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Case Summary: *Google LLC v. Sonos, Inc.*, No. 24-1097 (Fed. Cir. Aug. 28, 2025)

Written by Maxwell Breton

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In a significant decision for patent enforcement, the U.S. Court of Appeals for the Federal Circuit partially reversed a District Court ruling, limiting the application of patent prosecution laches. Laches, as a legal doctrine, incentivizes timely legal action by preventing a party from pursuing a claim after an unreasonable delay if that delay prejudices the opposing party. In patent law, prosecution laches limits the ability of a patent applicant to inexcusably delay prosecution, rendering such patents unenforceable. Applicants, through continuation applications, often seek to keep their claims pending as long as possible, enabling them to strategically adjust their scope. However, if such delays constitute an egregious misuse of the statutory patent system, the patent in question may be held unenforceable.¹

In 2023, the Northern District of California held that two of Sonos' patents were unenforceable under prosecution laches in a suit for declaratory judgment of

¹ *Google LLC v. Sonos, Inc.*, No. 24–1097, slip op. at 15 (Fed. Cir. Aug. 28, 2025) (“That doctrine ‘may render a patent unenforceable when it has issued only after an unreasonable and unexplained delay in prosecution that constitutes an egregious misuse of the statutory patent system under the totality of the circumstances.’”).

non-infringement filed by Google. Google argued that the intentional delay in prosecution by Sonos caused harm to the company by preventing Google from designing new products around enforceable claims, therefore causing economic damages. After a jury originally awarded Sonos over \$30 million for infringement, the District Court later held in a post-trial decision that Sonos had unreasonably delayed prosecution for thirteen years, siding with Google and declaring Sonos' patents unenforceable.² The holding drew widespread criticism from the intellectual property community for contradicting the common patent practice of continuation applications. Following the District Court's ruling, Gene Quinn, a leading intellectual property commentator and founder of IPWatchdog, remarked that the "filing of a continuation cannot legitimately—either legally, practically or rationally—lead to a finding of laches."³ Quinn also clarified that the Supreme Court "specifically said there can be no laches when action is taken within a statutorily defined timeframe."⁴

On appeal, Sonos argued that the District Court improperly applied the doctrine of prosecution laches. To establish prosecution laches, the burden was placed on Google to prove both of the following elements were present: an

² *Id.* at 8 ("The court therefore determined that 'the magnitude of Sonos's delay in presenting its claims for prosecution sufficed to invoke prosecution laches.'").

³ Gene Quinn, *Sonos v. Google: A Decision Based on Ignorance of Patent Law That Must Be Overturned*, IPWatchdog, Nov. 2, 2023, <https://ipwatchdog.com/2023/11/02/sonos-v-google-decision-based-ignorance-patent-law-must-overturned/id=169114/>.

⁴ Eileen McDermott, *CAFC Dodges Key Issues in Reversing District Court Finding for Google on Prosecution Laches*, IPWatchdog, Aug. 29, 2025, <https://ipwatchdog.com/2025/08/29/cafc-dodges-key-issues-reversing-district-court-finding-google-prosecution-laches/id=191723/>.

unreasonable or inexcusable delay of prosecution, and that the delay resulted in prejudice.⁵ As the company argued in District Court proceedings, Google claimed that it suffered economic prejudice due to the prosecution delay. However, Google was unable to substantiate its claim that its new product development predated Sonos' patent filing by more than four years, or that product development would have progressed differently without the delay.⁶ As such, the Federal Circuit reversed the District Court's ruling that Sonos' patents were unenforceable due to prosecution laches.

The Federal Circuit's ruling will likely have a substantial impact on future patent litigation benefiting plaintiffs in infringement suits. Defendants now bear a far greater burden to prove prejudice resulting from prosecution delays and must therefore demonstrate concrete evidence of economic harm. The Federal Circuit also reinforces the high bar of what constitutes an unreasonable and inexcusable delay: filing a continuation within the statutory timeframe weakens a claim of prosecution laches. The decision by the Federal Circuit strengthens the ability for patent holders to pursue infringement damages while encouraging the long-time practice of continuation filing. Ultimately, the ruling in *Google v. Sonos* narrows the scope of prosecution laches, restoring confidence in common patent prosecution practices and limiting a potential infringement defense.

⁵ *Sonos, Inc.* at 15 ("To succeed in its defense, Google must establish that Sonos's delay in prosecution was unreasonable and inexcusable under the totality of circumstances, and that Google suffered prejudice attributable to that delay.").

⁶ *Id.* at 16 ("Google presented no evidence—testimony or otherwise—to support its assertion that its investment in those products actually began in 2015, or that it was caught unawares that Sonos may have already invented the adjudicated-infringing functionality when making those investments").

Case Summary: *Oklahoma Statewide Virtual Charter School Board v. Drummond*

Written by Nate Mangum-Oates

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

605 U.S. 165 (2025)

In 2023, the Archdiocese of Oklahoma City and the Diocese of Tulsa applied to the Oklahoma Statewide Charter School Board to create a tuition-free, online K–12 charter school. This school, the St. Isidore of Seville Catholic Virtual School, was intended to operate within Oklahoma’s charter school system, making it distinct from private Catholic schools. St. Isidore did not dispute that it is a religious institution and explicitly planned to “participate in the ‘evangelizing mission of the church.’”¹ On October 9, 2023, the Charter School Board approved St. Isidore’s contract for sponsorship by a 3–2 margin, which established the school as a public charter school.²

The Oklahoma Charter Schools Act of 1999 requires that all charter schools be nonsectarian in their programs.³ The Charter School Board allows for

¹ *Drummond v. Oklahoma Statewide Virtual Charter School Board*, OK 53–121694, slip op. at ¶ 4 (Okla. June 25, 2024) (“St. Isidore does not dispute that it is a religious institution.... Specifically, it plans to... participate ‘in the evangelizing mission of the church.’”).

² *Id.* at ¶ 5 (“On October 9, 2023, the Charter School Board voted again 3-2 to approve St. Isidore’s contract for sponsorship.”).

³ *Id.* at ¶ 3 (“However, the Act requires that all charter schools be nonsectarian in their

negotiation of contract terms that vary from the Board’s provided model contract if the terms comply with “applicable state, federal, local, and/or tribal law.”⁴ The St. Isidore Contract differed from the model contract in important ways. Most significantly, it did not include the model contract section titled “Prohibition of religious affiliation.”⁵ A charter school is required to stipulate “that it is not affiliated with a nonpublic sectarian school or religious institution” under the model contract; St. Isidore concedes that it is affiliated with a nonpublic sectarian school or religious institution in its contract.⁶ The State of Oklahoma, through Attorney General Gentner Drummond, sought a writ of mandamus directing the Charter School Board to rescind the St. Isidore Contract “on grounds that the contract violate[d] state and federal law.”⁷ The Oklahoma Supreme Court had original jurisdiction in this case⁸ and held in a 6–2 decision that the “Contract violate[d] the Oklahoma Constitution, the Act, and the federal Establishment Clause.”⁹

The Oklahoma Supreme Court argued in its opinion that Oklahoma’s Constitution and the Oklahoma Charter Schools Act prohibit the St. Isidore

programs...”).

⁴ *Id.* at ¶ 6 (“However, the Charter School Board can negotiate contract terms that add to or vary from the model contract, if the terms comply with ‘applicable state, federal, local, and/or tribal law.’”).

⁵ *Id.* at ¶ 7 (“The St. Isidore Contract varies significantly from the model contract.... The St. Isidore Contract does not contain the model contract section titled ‘Prohibition of religious affiliation...’”).

⁶ *Id.* at ¶ 7 (“Under the model contract, a charter school must warrant ‘that it is not affiliated with a nonpublic sectarian school or religious institution.’ In the St. Isidore Contract, St. Isidore warrants that it is affiliated with a nonpublic sectarian school or religious institution.”).

⁷ *Id.* at ¶ 1 (“Petitioner Gentner Drummond, Attorney General for the State of Oklahoma...seeks a writ of mandamus... to rescind the Charter School Board’s contract with Intervenor St. Isidore of Seville Catholic Virtual School (‘St. Isidore’) on grounds that the contract (‘St. Isidore Contract’) violates state and federal law.”).

⁸ *Id.* at ¶ 2 (“Original jurisdiction is assumed.”).

⁹ *Id.* at ¶ 8 (“We hold that the St. Isidore Contract violates the Oklahoma Constitution, the Act, and the federal Establishment Clause.”).

Contract.¹⁰ It also argued that since St. Isidore is a governmental entity and a state actor as a public charter school,¹¹ the Establishment Clause prohibits the St. Isidore Contract,¹² and the Free Exercise Clause is not implicated in this case.¹³ Justice Rowe briefly concurred in part, agreeing with the majority that “the Oklahoma constitution mandates . . . public charter schools [be] nonsectarian” while dissenting from the rest of the majority’s opinion.¹⁴ Justice Kuehn issued a comprehensive dissenting opinion; she argued that “[a] private entity . . . may be deemed a state actor if it performs a function traditionally considered the exclusive realm of the state.” Consequently, given the established role of private entities in education, a religious charter school would not be considered a “state actor,” even if it were technically public.¹⁵ Kuehn further argued that “excluding private entities like St. Isidore from contracting for educational services, based solely on religious affiliation, would violate the Free Exercise clause.”¹⁶

¹⁰ *Id.* at ¶ 9–15 (“Section I. OKLAHOMA’S CONSTITUTION AND THE ACT PROHIBIT THE ST. ISIDORE CONTRACT”).

¹¹ *Id.* at ¶ 16–37 (“Section II. AS A PUBLIC CHARTER SCHOOL, ST. ISIDORE IS A GOVERNMENTAL ENTITY AND A STATE ACTOR”).

¹² *Id.* at ¶ 38–41 (“Section III. THE ESTABLISHMENT CLAUSE PROHIBITS THE ST. ISIDORE CONTRACT”).

¹³ *Id.* at ¶ 41–44 (“Section IV. THE FREE EXERCISE CLAUSE IS NOT IMPLICATED IN THIS CASE”).

¹⁴ *Drummond v. Oklahoma Statewide Virtual Charter School Board*, OK 53–121694 (Rowe, J., dissenting in part and concurring in part), slip op. at ¶ 1-2 (Okla. June 25, 2024) (“I concur with the Majority that Article 1, Section 5 of the Oklahoma Constitution mandates that public charter schools are nonsectarian. I dissent to the remainder of the Majority’s opinion.”).

¹⁵ *Drummond v. Oklahoma Statewide Virtual Charter School Board*, OK 53–121694 (Kuehn, J., dissenting), slip op. at ¶ 7 (Okla. June 25, 2024) (“A private entity, such as a religious organization, may be deemed a state actor if it performs a function traditionally considered the exclusive realm of the state....But the Majority concedes that education is not a ‘traditionally exclusive public function.’”).

¹⁶ *Id.* at ¶ 1 (Okla. June 25, 2024) (“Excluding private entities from contracting for functions, based solely on religious affiliation, would violate the Free Exercise Clause of the First Amendment to the United States Constitution.”).

The Oklahoma Supreme Court’s decision was appealed to the United States Supreme Court. In a 4–4 decision, with Justice Barrett recusing herself without providing an official explanation, the Supreme Court upheld the ruling by the Oklahoma Supreme Court. In line with longstanding custom for the Court, the tie resulted in an affirmation of the lower court’s judgment *Per Curiam*, or by the Court as a whole, with no additional concurring or dissenting opinions.¹⁷ Given the 4–4 split, the decision in this case does not establish binding precedent for other jurisdictions beyond the parties in this case.

The publicity of the case and the Court’s 4–4 deadlock indicate that similar cases are likely to be litigated in other states with the hope for another successful appeal to the U.S. Supreme Court. Given that Justice Barrett typically leans conservative and is unlikely to recuse herself from all cases on this subject, there is potential for the full U.S. Supreme Court to issue a favorable decision for the establishment of religious charter schools like St. Isidore. Given South Carolina’s political landscape and the amicus brief indicating its interest in this case, future litigation on religious charter schools could lead to substantial educational changes in the state.

¹⁷ *Oklahoma Statewide Virtual Charter School Board v. Drummond*, 605 U.S. 165, 166 (2025) (“The judgment is affirmed by an equally divided Court. Justice Barrett took no part in the consideration or decision of these cases.”).

Case Summary: *Martinez v. High*, No. 22-16335 (9th Cir. Jan. 26, 2024)

Written by Bailee Tayles

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

This case involves a respondent police officer revealing a confidential complaint of abuse to the victim's abuser, thereby directly placing the victim in immediate danger. On May 29, 2013, Plaintiff Desiree Martinez made a confidential phone call to the Clovis Police Department to report her abuse at the hands of her romantic partner, Officer Pennington.¹ A few months later on September 7, 2013, Officer Pennington called his colleague and friend, Respondent Officer Channon High, with the Clovis PD Records Office, while Ms. Martinez was present.² Pennington placed this call on speaker phone, where he proceeded to ask Martinez if she was going to tell the "cops" what he "did to her" to which Martinez responded "no."³ On the other line, Officer High revealed that she had access to the record of Martinez's prior confidential report of abuse.⁴ After this, Pennington hung up the phone and proceeded to inflict physical and sexual abuse onto Martinez in

¹ *Martinez v. High*, No. 22-16335, slip op. at 5 (9th Cir. Jan. 26, 2024) ("On May 29, 2013, Ms. Martinez made an anonymous call to the Clovis Police Department to report that Mr. Pennington was still abusing her and to seek information about her legal rights. Ms. Martinez made this report confidentially due to Mr. Pennington's threats, which made her 'fear[] great bodily harm or death.'").

² *Id.* at 6.

³ *Id.*

⁴ *Id.* ("Officer High interjected [in response to Ms. Martinez's denial]: 'Yes, she did. I see a report right here.'").

retaliation.⁵

On May 4, 2015, Ms. Martinez sued Officer High for disclosing her confidential complaint to Officer Pennington, which led directly to an infliction of severe physical harm against her. Her complaint argued that Officer High's actions violated her substantive due process rights under the Fourteenth Amendment. Following the suit, the district court initially denied Officer High's movement for summary judgment based on qualified immunity, but later granted Officer High qualified immunity after a successive summary judgment motion. The Ninth Circuit granted qualified immunity to two other officers involved in the case, and thus Officer High was granted the same qualified immunity motion.⁶ Though Ms. Martinez appealed for a reversal of this determination, arguing that Officer High "waived her qualified immunity defense by failing to raise it in the prior appeal,"⁷ the Ninth Circuit disagreed as the prior appeal was made by the Plaintiff. The Court affirmed that Officer High's decision to not appeal the denial of her first summary judgment motion does not prohibit her from re-raising her qualified immunity defense.⁸

In its opinion, the Ninth Circuit acknowledged that Ms. Martinez suffered brutal physical abuse at the hands of Officer Pennington. This opinion also affirmed

⁵ *Id.*

⁶ *Id.* at 8 ("The district court granted the motion and held that, based on *Martinez I*, Officer High was entitled to qualified immunity [because] it was not clearly established in 2013 that [Officer High]'s conduct violated due process.") (cleaned up).

⁷ *Id.* at 9.

⁸ *Id.*

that Officer High's actions increased Ms. Martinez's risk of abuse and placed her in "actual, foreseeable danger."⁹ Furthermore, it affirmed that Officer High acted in an ignorant manner toward the potential future abuse that Ms. Martinez might experience as a result of her actions. Due to these acknowledgements, the Circuit found that Officer High violated Ms. Martinez's due process rights. Despite this, the Circuit held that even though Ms. Martinez suffered a constitutional violation, Officer High was still entitled to qualified immunity. The Circuit affirmed its decision given the fact that in 2013, there was no existing case law to put "every reasonable official" on notice that their conduct was unconstitutional. Because this case law did not exist, the Court held that Ms. Martinez's rights were not "clearly established" at the time of the violation.¹⁰

Judge Bumatay concurred in the judgment. While he agreed that Officer High was entitled to qualified immunity, he criticized the state-created danger doctrine itself as having "no support in the text of the Constitution, the historical understanding of the 'due process of law,' or even Supreme Court precedent."¹¹ Moreover, he wrote that the majority should not have addressed whether Ms. Martinez's rights were violated given that the qualified immunity doctrine already foreclosed the case.¹²

⁹ *Id.* at 12 ("First, Officer High's affirmative conduct increased Ms. Martinez's risk of abuse by Mr. Pennington. An officer's statements about a victim to a violent perpetrator can increase the risk of retaliation").

¹⁰ *Id.* at 18 ("At bottom, our precedent dictates that no existing authority gave Officer High sufficient notice in 2013 that her conduct violated due process.").

¹¹ *Id.* at 19 (Bumatay, J., concurring in the judgment).

¹² *Id.* at 20 ("[I]t was simply unnecessary to reach whether Desiree Martinez's allegations against Officer High amount to a claim under the state created danger doctrine. To decide this case, it is

Although the Court affirmed Officer High's qualified immunity, this case clarified what deems an officer of the law liable under the state-created danger doctrine. This case established the precedent that an officer will be held responsible in cases where their actions lead directly to an increase in a victim's vulnerability in a dangerous situation. Thus, the Ninth Circuit affirmed that when an officer discloses a victim's confidential report to a violent perpetrator in a manner that increases the risk of retaliation against the victim, they are considered liable.¹³ Moving forward, this case can be cited as creating a "clearly established" precedent for officer liability under the state-created danger doctrine.

sufficient that everyone agrees that no clearly established law existed at the time of the incident between Martinez, Officer High, and her abuser.").

¹³ *Id.* at 19 (op. of Desai, J.) ("An officer is liable under the state-created danger doctrine when the officer discloses a victim's confidential report to a violent perpetrator in a manner that increases the risk of retaliation against the victim.").

Case Summary: *Barnes v. Felix*, No. 23–1239 (U.S. May 15, 2025)

Written by Ella Grace Hart

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

On April 28, 2016, law enforcement officer Roberto Felix Jr. stopped Ashtian Barnes on the Sam Houston Tollway for suspected toll violations.¹ After approaching the car, Felix requested documentation, and Barnes began searching for it. Because the car was a rental in his girlfriend's name, Barnes could not produce the required documentation.² He then suggested to Felix that it might be in the trunk. Without exiting the vehicle, Barnes opened the trunk, turned off the engine, and “turn[ed] off the ignition.”³ Then, “Felix told Barnes to get out of the car[, and] Barnes opened the door but did not exit; instead, he turned the ignition back on.”⁴ “[A]s the car began to move forward, [Felix] jumped onto [the car's] doorsill.”⁵ Unable to see inside the vehicle, he placed his gun near or against

¹ *Barnes v. Felix*, No. 23–1239, slip op. at 1–2 (U.S. May 15, 2025) (“On the afternoon of April 28, 2016, Roberto Felix, Jr., a law enforcement officer patrolling a highway outside Houston, received a radio alert about an automobile on the road with outstanding toll violations. Felix soon spotted the car, a Toyota Corolla, and turned on his emergency lights to initiate a traffic stop. The driver, Ashtian Barnes, pulled over to the highway's shoulder.”).

² *Id.* at 2 (“Parking his own car just behind, Felix walked to the Corolla's driver-side door and asked Barnes for his license and proof of insurance. Barnes replied that he did not have his license with him, and that the car was a rental in his girlfriend's name. As he spoke, Barnes rummaged through some papers inside the car, causing Felix to tell him several times to stop ‘digging around.’”).

³ *Id.* at 2 (“Barnes responded that he might have some identification in the trunk. So Felix told him to open the trunk from his seat. Barnes did so, while also turning off the ignition.”).

⁴ *Id.* at 2 (“With his right hand resting on his holster, Felix told Barnes to get out of the car. Barnes opened the door but did not exit; instead, he turned the ignition back on.”).

