy, including caucus voting and the donor disclosure rules recently approved by eight Justices in <i>Citizens United</i> . The Court agreed with our position, and held that the disclosure of the names of petition signers does not violate the First Amendment.
08-7412 08-7621	<i>Graham v. Florida</i> Reversed and remanded 5/17/10 <i>Sullivan v. Florida</i> Dismissed as improvidently granted 5/17/10	D. Falk N. Soltman B. Wong	The issue in these cases was whether the Eighth Amendment prohibits a state from sentencing a juvenile who commits a non-homicide offense to life in prison without parole. We filed an amicus brief in support of petitioners on behalf of the Disability Rights Legal Center arguing that the prevalence of diagnosed and undiagnosed disabilities among juveniles casts significant doubt on the criminal justice system's ability to reliably assess juvenile culpability. The Court agreed with our position, and held that the Eighth Amendment categorically prohibits states from sentencing such offenders to life in prison without a realistic possibility of eventual release.

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08-304	<p><i>Graham County Soil and Water Conservation District v. United States ex rel. Wilson</i></p> <p>Reversed and remanded 3/30/10</p>	D. Himmelfarb	<p>The False Claims Act prohibits <i>qui tam</i> suits based on public disclosure of information in various contexts, including in “administrative” hearings, audits, and investigations. 31 U.S.C. § 3730(e)(4)(A). The Court granted cert to resolve a circuit split over whether an audit and investigation performed by a State or its political subdivision invokes this provision of the FCA. We filed an amicus brief on behalf of the National League of Cities, and other <i>amici</i>, in support of the petitioner. The Court agreed with petitioner and us that the public disclosure bar encompasses disclosures made in the course of state administrative proceedings.</p>
08-1214	<p><i>Granite Rock Co. v. International Brotherhood of Teamsters</i></p> <p>Reversed in part, affirmed in part, and remanded 6/24/2010</p>	A. Pincus E. Tager A. Parasharami	<p>The Ninth Circuit held that when a purported contract contains a broadly worded arbitration clause, initial questions of contract formation must be determined by an arbitrator, not a court. We filed an amicus brief on behalf of the U.S. Chamber of Commerce, arguing that because arbitrators derive their jurisdiction solely from the consent of the parties, a court cannot refer a dispute to arbitration without first finding that the parties agreed to arbitrate. The Court agreed with our position, and held that challenges to contract formation and agreement are always entitled to a judicial determination.</p>
08-1498/ 09-89	<p><i>Holder v. Humanitarian Law Project/Humanitarian Law Project v. Holder</i></p> <p>Reversed in part, affirmed in part, and remanded 6/21/2010</p>	D. Gossett M. Kimberly	<p>It is unlawful to knowingly provide any “service,” “training,” or “expert advice or assistance” “derived from scientific [or] technical * * * knowledge” to a designated foreign terrorist organization. The Ninth Circuit ruled that several sub-provisions of this anti-terrorism law are unconstitutional, but upheld several others. The government and the plaintiffs below cross-petitioned for review, and the Court granted both petitions, agreeing to review whether the relevant provisions are unconstitutional under the First and Fifth Amendments. We filed an amicus brief on behalf of the Constitution Project and the Rutherford Institute supporting the respondents/cross-petitioners. The Court ruled for the government,</p>

