Nineteenth Annual
U.S. Supreme Court Review

2025 - 2026 Term

Kieran D. Maye, Jr.

Prepared for
Oklahoma Judicial Conference
July 8, 2026

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Table of Contents

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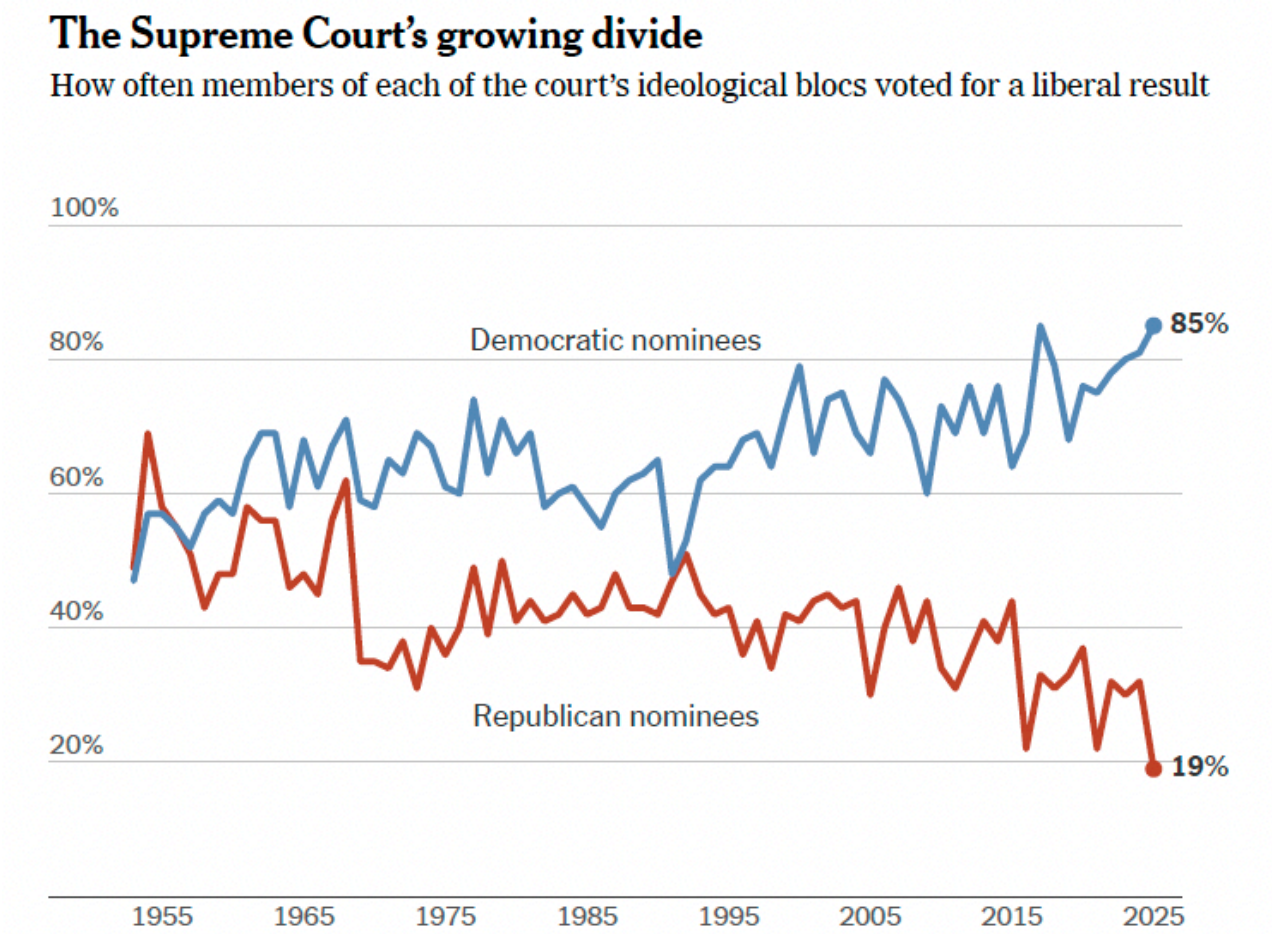
OVERVIEW OF THE TERM[1]

In the consequential Supreme Court term that ended last Tuesday, the justices rejected some of President Trump's marquee policies that were personally important to the president. Chief Justice Roberts and two justices appointed by Trump joined with the three liberals to invalidate the president's sweeping tariffs. The court struck down Trump's order to end the guarantee of birthright citizenship for the U.S.-born babies of undocumented immigrants and temporary visitors. And the justices prevented him from immediately firing a leader of the influential Federal Reserve.

But even as the justices chose key moments to push back on Trump, the court's conservative supermajority delivered generational, long-sought wins, including expanding executive power, as the court that Trump remade in his first term, continued a project of pushing the law to the right.

[1] This Overview is drawn from an excellent article in the New York Times by Ann E. Marimow and Abbie VanSickle, the full text of which can be found here: https://www.nytimes.com/2026/07/01/us/politics/supreme-court-term-trump-conservatives.html?smid=nytcore-ios-share



The court endorsed Republican-backed efforts to lift limits on campaign financing, expanded presidential reach over immigration policy and the federal bureaucracy, and dealt a major blow to the Voting Rights Act of 1965, a landmark civil rights law.

'Running the Table'

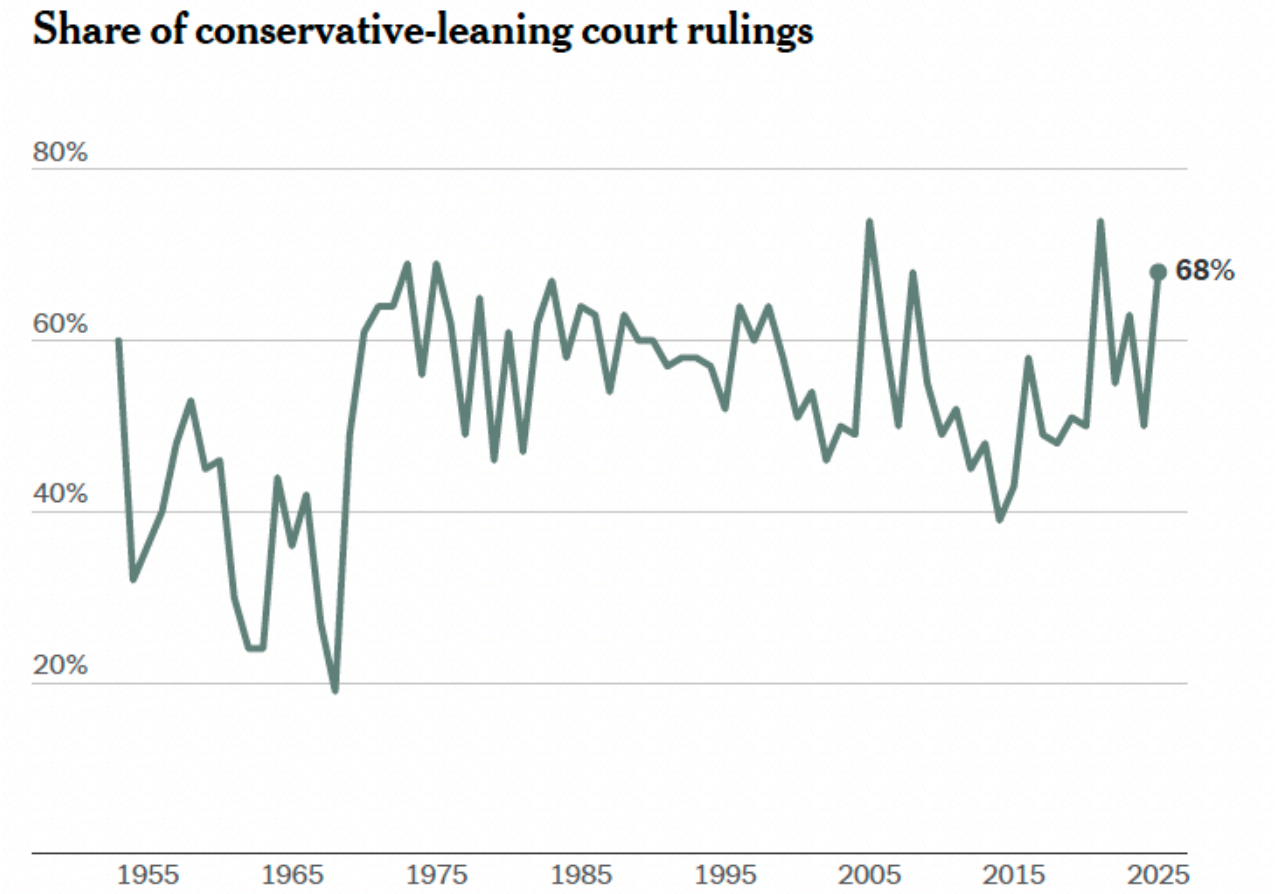
In the final days of a contentious term that began in October, the conservative majority overruled a 90-year-old precedent, clearing the way for Trump and future presidents to fire independent regulators over policy disagreements despite laws passed by Congress intended to insulate agencies from political pressure.

That 6-to-3 ruling upends the structure of the federal government and weakens Congress's ability to restrain the president. It also raises questions about whether such agencies will continue to operate independently of whomever occupies the White House to regulate major parts of American life, from labor disputes to broadcast television to workplace discrimination.

There was one exception: The court shielded the independence of the Federal Reserve by blocking Trump from immediately firing one of its governors, Lisa D. Cook, over unproven allegations of mortgage fraud.

The majority also fulfilled another long-held goal of the chief justice, who joined the bench in 2005, when it agreed in April to significantly weaken the Voting Rights Act. The ruling cleared the way for a Republican push throughout the South to redraw congressional maps, carving up voters and dismantling majority-Black districts in Alabama, Louisiana and Tennessee.

“Conservatives are running the table,” said Daniel Epps, a law professor who clerked for Justice Anthony M. Kennedy, a Republican nominee who was considered an unpredictable swing vote before his retirement in 2018.



Professor Epps expressed concern about public perception of the justices as political actors. “When they are constantly and consistently boosting Republicans in the political process, the court seems more partisan and its standing with the public decreases.”

In public appearances, the justices often take pride in the percentage of cases in which they are unanimous.

“We’re able to talk to one another and listen to one another and find common ground a surprising amount of the time,” Justice Gorsuch, one of Trump’s nominees, told David French of The New York Times in a recent interview. “You give us the 70 hardest cases in the country every year, where lower court judges have disagreed, and we’re able to reach unanimity that much. I think that’s a miracle, right?”

The justices did find unanimity 45 percent of the time, up two points from last term. They joined together, for instance, to say a Texas man could not be prosecuted for violating a law banning drug users from gun possession merely because he frequently used marijuana, and they agreed that a New Jersey antiabortion group could bring a challenge in federal court to government efforts to seek its donor list.

There were also examples of ideologically diverse lineups during the term.

In a 5-to-4 vote, Chief Justice Roberts and Justice Barrett joined the court's three liberals in supporting Mississippi's grace period for late arriving mail-in ballots, rejecting a push by the Trump administration to invalidate a state law.

Justice Barrett also joined Chief Justice Roberts' majority opinion last week to uphold birthright citizenship on constitutional grounds. Trump appointed Justice Barrett to the court in his first term, and her tendency to occasionally rule against his priorities has drawn harsh criticism from the president's allies.

Justice Gorsuch, who has a libertarian streak, also aligned at times with his colleagues on the left, more often than he has in the past. He sided with them in a case about the rights of criminal defendants who have entered into plea bargains with prosecutors and joined a dissent by Justice Jackson, a liberal, in a case thwarting people's ability to sue the manufacturer of the weedkiller Roundup in state courts.

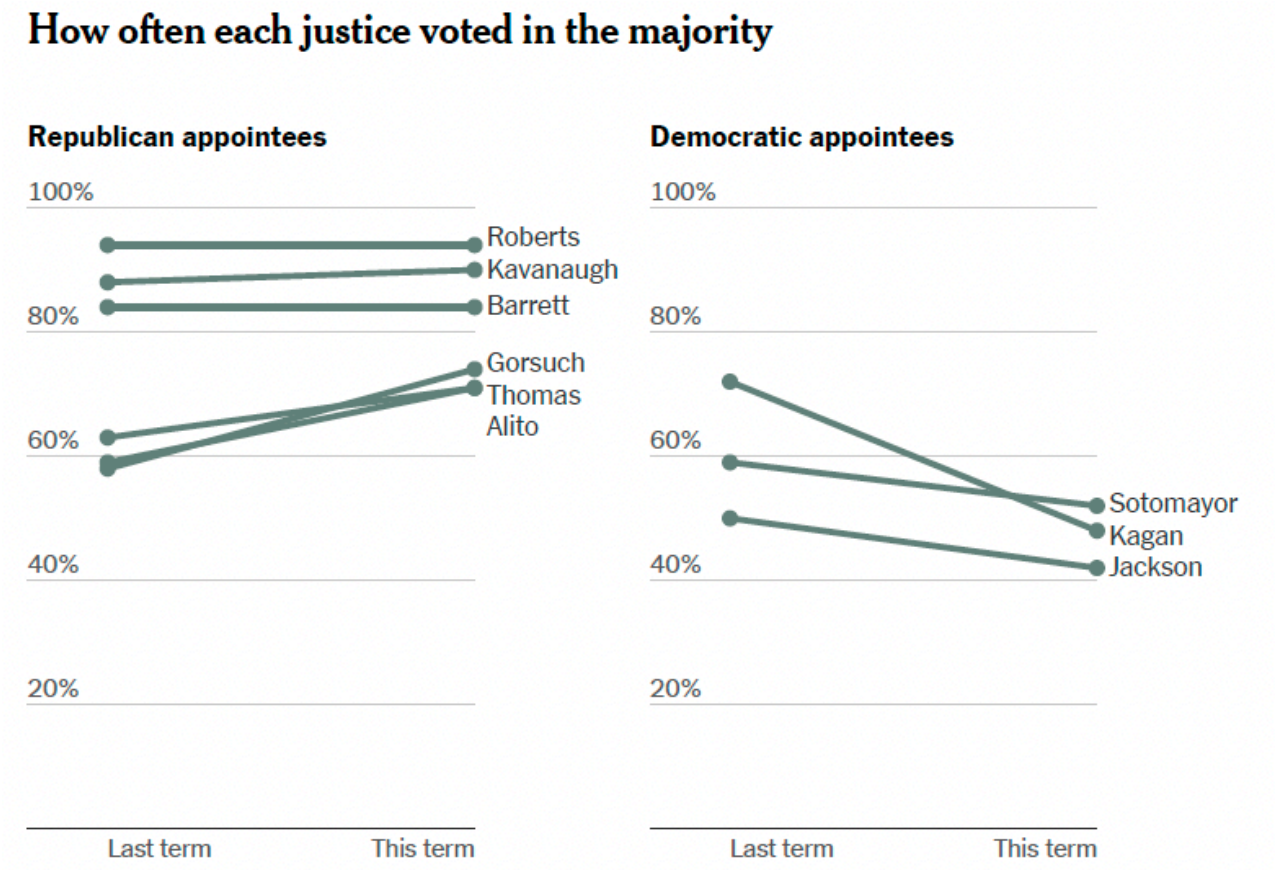
But even so, a conservative bloc routinely controlled the outcome in cases large and small, with the center of the bench shifting considerably to the right and delivering 13 ideologically divided decisions in which all six justices nominated by Republican presidents were in the majority and all three Democratic nominees were in dissent. That was nearly a quarter of all rulings in which nine justices participated, compared to 11 percent in the term that ended in June 2025.

Those rulings included decisions that strip deportation protections for hundreds of thousands of migrants from Haiti and Syria and allow the administration to turn away asylum seekers fleeing persecution at the U.S.-Mexico border.

The majority continued a trend in recent years of limiting transgender rights after the justices' expansion in 2020 of workplace protections for gay and transgender workers. The justices upheld state laws from West Virginia and Idaho prohibiting transgender females from playing on women's and girls' sports teams.

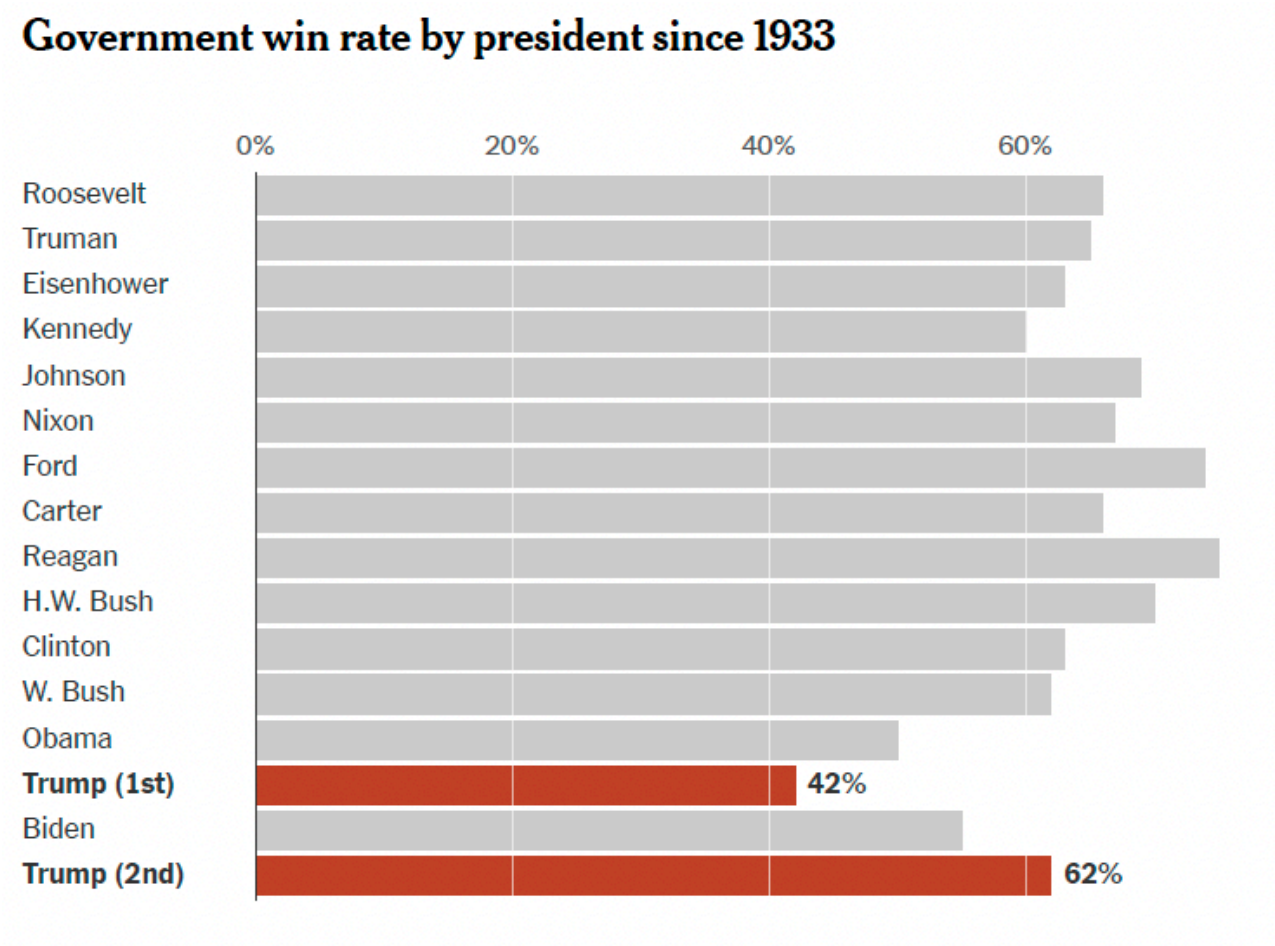
Justices Gorsuch, Thomas and Alito, all conservatives, voted in the majority far more often than last term. In contrast, Justice Kagan, a liberal, who has at times found compromise with her conservative colleagues, found herself more frequently in dissent this term, according to an analysis prepared for The New York Times by Lee Epstein and Andrew D.
Martin at Washington University in St. Louis and Michael Nelson at Penn State.

“The six-person conservative juggernaut many predicted in 2020 was in full force this term,” Professor Epstein, a political scientist and law professor, said in reference to the year Justice Barrett replaced Justice Ruth Bader Ginsburg, a liberal, and solidified the supermajority.



The court’s rulings were more favorable to the administration as it defended the government broadly more this year than during Trump’s first term or compared with all recent administrations since George W. Bush’s.

“The important losses for the administration in the extreme cases do not change the fact that the administration largely found a sympathetic court,” said Gregory Garre, a Supreme Court practitioner who served as solicitor general during the Bush administration.



While the court is unquestionably dominated by the six justices nominated by Republican presidents, it is not being run by those on the far right. Across all cases, the justices most frequently in the majority have been the same for the last six terms: Chief Justice Roberts and Justices Kavanaugh and Barrett.