⁵ *Id.* at 2 (“Felix unholstered his gun and, as the car began to move forward, jumped onto its door

Barnes’s head and fired two shots.⁶ Barnes was pronounced dead at the scene shortly thereafter.⁷

Barnes’s parents sued Felix and Harris County, alleging a violation of Barnes’s Fourth Amendment right against excessive force. The district court granted summary judgment, finding that Barnes posed a serious threat to Felix when the car began to move, and thus Felix’s actions were not excessive. Applying the Fifth Circuit’s “moment of threat” doctrine, the court evaluated the claim solely on the precise moment Felix perceived danger.⁸ Barnes’ parents appealed on behalf of his estate, but the Fifth Circuit affirmed the district court’s ruling, concluding that Felix could have reasonably believed his life was in danger when the car began moving.⁹ The estate then successfully petitioned the U.S. Supreme Court for certiorari.

The Supreme Court unanimously reversed the lower court rulings in favor of Ashtian Barnes’ parents. The Court held that excessive force claims under the Fourth Amendment must be evaluated under the “totality of the circumstances,” an inquiry that is not confined to the instant an officer perceives a threat.¹⁰ Writing for

sill.”).

⁶ *Id.* at 2 (“And with no visibility into the car (because his head was above the roof), [Felix] fired two quick shots inside.”).

⁷ *Id.* at 2–3 (“Felix then radioed for back-up. By the time it arrived, Barnes was dead. . . . All told, about five seconds elapsed between when the car started moving and when it stopped. And within that period, two seconds passed between the moment Felix stepped on the doorsill and the moment he fired his first shot.”).

⁸ *Id.* at 3–4. (“The District Court identified that moment as ‘the two seconds before Felix fired his first shot,’ when he was standing on the doorsill of a moving vehicle. . . . At that moment, the court found, an officer could reasonably think himself ‘at risk of serious harm.’”).

⁹ *Id.* at 3 (“The Court of Appeals affirmed, explaining that it too was ‘[b]ound’ by ‘this Circuit’s moment of threat doctrine.’”).

¹⁰ *Id.* at 5 (“Today, we reject that approach as improperly narrowing the requisite Fourth

the Court, Justice Elena Kagan reaffirmed the standard set forth in *Graham v. Connor*, 490 U.S. 386 (1989), which requires that an officer’s use of deadly force be “objectively reasonable” under the Fourth Amendment.¹¹ This inquiry demands attention to the circumstances leading up to the use of force, not merely the final seconds of the encounter.¹² The Fifth Circuit’s “moment of threat” doctrine improperly restricted the analysis to the two seconds during which Felix was standing on the vehicle’s doorsill, excluding consideration of the preceding events which were necessary for a full reasonableness inquiry.¹³

Justice Kavanaugh filed a concurring opinion, joined by Justices Thomas, Alito, and Barrett. While agreeing that the officer’s actions must be assessed based on the totality of the circumstances, the concurrence emphasized the inherent dangers of traffic stops for law enforcement officers.¹⁴ Citing *Lange v. California*, 594 U. S. 295 (2021), Justice Kavanaugh observed that a suspect’s flight during a stop for a minor offense “could well be indicative of a larger danger.”¹⁵ He further

Amendment analysis. To assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances, including facts and events leading up to the climactic moment.”).

¹¹ *Id.* at 5–6 (citing *Graham v. Connor*, 490 U.S. 386, 396–97 (1989)) (“A police officer’s use of deadly force violates the Fourth Amendment when it is not ‘objectively reasonable.’ And that inquiry into reasonableness, we have held, requires assessing the ‘totality of the circumstances.’”).

¹² *Id.* at 5–6 (“[D]eciding whether a use of force was objectively reasonable demands ‘careful attention to the facts and circumstances’ relating to the incident, as then known to the officer.”).

¹³ *Id.* at 7 (“The moment-of-threat rule applied in the courts below prevents that sort of attention to context, and thus conflicts with this Court’s instruction to analyze the totality of the circumstances. . . . A court deciding a use-of-force case cannot review the totality of the circumstances if it has put on chronological blinders.”)

¹⁴ *Id.* at 1 (Kavanaugh, J., concurring) (“I agree that the officer’s actions during the traffic stop in this case should be assessed based on the totality of the circumstances. I write separately to add a few points about the dangers of traffic stops for police officers, particularly when, as here, the driver pulls away in the midst of the stop.”).

¹⁵ *Id.* at 4 (Kavanaugh, J., concurring) (“[T]he very ‘fact that a suspect flees when suspected of a minor offense’ ... ‘could well be indicative of a larger danger.’”).

explained that if a driver suddenly speeds off during a traffic stop, the officer is left with no safe choice. Every option carries risks to the public, forcing the officer to make a split-second, high-stakes decision under intense pressure.¹⁶ The concurrence urged lower courts to remain attentive to the real-world risks officers face when reviewing excessive force claims under the totality of the circumstances.

This decision represents a significant step in clarifying the framework for evaluating police use of deadly force. By rejecting the “moment of threat” doctrine, the Court has unified federal doctrine regarding excessive force claims and ensured that courts across the country will apply a consistent standard. In doing so, the Court reaffirmed the balance required under the Fourth Amendment: protecting individual constitutional rights while recognizing the practical realities of effective law enforcement.

¹⁶ *Id.* at 6 (Kavanaugh, J., concurring) (“The point here is that when a driver abruptly pulls away during a traffic stop, an officer has no particularly good or safe options. None of the options available to the officer avoids danger to the community, and all of them require life-or-death decisions that must be made in a few seconds in highly stressful and unpredictable circumstances.”).

Case Summary: *Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos*, No. 23-1141 (U.S. June 5, 2025)

Written by Asheton Holden

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In a recent ruling, the United States Supreme Court addressed the extent to which a weapons' manufacturer or retailer can be held liable for consumers' misuse of their product. The Supreme Court overturned the First Circuit's decision which allowed a lawsuit against a firearms manufacturer to move forward despite the broad immunity granted by the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA provides protections for companies in the event of later weapon misuse "by third parties, including criminals."¹

In August of 2021, the federal government of Mexico filed an initial lawsuit against Smith & Wesson Brands, Inc., and seven other U.S.-based firearm manufacturers, alleging that these companies had aided and abetted criminal activity through the sale of weapons to Mexican drug cartels, thus facilitating violence in their country. Mexico was seeking redress for the "severe gun violence" within its borders that it believed originated in the United States due to the fact

¹ *Smith & Wesson Brand, Inc., et al. v. Estados Unidos Mexicanos*, No. 23-1141, slip op. at 1 (U.S. June 5, 2025) ("According to the Mexican Government, as many as 90% of the guns recovered at crime scenes in Mexico originated in the United States.").

that ninety percent of firearms recovered at crime scenes in Mexico had been manufactured and sold by American companies.² Because Mexico’s level of firearms production does not have the capacity to satisfy consumer demand, firearms are often smuggled illegally over the border from the U.S. where they are more accessible.³ Thus, the question arose as to whether U.S. manufacturers and retailers could be held liable, under the doctrine of proximate causation, for domestically produced and distributed firearms that are ultimately trafficked to Mexican drug cartels.⁴ In 2022, the United States District Court for the District of Massachusetts dismissed the case under the PLCAA.⁵ Mexico appealed to the U.S. Court of Appeals for the First Circuit, which then overturned the District Court’s ruling, allowing the suit to proceed.

The PLCAA bars any civil liability action from being heard in any federal or state court⁶ and explicitly defines the term to encompass any “civil action or proceeding” against any firearm manufacturer or retailer originating from “the criminal or unlawful misuse” of a product by “a third party.”⁷ The argument against

² *Id.* at 1.

³ *Id.* at 1 (“The country has only a single gun store, and issues fewer than 50 gun permits each year. But gun traffickers can purchase firearms in the United States—often in illegal transactions—and deliver them to drug cartels in Mexico.”).

⁴ *Id.* at 7 (“Because Mexico relies exclusively on an aiding-and-abetting theory, [Mexico must plausibly allege] that the manufacturers have aided and abetted gun dealers’ firearms offenses (such as sales to straw purchasers), so as to *proximately cause* harm to Mexico.”) (emphasis added).

⁵ *Id.* at 1 (“The Protection of Lawful Commerce in Arms Act (PLCAA) bars certain lawsuits against manufacturers and sellers of firearms.”).

⁶ *Id.* at 1 (citing 15 U. S. C. §7902(a)) (“...qualified civil liability action . . . may not be brought in any Federal or State court.”).

⁷ *Id.* at 1 (citing §7903(5)(A)) (“...defines that term to include a “civil action or proceeding” against a firearms manufacturer or seller stemming from “the criminal or unlawful misuse” of a firearm by “a third party...”).

Smith & Wesson, et al. relied upon the “predicate exception,” for which conditions and immunities are specifically outlined by the PLCAA.⁸ The predicate exception allows civil suits to be brought against gun manufacturers and intermediaries on the grounds that they “knowingly violated a State or Federal statute applicable to the sale or marketing” of firearms, and that the “violation was a proximate cause of the harm for which relief is sought.”⁹ Essentially, Mexico argued that these companies violated gun sale laws by intentionally selling dangerous weapons without exercising “reasonable care” as required by both federal and state sales regulations.¹⁰ These brands were accused of several violations of these regulations including “supply[ing] firearms to retail dealers whom they know illegally sell to Mexican gun traffickers,” “fail[ing] to impose the kind of controls on their distribution networks that would prevent illegal sales to Mexican traffickers,” and “mak[ing] ‘design and marketing decisions’ intended to stimulate cartel members’ demand for their products.”¹¹

In June of 2025, the U.S. Supreme Court overturned the First Circuit’s ruling

⁸ *Id.* at 1 (“PLCAA itself lists as examples two ways in which aiding and abetting qualifies—when a gun manufacturer (or seller) aids and abets another person in making a false statement about a gun sale’s legality or in making specified criminal sales.”).

⁹ *Id.* at 1 (citing §7903(5)(A)(iii)) (“That exception applies to lawsuits in which the defendant manufacturer or seller ‘knowingly violated a State or Federal statute applicable to the sale or marketing’ of firearms, and the ‘violation was a proximate cause of the harm for which relief is sought.’”).

¹⁰ *Id.* at 1 (“The basic theory is that the defendants failed to exercise “reasonable care” to prevent trafficking of their guns into Mexico, and so are responsible for the harms arising there from the weapons’ misuse.”).

¹¹ *Id.* at 1 (“The manufacturers allegedly (1) supply firearms to retail dealers whom they know illegally sell to Mexican gun traffickers; (2) have failed to impose the kind of controls on their distribution networks that would prevent illegal sales to Mexican traffickers; and (3) make ‘design and marketing decisions’ intended to stimulate cartel members’ demand for their products.”).

and barred the suit from continuing under the PLCAA, stating that these companies had not knowingly sold their products for the purpose of facilitating crime or violence.¹² Justice Kagan delivered the Court’s opinion, holding that the complaint from Mexico did not sufficiently clear the bar on civil proceedings set by the PLCAA because no specific illegal transactions had been discovered or proved. All accusations were alleged and based only on the fact that the violent individuals were in possession of a firearm of a particular brand. In response to several alleged regulatory violations, the Court elaborated on why each was not sufficiently supported. The design of the firearm being characteristically militaristic can be appealing to a wide range of demographics, not only those participating in illegal activities. Additionally, an “indifference” towards routine trafficking violators is not a proper claim,¹³ as indifference is different from assistance.

Justice Thomas and Justice Jackson both provided concurring opinions. Justice Thomas wrote separately to identify the condition under the predicate exception—that a defendant’s explicit violation must be proven to fall outside of the PLCAA’s immunity—which Mexico did not establish.¹⁴ Thus, the plaintiff’s argument was not sound. Justice Thomas also argued that future cases should explore the meaning of “violation” and its relation to the PLCAA’s regulations

¹² *Id.* at 1 (“To aid and abet a crime, a person must take an affirmative act in furtherance of the offense and intend to facilitate its commission...”).

¹³ *Id.* at 1 (“Mexico focuses on production of “military style” assault weapons, but these products are widely legal and purchased by ordinary consumers...Mexico’s plausible allegations are of “indifferen[ce],” rather than assistance.”).

¹⁴ *Id.* at 1 (“I agree. I write separately to note that the Court’s opinion does not resolve what a plaintiff must show to establish that the defendant committed a “violation.”).

regarding findings of guilt or liability, in addition to allegations.¹⁵

Justice Jackson elaborated on his agreement through the fact that Mexico failed to identify specific breaches of gun sale law by any one company and included only nonconclusory evidence for the violation claims. Only “downstream violations” were committed, removing the defendants from liability at that stage of the transaction and placing the responsibility on the individual.¹⁶

The future of the gun control debate will be significantly affected by the Supreme Court’s ruling in *Smith & Wesson, Brands, Inc. et al v. Estados Unidos Mexicanos*. The provisions of the PLCAA grant manufacturers and retailers immunity that cannot be breached by civil litigation without significant evidence of a “knowing violation.” This decision may implicate additional questions, including whether it is within the federal government’s power to regulate gun sales in a manner that makes it difficult for them to be legally obtained. Courts have held that companies generally cannot be held liable for violence carried out by third parties using their products. Therefore, this decision is applicable to future cases involving specific third-party violations and the liability associated with the originating producer, raising questions regarding sales regulations and due diligence on reasonable care.

¹⁵ *Id.* at 1 (Thomas, J., concurring) (“In future cases, courts should more fully examine the meaning of ‘violation’ under the PLCAA. It seems to me that the PLCAA at least arguably requires not only a plausible *allegation* that a defendant has committed a predicate violation, but also an earlier *finding* of guilt or liability in an adjudication regarding the violation.”) (emphasis in original).

¹⁶ *Id.* at 1 (“I agree. I write separately to explain that, in my view, the complaint’s core flaw is its failure to allege any nonconclusory statutory violations in the first place.”).

**Case Summary: *Medical Marijuana, Inc., et al. v. Horn*, No. 23-365 (U.S.
Apr. 2, 2025)**

Written by Elizabeth Atchley

Edited by Madeline Leonard & Maclain Conlin

*(The views expressed are those of the author and do not necessarily represent the
position of the Clemson Law Review or its leadership.)*

After a truck driving accident in 2012 left him in chronic pain, Douglas Horn sought out a CBD product manufactured by Medical Marijuana, Inc. called “Dixie X,” a non-psychoactive drug explicitly stated to be free of THC.¹ Later on, Horn was subject to an employee drug test at his place of work which came back positive for THC, leading to his termination from the company after he “refused to participate in a substance abuse program.”² After being fired, Horn sued Medical Marijuana, Inc. in the Federal District Court for the Western District of New York (WDNY) for violating the Racketeer Influenced and Corrupt Organizations Act (RICO), which establishes a cause of action to “any person injured in his business or property” due to a criminal RICO violation.³

When initially brought forth, the District Court issued a summary judgement

¹ *Medical Marijuana, Inc., v. Horn* No. 23-365 slip op. at 1 (U.S. April 2, 2025) (“In 2012, Douglas Horn was working as a commercial truck driver when he crashed his truck and injured his back and shoulder. Months later, he was still suffering from chronic pain, and neither physical therapy nor traditional medicine provided relief. While searching for a natural alternative, Horn came across “Dixie X,” a tincture infused with cannabidiol—more commonly known as CBD—sold by Medical Marijuana, Inc.”).

² *Id.* at 2.

³ *Id.* at 1 (citing 18 U.S.C. §1964(c)) (“The Racketeer Influenced and Corrupt Organizations Act (RICO) creates a cause of action for [a]ny person injured in his business or property.”).

for Medical Marijuana, claiming that since any loss in this case was a result of Horn’s personal injury (ingesting THC), RICO was not violated and Medical Marijuana was not responsible.⁴ When appealed to the Second Circuit, the court reversed this ruling, asserting that because Horn was terminated from his job, he was considered to be “injured in his business.”⁵ This ruling by the Second Circuit was important considering the status-quo “antecedent-personal-injury bar,” which precludes relief from business injury in the instances it derives from personal injury.⁶

When this case came to the U.S. Supreme Court, Justice Barrett delivered the majority opinion, joined by Justices Sotomayor, Kagan, Gorsuch, and Jackson. Justice Barrett clarified that the central question of the case was not whether Horn sustained a “personal injury” or whether the term “business” encompasses “employment,” but simply “whether civil RICO bars recovery for all business or property harms that derive from a personal injury.”⁷ The Court upheld the Second Circuit’s ruling, arguing that “by implicitly denying a remedy for personal injuries,” RICO does not inherently deny “a remedy for business and property loss that derives from a personal injury.”⁸

⁴ *Id.* at 3.

⁵ *Id.* at 4 (citing 80 F. 4th 130 (2023)) (“Adopting the broad definition, the Second Circuit concluded that Horn had been ‘injured in his business’ when he lost his job.”)

⁶ *Medical Marijuana, Inc., v. Horn* No. 23-365 slip op. at 4 (U.S. April 2, 2025)

⁷ *Id.* at 4—5 (“First, we express no view on whether Horn suffered an antecedent personal injury when he consumed TH. . . . Second, we do not decide whether the Second Circuit correctly interpreted ‘business’ to encompass ‘employment’. . . . The only question we address is the one squarely before us: whether civil RICO bars recovery for all business or property harms that derive from a personal injury.”).

⁸ *Id.* at 1 (“We must decide whether the statute, by implicitly denying a remedy for personal injuries, also denies a remedy for business and property loss that derives from a personal injury. It does

A concurring opinion was filed by Justice Jackson, in which she reiterated Congress’s original intent for RICO: that it “shall be liberally construed to effectuate its remedial purposes.”⁹ Justice Jackson contended that this purpose aligned with “particular force” to the provision at hand and that the Court’s decision is consistent with this mission.

Dissenting opinions were filed by Justices Kavanaugh and Thomas.

Justice Thomas stated that he would dismiss the original writ of certiorari granted to the case. He claimed that there was a detrimental lack of information on whether a personal injury was committed in the first place, and whether the phrase “injured in his business and property” even applies.¹⁰

Justice Kavanaugh, joined by Justice Alito and Chief Justice Roberts, dissented, arguing that RICO expressly and restrictively outlines definitions of injury to differentiate between personal injuries and business or property injuries, thereby carefully indicating the conditions in which remedies are required.¹¹ According to Justice Kavanaugh, this case did not meet the necessary conditions. In his view, the Court’s ruling effectively allowed plaintiffs to “circumvent RICO’s

not.”).

⁹ *Id.* at 1 (Jackson, J., concurring) (“Congress has instructed that the Racketeer Influenced and Corrupt Organizations Act (RICO) ‘shall be liberally construed to effectuate its remedial purposes’. . . . That instruction applies with particular force to the remedial provision of RICO at issue in this case. . . .”).

¹⁰ *Id.* at 1 (Thomas, J., dissenting) (“The parties dispute an important threshold issue: whether the plaintiff here suffered a personal injury in the first place. And, they have inadequately briefed their views on the meaning of the key statutory phrase ‘injured in his business or property’. . . . Rather than opine on ancillary issues, I would dismiss the writ of certiorari as improvidently granted.”).

¹¹ *Id.* at 2—3 (Kavanaugh, J., dissenting) (“And it is not remotely plausible to conclude that Congress excluded personal-injury suits under RICO and then turned around and somehow still implicitly authorized most personal-injury suits under RICO.”).

categorical exclusion of personal-injury suits simply by alleging that a personal injury resulted in losses of business or property, thereby converting otherwise excluded personal-injury suits into business- or property-injury suits.”¹²

The Supreme Court’s decision in *Medical Marijuana, Inc. v. Horn* increases the level of accountability expected from corporations under RICO by permitting individuals to seek damages for business or property losses that derive from personal injuries. However, in the wake of this decision there are some concerns regarding RICO’s broadened role. For example, Medical Marijuana warned that this ruling implies the “evisceration” of the RICO “business or property” limitation.¹³ However, the Second Circuit and Supreme Court both recognized the evolving nature of RICO and its role in upholding ethical standards for business. This dynamic interpretation of RICO is just one example of how the legal field must adapt to changing definitions of injury, enterprise, and accountability.

¹² *Id.* at 2.