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			and held that the anti-terrorism law was constitutional as applied.
08-1529	<i>Hui v. Castaneda</i> Reversed and remanded 5/3/10	J. Sarles S. Sanders	This case arises out of the death of an immigration detainee and allegations that medical personnel employed by the US Public Health Service were deliberately indifferent to his serious medical needs in violation of the 8th Amendment. The question presented was whether plaintiffs suing the PHS may bring a <i>Bivens</i> action for violation of constitutional rights or whether they are limited to a malpractice claim under the Federal Tort Claims Act. On behalf of the American Civil Liberties Union, we filed an amicus brief in support of the respondents, arguing that ordinary tort principles do not sufficiently protect constitutional rights or deter constitutional violations and thus a <i>Bivens</i> action is necessary. The Court held that public health service officers and employees are immune from <i>Bivens</i> actions for constitutional harms committed in the line of duty.
08-586	<i>Jones v. Harris Associates</i> Vacated and remanded 3/30/10	S. Shapiro A. Pincus T. Bishop J. Yount	The case concerned the standards for determining whether a mutual fund adviser's fees violate fiduciary duties under Investment Company Act section 36(b). We filed an amicus brief in support of respondents on behalf of Fidelity Investments. The Supreme Court, in a unanimous opinion by Justice Alito, held that to face liability under Section 36(b) an advisor must "charge a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." In explaining how that standard is to be applied, the Court made clear that plaintiffs face a formidable hurdle when asserting a claim under Section 36(b) and that compensation decisions made by a fund's board of directors will receive considerable deference.
09-350	<i>Los Angeles County v. Humphries</i>	A. Pincus C. Rothfeld	After finding that the Humphries were erroneously included in the California Child Abuse Central Index, the Ninth Circuit found that

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	Oral argument scheduled for 10/5/10	P. Hughes	California and the County of Los Angeles had violated the Humphries' constitutional rights. The Ninth Circuit remanded the case for further proceedings on <i>Monell</i> liability, and then later awarded the Humphries attorneys' fees with respect to their appeal. The County of Los Angeles challenged only the fee award through a petition of certiorari, arguing that (1) no judgment can be had against the county—even for prospective relief—until the plaintiffs prove <i>Monell</i> liability, and (2) that the declaratory relief obtained here is insufficient to trigger a fee award. On behalf of the Humphries, we filed a brief in opposition to L.A. County's petition for certiorari. The Court granted certiorari, limited to the first question. We now represent the Humphries on the merits. Andy Pincus will argue the case.
Original Nos. 1, 2, & 3	<i>Michigan v. Illinois</i> Petition to reopen denied 4/26/10	T. Bishop R. Bulgar K. Agonis	In a motion to reopen a consent decree in a longstanding water law case under the Court's original jurisdiction, Michigan (joined by several other states) contends that Illinois has unlawfully failed to take sufficient measures to prevent the Asian Carp, an invasive species in the Chicago River and associated waterways, from reaching the Great Lakes. Michigan also moved for a preliminary injunction to require closure of the canal locks between the river system and Lake Michigan, through which 19 million tons of cargo move each year. We were retained by the American Waterways Operators, an association of barge and tugboat operators, to assist in preparation of an affidavit in opposition to injunctive relief, and to assist in opposing the petition to reopen. The Court denied the petition to reopen and refused injunctive relief.
09-475	<i>Monsanto Co. v. Geertson Seed Farms</i> Reversed and remanded 6/21/2010	D. Himmelfarb	The Ninth Circuit affirmed an injunction against the use of genetically modified alfalfa seeds that the district court entered without a hearing on irreparable harm. The Ninth Circuit ruled that parties suing under the National Environmental Policy Act did not have to demonstrate irreparable harm, despite the Supreme Court's