Justice Jackson, the court's most junior justice, continued to emerge as a singular figure at the left end of the court. She was the least likely justice to be in the majority this term, and holds the record, going back to 1953 under the Warren court, for writing a greater share of separate, concurring opinions than any other justice. And she has been willing to criticize the court in public remarks.

In a speech at Yale Law School in April, Justice Jackson delivered a lengthy takedown of her conservative colleagues' handling of the emergency docket, quick-turn orders that are issued without oral arguments or detailed reasoning. She called them "scratch-paper musings" that have real-world impacts and make the justices "seem oblivious."

‘Not Laying Down for Trump’

Throughout the first year of Trump’s second term, the Supreme Court issued a series of emergency orders that overwhelmingly allowed the president to carry out his policies while litigation continued in the lower courts.

The brief orders, issued without oral arguments or detailed reasoning, almost always divided along ideological lines with the three liberal justices issuing sharp dissents.

The term that ended last Tuesday offered a more mixed picture for Trump, as the court broke from its pattern of ideologically divided decisions to brush back the president on some key issues. Along with his sweeping tariffs, Trump appeared personally invested in the legal challenge to his executive order limiting birthright citizenship. In a first for a sitting president, Trump went to the oral arguments, in what critics said was a show of power meant to intimidate the justices. The president posted constantly on social media about the issue, calling birthright citizenship a “scam” and saying it would be a “disgrace” if the justices ruled against him. Those complaints came as Trump frequently vented his frustration with the court, lobbing harsh, personal insults at the justices who ruled against his sweeping tariffs. He singled out two of his nominees, Justices Barrett and Gorsuch, calling them “fools and lap dogs” and “an embarrassment to their families” and suggesting they had been disloyal to him personally. Trump has long been a critic of birthright citizenship, the foundational principle that nearly all children born on U.S. soil are Americans. His administration pushed a legal theory — once thought to be a fringe notion — that the 14th Amendment had been intended to apply to formerly enslaved people and their children, not to undocumented immigrants.

Writing for the majority to uphold birthright citizenship, the chief justice said, “Citizenship, then and now, was the right to have rights — to freely participate in our political community.”

He continued: “The framers of the 14th Amendment extended that promise to ‘every freeborn person in this land.’ We keep that promise today.” After the decision, Trump called the ruling “too bad for our Country.” He urged Congress to take up the issue with legislation and asserted that “no long and unwieldy Constitutional Amendment is necessary.” His claim appeared at odds with the court’s decision, where a majority ruled that the Constitution guarantees birthright citizenship.

Despite the president’s focus on unwinding birthright citizenship, many legal observers considered such a view to be a long-shot argument, with far-reaching consequences that would upend the country’s birth and immigration systems and redefine what it means to be an American.

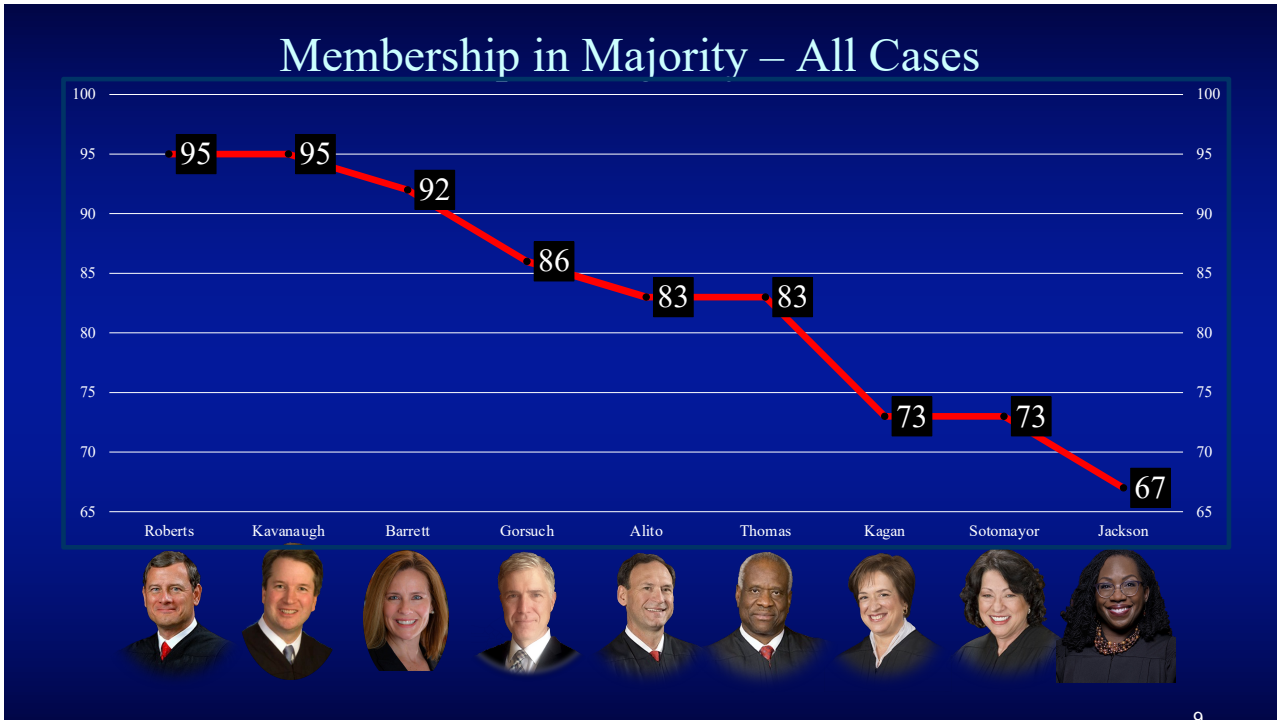
The court this term said it was “not laying down for Trump. That’s the message,” said Irv Gornstein, the executive director of the Supreme Court Institute at Georgetown University Law Center. “They are not going to give in to Trump’s arguments just because he’s the president.”

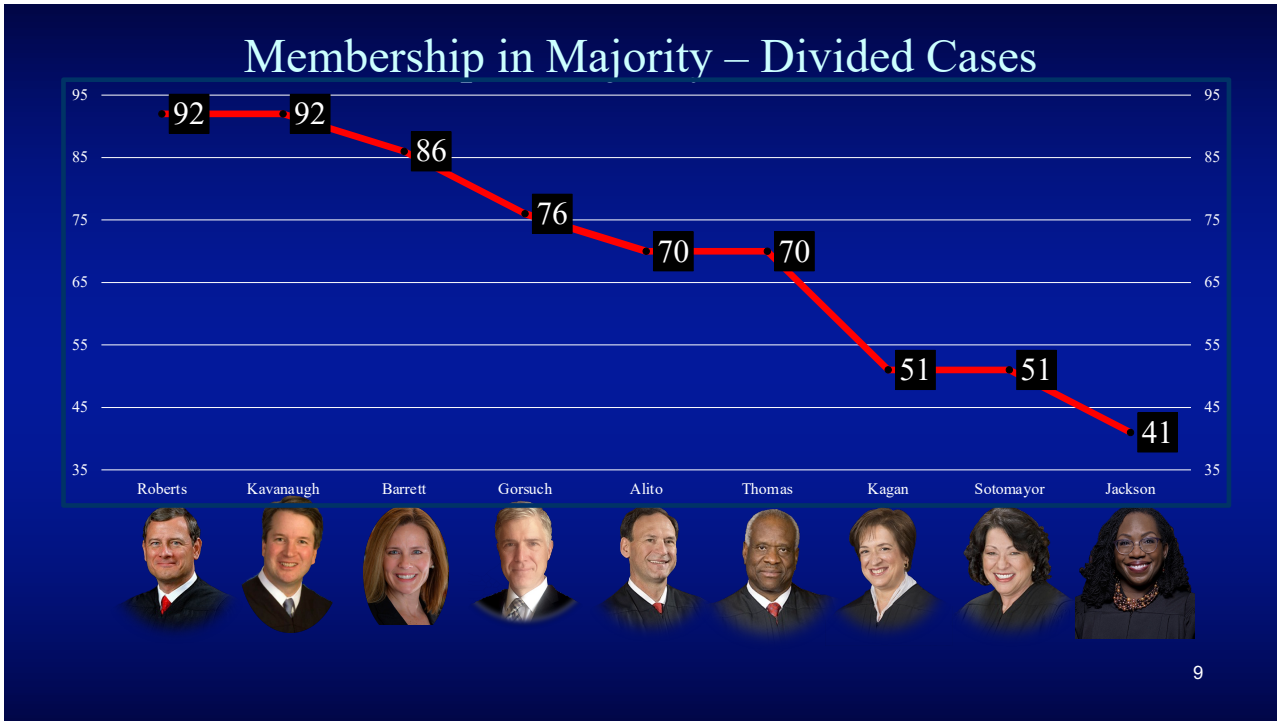
VOTING PATTERNS

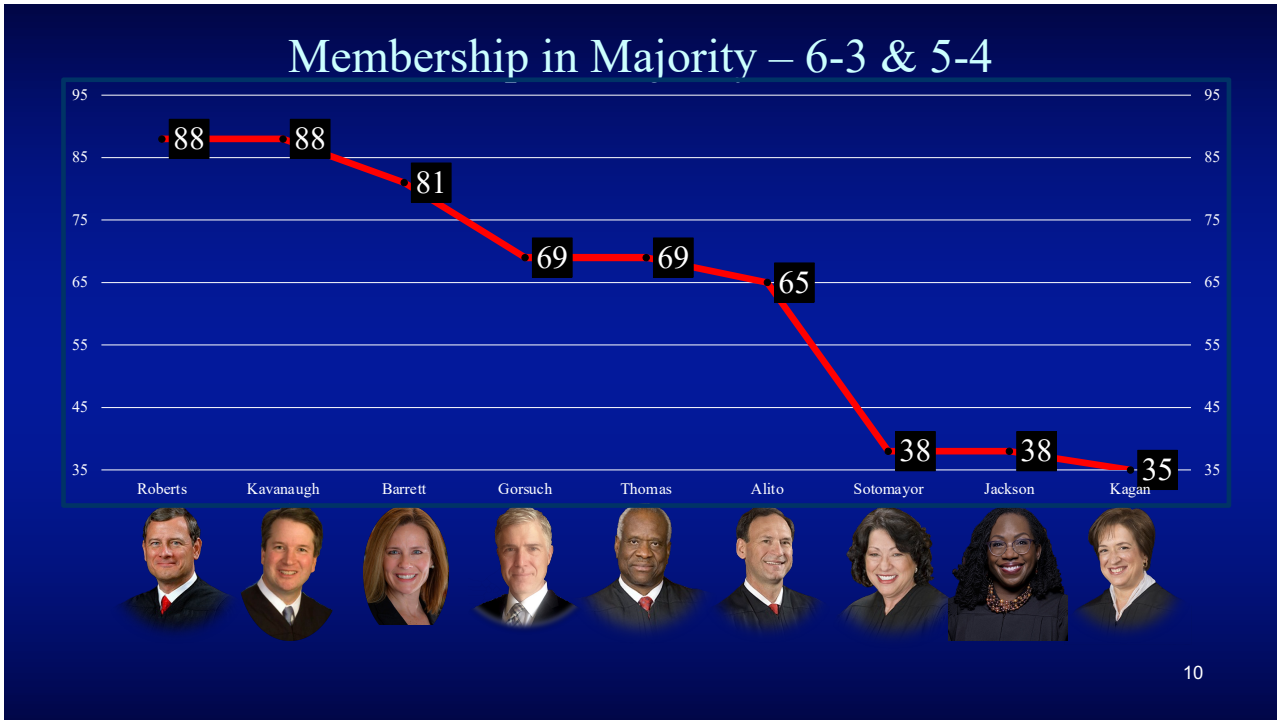
In the October 2025 term, the United States Supreme Court decided 66 cases with 9 per curiam opinions and 56 full signed opinions. One opinion decided the two transgender athlete cases. The graph below shows the vote split breakdown for this term.

Vote	Number of Opinions
9 – 0	29
8 – 1	7
7 – 2	4
6 – 3	19
5 - 4	7

The following charts reflect the percentage of the decided cases in which the Justices voted in the majority in this term.

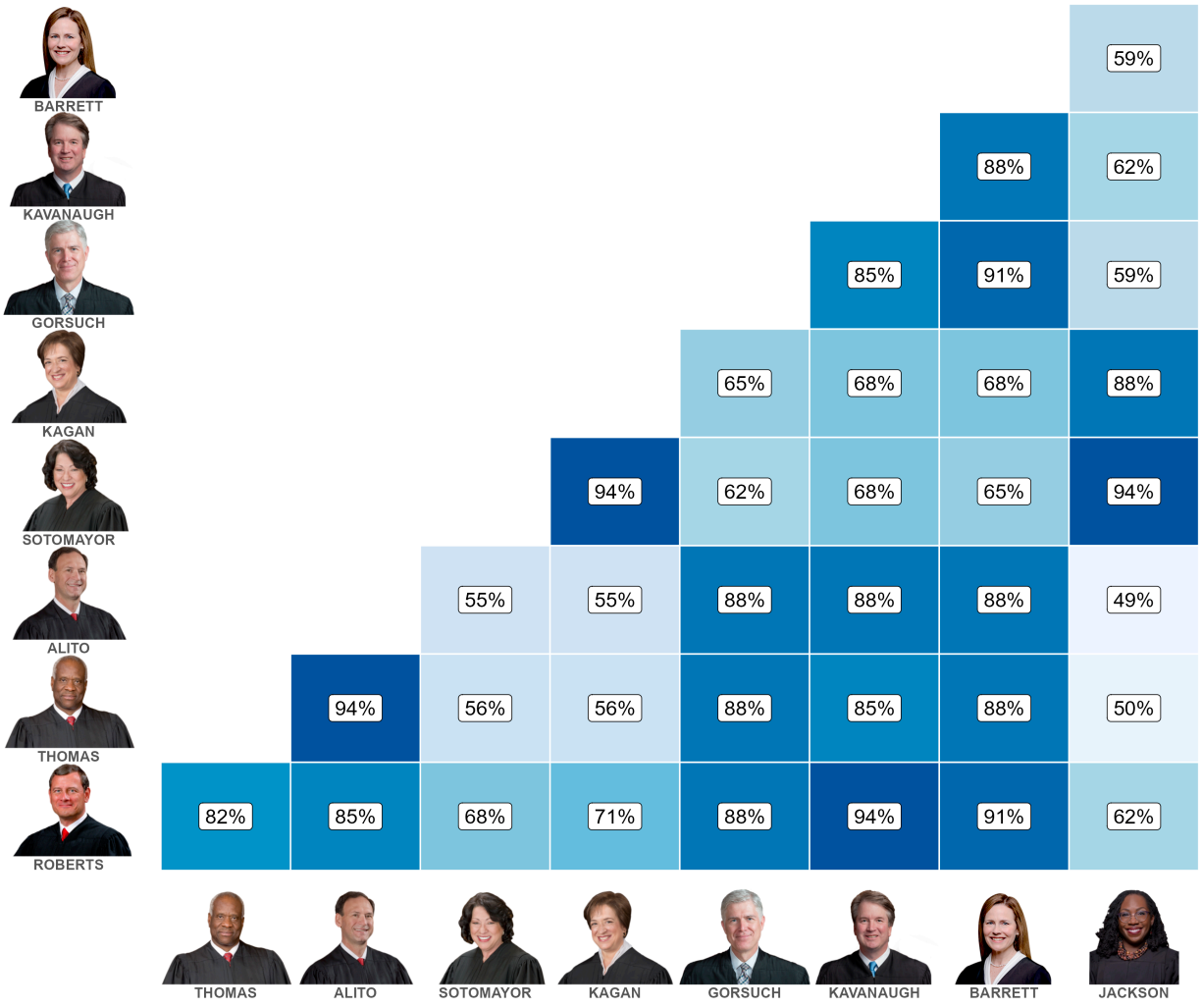



Membership in Majority – Divided Cases
95
85
75
65
55
45
35
92
92
86
76
70
70
51
51
41
Roberts
Kavanaugh
Barrett
Gorsuch
Alito
Thomas
Kagan
Sotomayor
Jackson
9


Membership in Majority – 6-3 & 5-4
95
85
75
65
55
45
35
88
88
81
69
69
65
38
38
35
Roberts
Kavanaugh
Barrett
Gorsuch
Thomas
Alito
Sotomayor
Jackson
Kagan
10

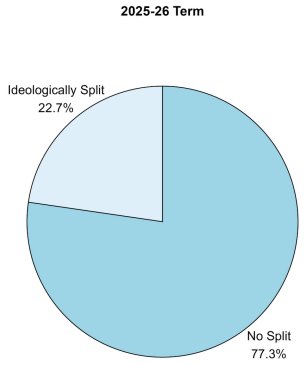
FREQUENCY OF AGREEMENT AMONG JUSTICES

This term the greatest alignments were the combinations of Justices Roberts-Kavanaugh, Sotomayor-Kagan, Alito-Thomas and Jackson-Sotomayor. Justice Jackson, the newest member of the Court aligned most frequently with Justice Sotomayor and least frequently with Justices Alito and Thomas. The graph below shows all of the justices' alignment percentages across this term.



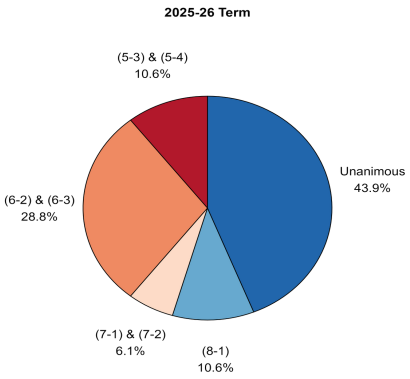
IDEOLOGICALLY DIVIDED CASES

The following chart depicts the ideologically splits in Oct 2026:



VOTE SPLITS – ALL CASES 2005 – 2025

Decisions by Vote Split – All Cases



CASE SUMMARIES[2]

BIRTHRIGHT CITIZENSHIP

TRUMP V. BARBARA

Facts of the case

On January 20, 2025, President Trump issued Executive Order No. 14,160, titled "Protecting the Meaning and Value of American Citizenship," which declared that individuals born in the United States are not U.S. citizens at birth if their parents lack sufficient legal status. Specifically, the order directs federal agencies not to recognize citizenship claims for children born after February 20, 2025, if: (1) the mother was unlawfully present in the U.S. and the father was neither a U.S. citizen nor a lawful permanent resident (LPR), or (2) the mother's presence in the U.S. was lawful but temporary and the father was not a U.S. citizen or LPR. The order was issued on the alleged basis that the Fourteenth Amendment's Citizenship Clause does not confer birthright citizenship on such children because they are not "subject to the jurisdiction" of the United States in the constitutional sense.

Three families challenged the order on behalf of themselves and similarly situated individuals. One class representative is Barbara, a Honduran asylum applicant whose child is due in October 2025. Another is Susan, a Taiwanese citizen in the country on a student visa whose daughter was born in April 2025; her child's passport application was in progress at the time of the suit. The third is Mark, a Brazilian applicant for permanent residence whose son was born in March 2025 and initially received a U.S. passport. These families filed suit under pseudonyms, alleging that the Executive Order unlawfully strips their children of citizenship guaranteed by the Fourteenth Amendment and 8 U.S.C. § 1401(a). They seek to preserve access to citizenship-related benefits including Social Security, SNAP, and Medicaid.

The U.S. District Court for the District of New Hampshire issued a preliminary injunction and provisionally certified a nationwide class of children affected by the order. The court held that the plaintiffs were likely to succeed on the merits of their constitutional and statutory claims. That decision was appealed to the U.S. Court of Appeals for the First Circuit, and before a ruling from that court, the Supreme Court granted certiorari before judgment.

Question

Is a presidential executive order that denies U.S. birthright citizenship to children born in the United States because their parents are unlawfully present or in the country on temporary visas consistent with the Citizenship Clause of the Fourteenth Amendment and 8 U.S.C. § 1401(a)?

[2] The following cases are based largely on case summaries prepared by the Oyez Project, located at www.oyez.org, and SCOTUSBLOG, located at www.SCOTUSBLOG.com and are used and reproduced pursuant to the Creative Commons License granted for non-commercial uses.

Conclusion

The Supreme Court struck down President Trump's executive order seeking to end birthright citizenship – the guarantee of citizenship to virtually everyone born in the United States. In a decision by Chief Justice Roberts, in *Trump v. Barbara*, the justices agreed with the challengers, as well as all of the lower courts around the country that have considered the issue, that Trump's order cannot be reconciled with the 14th Amendment to the Constitution, which confers citizenship on anyone "born … in the United States, and subject to the jurisdiction thereof."

Writing for the majority, Roberts emphasized that the "children born of parents unlawfully or temporarily present in the United States" "satisfy both elements of the Citizenship Clause." "Under the Constitution," he concluded, "they are citizens at birth."