¹³ *Id.* at 4 (“Medical Marijuana warns that the Second Circuit’s rule will eviscerate RICO’s ‘business or property’ limitation, allowing plaintiffs to transform personal-injury claims into RICO suits for treble damages.”).

Case Summary: *Trump, President of the United States, et al. v. CASA, Inc. et al.*, Nos. 204A884, 204A885 & 204A886 (U.S. June 27, 2025)

Written by Aidan Kelly

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

On January 20th, President Donald J. Trump issued Executive Order 14160, seeking to limit the scope of birthright citizenship for children born in the U.S. to noncitizen parents.¹ The order directed federal agencies to restrict the recognition of birthright citizenship for children born to a mother “unlawfully present” in the United States or a father who was not a citizen or permanent resident at the time of the child’s birth.² In response to the executive order, the immigration advocacy group CASA Inc., joined by the Asylum Seeker Advocacy Project (ASAP) and five pregnant mothers, filed suit against President Trump, arguing that the order violated the Fourteenth Amendment’s Citizenship Clause, section 201 of the Nationality Act of 1940, and exceeded the powers granted to the executive branch under the Constitution.³

¹ *Trump v. CASA, Inc.*, Nos. 24884, 24885, & 24886, slip op. at 1 (U.S. June 27, 2025).

² *Id.* at 1 (quoting Exec. Order No. 14,160 § 2(a)(1)–(2), 90 Fed. Reg. 8449 (Jan. 20, 2025)) (“Specifically, it sets forth the ‘policy of the United States’ to no longer issue or accept documentation of citizenship in two scenarios: ‘(1) when [a] person’s father was not a United States citizen or lawful permanent resident . . . or (2) when [a] person’s mother’s presence in the United States was lawful but temporary, and the person’s father was not a United States citizen or lawful permanent resident at the time of said person’s birth.’”).

³ *Id.* at 3 (“The plaintiffs filed suit, alleging that the Executive Order violates the Fourteenth Amendment’s Citizenship Clause, §1, as well as §201 of the Nationality Act of 1940. . . .”).

District courts in Washington and New Jersey, among others, issued universal preliminary injunctions blocking the enforcement of the order against anyone. The Government filed three applications for partial stays, asking that the injunctions be limited to the parties. The Court of Appeals, in turn, denied the federal government’s request to stay relief.⁴ After another appeal, the Supreme Court granted certiorari to decide whether federal courts have the authority to issue universal injunctions under the Judiciary Act of 1789.⁵

The Court ruled in a 6—3 decision delivered by Justice Barrett that federal courts lack the authority to issue universal injunctions. Looking to traditional equity practice, she determined that equitable remedies must be limited to the parties before the court.⁶ Consequently, federal courts have the power to remedy specific injuries but do not have the authority to supervise nationwide policy.

Justice Alito concurred, warning that federal courts must also rigorously enforce “the requirements for third-party standing and class certification” to prevent the “creat[ion] [of] a potentially significant loophole to [the Court’s] decision.”⁷

⁴ *Id.* at 3 (“In each case, the District Court concluded that the Executive Order is likely unlawful and entered a universal preliminary injunction barring various executive officials from applying the policy to *anyone* in the country. And in each case, the Court of Appeals denied the Government’s request to stay the sweeping relief.”) (emphasis in original).

⁵ *Id.* at 4 (“The issue before us is one of remedy: whether, under the Judiciary Act of 1789, federal courts have equitable authority to issue universal injunctions.”).

⁶ *Id.* at 11 (“Because the universal injunction lacks a historical pedigree, it falls outside the bounds of federal court’s equitable authority under the Judiciary Act.”).

⁷ *Id.* at 4 (Alito, J., concurring) (“Lax enforcement of the requirements for third-party standing and class certification would create a potentially significant loophole to today’s decision.”).

In a separate concurrence, Justice Thomas agreed that universal injunctions have no precedent set in the Judiciary Act of 1789. He further argued that the “complete relief” principle is a limit that does not permit equitable remedies which extend beyond the plaintiff’s individual injury.⁸ Both Justice Thomas and Justice Alito cautioned lower courts to follow the limits of equity and not overstep with broad injunctions.

Justice Kavanaugh agreed with the Court’s decision, emphasizing that district courts may only grant plaintiff-specific relief and laying out the role of the Supreme Court in determining the interim legal status of major federal policies, ensuring national uniformity in law.⁹

In dissent, Justice Sotomayor, argued that the executive order was “patently” unconstitutional and that the Court’s opinion improperly treated equity as a rigid system instead of one that can adapt to new circumstances.¹⁰

Justice Jackson wrote a separate dissenting opinion, emphasizing the danger that the ruling has on the American legal system. Notably, she claimed that the Court’s decision authorized a selective obedience to the Constitution, leaving

⁸ *Id.* at 3 (Thomas, J., concurring) (“[T]hey must ensure that any injunctions comport with both the complete-relief principle and other ‘principles of equity.’”).

⁹ *Id.* at 9 (Kavanaugh, J., concurring) (“One of this Court’s roles, in justiciable cases, is to resolve major legal questions of national importance and ensure uniformity of federal law. So a default policy of off-loading to lower courts the final word on whether to green-light or block major new federal statutes and executive actions for the several-year interim until a final ruling on the merits would seem to amount to an abdication of this Court’s proper role.”).

¹⁰ *Id.* at 31 (Sotomayor, J., dissenting) (“Such a result demonstrates the folly of treating equity as a closed system, rather than one designed to adapt to new circumstances.”).

executive power unchecked in this realm.¹¹ In her majority opinion, Justice Barrett responded to this objection by pointing out that federal courts are also obligated to follow the law, including the limitations of the Judiciary Act of 1789.¹²

The ruling that the Supreme Court set down in *Trump v. CASA, Inc.* will have a significant effect on lower courts' powers. In setting down a decision against universal injunctions, the Court is effectively barring district judges from halting nationwide federal policy, except for individual parties. Justice Kavanaugh's dicta notes that the Supreme Court is cementing itself as an emergency docket for enforcing uniformity of law. For lawyers seeking injunctive relief that extends to non—parties, they must now seek to fulfill the rigorous standards of Rule 23, or appeal to the Supreme Court for national review.

¹¹ *Id.* at 19 (Jackson, J., dissenting) (“What [good], really, is this system for protecting people’s rights if it amounts to this—placing the onus on the victims to invoke the law’s protection, and rendering the very institution that has the singular function of ensuring compliance with the Constitution powerless to prevent the government from violating it?”).

¹² *Id.* at 23 (“No one disputes that the Executive has a duty to follow the law. But the Judiciary does not have unbridled authority to enforce this obligation—in fact, sometimes the law prohibits the Judiciary from doing so. . . . Observing the limits on judicial authority—including, as relevant here, the boundaries of the Judiciary Act of 1789—is required by a judge’s oath to follow the law.”).

Case Summary: *Noem v. Perdomo*, No. 25A169 (U.S. Sept. 8, 2025)

Written by Kaitlyn Lisjak

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In early June 2025, the Department of Homeland Security implemented “Operation at Large” in the Central District of California. Federal immigration officers conducted enforcement operations throughout the District in search of removable noncitizens working and residing in the area. Five individuals and three labor and community associations “filed [a] putative class action against Secretary of Homeland Security Kristi Noem and other senior federal immigration enforcement officials.”¹ The plaintiffs argued that senior federal officials directed a pattern of seizures without individual reasonable suspicion, relying instead on four enumerated factors: “apparent race or ethnicity, speaking Spanish or speaking English with an accent, presence at a particular location, and the type of work one does.”² They further claimed “that these four factors, even when taken together, cannot support reasonable suspicion of unlawful activity absent more specific information about the person being stopped or the location being searched.”³

A federal district court judge in the Central District of California issued a

¹ *Noem v. Perdomo*, No. 25A169, slip op. at 4 (Sotomayor, J., dissenting) (U.S. Sept. 8, 2025).

² *Id.* at 4–5.

³ *Id.* at 5.

Temporary Restraining Order (TRO) “enjoin[ing] U.S. immigration officers from making investigative stops in the Los Angeles area when the stops are based on” the four factors mentioned above “or [a] combination of [these] factors.”⁴ On appeal for a stay, the Ninth Circuit upheld the TRO but narrowed it slightly due to vague language in the District Court's opinion.⁵ In response, through Secretary of Homeland Security Kristi Noem, the government filed an emergency application to the Supreme Court of the United States to stay the order of the District Court upheld by the Ninth Circuit.

The Supreme Court granted the government's request for a stay of the TRO. This decision was made on the Supreme Court's emergency docket, and a majority opinion was not provided. However, Justice Kavanaugh's offered a comprehensive concurring opinion, and his opinion will be used in this case summary to explain the decision of the Court. In Justice Kavanaugh's view, the plaintiffs lacked Article III standing because past unlawful stops do not prove an imminent threat of future unlawful stops.⁶ Justice Kavanaugh argued that the respondents had no basis for alleging that immigration officers “will unlawfully stop *them* in the future based on the prohibited factors. . .”⁷

⁴ *Noem v. Perdomo*, No. 25A169, slip op. at 2 (Kavanaugh, J., concurring) (U.S. Sept. 8, 2025).

⁵ *Id.* at 7 & n. 5 (Sotomayor, J., dissenting) (“The Ninth Circuit granted a stay only as to the phrase, ‘except as permitted by law,’ which it found to be impermissibly vague.”).

⁶ *Id.* at 4 (Kavanaugh, J., concurring) (“[U]nder this Court's decision in *Los Angeles v. Lyons*, 461 U. S. 95 (1983), plaintiffs likely lack Article III standing to seek a broad injunction restricting immigration officers from making these investigative stops. In *Lyons*, the Court held that standing to obtain future injunctive relief does not exist merely because plaintiffs experienced past harm and fear its recurrence.”).

⁷ *Id.* at 4 (emphasis in original).

Furthermore, Justice Kavanaugh contended that “the Government ha[d] a fair prospect of succeeding on the Fourth Amendment issue.”⁸ In his view, imposing categorical rules artificially limits inferences of reasonable suspicion, and the order wrongly held that the four factors, both individually and in combination, can never amount to reasonable suspicion.⁹

Moreover, Justice Kavanaugh also argued that the order of the District Court inflicted irreparable harm on the government and public by thwarting the enforcement of immigration laws in a critically important region.¹⁰ Thus, the balance of the equities weighed in the government’s favor, and a stay was warranted.

Justice Sotomayor wrote a dissenting opinion, joined by Justices Kagan and Jackson. She argued that the request for a stay was a “grave misuse of [the] emergency docket.”¹¹ Citing *Reid v Georgia*, she claimed that “a set of facts cannot constitute reasonable suspicion if it ‘describes a very large category of presumably innocent people.’”¹² Accordingly, in Justice Sotomayor’s view, the Fourth Amendment prohibits detaining individuals based on a set of facts that describe a

⁸ *Id.* at 5.

⁹ *Id.* at 6 (“Under this Court’s precedents, not to mention common sense, those circumstances taken together can constitute at least reasonable suspicion of illegal presence in the United States. Importantly, reasonable suspicion means only that immigration officers may briefly stop the individual and inquire about immigration status. If the person is a U. S. citizen or otherwise lawfully in the United States, that individual will be free to go after the brief encounter. Only if the person is illegally in the United States may the stop lead to further immigration proceedings.”).

¹⁰ *Id.* at 8 (“In any event, the balance of harms and equities in this case tips in favor of the Government. The interests of individuals who are illegally in the country in avoiding being stopped by law enforcement for questioning is ultimately an interest in evading the law. That is not an especially weighty legal interest.”).

¹¹ *Id.* at 2 (Sotomayor, J., dissenting).

¹² *Id.* at 9 (citing *Reid v. Georgia*, 448 U. S. 438, 441 (1980) (per curiam)).

significant percentage of the population in the Central District of California. She cited the District Court’s opinion, which stated that the four enumerated factors are “no more indicative of illegal presence in the country than of legal presence.”¹³ Justice Sotomayor also referenced *United States v. Cortez*, which held that officers “must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.”¹⁴

As the influx of noncitizens has exponentially increased in recent years, and the political debate surrounding this issue becomes more polarized, *Noem v Perdomo* may become a crucial precedent in future immigration cases. Courts might look to the four factors offered by the government in *Noem* determine what qualifies as reasonable suspicion. The Court’s decision to stay the TRO will make it less difficult for the federal government to detain individuals that it suspects of violating immigration law, but this may in turn increase the possibility of error in immigration enforcement. While the outcome of this case eases the duties of government officials, many important constitutional questions in the immigration field remain unresolved.

¹³ *Id.* at 10.

¹⁴ *Id.* at 10 (citing *United States v. Cortez*, 449 U. S. 411, 417–418 (1981)).

Case Summary: *Bartz v. Anthropic PBC*, No. 24-05417 (June 23, 2025)

Written by Ava Nesci

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

As a new, novel, and rapidly developing technology, artificial intelligence (AI) has recently come to the center of many legal debates, raising complex questions that the legal field is only just beginning to address. Copyright law has been at the heart of many of these early cases, and the District Court of Northern California's recent order in *Bartz v. Anthropic PBC* on fair use in accordance with section 107 of the Copyright Act¹ has laid a foundational brick for building upon this area of law. In *Bartz v. Anthropic PBC*, the court considered how copyright infringement and fair use doctrines apply when research companies use copyrighted works to train AI systems. In the case, plaintiffs and authors Andrea Bartz, Charles Graeber, and Kirk Wallace Johnson filed suit against Anthropic PBC for copyright infringement after discovering that the company had used both purchased and pirated copies of their books to train large language models (LLMs) to create an interactive AI named Claude and to create a central library as a general-purpose resource.² The dispute thus focused on the use of the author's materials as inputs to train the

¹ 17 U.S. Code § 107.

² *Barts v. Anthropic PBC*, No. 24-05417, slip op. at 2 (N.D. Cal. Jun. 23, 2025).

LLM, not the outputs produced by Claude.³ The court’s analysis of the use of purchased materials to train AI is significant in determining how the courts will analyze similar cases going forward.

Under the Copyright Act, the reproduction of a copyrighted work for the purposes of issuing “criticism, comment[ary], news reporting, teaching, . . . scholarship, or research” is considered a fair use, and “is not an infringement of copyright.”⁴ The Copyright Act is rooted in Article 1, Section 8 of the Constitution, which states that “Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”⁵ Thus, in order to determine whether or not the use of a copyrighted material is fair, the court applied the four part analysis required by the Copyright Act, which requires the following: First, the court must consider the purpose and character of the use. Secondly and thirdly, the court must determine the nature of the copyrighted work and the amount of the copyrighted material used. Finally, the effect of the use on the value of the copyrighted work must be taken into consideration.⁶ Moreover, when a copyrighted work is used in multiple ways, the court must analyze each infringing use separately.

³ *Id.* at 12.

⁴ 17 U.S. Code § 107.

⁵ U.S. Const. Art. I § VIII.

⁶ 17 U.S. Code § 107(1)–(4). The four part analysis considers: “(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.” *Id.*

The Supreme Court in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith* established that when a copyrighted material is used in multiple ways, each use must be analyzed separately.⁷ In accordance with the precedent from *Warhol*,⁸ the district court found and analyzed three uses: training the LLM,⁹ converting purchased copies of the author’s books from print to digital to create a central library as a permanent, general-purpose resource,¹⁰ and downloading pirated copies of the author’s books to contribute to the general-purpose library.¹¹ Anthropic was not entitled to use pirated copies of the authors books, and thus the court’s analysis focused primarily on the first two uses.

The first factor of the analysis considers the purpose and character of the use, which requires the court to look at whether or not the use is transformative. To be transformative, the user must apply some degree of creativity to produce something different from the copyrighted material. However, in *Feist Pubs, Inc. v. Rural Tel. Serv. Co.*, the Supreme Court acknowledged that the originality threshold is “extremely low,” requiring only “some minimal degree of creativity” to be considered

⁷ *Andy Warhol Foundation for Visual Arts, Inc v. Goldsmith*, No. 21–869, slip op. at 20 (U.S. May 18, 2023) (“The fair use provision, and the first factor in particular, requires an analysis of the specific ‘use’ of a copyrighted work that is alleged to be ‘an infringement’. . . .The same copying may be fair when used for one purpose but not another.”) (cleaned up).

⁸ *Barts v. Anthropic PBC*, No. 24-05417, slip op. at 10 (N.D. Cal. Jun. 23, 2025) (“These factors presuppose a “use.” So, at the threshold, a court must decide whether a “copyrighted [work] has been used in multiple ways,” then evaluate each.” *Warhol*, 598 U.S. at 533).

⁹ *Id.* at 11 (“Anthropic used copies of Authors’ copyrighted works to iteratively map statistical relationships between every text-fragment and every sequence of text-fragments so that a completed LLM could receive new text inputs and return new text outputs as if it were a human reading prompts and writing responses.”).

¹⁰ *Id.* at 14 (“[Anthropic] retained all the copies in its central library for other uses that might arise even after deciding it would not use them to train any LLM (at all or ever again).”).

¹¹ *Id.* at 18. (“Anthropic downloaded over seven million pirated copies of books, paid nothing, and kept these pirated copies in its library even after deciding it would not use them to train its AI (at all or ever again).”).

transformative.¹² In *Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc.*, a federal district court judge in Delaware refused to recognize fair use due to a lack of transformation because the AI simply reiterated relevant information from the copyrighted source when prompted as opposed to writing new content itself.¹³

In contrast, Anthropic’s use of the material for training purposes was transformative. Anthropic used copies of the authors’ copyrighted works to iteratively map statistical relationships between text-fragments, so that the LLM, Claude, could receive text inputs and respond as if it were a human.¹⁴ Moreover, the court in the Anthropic case equated fair use by humans to that of AI, reasoning that “like any reader aspiring to be a writer, Anthropic’s LLMs trained upon works not to race ahead and replicate or supplant them—but to turn a hard corner and create something different.”¹⁵ The authors argued against this, claiming that “computers nonetheless should not be allowed to do what humans do,” but the court rejected this notion and applied the traditional fair use analysis. The court further supported this reasoning, citing three influential circuit court precedents—*Nichols v. Universal Pictures Corp.*, *Apple Comput., Inc v. Microsoft Corp.*, and *Swirsky v. Carey*—which held that copyright does not extend to protect methods of “operation, concepts, or principles.”¹⁶ The court also found that Anthropic’s conversion of the purchased materials from print to digital to keep in their library was

¹² *Feist Pubs, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

¹³ *Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence Inc.*, 765 F. Supp. 3d 382, 398 (D. Del. 2025).

¹⁴ *Barts v. Anthropic PBC*, No. 24-05417, slip op. at 11 (N.D. Cal. Jun. 23, 2025).

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 13 (cleaned up).

transformative enough to favor fair use under the first factor.¹⁷

Next, the court applied the second factor of the analysis, which looks at the nature of the copyrighted work. The court cited *Campbell v. Acuff-Rose Music, Inc.*, which recognized that “some works are closer to the core of intended copyright protection.”¹⁸ More protection is afforded to published works, than to unpublished ones, and more protection is afforded to works of fiction than works of fact. Since the authors books were published and chosen by Anthropic because of their expressive elements, the court determined that the second factor points against fair use.¹⁹

Then, the court applied the third analysis factor, considering the amount and substantiality of the copyrighted work which was used to determine whether this amount was reasonably necessary in light of Anthropic’s purposes.²⁰ In light of Anthropic’s requirement for a monumental amount of material to train its LLM, and the requirement that Anthropic needed only to prove that their use was reasonably necessary, and not strictly necessary, the court ruled in favor of fair use. The court also ruled in favor of fair use for the digital copying of purchased books to store in their library, since maintaining the totality of each work was necessary for Anthropic’s research purposes.²¹

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 24. (“This factor ‘calls for recognition that some works are closer to the core of intended copyright protection than others, with the consequence that fair use is more difficult to establish when the former works are copied.’ *Campbell v Acuff-Rose Music, Inc.*, 510 U.S. at 586 (1994).”).