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			<p>recent ruling (in <i>Winter</i>) that all injunctions require such a showing. On behalf of the American Farm Bureau Federation and the Biotechnology Industry Organization, we filed an amicus brief supporting the petitioner, arguing that the Ninth Circuit's decision presents a serious threat to the use of biotechnology in agriculture. The Court agreed with our position, and held that the district court abused its discretion in entering the injunction.</p>
08-1191	<p><i>Morrison v. National Australia Bank Ltd.</i> Affirmed 6/24/10</p>	<p>A. Pincus M. Cohen T. Delaney A. Lakatos W. Hein</p>	<p>The Court granted certiorari to resolve a circuit split regarding the appropriate standard for identifying domestic conduct sufficient to support a private claim of transnational securities fraud. We filed an amicus brief on behalf of various non-U.S. banking and industry groups in support of a restrictive standard, arguing among other things that exporting the private civil U.S. securities enforcement regime is ill-advised as a matter of comity. The Court favorably cited our amicus brief, and held that Section 10(b) of the Securities Exchange Act applies only to securities that are sold on a domestic U.S. exchange or otherwise sold within the United States.</p>
08-1065	<p><i>Pottawattamie County, Iowa v. McGhee</i> Dismissed 1/4/10</p>	<p>J. Sarles S. Sanders S. Shapiro</p>	<p>The Court granted our petition to decide whether the Eighth Circuit erroneously denied immunity to prosecutors where civil rights plaintiffs alleged that the prosecutors (1) procured false testimony during the investigative phase of a criminal proceeding, then (2) introduced the same evidence in judicial proceedings. The case settled after oral argument and was therefore dismissed on motion of the parties. Steve Sanders argued the case.</p>
09-497	<p><i>Rent-A-Center West, Inc. v. Jackson</i> Reversed 6/21/10</p>	<p>D. Falk A. Parasharami</p>	<p>The Ninth Circuit held that only a court may decide whether an arbitration clause is unconscionable, even when the parties clearly and unmistakably agreed to have all questions of arbitrability decided in the first instance by the arbitrator. We filed an amicus brief on behalf of the U.S. Chamber of Commerce, arguing that the Federal Arbitration Act requires courts to enforce arbitration</p>

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			agreements as written. The Court agreed with our position, and held that courts must honor the parties' agreement unless the objecting party identifies a problem specific to the delegation clause.
08-1198	<i>Stolt-Nielsen S.A. v. Animalfeeds Int'l Corp.</i> Reversed and Remanded 4/27/10	E. Tager A. Parasharami K. Ranlett R. Lomio	The issue in this case was whether an arbitration agreement that is silent as to whether the arbitrator may conduct class-wide proceedings may be construed to give the arbitrator that authority. On behalf of the CTIA–The Wireless Association, we filed an amicus brief contending that construing silence on this topic as consent would be inconsistent with the Federal Arbitration Act. The Court reversed the Second Circuit's decision and held that the arbitrators had exceeded their powers in construing the "silent" arbitration agreement to permit class arbitration. The Court agreed that the Federal Arbitration Act precludes inferring an agreement to permit class arbitration because of the many fundamental differences between class arbitration and arbitration in its traditional bilateral form.
08-769	<i>United States v. Stevens</i> Affirmed 4/20/10	A. Tauber C. Canetti E. Volokh	The Third Circuit held that a federal statute criminalizing the creation, sale, or possession of a depiction of animal cruelty violates the First Amendment. On behalf of the National Coalition Against Censorship and the College Art Association, we filed an amicus brief supporting the respondents. In arguing that the Court should affirm the Third Circuit, we provided examples of how the statute is overbroad and explained how a statutory exemption for depictions with religious, political, or educational value does not save the statute because of the inherent subjectivity in determining what material fits within the exception. The Court agreed that the statute is substantially overbroad, and therefore invalid under the First Amendment.
08-1314	<i>Williamson v. Mazda Motor of America, Inc.</i>	K. Geller E. Jones	The plaintiffs in this case sued Mazda in California state court, alleging that a passenger wearing a lap-only seatbelt in a rear seat of

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	<i>Cert. granted 5/24/10</i>	C. Rothfeld D. Himmelfarb	a 1993 minivan was killed in an accident and that Mazda was liable under state negligence law for failing to install a lap/shoulder seatbelt in the passenger's seat. The California Court of Appeal held that the claim was preempted by the then-applicable version of Federal Motor Vehicle Safety Standard 208, which permitted Mazda to install either lap-only or lap/shoulder belts in the rear seating position. The Supreme Court granted plaintiffs petition to review the preemption holding. We are co-counsel for Mazda.