In a dissenting opinion, Justice Alito called the ruling both "one of the most important decisions in the history of the Court" and "a serious mistake." "Careful analysis of the text of the Fourteenth Amendment and the process that led to its adoption," Alito argued, "shows that it does not degrade the concept of United States citizenship in this way. Instead," he contended, "the Fourteenth Amendment confers citizenship on only those children who, at birth, owe allegiance solely to this country."

Trump issued the executive order at the center of the case on Jan. 20, 2025, shortly after he was sworn into office for a second term. It provided that babies who are born in the United States to parents who are in this country either illegally or temporarily are not automatically entitled to citizenship.

Although Trump's order was slated to go into effect 30 days after he signed it, it never did. Instead, several federal judges across the U.S. prohibited the Trump administration from enforcing the order while challenges to it moved forward in court.

Faced with the prospect that Trump's order could be on hold indefinitely, the Trump administration came to the Supreme Court last spring, asking the justices to weigh in on whether the lower courts can issue "universal" or "nationwide" injunctions – orders that bar the enforcement of laws or policies anywhere in the country. By a vote of 6-3, in *Trump v. CASA*[3], the court ruled that they cannot.

After the Supreme Court's decision prohibiting universal injunctions, cases challenging the merits of Trump's order continued in the lower courts. On July 10, a federal judge in New Hampshire issued a preliminary injunction that blocked the government from enforcing the order against a class of babies born after Feb. 20, 2025, who are or would be denied U.S. citizenship by the order. U.S. District Judge Joseph Laplante concluded, "that the Executive Order likely 'contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it.'"

The Trump administration then appealed to the Supreme Court on Sept. 26, asking it to review Laplante's ruling without waiting for a federal appeals court to weigh in. The justices granted the government's request on Dec. 5, and the case was argued on April 1.

[3] 606 U.S. 831, 145 S. Ct. 2540, 222 L. Ed. 2d 930 (2025)

The Supreme Court upheld the lower court's decision. Roberts explained that under early English law, children who were born in Britain automatically became British subjects. "This view crossed the Atlantic with the colonists—and was adopted with little fanfare after the Revolution," Roberts observed. In 1868, the 14th Amendment was adopted to repudiate the Supreme Court's infamous 1857 ruling in *Dred Scott v. Sandford*[4], holding that a Black person whose ancestors were brought to this country and sold as enslaved persons was not entitled to any protection from the federal courts because he was not a U.S. citizen. In so doing, Roberts wrote, the framers of the amendment intended to "permanently enshrine" the existing understanding of birthright citizenship. "A child born on American soil and subject to American law was made an American citizen."

The Supreme Court then reaffirmed that principle in 1898 in the case of Wong Kim Ark, who was born in San Francisco to parents of Chinese descent. When he returned to the United States from a visit to China in 1895, immigration officials would not allow him to enter the country on the ground that he was not a U.S. citizen. "What the Court held in Wong Kim Ark was simple," Roberts stressed: "the Citizenship Clause incorporated the common law and granted citizenship to nearly all children born in the United States. Not surprisingly, then, in the 128 years since, we have repeatedly understood the rule" of that case "to guarantee citizenship to all children born in the United States and subject to its power."

Roberts rejected the government's argument that, even if birthright citizenship was the norm in early U.S. history, by the time the 14th Amendment was enacted, the key question was whether a child owed "primary allegiance" to the United States, which in turn hinged on "domicile" – the place where someone has a permanent home. As an initial matter, Roberts said, "there is scant evidence for this dramatically revisionist view." But in any event, he added, if Congress "intended to limit American citizenship to the children of those domiciled in the United States, nothing in the succinct language of the Citizenship Clause conveyed that design."

"Citizenship, then and now," Roberts concluded, "was the right to have rights—to freely participate in our political community. The Framers of the Fourteenth Amendment extended that promise to 'every free-born person in this land.' We keep that promise today."

Justice Kavanaugh agreed with the result that the court reached – that the president's executive order is invalid – but not its reasoning. In his view, Trump's order "does not violate the Fourteenth Amendment" but does violate a federal law providing that children who are "born in the United States, and subject to the jurisdiction thereof" are U.S. citizens. Congress, Kavanaugh suggested, "could amend" that law "or otherwise enact new legislation establishing exceptions to birthright citizenship for children born to foreign citizens unlawfully or temporarily in the country. But," he noted, "Congress has not yet done so."

Justice Thomas penned a lengthy dissent, which Justice Gorsuch joined. He called the majority's account "not historically accurate" and said that it "adds to the sad history of the Fourteenth Amendment, which was designed and understood to secure equal rights for the freed blacks but has instead been repurposed for political projects that the Reconstruction Congress did not support."

[4] 60 U.S. 393, 15 L. Ed. 691, 15 L. Ed. 2d 691 - Supreme Court, 1857

Gorsuch also wrote a separate brief dissent, in which he appeared to suggest that Trump's executive order might violate the Constitution as it applies to the children of undocumented immigrants who intend to live in the United States permanently. "If those parents are not domiciled here," Gorsuch queried, "then where are they domiciled? And if the answer is nowhere," he continued, "how can we reconcile that conclusion with this Court's longstanding recognition that every person is domiciled somewhere?" Because the challengers in this case have argued that Trump's order is invalid in all circumstances, rather than just some, Gorsuch explained, "these questions may not be properly before us. But their answers are undeniably important to a Nation committed to a view of citizenship open to all children born here to parents who can call this country their home."

TARIFFS

LEARNING RESOURCES, INC. V. TRUMP

Facts of the case

Learning Resources, Inc. and hand2mind, Inc. are family-owned businesses that design and distribute educational products for children. Although their product development and some assembly occur domestically, most of their manufacturing is outsourced to international partners, including China. Beginning in early 2025, a series of executive orders from President Trump, invoking the International Emergency Economic Powers Act ("IEEPA"), imposed unprecedented tariffs on imports, including goods from China. These included a 20% "trafficking" tariff and additional "reciprocal" tariffs that pushed rates on Chinese goods to over 145%. Petitioners' imports were directly affected, and complying with the new tariffs would increase their import-related costs from $2.3 million in 2024 to over $100 million in 2025, putting their businesses at existential risk.

The petitioners filed suit on April 22, 2025, in the U.S. District Court for the District of Columbia, challenging the legality of the IEEPA tariffs. The district court granted a preliminary injunction on May 29, 2025, holding that IEEPA does not authorize the president to impose tariffs and finding that the tariffs posed an existential threat to the petitioners. However, that ruling was stayed just days later, and the U.S. Court of Appeals for the District of Columbia Circuit docketed the case. Meanwhile, the U.S. Court of International Trade ruled similarly in related cases but its decision was also stayed by the U.S. Court of Appeals for the Federal Circuit.

Question

Does the International Emergency Economic Powers Act, 50 U.S.C. § 1701 ("IEEPA"), authorize the president to impose tariffs?

Conclusion

The International Emergency Economic Powers Act (IEEPA) does not authorize the President of the United States to impose tariffs. Chief Justice Roberts authored the 6-3 majority opinion of the Court.

The Constitution exclusively vests the power to lay and collect taxes, including the power to impose tariffs, in Congress. Because the Executive Branch enjoys no inherent authority to impose peacetime tariffs, any presidential power to do so must come from a clear congressional delegation. IEEPA grants the President authority to "regulate" the "importation" of goods during a national emergency, but this general regulatory power does not include the distinct and extraordinary power to tax. While taxes can accomplish regulatory goals, the everyday power to regulate commerce remains entirely separate from the power to raise revenue.

The broader statutory text and congressional practice confirm that IEEPA lacks an implicit delegation of the taxing power. When Congress delegates the authority to impose customs duties—a federal tax levied on imported goods—it consistently uses explicit terms like "duty" or "surcharge" and imposes strict procedural limits. IEEPA lists nine specific actions the President may take regarding foreign commerce, such as investigating or prohibiting transactions, but notably omits any mention of tariffs or revenue-raising measures. Furthermore, interpreting the statute to allow taxation renders it partly unconstitutional, as IEEPA authorizes the President to regulate both importation and exportation, and the Constitution expressly forbids taxing exports.

Justice Gorsuch authored a concurring opinion arguing that the major questions doctrine, which requires clear congressional authorization for extraordinary assertions of executive power, protects the constitutional separation of powers.

Justice Barrett authored a concurring opinion asserting that the major questions doctrine operates as an ordinary application of textualism that uses constitutional context to ascertain a statute's most natural meaning.

Justice Kagan authored an opinion concurring in part and concurring in the judgment, joined by Justices Sotomayor and Jackson, arguing that ordinary tools of statutory interpretation easily resolve the dispute without invoking the major questions doctrine.

Justice Jackson authored an opinion concurring in part and concurring in the judgment emphasizing that legislative history proves Congress intended IEEPA only to authorize the freezing of foreign-owned property.

Justice Thomas authored a dissenting opinion arguing that the constitutional nondelegation doctrine does not apply to foreign commerce, allowing Congress to freely delegate tariff-making powers.

Justice Kavanaugh authored a dissenting opinion, joined by Justices Thomas and Alito, arguing that historical practice, precedent, and the ordinary meaning of the word "regulate" establish that IEEPA authorizes presidential tariffs.

TRUMP V. SLAUGHTER

Facts of the case

Rebecca Kelly Slaughter was serving as a Commissioner on the Federal Trade Commission (FTC), an agency led by five commissioners appointed by the President and confirmed by the Senate to seven-year terms. The Federal Trade Commission Act limits the President's ability to remove an FTC Commissioner to "inefficiency, neglect of duty, or malfeasance in office." President Trump fired Commissioner Slaughter, explaining her continued service was "inconsistent with [the] Administration's priorities," which did not meet the statutory standard of "cause." Slaughter sued President Trump and the three remaining FTC Commissioners, arguing her removal was unlawful because the President failed to offer a statutory cause.

The district court ruled in favor of Commissioner Slaughter, declaring her removal unlawful, ordering her reinstatement, and issuing a permanent injunction against the remaining Commissioners and their subordinates, barring them from interfering with her duties. The government appealed the decision and requested a stay of the district court's order pending the appeal. The U.S. Court of Appeals for the D.C. Circuit denied the government's motion for a stay pending appeal and dissolved an administrative stay that had been previously entered. The Supreme Court granted the stay on September 22, 2025, and also granted certiorari.

Question

Do the statutory removal protections for members of the Federal Trade Commission violate the separation of powers?

Conclusion

The Supreme Court gave President Trump sweeping new authority over approximately two dozen multi-member agencies that Congress intended to be independent. By a vote of 6-3, the justices struck down a federal law that bars the president from firing members of the Federal Trade Commission except in cases of "inefficiency, neglect of duty, or malfeasance in office." That law, a majority of the justices ruled, violates the constitutional separation of powers between the three branches of government. And in reaching that decision, the court overruled its 91-year-old decision in *Humphrey's Executor v. United States*[5], which had upheld the law at the center of the dispute.

More broadly, the decision was a major victory for proponents of the "unitary executive" theory – the idea that the president should have complete control over the executive branch. Under this theory, the president should be able to fire any member of the executive branch, and laws – like the one that the court struck down – that restrict his ability to do so violate the separation of powers.

[5] 295 U.S. 602, 55 **S**. Ct. 869, 79 L. Ed. 1611 (1935)

Writing for the majority, Chief Justice Roberts contended that "the President must have the assistance of officers he can trust. Although it is up to the Senate to decide whether to confirm those with whom the President would prefer to work, neither Congress nor the courts may saddle him with those with whom he cannot work. Subordinates who exercise the President's power are subject to removal by him. Then, and only then, can they remain accountable to the President, and the President to the people."

Justice Sotomayor penned a 49-page dissent that was joined by Justices Kagan and Jackson. "Today," she wrote, "the Court discards" the "democratic regime" created by the Constitution "in favor of one that distorts the structure of Government to fit the majority's theory of unitary, total executive control. The result," she concluded, "is a President who emerges with far greater power than ever before."

The Federal Trade Commission was created more than a century ago. It has five commissioners, no more than three of whom may come from any one political party. Each commissioner is appointed by the president and confirmed by the Senate to serve a seven-year term.

The Supreme Court reversed the lower court's ruling. Roberts first emphasized that the Constitution gives the president "[t]he executive Power," as well as the responsibility to "take Care that the Laws be faithfully executed." The Framers of the Constitution, Roberts explained, wanted to create a system in which the one person, the president, was in charge of the executive branch. The officials who work for him, Roberts continued, are there to help him, but the president must be able to fire them if they are not performing well – so that he can carry out his own job.

Roberts acknowledged the Supreme Court's decision in *Humphrey's Executor*, upholding the same law at the center of this case. But that decision, he contended, "was tethered to a highly circumscribed and almost fictional view of the FTC's role" as being "very limited": "they were 'neither political nor executive, but predominantly quasi-judicial and quasi-legislative.'" "At this point," Roberts reasoned, "all that is left of H*umphrey's Executor* is its observation that an agency that 'exercises no part of the executive power' need not fall within the rule of Presidential removal."

In this case, Roberts concluded, "the FTC unquestionably exercises executive power, and must therefore be controlled by the" president. For example, the current version of the FTC "enforces and administers some 80 statutes, which cover almost every facet of our Nation's economy." The agency both carries out investigations and then enforces compliance "through in-house adjudications." Indeed, Roberts noted, the agency even "files civil suits on behalf of the United States in federal court." "As we have said many times, the 'discretionary power to seek judicial relief' lies at the very core of executive authority," Roberts observed. And because the FTC exercises such power, Roberts said, "Slaughter served as the President's subordinate at the FTC—and … the President was entitled to cut her tenure short."

Roberts indicated, did not resolve all questions about when an agency or entity exercises executive power, so that its officials can be fired by the president for any reason. Roberts emphasized that "not all offices created by Congress necessarily come with executive or even sovereign power

attached" – for example, the Boy Scouts of America and Georgetown University. The same is true, Roberts continued, for "some functions traditionally handled outside the Executive Branch" – such as the Federal Reserve, "to the extent that it follows in the distinct historical tradition of the First and Second Banks of the United States—both of which influenced monetary policy and neither of which were subject to plenary Presidential control."

The court was also not deciding, Roberts said, "the fate of officials not before us," such as federal judges that do not have lifetime tenure. "All we do today is recognize what has been clear for a century," Roberts wrote, "that those who fall within the President's 'general administrative control' must be removable by the President at will."

In her dissent, Sotomayor stressed that Congress established multi-member agencies like the FTC "to address complex problems while enjoying some independence from Presidential removal and thus absolute partisan control." In holding that the president can remove Slaughter and other FTC commissioners for any reason, she argued, the majority "gives the President a power unknown even to the English Crown against which the Founders revolted, elevating him above his once-coequal branches by transforming a duty to take care that the laws be faithfully executed into a license to act in defiance of those very laws."

The Court's decision, Sotomayor contended, "reshapes our Government. Dozens of independent commissions are now likely to become purely executive agencies, shifting tremendous power over broad swaths of American life into the President's hands"—for example, the Federal Energy Regulatory Commission, the Consumer Product Safety Commission, the Nuclear Regulatory Commission, and the Merit Systems Protection Board.

TRUMP V. COOK

Facts of the case

In 2023, President Biden nominated Lisa D. Cook for a full 14-year term on the Board of Governors of the Federal Reserve System after she had served a short unexpired term beginning in 2022. The Senate confirmed her to the new term in September 2023. In August 2025, William Pulte, Director of the Federal Housing Finance Agency, referred allegations against Cook to the Department of Justice, claiming she had committed mortgage fraud in 2021—before she joined the Board—by misrepresenting her residency to obtain favorable loan terms. Shortly after the referral was made public, President Trump accused Cook of untrustworthiness and, on August 25, 2025, issued a public letter removing her from office. The President's letter cited the mortgage allegations as cause for removal but did not offer Cook any prior notice or opportunity to respond.

Cook sued in the U.S. District Court for the District of Columbia on August 28, 2025, alleging that her removal violated the Federal Reserve Act's requirement that Governors may be removed only "for cause" and that the President's action also violated her procedural due process rights under the Fifth Amendment. She sought a temporary restraining order, which the district court treated as a motion for a preliminary injunction.

The district court granted the preliminary injunction on September 9, 2025, ordering that Cook's removal not be enforced while the litigation proceeds. The court found that Cook was likely to prevail on her statutory and constitutional claims and that the government's asserted harms were outweighed by the public interest in due process and Federal Reserve independence. The U.S. Court of Appeals for the District of Columbia Circuit denied the government's emergency motion for a stay on September 15, 2025, with Judges Garcia and Childs concurring and Judge Katsas dissenting.

The Trump administration filed an emergency application for a stay with the Supreme Court, asking the Justices to allow Cook's removal to take effect immediately. The Court deferred a ruling on the stay. Instead of issuing a summary order, the Court kept the injunction in place—allowing Cook to remain in office—and scheduled the application for full oral argument.

Question

Should the Court stay a district court injunction preventing the President from removing a member of the Federal Reserve Board of Governors "for cause" based on pre-appointment conduct without prior notice or a hearing?

Conclusion

The Supreme Court ruled in favor of Cook. By a vote of 5-4, the court held that Cook can continue to remain in her job while her challenge to Trump's efforts to fire her moves forward.

Writing for the majority, Chief Justice Roberts contended that, if the Trump administration were correct, it "would in effect transform the Federal Reserve's for-cause protection into at-will employment—an interpretive leap out of step with the statute Congress enacted and our Nation's tradition of central banking protected from political interference."

Justices Sotomayor, Kagan, Kavanaugh, and Jackson joined the Roberts decision.

In his dissenting opinion, Justice Thomas called the ruling "incorrect." "Although the Court expresses concern that the President removed a Board member for 'the first time in the Federal Reserve's 111-year history,'" he wrote, "it expresses no such concern that it today upholds an injunction against the President's removal of an executive officer for the first time in the Constitution's 237-year history."

Justice Alito also filed a dissenting opinion, which was joined by Justice Gorsuch. Justice Barrett filed her own dissenting opinion.

The decision was a major ruling on the president's power over the seven-member board of the Federal Reserve, the country's central bank. The Fed is an independent government agency that is not funded by Congress through the normal appropriations process, operating instead using interest on securities that it owns.

Congress has also sought to insulate the Fed from outside political influence by requiring members of the board, who are appointed by the president and confirmed by the Senate, to serve staggered 14-year terms, a design intended to prevent any one president from "stacking the deck" with his own nominees. Additionally, federal law only permits the president to remove members of the board "for cause."

Since taking office in January 2025, Trump has attempted to assert control over several multi-member independent agencies, whose officials could also only be removed for cause. In orders issued last year, the Supreme Court allowed Trump to fire members of the Federal Trade Commission, National Labor Relations Board, Merit Systems Protection Board, and Consumer Product Safety Commission while their appeals moved forward.

Because Cook remained in her job, she participated in the Federal Reserve's two-day policy meeting on September 16 and 17, during which the Fed lowered interest rates by a quarter of a point – the first-rate reduction in nine months.

In his 26-page opinion, Roberts emphasized that the case came to the court as a request by the government for temporary relief. That means, he said, that the government must show (among other things) that it is likely to prevail on the merits of its appeal – which, he concluded, it has not done.

The majority's opinion considered and rejected each of the government's arguments. First, Roberts rebuffed the government's contention that courts cannot review the president's decision to remove a member of the Board of Governors "for cause." "Whether a Governor should be removed, it is true, is a decision only the President can make (short of impeachment). But that does not mean that he may make that decision for any reason, or no reason."

When determining whether a governor has been fired for "cause," Roberts continued, the bar is not (contrary to the government's assertion) "very low." Roberts stressed that "[n]ot only the fact of independence but also the appearance of independence is key to the Federal Reserve's design," which in turn "counsels a substantial threshold for 'cause.'" This determination, Roberts suggested, may hinge on whether the justification that the president offers for the firing is one that indicates that the governor is "truly" not fit to serve in that role or instead appears to be a pretext to replace the governor with a new candidate who will better serve the president's interests. "Without such constraints in place," Roberts wrote, "any perceived or alleged misstep (past or present) could provide a ready pretext for a Governor's removal—a fact that he would surely know, and that would surely weigh on him as he decided what to say and how to vote. Nothing," Roberts concluded, "could be more corrosive of the independence that Congress sought to preserve."

Roberts next rejected the government's contention that courts cannot issue orders – like Cobb's – that temporarily reinstate a governor to the Fed while litigation continues. "On their view," Roberts recounted, "all that a court may do is wait, and perhaps award backpay later—even if the President fires a member of the Board for an absurd reason, or no reason, and even if the court holds that he broke the law in doing so. The law," Roberts emphasized, "does not require such a result." Indeed, Roberts posited, such a rule would allow the president to fire a governor "for very lengthy periods of time without substantial cause for removal."

Roberts noted that the majority was deciding the government's request "on narrow grounds." "No matter the precise definition of cause, or the scope of our review of any such determination, the President failed to afford Cook the procedural protections to which she was entitled by statute. Without such protections, she could not properly dispute the charges the President laid against her."