¹⁹ *Id.* at 24.

²⁰ *Id.* at 25.

²¹ *Id.* at 26.

Finally, the fourth factor of the analysis considers the effect of the use on the value of the copyrighted materials. The court found that this factor was neutral for the conversion of purchased copies from print to digital, and ruled in favor of fair use for training purposes, specifically noting that “the copies used to train specific LLMs did not and will not displace demand for copies of Authors’ works, or not in the way that counts under the Copyright Act.”²² The court dismissed the authors concerns that this use may lead to an explosion of competing works, reasoning that it is no different than school children using their works to learn to write well and is thus not a use which copyright holders can restrict.²³

This decision provides insight into how courts going forward will handle copyright law as applied to AI. In determining fair use thus far, the courts have treated AI learning as equivalent to human learning, as shown by the court’s decision and rationale here to reject the author’s claim that a distinction ought to be made between humans and computers in to the application of copyright law; just as a human may learn from books and emulate a blend of their writing, computers may learn from and emulate the writing styles of various books.²⁴

In the still emerging area of artificial intelligence law, subjecting AI to the same laws and analysis humans are subject to under existing copyright law offers the most workable framework. However, the authors in this case highlight the key concern that humans and computers are not the same, and argue that they should

²² *Id.* at 28.

²³ *Id.*

²⁴ *Id.* at 13.

not be treated as such. The authors in the *Anthropic* case specifically challenged the use of their books as inputs to train an AI, and emphasized the great extent to which the LLMs memorized components of their work,²⁵ suggesting that this capacity significantly differentiates AI use from human use. Although the court dismissed this argument, it may become relevant in light of the original intention behind the Copyright Act if authors and creators continue to bring suits against the use of their work to train AI. As developers continue to utilize copyrighted materials to train and improve AI, and people become more reliant on it, authors and creators may become disincentivized to create.

In a current events conversation article from *The New York Times*, Ricardo Nagaoka compiled a number of testimonies from how students are using AI.²⁶ The responses included using AI to answer questions, generate ideas, provide sample introductions for essays to aid students in learning, and developing their writing. Another article by Paul McQuiston from *USC Today*, similarly, looks to how college students are using AI. McQuiston explains that some students are using AI to cultivate their writing skills and mentions a tool called ABE, which is designed to help students through promoting reflection and revision throughout the writing

²⁵ *Id.* at 11 (“Authors further argue — and this order takes for granted — that such training entailed ‘memoriz[ing]’ works by ‘compress[ing]’ copies of those works into the LLM. . . .The LLMs ‘memorize[d] A LOT, like A LOT’. . . .Regardless, the ‘purpose and character’ of using works to train LLMs was transformative — spectacularly so.”).

²⁶ Ricardo Nagaoka, *What Students Are Saying About Using A.I. for Schoolwork*, N.Y. Times, May 8, 2025, <https://www.nytimes.com/2025/05/08/learning/what-students-are-saying-about-using-ai-for-schoolwork.html>, accessed November 10, 2025.

process.²⁷ While helpful, this trend towards using AI to develop writing skills may degrade the value of the works which were used to train the AI, and despite the ruling in *Anthropic*, may elevate the importance of considering these additional factors under the fourth prong of the fair use analysis, which considers the effect of the use upon the potential market for or value of the copy.

²⁷ Paul McQuiston, *AI is Changing How Students Learn – Or Avoid Learning*, USC Today, Sept. 18, 2025, <https://today.usc.edu/ai-is-changing-how-students-learn-or-avoid-learning/>, accessed November 11, 2025.

Case Summary: *Mahmoud v. Taylor*, No. 24-297 (U.S. June 27, 2025)

Written by Dalea Gottschalk

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

Mahmoud v. Taylor is a case regarding LGBTQ books in the classroom that was brought before the Supreme Court of the United States by way of appeal after being heard by the United States District Court for the District of Maryland and the Fourth Circuit Court of Appeals. In 2022, the Montgomery County Board of Education introduced “LGBTQ+-inclusive” books into the kindergarten-5th grade curriculum that highlighted topics of sexuality and gender.¹ Initially, the board informed parents beforehand when these texts were going to be used in schools so they could opt-out their child from the lesson that day if they chose. This was consistent with the board's “Guidelines for Respecting Religious Diversity,” which stipulated that the board would make “reasonable accommodations” for the beliefs of students.² However, the board stopped notifying parents when the books would be used after less than a year of the texts being used in classes.³ The school board

¹ *Mahmoud v. Taylor*, No. 24-297, slip op. at 1 (U.S. June 27, 2025) (“The Board of Education of Montgomery County, Maryland (Board), has introduced a variety of ‘LGBTQ+- inclusive’ storybooks into the elementary school curriculum.”).

² *Id.* at 3 (“[T]he Board’s ‘Guidelines for Respecting Religious Diversity’ profess a commitment to making ‘reasonable accommodations’ for the religious ‘beliefs and practices’ of MCPS students.”).

³ *Id.* at 9 (“In March 2023, less than a year after the ‘LGBTQ+-inclusive’ texts were introduced, the Board issued a statement declaring that ‘[s]tudents and families may not choose to opt out of engaging’ with the storybooks and that ‘teachers will not send home letters to inform families when inclusive books are read in the future.’”).

claimed that this decision was made because there were too many students being opted-out of the lessons, so they could no longer accommodate the requests.⁴ The United States District Court for the District of Maryland ruled in favor of the school board and the Fourth Circuit Court of Appeals affirmed the decision of the district court, arguing “the record in this case is too ‘threadbare’ to demonstrate a burden on religious exercise.”⁵ A writ of certiorari was petitioned and granted and the case was then heard by the Supreme Court of the United States.

Parents of various religious backgrounds came together and first filed suit in the United States District Court for the District of Maryland. The plaintiffs argued that the use of “LGBTQ+-inclusive” texts without the option of an opt-out policy infringed on the right of parents to direct the religious upbringing of their children. Citing *Wisconsin v. Yoder*, which supports that parents have a right to bring up their children in the religion they choose, the parents argued that this right cannot be infringed upon by laws that threaten this.⁶ The parents sought out a preliminary and permanent injunction to prohibit students from being forced to use the texts as part of their education if parents object.⁷ The district court denied this injunction

⁴ *Id.* at 9 (“According to one MCPS official, the Board decided to change its policy because, among other things, ‘individual principals and teachers could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment.’”).

⁵ *Id.* at 31 (citing 102 F. 4th 191, 209 (2024)) (noting “the Fourth Circuit’s view that the record before us is too ‘threadbare’ to demonstrate a burden on religious exercise.”).

⁶ *Id.* at 14-15 (citing 406 U.S. 205 (1972)) (“In *Yoder*, we recognized that parents have a right ‘to direct the religious upbringing of their children,’ and that this right can be infringed by laws that pose ‘a very real threat of undermining’ the religious beliefs and practices that parents wish to instill in their children.”).

⁷ *Id.* at 14 (“They sought a preliminary and permanent injunction ‘prohibiting the School Board from forcing [their] children and other students—over the objection of their parents—to read, listen to, or discuss’ the storybooks.”).

and the circuit court affirmed. After these decisions by the lower courts, the case was then appealed to the United States Supreme Court.

The Supreme Court held that the parents were entitled to the preliminary injunction they had requested.⁸ They also held that the parents were likely to win their case that the lack of an opt-out policy for these texts infringed upon their right to practice their religion freely and bring their children up in the same religion.⁹ The Supreme Court agreed that books are influential enough to potentially impact the beliefs of children and that if the parents of these children do not agree with the pro-LGBTQ+ sentiments contained in these books, then they have the right to not expose their children to them.¹⁰ Again citing *Wisconsin v. Yoder*, the Supreme Court argued that forcing children to use texts that contradicted the religious beliefs that their parents wished to instill in them was “unacceptable” according to this precedent and “hostile” to their parents’ beliefs.¹¹

The Supreme Court further highlights that the Montgomery County Board of Education did not present any compelling evidence that their policy was not infringing upon the right of parents to exercise their religion.¹² Furthermore, the

⁸ *Id.* at 16 (“We now hold that the parents have shown that they are entitled to a preliminary injunction”).

⁹ *Id.* at 17 (citing *Espinoza v. Montana Dept. of Revenue*, 591 U. S. 464, 486 (2020) (quoting *Yoder*, 406 U. S., at 213–214 (1972))) (“[W]e hold that the parents are likely to succeed on their claim that the Board’s policies unconstitutionally burden their religious exercise. ‘[W]e have long recognized the rights of parents to direct ‘the religious upbringing’ of their children.’”).

¹⁰ *Id.* at 22 (“substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that *Yoder* found unacceptable...the books are unmistakably normative. They are clearly designed to present certain values and beliefs as things to be celebrated and certain contrary values and beliefs as things to be rejected.”).

¹¹ *Id.* at 21-22 (citing 406 U.S. 205 (1972)).

¹² *Id.* at 27 (“None of the counterarguments raised by the dissent, the Board, the courts below, or the Board’s amici give us any reason to doubt the existence of a burden here.”).

Supreme Court stressed that “public education is a public benefit” that cannot be withheld merely because parents decline to conform to a policy that challenges their religious beliefs, especially considering that education is compulsory in Maryland.¹³ Due to the focus on religious liberties in this case, the Supreme Court chose to apply the strict scrutiny test in making their decision, requiring that the school board’s policy serve a compelling public interest in order to be upheld.¹⁴ This policy did not pass strict scrutiny and the Supreme Court awarded the parents the preliminary injunction they sought out, claiming the injunction to be “both equitable and in the public interest.”¹⁵ Reversing the decision of the Fourth Circuit Court, the Supreme Court remanded the case for further proceedings.

Justice Thomas wrote a concurring opinion, agreeing that the school board’s no-opt-out policy infringes on the free exercise of the parents’ religious rights and does not pass constitutional scrutiny.¹⁶ Thomas argued that the lessons taught to children using these “LGBTQ+-inclusive” texts are not “critical to the students’ civic development” and therefore should not be required.¹⁷ He further reasoned that the

¹³ *Id.* at 33 (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. 449, 462 (2017)) (“Public education is a public benefit, and the government cannot ‘condition’ its ‘availability’ on parents’ willingness to accept a burden on their religious exercise. *Ibid.* Moreover, since education is compulsory in Maryland, see Md. Educ. Code Ann. §7–301(a– 1)(1), the parents are not being asked simply to forgo a public benefit. They have an obligation—enforceable by fine or imprisonment—to send their children to public school unless they find an adequate substitute. §§7–301(a)(3), (e).10. And many parents cannot afford such a substitute.”).

¹⁴ *Id.* at 36 (“[S]trict scrutiny is appropriate regardless of whether the law is neutral or generally applicable.”).

¹⁵ *Id.* at 41.

¹⁶ *Id.* at 1 (Thomas, J., concurring) (“The Court correctly holds that the policy contravenes the parents’ free exercise right to direct the religious upbringing of their children, see ante, at 17, and I join its opinion in full. I write separately to highlight additional reasons why the Board’s policy cannot survive constitutional scrutiny”).

¹⁷ *Id.* at 2 (Thomas, J., concurring).

state does not have a right to step into a parental role by deciding what children should and should not be exposed to in their education, but that this right should be reserved for the parents.¹⁸

Justice Sotomayor, joined by Justices Kagan and Jackson, dissented, pointing out that public schools are a symbol of democracy and should not be required to restrict what students are exposed to based on the religious beliefs of parents.¹⁹ Additionally, she argued that opt-out policies “impose impossible administrative burdens on schools” and lead to “costly litigation over opt-out rights,” reducing the resources available for students.²⁰ Sotomayor highlights how courts have historically not considered exposure to potentially controversial ideas as infringement on free exercise. Given that the schools do not encourage students to forgo any of their own religious principles, but instead introduce them to beliefs that others around them may hold, Sotomayor argued that the usage of these classroom texts was not an infringement on free exercise.²¹

Mahmoud v. Taylor is important to future legal proceedings because it establishes the precedent that parents may object to educational practices or

¹⁸ *Id.* at 6 (Thomas, J., concurring) (citing 406 U.S. 222-233 (1972)) (“[I]f a State were “empowered, as *parens patriae*, to ‘save’ a child’ from the supposed ‘ignorance’ of his religious upbringing, then ‘the State will in large measure influence, if not determine, the religious future of the child.’ . . . Such an arrangement would upend the ‘enduring American tradition’ of parents occupying the ‘primary role . . . in the upbringing of their children’—a role that includes the “inculcation of . . . religious beliefs.””).

¹⁹ *Id.* at 1 (Sotomayor, J., dissenting) (“Public schools, this Court has said, are ‘at once the symbol of our democracy and the most pervasive means for promoting our common destiny.’ . . . Yet it will become a mere memory if children must be insulated from exposure to ideas and concepts that may conflict with their parents’ religious beliefs”).

²⁰ *Id.* at 2 (Sotomayor, J., dissenting).

²¹ *Id.* at 10 (Sotomayor, J., dissenting) (“Consistent with these longstanding principles, this Court has made clear that mere exposure to objectionable ideas does not give rise to a free exercise claim”).

materials that conflict with their religious beliefs. This case has the possibility to implicate instructional methods and materials in schools around the country. Schools may be less inclined to use potentially controversial classroom materials for fear of legal action from parents. Additionally, this case could give parents more control over their child's curriculum, introducing a precedent that supports parents' right to object to instructional materials required by public schools that may violate their religious beliefs. This could potentially lead to similar cases in the future. These cases could include topics such as LGBTQ-inclusive class materials or expand to other topics that parents could see as challenging their religious beliefs.

**Case Summary: *Free Speech Coalition, Inc. v. Paxton*, No. 23-1122 (U.S.
June 27, 2025)**

Written by Hailey Herzog

Edited by Madeline Leonard & Maclain Conlin

*(The views expressed are those of the author and do not necessarily represent the
position of the Clemson Law Review or its leadership.)*

This past January, the Supreme Court ruled on *Free Speech Coalition, Inc. v. Paxton*, No. 23-1122 (U.S. June 27, 2025), a case concerning Texas H.B. 1181 (2023), which requires commercial websites containing content where “more than one-third is sexual material harmful to minors” to verify that visitors are 18 years or older.¹ Like many other states, Texas prohibits the distribution of sexually explicit materials to minors and imposes injunctions and other civil penalties on violators. In response to this law, representatives of the pornography industry sued the Attorney General of Texas.² The petitioners, namely Free Speech Coalition, Inc., a nonprofit trade association representing the adult entertainment industry, argued that adults have a right to access these materials and that enforcement of H.B. 1181 would infringe on their First Amendment-protected freedom of speech. The District Court granted a preliminary injunction to the petitioners, stating that Texas had failed to demonstrate that the law met the narrowly tailored or least

¹ *Free Speech Coalition, Inc. v. Paxton*, No. 23-1122, slip op. at 2 (U.S. Jan. 15, 2025).

² *Id.* at 4 (“Soon after Texas enacted H. B. 1181, a trade association for the pornography industry, a group of companies that operate pornographic websites, and a pornography performer sued the Texas attorney general.”).

restrictive means standard of the strict scrutiny test.³

In response to the injunction, the Texas Attorney General appealed the case to the Fifth Circuit to seek reversal of the District Court’s decision and ask that it uphold H.B. 1181. As a result, the Fifth Circuit, vacated the injunction, stating that H.B. 1181 was a permissible “regulatio[n] of the distribution to minors of materials obscene for minors.”⁴ According to the Court, H.B. 1181 incidentally implicates⁵ the privacy of the adults, meaning that the law’s main purpose is not to restrict adults access to the sites, but to protect minors from the content. Therefore, because the law has only an incidental effect of restricting the privacy of adults, it is held to a lower standard of review. Furthermore, the Fifth Circuit reasoned that because the First Amendment does not guarantee minors a right to access such materials, there is no implication of fundamental rights and H.B. 1181 is only subject to rational basis review.⁶ Petitioners “sought a stay of the Fifth Circuit’s judgment,”⁷ which the Court denied. The Court did however grant certiorari to determine whether H.B. 1181 “is likely constitutional on its face.”⁸

³ *Id.* at 4 (“The District Court acknowledged Texas’s compelling interest in preventing ‘a minor’s access to pornography.’ But, it found that Texas had failed to ‘show that H. B. 1181 is narrowly tailored and the least restrictive means of advancing that interest.’”) (cleaned up).

⁴ *Id.* at 5.

⁵ *Id.* at 5 (“The Fifth Circuit viewed H. B. 1181 as a ‘regulatio[n] of the distribution to minors of materials obscene for minors,’ which only incidentally implicates ‘the privacy of those adults’ seeking to access the regulated content.”).

⁶ *Id.* at 5 (“And, because minors have no First Amendment right to access such materials, the court held that the law was “subject only to rational basis review”—the exceedingly deferential standard applicable to laws that do not implicate fundamental rights.”).

⁷ *Id.* at 5 (“Petitioners sought a stay of the Fifth Circuit’s judgment, which this Court denied. We granted certiorari to determine whether H. B. 1181’s age verification requirement is likely constitutional on its face.”) (cleaned up).

⁸ *Id.* at 5.

The Court upheld H.B. 1181 as constitutional. Justice Thomas delivered the opinion of the Court, arguing that, “States have a specific interest in protecting children from sexually explicit speech.”⁹ The Court found common ground between the petitioners’ calls for strict scrutiny and Texas’s argument for rational basis review by declaring that H.B. 1181 had “only an incidental effect on protected speech,”¹⁰ making it subject to intermediate scrutiny. Justice Thomas contended that in passing intermediate scrutiny, H.B. 1181 “advances the State’s important interest in shielding children from sexually explicit content”¹¹ and is appropriately tailored using established age verification methods. Furthermore, Justice Thomas added that the courts have traditionally given states the power to impose various age verification requirements to prevent minors from accessing explicit content.¹² In such cases when power is reserved to the states, the state must exercise it through “the ordinary and appropriate means,”¹³ a standard which Texas’ age verification methods easily passed.

Justice Thomas recognized the importance of addressing minors’ growing access to obscene materials online.¹⁴ He wrote that while age verification requirements for children “may be effective against brick-and-mortar stores, it has

⁹ *Id.* at 8.

¹⁰ *Id.* at 13 (“To the extent that it burdens adults’ rights to access such speech, it has ‘only an incidental effect on protected speech,’ making it subject to intermediate scrutiny.”).

¹¹ *Id.* at 36.

¹² *Id.* at 13 (“The First Amendment leaves undisturbed States’ traditional power to prevent minors from accessing speech that is obscene from their perspective.”).

¹³ *Id.* at 14 (citing J. Story, *Commentaries on the Constitution of the United States* §430, pp. 412–413 (1833)).

¹⁴ *Id.* at 13 (“With the rise of the smartphone and instant streaming, many adolescents can now access vast libraries of video content—both benign and obscene—at almost any time and place, with an ease that would have been unimaginable at the time of Reno and Ashcroft II.”).

proved challenging to enforce against online content.”¹⁵ With access to online pornographic materials growing,¹⁶ this decision illustrates a potential transition in the Court’s approach from *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004), which stated that Congress’s Child Online Protection Act (COPA), prohibiting the posting of “content that is ‘harmful to minors’ online for ‘commercial purposes’,”¹⁷ did not pass strict scrutiny. This shows a shift in the Court towards accounting for the vast expanse of obscene content now readily available to minors online.¹⁸

Justice Kagan delivered the dissenting opinion of the Court, joined by Justices Sotomayor and Jackson. While Justice Kagan agreed that states have a compelling interest in protecting children from obscene speech, she added that in the act of protection, states can often harm and impede adults from accessing speech that is constitutionally protected.¹⁹ Justice Kagan contended that because H.B. 1181 has the likely possibility of impeding “adults from viewing a class of speech protected for them,”²⁰ the Court should apply strict scrutiny as used in similar cases such as *Reno v. American Civil Liberties Union*, 521 U. S. 844 (1997)

¹⁵ *Id.* at 1 (“Texas, like many States, prohibits the distribution of sexually explicit content to children. Tex. Penal Code Ann. §43.24(b) (West 2016). But, although that prohibition may be effective against brick-and-mortar stores, it has proved challenging to enforce against online content.”).