CERT. PETITIONS AND APPEALS

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09-893	<i>AT&T Mobility LLC v. Concepcion</i> Cert. granted 5/24/10	E. Tager D. Falk A. Parasharami K. Ranlett	The Court granted our petition for certiorari to address whether the Federal Arbitration Act preempts the Ninth Circuit’s holding that a provision in AT&T Mobility’s wireless service agreement that requires disputes to be arbitrated on an individual basis, thereby precluding class actions, is unconscionable under California law.
09-246	<i>Bridgeport Roman Catholic Diocesan Corporation v. New York Times et al.</i> Cert. denied 11/2/09	P. Lacavora H. Chanoine	On behalf of the Bridgeport Roman Catholic Diocese, we filed a petition seeking review of two issues raised by a decision of the Connecticut Supreme Court. First, the petition asked whether a church “waived” its First Amendment right to object to compelled disclosure of confidential priest evaluations after the church produced the documents in earlier civil litigation under protective orders sealing the documents and prohibiting further dissemination. Second, the petition asked the Court to determine the boundaries of the “judicial documents” concept, which establishes the scope of the “presumptive right of public access.”
08-1375	<i>Cassens Transport Co. v. Brown</i> Cert. denied 12/7/09	C. Rothfeld B. Wong	The issue in this case involved whether the McCarran-Ferguson Act precludes application of a federal statute (RICO) that would impair a state insurance law. The Sixth Circuit held that employees could sustain a civil RICO claim against employers that self-insured their liability for worker’s compensation claims and then allegedly fraudulently denied them benefits. We filed a petition challenging, <i>inter alia</i> , the Sixth Circuit’s categorical holding that self-insurance is never insurance under the McCarran-Ferguson Act.
09-564	<i>City Council of the City of Albuquerque v. Albuquerque Commons Partnership</i> Cert. denied 2/22/10	T. Bishop A. Tauber	The City Council of the City of Albuquerque requested review of an \$8 million procedural due process judgment against the City. We assisted counsel for developer Albuquerque Commons Partnership in opposing certiorari.

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09-1149	<i>City of Warren v. Moldowan</i> Cert. denied 6/28/10	J. Sarles S. Sanders K. Agonis	The issue in this case was whether a police officer may be liable under Section 1983 for an innocent or negligent failure to turn over potentially exculpatory evidence to a criminal defendant. We filed an amicus brief in support of petitioners on behalf of several law enforcement organizations.
09-1533	<i>DePierre v. United States</i> Cert. petition filed 6/15/10 Response due 8/16/10	A. Pincus C. Rothfeld	This case implicates a conflict among the circuits concerning a discrete question of statutory interpretation: Do the words “cocaine base” in 21 U.S.C. § 841(b)(1)(A)(iii) refer strictly to “crack cocaine” (as held by the Sixth, Seventh, Eighth, Ninth, Eleventh, and District of Columbia Circuits), or to “all forms of cocaine base, including but not limited to crack cocaine” (as held by First, Second, Third, Fifth, and Tenth Circuits)? Here, evidence in the record indicated that the cocaine base the defendant was charged with possessing was not crack. The First Circuit held the distinction irrelevant, however, concluding that 21 U.S.C. § 841(b)(1)(A)(iii) applies to all forms of cocaine base. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari.
09-297	<i>Ford Motor Co. v. Buell-Wilson</i> Cert. denied 11/30/09	E. Tager	The petition raised the issue whether a California punitive damages statute is unconstitutionally vague because it permits an award of punitive damages for conduct that an objectively reasonable person would not believe to be improper. On behalf of The Product Liability Advisory Council, Inc., we filed an amicus brief supporting the petitioner and arguing that if punitive liability attaches to objectively reasonable conduct, a defendant is deprived of its due process right to fair notice and faces a constitutionally impermissible risk that the resulting penalty will be arbitrary.
09-854	<i>Fortis Insurance Co. v. Mitchell</i> Cert. denied 3/22/10	E. Tager C. Houpt	This was an insurance bad-faith case. The jury awarded the plaintiff \$150,000 in compensatory damages and \$15 million in punitive damages. The South Carolina Supreme Court reduced the punitive damages to \$10 million, reasoning that the reduced amount was a