Roberts also pushed back against the argument – made by Thomas in his dissenting opinion – that the "for cause" removal requirement violates the Constitution's separation of powers by restricting "the President's power to 'remove his subordinates at will.'" Roberts pointed to the efforts by Congress to shield earlier national banks from presidential influence to avoid "even the 'suspicion' of political manipulation of monetary policy." Even if "the Federal Reserve is more powerful than its predecessors," Roberts wrote, it still "remains 'consistent'" with the idea "that monetary policy should not be subject to political interference." And although this question arises on the court's interim docket, Roberts acknowledged, he emphasized that the justices "have had the benefit of not only amici and oral argument but months of internal consultation and deliberation. We see no reason to leave the public in limbo, or to sow doubt as to the status of one of our Nation's (and the world's) most important financial institutions."

In his dissent, Alito argued that the justices "should have granted or denied" the government's request "in a brief order last fall," rather than hearing oral argument and "bringing proceedings in the lower courts to a 9-month standstill."

SECOND AMENDMENT

WOLFORD V. LOPEZ

Facts of the case

In 2023, Hawaii and California enacted new laws, Act 52 and Senate Bill 2, respectively, that significantly restrict the public carry of firearms. Both laws prohibit individuals with carry permits from bringing firearms into numerous specified "sensitive places." Hawaii's list includes fifteen categories, such as bars, restaurants serving alcohol, parks, beaches, and banks. California's list is broader, covering more than two dozen types of property, including hospitals, public transit, playgrounds, libraries, museums, places of worship, and casinos.

Both states also changed the default rule for private property open to the public, generally banning firearms unless the property owner expressly permits them. Hawaii allows owners to consent verbally, in writing, or via a posted sign. California's rule is stricter, permitting consent only through the posting of a specific, state-mandated sign. Plaintiffs in both states include individuals who hold concealed-carry permits and various gun-rights organizations. They filed lawsuits alleging that these new restrictions violate their Second Amendment right to keep and bear arms.

Plaintiffs in both actions sued their respective state attorneys general, and federal district courts issued preliminary injunctions blocking enforcement of many of the new provisions. On appeal,

the U.S. Court of Appeals for the Ninth Circuit consolidated the cases, affirming the injunctions in part but reversing them in large part. The Ninth Circuit's ruling allowed many of the challenged restrictions to remain in effect but agreed with the district courts that the states could not, for example, ban firearms in banks or hospitals.

Question

Does a law that makes it a crime for a licensed concealed carry permit holder to bring a handgun onto private property open to the public—such as a store or restaurant—unless the property owner gives "express authorization" violate the Second Amendment?

Conclusion

The Court struck down a Hawaii law that makes it a crime for gun owners to bring their guns onto private property that is open to the public unless they have the property owner's specific consent. In *Wolford v. Lopez*, by a vote of 6-3, the justices agreed with a group of Maui residents with concealed-carry permits that the law violates the Second Amendment's guarantee of the right to bear arms.

The decision will have an impact not only in Hawaii, but also in four other states – California, Maryland, New York, and New Jersey – with similar laws.

In his 24-page opinion for the court, Justice Alito wrote that the law "hobbles what the Second Amendment protects: the right of Americans to carry arms for self-defense as they go about their daily lives." Justice Jackson, who dissented, countered that the law "fairly applies a first principle of property law—the right to exclude—and does no harm to the Second Amendment."

Alito found it clear that the Hawaii law fell within "the plain text of the Second Amendment" and was therefore "presumptively unconstitutional." "No party," he wrote, "disputes that" the challengers in the case "are among 'the people' protected by the Second Amendment or that they seek to 'bear,' i.e., to carry, 'arms.'" Alito stressed that the Hawaii law "unquestionably imposed a new and significant burden on the exercise of the right" to bear arms.

He acknowledged that under the Hawaii law, property owners can still "admit or exclude" gun owners "who are carrying guns for self-defense." But the difference between the Hawaii law and the default rule elsewhere in the country – that gun owners with concealed-carry permits can enter private property open to the public "unless expressly prohibited from doing so" – "will determine where carry-permit holders may lawfully carry firearms," Alito said, when "the owner either pays no attention or does not care about such issues."

The key question before the court, in his view, was whether there was a history of similar regulations in early U.S. and English history. Alito first rejected Hawaii's contention that, "whatever the situation in other parts of the country, in Hawaii, opening private property to the public" does not give permission to bring a gun onto that property. Alito countered that "the Second Amendment has the same meaning in all parts of the United States," where there is "'overwhelming evidence'" of "an 'enduring American tradition permitting public carry.'"

Alito next rebuffed Hawaii's efforts to rely on a group of 18th-century laws that Alito characterized as prohibiting "unauthorized hunting … on someone else's private property." Such laws, Alito said, were simply too different from Hawaii's law, because they did not affect "the Second Amendment's central objective" of "protecting the fundamental right to self-defense." Instead, he wrote, they were intended to "prevent the distinctive harms and risks associated with unauthorized hunting."

Alito also strongly spurned the state's reliance on "an 1865 Louisiana statute that made it unlawful 'for any person or persons to carry firearms on the premises or plantations of any citizens,'" without the owner's consent, calling it "remarkable." That law was "neither widespread nor widely accepted," Alito contended, and in any event, it was adopted as part of the "so-called Black Codes" to discriminate against formerly enslaved people in the wake of the Civil War. "Hawaii's claim that this tainted artifact illuminates the original understanding of the right to keep and bear arms cannot be taken seriously."

In a dissent joined by Justice Sotomayor, Jackson contended that the majority was asking the wrong question. In her view, "Hawaii's law does not implicate the Second Amendment because" "[t]here is no constitutional right to enter private property without the owner's permission, let alone with a firearm." The question before the justices, therefore, Jackson wrote, is "merely how a property owner must communicate his decision to exclude or to invite armed carry, including whether a State may alter the background property-law rules that set the default as one or the other. The Second Amendment has nothing to say about that."

Even if the Second Amendment did apply, Jackson continued, the early American laws that Hawaii offers meet the test outlined by the court in *Bruen* because they "demonstrate a tradition of state regulation within which Hawaii's law fits comfortably. Like Hawaii's," Jackson said, "these laws required consent for armed entry onto private property open to the public. And like Hawaii's, they did so to protect property owners' rights and to prevent the harms that generally accompanied unauthorized armed entry onto private land."

Jackson, who joined the court after its decision in *Bruen*, reiterated her view that the case "was wrongly decided." But in any event, she said, "the Court has now manipulated *Bruen* into a free-for-all that lets the Judiciary thwart the will of legislatures by privileging access to firearms above all else. Today's decision makes one thing clear: The Court's objective is protecting guns, not consistently preserving any principle of law."

Justice Barrett wrote a concurring opinion, joined in part by Justices Thomas and Gorsuch, in which she pushed back against Jackson's insistence that property law, rather than the Second Amendment, is at the core of the dispute. She contended that Jackson's argument "misunderstands the role of historical evidence in a Second Amendment challenge." For purposes of determining whether the Second Amendment is implicated at all, Barrett wrote, it does not matter "that a property owner has the right to exclude anyone who wishes to enter her property with firearms. No one doubts that all property owners in Hawaii could bar the carry of arms on their respective premises, if they wanted to." But, Barrett continued, "the Second Amendment does not apply to

private parties. It does apply to the States. And when a State enacts a property law that regulates arms-bearing conduct, that law implicates the Second Amendment."

Justice Kagan wrote a brief dissenting opinion of her own. In her view, the court could have upheld the Hawaii law "because … it is a modern-day analogue of colonial and founding era laws that similarly prohibited carrying firearms onto private property without the owner's affirmative consent."

UNITED STATES V. HEMANI

Facts of the case

A grand jury indicted Ali Danial Hemani in February 2023 for violating 18 U.S.C. § 922(g)(3), a federal law prohibiting firearm possession by an "unlawful user of…a controlled substance." The indictment alleged that in August 2022, Hemani knowingly possessed a Glock 19 9mm pistol while being an unlawful user of controlled substances. The government specified that Hemani allegedly used marijuana, promethazine, and cocaine.

The pistol was located in the closet of Hemani's parents' home. Crucially, the prosecution did not allege that Hemani was intoxicated or using a controlled substance at the precise time he possessed the firearm. The government's case rested on his status as a regular drug user, not on simultaneous use and possession.

Hemani filed a motion to dismiss the indictment, arguing the law was unconstitutional as applied to him. The U.S. District Court for the Eastern District of Texas granted the motion and dismissed the indictment. The U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal, concluding that a binding regional precedent (*United States v. Connelly*[6]) rendered the law's application to Hemani unconstitutional.

Question

Does a federal law that prohibits the possession of firearms by a person who "is an unlawful user of or addicted to any controlled substance" violate the respondent's Second Amendment right to bear arms?

Conclusion

The Supreme Court ruled that the federal government cannot prosecute a Texas man on charges that he violated a federal law barring users of illegal drugs from having a gun. In an opinion by Justice Gorsuch, the justices agreed with Ali Danial Hemani that, at least as when it is applied to him, the law violates the Second Amendment.

[6] 117 F. 4th 269 (5th Ct. 2024)

Writing for the court, Gorsuch emphasized that the government was seeking to "automatically strip Mr. Hemani of his Second Amendment right to possess a firearm" and "imprison him for up to 15 years" based only on a showing that he "regularly uses any amount of any controlled substance." But the government's arguments fell short, Gorsuch concluded, because the early American laws on which the government relied to support these restrictions "targeted different kinds of people, did so for different reasons, and operated in different ways."

In a 19-page opinion for the majority, Gorsuch explained that under the Supreme Court's 2022 decision in *New York State Rifle and Pistol Association v. Bruen*[7], courts should uphold restrictions on gun rights only when there is a tradition of such regulations in early U.S. history. And in 2023's *United States v. Rahimi*[8], Gorsuch continued, the court made clear that the government is not required "to point to a 'historical twin'"; it is enough, he said, that "the challenged regulation is consistent with the principles that underpin our regulatory tradition."

Here, Gorsuch wrote, the federal government cannot meet this high bar. Although the government points to early American laws targeting "habitual drunkards" – for example, by jailing them, placing them in workhouses, committing them to asylums, or requiring them to post a bond to ensure their good behavior – these laws are not sufficiently analogous to justify Hemani's prosecution. First, Gorsuch suggested, a "habitual drunkard" was not the same thing as someone who regularly uses intoxicants such as alcohol. Even some of the Founding Fathers were heavy drinkers by today's standards, Gorsuch noted, but to be regarded as a "habitual drunkard" someone would have to frequently be so drunk that they were "practically incapacitated and incapable of managing their affairs." Yet the government in this case maintains that it does not need to show that a drug user "is regularly incapacitated." Indeed, Gorsuch said, under the government's theory it could also prosecute "a husband who regularly takes his wife's prescription Ambien to sleep" – a scenario raised by Justice Barrett at the oral argument – "and a college student who routinely uses a friend's Adderall to cram for exams."

Gorsuch next rejected the government's argument that the law at the center of this case serves a similar purpose as the law targeting habitual drunkards – that is, "to protect the public from 'unusually dangerous' individuals who will 'misuse . . . firearms' to commit 'violent crime[s].'" Even if that is the goal of the law in this case, Gorsuch countered, the habitual drunkard laws normally "had little to do with protecting the public from categorically violent and unusually dangerous persons."

Moreover, Gorsuch continued, the habitual drunkard laws are not an apt analogy because their operation "differs significantly" from the operation of the law at the center of this case. Gorsuch stressed, those laws "usually provided some form of process" – such as a trial, proceedings in a probate court, or a bond hearing – "before an individual lost any of his liberties, even temporarily." By contrast, under the government's rule, the law in this case "automatically divests an individual of his constitutional right to bear arms the moment he becomes an unlawful user and until he ends his drug use."

[7] 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022)
[8] 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024)

Gorsuch made clear that the court did "not question that sometimes an individual's unlawful use of marijuana (or any other controlled substance) may render him a danger to others." But here, he said, the government is asking the court "to conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing." Such a position, Gorsuch posited, is at odds with the government's own actions – for example, its recent decision to downgrade the categorization of marijuana on its list of controlled substances, so that it is now classified as having "a lower potential for dependence and abuse" and "a 'currently accepted medical use.'"

Gorsuch emphasized that the Court's ruling was "a narrow one" that did not address whether the government could prosecute drug addicts for having a gun or the legality of other gun restrictions – such as the ban on the possession of guns by people who have been convicted of felonies. Indeed, Gorsuch added, the decision did "not even address whether the government" could prosecute someone if it had proof that a specific individual's drug use "renders him a danger to himself or others."

Although all the justices agreed that Hemani's conviction was improper, several justices wrote separate opinions. Justice Thomas filed a concurring opinion in which he argued that the law under which Hemani had been convicted violates the Constitution, because Congress does not have the power "to regulate the possession of firearms solely on the ground that they crossed state lines at some point in the past."

Justice Jackson also wrote a concurring opinion, joined by Justice Sotomayor, in which she contended that the framework established by the Supreme Court in *Bruen* "is unworkable" and "vulnerable to inconsistent and arbitrary application, as judges draw different conclusions from the same historical evidence."

Justice Alito, in an opinion joined by Justice Kagan, agreed with the result that the majority reached, if not its reasoning. In his view, the federal government had "failed to show that a marijuana user like" Hemani "is incapacitated in a way analogous to the habitual drunkards that the Government's analogues regulated."

LITTLE V. HECOX

Facts of the case

In 2020, Idaho enacted the Fairness in Women's Sports Act, which categorically barred transgender girls and women from participating on female athletic teams in public schools—from elementary school through college. Prior to the law's passage, Idaho's high school athletic association and the NCAA allowed transgender women to compete on women's teams after a year of hormone therapy. At the time, there were no known instances of transgender girls competing in Idaho athletics under those existing rules. Nonetheless, Idaho lawmakers passed the Act, citing concerns about "fairness" and biological differences attributed to testosterone and other factors. The law allowed any individual to challenge a female athlete's gender, triggering a mandatory medical verification process that could include analysis of reproductive anatomy, genetic make-up, or testosterone levels. Cisgender women, including those perceived as more masculine, could also be subjected to these checks.

Lindsay Hecox, a transgender woman and student at Boise State University who wished to join the women's cross-country team, filed suit alongside a cisgender high school athlete known as Jane Doe. They alleged that the Act violated their constitutional rights, including the Equal Protection Clause of the Fourteenth Amendment. Hecox had undergone hormone therapy, significantly lowering her testosterone levels, but was still categorically excluded under the law. The district court granted a preliminary injunction blocking the law in August 2020, finding it likely unconstitutional. After several rounds of appeal and remand, the U.S. Court of Appeals for the Ninth Circuit ultimately affirmed the injunction as applied to Hecox but remanded the case to the district court to reconsider the scope of the injunction, especially in light of the Supreme Court's 2024 decision in *Labrador v. Poe*[9].

Question

May a state, consistent with the Equal Protection Clause of the Fourteenth Amendment, categorically require sports participants to compete based on their biological sex, rather than gender identity?

Conclusion

The Supreme Court holds that states can exclude transgender athletes from women's and girls' sports teams. The justices ruled unanimously that laws enacted by Idaho and West Virginia do not violate federal civil rights laws, but they divided over whether the West Virginia law violates the Constitution, at least with regard to the athlete in the case before the court.

In his 29-page opinion, Justice Kavanaugh wrote that "[c]onsistent with Title IX and the Equal Protection Clause, we hold that the States may maintain women's and girls' sports for biological

[9] 144 S. Ct. 921, 601 U.S. __, 218 L. Ed. 2d 400 (2024)

females. They may determine eligibility for women's and girls' sports based on biological sex. The Constitution and Title IX do not require an overhaul of women's and girls' sports throughout America."

Justice Sotomayor, in an opinion joined by Justices Kagan and Jackson, contended that "the majority extends great sympathy to those it favors: the young cisgender girls and women who play sports. I share that sympathy. Playing sports can lead to benefits that are immeasurable, and many are understandably invested in ensuring that competition stays fair and safe. Because the majority, however, inflicts a hardship on those it disfavors without giving them the fair and full opportunity the Constitution requires to litigate their contentions, I respectfully dissent."

The court's decision in *West Virginia v. B.P.J.* and *Little v. Hecox* came just over a year after the Supreme Court, also by a vote of 6-3, upheld a Tennessee law banning the use of puberty blockers and hormone therapy by transgender teenagers.

The court's ruling centers on two laws that limit participation on women's and girls' teams. Idaho enacted the Fairness in Women's Sports Act in 2020. The law bars transgender women and girls from participating on any women's and girls' sports teams in public schools, from elementary school through college. Idaho was the first state to pass such a law; since then, 25 other states have enacted similar bans.

The West Virginia Legislature passed that state's law, known as the Save Women's Sports Act, in 2022. The law prohibits transgender women and girls from participating on women's and girls' sports team in public secondary schools and colleges.

There are two challengers in two separate cases, which were argued on the same day in January. One challenger is Lindsay Hecox, who filed this lawsuit because she wanted to try out for the women's track and cross-country teams at Boise State University in Idaho. Hecox did not make the NCAA teams at BSU but competed in women's soccer at the club level.

The other challenger is Becky Pepper-Jackson, identified in court filings only as B.P.J., a 15-year-old high school student who has publicly identified as female since the third grade. Pepper-Jackson takes medicine to stave off the onset of male puberty and has also begun to receive hormone therapy with estrogen. Pepper-Jackson's mother, Heather Jackson, went to federal court in West Virginia when she learned that her state's law would bar Pepper-Jackson from participating on the girls' middle school sports teams.

The U.S. Court of Appeals for the 9th Circuit agreed with Hecox that the Idaho law violates the 14th Amendment's guarantee of equal treatment and prohibited Idaho from enforcing the ban. The court of appeals reasoned that the Idaho law was intended "to categorically ban transgender women and girls from public school sports teams that correspond with their gender identity." The law also discriminates on the basis of sex, the lower court ruled, because athletes on girls' and women's teams are subject "to invasive sex verification procedures to implement that policy," while athletes on boys' and men's teams are not.

A federal appeals court in Richmond also barred West Virginia from enforcing its law. Specifically, the U.S. Court of Appeals for the 4th Circuit ruled that West Virginia's law violates Title IX, a federal civil rights law that prohibits sex discrimination in educational programs and activities that receive federal funding, because it discriminates against Pepper-Jackson on the basis of sex.

Writing for the court, Kavanaugh made several overarching points. First, he emphasized, men and women have "inherent physical differences" that are "relevant to athletic performance" – for example, "height, weight, strength, speed, endurance, and jumping ability." As a result of these differences, "forcing female athletes to compete against males can create significant safety risks" in contact sports. Moreover, he added, "in virtually all competitive sports, forcing female athletes to compete against males can undermine competitive fairness." As a result, he said, "schools therefore typically maintain separate women's and men's sports teams."

These points provided the underpinning for Kavanaugh's conclusion that the Idaho and West Virginia laws do not violate Title IX or the Constitution. First, he explained, Title IX bars "discrimination on the basis of sex," and the regulations that implement the law "expressly permit schools to maintain separate teams for 'members of each sex.'" When both the law and the regulations refer to "sex," he wrote, they mean "biological sex," because that was the "ordinary meaning" of the word when they were enacted in the 1970s. Indeed, he continued, "the Title IX regulations allowed separate sports teams precisely because of the biological differences between the sexes."

Kavanaugh pushed back against Pepper-Jackson's suggestion that interpreting the regulations to bar transgender women and girls from women's and girls' sports teams would not be "reasonable" and would therefore violate such a requirement imposed by a 1974 amendment to Title IX. "Separate sports teams for biological males and biological females are reasonable" in light of the differences between men and women and the effects of those differences, Kavanaugh wrote. And as evidence of that reasonableness, he noted that "27 States, the NCAA, the" U.S. Olympic and Paralympic Committee, and the International Olympic Committee "have all drawn the same line."

"Whether biological males may participate on women's and girls' sports teams may be a debated policy question. But the legal question for Title IX purposes is whether West Virginia may limit women's and girls' sports teams to biological females. As a matter of text and history, West Virginia may do so," Kavanaugh concluded.

Kavanaugh relied on many of the same points in determining that the Idaho and West Virginia laws do not violate the Constitution's guarantee of equal treatment. Because "the laws limit women's and girls' sports teams to biological females," Kavanaugh explained, they are subject to a constitutional test known as "intermediate scrutiny," which requires the states to show that a classification based on sex "is 'substantially related' to achieving an 'important' government objective."

Both states' laws do this, Kavanaugh wrote: the states have "interests in safety and competitive fairness," which they promote by "limiting women's and girls' sports to biological females." This is true, Kavanaugh continued, even when the effect of the classification is to exclude transgender

athletes who "have taken puberty blockers or hormones" and therefore may not pose the same risks to fairness and safety. "Especially in the sports context," Kavanaugh wrote, "an enormous practical and administrability problem would arise if courts suddenly had to make such individualized exemptions." "The legislatures and the schools are better equipped—and under the Constitution, are the more appropriate entities—to assess the competing medical and scientific considerations and draw appropriate lines," Kavanaugh stressed.