¹⁶ American Coll. of Pediatricians, *The Impact of Pornography on Children*, (May 2022), <https://acpeds.org/the-impact-of-pornography-on-children/>.

¹⁷ *Id.* at 24.

¹⁸ *Id.* at 12 (“For the past two decades, Ashcroft II has been our last word on the government’s power to protect children from sexually explicit content online.”).

¹⁹ *Id.* at 2 (Kagan, J., dissenting).

²⁰ *Id.* at 2 (“And laws like H. B. 1181 fit that description: They impede adults from viewing a class of speech protected for them (even though not for children) and defined by its content.”).

or *Ashcroft*.²¹ In Justice Kagan’s view, if Texas can design a law other than H.B. 1181 that prevents minors from accessing explicit content but “better protect adults’ First Amendment freedoms,” such as requiring content filtering technology, then Texas must adopt that policy instead.²²

As explicit materials have become increasingly abundant on the internet in recent years, so has minors’ access to these materials, especially as children are gaining access to the internet at increasingly younger ages. *Free Speech Coalition, Inc. v. Paxton* has set a precedent that may help states such as Florida²³ and Indiana²⁴ defend similar online age restriction laws. If, going forward, the Court applies intermediate scrutiny as it did in *Paxton*, then this case could establish a new wave of greater judicial flexibility regarding free speech and online obscenity cases.

²¹ *Id.* at 19 (“So as the Court took care to explain, the statute did “not impose a complete prohibition.” Rather, it effected only a “content-based burden[]”—as H. B. 1181 does. The same is true of the statutes in Reno and Ashcroft, and in a way even more similar to Texas’s law.”) (cleaned up).

²² *Id.* at 23.

²³ Fla. H.R. 3, 2024 Leg., Reg. Sess. (Fla. 2024), <https://www.flsenate.gov/Session/Bill/2024/3>.

²⁴ Ind. S. 17, 2024 Leg., Reg. Sess. (Ind. 2024), <https://iga.in.gov/legislative/2024/bills/senate/17/details>.

Case Summary: *Martin v. United States*, No. 24-362 (U.S. June 12, 2025)

Written by Zach Distel

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

On “October 18, 2017, the Federal Bureau of Investigation raided the wrong house in suburban Atlanta.”¹ While “[o]fficers meant to execute search and arrest warrants at a suspected gang hideout, 3741 Landau Lane, . . . they [instead] stormed a quiet family home, 3756 Denville Trace, occupied by Hilliard Toi Cliatt, his partner Curtrina Martin, and her 7-year-old son G. W.”² The petitioners’ front door was breached, a flash-bang grenade was detonated, Cliatt was assaulted and put into handcuffs, and Martin was held at gunpoint.³ The mistake was attributed to Special Agent Lawrence Guerra’s use of a personal GPS device, as well as the SWAT team’s failure to recognize the incorrect street sign and address of the home in which they raided.⁴ The Martin-Cliatt family was left with personal injuries, property damage and trauma at the hands of the federal employees.

¹ *Martin v. United States*, No. 24-362, slip op. at 1 (U.S. June 12, 2025).

² *Id.*

³ *Id.* at 2 (“A six-member SWAT team, led by FBI Special Agent Lawrence Guerra, breached the front door and detonated a flash-bang grenade. Fearing a home invasion, Mr. Cliatt and Ms. Martin hid in a bedroom closet. But the SWAT team soon found the couple’s hiding spot, dragged Mr. Cliatt from the closet, ‘threw [him] down on the floor,’ handcuffed him, and began ‘bombarding [him] with questions.’ Meanwhile, another officer trained his weapon on Ms. Martin, who was lying on the floor half-naked, having fallen inside the closet.”) (cleaned up).

⁴ *Id.* at 2 (“And it seems the agents neither noticed the street sign for ‘Denville Trace,’ nor the house number, which was visible on the mailbox at the end of the driveway.”).

As a result of the damages, the Martin-Clatt family filed a lawsuit against the United States under the Federal Tort Claims Act (FTCA). The FTCA allows individuals to sue for injuries or damage caused by the negligence of federal employees by waiving the federal government’s sovereign immunity from these cases. However, the FTCA also contains 13 statutory exceptions to the waiver of immunity, two of which are relevant to law enforcement misconduct. The first is the intentional-tort exception, which protects the government from liability for certain intentional misconduct acts committed by federal officers.⁵ The second is the discretionary-function exception, which prohibits claims against the government that are based on an official’s exercise of discretionary functions.⁶

Initially, the U.S. District Court for the Northern District of Georgia granted summary judgment for the federal government.⁷ Then, on appeal, the Eleventh Circuit affirmed the decision, applying a distinct approach to the discretionary-function exception.⁸ The Eleventh Circuit broadly interpreted the “law enforcement proviso,” which is housed within section §2680(h) of the United States Code and countermands the intentional-tort exception, allowing for suit when torts are committed by “investigative or law enforcement officers.”⁹ In their

⁵ *Id.* at 3 (“Located in subsection (h) of §2680, it prohibits claims alleging any of 11 enumerated torts.”).

⁶ *Id.* at 4 (“Housed in subsection (a) of §2680, this exception bars ‘any claim’ based on the exercise of an official’s ‘discretionary function.’”) (cleaned up).

⁷ *Id.* at 3 (“After discovery and motions practice, the district court rejected each of the plaintiffs’ claims and granted summary judgement to the government.”).

⁸ *Id.* at 3 (“The Eleventh Circuit affirmed and, in doing so, relied on an understanding of the FTCA that no other circuit has adopted.”).

⁹ *Id.* at 3 (“But the exception is itself subject to a ‘law enforcement proviso’. See *Millbrook v. United States*, 569 U.S. 50, 55 (2013). That proviso countermands the exception with respect to six intentional torts (including assault, battery, false imprisonment, and false arrest) against

interpretation, they held that this proviso overrides all exceptions in §2680, including the discretionary-function exception.¹⁰ In order to compensate for this expansive approach, they applied the Supremacy Clause to the discretionary-function exception, which provides the rule of decision when state and federal laws conflict, favoring federal law as the “supreme Law of the Land.”¹¹ The Eleventh Circuit held that the government has sovereign immunity in instances where the law enforcement officer’s actions maintain “some nexus with furthering federal policy and can reasonably be characterized as complying with the full range of federal law.”¹² Since Special Agent Guerra exercised discretion in preparing for the warrant execution, the petitioners’ negligence claims were dismissed by the Eleventh Circuit.¹³

The Supreme Court granted the Martin-Cliatt family’s petition for certiorari. In a unanimous decision, the Supreme Court remanded the case to the Eleventh Circuit. Justice Gorsuch delivered the opinion of the Court, first contrasting the Eleventh Circuit’s approach with other circuit courts on similar cases.¹⁴ At the

‘investigative or law enforcement officers.’”).

¹⁰ *Id.* at 5 (“The Eleventh Circuit does so because, in its view, the law enforcement proviso does not just override the intentional-tort exception, it overrides all the other exceptions in §2680, the discretionary-function exception included.”).

¹¹ *Id.* at 5 (“But in the Eleventh Circuit, the government may assert a particular affirmative defense under the Constitution’s Supremacy Clause. See *Denson v. United States*, 574 F. 3d 1318, 1347 (2009)”).

¹² *Id.* at 5.

¹³ *Id.* at 6 (“It dismissed the plaintiffs’ negligence claims under the discretionary-function exception because, in its view, Agent Guerra ‘enjoyed discretion in how he prepared for the warrant execution.’”).

¹⁴ *Id.* at 5 (“Rather than asking whether the discretionary-function exception bars either the plaintiff’s negligent-tort claims or his intentional-tort claims, as most courts do, the Eleventh Circuit applies that exception only to the plaintiff’s negligence claims”).

liability stage in FTCA cases, other courts assess whether a “private individual under like circumstances” would be liable under the state tort law where the government’s wrongful act occurred.¹⁵ By contrast, the Eleventh Circuit imposed the Supremacy Clause defense to evaluate whether the law enforcement officer’s acts furthered federal policy or complied with federal law. Thus, Justice Gorsuch outlined the Eleventh Circuit’s use of the Supremacy Clause, reiterating that the Constitution and federal laws take precedence when conflicted with state laws.¹⁶ However, the Court emphasized that the FTCA’s liability rule incorporates state law, and therefore the Supremacy Clause does not provide a government defense in FTCA cases.¹⁷ The Court ultimately determined that the Eleventh Circuit must consider under Georgia state law whether a “private individual under like circumstances” would be liable for the acts and omissions the plaintiffs alleged.¹⁸

Justice Sotomayor filed a concurring opinion, joined by Justice Jackson. The concurring opinion reasoned that the discretionary-function exception did not apply to this case. Justice Sotomayor acknowledged that federal employees possess an element of discretion, but argued that “the exception does not apply reflexively.”¹⁹

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 12. (“It provides that the ‘Constitution, and the Laws of the United States which shall be made in Pursuance thereof... shall be the supreme Law of the Land... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding’. Art. VI, cl. 2.”).

¹⁷ *Id.* at 12-13. (“Because the FTCA’s liability rule incorporates state law, in most cases there is no conflict for the Supremacy Clause to resolve.”).

¹⁸ *Id.* at 17. (“Should some or all of the plaintiffs’ claims survive the discretionary-function exception, the Eleventh Circuit must then ask whether, under Georgia state law, a ‘private individual under like circumstances’ would be liable for the acts and omissions the plaintiffs allege, subject to the defense discussed in §2674—not a Supremacy Clause defense nowhere mentioned there.”).

¹⁹ *Id.* at 2 (Sotomayor, J., concurring) (“Even where a federal employee retains an element of choice, however, the exception does not apply reflexively. After all, it is rare for statutes or regulations to prescribe an official’s required course of conduct down to the very last detail, so some degree of choice

She further elaborated that, “Like driving, executing a warrant always involves some measure of discretion.”²⁰ However, she noted that Special Agent Guerra’s use of his personal GPS, as well as his failure to check the street sign or house number of the home, did not involve the “kind of policy judgements that the discretionary-function exception was designed to protect,” but were instead instances of negligent uses of discretion.²¹

The Supreme Court’s decision in *Martin v. United States* narrows the scope of FTCA’s discretionary-function exception. The ruling of this case confirmed that the Supremacy Clause does not offer the federal government full protection in FTCA suits, as FTCA relies on applying state law to the federal government. Furthermore, the case ensured that the federal government must be assessed in the context of a private actor under state tort law, without the blanket defense of the Supremacy Clause. While the Supreme Court did not resolve all of the ambiguities of FTCA, this case clarified an issue that was long overdue for consideration. In the concurring opinion, Justice Sotomayor noted that it had been 34 years since the Supreme Court last weighed in on the discretionary-function exception of FTCA.²² The decision to remand this case reinforces that lower courts must adopt a more

will almost invariably remain.”).

²⁰ *Id.* at 4 (Sotomayor, J., concurring) (“Like driving, executing a warrant always involves some measure of discretion.”).

²¹ *Id.* (“Yet it is hard to see how Guerra’s conduct in this case, including his allegedly negligent choice to use his personal GPS and his failure to check the street sign or house number on the mailbox before breaking down Martin’s door and terrorizing the home’s occupants, involved the kind of policy judgements that the discretionary-function exception was designed to protect”).

²² *Id.* at 3 (“It has been 34 years since this Court last weighed in on the discretionary-function exception, and despite substantial percolation in the courts of appeals, the ‘exact boundaries of the exception remain unclear.’”) (cleaned up).

precise approach to the discretionary-function exception, without reliance on broader policy-based judgements.

Case Summary: *State v. Stoots*, No. 23–601 (S.C. Jan. 23, 2025)

Written by Anna Muma

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In *State v. Stoots*, Jason Edwin Stoots faced charges of domestic violence resulting from an altercation with his wife, Kimberly, in a Taco Bell drive-thru. Stoots testified that Kimberly “started throwing her arms” and “started hitting” him, to which he “grabbed both her arms” in what he described as a defensive “push and pull encounter.”¹ Stoots claimed that his response was accidental, asserting that he had no intent to harm his wife.² However, Kimberly stated, “Not once in that van did I touch him before he hit me.”³ Medical documentation revealed a significant amount of bleeding and facial bruising, requiring prompt medical treatment.⁴

During the charge conference, Stoots’ lawyer requested jury instructions on self-defense and accident as defenses, arguing that Stoots accidentally struck Kimberly while protecting himself. These instructions would have prompted the

¹ *State v. Stoots*, No. 23–601, slip op. at 2 (S.C. Jan. 23, 2025).

² *Id.* at 2. (“I was just holding her wrist and all that and it was going back and forth. It was accidental. . . . There was no intent whatsoever.”).

³ *Id.* at 2.

⁴ *Id.* at 2. (“Dr. Christopher Carey, the physician who treated Kimberly at the emergency room, testified that when Kimberly arrived, ‘she had swelling and bruising to the face. There was a cut to her inner lip, one of her upper teeth was displaced posteriorly, it was pushed back. And she had . . . a significant amount of bleeding from her tooth and from her inner mouth.’”).

jury to evaluate whether Stoots' defense was lawful and whether the actions harming his wife were intentional. The trial judge denied this request, reasoning that Stoots' physical contact was not an accident and that he could have avoided the confrontation by leaving the vehicle. After deliberation, the jury found Stoots guilty of second-degree domestic violence—a charge involving an attempt to inflict moderate injuries on a household member.⁵ When Stoots appealed based on the trial court's refusal of instructions, the South Carolina Court of Appeals upheld the conviction.⁶ Later, the Supreme Court of South Carolina granted certiorari to determine if the trial court's refusal to instruct the jury on self-defense and accident was erroneous.

The Supreme Court held that the trial court should have instructed the jury on self-defense, rejecting the explanation that Stoots' response was disproportionate due to size difference or his better position to leave the altercation.⁷ The Court claimed that proportionality is “almost always a jury question,” and that determining self-defense does not require belief of an imminent threat of serious bodily injury.⁸ However, the Court affirmed the trial court's refusal

⁵ *Id.* at 2. (“At the conclusion of the presentation of evidence at trial, Stoots requested the trial court instruct the jury on the law of self-defense and accident, but the trial court refused.”).

⁶ *Id.* at 3. (“The jury found Stoots guilty of the lesser-included offense of second-degree domestic violence. Stoots appealed based on the trial court's refusal to charge self-defense and accident, and the court of appeals affirmed.”).

⁷ *Id.* at 6. (“To the extent the trial court found as a matter of law that Stoots was required to exit his own vehicle when his wife started hitting him in a fast-food drive-thru line instead of grabbing her arms to prevent his own injury, that was error.”).

⁸ *Id.* at 4. (“The court of appeals held ‘Stoots used excessive force towards Victim,’ and it cited a case about proportionality. Stoots, Op. No. 2023-UP-051 (citing *Golden v. State*, 1 S.C. 292, 296 (1870)). We agree proportionality is a critical concern in all non-deadly force cases. . . . Whether the defendant's response was proportional, however, is almost always a jury question. See *State v. McGowan*, 347 S.C. 618, 624, 557 S.E.2d 657, 660 (2001) ([W]hether or not [the defendant's]

of an accident instruction, holding that the jury had already been properly instructed that the State must prove criminal intent as “a mental state of conscious wrongdoing.”⁹ The Court deemed the judge’s regular instruction on criminal intent sufficient. Of the *Brown* elements—intention, lawful activity, and negligence—requested by the defense counsel, only intentionality was relevant.¹⁰ Thus, there was no reversible error in the trial court’s refusal to provide a jury instruction on accident.

In a unanimous opinion authored by Justice Few and joined by the rest of the bench, the Court reversed Stoots’ conviction and remanded the case for a new trial.¹¹ The court cited the long-standing principle in South Carolina law that requires a self-defense instruction “if there is any evidence from which the jury could reasonably conclude the defendant acted in self-defense.”¹² Because Stoots testified that he had grabbed Kimberly’s arms to protect himself from perceived harm, the trial court was required to instruct the jury on self-defense.¹³ The Court

response was proportional to the threatened arrest was a matter for the jury.’).”

⁹ *Id.* at 3. (“It is not necessary to establish intent by direct evidence. Intent may be established by circumstantial evidence taking into account the circumstantial evidence that are at issue. Criminal intent is a mental state of conscious wrongdoing.”).

¹⁰ *Id.* at 6–7. (“In *Brown*, we held that under the law of accident ‘no criminal responsibility attaches . . . [i]f it be shown that the killing was unintentional; that it was done while the perpetrator was engaged in a lawful enterprise, and was not the result of negligence.’ 205 S.C. at 521, 32 S.E.2d at 828. *Brown* was an involuntary manslaughter case in which the criminal intent the State was required to prove was negligence. In recent years, however, we have used the same three elements to define the law of accident in homicide cases. See, e.g., *State v. Commander*, 396 S.C. 254, 271, 721 S.E.2d 413, 422 (2011) (quoting *State v. Chatman*, 336 S.C. 149, 153, 519 S.E.2d 100, 102 (1999)). Charging the jury on those three elements has become standard when a defendant claims the ‘defense’ of accident.”).

¹¹ *Id.* at 10. (“In conclusion, the trial court erred by refusing to charge self-defense. We reverse the court of appeals and remand to the court of general sessions for a new trial.”).

¹² *Id.* at 3.

¹³ *Id.* at 4. (“If there is any evidence the defendant was acting in self-defense—which there is here—the trial court must charge it and let the jury sort out whether it believes the State’s version of

explained that reasonableness often takes precedence over rigid rules in such cases.

State v. Stoots powerfully influences cases of domestic violence and lower assault, particularly those occurring in closed meetings, which often involve contradictory testimony. The unanimous decision underscores the defendant's right to jury consideration in cases of claimed self-defense, even when supporting evidence is limited or contested. This powerful legal protection gives voice to vulnerable individuals, preventing wrongful convictions in the common case of minor defense against minor unlawful aggression.

Moving forward, this stricter standard for instructions may increase complexity in prosecutions, as it may become easier for defendants to avoid conviction when evidence of self-defense is raised. Thus, prosecutors must thoroughly refute ambiguous evidence of intent to prove that the defendant's actions were not justified.¹⁴ This case has the potential to increase fairness in verdicts and trust in the justice system, as evidence for self-defense is less likely to be ignored. These implications will most directly affect South Carolina defense practice by emphasizing defendants' rights to jury instructions when evidence is presented. As a landmark case related to domestic violence, *Stoots* will impact prosecutions statewide by minimizing judicial discretion during charge conferences. This may prompt reforms in jury instruction and acknowledgement of self-defense

events.”).

¹⁴ *Id.* at 3. (“We have held many times that if there is any evidence from which the jury could reasonably conclude the defendant acted in self-defense, it is reversible error for the trial court to refuse to instruct the jury on the point.”).

claims.

Case Summary: *Trump v. Orr*, No. 25A319 (U.S. Nov. 6, 2025)

Written by Ava-Coleman Diegel

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

Published: December 31, 2025

In February 2025, seven transgender and nonbinary individuals filed a lawsuit challenging the new Passport Policy implemented by the Trump administration, which required that a person's sex designation on their passport reflect the individual's sex assigned at birth rather than their current gender identity.¹ The policy also eliminated the option to select an "X" marker for applicants who are nonbinary, intersex, or other gender-nonconforming individuals.² The plaintiffs alleged that the policy violated the equal protection guarantee as applied to the federal government through the Fifth Amendment's Due Process Clause. In *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Supreme Court held that the Fifth Amendment contains an implied equal protection component, which means that federal actions cannot discriminate in ways that would violate equal protection if undertaken by a state. Relying on this doctrine, the plaintiffs argued that the policy unlawfully singled out transgender and nonbinary people for

¹ *Trump v. Orr*, No. 25A319, slip op. at 1 (U.S. Nov. 6, 2025) ("This case concerns an Executive Branch policy requiring . . . all new passports to display an individual's biological sex at birth.").