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			single-digit multiple of the “potential harm” that the plaintiff could have suffered, even though the plaintiff did not rely on potential harm at trial and the jury was never instructed to consider it. On behalf of Fortis, we filed a petition for certiorari.
09-311	<i>HCA Health Services of Oklahoma, Inc. v. Shinn</i> Cert. denied 11/9/09	E. Tager D. Himmelfarb	This case presented the question whether due process requires a court to give particularized notice that it is considering discovery sanctions before actually sanctioning a party and whether a party defending a sanctions motion has the right to present evidence. Less than an hour after a sanctions motion was filed against HCA Health Services of Oklahoma, Inc., an Oklahoma trial court held a hearing and denied HCA the opportunity to submit a response or to present evidence in its defense. The court granted the motion, and sanctioned HCA by entering a default judgment against it. In addition to seeking plenary review of the sanctions issues, we asked the Court to grant, vacate, and remand for further consideration in light of <i>Caperton v. A.T. Massey Coal Co., Inc.</i> , No. 08-22, because the lawyer seeking sanctions against HCA served as the chairman of the trial judge’s reelection campaign.
09-480	<i>Hensley v. United States</i> Cert. denied 1/25/10	A. Pincus C. Rothfeld	This issue in this case was whether a district court’s use of a later U.S. Sentencing Guidelines Manual that retroactively increased the guidelines range violates the Ex Post Facto Clause. In this case, the petitioner was convicted on one charge of attempting to solicit a minor over the Internet. The guidelines range at the time of the offense was 78 to 97 months, but had been increased to 121 to 151 months by the time of sentencing. The district court used the later Manual and imposed a sentence of 125 months; the Seventh Circuit affirmed. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari, arguing that the use of a later Manual that increases a guidelines range violates the Ex Post Facto Clause.

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09-8610	<i>Hood v. Texas</i> Cert. denied 4/19/10	A. Pincus S. Claffee	Charles Dean Hood was convicted of murder and sentenced to death. Later, he discovered that the judge who had presided over his trial and sentencing had previously been involved in a secret intimate relationship with the district attorney who had prosecuted his case. After Hood obtained evidence of the affair, including on-the-record admissions by the judge and prosecutor, a trial judge on remand recommended that the appellate court grant Hood's habeas application. The appellate court, however, rejected Hood's application in a boilerplate two-sentence order. We filed an amicus brief on behalf of a group of former judges, state officials, and prosecutors in support of the petitioner, arguing that the shocking facts of the case cast grave doubt on the fairness of Hood's trial and tarnish significantly the reputation of the court system as a whole. We also argued that the undisputed facts of the affair and ensuing cover-up give rise to an unconstitutional appearance of bias and that the appellate court should have granted Hood's application on due process grounds.
09-350	<i>Los Angeles County v. Humphries</i> Cert. granted 2/22/10	A. Pincus C. Rothfeld P. Hughes	The Ninth Circuit found that California and the County of Los Angeles violated the Constitution by failing to remove the Humphries from the Child Abuse Central Index after two judicial findings of innocence, awarded the Humphries attorneys' fees, and remanded for consideration of <i>Monell</i> liability. The County of Los Angeles filed a petition for certiorari, arguing that (1) the Humphries are not entitled to prospective relief against the city unless they can prove <i>Monell</i> liability, and (2) declaratory relief is insufficient to trigger a fee award. In conjunction with the Yale Supreme Court Clinic, we filed a brief in opposition on behalf of the Humphries. The Court granted certiorari, limited to the first question.