More broadly, Kavanaugh stated that "the underlying medical and scientific premise of" that argument is "the subject of ongoing medical and scientific debate." "States and leading athletic organizations disagree with the plaintiffs," Kavanaugh said, "and have concluded that biological males still retain a physical advantage after taking puberty blockers and hormones."

Kavanaugh concluded with a paean to sports and, in particular, women's sports. "Sports," he wrote, "are highly competitive and generally zero sum. At almost every turn, someone wins and someone loses. Every athlete who makes a team takes a roster spot from another athlete. Every player who earns playing time reduces the playing time of a teammate." Female athletes, he contended, "care deeply about all of those things."

Justice Thomas joined the Kavanaugh opinion but also penned a brief solo concurring opinion. "Men and boys with gender dysphoria are not women or girls," Thomas wrote, "even if they believe that they are. Sex is an immutable, 'biological' characteristic; it is binary; and 'man' and 'woman,' 'boy' and 'girl,' are the terms that correspond to adults and children of each sex. To use language to obscure reality—to show 'indifference regarding the truth'—is to lie to the public and cease to treat our fellow citizens 'as equal[s].'"

Justice Gorsuch concentrated on Congress' enactment of Title IX using its powers under the Constitution's spending clause, which gives it the power to spend money to provide for the "general Welfare of the United States." Although that provision allows Congress to put conditions on the funds that it allocates to others, Gorsuch explained, the recipient of those funds "must '"voluntarily and knowingly"' assent to those conditions for them to bear any legal force." Moreover, Gorsuch continued, "Congress must 'clearly and unambiguously' specify the conditions it expects the funding recipient to follow." In this case, Gorsuch said, "[n]othing in Title IX clearly and unambiguously alerts funding recipients that they are prohibited from restricting a school-sponsored sports team to biological women or girls."

In her dissenting opinion, Sotomayor agreed that West Virginia's ban does not violate Title IX. She explained that, when Pepper-Jackson has agreed with the state that "sex" means "'biological sex' or sex identified at birth,'" there is no violation because the state can create sports teams based on sex. But she would have upheld the lower court's ruling and sent the case back for more fact-finding related to Pepper-Jackson's constitutional claim. That "unresolved factual dispute" over whether athletes like Pepper-Jackson, who have never gone through puberty, are "similarly situated to cisgender girls" is actually an important part of whether excluding them from participating in sports advances the state's interests and therefore whether the state's ban can pass constitutional muster.

“Because of the Court’s decision today,” Sotomayor concluded, “West Virginia, and any other state actor, can deny B. P. J. and others like her” the benefits of playing sports “simply because it thinks they have an inherent athletic advantage, even if the facts show that they do not. In the end, to the Court,” Sotomayor argued, “the facts do not matter, even though the consequences are serious.”

WEST VIRGINIA V. B.P.J.

Facts of the case

B.P.J. is a transgender girl who has identified as female since the third grade. At the onset of puberty, B.P.J. began taking puberty blockers and estrogen for medical treatment of gender dysphoria, effectively halting male pubertal development and aligning her physical characteristics with those of cisgender girls. Since her social transition, B.P.J. has consistently lived as a girl at school and participated on girls’ athletic teams. In 2021, West Virginia enacted the “Save Women’s Sports Act,” which requires public school and collegiate sports teams to be designated based on “biological sex” and excludes individuals identified as male at birth from participating on female teams. This law, by its design and effect, prevented B.P.J. from continuing to compete on her school’s girls’ cross-country and track teams.

Shortly after the Act took effect, B.P.J., through her mother, sued the West Virginia State Board of Education and other state and county education officials, as well as the West Virginia Secondary School Activities Commission. She alleged that excluding her from girls’ sports violated the Equal Protection Clause and Title IX. The State of West Virginia intervened to defend the law. Initially, the district court granted B.P.J. a preliminary injunction, allowing her to participate on girls’ teams pending litigation. However, at summary judgment, the district court reversed course and upheld the law, concluding that the classification on the basis of “biological sex” was substantially related to the important government interest in ensuring fairness and opportunity in girls’ athletics. The court granted summary judgment to the defendants and denied B.P.J.’s cross-motion, holding that the exclusion of B.P.J. from girls’ sports did not violate the Constitution or Title IX. On appeal, the U.S. Court of Appeals for the Fourth Circuit reversed in part, vacated in part, and remanded. It held that application of the law to B.P.J. violated Title IX and that factual disputes precluded summary judgment against her equal protection claim.

Question

Does Title IX or the Equal Protection Clause prohibit a state from assigning students to girls’ and boys’ sports teams based on their biological sex as determined at birth?

Conclusion

See *Little v. Hecox*, *Supra*.

CHILES V. SALAZAR

Facts of the case

Kaley Chiles is a licensed professional counselor practicing in Colorado Springs. She holds a master's degree in clinical mental health and provides talk therapy, specializing in clients dealing with addiction, trauma, sexuality, gender dysphoria, and other mental health concerns. Chiles identifies as a Christian and serves clients who often seek religiously informed care that aligns with traditional biblical understandings of sexuality and gender. Prior to the enactment of a 2019 Colorado law banning conversion therapy for minors, Chiles counseled clients, including minors, in accordance with their self-identified goals, which sometimes included diminishing same-sex attractions or aligning gender identity with biological sex. Since the law's passage, Chiles has refrained from engaging in discussions with minors that she believes could be interpreted as conversion therapy and alleges that this has hampered her ability to provide full counseling services in line with her and her clients' religious convictions.

In September 2022, Chiles brought a pre-enforcement lawsuit under 42 U.S.C. § 1983 against Colorado officials responsible for enforcing the statute. She alleged that the ban on conversion therapy for minors violates her rights under the Free Speech and Free Exercise Clauses of the First Amendment. Seeking a preliminary injunction, she asked the district court to block enforcement of the law against her. The court denied the motion but found she had standing to proceed. On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed in full, holding that Colorado's law regulates professional conduct that incidentally involves speech and survived rational basis review.

Question

Does a Colorado law banning "conversion therapy"—i.e., attempts to "convert" someone's sexual orientation or gender identity—violate the Free Speech Clause of the First Amendment?

Conclusion

The First Amendment prohibits a state from applying a conversion therapy ban to a licensed counselor who uses only talk therapy, because such a law regulates speech based on viewpoint and therefore demands the most rigorous constitutional scrutiny. Justice Gorsuch authored the 8-1 majority opinion.

The First Amendment's core guarantee is that every person has the right to speak their mind free from government-imposed orthodoxy. Laws that restrict speech based on its subject matter — called "content-based" restrictions — are presumptively unconstitutional and require "strict scrutiny," meaning the government must prove the law is the most targeted possible means of serving a compelling public interest. Viewpoint discrimination — when a law permits speech on one side of a debate while silencing the other — is an even more serious violation. Colorado's law commits exactly that sin as applied to Chiles's practice. It expressly allows a therapist to offer clients acceptance and support for gender identity exploration or gender transition, but flatly

forbids any therapeutic conversation aimed at reducing or changing a client's same-sex attractions, behaviors, or gender identity. Because the law picks winners and losers based on the message being delivered, it discriminates based on viewpoint and triggers the highest level of constitutional scrutiny, not the lenient "rational basis" review the lower courts applied.

Colorado advanced several arguments for why its law should survive without strict scrutiny, and none succeeded.

First, the state argued that talk therapy is "conduct," not "speech," so the First Amendment's full force should not apply. That argument fails because relabeling speech as a "treatment" or "therapeutic modality" cannot strip it of constitutional protection; the only thing Chiles does with her clients is talk, and the law targets only what she says.

Second, Colorado argued the law only "incidentally" burdens speech because its primary purpose is to ban a harmful medical treatment. That argument misreads the Court's precedents: the speech-incident-to-conduct doctrine protects laws that restrict speech tied to separately unlawful acts, or laws that restrict expressive conduct for reasons unrelated to content. This law does neither — the behaviors the law restricts are not independently illegal, and the law explicitly targets speech based on its content and viewpoint.

Third, Colorado invoked historical traditions of medical licensing, informed-consent laws, and malpractice liability as evidence of a long-recognized category of regulable professional speech. Those traditions fail at both the general and specific level: licensing laws have historically governed who may practice a profession, not what viewpoints practitioners must hold; informed-consent laws compel disclosure of objective facts tied to a specific medical procedure, not suppression of a perspective; and malpractice requires proof of actual harm, which "provides breathing room for protected speech" in a way this law does not.

Justice Kagan concurred, joined by Justice Sotomayor, agreeing that Colorado's law is plainly unconstitutional viewpoint discrimination, but writing separately to flag that the harder, unresolved question — whether a content-based but viewpoint-neutral law restricting therapeutic speech would survive First Amendment challenge — should be left for another day.

Justice Jackson dissented, arguing that the majority misreads *NIFLA v. Becerra*[10] and ignores a centuries-long tradition of states regulating medical professionals' treatment-related conduct; in her view, Colorado's law incidentally restricts Chiles's speech only as a byproduct of regulating a harmful medical treatment, which does not trigger heightened scrutiny, and the majority's holding dangerously undermines states' ability to enforce any standard of care administered through speech.

[10] 585 U.S. 755, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018)

LOUISIANNA V. CALLAIS

Facts of the case

This case involves a challenge to Louisiana's congressional redistricting map, specifically focusing on District 6, alleging that the map is an impermissible racial gerrymander. The map was created in response to a previous lawsuit, *Robinson v. Ardoin*[11], where plaintiffs argued that the prior map violated Section 2 of the Voting Rights Act by diluting minority votes. To address these issues, the Louisiana Legislature adopted a new map (Senate Bill 8) that included a second majority-Black district. However, the plaintiffs in this case claimed that this new map violated the Equal Protection Clause of the Fourteenth Amendment by prioritizing race in its creation. A three-judge panel concluded that District 6 of the new map did indeed violate the Equal Protection Clause, leading the court to issue an injunction against using this map in future elections.

Question

Does Louisiana's creation of a second majority-Black congressional district constitute unconstitutional racial gerrymandering, even when drawn in response to a federal court finding that the state's prior single majority-Black district likely violated Section 2 of the Voting Rights Act?

Conclusion

A state violates the Equal Protection Clause of the Fourteenth Amendment by intentionally drawing legislative districts predominantly on the basis of race—unless such action is narrowly tailored to achieve a compelling governmental interest, such as genuine compliance with Section 2 of the Voting Rights Act (VRA) as properly interpreted. Because the VRA did not require Louisiana to create an additional majority-minority district, the state's use of race in its SB8 congressional map lacked a compelling interest and constitutes an unconstitutional racial gerrymander. Justice Alito authored the 6-3 majority opinion.

The Constitution almost never permits the government to use race as a factor in decision-making, especially in drawing legislative districts, unless doing so is needed to remedy specific, identified past discrimination or to avoid imminent safety risks. This triggers "strict scrutiny"; any use of race must serve a compelling government interest and be narrowly tailored to that interest. Here, the only compelling interest Louisiana claimed was compliance with Section 2 of the Voting Rights Act, which prohibits voting practices that result in minority groups having "less opportunity" than others to elect representatives of their choice. However, Section 2, as properly construed, only applies when there is strong evidence of intentional racial discrimination in the drawing of districts—not merely when districts could have more majority-minority seats. Section 2 does not require proportional representation, and it permits states to pursue nonracial districting goals, including political considerations.

[11] 86 F.4th 574 (5th Cir. 2023)

To prove a violation of Section 2, a plaintiff must show, through a careful and updated application of the test set out in. *Thornburg v. Gingles*[12], that minority voters have less opportunity than others due to intentional discrimination rather than politics or other race-neutral factors. Plaintiffs must show that: (1) an alternative majority-minority district could be drawn without using race as the districting criterion and while meeting all the state's legitimate political and traditional districting goals; and (2) racially polarized voting patterns reflect racial, and not just partisan, divisions. Additionally, courts must focus on current and intentional acts of discrimination, not historical or societal effects alone. In this case, the evidence did not show that Louisiana's prior map denied Black voters equal electoral opportunity due to intentional racial discrimination—plaintiffs failed to disentangle race from politics and did not offer a workable alternative map satisfying all legitimate state goals. Thus, Section 2 did not require the state to create another majority-Black district, and using race for that purpose was unconstitutional.

Justice Thomas, joined by Justice Gorsuch, concurred, arguing that the VRA should not apply to districting at all and that Section 2 covers only ballot access, not how districts are drawn.

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented, maintaining that Section 2's "results" test focuses on the real-world effect of vote dilution, not discriminatory intent, and criticizing the majority for undermining Congress's intent and making proof of intent an impossible barrier for future VRA plaintiffs.

ELECTION LAW

WATSON V. REPUBLICAN NATIONAL COMMITTEE

Facts of the case

Federal statutes designate the Tuesday after the first Monday in November as the uniform day for electing members of Congress and appointing presidential electors. While Mississippi requires voters to cast absentee ballots by this federal deadline, the state legislature amended its election code in 2020 to permit the counting of mail-in ballots received up to five business days after Election Day, provided they are postmarked by that Tuesday. This "postmark rule" allows validly cast votes delayed by mail service to be included in the final tally, a practice currently utilized by approximately thirty states.

In 2024, the Republican National Committee, the Mississippi Republican Party, the Libertarian Party of Mississippi, and individual voters filed suit against Mississippi Secretary of State Michael Watson and county election officials. The plaintiffs argued that the federal statutes establishing a singular "election" day preempt Mississippi's five-day receipt window, contending that an election is not legally concluded until officials actually receive the ballots. They sought to invalidate the state statute and enjoin officials from counting any absentee ballots received after federal Election Day.

[12] 471 U.S. 1064, 105 S.Ct. 2137, 92 L. Ed. 2d 25

The district court granted summary judgment in favor of the state officials, ruling that the state law did not conflict with federal statutes. The U.S. Court of Appeals for the Fifth Circuit reversed, holding that federal law preempts the Mississippi statute because ballots must be both cast and received by Election Day.

Question

Do the federal election-day statutes preempt a state law that allows ballots that are cast by federal election day to be received by election officials after that day?

Conclusion

Just over four months before the 2026 midterm elections, the Supreme Court upheld a Mississippi law that allows mail-in ballots to be counted as long as they are postmarked by, and received within five days of, Election Day. By a vote of 5-4, the justices in *Watson v. Republican National Committee* rejected an argument, made by the political parties and others challenging the law, that federal law requires mail-in ballots to be received by Election Day.

Writing for the majority, Justice Barrett concluded that "the election-day statutes require the electorate's choice to be made on election day. That occurs so long as election day is the deadline for individuals to vote—as it is in Mississippi. But the election-day statutes do not set a deadline for ballot receipt, so they do not prevent Mississippi from counting ballots postmarked before election day yet received afterward."

Chief Justice Roberts and Justices Sotomayor, Kagan, and Jackson joined Barrett's opinion for the court.

In a dissenting opinion, Justice Alito argued that "from this Nation's founding until the last few decades of the 20th century—a period that spans the enactment of all three election-day statutes—having an 'election' on a particular day meant completing ballot collection on that day."

Justices Thomas and Gorsuch joined Alito's opinion, while Justice Kavanaugh joined most of the opinion.

Mississippi passed the law at the center of the dispute in 2020, in response to the COVID-19 pandemic. Four years later, the Republican National Committee and the Mississippi Republican Party, along with a Mississippi voter and a county election official, went to federal court in Gulfport, Mississippi, to challenge the post-election ballot deadline; the Libertarian Party of Mississippi filed a similar lawsuit a few weeks later, which was combined with the first suit. They argued that Mississippi's law clashes with a federal law, first passed by Congress in 1845, that designates the Tuesday after the first Monday in November as the "election day."

Senior U.S. District Judge Louis Guirola, Jr., upheld the Mississippi law. In his view, Congress had established a national Election Day to prevent two problems: requiring voters to go to the polls

on multiple different days to vote in state and federal elections, and the prospect that, if elections were held in different states on different days, the results of earlier elections could influence the elections that followed. "Neither of those concerns," he concluded, "is raised by allowing a reasonable interval for ballots cast and postmarked by election day to arrive by mail."

The challengers appealed to the U.S. Court of Appeals for the 5th Circuit, which reversed, holding that federal law requires all ballots to be received by Election Day. Over a dissent by five judges, the full court of appeals turned down Mississippi's plea to rehear the case, and the Supreme Court agreed in November to weigh in.

In a 22-page opinion, the court reversed the 5th Circuit's decision and upheld the Mississippi law. Barrett emphasized that the question before the justices was "a narrow one about timing" – simply "whether counting ballots postmarked by election day, but received up to five days later, violates the federal election-day statutes."

In the majority's view, "[t]he defining element of an 'election' … has always been the electorate's choice of a candidate." That choice, Barrett wrote, "is made when voting is complete, not when ballots are received." This means, Barrett continued, that – as with the Mississippi law – "the deadline for individuals to vote" must be Election Day. But the federal laws at the center of this case, Barrett stressed, "do not set a deadline for ballot receipt" and therefore "do not prevent Mississippi from counting ballots postmarked before election day yet received afterward."

Barrett pushed back against the challengers' argument that when Congress enacted two of the three "election day" statutes implicated in the case, there was no mail-in voting, and so the use of the word "election" necessarily means that the ballots must also be received by Election Day. "At bottom," she said, that "theory is that because we are governed by 19th-century election-day laws, we are also governed by 19th-century voting practices. Carried to its logical conclusion," Barrett posited, "this theory would call into question the way modern elections work" – for example, potentially jeopardizing early voting, "because in the 19th century, the polls were open only on election day itself." "But," according to Barrett, "historical practice, detached from statutory text, is not controlling."

Barrett also pointed to the federal law requiring states to allow military and overseas voters to cast absentee ballots in federal elections. That law, she said, "presupposes that the deadline for ballot receipt is uniformly a matter of state law," which "would make little sense" if those ballots had to be received by Election Day.

Finally, Barrett rejected the challengers' contention "that requiring ballots to be received by election day protects election integrity and increases voter confidence in election results." Such arguments, she said, are not legal arguments but instead "policy arguments" that "are properly directed to legislatures" instead. "The question today is not whether requiring ballots to be received by election day is a good or bad idea; the question is whether the idea has made its way into the United States Code."

Alito's dispute with the majority hinged on when, in his view, the "election" occurs. He acknowledged that "[b]oth voting by mail and early voting have become popular, and" that the

plaintiffs "do not dispute the lawfulness of these modern practices." But, he said, "under federal law, the electorate's collective choice must still be authoritatively expressed on election day. That requirement," he said, "is met in a jurisdiction with mail voting or early voting provided that the critical act occurs on election day: the completion of the collection of the ballots that embody the electorate's collective choice. That is what took place when all voting was done in person," he wrote, "and compliance with the election-day statutes demands that the same occur in a modern election."

FIRST AMENDMENT – ASSOCIATIONAL RIGHTS

FIRST CHOICE WOMEN'S RESOURCE CENTER, INC. V. DAVENPORT

Facts of the case

First Choice Women's Resource Centers, Inc. is a nonprofit organization in New Jersey that operates a network of centers offering pregnancy-related services. In 2023, the New Jersey Division of Consumer Affairs began investigating First Choice over concerns that its client-facing websites downplayed its pro-life mission and may have misled donors and clients about its services, staff qualifications, and medical practices. State investigators identified possible discrepancies between what First Choice told donors—emphasizing a pro-life mission—and what was publicly communicated to potential clients on other websites. The investigation also scrutinized potentially misleading medical statements and questioned whether unlicensed staff were performing services that require medical credentials.

As part of its investigation, the State issued a non-self-executing subpoena to First Choice seeking internal documents, advertising material, substantiation for medical claims, and information on donors and licensed personnel. First Choice objected to the subpoena—particularly the requests for donor identities—arguing that complying would violate its constitutional rights, including freedom of association and donor privacy. While First Choice continued to raise these objections, the state filed a motion in New Jersey Superior Court to compel enforcement. The state court denied First Choice's motion to quash the subpoena in full but did not order immediate production of documents. Instead, it instructed the parties to negotiate the subpoena's scope, specifically reserved constitutional arguments for future resolution, and clarified that donor identities would be sought only for those who contributed through two specific websites. As a result, First Choice remained under no court order to turn over the disputed materials while negotiations continued.

While contesting the subpoena in state court, First Choice filed suit in the U.S. District Court for the District of New Jersey, seeking federal relief to block enforcement on constitutional grounds. The district court twice dismissed the federal suit as unripe, and the U.S. Court of Appeals for the Third Circuit affirmed, holding that the ongoing state court proceedings and the lack of any order compelling compliance rendered First Choice's claims not ready for federal adjudication.

Question

When the recipient of a state investigatory subpoena demonstrates an objectively reasonable chill of its First Amendment rights, does a federal court lack jurisdiction to hear the case because those constitutional claims must first be resolved in state court?