² *Id.* at 3 (Jackson, J., dissenting) ("On January 22, 2025 . . . the Passport Policy now requires that all new passports reflect the holders' sex assigned at birth.").

differential treatment. The plaintiffs also claimed that the Passport Policy violated the Administrative Procedure Act (APA), a law that prohibits government agencies from acting in ways that are arbitrary or capricious.³

The U.S. District Court for the District of Massachusetts found that the plaintiffs were likely to succeed on both their equal protection and Administrative Procedure Act (APA) claims, finding the Passport Policy to be arbitrary, capricious, and discriminatory.⁴ Six of the seven plaintiffs were granted preliminary injunctive relief, which would allow the individuals to receive protection from the policy, effective immediately, while the seventh was exempted because he already held a passport reflecting his gender identity.⁵

Following the injunction, the plaintiffs added five more individuals to the case, and the government appealed both the individual and class injunctions to the U.S. Court of Appeals for the First Circuit.⁶ The individual injunction applied only to one named plaintiff, while the class injunction extended relief to the broad population of transgender and nonbinary applicants affected by the Passport Policy. The Trump administration argued that the Constitution does not require the government to adopt an individual's preferred definition of sex, and that the Passport Policy should be reviewed only under a lenient standard of "rational-basis

³ *Id.* at 3-4 ("They claimed . . . the Passport Policy violated the Equal Protection Clause . . . and . . . that it violated the Administrative Procedure Act insofar as it was arbitrary and capricious.").

⁴ *Id.* at 3 ("The District Court . . . issued a 56-page decision . . . that the plaintiffs were likely to succeed on their legal claims . . .").

⁵ *Id.* at 4 ("The District Court granted the plaintiffs' motion for class certification and extended the preliminary injunction . . .").

⁶ *Id.* at 4 ("The Government appealed . . . and the First Circuit declined to stay the District Court's preliminary injunction. . . .The Government then turned to this Court for a stay.").

review,” which asks whether the rule is reasonably related to a legitimate government purpose.⁷ The government further argued that the policy applied equally to both sexes and served the government’s legitimate interests in maintaining consistent and reliable identification, affirming its actions were neither arbitrary nor capricious.⁸ The government also claimed that the District Court’s injunction caused irreparable harm by interfering with the President’s authority to implement the executive policy.⁹

The Supreme Court issued a brief, unsigned order to grant a stay, granting the government’s request to temporarily pause the District Court’s injunction. After the First Circuit declined to stay the injunction, the government filed an emergency application with the Supreme Court, asking the Justices to intervene through the Court’s emergency docket, also known as the shadow docket. Stating that displaying an individual’s sex at birth on a passport does not violate equal protection, the Supreme Court decided to allow the passport policy to remain in effect as litigation continues, reasoning that it is comparable to displaying a person’s country of birth, with both being “historical facts” that do not amount to

⁷ App. for a Stay of the Injunction, *Trump v. Orr*, No. 25A319, at 25 (U.S. Nov. 6, 2025) (“Under that standard, as the government made clear in its stay motion, the question is whether the challenged policy is ‘inexplicable by anything but animus’; if it can be explained by a rational basis, the inquiry is at an end.”) (citing Gov’t C.A. Stay Mot. 17).

⁸ *Id.* at 17-18 (“A policy that prohibits ‘all people’ from self-selecting a marker on their passport—and thus ‘affects every person in the country in the same way’—is not a policy that discriminates based on sex.”); *also id.* at 25 (“Indeed, the government’s briefing in the district court defended the challenged policy on the ground that the policy served an ‘interest in maintaining a consistent, historical, and biologically based definition of sex,’ including for purposes of maintaining a ‘meaningful basis for identification,’ as articulated in the Executive Order.”) (cleaned up).

⁹ *Id.* at 33 (“The district court’s classwide injunction irreparably harms the government and the public by blocking the President’s exercise of his constitutionally and statutorily conferred power to prescribe rules of the issuance of passports.”).

unequal treatment.¹⁰

Three justices dissented from the decision to grant the stay: Justices Ketanji Brown Jackson, Sonia Sotomayor, and Elena Kagan. Justice Jackson argued that the majority’s reasoning failed to consider the policy’s discriminatory impact and that allowing it to take effect would cause immediate harm to transgender and nonbinary individuals.¹¹ She wrote that the government “offers no evidence that it will suffer any harm if it is temporarily enjoined . . . while the plaintiffs will be subject to imminent, concrete injury.”¹² The dissenting justices stated that the District Court acted properly to prevent irreparable harm and that the majority’s decision undermined the equitable balance of the case.¹³

This case is significant because it illustrates how the current Supreme Court views conflicts between gender identity rights and executive authority. By granting the stay, the Court potentially signaled its deference to the executive branch’s authority in setting policies related to sex and identification. Although the decision does not settle the issue permanently, the case will likely become a future reference point for lawyers in examining how courts apply equal protection in cases related to gender-identity policies.

¹⁰ *Trump v. Orr*, No. 25A319, slip op. at 1-2 (U.S. Nov. 6, 2025) (“Displaying an individual’s sex at birth . . . is comparable to displaying a person’s country of birth, with both being ‘historical facts’ that do not subject anyone to differential treatment.”).

¹¹ *Id.* at 2 (Jackson, J., dissenting) (“The Government fails to appreciate the serious consequences of its policy...”).

¹² *Id.* at 2 (“The Government . . . offers no evidence that it will suffer any harm . . . while the plaintiffs will be subject to imminent, concrete injury.”).

¹³ *Id.* at 4 (“Such senseless sidestepping of the obvious equitable outcome . . . is an abdication of the Court’s duty to ensure that equitable standards apply equally. . .”).

Case Summary: *Smith & Wesson Brands, Inc., et al v. Estados Unidos Mexicanos*, No. 23-1141 (U.S. June 5, 2025)

Written by Cole Kinley

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In 2021, the Mexican Government filed a lawsuit against seven American firearm manufacturers, claiming that the companies' negligent distribution led to cartel-related gun violence.¹ The government argued that the manufacturers were responsible for this violence due to the fact that around "90% of the guns recovered at crime scenes" were American-made.² Mexico also accused the defendants of promoting products that appealed to cartel members, such as the "El Jefe," "El Grito," and "Emiliano Zapata 1911" pistols,³ military-grade weapons like a "50. caliber long range sniper rifle," and firearms with defaceable serial numbers.⁴

The Protection of Lawful Commerce in Arms Act (PLCAA) generally

¹ *Smith & Wesson Brands, Inc., et al v. Estados Unidos Mexicanos*, No. 23-1141 slip op. at 3 (U.S. June 5, 2025).

² *Id.* at 3 ("[The defendants included] Smith & Wesson Brands, Inc.; Barrett Firearms Manufacturing, Inc.; Beretta USA Corp.; Century International Arms, Inc.; Colt's Manufacturing Company, LLC; Glock, Inc.; and Sturm, Ruger & Co., Inc. [Also,] Witmer Public Safety Group, Inc., [or] Interstate Arms [was named in the suit.]").

³ *Id.* at 6 ("And the manufacturers produce firearms whose names or aesthetic features appeal to cartel members. Colt, for example, makes the '.38 caliber Super 'El Jefe' pistol; the .38 caliber Super 'El Grito' pistol; and the .38 caliber 'Emiliano Zapata 1911' pistol—the last of which includes Zapata's image and the words 'It is better to die standing than to live on your knees.'").

⁴ *Id.* at 6 ("Mexico says, the manufacturers make guns whose serial numbers can be 'obliterated or defaced,' thus hindering police tracing efforts.").

safeguards firearm manufacturers from being held liable for third-party misuse.⁵ However, the law contains a predicate exception that allows for a suit if a sale “knowingly violated” the law and subsequently resulted in harm.⁶ To meet the PLCAA’s requirements, it must be proven that a manufacturer aided and abetted another’s firearm misuse. The two ways to meet this requirement include when a distributor assists third-party misuse by “making a false statement about a gun sale’s legality or . . . making specified criminal sales.”⁷ To win the case, the Mexican Government needed to prove that American manufacturers knowingly violated regulations and purposefully sold firearms to cartel-affiliated dealers.

At first, the U.S. District Court of Massachusetts dismissed the case on the grounds that the PLCAA protected the manufacturers against a suit. In response, the U.S. Court of Appeals for the First Circuit reversed the lower court decision and found that the Mexican Government had plausibly alleged that defendants did aid and abet illicit firearm dealings. The First Circuit’s reversal made it more likely that the case would reach the U.S. Supreme Court, and in June 2025, the Court unanimously reversed the Court of Appeals’ decision. Justice Kagan delivered the majority opinion, citing two examples of previous rulings that precisely defined when companies could be held liable for third-party misconduct. In *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), the Court clarified that to meet the exception, the

⁵ *Id.* at 1 (“[The statute] bars certain lawsuits against manufacturers and sellers of firearms. Congress enacted the statute in response to a spate of litigation trying to hold gun companies liable in tort for harms “caused by the misuse of firearms by third parties, including criminals.”).

⁶ *Id.* at 2.

⁷ *Id.* at 2.

defendant must have shown misfeasance rather than nonfeasance towards third-party activities.⁸ In other words, a suit cannot simply be based on a lack of action but must center around an intentionally illicit action.

Justice Kagan also cited *Direct Sales Co. v. United States*, 319 U.S. 703 (1943), where aiding and abetting did apply, and a company was held liable. In that case, the Court ruled that “[a] mail-order pharmacy could be convicted for assisting” in the small-scale illegal distribution of drugs.⁹ The basis of the Supreme Court’s decision was that the pharmacy supplied excessive amounts of morphine, and did so after a warning from federal authorities.¹⁰ If the firearms manufacturers acted similarly, a suit could have proceeded. The *Direct Sales* decision was due to the case “[involving] aid [being] given to a single named offender in violating a specified narcotics law.”¹¹ However, as Justice Kagan suggested, this situation did not apply to American manufacturers in *Smith & Wesson* because they did not violate any statutes and were not directly linked to cartel-related gun violence.¹²

Justice Kagan also dismissed claims of targeted marketing through

⁸ *Id.* at 9 (“The plaintiffs, victims of the attack, alleged that adherents of ISIS used [Twitter’s] platforms for recruiting and fundraising. [They] further asserted that the [defendant] knew that [,] yet failed to [remove harmful content.] But we held that was not enough to make the companies liable for ISIS’s terrorist acts. [Their] relationship with ISIS and its supporters, we reasoned, was “the same as their relationship [all of its] other users: arm’s length, passive, and largely indifferent.”).

⁹ *Id.* at 8.

¹⁰ *Id.* at 8–9 (“And it did all that against the backdrop of law enforcement warnings: The Bureau of Narcotics had informed Direct Sales that “it was being used as a source of supply” by lawbreaking doctors.”).

¹¹ *Id.* at 11.

¹² *Id.* at 10 (“Viewed against the backdrop of [the PLCAA], Mexico’s complaint does not plausibly allege that the defendant manufacturers aided and abetted gun dealers’ unlawful sales of firearms to Mexican traffickers. We have little doubt that, as the complaint asserts, some such sales take place—and that the manufacturers know they do.”).

military-grade weapons, which are legal and widely popular in the United States.¹³ In addition, products “with Spanish-language names or graphics” could not be seen as being exclusively advertised to cartel members, since “millions of law-abiding Hispanic Americans” purchase them as well.¹⁴ Therefore, the conduct of American manufacturers did not satisfy the PLCAA’s predicate exception. Simple inaction towards third-party firearm misuse was not enough to allow for a suit, as intended by the PLCAA.¹⁵

Justices Thomas and Jackson filed concurring opinions. Justice Thomas advised that lower courts should not accept similar cases going forward. Under the PLCAA, a suit must “[have] a plausible allegation that a defendant has committed [a violation],” and also “an earlier finding of guilt or liability in an adjudication regarding [it].”¹⁶ In other words, to satisfy the predicate exception, a very specific set of circumstances must be met. If not, as Justice Thomas insists, courts should not consider suits similar to *Smith & Wesson*. Justice Jackson agreed with the majority’s arguments and further demonstrated how the defendants’ actions did not meet the exception.¹⁷ Jackson also connected the suit to the PLCAA’s broader purpose: to protect American firearm manufacturers from a flood of third-party

¹³ *Id.* at 14.

¹⁴ *Id.* at 14.

¹⁵ *Id.* at 15 (“Congress explained that [the statute] was meant to stop those suits—to prevent manufacturers (and sellers) from being held ‘liable for the harm caused by those who criminally or unlawfully misuse firearm[s].’ §7901(a)(5). Mexico’s suit closely resembles the ones Congress had in mind[.]”).

¹⁶ *Id.* at 1 (Thomas, J., concurring).

¹⁷ *Id.* at 2–3 (Jackson, J., concurring). (“All that Mexico alleges here is that firearms-industry-wide practices—though lawful on their own—facilitated dealers’ unspecified downstream violations. Mexico does not tether its claims to alleged statutory breaches. [Also,] it [does not] identify the dealers who would be the principals for any underlying statutory violations.”).

litigation suits.¹⁸ The statute also intended to place gun control under the purview of legislation, not litigation. The Supreme Court confirmed this principle with its decision.

The Court's unanimous decision reaffirmed existing regulations on third-party liability. The decision also confirmed the PLCAA's intended purpose: to protect American firearm manufacturers and sellers from these types of suits. In doing so, the Court conceded firearm-related regulation to Congress and its legislative capabilities. As a result, future plaintiffs are less likely to bring forth firearm-related suits when considering the strict predicate exception parameters set by Justice Thomas. Thus, on the topic of gun-related liability the Supreme Court has made it clear—it is an issue for Congress to decide.

¹⁸ *Id.* at 1 (Jackson, J., concurring).

**Case Summary: *Department of State v. AIDS Vaccine Advocacy Coalition*,
No. 24A269 (U.S. Sept. 26, 2025)**

Written by Megan Borsos

Edited by Madeline Leonard & Maclain Conlin

*(The views expressed are those of the author and do not necessarily represent the
position of the Clemson Law Review or its leadership.)*

On January 20, 2025, President Trump issued Executive Order No. 14169, titled “Reevaluating and Realigning United States Foreign Aid,” ordering a 90-day pause on all U.S. foreign development assistance programs and foreign aid funding pending a full review.¹ On February 10, AIDS Vaccine Advocacy Coalition (AVAC), an organization that receives grant money from the U.S. Department of State and the U.S. Agency for International Development (USAID), was joined by Journalism Development Network, Inc. in filing a lawsuit against the U.S. Department of State and other related federal agencies. Suing under the Administrative Procedure Act (APA), AVAC and other organizations filing similar suits requested “that the District Court compel the obligation and expenditure of the funds Congress had appropriated.”²

On February 13, the U.S. District Court for the District of Columbia issued a Temporary Restraining Order (TRO) against the Government, which was later

¹ Exec. Order No. 14169, 90 C.F.R. 8619 (2025).

² *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A269, slip op. at 4 (Kagan, J., dissenting) (U.S. Sept. 26, 2025).

followed by a ruling ordering the Government to pay all invoices submitted before February 13 by 11:59 pm on February 26.³ On February 26, the Government filed an application to vacate the order with the U.S. Supreme Court and was granted an administrative stay by Chief Justice Roberts. However, their application to vacate was subsequently denied, and the case was remanded to the District Court.⁴

The most recent development in this case arose following a “special message” sent by President Trump on August 28, pursuant to the Impoundment Control Act (ICA), proposing the rescission of \$4 billion of appropriated foreign-aid funds.⁵ Enacted in response to President Nixon’s impoundment efforts, the ICA provides a formal process for the President to request the rescission of funds, including a 45-day period in which the President can temporarily withhold funds while Congress considers the proposal. If, at the end of 45 days, Congress does not approve the rescission, the funds must be released. However, under a controversial strategy known as a pocket recission, a President can request the rescission of funds set to expire within the 45 days, causing them to expire regardless of congressional action. President Trump employed this method by submitting the rescission request shortly before the September 30 expiration of the appropriated funds.

On September 3, the District Court directed the President to obligate \$10.5 billion of appropriated aid funds set to expire on September 30, which included the

³ *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A831, slip op. at 1 (U.S. Mar. 5, 2025).

⁴ *Id.* at 1.

⁵ *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A269, slip op. at 1 (U.S. Sept. 26, 2025).

\$4 billion proposed for rescission.⁶In response, the Government asked that the District Court issue a stay of its ruling, and, after that request was denied, filed an appeal with the United States Court of Appeals for the District of Columbia Circuit, which was also denied. The Government then filed an application with the Supreme Court to stay the District Court’s preliminary injunction, arguing that the ICA “[precluded] the organizations from bringing this APA suit to enforce appropriations laws.”⁷ The Court granted the Government’s application for an emergency stay.

In an unsigned order, the Court held that, at this stage, the Government had demonstrated that the ICA barred respondents from bringing an appropriations suit under the APA.⁸ This view is consistent with a previous D.C. Circuit Court ruling,⁹ which held that the plaintiffs could not challenge a violation of the ICA because it does not provide a remedy for private litigants; rather, only the Comptroller General may sue for violations. Additionally, the Supreme Court held that the Government had “made a sufficient showing that mandamus relief [was] unavailable to respondents” and that “the asserted harms to the Executive’s conduct of foreign affairs [appeared] to outweigh the potential harms faced by respondents.”¹⁰ However, despite granting the stay, the Court noted that the order

⁶ *Id.* at 1 (“On September 3, the United States District Court for the District of Columbia entered a preliminary injunction directing the Executive to obligate roughly \$10.5 billion of appropriated aid funding set to expire on September 30.”).

⁷ *Id.* at 4 (Kagan, J., dissenting).

⁸ *Id.* at 1 (“The Government, at this early stage, has made a sufficient showing that the Impoundment Control Act precludes respondents’ suit, brought pursuant to the Administrative Procedure Act, to enforce the appropriations at issue here.”).

⁹ *Global Health Council v. Donald J. Trump*, No. 25-5097 (D.C. Cir. Aug. 13, 2025).

¹⁰ *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A269, slip op. at 1 (U.S. Sept. 26, 2025).

“should not be read as a final determination on the merits” but instead merely reflected the Supreme Court’s “preliminary view, consistent with the standards for interim relief.”¹¹

A dissenting opinion was filed by Justice Kagan, joined by Justice Sotomayor and Justice Jackson. Justice Kagan argued that the Government had not met the “standard for emergency relief” created in *Nken v. Holder*, 556 U.S. 418 (2009) because it had failed to provide strong evidence that it was likely to succeed on the merits, nor had it shown that it would suffer irreparable harm in the absence of relief.¹² She therefore determined that the Court should have denied the application and allowed the lower courts to consider the issue fully.

Justice Kagan further argued that although the ICA gives the Comptroller General the ability to sue the Executive regarding presidential impoundments, it does not preclude private parties from bringing an APA suit for similar purposes.¹³ As evidence for this claim, she cited a section of the ICA titled “Disclaimer,” in which it declares that “Nothing Contained in this Act . . . shall be construed” as “affecting in any way the claims or defenses of any party to litigation concerning any impoundment.”¹⁴ Justice Kagan acknowledged that the Government could and has argued that the provision contains an “unspoken limit,” restricting its application “only to litigation pending at the time the ICA was enacted.”¹⁵ However,

¹¹ *Id.* at 1.

¹² *Id.* at 3 (Kagan, J., dissenting) (citing *Nken v. Holder*, 556 U.S. 418, 426-427 (2009)).

¹³ *Id.* at 5.

¹⁴ *Id.* at 5 (citing Impoundment Control Act of 1974 (ICA), § 681(3)).

