

STATUS OF CASES ARGUED
BEFORE THE UNITED STATES SUPREME COURT
OCTOBER TERM, 2009

The following charts summarize the final disposition of all cases argued before the Supreme Court of the United States during October Term 2009. The Term begins on October 5, 2009 and is scheduled to end in late June or early July, 2010.

Court-watchers often find that they can predict who will be the author of the final opinions issued from each session based on the previous authorship distribution, because typically each Justice is assigned at least one majority opinion per session. Because the author of the final opinion is not always the same Justice who initially received the writing assignment, and because the Court sometimes departs from its usual patterns for various reasons (including assigning extra opinions to Justices who are more current on their assignments than other Justices), the exercise of predicting the author of a not-yet-released majority opinion is always one with a high potential for error. Nevertheless, experience has shown that the predictive exercise yields correct results often enough to make it interesting, even if not totally reliable.

The first chart below summarizes the Term, with each session represented by a column. The chart lists the number of cases that were or will be argued during the session, the number resolved to date, and how those cases were resolved—how many majority opinions each Justice drafted, and the number resolved *per curiam* or otherwise without a majority opinion.

The remaining tables present more detailed information on each session of the Term than is included in the summary table. Each session is presented on its own page, and includes a row for each case argued—specifying the case's name, the date of argument, a brief summary of the issue presented, and, for those cases already decided, the date of decision and the author of the majority opinion. The next table includes similar information for opinions issued during the Term where oral argument was never conducted. A final table includes information about the cases in which the Court has granted certiorari but has not yet set a date for oral argument.

We try to update these charts when the Court schedules additional cases for oral argument or issues an opinion. We hope that you find this document useful, and welcome your feedback on it (which should be directed to dgossett@mayerbrown.com or kranlett@mayerbrown.com).

**SUMMARY TABLE
OCTOBER TERM, 2009**

	<i>Session beginning:</i>								
	Oct. 5	Nov. 2	Nov. 30	Jan. 11	Feb. 22	Mar. 22	Apr. 19	NA	Tot.
TOTAL ARGUMENTS SCHEDULED	14	13	10	10					47
ROBERTS									0
STEVENS									0
SCALIA									0
KENNEDY									0
THOMAS									0
GINSBURG									0
BREYER									0
ALITO									0
SOTOMAYOR									0
PC								2	2
DIG									0
D									0
AEDC									0
R									0
Disposed of	0	0	0	0	0	0	0	2	2
Pending	14	13	10	10	0	0	0	0	47

KEY

- PC = Per curiam
- DIG = Dismissed as improvidently granted
- D = Dismissed for other reasons
- AEDC = Affirmed by an equally divided Court
- R = Set for reargument

DETAILED CASE DISPOSITION TABLES

1: Session beginning October 5, 2009

Case Name	Docket Number	Issue	Argument Date	Decision Date	Author
<i>South Carolina v. North Carolina</i>	138 Orig.	Intervention by non-states in cases between states in Court's original jurisdiction	10/5		
<i>Maryland v. Shatzer</i>	08-680	Expiration of bar on police interrogation after accused has invoked right to counsel once nearly three years have elapsed	10/5		
<i>Mohawk Indus. Inc. v. Carpenter</i>	08-678	Right to interlocutory appeal of order to disclose materials alleged to be protected by attorney-client privilege	10/5		
<i>United States v. Stevens</i>	08-769	Facial First Amendment challenge to statute criminalizing creation, possession, and sale of depictions of illegal animal cruelty that lack serious religious, political, scientific, educational, journalistic, historical, or artistic value	10/6		
<i>Johnson v. United States</i>	08-6925	State supreme court's determination that offense does not have use or threat of force as an element as precluding use of that offense as a "violent felony" under the Armed Career Criminal Act, and whether simple battery is per se a violent felony	10/6		
<i>Bloate v. United States</i>	08-728	Excludability of time preparing pretrial motions from Speedy Trial Act 70-day deadline for commencing trial	10/6		
<i>Salazar v. Buono</i>	08-472	Standing to bring Establishment Clause challenge to religious display on government land, and permissibility of transfer of display to private party	10/7		
<i>Reed Elsevier Inc. v. Muchnick</i>	08-103	Restriction by 17 U.S.C. § 411(a) of courts' subject matter jurisdiction over copyright infringement actions	10/7		
<i>Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs</i>	08-604	Railway Labor Act as authorization for vacating arbitral awards that violate due process and retroactivity of Board's interpretation of own standard	10/7		

