Supreme Court 2025 term will offer practical guidance to businesses on recurring procedural questions

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The Supreme Court's 2025 Term hasn't officially started yet, but there's already been considerable activity. The Trump administration has come to the Court for emergency relief nine times so far, including in cases with nationwide significance about the President's power to remove officers from independent agencies, Presidential impoundment of congressionally appropriated funds, and the ICE raids in Los Angeles.

As of this writing, the Court has yet to deny the administration's requests. Although the interim orders granting temporary relief aren't decisions on the merits, they pave the way for the Executive branch to press the bounds of its authority — likely sparking more litigation that will eventually make its way to the high court.

In addition, while the Court typically does not grant cases before its Long Conference in late September, the Justices issued a rare order on Sept. 9 granting expedited review in two cases challenging President Trump's tariffs (*Trump v. V.O.S. Selections* and *Learning Resources v. Trump*). These cases center on whether the International Emergency Economic Powers Act (IEEPA) authorizes the sweeping tariffs, and the Justices may also grapple with how far Congress can go in delegating its authority to impose tariffs to the President. Whatever the Court decides, the cases are likely to have global consequences, not to mention their obvious significance for businesses and consumers.

On Sept. 22, the Justices also granted cert in *Trump v. Slaughter*. This case, which involves a challenge to the President's removal of Rebecca Slaughter as Commissioner of the Federal Trade Commission (FTC), came to the Justices via the Court's emergency docket.

The Justices' order allows the President to remove Slaughter while the Justices consider whether to overrule *Humphrey's Executor v. United States* — a 1935 decision that allows Congress to restrict the President's ability to remove members of the FTC. The Justices will hear oral argument in December, and their decision could have major implications for Executive control over independent agencies.

At this point, the rest of the 2025 Term's merits docket looks comparatively mellow. To be sure, the Justices will confront weighty culture-wars questions, such as the legality of state laws that restrict sports participation based on biological sex and the constitutionality of Colorado's ban on so-called "conversion therapy" seeking to change a patient's sexual orientation or gender identity.

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In the business arena, the Justices will consider some consequential questions, including whether an internet services provider "materially contributes" to copyright infringement when it knows that some subscribers are using its services to pirate music and does not cut off their service (*Cox Communications v. Sony Music Entertainment*). That case touches on several broader issues that have been before the Court in recent terms and may require the Justices to revisit the scope of aiding-and-abetting liability, how to regulate the unique and evolving context of the internet, and web sites' liability for third-party content.

But the vast majority of questions on the Court's current business docket present narrow procedural questions. While the decisions may not captivate headlines, they will have important practical ramifications for businesses on matters that corporate litigants routinely encounter. The Justices' choice to take on so many low-profile, granular questions also offers insights about what else the 2025 Term may have in store.

In *Berk v. Choy*, the Court will consider Delaware's requirement that medical-malpractice plaintiffs file with their complaint an

affidavit signed by an expert or the plaintiff's attorney attesting that the case is meritorious. Other states have similar laws, but courts are divided about whether they apply in diversity cases filed in federal court. The Court's decision should not only resolve this split, providing clarity to litigants whose cases are implicated by "affidavit of merit" requirements, but it may also offer broader guidance for determining which other types of state rules apply in federal diversity cases.

Several other cases will give defendants direction about removing cases from state to federal court. The 2025 Term has a surprising number of cases focused on this narrow area of law. The decisions will guide companies on several key issues, including questions about whether the 30-day statutory limit for removing a case has any equitable exceptions and the scope of the so-called federal-officer removal statute, which allows federal jurisdiction over civil actions against "any person acting under [an] officer" of the United States "for or relating to any act under color of such office."

The statute applies to private parties who act under federal direction, and companies often rely on it to remove to federal court cases that arise from their work as government contractors.

The Justices will also offer guidance about the finality of removal decisions. In *Hain Celestial Group v. Palmquist*, a defendant removed the case from federal court, arguing that a non-diverse co-defendant was immune under state law and should never have been a party to the suit.

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The district court agreed and the case went to trial, but the 5th U.S. Circuit Court of Appeals subsequently determined that the non-diverse defendant should never have been dismissed. Because federal jurisdiction had hinged on the non-diverse defendant's improper dismissal, the 5th Circuit vacated the district court's judgment. Other circuits have preserved judgments under similar circumstances.

The Justices' resolution of this split should provide clarity for companies navigating the removal process. In persuading the Justices to grant review, Hain Celestial Group emphasized the need for certainty on this recurring issue. A decision upholding the 5th Circuit's rule could spur parties to seek interlocutory review of some pre-trial decisions so that they can obtain finality on removal decisions before litigating further.

Why do so many of this Term's cases involve narrow, low-profile questions? The Justices pick their docket, after all, and in recent months they have turned away some high-stakes questions impacting businesses, including a rare rejection of the Solicitor General's recommendation that the Court grant cert in a case about citizen suits under the Clean Water Act.

One possible explanation is that, in an era when the Justices regularly disagree about momentous culture-wars issues, they may be eager to take on less weighty questions in areas where they are more likely to find common ground.

The prevalence of lower-profile procedural questions this Term also may reflect the Justices' growing workload from sources outside the traditional merits docket. The Trump administration's sweeping policy changes are forcing the Justices to confront consequential questions on expedited timelines.

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This Term's tariff cases and *Slaughter* are prime examples. And last Term, the Court added a special oral argument session in *Trump v. CASA* to consider the validity of nationwide injunctions halting the executive order ending birthright citizenship.

While most emergency applications don't prompt oral argument, the Court's skyrocketing emergency docket has given the Justices a lot more to do. Last Term, the Court received 113 emergency applications — outpacing the merits docket for the first time, and nearly tripling the number of emergency applications from each of the two preceding Terms.

The 2025 Term hasn't even begun, and the Justices have already handled more than 25 emergency applications. Several of those emergency applications implicate seismic questions on which the country is deeply divided. There's no reason to think this tide will ebb soon.

Choosing lower-profile cases for the merits docket may be a way for the Justices to conserve bandwidth for questions that come to them from these atypical avenues. So while the 2025 Term already promises to bring significant decisions, the Term's biggest questions may not even be on anyone's radar yet.

The writers are regular, joint contributing columnists on the U.S. Supreme Court for Reuters Legal News and Westlaw Today.

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