Conclusion

A government demand for a private organization's donor records inflicts an immediate, concrete injury to First Amendment freedom of association rights, giving the organization the legal right to challenge the demand in federal court. Justice Gorsuch authored the unanimous 9-0 opinion.

The U.S. Constitution limits federal courts to hearing actual disputes. This rule requires a plaintiff to demonstrate "injury in fact"—that is, a concrete, ongoing, or imminent harm. The First Amendment guarantees the right to assemble and associate freely, a protection that necessarily includes the right to keep those associations private. Government demands for private donor lists inherently threaten these rights. Forcing an advocacy group to reveal its supporters discourages individuals from donating and deters organizations from expressing unpopular views. This deterrent effect creates a real constitutional harm the moment a government official issues a demand for private information.

An official subpoena demanding donor information immediately triggers this constitutional injury, regardless of whether a judge has ordered the group to comply yet. The outstanding threat of financial penalties or eventual public disclosure forces an organization to change its behavior to avoid government scrutiny. Government promises to keep the donor information confidential or to limit the scope of the demand do not erase this harm. The pressure to abandon protected speech remains constant as long as the demand exists, giving organizations the immediate right to sue to protect their constitutional freedoms.

FIRST AMENDMENT – POLITICAL SPENDING

NATIONAL REPUBLICAN SENATORIAL COMMITTEE V. FEDERAL ELECTION COMMISSION

Facts of the case

In 2022, two Republican party committees—the National Republican Senatorial Committee and the National Republican Congressional Committee—along with then-Senator J.D. Vance and then-Representative Steve Chabot, sued the Federal Election Commission (FEC). The Republican committees asserted that the Federal Election Campaign Act of 1971 (FECA) unconstitutionally restricts their ability to coordinate campaign advertising with their own candidates. This coordination allows the party and its candidates to unify their political message and spend money more efficiently. For example, in the 2021-2022 election cycle, the senatorial committee spent

about $15.5 million and the congressional committee spent about $8.3 million on such coordinated expenditures, which primarily fund political advertising.

The plaintiffs argue that developments since a 2001 Supreme Court decision, *FEC v. Colorado Republican Federal Campaign Committee*[13] (Colorado II), which upheld these same limits, have rendered that decision obsolete. Specifically, they point to changes in campaign finance law, the rise of "Super PACs," and shifts in the Supreme Court's First Amendment jurisprudence as reasons the restrictions no longer pass constitutional muster.

The plaintiffs filed their lawsuit in the U.S. District Court for the Southern District of Ohio. As required by FECA for constitutional challenges, the district court certified the legal question to the U.S. Court of Appeals for the Sixth Circuit sitting *en banc*. The Sixth Circuit concluded that the FECA's limits on coordinated campaign expenditures do not violate the First Amendment and denied both the facial and as-applied challenges brought by the plaintiffs.

Question

Do FECA limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communications"?

Conclusion

By a vote of 6-3, the justices struck down a federal law that limited the amount of money that political parties can spend in coordination with a candidate for office. The majority opinion, written by Justice Kavanaugh, agreed with the challengers that the coordinated expenditure limits violate the First Amendment.

The decision in *National Republican Senatorial Committee v. Federal Election Commission* overruled the court's 2001 decision in *Federal Election Commission v. Colorado Republican Federal Campaign Committee*[14], in which the court – then by a vote of 5-4 – upheld the same limits.

Writing for the court, Kavanaugh said that the majority's ruling "treats all political parties equally. It will allow all political parties—including the DNC and RNC and the respective Senate and House campaign committees, as well as other parties and party committees—to participate more freely and compete more fully in the political process, and to coordinate more closely with their candidates."

In a dissenting opinion joined by Justices Sotomayor and Jackson, Justice Kagan argued that the majority's opinion "rewrites the rules, to allow circumvention of the contribution limits." In so doing, she said, "the majority … jettisons a rule needed to protect our democracy's integrity."

[13] 533 U.S. 431, 121 S. Ct. 2351, 150 L. Ed. 2d 461 (2001)
[14] *Id.*

The expenditure limits at the center of the case are part of the Federal Election Campaign Act. In 2022, four challengers – then-Sen. J.D. Vance, then Rep. Steve Chabot (a Republican from Ohio), and the National Republican Senatorial Committee and the National Republican Congressional Committee (which focus on electing Republicans to the U.S. Senate and House, respectively) – went to federal court in Cincinnati. They argued that the coordinated party limits violate the First Amendment by (among other things) preventing the committees from working with candidates to ensure that their advertisements have the same political message.

The full U.S. Court of Appeals for the 6th Circuit upheld the restrictions. Chief Judge Sutton acknowledged that the challengers had made "fair points," but he concluded that the court of appeals was bound by the Supreme Court's decision in the 2001 Colorado case.

When the challengers asked the Supreme Court to review the 6th Circuit's decision, the Trump administration agreed that the restrictions violate the First Amendment, and it urged the justices to weigh in. With the federal government no longer defending the limits, the court appointed Roman Martinez, a former clerk to Chief Justice Roberts and then-Judge Kavanaugh, to do so.

In his opinion for the majority, Kavanaugh explained that under the Supreme Court's current campaign finance cases, the only rationale for campaign-finance restrictions is to prevent "quid pro quo" corruption – that is, "contributions in exchange for official action." Supporters of the coordinated-expenditure limits, Kavanaugh noted, insist that those limits must remain in place to prevent donors from circumventing the limits on contributions by donating money to a political party and then instructing the political party to use that donation "in order to support a particular candidate—a practice referred to as 'earmarking.'"

But there are other measures in place to prevent such circumvention that do not restrict speech in the same way that the coordinated-expenditure limits do, Kavanaugh emphasized: the base limits on contributions, federal laws that treat "earmarked" contributions as contributions to a candidate, and federal disclosure laws. Moreover, Kavanaugh added, most states do not impose these kinds of coordinated-expenditure limits in their elections, but "'no evidence of corruption' via circumvention 'has materialized.'" By contrast, Kavanaugh wrote, the coordinated-expenditure limit "imposes a severe and direct restriction on free speech and infringes fundamental First Amendment values. Otherwise stated, the restriction on political-party coordinated expenditures" does not pass the stringent constitutional test: it "is 'disproportionate' and is not 'necessary' and 'narrowly tailored' to the Government's interest in preventing circumvention of the base contribution limits."

Kavanaugh rejected arguments that the court should adhere to its decision in the 2001 case, comparing that ruling to "a three-legged stool where all three legs have already been knocked out." The rationale of that decision, he said, "has been rejected by subsequent cases and is no longer good law in light of the Court's more recent precedents."

Kagan argued in her dissenting opinion that the court's ruling "ushers in the same opportunities for quid pro quo corruption that the contribution limits were meant to check." "As a result," she wrote, "a donor will be able to give a party as much as half a million dollars (as compared to the $7,000

he can give directly to the candidate) to cover the candidate's bills. And the candidate can seek just such a donation."

PRISONER RIGHTS – OFFICIAL PERSONAL LIABILITY

LANDOR V. LOUSIANA DEPARTMENT OF CORRECTIONS AND PUBLIC SAFETY

Facts of the case

Damon Landor, a devout Rastafarian, vowed as part of his faith never to cut his hair—a religious commitment known as the Nazarite Vow. Incarcerated in 2020, Landor was first held at the St. Tammany Parish Detention Center and later at LaSalle Correctional Center, both of which allowed him to maintain his hairstyle in accordance with his religious beliefs. After approximately five months and with three weeks left in his sentence, Landor was transferred to Raymond Laborde Correctional Center. Upon arrival, Landor proactively explained his religious practices and presented documentation of previous accommodations, including a copy of a federal court decision supporting similar claims. An intake guard disregarded his documentation, summoned the warden, and upon Landor's inability to produce immediate additional proof of his beliefs, guards forcibly handcuffed Landor and shaved his head.

Following his release, Landor sued the Louisiana Department of Corrections and Public Safety, its Secretary James LeBlanc, the correctional center, and Warden Marcus Myers, asserting claims under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and 42 U.S.C. § 1983 for violations of his federal constitutional rights, as well as state law claims.

The U.S. District Court for the Middle District of Louisiana dismissed Landor's individual-capacity RLUIPA claims for money damages, holding such relief unavailable under controlling Fifth Circuit precedent. The U.S. Court of Appeals for the Fifth Circuit affirmed, relying on its prior decision in *Sossamon v. Lone Star State of Texas*[15], and rejecting Landor's arguments that subsequent Supreme Court authority or other legal developments altered that result.

Question

May an individual sue a government official in his individual capacity for damages for violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA)?

Conclusion

The Court held that a Louisiana man cannot sue prison officials who shaved his head even after he showed them a copy of a court ruling that allowed him to keep his long hair for religious reasons. By a vote of 6-3, the justices agreed with the prison officials that a federal law intended to protect

[15] 560 F. 3d 316 (5th Cir. 2009)

the religious rights of prisoners does not authorize Damon Landor's lawsuit seeking damages from the officials.

Writing for the majority, Justice Gorsuch wrote that under the Constitution's spending clause (pursuant to which the federal law protecting such religious rights was enacted), "Congress's power to spend money does not include the power to regulate. Spending Clause statutes can bind only those who voluntarily and knowingly undertake obligations by agreement with the federal government" – an "essential element" missing from Landor's case.

Justice Jackson, joined by Justices Sotomayor and Kagan, dissented. She argued that, as a result of the majority's ruling, "[p]risoners like Landor who suffer violations of their religious freedom in state prisons—no matter how blatant—will often be left remediless. And encroachments on prisoners' statutory rights are likely to happen with fair frequency, as state-empowered prison officials will have little incentive to abide by federal law, even if it is handed to them on a piece of paper."

In his 18-page opinion for the majority, Gorsuch explained that Congress enacted RLUIPA pursuant to its power under the spending clause, which gives it the power to spend money to provide for the "general Welfare of the United States." But although that power allows Congress to put conditions on the funds that it distributes, Gorsuch reasoned, it can only impose sanctions – other than terminating the funds – for violations of those conditions if the recipients of the funds have knowingly and voluntarily consented to those sanctions.

In this case, Gorsuch continued, the Louisiana Department of Corrections "does not dispute that it is a recipient of federal funds" and "that it has agreed" to be sued by private plaintiffs under RLUIPA "as a condition of accepting those funds." But Landor does not contend that the prison officials who are the defendants in his lawsuit have "voluntarily and knowingly consented to answer private suits under RLUIPA," Gorsuch noted, and therefore his lawsuit against them cannot go forward. Gorsuch wrote, for example, that it did not matter that the prison officials received paychecks from the Louisiana Department of Corrections, which in turn received federal funding, so that they "should be deemed to have implicitly consented to RLUIPA liability."

Accepting such an argument, Gorsuch suggested, would give Congress "an effectively unbridled police power," allowing it to regulate a private individual's conduct as long as that person received some money from the recipient of federal funds who had consented to a condition. This would, Gorsuch said, allow Congress to "require coaches at universities that receive federal funds to permit transgender athletes to play women's sports" or "bar doctors at medical practices that accept federal funds from administering certain vaccines to children" – with the prospect that they could face lawsuits if they did not comply with those conditions.

Gorsuch also rebuffed Landor's invocation of the Constitution's necessary and proper clause, which gives Congress the power to use "necessary and proper" means to carry out its other powers outlined in the Constitution. Applying that provision, Landor (and Jackson in her dissent) reasoned, Congress could allow prisoners to sue individual prison officials even if they did not specifically consent because doing so would be "necessary and proper" to carry out RLUIPA's goal of protecting religious freedom. That theory, Gorsuch countered, focuses on the wrong

question, which "is not … whether a personal-capacity cause of action is incidental to RLUIPA's policy protecting religious exercises" but "instead … whether their proposed cause of action is a necessary and proper incident to Congress's constitutionally enumerated power to spend money" – which, Gorsuch concluded, it is not.

In her 29-page dissent, Jackson argued that the majority's decision imposed a "novel consent requirement." "On the majority's view," she wrote, "no matter how clearly Congress speaks, all that matters is the response it elicits: Spending Clause legislation may not make anybody liable without their express consent. And because prison officials (as opposed to their state-prison employers) have not directly accepted federal funds, they have not consented to being sanctioned for their failure to follow federal law."

In establishing such a rule, Jackson contended, Gorsuch's opinion "jettisons 'a long line of this Court's precedents.' We have lived for decades," she said, "in a world in which Congress has been able to use its spending power to reach beyond direct recipients of federal funds. And it has done so repeatedly."

FOURTH AMENDMENT

CASE V. MONTANA

Facts of the case

In September 2021, Trevor Case's ex-girlfriend J.H. called police to report that Case had threatened suicide during their phone conversation. J.H. believed Case was intoxicated due to his erratic behavior, and she became alarmed when he mentioned getting "a note or something like that" before committing suicide. During the call, J.H. heard clicking sounds resembling a cocking pistol, prompting her to tell Case she would call police. Case responded by threatening to harm any officers who came to his home. The call ended when J.H. heard a "pop" that she believed was a gunshot, followed by dead air, though the line remained connected. Unable to get Case to respond, J.H. contacted police and drove to his residence.

Law enforcement officers arrived at Case's home and attempted to make contact by knocking on doors and calling through an open window, but received no response. Through the windows, officers observed empty beer cans, an empty handgun holster, and a notepad they believed contained a suicide note. The officers knew of Case's history of alcohol abuse, mental health issues, and previous suicide threats, including an incident where he brought a weapon to the school where he taught. After approximately forty minutes on scene, officers made the decision to enter the home without a warrant to conduct a welfare check. They entered with weapons drawn due to J.H.'s report of Case's threats against officers. While clearing the home, Sergeant Pasha encountered Case in an upstairs bedroom closet. When Case suddenly opened the closet curtain, Pasha observed what he believed was a dark object at Case's waist and shot him in the abdomen. A handgun was subsequently found in a laundry hamper next to where Case fell.

Case was charged with Assault on a Peace Officer and filed pretrial motions to suppress evidence obtained from the warrantless entry. The district court denied the motion to suppress. Following a jury trial in December 2022, Case was convicted of the felony charge. Case appealed to the Montana Supreme Court, which affirmed.

Question

May law enforcement enter a home without a search warrant based on less than probable cause that an emergency is occurring?

Conclusion

The Fourth Amendment permits police officers to enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or faces imminent serious injury—and this standard does not require "probable cause" as that term applies in criminal investigations. Justice Kagan authored the unanimous opinion of the Court.

The Fourth Amendment generally requires a warrant for home searches, but exceptions exist, including for emergency aid situations. The Court in *Brigham City v. Stuart*[16] established that officers may make warrantless entries when they have "an objectively reasonable basis for believing" an occupant needs emergency assistance. The Montana Supreme Court erred by applying a "reasonable suspicion" standard borrowed from street-stop cases, which sets a lower bar than the *Brigham City* test. Meanwhile, Case argued the Court should interpret *Brigham City* as requiring "probable cause"—the standard typically used to assess whether police have sufficient grounds to believe criminal activity has occurred. The Court rejected this argument, explaining that probable cause is rooted in criminal investigations and has developed meaning through cases assessing the likelihood of finding criminal evidence. Transplanting that body of law to non-criminal emergency situations would be awkward and unnecessary. Instead, courts should evaluate emergency-aid entries on their own terms.

Applying this standard, the officers here acted reasonably. They knew Case had a history of mental health struggles and prior suicidal behavior. His ex-girlfriend reported he threatened suicide, mentioned writing a note, and appeared to cock a gun before the phone went silent. At the scene, officers observed beer cans, an empty holster, and a notepad through the windows, and Case did not respond to their calls. These facts gave the officers an objectively reasonable basis to believe Case had shot himself or would do so without intervention. The Court therefore affirmed the Montana Supreme Court's judgment and clarified the correct legal standard.

Justice Sotomayor authored a concurring opinion emphasizing that in mental health crisis situations, officers must carefully assess whether entry will protect the occupant or instead escalate danger, given studies showing heightened risks of harm during police encounters with individuals experiencing mental health crises.

[16] 547 U.S. 398, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006)

Justice Gorsuch authored a concurring opinion arguing that the emergency-aid exception aligns with longstanding common-law principles permitting entry onto another's property to prevent serious physical harm.

CHATRIE V. UNITED STATES

Facts of the case

Okello Chatrie was arrested in connection with the armed robbery of a bank in Richmond, Virginia, where an individual entered the Call Federal Credit Union, threatened employees and patrons with a handgun, and escaped with $195,000. The robbery was captured by surveillance footage, which showed the perpetrator appearing to talk on a cellphone. Lacking viable leads, Detective Joshua Hylton applied for a "geofence warrant" in June 2019. This novel form of warrant compelled Google to provide location data for all devices that had been near the robbery site within a one-hour window around the time of the crime. The geofence specified a 150-meter radius centered on the bank, encompassing not only the crime scene but also public streets, private residences, a hotel, a church, and a restaurant.

Google responded with anonymized location data of devices within the geofence during the specified time. The government then requested two additional sets of data from Google: (1) expanded location data from nine of the original nineteen users, covering movements outside the geofence over a longer timeframe, and (2) identifying information for three of those users. One account belonged to Chatrie. Based on this data, law enforcement identified him as the suspect, arrested him, and charged him in federal court.

Chatrie moved to suppress the location data obtained through the geofence warrant, arguing that it violated the Fourth Amendment. The U.S. District Court for the Eastern District of Virginia held that the warrant likely violated the Fourth Amendment but declined to suppress the evidence under the good-faith exception. The U.S. Court of Appeals for the Fourth Circuit, sitting *en banc,* affirmed the district court's denial of the suppression motion. While the panel sharply disagreed both on whether a Fourth Amendment search had occurred and whether the warrant was constitutionally valid, all judges agreed that any defect was ultimately excused under the good-faith exception.

Question

Did the execution of the geofence warrant violate the Fourth Amendment?

Conclusion

The Court ruled that when law enforcement officials used a "geofence warrant" – a warrant that instructed Google to provide location data for cellphone users who were near a particular place

during a specific time period – to obtain evidence used to convict a Virginia man of a 2019 bank robbery, they conducted a "search" for purposes of the Fourth Amendment. By a vote of 6-3, the justices sent Okello Chatrie's case back to the lower court for it to consider whether, as the Fourth Amendment requires, the search was "reasonable."

Writing for the majority, Justice Kagan emphasized that "[a]n individual has a reasonable expectation of privacy in records about his cell phone's location, and police intrude on that constitutionally protected interest when they demand the information—even though for only a limited time, and from a third-party tech company."

Justice Alito, in a dissenting opinion joined in part by Justices Thomas and Barrett, contended that the majority's opinion "will send seismic waves through our Fourth Amendment doctrine" but would ultimately not have any effect on Chatrie's case.

SIXTH AMENDMENT – EFFECTIVE ASSISTANCE OF COUNSEL

VILLARREAL V. TEXAS

Facts of the case

David Asa Villarreal was charged with murder in Bexar County, Texas. During his trial, Villarreal took the stand in his own defense shortly before a planned midday recess. Because Villarreal was still in the middle of his direct examination when the court adjourned for an overnight recess, the trial judge instructed his attorneys not to confer with him regarding his ongoing testimony but permitted them to discuss other trial-related matters. Villarreal's lead counsel objected to this limitation under the Sixth Amendment but otherwise indicated understanding of the court's directive. The next day, Villarreal resumed his testimony, and no further objections about the limitation were raised. Villarreal was ultimately convicted and sentenced to sixty years in prison.

Following his conviction, Villarreal appealed, arguing that the trial court's restriction violated his Sixth Amendment right to counsel. A divided appeals court affirmed his conviction, and Villarreal petitioned for discretionary review, and the Court of Criminal Appeals of Texas held that the trial judge's limited no-conferral order did not violate Villarreal's Sixth Amendment right to counsel.

Question

Does a trial court violate a defendant's Sixth Amendment right to counsel by preventing the defendant and his lawyer from discussing the defendant's testimony during an overnight break in the trial?

Conclusion

A trial judge may order a defendant's lawyers not to coach or manage the defendant's ongoing testimony during an overnight recess, as long as the order still allows the defendant to discuss all

other topics—such as trial strategy, other witnesses, or whether to accept a plea deal—with their attorneys. Justice Jackson authored the majority opinion that was unanimous in the judgment.

The Sixth Amendment guarantees every criminal defendant the right to consult with their lawyer. But when a defendant voluntarily takes the witness stand, they also take on the responsibilities of any other witness—including the responsibility to give testimony that has not been shaped or coached mid-stream. Two prior cases set the boundaries here. In *Geders v. United States*[17], a judge violated the Sixth Amendment by cutting off all communication between a defendant and their lawyer during an overnight recess, because overnight breaks naturally involve legitimate strategy discussions that go far beyond testimony. In *Perry v. Leeke*[18], a judge permissibly banned all communication during a short daytime break, because a brief pause almost certainly produces only one topic of conversation: coaching the ongoing testimony. The key distinction between those two cases is not how long the break lasts—it is what topics the break realistically makes available. Discussions about testimony itself carry no Sixth Amendment protection while a defendant is on the stand, because such conversations threaten to corrupt the truth-seeking purpose of a trial. But discussions that merely touch on testimony while addressing a protected topic—like whether to plead guilty, or what a new piece of evidence means for overall strategy—remain fully protected.