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<i>McDaniel v. Brown</i>	08-559	Standard of review under AEDPA of sufficiency-of-the-evidence claim, and habeas court's power to consider nonrecord evidence	10/13		
<i>Padilla v. Kentucky</i>	08-651	Failure to advise client that guilty plea may lead to deportation as ineffective assistance of counsel	10/13		
<i>Smith v. Spisak</i>	08-724	Permissibility under AEDPA of extending <i>Maryland v. Mills</i> to "unanimity" and "acquittal first" instructions	10/13		
<i>Alvarez v. Smith</i>	08-351	Indefinite retention of seized personal property by law enforcement without judicial or administrative review as due process violation	10/14		
<i>Perdue v. Kenny A.</i>	08-970	Enhancement of statutory award of attorneys' fees for quality of performance and results	10/4		

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2: Session beginning November 2, 2009

Case Name	Docket Number	Issue	Argument Date	Decision Date	Author
<i>Jones v. Harris Assocs. L.P.</i>	08-586	Excessive-fee claims under Section 36(b) of the Investment Company Act when advisor not alleged to have misled fund directors	11/2		
<i>Shady Grove Orthopedic Assoc. v. AllState Ins. Co.</i>	08-1008	Enforceability of state law barring class actions for state-law claims in federal court	11/2		
<i>Beard v. Kindler</i>	08-992	Discretionary state procedural rule as an “adequate and independent” state ground barring postconviction relief	11/2		
<i>NRG Power Mkt. v. Maine Pub. Utils.</i>	08-674	Applicability of presumption that freely negotiated rate is “just and reasonable” to rate challenge brought by non-contracting third party	11/3		
<i>Schwab v. Reilly</i>	08-538	Timing and scope of trustee’s objections to debtor’s claim of exempt property under Chapter 7	11/3		
<i>Hemi Group, LLC v. City of New York</i>	08-969	Non-commercial injury to city from nonpayment of taxes by third parties as direct injury to city’s “business or property” required for standing under RICO	11/3		
<i>Pottawattamie Cty. v. McGhee</i>	08-1065	Prosecutorial immunity from civil suit for allegedly procuring and presenting false testimony	11/4		
<i>Wood v. Allen</i>	08-9156	Failure by death penalty counsel to present evidence of client’s mental impairment as ineffective assistance of counsel	11/4		
<i>Graham v. Florida</i>	08-7412	Life imprisonment without the possibility of parole of juvenile for committing non-homicide crime as “cruel and unusual” punishment violating the Eighth Amendment	11/9		
<i>Sullivan v. Florida</i>	08-7621	Life imprisonment without the possibility of parole of 13 year old for committing non-homicide crime as “cruel and unusual” punishment violating the Eighth Amendment	11/9		
<i>Bilski v. Kappos</i>	08-964	Propriety of machine-or-transformation test for patent eligibility	11/9		

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<i>Kucana v. Holder</i>	08-911	Scope of jurisdiction-stripping provision of 8 U.S.C. § 1252(a)(2)(B)(ii) and reviewability of BIA's rulings on motions to reopen	11/10		
<i>Hertz Corp. v. Friend</i>	08-1107	Test for determining the principal place of business of a corporation for jurisdictional purposes	11/10		

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3: Session beginning November 30, 2009