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09-490	<p><i>Mayo Collaborative Services v. Prometheus Laboratories</i></p> <p>Granted, vacated, and remanded 6/29/10</p>	<p>S. Shapiro T. Bishop J. Sarles</p>	<p>This case presents the question whether a patent holder may attempt to “preempt the field” of medical diagnosis by claiming a broad process patent based on blood testing. On behalf of an affiliate of the Mayo Clinic, we asked the Court to review and reverse a decision by the Federal Circuit in which the court ruled that patent claims, which cover methods for calibrating the proper dosage of thiopurine drugs, address patentable subject matter under 35 U.S.C. § 101. The Court granted the petition and remanded for further consideration in light of <i>Bilski v. Kappos</i>, No. 08-964.</p>
09-1378	<p><i>Mendiola v. Holder</i></p> <p>Cert. petition filed 5/12/10</p> <p>Response due 7/14/2010</p>	<p>A. Pincus C. Rothfeld</p>	<p>Mendiola, a lawful permanent resident, was ruled removable and subsequently removed from the United States based on two state convictions for possession of steroids. After returning to the United States, he filed a motion to reopen his removal proceedings. The BIA denied his request pursuant to 8 C.F.R. 1003.2(d), which prohibits the consideration of a motion to reopen once an alien has been removed from the country. On appeal, the Tenth Circuit affirmed; however, it acknowledged that its holding is in conflict with a decision of the Fourth Circuit. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari, arguing that 8 C.F.R. 1003.2(d) conflicts with the Immigration and Nationality Act and is therefore invalid.</p>
09-224	<p><i>Nickels v. Grand Trunk Western Railroad, Inc.</i></p> <p>Cert. denied 1/19/10</p>	<p>A. Tauber M. Kimberly</p>	<p>This case presented the question whether certain regulations issued by the Federal Railroad Administration pursuant to the Federal Railroad Safety Act preclude a negligence claim brought by a railroad employee under the Federal Employers’ Liability Act. After prevailing in the Sixth Circuit, we successfully opposed the employee’s petition for certiorari.</p>
09-293	<p><i>Ozuna v. United States</i></p> <p>Cert. denied 3/1/10</p>	<p>S. Kane</p>	<p>This case presented the question whether a party moving to reopen a suppression hearing in order to introduce additional evidence must justify his initial failure to introduce that evidence. After granting petitioner’s motion to suppress, the district court allowed the</p>

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			<p>government to introduce additional evidence without justification and ultimately denied the suppression motion. In conflict with decisions from several other circuits, the Seventh Circuit held that the government was not required to justify its failure to introduce all evidence at the initial hearing. Representing the defendant <i>pro bono</i>, we filed a petition for certiorari seeking review of the Seventh Circuit's decision.</p>
09-885	<p><i>Standard Ins. Co. v. Lindeen</i> Cert. denied 5/17/10</p>	<p>A. Tauber B. Wong</p>	<p>This case presented the question whether a state may, consistently with ERISA's carefully tuned remedial scheme, prohibit the use of so-called "discretionary clauses" in insurance policies, and so effectively require application of a <i>de novo</i> standard of review in suits brought under ERISA's civil enforcement provisions. On behalf of Associated Oregon Industries, Association of California Life and Health Insurance Companies, Blue Cross and Blue Shield of Montana, Montana Chamber of Commerce, and New West Health Services, we filed an amicus brief in support of the petition for certiorari.</p>
09-1138	<p><i>Tam Travel, Inc. v. Delta Air Lines, Inc.</i> Cert. petition filed 3/18/2010 Opposition filed 6/16/10</p>	<p>R. Favretto A. Tauber J. Roberti T. Weiman</p>	<p>Plaintiffs brought an antitrust action alleging a conspiracy to fix fees paid by airlines to travel agents in connection with ticketing. The Sixth Circuit affirmed dismissal of the claim, both on the ground that plaintiffs had failed to allege facts sufficient to sustain such a claim and, with respect to United Air Lines, Inc., on the additional ground that plaintiffs' claim had in any event been extinguished in bankruptcy. We have been retained to collaborate with counsel for the other defendants on a brief in opposition to the petition for certiorari.</p>

