

The Supreme Court Update - October 8, 2026

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by Andrew Brantingham, Liz Kramer, Ian Blodger, Jessica M. Leano, and Brock Huebner

On September 29, 2026, the Supreme Court granted certiorari in one case:

Department of Homeland Security v. D.V.D., No. 26-426: This case concerns the Trump Administration's "third-country removal" procedures, where immigrants are deported to countries not listed in the removal orders. In granting certiorari, the Court granted the Government's application to stay a lower court decision halting the practice, which will allow third-country removals to continue pending resolution of the case. The issues presented are: (1) Whether the district court had jurisdiction over respondents' claims; (2) whether the district court had authority to enter class-wide declaratory relief and APA vacatur under 8 U.S.C. § 1252(f)(1); (3) whether the Government's guidance on third-country removals is unlawful under 8 U.S.C. § 1231(b), the due process clause, or FARRA/CAT and its implementing regulations; and (4) such other questions that the Government determines are appropriate for the proper disposition of the case.

On October 1, 2026, the Court granted certiorari in three additional cases:

Rhoney v. Barbosa da Cunha, No. 26-104: Immigration officials detained Ricardo Aparecido Barbosa da Cunha—a Brazilian citizen who had lived in the United States for approximately twenty years after entering without inspection—and denied him a bond hearing under 8 U.S.C. § 1225(b)(2)(A). The Second Circuit held that his detention was instead governed by § 1226(a), which permits release on bond, because § 1225(b)(2)(A)'s mandatory-detention requirement applies only to noncitizens apprehended while entering the country or shortly thereafter. The question presented is: Whether 8 U.S.C. § 1225(b)(2)(A) mandates the detention pending removal proceedings of aliens who, like Barbosa da Cunha, are present in the United States without having been admitted.

Missionaries of St. John the Baptist, Inc. v. Frederic, No. 25-113: A Catholic religious organization sought to build a shrine to the Virgin Mary on land the organization owned adjacent to its church in Park Hills, Kentucky. Local zoning restrictions prohibited the proposed construction. The question presented is: Whether a land-use regulation that

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prohibits a religious institution from building a religious structure on its own property constitutes a “substantial burden” on religious exercise under the Substantial Burden Provision of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc(a).

Marschner v. Marschner, No. 25-1349: Under the Uniformed Services Former Spouses’ Protection Act (“USFSPA”), a veteran’s longevity-based retirement pay can be divided in a divorce, but retirement pay based on disability and retirement pay that was waived to receive disability pay are indivisible. The question presented is: Does the USFSPA require state courts to refuse enforcement of indemnification provisions in a divorce settlement agreement?