Case Name	Docket Number	Issue	Argument Date	Decision Date	Author
<i>Graham County Soil & Water Conservation Dist. v. United States ex rel. Wilson</i>	08-304	Audit or report by state or local—rather than federal—government as triggering public-disclosure jurisdictional bar of False Claims Act	11/30		
<i>Merck & Co. v. Reynolds</i>	08-905	Investor’s notice of scienter as triggering statute of limitations for securities fraud claim	11/30		
<i>Milavetz, Gallop & Milavetz, P.A. v. United States</i> <i>United States v. Milavetz, Gallop & Milavetz, P.A.</i>	08-1119 08-12245	First Amendment challenge to statute barring attorneys from advising debtors to assume more debt prior to filing for bankruptcy	12/1		
<i>United Student Aid Funds, Inc. v. Espinosa</i>	08-1134	Availability of discharge of debt for student loan without showing that repayment would constitute an “undue hardship” in a separate adversary proceeding	12/1		
<i>Stop the Beach Renourishment, Inc. v. Florida</i>	08-1151	Governmental restoration of eroded beachfront that modifies private property boundary lines as a taking	12/2		
<i>Free Enterprise Fund v. Public Co. Accounting Oversight Bd.</i>	08-861	Separation-of-powers challenge to method of selecting and removing members of the Public Company Accounting Oversight Board mandated by Sarbanes-Oxley	12/7		
<i>Florida v. Powell</i>	08-1175	Failure to advise suspect of right to counsel during the interrogation as violation of <i>Miranda</i>	12/7		
<i>Black v. United States</i>	08-876	Applicability of deprivation-of-honest-services provision of mail-fraud statute to defendants whom jury did not find to have reasonably contemplated identifiable economic harm, and preservation of challenge when defendant objected to special verdict	12/8		
<i>Weyhrauch v. United States</i>	08-1196	Violation of a state-law duty of disclosure as an element of a state official’s deprivation of honest services through non-disclosure of material information in violation of the mail-fraud statute	12/8		

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<i>Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.</i>	08-1198	Permissibility under Federal Arbitration Act of imposing class arbitration upon parties to arbitration clause that is silent on availability of class procedures	12/9		
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4: Session beginning January 11, 2010

Case Name	Docket Number	Issue	Argument Date	Decision Date	Author
<i>Alabama v. North Carolina</i>	132, Orig.	Non-state's joinder in original action by state against another state, and whether regional compact on disposal of radioactive waste authorizes monetary sanction against state for breaching compact	1/11		
<i>Briscoe v. Virginia</i>	07-11191	Constitutionality of Virginia procedure requiring accused to assert demand to question crime lab technician	1/11		
<i>United States v. Comstock</i>	08-1224	Constitutionality of federal law authorizing civil commitment of "sexually dangerous" persons who are either nearing the end of their prison terms or were found incompetent to stand trial	1/12		
<i>Abbott v. Abbott</i>	08-645	<i>Ne exeat</i> clause as conferring "right of custody" under Hague Convention on International Child Abduction	1/12		
<i>Am. Needle, Inc. v. Nat'l Football League</i>	08-661	NFL and its teams as a "single entity" that is not subject to rule-of-reason claims under Section 1 of the Sherman Act when they grant an exclusive license of consumer headwear with team logos	1/13		
<i>Jerman v. Carlisle</i>	08-1200	Debt collector's legal error as trigger for the "bona fide error" defense under the Federal Debt Collection Practices Act	1/13		
<i>Mac's Shell Serv., Inc. v. Shell Oil Prods. Co.</i> <i>Shell Oil Prods. Co. v. Mac's Shell Serv., Inc.</i>	08-240 08-372	Franchisee gas station owner's recovery for "constructive discharge" against franchisor under Petroleum Marketing Practices Act when franchisee signs and operates under renewed agreement	1/19		
<i>Granite Rock Co. v. Int'l Bh'd of Teamsters</i>	08-1214	Arbitrability of the issue of contract formation of a tentative collective-bargaining agreement, and liability of international union for tortiously interfering with local union's agreement	1/19		

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<i>Berghuis v. Smith</i>	08-1402	Use of “comparative disparity” test to reject a state prisoner’s postconviction challenge to his conviction on the ground that the jury did not satisfy the Sixth Amendment’s “fair cross section” requirement	1/20		
<i>Conkright v. Frommert</i>	08-810	Level of deference to ERISA plan administrator’s interpretation of plan language when calculating additional benefits due under the plan as a result of an ERISA violation	1/20		

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5: Cases not on the argument calendar

Case Name	Docket Number	Issue	Decision Date	Author
<i>Corcoran v. Levenhagen</i>	08-10495	Right of death-sentenced inmate to obtain federal habeas review of issues that district court did not consider because it granted writ on another ground that was later reversed on appeal	10/20	PC
<i>Bobby v. Van Hook</i>	09-144	Reliance on ABA guidelines for capital defense attorneys that postdate trial to challenge effectiveness of counsel	11/9	PC