¹⁵ *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A269, slip op. at 6 (Kagan, J.,

she challenged this argument, stating that Congress did not include the words “currently pending” or express a similar idea in any other way.¹⁶ Moreover, Justice Kagan laid out the historical context of the ICA to offer an additional explanation as to why Congress did not intend the ICA to preclude private plaintiff suits.¹⁷

In response to the Government’s argument that complying with the District Court’s order would force the Government to advocate views contrary to U.S. foreign policy, Justice Kagan stated that this is the “price of living under the Constitution that gives Congress the power to make spending decisions through the enactment of appropriations laws.”¹⁸ She concluded her dissent by reiterating the stringent standards that need to be met for granting emergency relief and her belief that the “Executive has not shown what it must to receive emergency relief from this court.”¹⁹

The result of this case will be felt not only by AVAC but also by every organization affected by the Presidential impoundment of congressionally appropriated funds. By issuing this emergency stay, the Court allowed \$4 billion in appropriated foreign aid funds to expire and narrowed the ability of private organizations affected by impoundment to seek relief through the judicial system. Additionally, the Court’s decision has strengthened the Executive’s purported

dissenting) (U.S. Sept. 26, 2025).

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 7 (“The ICA emerged against the backdrop of President Nixon’s large-scale efforts to impound appropriated funds, and thus to substitute his own policy priorities for Congress’s.”).

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 8.

authority to delay or withhold appropriate funds, thereby increasing executive power over appropriations. Furthermore, the ruling validated the Trump Administration's use of the pocket rescission. Although the majority noted that this is not a final ruling, this case remains significant because it raises concerns about the balance of power between the President and Congress.

Case Summary: *Ames v. Ohio Dept. of Youth Services*, No. 23-1039 (U.S. June 5, 2025)

Written by Laura Rucks

Edited by Olivia Oefinger & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

Marlean Ames, a heterosexual woman, was hired by the Ohio Department of Youth Services in 2004.¹ During her employment there she filled different roles eventually being promoted to Program Administrator.² In 2019 she was interviewed for a management position within the new Office of Quality and Improvement.³ Another candidate, a lesbian woman, was ultimately hired for this role.⁴ Ames was then demoted from the Program Administrator position to her original role as a secretary.⁵ A gay man was chosen to fill the Program Administrator role. Ames then filed a lawsuit under Title VII.⁶

The District Court “analyzed Ames’s claims under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).”⁷ This case established a framework that required plaintiffs bringing “disparate-treatment claims that rest on circumstantial

¹ *Ames v. Ohio Dept. of Youth Services*, No. 23-1141, slip op. at 2 (U.S. June 5, 2025)

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2 (“The [District Court] analyzed Ames’s claims under *McDonnell Douglas Corp. v. Green*, 411 U. S. 792 (1973), which establishes the traditional framework for evaluating disparate-treatment claims that rest on circumstantial evidence.”).

evidence” to “make a prima facie showing that the defendant acted with a discriminatory motive.”⁸ The District Court cited existing precedents from the Sixth Circuit which held that *McDonnell Douglas* required plaintiffs that are members of majority groups to “present . . . evidence of ‘background circumstances’ suggesting that the agency was the rare employer who discriminates against members of a majority group.”⁹ This higher standard resulted in a ruling in favor of the Ohio Department of Youth Services. The decision was affirmed by the U.S. Court of Appeals for the Sixth Circuit.¹⁰

The Supreme Court, however, did not affirm the decision of the lower courts. The Court rejected the Sixth Circuit’s interpretation of the *McDonnell Douglas* framework, holding that there was no text in Title VII that justified automatically applying “a heightened evidentiary standard” to members of a majority group.¹¹ The judgement of the lower courts was vacated, and the case was remanded for proper application of the prima facie standard.¹²

Justice Jackson delivered the opinion for a unanimous court.¹³ She referenced the lack of textual evidence within Title VII to establish any “background circumstances” rule.¹⁴ She also pointed to the lack of precedent within previous

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 9.

¹¹ *Id.* (“The Sixth Circuit has implemented a rule that requires certain Title VII plaintiffs—those who are members of majority groups—to satisfy a heightened evidentiary standard in order to carry their burden under the first step of the *McDonnell Douglas* framework. We conclude that Title VII does not impose such a heightened standard on majority group plaintiffs.”).

¹² *Id.* at 9.

¹³ *Id.* at 1.

¹⁴ *Id.* at 5.

cases, specifically referencing *Griggs v. Duke Power Co*, 401 U.S. 424 (1971).¹⁵ Moreover, Justice Jackson refuted Ohio’s argument that Sixth Circuit’s rule is not an additional requirement but rather “another way of asking whether the circumstances surrounding an employment decision, if otherwise unexplained, suggest that the decision was because of a protected characteristic.”¹⁶ She rejected this argument because the Sixth Circuit “explicitly held that . . . Ames must make a showing *in addition to the usual ones* for establishing a prima-facie case” because she “is heterosexual.”¹⁷

Justice Thomas continued in a concurring opinion joined by Justice Gorsuch.¹⁸ He explained that he agreed completely with the Court’s opinion, but “w[rote] separately to highlight the problems that arise when judges create atextual legal rules and frameworks.”¹⁹ He outlined the errors of these judge-made doctrines in the present case, specifically in the application of the *McDonnell Douglas* framework.²⁰ He then applied these principles more broadly and argued that “judge-made doctrines can distort the underlying statutory text”²¹ and “can be

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 8 (“Under Ohio’s view, the ‘background circumstances’ requirement ‘is not an additional prima facie element’ but, rather, ‘just another way of asking whether the circumstances surrounding an employment decision, if otherwise unexplained, suggest that the decision was because of a protected characteristic.’”)

¹⁷ *Id.* (“The Court of Appeals explicitly held that ‘Ames is heterosexual . . . which means she must make a showing *in addition to the usual ones* for establishing a prima-facie case.’”) (emphasis in original).

¹⁸ *Id.* at 1 (Thomas, J., concurring).

¹⁹ *Id.* (“I write separately to highlight the problems that arise when judges create atextual legal rules and frameworks.”)

²⁰ *Id.* at 8.

²¹ *Id.* at 2 (“This additional requirement is a paradigmatic example of how judge made doctrines can distort the underlying statutory text.”)

difficult for courts to apply.”²²

The Supreme Court’s unanimous decision more clearly defined how discrimination claims under Title VII will be handled in the future. By clarifying the *McDonnell Douglas* framework, the Supreme Court provided lower courts with guidance on how to interpret similar statutory law. Additionally, Justice Thomas’s concurring opinion highlighted a broader concern of the Court. He suggested that the creation and continued reliance of judge-made doctrines would be treated more skeptically by the Supreme Court in future cases.

²² *Id* at 3.

Case Summary: *Baird v. Bonta*, No. 24-565 (9th Cir. Jan. 2, 2026)

Written by Delaney Grimaldi

Edited by Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

Baird v. Bonta, No. 24-565 (9th Cir. 2026) involves Mark Baird, a law-abiding citizen of California seeking to openly carry a firearm in public for self-defense purposes.¹ California Penal Code sections 25850 and 26350 restrict such conduct, criminalizing open carry in any county with a population greater than 200,000 and requiring licenses for open carry in non-urban counties.² Baird filed a civil rights lawsuit against the Attorney General of California, asserting that the firearm restrictions violated the Second and Fourteenth Amendments of the U.S. Constitution.³ The District Court granted summary judgment to California.⁴ Baird appealed to the Ninth Circuit, arguing that the District Court had misapplied the Supreme Court’s 2022 decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 597

¹ *Baird v. Bonta*, No. 24-565, slip op. at 5 (9th Cir. Jan. 2, 2026).

² *Id.* at 11; *also id.* at 77 (Smith, J., concurring in part and dissenting in part) (“Sections 25850 and 26350 create criminal penalties for carrying firearms. Section 25850 criminalizes carrying a loaded firearm in any public place or street. Section 26350 criminalized openly carrying an unloaded firearm.”).

³ *Id.* at 13 (maj. op.) (“In his opening brief before this court, Baird characterizes the question presented broadly as ‘[w]hether California Penal Code sections 25850 and 26350, which criminalize the open carriage of handguns for self-defense, violate the Second Amendment.’”).

⁴ *Id.* at 15 (“Although the district court acknowledged that Baird’s proposed conduct was ‘presumptively protect[ed]’ under the Second Amendment, it ultimately concluded that California’s urban open-carry ban is consistent with the Nation’s historical tradition of firearm regulation. . . . The district court thus entered summary judgment in favor of California.”).

U.S. 1 (2022).⁵ The Court published its *Baird v. Bonta* opinion on January 2, 2026, affirming in part, reversing in part, and remanding to the District Court.⁶

Judge VanDyke delivered the opinion of the court, reversing and remanding the summary judgment of California’s open-carry ban in urban areas. Referencing the Supreme Court’s *Bruen* methodology, the court determined that the State must demonstrate firearm regulations are consistent with historical traditions when restricting individuals’ conduct covered by the plain text of the Second Amendment.⁷ The court asserted that open carry is a historical practice, and that the “absence of a distinctly similar historical regulation” is evidence that California’s regulation violated the Second Amendment.⁸ An analysis of historical regulations showed open carry was often explicitly protected as self-defense conduct.⁹ Judge VanDyke applied the “straightforward” rather than “nuanced” approach of *Bruen* after concluding the present case lacked relevant technological or societal changes.¹⁰ California’s firearm regulations attempted to address

⁵ *Id.* at 5 (“ . . . Baird argues that the district court erred as a matter of law by incorrectly applying *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022).”).

⁶ *Id.* at 55 (“We therefore affirm the judgment of the district court in part, reverse in part, and remand with the instruction to enter judgment in favor of appellant Baird with respect to his challenge to California’s urban open-carry ban.”).

⁷ *Id.* at 16 (quoting *Bruen*, 597 U.S. at 24) (“If ‘the Second Amendment’s plain text covers an individual’s conduct’ that is proscribed by a firearms regulation, then ‘the Constitution presumptively protects that conduct,’ and [t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.”).

⁸ *Id.* at 17 (citing *Bruen*, 597 U.S. at 26).

⁹ *Id.* at 20 (citing Jonathan Meltzer, *Open Carry for All: Heller and Our Nineteenth-Century Second Amendment*, 123 YALE L. J. 1486, 1511-1512 (2014)) (“The general consensus at the time was that open carry was essential to protect the natural and common law right of self-defense, while ‘those who relied on concealed weapons could not possibly be interested in self-defense, but instead must have an improper, aggressive motive.’”).

¹⁰ *Id.* at 17 (citing *Bruen*, 597 U.S. at 25-27) (“Under *Bruen* many questions are ‘straightforward,’ and when governments are attempting to address ‘general societal problem[s]’ that have persisted since the Founding via regulations with no ‘distinctly similar’ historical counterpart, then there is no

long-present, general social problems using methods inconsistent with tradition, indicating a Second Amendment violation.

The Ninth Circuit affirmed the portion of the District Court’s summary judgment ruling regarding Baird’s challenge of license requirements for non-urban counties. Baird waived his right to this claim by failing to contest the dismissal in his opening brief.¹¹ As a result, the court did not conduct an in-depth analysis of the history of this issue in the majority opinion. Judge Lee wrote a concurrence based upon California’s record showing no indication of ever issuing an open-carry license in less-populated areas. Judge VanDyke joined this concurrence, which was critical of the potentially misleading open-carry licensure application process.¹²

Judge N.R. Smith wrote a separate opinion, concurring in part and dissenting in part.¹³ He agreed with the majority’s decision to affirm the District Court’s grant of summary judgment regarding California’s open-carry licensing policy, concluding it was facially constitutional. However, Judge Smith dissented from the majority’s ruling on California’s urban open-carry restrictions. He interpreted *Bruen* to mean that while a state could not constitutionally ban public carrying of firearms altogether, it could restrict either open-carry or concealed-carry so long as one

need to consider the ‘nuanced approach.’”).

¹¹ *Id.* at 6.

¹² *Id.* at 55 (Lee, J., concurring) (“ . . . California admits that it has no record of even *one* open-carry license being issued. How could this be? One potential reason is that California has misled its citizens about how to apply for an open-carry license.”); *also id.* at 56 (“ . . . California tries to hide the fact that citizens in those counties have a right to open carry their weapon under the law. Our constitutional rights, however, should not hinge on a Where’s Waldo quiz.”).

¹³ *Id.* at 75.

option remained available.¹⁴ He further indicated his belief that Baird's proposed conduct was not protected by the plain language of the Second Amendment.¹⁵ Overall, Judge Smith believed that the District Court's grant of summary judgment in favor of the State should have been affirmed in full.

Baird v. Bonta is a significant Second Amendment case post-*Bruen* that utilizes the Supreme Court's 2022 decision as a framework to evaluate the constitutionality of state restrictions on the public carrying of firearms, specifically in urban areas. This ruling further conveys *Bruen*'s conclusion that a historical analysis must be employed to evaluate contested firearm regulations claimed to address general social problems, and the absence of similar past restrictions indicates inconsistency with the Second Amendment. This case decreases California's ability to regulate the public carrying of firearms in urban areas, a change likely to be praised by gun rights advocates and potentially criticized by advocates of stricter policies to regulate firearms. The differing interpretations of *Bruen* by Judge VanDyke in the majority opinion and Judge Smith in his separate opinion reflect similar debates occurring more broadly in the legal system. This is a developing indication that the Supreme Court may eventually need to address these discrepancies by issuing a new opinion to clearly delineate the boundaries of the *Bruen* framework.

¹⁴ *Id.* at 79 (citing *Bruen*, 597 U.S. at 24) ("Because California allows concealed carry, California may restrict open carry.").

¹⁵ *Id.* at 78-79 ("Baird argues that sections 25850 and 26350 unconstitutionally prohibit people from carrying a handgun openly throughout California. Such conduct is not covered by the plain text of the Second Amendment.").

Case Summary: *Goldey v. Fields*, No. 24-809 (U.S. June 30, 2025)

Written by Brooke Clary

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In June 2025, the Supreme Court declined to recognize an implied right to sue for excessive force against federal prison personnel under the Eighth Amendment of the U.S. Constitution.¹ The case began in Lee County, Virginia, where the plaintiff, Andrew Fields, was placed in solitary confinement at the United States Penitentiary with periodic checks from prison staff.² According to Fields, “officials would physically abuse him . . . during their periodic checks.”³ As a result, Fields filed suit for excessive force in violation of his constitutional rights in the U.S. District Court for the Western District of Virginia. The District Court dismissed the claim, holding that *Bivens v. Six Unknown Named Agents*, 403 U.S.

¹ *Goldey v. Fields*, No. 24-809, slip op. at 1 (U.S. June 30, 2025) (“In *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), this Court recognized an implied cause of action for damages against federal officers for certain alleged violations of the Fourth Amendment. The Court subsequently recognized two additional contexts where implied *Bivens* causes of action were permitted, neither of which was an Eighth Amendment excessive-force claim. After 1980, we have declined more than 10 times to extend *Bivens* to cover other constitutional violations. Those many post-1980 *Bivens* ‘cases have made clear that, in all but the most unusual circumstances, prescribing a cause of action is a job for Congress, not the courts.’ *Egbert v. Boule*, 596 U. S. 482, 486 (2022). Despite those precedents, the U. S. Court of Appeals for the Fourth Circuit permitted the plaintiff here to maintain an Eighth Amendment excessive-force *Bivens* claim for damages against federal prison officials. For the past 45 years, this Court has consistently declined to extend *Bivens* to new contexts. See *Egbert*, 596 U. S., at 490–491. We do the same here.”).

² *Id.* (“Lee County, Virginia, ordered that plaintiff Andrew Fields be placed in solitary confinement. Prison officials monitored Fields while he was isolated.”).

³ *Id.* (citing *Fields v. Federal Bureau of Prisons*, 109 F. 4th 264, 268 (CA4 2024)) (“Fields alleges that during their periodic checks, officials would ‘physically abuse’ him.”).

388 (1971) did not permit a “damages remedy . . . for claims of excessive force by BOP officers against an inmate.”⁴

Fields appealed to the Fourth Circuit, which then reversed the initial dismissal of Fields’ claims by the District Court.⁵ The Fourth Circuit claimed the District Court’s use of *Bivens* had been inappropriate, and that damages for Eighth Amendment violations were available.⁶ The majority opinion was based on the court’s finding that no adequate alternative cause for damages existed.⁷ Since Fields was denied a standard grievance process within the prison,⁸ the Fourth Circuit held that this excessive force violation, combined with the lack of alternative remedies, would support a remedy for the Eighth Amendment under *Bivens*.

Judge Julius Richardson dissented from the Fourth Circuit’s decision.⁹ He wrote that “a faithful application” of the Fourth Circuit’s precedent and “the

⁴ *Id.* at 2 (citing App. to Pet. for Cert. 49a; *also id.*, at 45a–54a) (“The U.S. District Court for the Western District of Virginia dismissed Fields’s complaint. As relevant here, the court determined that Fields lacked a cause of action under *Bivens*. Because ‘the Supreme Court has never ruled that a damages remedy exists for claims of excessive force by BOP officers against an inmate,’ the District Court had ‘no difficulty in concluding that these claims arise in a new context’ and that a *Bivens* remedy was unavailable.”).

⁵ *Id.* at 2 (“[T]he Fourth Circuit reversed . . .”).

⁶ *Id.* at 2 (citing *Fields v. Federal Bureau of Prisons*, 109 F. 4th 264, 270 (CA4 2024)) (“In a divided decision, the Fourth Circuit reversed in relevant part, concluding that Fields could proceed with his Eighth Amendment excessive-force claim for damages. The Court of Appeals determined that no ‘special factors counseled against extending *Bivens*’ here.”).

⁷ *Fields v. Goldey*, No. 23-6246, slip op. at 6 (4th Cir. July 25, 2024) (“Although § 1983 gives plaintiffs the statutory authority to sue state officials for money damages for constitutional violations, there is no statutory counterpart to sue federal officials.’ *Mays v. Smith*, 70 F.4th 198, 201 (4th Cir. 2023). If they are to proceed at all, plaintiffs suing federal-officer defendants must proceed under an implied cause of action first established by the Supreme Court in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*[,] 403 U.S. 388 (1971).”).

⁸ *Id.* at 5 (“Following his time in the SHU, Fields attempted to utilize the Bureau of Prisons’ (BOP’s) administrative grievance procedure, but prison staff denied him access to the necessary forms. J.A. 24, 26. He was thus unable to pursue any alternative remedies.”).

⁹ *Goldey v. Fields*, No. 24-809, slip op. at 2 (U.S. June 30, 2025) (“In a divided decision, the Fourth Circuit reversed in relevant part . . .”).

Supreme Court’s leads squarely to the conclusion that [the Circuit Court] cannot create a new *Bivens* action here.”¹⁰ Additionally, Judge Richardson explained that the Court should defer to lawmakers to handle remedy and cause of action for constitutional violations, as opposed to engaging in judicial activism by stretching *Bivens* beyond its existing meaning to create new precedent.¹¹

Goldey appealed the Fourth Circuit’s ruling to the U.S. Supreme Court.

In a unanimous decision, the Supreme Court sided with the District Court’s opinion, rejecting the use of *Bivens* for Eighth Amendment violations and reiterating that the recognition of new causes of action through *Bivens* is disfavored.¹²

The outcome of this case may significantly impact the future of *Bivens*. The Supreme Court reinforced that Congress should control the remedies for areas that are not clearly governed by *Bivens*, signaling that it is unlikely for *Bivens* to expand beyond its original purpose. Extending protections under *Bivens* for excessive force could have led to negative consequences on prison operations.¹³ Additionally, this extension could have increased litigation against federal personnel, resulting in

¹⁰ *Id.* at 2 (“Judge Richardson dissented and stated: ‘A faithful application of our precedent and the Supreme Court’s leads squarely to the conclusion that we cannot create a new *Bivens* action here.’”).

¹¹ *Fields v. Goldey*, No. 23-6246, slip op. at 22 (4th Cir. July 25, 2024) (“Courts must cautiously defer to the nation’s lawmakers, who enjoy the principal—perhaps sole—authority to invent new legal causes of action for constitutional violations.”).

