

## 20-382 GUAM V. UNITED STATES

DECISION BELOW: 950 F.3d 104

LOWER COURT CASE NUMBER: 19-5131

QUESTION PRESENTED:

For nearly half a century, the United States Navy discarded toxic waste at a dump that the Navy created in the 1940s on the Island of Guam, an unincorporated territory of the United States, without any environmental safeguards. The Navy then left Guam to clean up the site—a project that is likely to cost more than \$160 million. Guam brought this suit to recover cleanup costs from the United States under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607(a), which allows parties to recover remediation costs from other responsible parties within six years of the initiation of a remedial action. The district court concluded that Guam’s claim could proceed.

The D.C. Circuit, however, held that Guam’s claim was precluded by CERCLA Section 113(f)(3)(B), in a decision that deepens two acknowledged circuit conflicts. Section 113(f)(3)(B) establishes a contribution remedy for any party that “has resolved its liability to the United States or a State for some or all of a response action” in a “judicially approved settlement,” subject to a three-year statute of limitations. *Id.* § 9613(f)(3)(B). Here, the D.C. Circuit held that Section 113(f)(3)(B) was triggered by a decade-old consent decree settling claims under the Clean Water Act (CWA)—even though that decree did not mention CERCLA, explicitly disclaimed any finding of liability, and left Guam exposed to future liability. And given that Guam filed suit more than three years after the consent decree was entered, the court held that Guam’s action is barred.

The questions presented are:

1. Whether a non-CERCLA settlement can trigger a contribution claim under CERCLA Section 113(f)(3)(B).

2. Whether a settlement that expressly disclaims any liability determination and leaves the settling party exposed to future liability can trigger a contribution claim under CERCLA Section 113(f)(3)(B).

CERT. GRANTED 1/8/2021