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6: Cases in which certiorari has been granted but for which argument has not yet been scheduled

Case Name	Docket Number	Issue
<i>Lewis v. City of Chicago</i>	08-974	Whether employee must file EEOC challenge to discriminatory practice 300 days after employer used that practice or first announced it
<i>Lewis v. Chicago</i>	08-974	Whether 300-day period to file disparate-impact charge with EEOC starts on date that employer announces or uses the challenged practice
<i>Carr v. United States</i>	08-1301	<i>Ex post facto</i> challenge to prosecution for failing to register as a sex offender when conviction predates passage of law requiring registration
<i>Astrue v. Ratliff</i>	08-1322	Whether statutory award of attorneys' fees to a prevailing plaintiff is subject to offset for plaintiff's pre-existing debt
<i>Berghuis v. Thompkins</i>	08-1470	Whether <i>Miranda</i> permits an officer non-coercively to persuade an arrestee to cooperate after arrestee acknowledges his <i>Miranda</i> rights but neither waives nor invokes them
<i>Holder v. Humanitarian Law Project</i> <i>Humanitarian Law Project v. Holder</i>	08-1498 09-89	Vagueness challenge to law criminalizing the knowing provision of any "service," "training" or "expert advice" to a designated foreign terrorist organization, and Free Speech Clause challenge to conviction based on speech that furthered only the lawful, nonviolent activities of the organization
<i>McDonald v. Chicago</i>	08-1521	Applicability of Second Amendment to state and local governments
<i>Migliaccio v. Castaneda</i> <i>Henneford v. Castaneda</i>	08-1529 08-1547	Federal Tort Claims Act as exclusive remedy for claims arising from medical care provided by Public Health Service employees
<i>Samantar v. Yousuf</i>	08-1555	Applicability of foreign sovereign immunity to individual acting in official capacity on behalf of foreign state when individual no longer has that position at the time the suit is filed
<i>United States v. O'Brien</i>	08-1569	Whether finding that gun used in offense is a machine gun, which triggers 30-year mandatory minimum sentence, must be found by jury beyond a reasonable doubt rather than by a judge by a preponderance of the evidence
<i>United States v. Marcus</i>	08-1341	Standard for plain-error review of Ex Post Facto challenge under Fed. R. Crim. P. 52(b)
<i>Skilling v. United States</i>	08-1394	Private gain as element of offense of deprivation of "honest services" fraud statute, and if not, whether that statute is vague; burden of proof of jury prejudice from pretrial publicity
<i>Health Care Serv. Corp. v. Pollitt</i>	09-38	Removability under complete preemption doctrine or federal officer removal statute of state court action against government contractor administering federal employees' benefits
<i>Holland v. Florida</i>	09-5327	"Gross negligence" by appointed counsel in filing habeas petition as basis for equitable tolling of filing deadline
<i>Kiyemba v. Obama</i>	08-1234	Whether federal court may order detainees held indefinitely by U.S. at Guantanamo Bay to be released into the continental U.S.

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<p><i>Kaisha v. Regal-Beloit Corp.</i> <i>Union Pac. R. Co. v. Regal-Beloit Corp.</i></p>	<p>08-1553 08-1554</p>	<p>Application of Carmack Amendment to inland rail leg of an intermodal shipment from overseas where the shipment was made under a “through” bill of lading issued by an ocean carrier that extended the Carriage of Goods By Sea Act to the inland leg, there was no domestic bill of lading for rail transportation, and the ocean carrier privately subcontracted for rail transportation</p>
<p><i>Hamilton v. Lanning</i></p>	<p>08-998</p>	<p>Permissibility of considering evidence that debtor’s “projected disposable income” during the plan period will be different than during the pre-filing period</p>
<p><i>New Process Steel, L.P. v. NLRB</i></p>	<p>08-1457</p>	<p>Whether three-member quorum of NLRB may delegate full powers to two-member group when remaining three positions are unfilled</p>
<p><i>Levin v. Commerce Energy, Inc.</i></p>	<p>09-223</p>	<p>Tax Injunction Act or comity principles as bar to federal jurisdiction over constitutional challenge to denial of specific exemptions to four taxpayers rather than challenge to their tax assessments</p>