Applying that framework here, the trial judge's order prohibited attorneys from "managing" Villarreal's ongoing testimony, while explicitly leaving open every other subject of conversation. That narrow restriction mirrors the traditional practice of witness sequestration—keeping a witness's story unaltered by outside input—adapted to respect a defendant's unique constitutional rights. Critically, the order did not bar attorneys from discussing trial strategy, evaluating a plea, or gathering factual information relevant to defense decisions, even if those conversations incidentally touched on how the testimony was going. Restricting only testimony coaching for its own sake falls well within the Constitution's limits.

Justice Alito concurred, writing separately to emphasize that a defendant who takes the stand accepts a baseline rule that the jury hears their story in their own words—not a version edited by counsel—and to provide concrete examples of what attorneys may and may not say to a testifying client during an overnight break.

Justice Thomas wrote an opinion concurring in the judgment, joined by Justice Gorsuch, arguing that the existing precedents of *Geders* and *Perry* already resolved this case without the majority needing to announce a broader new rule, and that the majority unnecessarily expanded those precedents by opining on hypothetical scenarios not present in this case.

[17] 425 U.S. 80, 96 **S**. Ct. 1330, 47 L. Ed. 2d 592 (1976)
[18] 488 U.S. 272, 109 S. Ct. 594, 102 L. Ed. 2d 624 (1989)

Facts of the case

Munson P. Hunter, III pleaded guilty to committing wire fraud affecting a financial institution and to aiding and abetting. A federal district court sentenced him to 51 months in prison followed by three years of supervised release. A specific condition of that supervised release requires Hunter to take any mental health medication prescribed by his physician.

Hunter challenged his sentence at the U.S. Court of Appeals for the Fifth Circuit, arguing the medication condition infringed on his due process liberty interests and that the written judgment improperly included the "aiding and abetting" reference. The Fifth Circuit dismissed the appeal regarding the medication condition, finding it was barred by an appeal waiver in Hunter's plea agreement, and affirmed the judgment, noting that the "aiding and abetting" charge was indeed part of the count to which Hunter pleaded guilty.

Questions

1. Does an appeal waiver bar all claims except for ineffective assistance of counsel or a sentence exceeding the statutory maximum?

2. Does such a waiver become ineffective if the sentencing judge later tells the defendant they can appeal, and the government fails to object?

Conclusion

The Court held that a federal defendant's waiver of appellate review is unenforceable if it would result in a miscarriage of justice. Although the court did not decide whether enforcing the defendant's appellate waiver in his case would constitute a miscarriage of justice, the majority described the circumstances where this standard would be met as "rare" and involving "extreme cases," and the court described in general terms three examples that would constitute a miscarriage of justice while also outlining some common circumstances where a knowing and voluntary appellate waiver would be enforceable.

Justice Kagan's opinion, joined by seven other justices, held that "an agreement not to appeal a sentence is unenforceable when it would result in a miscarriage of justice—meaning, when it would leave in place the kind of egregious error that would bring the judicial system into disrepute." Her opinion first addressed the source of the court's authority to adopt the miscarriage-of-justice exception and then offered some guidance on what such an exception would cover, although the court did not address how the exception would apply in Hunter's case.

In describing its authority to adopt the miscarriage-of-justice standard, Kagan pointed to a district court's role under Federal Rule of Criminal Procedure 11(c)(3)(A) in accepting a plea agreement and federal courts' institutional interest in ensuring that legal proceedings appear fair to all who observe them. The parties had focused on principles of contract law, but Kagan's opinion did not

rely on them (although at the same time she did not repudiate any precedent that applies contract law to plea agreements).

Kagan's opinion might appear to involve an application of what courts have referred to as federal courts' supervisory powers (that is, the power to manage the activities of the judiciary). But as Justice Thomas' dissent highlighted, Kagan's opinion never actually says that the court did rely on supervisory powers, and the court's opinion is ambiguous on that doctrine. Justice Barrett, who as a law professor wrote about federal courts' supervisory powers, concurred in an opinion that addressed the scope of supervisory powers and sought to ground the court's ruling in waiver principles, while Thomas' dissent rejected, among other things, that supervisory powers could justify the court's rule here at all. The separate opinions suggest that Kagan's minimalism in explaining how the court grounded its authority for adopting a miscarriage-of-justice exception was thus necessary to reach an eight-justice majority.

Turning to when the miscarriage-of-justice standard might be achieved, Kagan's opinion began with a general description of when the standard would not be met. "Sentencing is a complex affair in our criminal justice system," she noted, "involving for example the detailed calculation of a Sentencing Guidelines range and the mandatory consideration of multiple sentencing factors." Mistakes inevitably occur, and "[s]uch standard-fare errors in misapplying sentencing law cannot cancel an appeal waiver."

But to offer some guidance on when the miscarriage-of-justice standard would be fulfilled, Kagan described three examples, while cautioning that because "[e]xtreme cases" are "hard to anticipate before they happen," her list is not exhaustive. First, Kagan said that an appellate waiver would not prevent a defendant from appealing "a sentence exceeding what the relevant statute allows—most commonly, a term of years above the maximum prescribed." Second, appeals are permitted if "a blatant constitutional error, such as when a judge takes account of a constitutionally impermissible factor (like race)." Third, she said that appellate waivers could not be enforced when a sentence was "imposed without 'some minimum of civilized procedure,'" which the court illustrated with the example of a judge who "let an orangutan pick a sentence out of a hat." It was also undisputed that an appellate waiver is unenforceable when defense counsel's ineffectiveness undermines the knowingness and voluntariness of the plea.

Justice Kavanaugh's concurring opinion, joined by Justices Alito and Barrett, reiterated their view that the court set a "high bar" for finding a miscarriage of justice and disputed the interpretation of the rule by Justice Gorsuch's concurrence, joined by Justices Sotomayor and Jackson. Gorsuch's concurrence broadly criticized the prevalence of plea deals and focused on objections to pleas that do not turn on the existence of an appellate waiver.

Before reaching the miscarriage-of-justice standard, Kagan briefly addressed an issue that Hunter raised that attracted no support on the court. After Hunter entered into his plea agreement and had the terms of the appellate waiver reviewed at his plea hearing, the district court concluded the sentencing hearing by telling Hunter, "You have a right to appeal. If you wish to appeal, [your trial counsel] will continue to represent you." Hunter contended that the prosecutor's failure to object constituted a waiver by the government of his appellate waiver. The court was unpersuaded. First, the court noted that the plea agreement said that it could be modified in writing only, which did not

occur. Second, the government's silence did not constitute an "affirmative signal of 'abandonment,'" which is usually necessary to find that a party waived a claim.

In total, Kagan's opinion seemed designed to convey to lower courts simultaneously that a miscarriage-of-justice standard governs appellate waivers and that such a standard will successfully apply in only the most extreme circumstances.

IMMIGRATION

MULLIN V. DOE

Facts of the case

Congress created the Temporary Protected Status (TPS) program to allow foreign nationals from countries experiencing armed conflict, natural disasters, or other extraordinary conditions to live and work legally in the United States on a temporary basis. Federal law requires the Secretary of Homeland Security to periodically review conditions in each designated country and, after consulting with other government agencies, determine whether those conditions still justify protection. Syria has held TPS designation for years, shielding its nationals from deportation to a country ravaged by civil war and humanitarian crisis.

Shortly after taking office in January 2025, President Trump issued Executive Order 14159, directing the Secretary to aggressively limit TPS designations. Secretary Kristi Noem then terminated TPS for Syria on September 19, 2025, with an effective date of November 21, 2025 — giving roughly 6,100 Syrian TPS holders weeks to lose their legal status, work authorization, and protection from deportation. Seven Syrian nationals with family ties in the United States sued, arguing that the termination violated federal immigration law, was arbitrary and capricious, and reflected discriminatory animus rather than a genuine, good-faith review of conditions in Syria.

The district court granted the plaintiffs' motion and postponed the termination effective November 19, 2025; the government appealed and moved to stay that order, but the U.S. Court of Appeals for the Second Circuit denied the stay on February 17, 2026, concluding that the government had not demonstrated a likelihood of success on the merits or irreparable harm.

Question

Did the Trump administration lawfully end the Temporary Protected Status program for Syrian nationals?

Conclusion

The Supreme Court cleared the way for the federal government to remove protections for citizens of Haiti and Syria under a federal program that allows foreign citizens to stay in the United States when the U.S. government believes that it is not safe for them to return to their homes. By a vote of 6-3 in *Mullin v. Doe*, the justices paused rulings by federal courts in Washington, D.C., and

New York that had barred the Trump administration from ending the designations under the program, known as Temporary Protected Status, for Haiti and Syria. Instead, the court ruled that the federal law creating the TPS program generally bars courts from reviewing the determinations by then-Secretary of Homeland Security Kristi Noem to end the TPS designations for Haiti and Syria. The court also ruled that the Haitian TPS holders are likely to lose on the claim that Noem ended TPS status for Haiti because the country's citizens are overwhelmingly Black and therefore violated the Constitution's guarantee of equal treatment.

Writing for the majority, Justice Alito wrote that the language of the TPS statute prohibiting judicial review "is clear, and its plain meaning is very broad."

Justice Kagan dissented, in an opinion joined by Justices Sotomayor and Jackson. She wrote that at this stage of the litigation, the Haitian and Syrian TPS beneficiaries "ask for only one thing: that they may stay in this country while they continue to litigate their claims. … [T]hey are entitled to that relief, and should not instead be consigned to devastating, and indeed life-threatening, injury."

Congress enacted the Temporary Protected Status program in 1990. The program gives the Department of Homeland Security the power to designate a country's citizens as eligible to remain in the U.S. and work if they cannot return safely to their own country because of a natural disaster, armed conflict, or other "extraordinary and temporary" conditions there.

Then-Secretary of Homeland Security Janet Napolitano made both of the designations at the center of this case. In 2010, shortly after a magnitude 7.0 earthquake struck Haiti, killing more than 300,000 people and causing catastrophic damage, she designated Haiti under the TPS program. Napolitano made a similar designation for Syria two years later, pointing to "deteriorating conditions" there after a "brutal crackdown" by Syrian dictator Bashar al-Assad against anti-government dissenters.

Napolitano's designations of Haiti and Syria initially lasted for 18 months, but they were repeatedly extended until 2025, when Noem announced that the Trump administration planned to end both designations. Noem said that a new Syrian government was attempting to "move the country to a stable institutional governance," and that she had determined that "there are no extraordinary and temporary conditions in Haiti that prevent Haitian nationals … from returning in safety." And in both cases, she indicated that it would be "contrary to the national interest" to allow the countries' TPS designation to remain in place.

Challenges from Haitian and Syrian nationals with TPS followed in Washington, D.C., and New York, respectively. Federal judges in those cities barred the Trump administration from ending the TPS program for both countries, and two federal appeals courts declined to step in.

The Trump administration then came to the Supreme Court earlier this year, asking the justices to pause the lower courts' orders and hear oral arguments in the disputes immediately, without waiting for the federal appeals courts to weigh in. Those requests came less than a year after the Supreme Court twice blocked rulings by a federal district judge in San Francisco that would have temporarily barred the Trump administration from ending a TPS designation (as well as an extension of that designation) for Venezuela.

On March 16, the Supreme Court agreed to take up the Haiti and Syria disputes, but it temporarily left the lower courts' rulings in place – and, as a result, kept the protections for Haitian and Syrian nationals intact – while the case moved forward at the Supreme Court. The court heard oral arguments on April 29.

The Supreme Court reversed the lower court's rulings. Alito explained that the law creating the TPS program "allows 'no judicial review of any determination . . . with respect to the . . . termination' of a TPS designation. The term 'determination,'" he continued, "can be used to describe either an individual decision or" "the chain of events leading up to a decision." Moreover, Alito continued, the government's reading is supported by "other terms" in the same provision, "particularly the phrase 'with respect to'"—which "'generally has a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.'"

"Under either of these definitions," Alito concluded, courts generally cannot review Noem's decisions to terminate the TPS designations for Syria and Haiti. Each of the claims by the challengers in this case involves "a discrete decision made by the Secretary—for example, her decision to consult the State Department in a particular manner and her decision that country conditions in Syria and Haiti justified termination of their TPS designations. And all those steps were part of the process that led to her final decision to terminate these countries' TPS designations."

Alito also rejected the challengers' argument that although courts cannot review the substance of Noem's decision to terminate TPS status, they can weigh in on procedural violations of the laws governing her determinations – for example, their claim that Noem "inadequately consulted the State Department about conditions in Syria." "[T]he TPS judicial-review bar," Alito stressed, "expressly restricts review."

Alito similarly turned down the challengers' contention that decisions that are only part of the secretary's "ultimate 'determination'" can be reviewed. Alito once again emphasized that such an interpretation "is inconsistent with the plain meaning of the statutory text. And that is true whether the term 'determination' is understood to mean a discrete decision or a process leading up to a final decision." This theory, Alito continued, is also inconsistent with the general principles of federal agency laws, under which "[i]f the final agency action is unreviewable, then so too are subsidiary determinations."

Alito downplayed the challengers' suggestion that, if courts cannot review the secretary's decisions, it could lead to "many shocking abuses" – such as "a 50-year TPS designation, contrary to the 18-month statutory cap" or a decision to terminate TPS "based on a coin-flip." Even if the courts could not step in, Alito posited, "Congress would have ample means to stop that abuse, including, for example, through the annual appropriations process."

And even if there is an exception to the general bar on judicial review for the Haitian TPS beneficiaries' claim that Noem's decision to terminate the designation for Haiti violated the Constitution, Alito added, that claim "will likely fail." The challengers had pointed to statements by President Trump about Haiti – which, as Kagan provided in her dissent, included suggestions

that Haitians in Ohio were "eating the dogs . . . [and] cats," descriptions of Haiti as a "shithole country," and contentions that Haitians living in the U.S. "probably have AIDS" – as well as statements by Noem about immigration and TPS. Alito acknowledged that the statements contain "heated language." But "[n]one" of those statements, he concluded, "was overtly racial, and in substance all expressed policy views that could rest on" reasons having nothing to do with race. But, he wrote, "[p]olitical discourse by prominent public figures is increasingly couched in terms that would have scandalized the public just a short time ago, and the statements cited by" the Haitian TPS beneficiaries "exemplify this development."

Justice Thomas filed a concurring opinion in which he argued that courts also lack the power to review the Haitian TPS beneficiaries' constitutional claim. "[T]he statute," he contended, "makes Congress's intent to preclude judicial review clear." But even if courts could review constitutional claims generally, he said, these challengers could not prevail because noncitizens cannot sue the federal government for violations of their right to equal treatment. Such a guarantee is only binding on the states, he wrote.

In a dissent joined by Justices Sotomayor and Jackson, Kagan first offered a different, and narrower, reading of the judicial-review bar. The TPS judicial-review bar, she contended, applies only to the DHS secretary's "'determination' 'with respect to the designation, or termination or extension of a designation, of a foreign state.'" This means, she wrote, that courts do have the power to review decisions and actions beyond the secretary's "determination[s]" about TPS designations or terminations. This includes, she said, "the procedural steps the Secretary must undertake prior to making any determination about" the conditions in a particular country.

Here, Kagan said, the challengers are not arguing that Noem "made the wrong call when she determined that Haiti and Syria no longer meet the criteria for TPS (although the plaintiffs surely think that too). Instead," Kagan wrote, "the claims are that the Secretary failed to comply with a pre-determination procedural mandate—more specifically, that she failed to consult with appropriate agencies about country conditions."

Kagan called it "plain to see" that race played a role in the decision to terminate the TPS designation for Haiti. "The evidence" that the Haiti TPS beneficiaries "have offered," she stressed, "includes statements by the President so repellent and racially inflected that the majority declines to put them in print." But those "statements fairly shout," she said, "in their racial undertones and overtones alike, that race entered into the President's resolve to remove Haitians from this country."

"Respectfully," Kagan concluded, "I dissent from the Court's decision that" the TPS beneficiaries "may … be put on the next plane."

URIAS-ORELLANA V. BONDI

Facts of the case

Douglas Humberto Urias-Orellana, a Salvadoran citizen, fled to the United States with his wife and minor child after facing threats from Wilfredo, a local hitman. The violence began in 2016 when Wilfredo shot and seriously injured Urias-Orellana's two half-brothers in separate incidents. Wilfredo then vowed to kill their entire family. Over the next several years, Urias-Orellana was repeatedly threatened at gunpoint by masked men demanding money and warning they would harm him like his brothers. In December 2020, he was physically assaulted in his hometown, with the attackers striking him three times in the chest.

To escape these threats, Urias-Orellana and his family relocated multiple times within El Salvador. They lived peacefully in some locations for extended periods but encountered problems when returning to areas near his hometown. After noticing his attackers searching for him in early 2021, the family entered the United States without authorization in June 2021.

The Department of Homeland Security charged Petitioners with removability for illegal entry. They applied for asylum based on persecution of their family group, with Urias-Orellana also seeking protection under the Convention Against Torture. The Immigration Judge denied their applications, finding the harm did not constitute persecution and that they could safely relocate within El Salvador. The Board of Immigration Appeals affirmed, leading to this petition for review before the U.S. Court of Appeals for the First Circuit. The First Circuit denied the petition for review, upholding the Board of Immigration Appeals' decision on all claims.

Question

Must a federal court of appeals defer to the BIA's judgment that a given set of undisputed facts does not demonstrate mistreatment severe enough to constitute "persecution" under 8 U.S.C. § 1101(a)(42)?

Conclusion

When a federal appeals court reviews an immigration agency's determination that an asylum seeker's experiences do not qualify as "persecution" under federal law, the court must apply the deferential "substantial-evidence" standard — meaning it can overturn the agency's conclusion only if the evidence was so overwhelming that no reasonable decision-maker could have reached the same result. Justice Jackson authored the unanimous opinion of the Court.

To qualify for asylum, a person must demonstrate they faced "persecution" — or have a well-founded fear of future persecution — based on their race, religion, nationality, membership in a particular social group, or political opinion. Federal law (§1252(b)(4)(B)) directs appeals courts reviewing immigration removal orders to treat the agency's factual findings as conclusive unless any reasonable decision-maker would have been forced to reach the opposite conclusion. This is

the substantial-evidence standard: a court cannot simply substitute its own judgment for the agency's; it must defer to the agency unless the evidence compelled a different result. The Immigration and Nationality Act grants the government the authority to make this persecution determination in the first instance, and Congress deliberately structured judicial review to be narrow and deferential throughout.

The persecution determination is what lawyers call a "mixed question of law and fact" — it requires the agency to find the facts (what happened to the applicant) and then apply a legal standard (does that amount to persecution?). Some lower courts had reviewed the legal-application piece independently, without deference. That approach is wrong. A 1992 Supreme Court decision, *INS v. Elias-Zacarias*[19], already held that the substantial-evidence standard covers the entire persecution inquiry — both the underlying facts and the legal conclusion drawn from them. When Congress overhauled immigration law in 1996, it added §1252(b)(4)(B) using language that closely mirrors *Zacarias*, signaling that it intended to codify — not overturn — that deferential approach. Because the overall refugee determination centers on factual judgments about what an applicant actually experienced abroad, requiring deference across the whole inquiry is consistent with Congress's broader intent throughout the statute to limit federal court second-guessing of immigration agency decisions.

BLANCHE V. LAU

Facts of the case

Muk Choi Lau, a native and citizen of China, was admitted to the United States as a lawful permanent resident on September 7, 2007, after several years of traveling to the country as a nonimmigrant. On May 7, 2012, Lau was charged in New Jersey with third-degree trademark counterfeiting. While awaiting trial, he left the United States for a brief period. Upon returning on June 15, 2012, he presented himself at John F. Kennedy International Airport as a returning lawful permanent resident. However, because of his pending charge, immigration authorities declined to admit him outright and instead paroled him into the country pursuant to 8 U.S.C. § 1182(d)(5)(A). Over a year later, in June 2013, Lau pleaded guilty to the counterfeiting charge and was sentenced to two years’ probation.

The Department of Homeland Security initiated removal proceedings against Lau in March 2014, charging him with inadmissibility under 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude (CIMT). Lau argued that he should not have been treated as an arriving alien at the time of reentry and that he was eligible for a discretionary waiver under 8 U.S.C. § 1182(h). The immigration judge rejected both claims, and the Board of Immigration Appeals affirmed. Lau petitioned for review, arguing primarily that DHS lacked clear and convincing evidence to treat him as an applicant for admission on reentry merely due to a then-pending charge. The U.S. Court of Appeals for the Second Circuit agreed, holding that DHS erred

[19] 502 U.S. 478, 112 S. Ct. 812, 117 L. Ed. 2d 38 (1992)

in treating Lau as inadmissible based solely on unproven allegations at the time of reentry and granted his petition.