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09-310	<i>Williams v. United States</i> Cert. denied 1/19/10	M. Nemetz	We filed a cert. petition <i>pro bono</i> , arguing that the Seventh Circuit erred in applying a plain error standard of review to a criminal defendant's claim, raised for the first time on appeal, that he did not knowingly and intelligently waive his right to a jury trial. Other circuits review such a claim <i>de novo</i> , reversing unless the record demonstrates that the waiver was knowing and voluntary. The Seventh Circuit, however, held that a defendant must point to affirmative evidence that (i) he did not have a concrete understanding of his right to a jury trial, and (ii) but for the trial court's failure to ensure that he had that understanding, there is a reasonable probability that he would not have waived the right.
08-1314	<i>Williamson v. Mazda Motor of America, Inc.</i> Cert. granted 5/24/10	K. Geller E. Jones C. Rothfeld D. Himmelfarb	The plaintiffs in this case sued Mazda in California state court, alleging that a passenger wearing a lap-only seatbelt in a rear seat of a 1993 minivan was killed in an accident and that Mazda was liable under state negligence law for failing to install a lap/shoulder seatbelt in the passenger's seat. The California Court of Appeal held that the claim was preempted by the then-applicable version of Federal Motor Vehicle Safety Standard 208, which permitted Mazda to install either lap-only or lap/shoulder belts in the rear seating position. The plaintiffs ultimately sought review of the preemption issue in the United States Supreme Court. After requesting and receiving the views of the Solicitor General, the Court granted certiorari.
09-1146	<i>Yuma Anesthesia Medical Services LLC v. Fleming</i> Cert. denied 6/21/10	A. Pincus M. Nemetz A. Tauber M. Kimberly	Section 504 of the Rehabilitation Act of 1973 prohibits recipients of federal financial assistance from discriminating on the basis of disability (29 U.S.C. § 794(a)) and allows a private right of action to enforce alleged violations of the Act (29 U.S.C. § 794a(a)(2)). Section 504(d) provides that the "standards" of Title I of the Americans with Disabilities Act of 1990 shall apply to section 504 complaints alleging "employment discrimination." 29 U.S.C. § 794(d). The Ninth Circuit, in this case, held that independent contractors may bring employment discrimination actions under section 504 and thus avail themselves of

No.	Caption and Status	Attorneys	Description
			<p>the standards of Title I of the Americans with Disabilities Act. That holding, although supported by a decision of the Tenth Circuit, conflicts with decisions of the Sixth, Eighth, and D.C. Circuits, and the Supreme Court of Idaho. We filed a petition for a writ of certiorari.</p>
	<p><i>Zagorski v. Bell</i> Cert. denied 4/19/10</p>	<p>A. Pincus C. Rothfeld</p>	<p>In this case, a defendant was held on murder charges for two months in harsh conditions: he was in solitary confinement; the temperatures in his small and unventilated cell often exceeded 100 degrees; and he received psychotropic drugs after exhibiting psychological distress, including suicide attempts and self-mutilation. The defendant eventually agreed to speak with prison officials and made inculpatory statements that led to a jury convicting him and sentencing him to death. On review, the defendant argued that the statements were effectively coerced by the conditions of his confinement. The Sixth Circuit rejected that argument because the defendant had initiated the conversation and, in its view, the conditions of confinement were immaterial because the defendant was not held in solitary confinement for the purposes of extracting a statement. In conjunction with the Yale Supreme Court Clinic, we filed a petition for certiorari, arguing that a statement made in these circumstances cannot be voluntary under the Fifth Amendment.</p>