



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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Summary of Cases Accepted and Related Actions During Week of January 15, 2018

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#18-19 Facebook, Inc. v. Superior Court, S245203. (D027171; 15 Cal.App.5th 729; San Diego County Superior Court; SCD268262.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. In addition to the issues raised in the petition for review, the court directed the parties to address the following issues: (1) If, on remand and in conjunction with continuing pretrial proceedings, the prosecution lists the victim as a witness who will testify at trial (see Pen. Code, §§ 1054.1, subd. (a), 1054.7) and if the materiality of the sought communications is shown, does the trial court have authority, pursuant to statutory and/or inherent power to control litigation before it and to insure fair proceedings, to order the victim witness (or any other listed witness), on pain of sanctions, to either (a) comply with a subpoena served on him or her, seeking disclosure of the sought communications subject to in camera review and any appropriate protective or limiting conditions, or (b) consent to disclosure by provider Facebook subject to in camera review and any appropriate protective or limiting conditions? (2) Would a court order under either (1)(a) or (1)(b) be valid under the Stored Communications Act, 18 U.S.C., section 2702(b)(3)? (3) Assuming the orders described in (1) cannot properly be issued and enforced in conjunction with continuing *pretrial* proceedings, does the trial court have authority, on an appropriate showing *during trial*, to issue and enforce such orders? (4) Would a court order contemplated under (3) be proper under the Stored Communications Act, 18 U.S.C., section 2702(b)(3)? With regard to questions (1)-(4), see, e.g., *O'Grady v. Superior Court* (2006) 139 Cal.App.4th 1423; *Juror Number One v. Superior Court* (2012) 206 Cal.App.4th 854; *Negro v. Superior Court* (2014) 230 Cal.App.4th 879; and the Court of Appeal decision below, *Facebook, Inc., v. Superior Court (Touchstone)* (2017) 15 Cal.App.5th 729, 745-748. (5) As an alternative to options (1) or (3) set forth above, may the trial court, acting pursuant to statutory and/or inherent authority to control the litigation before it and to

insure fair proceedings, and consistently with 18 U.S.C. section 2702(b)(3), order the prosecution to issue a search warrant under 18 U.S.C. section 2703 regarding the sought communications? (Cf. *State v. Bray* (Or.App. 2016) 383 P.3d 883, pets. for rev. accepted June 15, 2017, 397 P.3d 30 [S064843, the state's pet.]; 397 P.3d 37 [S064846, the defendant's pet.].) In this regard, what is the effect, if any, of California Constitution, article I, sections 15 and 24?

#18-20 *People v. Beard*, S245903. (F074488; nonpublished opinion; Fresno County Superior Court; F06905403.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

#18-21 *People v. Vicario*, S245701. (E066353; nonpublished opinion; San Bernardino County Superior Court; FWV1303140.) Petition for review after the Court of Appeal affirmed in part and reversed in part affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Beard* and *Vicario* deferred pending decision in *People v. Valenzuela*, S232900 (#16-97), which presents the following issue: Is a defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

#18-22 *Melamed v. Cedars-Sinai Medical Center*, S245420. (B263095; nonpublished opinion; Los Angeles County Superior Court; BC551415.) Petition for review after the Court of Appeal reversed an order granting a special motion to strike in a civil action. The court ordered briefing deferred pending decision in *Wilson v. Cable News Network, Inc.*, S239686 (#17-83), which presents the following issue: In deciding whether an employee's claims for discrimination, retaliation, wrongful termination, and defamation arise from protected activity for purposes of a special motion to strike (Code of Civ. Proc., § 425.16), what is the relevance of an allegation that the employer acted with a discriminatory or retaliatory motive?

#18-23 *People v. Nash*, S244768. (F066160, F066278; nonpublished opinion; Kern County Superior Court; BF131808A, BF131808.) Petitions for review after the Court of Appeal affirmed in part and reversed in part judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in *People v. Mendoza*, S241647 (#17-208), which presents the following issue: Are the provisions of Proposition 57 that eliminated the direct filing of certain juvenile cases in adult court applicable to cases not yet final on appeal?

Dispositions

People v. Avalos, S209032, an automatic appeal, was abated upon the death of the appellant.

#08-158 In re Carter, S096438. Original proceeding. The court transferred this matter to the Superior Court of California, County of Los Angeles, for adjudication of the claims set forth in the November 13, 2008, amended order to show cause.

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.