The immigration judge ordered removal in 2018, and the Board of Immigration Appeals upheld that decision in 2021. The Second Circuit vacated the removal order in 2025 and remanded the case to terminate proceedings under the inadmissibility ground, reserving the possibility of future removal under a deportability provision.

Question

To remove a lawful permanent resident who committed an offense listed in Section 1182(a)(2) and was subsequently paroled into the United States, must the government prove that it possessed clear and convincing evidence of the offense at the time of the lawful permanent resident's last reentry into the United States?

Conclusion

The Court's ruling in *Blanche v. Lau* cleared the way for immigration officers to more freely deny lawful permanent residents – also known as green card holders – admission into the United States. By a vote of 6-3, the court, in an opinion from Justice Thomas, held that federal immigration law does not require border officers to have "clear and convincing evidence" that green card holders have committed a disqualifying crime before preventing them from reentering the country for an indefinite stay.

Justice Jackson dissented, in an opinion joined by Justices Sotomayor and Kagan. Jackson asserted that the court's opinion undermines "the benefits and security that come with having a green card" and wrote that she is worried that the court has "handed the Government a massive blank check" to put lawful permanent residents in "immigration limbo."

The Supreme Court vacated the 2nd Circuit's decision, holding that border officers do not need to meet the "clear and convincing evidence" standard to treat a lawful permanent resident who has been charged with a crime of moral turpitude as a candidate for admission. "Nothing in the INA imposes" that burden, Thomas wrote in the nine-page majority opinion. It came, instead, "from inapposite Board of Immigration Appeals precedent."

That BIA precedent, Thomas continued, addressed the evidence the government must have during a removal hearing, not during an encounter at the border. He rejected Lau's assertion "that the Government 'expressly' conceded" that this evidence standard applied at the border, explaining that the government had made that concession only with regard to removal proceedings. The court was also unconvinced, Thomas explained, by Lau's claim that a lawful permanent resident cannot be found to have committed a crime involving moral turpitude until he is convicted of such a crime. "A straightforward reading of the text contradicts Lau's interpretation," Thomas wrote, because "the Government may regard a lawful permanent resident as seeking admission as soon as he 'committed a' crime involving moral turpitude 'even if (as in [Lau's] case) the conviction occurred' later."

“We decline to read into the INA an additional clear-and-convincing-evidence burden on border officers entrusted with making ‘quick judgments on the spot’ when that burden is nowhere in the statute or even Board precedent,” Thomas concluded.

In her 17-page dissent, Jackson argued that the “text, structure, and context” of the INA should have led the court to a different conclusion. “[U]nder the plain terms of the statute,” she wrote, the government has “no discretion” to deny a lawful permanent resident admission into the country when it does not yet have evidence to justify that decision. “[T]he removal hearing—which can come months, or even years, after the LPR is demoted to ‘seeking an admission’ status and paroled in—is too late for the Government to carry its burden,” according to Jackson.

Jackson emphasized what was at stake for lawful permanent residents, asserting that “[a] demotion to the status of ‘seeking an admission’ is not costless,” because it makes it possible for them to “be immediately detained or paroled.” “The downsides of detention are obvious,” Jackson continued, and parole can also lead to “serious negative repercussions,” including a loss of one’s permanent green card and the ability to work.

“It is a fundamental maxim in our country that all are innocent until proven guilty,” Jackson wrote. And yet, “Lau was divested of his already-admitted status, deemed an applicant for admission, and paroled solely on the basis of” an indictment. “Congress could not have meant for the guarantees” afforded to lawful permanent residents “to be so cavalierly swept aside,” Jackson concluded.

DEATH PENALTY

HAMM V. SMITH

Facts of the case

Joseph Clifton Smith was convicted of capital murder and sentenced to death in Alabama. Years later, Smith filed a federal habeas corpus petition under 28 U.S.C. § 2254, seeking to overturn his death sentence on grounds that he is intellectually disabled and therefore cannot be executed under the Eighth and Fourteenth Amendments. The central issue in Smith’s case involved determining whether he met the three-prong test for intellectual disability: significantly subaverage intellectual functioning, significant deficits in adaptive behavior, and manifestation of these qualities before age 18.

Smith's IQ testing revealed multiple scores—72, 74, 75, 74, and 78—that fell within or near the range associated with intellectual disability when accounting for standard error of measurement. His experts testified that four of his five scores were consistent with mild intellectual disability, while the state’s expert, Dr. King, argued that Smith’s multiple scores placed him in the borderline range just above intellectual disability. After extensive evidentiary hearings featuring competing expert testimony about both Smith’s IQ scores and his adaptive functioning deficits, the district court found Smith intellectually disabled.

The U.S. District Court for the Southern District of Alabama granted Smith's habeas petition and vacated his death sentence. The U.S. Court of Appeals for the Eleventh Circuit affirmed this decision, but the Supreme Court granted certiorari and remanded the case, asking the Eleventh Circuit to clarify whether its ruling relied solely on the lower end of Smith's IQ score range or on a holistic analysis of all evidence. On remand, the Eleventh Circuit explained that its reasoning was based on a holistic analysis.

Question

When a capital defendant has taken multiple IQ tests with varying results, how should courts evaluate the cumulative effect of those scores to determine whether the defendant has significantly subaverage intellectual functioning under *Atkins v. Virginia*[20]?

Conclusion
The Court dismissed the case as improvidently granted (meaning the Court concluded, after accepting the case, that it was not the right vehicle to decide the question) in a 5-4 per curiam (unsigned) opinion.

Justice Sotomayor, joined by Justice Jackson, concurring, argued the case was an inappropriate vehicle for new guidance because the precise methodology question was never raised below, all parties agreed no single mandatory formula exists, and the lower courts' holistic approach was fully consistent with prior precedent, medical consensus, and Alabama state law.

Justice Alito, joined by Justice Thomas in full and by Chief Justice Roberts and Justice Gorsuch as to Parts I, III, and IV, dissenting, argued the Court should have provided workable rules for evaluating multiple IQ scores, offered three psychometrically sound approaches (composite scoring, median, and expert central-tendency judgment), and contended that the lower courts' reliance on the lowest score's error range and on adaptive-functioning evidence to deflate IQ estimates violated both statistics and the Court's holdings in *Hall v. Florida*[21] and *Moore v. Texas*[22].

Justice Thomas, dissenting, argued that *Atkins v. Virginia*[23] should be overruled entirely because it has no basis in the Eighth Amendment's original meaning, the common-law protection it invokes applied only to people with far more severe cognitive disabilities than those protected by *Atkins*, and the doctrine has proven unworkable.

[20] 536 U.S. 304, 122 S. Ct. 2242, 153 L. Ed. 2d 335 (2002)
[21] 572 U.S. 701, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014)
[22] 581 U.S. 1, 137 S. Ct. 1039, 197 L. Ed. 2d 416 (2017)
[23] *Supra* fn 14.

EXXON MOBILE, CORP. V. CORPORACIÓN CIMEX, S.A. (CUBA)

Facts of the case

This case involves Exxon Mobil Corporation's claim to property confiscated by the Cuban government decades ago. Exxon, through its predecessor Standard Oil Company, owned several subsidiaries in Cuba, including Esso Standard Oil, S.A. (Essosa), which operated oil and gas assets like a refinery, product terminals, and over 100 service stations. In 1960, following Fidel Castro's rise to power, the Cuban government confiscated these assets without providing compensation. The assets were subsequently transferred to Cuban state-owned enterprises, including Unión Cuba-Petróleo (CUPET), the state oil company, and Corporación CIMEX S.A. (Cuba) (CIMEX), a conglomerate. In 1969, the U.S. Foreign Claims Settlement Commission (FCSC) certified Standard Oil's loss at over $71 million, plus interest, due to the confiscation. In 1996, Congress passed the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act, also known as the Helms-Burton Act, which created a private right of action in Title III for U.S. nationals to sue any "person" who "traffics in" their confiscated property, explicitly defining "person" to include an agency or instrumentality of a foreign state. Although every President suspended this right of action until May 2, 2019, President Trump's administration then allowed the suspension to lapse, and Exxon filed its lawsuit that same day.

Exxon's complaint names the Cuban instrumentalities CIMEX, CUPET, and Corporación CIMEX S.A. (Panama) as defendants, alleging they continue to traffic in the confiscated property through commercial activities such as refining oil and operating service stations that process remittances and sell imported goods.

The Cuban defendants moved to dismiss the suit for lack of subject matter jurisdiction, asserting immunity under the Foreign Sovereign Immunities Act (FSIA). The district court held that the Helms-Burton Act did not independently abrogate foreign sovereign immunity and that the FSIA's expropriation exception did not apply, but found that the commercial-activity exception was met for CIMEX. The U.S. Court of Appeals for the D.C. Circuit agreed that the Helms-Burton Act did not displace the FSIA and that the expropriation exception was inapplicable, but vacated the ruling on the commercial-activity exception and remanded for further jurisdictional discovery.

Question

Does the Helms-Burton Act abrogate foreign sovereign immunity in cases against Cuban instrumentalities, even if the parties do not satisfy an exception under the Foreign Sovereign Immunities Act?

Conclusion

The Court ruled that a lawsuit by Exxon Mobil against Cuban state-owned companies for the confiscation of assets owned by subsidiaries of the oil giant's predecessor can go forward.

Writing for the majority, Justice Kavanaugh explained that the Helms-Burton Act, a federal law passed in 1996, cancels the immunity that the Cuban government and its companies would normally have, so that plaintiffs seeking to rely on that statute to sue them are not required to satisfy an exception to the Foreign Sovereign Immunities Act, a federal law that generally prohibits lawsuits in U.S. courts against foreign governments and their "agencies and instrumentalities." "Stacking an FSIA requirement on top of the Helms-Burton Act would thwart Congress's design and directly contravene the President's foreign policy judgments," Kavanaugh wrote.

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented. She argued that "[n]othing in the text or 'architecture' of the Helms-Burton Act suggests that Congress abrogated the sovereign immunity of these defendants—much less that it did so with the requisite unmistakable clarity."

The law at the center of the case was the Cuban Liberty and Democratic Solidarity Act, also known as the LIBERTAD Act or the Helms-Burton Act. It allows U.S. nationals to bring lawsuits in federal court against anyone who "traffics in property which was confiscated by the Cuban Government on or after January 1, 1959." It also gives the president the power to suspend the right to bring a lawsuit when he believes that doing so is "necessary to the national interests of the United States and will expedite a transition to democracy in Cuba." From 1996 until 2019, when President Trump declined to renew the suspension, U.S. presidents repeatedly suspended the right to bring a lawsuit.

In his 22-page opinion, Kavanaugh emphasized that "one Congress cannot bind another—meaning that a later Congress always may repeal or modify an old law, or enact a new law that is exempt from the old law. In 1996, when Congress passed the Helms-Burton Act, Congress was free to directly abrogate the foreign sovereign immunity of Cuban agencies and instrumentalities, thereby overriding the FSIA."

That is exactly what it did, Kavanaugh concluded. Among other things, he wrote, the Helms-Burton Act creates a right to sue that "expressly applies against Cuban agencies and instrumentalities" and was intended to "supply a meaningful remedy" against them – something that would generally not be possible if plaintiffs also had to satisfy one of the exceptions to the FSIA.

In her dissent, Kagan countered that whether the Cuban-owned companies are immune from lawsuits in U.S. courts "depends on whether an FSIA exception is met." The majority's contrary conclusion, she said, rests "on the ground that a different law, the Helms-Burton Act, abrogates (in nonlegal speak, eliminates) the immunity that the FSIA may otherwise grant. The problem for the majority is that the bar for finding" that Congress has repealed the general presumption of immunity in the FSIA "is high, and the Helms-Burton Act falls short."

PUNG V. ISABELLA COUNTY, MICHIGAN

Facts of the case

This case involves a dispute over the foreclosure and sale of the Pung property in Isabella County, Michigan, following the death of its owner, Timothy Scott Pung, in 2004. The property had a Principal Residence Exemption (PRE) from local school taxes. In 2010, the township tax assessor, Patricia DePriest, retroactively denied the PRE for the years 2007-2009, asserting a new owner must file an affidavit. Although the Michigan Tax Tribunal overturned this decision in 2012, holding the PRE remained valid for the estate, DePriest subsequently revoked the PRE for the 2012 tax year based on the same unfiled-affidavit rationale. This denial created an unpaid tax bill of $2,241.93. The County Treasurer, Steven Pickens, initiated foreclosure proceedings for this delinquency. After a final judgment of foreclosure, the property sold at a public auction for $76,008. Isabella County and Pickens retained the entire $76,008 from the sale, refusing to return the surplus proceeds above the tax debt to Michael Pung, the estate's representative. Michael Pung sued, alleging this retention of the surplus violated the Fifth Amendment's Takings Clause and the Eighth Amendment's Excessive Fines Clause.

The district court granted Pung summary judgment on the Takings Clause claim, ruling he was entitled to the surplus proceeds (the sale price minus the tax debt), but not to the greater loss in equity based on the property's fair market value. The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's judgment on all claims, including the amount of compensation awarded.

Questions

1. When the government takes property for tax debt, does the Fifth Amendment require compensation based on the property's true fair market value, or only on the lower amount it sold for at a tax foreclosure auction?

2. Does the Eighth Amendment's Excessive Fines Clause prohibit the government from seizing and keeping a property worth far more than the small tax debt owed on it?

Conclusion

The Court squarely rejected an argument that the longstanding use of tax foreclosure sales as a method to collect unpaid real-estate taxes violates the takings clause of the Fifth Amendment or the excessive fines clause of the Eighth Amendment.

Justice Alito wrote for the court, joined by all of the justices except Thomas. Alito starts by considering the takings problem, which he describes as "whether 'just compensation' [required by the takings clause] following a tax sale is measured by the price that the property fetched at auction

or its hypothetical fair market value." For the court, "the auction price is the proper baseline, at least when the procedure is fair in light of our country's history of tax sales."

Alito then briskly recounts the lengthy history, with examples dating to "the time of Magna Carta," "the early days of the Republic," and "later in the 19th century," demonstrating that "for hundreds of years, English and American Law have allowed the seizure and sale of property as a tax-collection method, provided that the government return any surplus proceeds to the debtor"—"nothing less, and nothing more." Applied to Pung's challenge then, "[t]he baseline for measuring just compensation in the tax-sale context is … the sale price, not the property's hypothetical fair market value."

Reprising points that he emphasized at the argument, Alito emphasizes the practical realities that protect the taxpayer from loss in this context:

[I]f the owner believes that the fair market value of the property exceeds the taxes that are due, the owner may be able to avoid foreclosure by refinancing the property or using the property as collateral for a new loan … Or the owner may be able to sell the property … himself before foreclosure, pay off the tax debt, and keep what is left … Here, the Pungs had years to take these steps and avoid foreclosure. … They failed to do so.

Alito also describes the "unprecedented burdens" that Pung's arguments "would impose … on jurisdictions that wish to collect unpaid taxes." One possibility is that in an effort "to obtain something like fair market value for homes on which they have foreclosed, jurisdictions would have to … either shoulder the burden of selling the property themselves or employ a real estate agent. In the meantime, local governments would have to do without the unpaid taxes and bear the costs and risks that go with the ownership of unoccupied homes." Alternatively, jurisdictions that "proceeded with traditional tax-sale procedures" often would face "a net loss" under Pung's theory, as "[t]he government would be on the hook for any difference between the foreclosed property's fair market value and the tax-sale price," typically being (as here) multiples of the proceeds received at the tax sale.

In the end, Alito explains, the court's "task … is not to decide whether tax sales as historically conducted represent good public policy. Our authority is limited to deciding whether the Takings Clause requires the transformation Pung advocates, and the answer to that question is clear."

Alito also devotes a few paragraphs to rejecting Pung's claim that the local government's "failure to compensate him for the fair market value of his property constituted an excessive fine." On that point, he notes that "[f]orfeiture of property can be a 'fin[e]' for purposes of the Eighth Amendment if it serves 'in part to punish.'" He explains that the court always "has consulted historical practice" in examining that question and then concludes that the historical practice that defeats the just compensation claim suffices for this point as well: "So, like his Fifth Amendment claim, Pung's Eighth Amendment claim lacks historical or precedential support."

The case is unlikely to make any great jurisprudential splash, as it validates what has been a common practice of all levels of government in this country for almost three centuries. Perhaps more notable is the concurrence of Justice Thomas, joined in part by Justice Gorsuch. He makes

two points, the first of which is the conclusion that the Michigan courts erred under Michigan law in concluding that Pung in fact owes any taxes – a question neither presented to nor decided in the lower court. Second, he concludes that the takings clause obligated the government first to sell Pung's personal property before proceeding to sell the land that was the subject of the unpaid taxes. Neither of those points resonated with other members of the court.

MISUSE OF PEREMPTORY CHALLENGES

PITCHFORD V. CAIN

Facts of the case

Terry Pitchford, who is black, was convicted of capital murder and sentenced to death for his involvement in the 2004 armed robbery and killing of Reuben Britt, a store owner in Grenada County, Mississippi. At the time of the crime, Pitchford was 18 years old. He confessed to participating in the robbery, although the fatal shot was fired by his accomplice. At Pitchford's 2006 trial in the Grenada County Circuit Court, the jury was selected from a pool that included 36 white and five Black potential jurors. The prosecution used peremptory strikes to remove four of the five Black prospective jurors. Pitchford's counsel raised a Batson objection, alleging that the strikes were racially discriminatory.

The trial court found Pitchford had made a prima facie showing of discrimination and required the prosecution to provide race-neutral reasons for each strike. The prosecutor cited explanations such as the venirepersons' criminal histories, perceived mental health issues, or similarities to the defendant. The trial judge accepted those explanations and allowed the strikes, ultimately empaneling a jury that included only one Black juror. Pitchford's counsel sought to preserve Batson-related objections during a bench conference, emphasizing the racial composition of the jury and the county, but did not conduct a further comparative analysis or expressly argue that the prosecution's stated reasons were pretextual.

Pitchford's conviction and sentence were affirmed on direct appeal by the Mississippi Supreme Court, which held that any pretext arguments had been waived for failure to raise them clearly at trial. A federal district court later granted habeas relief, but the U.S. Court of Appeals for the Fifth Circuit reversed, ruling the Mississippi Supreme Court had reasonably applied Batson and its waiver rule. The U.S. Supreme Court granted certiorari, limited to the question of whether the Mississippi Supreme Court unreasonably determined, under AEDPA, that Pitchford waived his right to rebut the prosecution's race-neutral justifications for the challenged juror strikes.

Question

Did the Mississippi Supreme Court unreasonably decide—under the standards set by federal habeas law—that Terry Pitchford gave up his right to argue that the prosecutor's explanations for striking four Black jurors were false or racially biased?

Conclusion

When a trial court prevents a defendant from completing the three-step Batson process for challenging racially discriminatory jury strikes, a state appellate court's subsequent finding that the defendant waived that challenge constitutes an unreasonable application of clearly established federal law under the Antiterrorism and Effective Death Penalty Act (AEDPA), entitling the defendant to federal habeas relief. Justice Kavanaugh authored the 5-4 majority opinion of the Court.

The Equal Protection Clause bars prosecutors from removing potential jurors based on race through peremptory strikes—tools that allow lawyers to dismiss jurors without giving any reason. *Batson v. Kentucky*[24] established a mandatory three-step process to police this prohibition: the defense first makes a preliminary showing that race motivated the strikes; the prosecutor then offers race-neutral explanations; and finally, at step three, the defense must have a meaningful opportunity to argue those explanations are pretextual (i.e., fake cover stories for actual racial bias), after which the judge decides the issue. Here, the Mississippi trial court completed only steps one and two, then cut off defense counsel twice when they attempted to reach step three. Because a *Batson* objection at that stage of proceedings is a pretext argument—the only way to challenge the prosecution's race-neutral explanations is to show they don't hold up—the defense cannot logically preserve a general *Batson* objection while simultaneously waiving the pretext component. The trial court's explicit assurance that the objection was "clear in the record" made the Mississippi Supreme Court's waiver ruling even more unreasonable.

AEDPA sets a demanding standard for federal courts reviewing state convictions: a state court's decision must represent not just legal error, but an unreasonable application of clearly established Supreme Court precedent, or rest on an unreasonable factual determination. While that standard demands significant deference to state courts, deference does not mean federal courts must rubber-stamp every state ruling. On this record—where the trial court skipped a mandatory step, twice cut off the defense, and then assured counsel the objection was preserved—the Mississippi Supreme Court's waiver finding falls outside the bounds of reasonable disagreement under both prongs of AEDPA.

Justice Gorsuch dissented, joined by Justices Thomas, Alito, and Barrett, arguing that the Mississippi Supreme Court reasonably applied its own permissible preservation rules when it found that Pitchford waived a comparative-juror pretext argument he never actually raised during jury selection, and that the majority failed to meet AEDPA's demanding standard requiring the record to compel the petitioner's reading of events rather than merely permit it.

[24] 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986)