¹² *Goldey v. Fields*, No. 24-809, slip op. at 2 (U.S. June 30, 2025) (citing *Egbert*, 596 U.S. at 491) (“This Court has repeatedly emphasized that ‘recognizing a cause of action under *Bivens* is ‘a disfavored judicial activity.’”).

¹³ *Id.* at 3 (citing *Turner v. Safley*, 482 U.S. 78, 84–85 (1987)) (“In addition, extending *Bivens* to allow an Eighth Amendment claim for excessive force could have negative systemic consequences for prison officials and the ‘inordinately difficult undertaking’ of running a prison.”).

higher financial responsibilities for the government. Therefore, the Court's decision to prevent expansion of *Bivens* precluded these negative consequences and confirms that alternative, though less productive,¹⁴ methods must be pursued for damages,¹⁵ such as utilizing grievance processes through the Bureau of Prisons. Above all, this case demonstrates a recent shift away from judicial activism and leaves the important task of creating permanent statutory causes of action for monetary damages¹⁶ to Congress.¹⁷

¹⁴ *Id.* at 3 (citing *Egbert*, 596 U.S. at 498) (“The existence of such alternative remedial procedures counsels against allowing *Bivens* suits even if such ‘procedures are ‘not as effective as an individual damages remedy.’”).

¹⁵ *Id.* at 3 (citing *Ziglar v. Abbasi*, 582 U. S. 120, 137 (2017)) (“Moreover, ‘an alternative remedial structure’ already exists for aggrieved federal prisoners.”).

¹⁶ *Id.* at 3 (citing *Ziglar*, 582 U.S. at 148– 149) (“ . . . Congress has actively legislated in the area of prisoner litigation but has not enacted a statutory cause of action for money damages.”).

¹⁷ *Id.* at 1 (citing *Egbert*, 596 U.S. at 486) (“[P]rescribing a cause of action is a job for Congress, not the courts.”).

Case Summary: *Case v. Montana*, No. 24-624 (U.S. Jan. 14, 2026)

Written by Marleni Velazquez

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In September 2021, Montana resident William Case placed a phone call to his ex-girlfriend, J.H. During the conversation, Case told her that he would commit suicide and leave behind a suicide note. J.H. then heard clicking, which she assumed sounded like the cocking of a gun, followed by a popping sound and then silence. When J.H. could not get Case to respond to her, she contacted the police.¹ The police officers at the scene knew of Case's troubled history of alcohol abuse, mental health issues, and previous suicide attempts.² Upon arrival, the police officers attempted to make contact by knocking on the door and calling out into an open window, but received no response from Case. Through the windows the police officers observed an empty handgun holster and a notepad with writing on it that was believed to be a suicide note.³ Determining that Case needed emergency assistance, the officers entered the home and announced themselves throughout

¹ *Case v. Montana*, No. 24-624, slip op. at 1-2 (U.S. Jan. 14, 2026).

² *Id.* at 2 (“The officers were aware that Case had a history of alcohol abuse and mental-health issues; that he had previously threatened suicide at the school where he worked; and that he had once seemed to attempt ‘suicide-by-cop,’ by confronting the police in a way that was likely to provoke a lethal response.”).

³ *Id.* at 2 (“Shining their flashlights inside, they could make out empty beer cans, an empty handgun holster, and a notepad with writing on it, which they took to be the suicide note Case had mentioned to J. H.”).

their search.⁴ Case never responded as he was hiding in the closet of a bedroom. An officer entered the bedroom and Case revealed himself from behind a curtain. The officer observed Case holding an object and in fear of his life, he shot Case in the abdomen.⁵ Case then received medical attention from the officers on scene and was transported to the hospital by ambulance where he later recovered.

As a result of this confrontation, Case faced charges of assaulting a police officer. In response, he filed a request to suppress all evidence found during the home entry, arguing his Fourth Amendment right against unreasonable searches and seizures was violated by the police's entry into his home without a warrant.⁶ The trial court denied the motion because the police officers had responded to what they reasonably believed was a legitimate emergency. The jury found Case guilty of the charge and the verdict was appealed to the Montana Supreme Court where it was upheld based on the "community care doctrine."⁷ According to this doctrine, police officers are given the authority to enter a home to conduct a "welfare check" should there be "objective and articulable facts" suggesting that a person in the home "is in need of help or is in peril."⁸ The court rejected Case's interpretation of the "probable cause" standard because it applies only during criminal investigations

⁴ *Id.* at 2 ("Once the chief came, the officers conferred and decided to enter the house 'to render emergency aid.' *Id.*, at 198.").

⁵ *Id.* at 3 ("Case did not answer; he was hiding in the closet of a bedroom upstairs. When one of the officers entered that room, Case threw open the closet curtain and appeared from behind it, holding 'a black object' which looked like a gun. *Id.*, at 194. Fearing that he was about to be shot, the officer fired his own rifle.).

⁶ *Id.* at 3.

⁷ *Id.* at 3. (553 P. 3d 985, 990 [Mont. 2024]).

⁸ *Id.* at 4. (553 P. 3d, at 990, 991).

where police must have a reasonable basis for believing a crime has been committed. Case then appealed this decision to the U.S. Supreme Court.

The Supreme Court affirmed the judgment by a unanimous vote but disagreed regarding the legal reasoning. The Supreme Court’s analysis relied on the precedent of *Brigham City v. Stuart*, 547 U. S. 398 (2006), which held that police officers can enter a home without a warrant if they have “objectively reasonable basis for believing” an occupant inside requires emergency assistance.⁹ This scenario is distinct from a criminal investigation, which would require probable cause. The Supreme Court noted that the language in Montana’s caretaker doctrine serves only in application to investigative street stops, and that there was no language in the law allowing the doctrine to be used to permit home entries without a warrant.¹⁰ Consequently, although the Fourth Amendment permits a warrantless home entry for a welfare check under the standard of an emergency-aid exception, *Brigham City* does not apply.

Justices Sotomayor and Gorsuch delivered concurring opinions. Justice Sotomayor emphasized the importance of police officers considering whether home entry would serve to rescue the occupant rather than escalate the risk of harm. Justice Sotomayor also referenced studies that correlate increased risks of harm with police encounters during mental health crises to dissuade police intervention

⁹ *Id.* at 5.

¹⁰ *Id.* at 7 (“That test’s language, as the dissenting justices noted, evokes the Fourth Amendment standard applying to brief, investigative street stops: ‘reasonable suspicion’ based on ‘specific and articulable facts.’ *United States v. Sokolow*, 490 U. S. 1, 7 [1989]; *Terry v. Ohio*, 392 U. S. 1, 21 [1968]; 553 P. 3d, at 999 [McKinnon, J.]”).

as the first course of action.¹¹ Justice Gorsuch argued that the emergency-aid exception can be associated with common-law standards where private citizens are allowed to enter homes to render aid to the occupant should there be suspected harm occurring.¹² While police officers are not private citizens, he asserted that they still do enjoy some privileges that private citizens do, and that consequently these common law standards ought to apply to them here.¹³ He further reasoned that the Fourth Amendment allows officers to save a life as any private citizen would, based on the interpretation of common law emergency aid standards.¹⁴

Ultimately, the judgment of this case provides a clarification regarding the difference between the caretaker doctrine and the precedent of *Brigham City v. Stuart* and their applications. If an officer has knowledge of or observes an emergency that would cause harm to the occupant of a home, then the officer should not be impeded from their duty to protect. The Supreme Court corrected Montana's interpretation of the caretaker doctrine to ensure police officers can protect citizens in their homes without fear of retaliation. The judgment clarifies that a warrantless home entry is not a violation of the Fourth Amendment when there is a reasonable basis to believe that immediate emergency aid is required for an occupant inside the home.

¹¹ *Id.* at 2-3 (Sotomayor, J., concurring).

¹² *Id.* at 1 (Gorsuch, J., concurring) ("From before the founding through the present day, the common law has generally permitted a private citizen to enter another's house and property in order to avert serious physical harm.").

¹³ *Id.* at 3 (Gorsuch, J., concurring) ("See, e.g., *Entick v. Carrington*, 19 How. St. Tr. 1029, 1066 [C. P. 1765]; 1 J. Chitty, *Criminal Law* 36 [1819]; 2 M. Hale, *Historia Placitorum Coronae* 91 [1736].").

¹⁴ *Id.* at 2-3 (Gorsuch, J., concurring).

Case Summary: *Chiles v. Salazar*, No. 24–539 (U.S. Mar. 31, 2026)

Written by Rylie DeWeese

Edited by Olivia Oefinger & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

Kaley Chiles, a licensed counselor in Colorado who employs talk therapy with her clients, filed suit in federal court against Colo. Rev. Stat. §12–245–224(1)(t)(V) (2025), a law “prohibiting licensed counselors from engaging in ‘conversion therapy’ with minors.”¹ The State argued that the law was established in response to “a growing mental health crisis among Colorado teenagers and mounting evidence that conversion therapy is associated with increased depression, anxiety, suicidal thoughts, and suicide attempts.”² Chiles argued that this law violated her First Amendment right to “speak freely with her clients in ways she believes might help them meet ‘their own goals.’”³ Kaley established that she does not go into her sessions with any preformed objectives or to try to persuade her clients in any way; instead, she only tries to help her clients “address their stated goals” on matters of sexuality and gender.⁴

The District Court and the U.S. Court of Appeals for the Tenth Circuit

¹ *Chiles v. Salazar*, No. 24–539, slip op. at 2 (U.S. Mar. 31, 2026).

² *Id.*

³ *Id.* at 4.

⁴ *Id.* at 2 (“On matters of sexuality and gender, Ms. Chiles’s clients, including minors, come to her with different goals in mind . . . Ms. Chiles does not try to persuade her clients to ‘change their attractions, behavior, or identity,’ but aims instead to help them address their stated goals.”).

concluded that the law applies to “professional conduct and that it regulates speech only incidentally,” which triggers only rational basis review, in which the state must prove the law is rationally related to a legitimate governmental interest.⁵ The lower courts held that Chiles was not entitled to the relief that she was seeking. Chiles then appealed to the U.S. Supreme Court.

Justice Gorsuch delivered the Court’s majority opinion, holding that the lower courts erred in applying rational basis review to the law and should have instead applied strict scrutiny since the law regulated speech based on its subject matter and constituted viewpoint discrimination.⁶ According to the Court, these content-based restrictions triggered strict scrutiny, which requires the government to prove the law is narrowly tailored to serve compelling state interests.⁷ The Court pointed to several cases as precedent for this holding, including *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010) and *Cohen v. California*, 403 U.S. 15 (1971). Justice Gorsuch wrote for the majority, saying that this law clearly struck at free speech since talk therapists like Chiles, who only speak with their clients and “[do] not prescribe medication, use medical devices, or employ any physical methods,” were impacted by the regulation.⁸ The majority also rejected the State’s argument that Chiles’ speech became conduct simply because it was described as a “treatment” or a “therapeutic modality,” with Justice Gorsuch writing that “the

⁵ *Id.* at 6.

⁶ *Id.* at 8.

⁷ *Id.* at 8 (“As a general rule, such ‘content-based’ restrictions trigger ‘strict scrutiny,’ a demanding standard that requires the government to prove its restriction on speech is ‘narrowly tailored to serve compelling state interests.’”).

⁸ *Id.* at 11.

First Amendment is no word game.”⁹

Justice Kagan wrote a concurring opinion, which Justice Sotomayor joined, making note that the case would have been much closer if it was “a content-based but viewpoint-neutral law.”¹⁰ On the other hand, Justice Jackson, the lone dissenter on the Court, pointed to *Lambert v. Yellowley*, 272 U.S. 581 (1926) as precedent that “there is no right to practice medicine which is not subordinate to the police power of the States.”¹¹ Justice Jackson asserted that the majority did not take the healthcare context into consideration and wrote that these First Amendment principles hold less weight “when the speakers are medical professionals and their treatment-related speech is being restricted incidentally to the State’s regulation of the provision of medical care.”¹² Justice Jackson claimed that “the Court could be ushering in an era of unprofessional and unsafe medical care administered by effectively unsupervised healthcare providers.”¹³ She also analogized the law by writing that “no one would bat an eye if a State required its doctors to discourage, but not encourage, smoking tobacco.”¹⁴

This case is incredibly important in how it might impact healthcare regulations and licensing in the future. This ruling could also have further implications on contentious healthcare issues like abortion, especially considering

⁹ *Id.* at 12.

¹⁰ *Id.* at 1 (Kagan, J., concurring) (“I write only to note that if Colorado had instead enacted a content-based but viewpoint-neutral law, it would raise a different and more difficult question.”).

¹¹ *Id.* at 1 (Jackson, J., dissenting) (citing *Lambert v. Yellowley*, 272 U.S. 581, 596 (1926)).

¹² *Id.* at 2 (Jackson, J., dissenting).

¹³ *Id.* at 33 (Jackson, J., dissenting).

¹⁴ *Id.* at 21 (Jackson, J., dissenting)

its broad framing of First Amendment protections for professional speech.

Case Summary: *A.A.R.P. v. Trump*, No. 24A1007 (U.S. May 16, 2025)

Written by Margaux Alvarez

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In April 2025, two Venezuelan nationals who were being detained in the United States filed for emergency relief to stop their imminent removal under the Alien Enemies Act (AEA). They brought their request on their own behalf and on behalf of a proposed class of other detainees in similar situations.¹ President Trump had issued a Proclamation invoking the AEA, which authorized the removal of Venezuelan members believed to be members of Tren de Aragua (TdA), a group that had been classified as a foreign terrorist organization. All alleged TdA members included in the proposed class were held in U.S. immigration detention facilities. According to the applicants, detainees were given removal notices stating they could be deported “tonight or tomorrow,” leaving them without adequate time to file for representation or habeas corpus petitions.² The administration relied on a March 15 executive order that classified Venezuelan nationals aged 14 or older as removable “alien enemies” based on claims that TdA members represented a threat of

¹ *A.A.R.P. v. Trump*, No. 24A1007, slip op. at 1-2 (U.S. May 16, 2025) (“[D]etainees seek injunctive relief against summary removal under the AEA.”); *id.* at 2 (“Evidence now in the record (although not all before us on April 18) suggests that the Government had in fact taken steps on the afternoon of April 18 toward removing detainees under the AEA—including transporting them from their detention facility to an airport and later returning them to the facility.”).

² *A.A.R.P.*, slip op. at 1.

predatory incursions in the United States.³

The detainees first asked the United States District Court for the Northern District of Texas for emergency injunctive relief, requesting that the Court stop their imminent removal under the Alien Enemies Act. Although the District Court received the request, it did not grant immediate relief and did not rule on the renewed emergency motion before the applicants claimed that the Government was preparing to carry out removals. During this period, the applicants argued that the Government was actively transporting detainees to airports for removal, and reports later indicated that some detainees were taken from their detention facilities on April 18.⁴ Reports also indicated that more than 200 noncitizens were transferred to El Salvador on the same day the District Court first addressed the request for relief, highlighting the risk that removals could occur even while legal challenges were in motion. They were taken to El Salvador's Terrorism Confinement Center, a maximum-security prison.⁵ Because the District Court did not issue immediate relief, the applicants then sought relief from the United States

³ Amy Howe, *Justices temporarily bar government from removing Venezuelan men under Alien Enemies Act* SCOTUSblog (May 16, 2025).

<https://www.scotusblog.com/2025/05/supreme-court-again-bars-trump-from-removing-venezuelan-nationals/> ("In his March 15 order, Trump indicated that members of Tren de Aragua were 'perpetrating, attempting, and threatening an invasion or predatory incursion' against the United States. Therefore, he concluded, any Venezuelan citizen in the United States who is 14 years old or older can be 'apprehended, restrained, secured, and removed as' an alien enemy.").

⁴ *A.A.R.P.*, slip op. at 2 ("Evidence now in the record [although not at all before us on April 18] suggests that the Government had in fact taken steps on the afternoon of April 18 toward removing detainees under the AEA – including transporting them from their detention facility to an airport and later returning them to the facility . . .").

⁵ Howe, *supra* note 3 ("News reports indicated that more than 200 noncitizens were taken to El Salvador from the United States on March 15.").

Court of Appeals for the Fifth Circuit.⁶ The Fifth Circuit rejected the appeal based on a lack of jurisdiction, reasoning that because the District Court had not issued a formal injunction, there was no appealable order for the appellate court to review.⁷

The Supreme Court subsequently granted certiorari, vacated the Fifth Circuit’s dismissal, and held that when a district court fails to act during a moment of “extreme emergency,” that inaction may function as a denial of injunctive relief, rendering the matter appealable under 28 U.S.C. § 1292(a)(1).⁸ Applying that principle, the Supreme Court concluded that the District Court’s delay amounted to such a denial because the detainees faced an imminent risk of removal.⁹

The Supreme Court also found that giving detainees only about 24-hours’ notice—without clear information on how to challenge their removal—likely violated due process under long-standing precedent from the *The Japanese Immigrant Case*, 189 U.S. 86 (1903) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) cases.¹⁰ These previous cases established an important due

⁶ Before the Fifth Circuit ruled, the Supreme Court “ordered the Government—in light of all these circumstances—‘not to remove any member of the putative class of detainees’ in order to preserve [its] jurisdiction to consider the application.” *A.A.R.P.*, slip op. at 2 (citing *J.G.G. v. Trump*, 604 U. S. ____ (2025)).

⁷ *Id.* at 2 (“The Fifth Circuit dismissed the detainees’ appeal for lack of jurisdiction and denied their motion for injunction pending appeal as premature, on the ground that the detainees ‘gave the [district] court only 42 minutes to act.’”).

⁸ 28 U.S.C. § 1292(a)(1) (2024); *A.A.R.P.*, slip op. at 3 (citing *Carson v. American Brands, Inc.*, 450 U.S. 79, 84 (1981)) (“The Fifth Circuit erred in dismissing the detainees’ appeal for lack of jurisdiction. Appellate courts have jurisdiction to review interlocutory orders that have ‘the practical effect of refusing an injunction.’”).

⁹ *A.A.R.P.*, slip op. at 3 (“Here the District Court’s inaction—not for 42 minutes but for 14 hours and 28 minutes—had the practical effect of refusing an injunction to detainees facing an imminent threat of severe, irreparable harm.”).

¹⁰ *A.A.R.P. v. Trump*, slip op. at (citing *The Japanese Immigrant Case*, 189 U.S. 86, 101 (1903)) (“We have long held that ‘no person shall be’ removed from the United States ‘without opportunity, at some time, to be heard.’”); *also id.* at 4 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339

process principle: before the government can take any action that deprives a person of liberty, it must provide meaningful notice and a real opportunity to be heard—even in immigration-related proceedings. The Court’s majority emphasized that detainees must have a real chance to contact counsel and file a habeas petition before they are removed from the United States. Because deportation to a foreign government can cause serious and irreversible harm—and because the Government itself suggested that someone who is wrongly deported may not be able to return—the Supreme Court issued a temporary injunction to preserve the status quo while the case continues in the Fifth Circuit.¹¹

Justice Kavanaugh wrote a concurring opinion agreeing that temporary relief was necessary. In his view, the Court needed to act quickly to prevent removals before the courts could determine whether the Alien Enemies Act actually authorized them. He also noted that both sides treated the legal issue as urgent. The Executive Branch argued that this case involved national security concerns, while the detainees mainly emphasized the immediate risk of wrongful removal. Justice Kavanaugh further pointed out that several federal district courts had already reached different conclusions about the President’s authority under the AEA, creating an uncertainty that only the Supreme Court could resolve.¹² Because

U.S. 306, 314 (1950)) (“Due process requires notice that is ‘reasonably calculated, under all the circumstances, to apprise interested parties’ and that ‘afford[s] a reasonable time . . . to make [an] appearance.’”).

¹¹ *Id.* at 4 (“Under these circumstances, notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster.”); *id.* at 4 (“The Government has represented elsewhere that it is unable to provide for the return of an individual deported in error to a prison in El Salvador.”).

¹² *A.A.R.P v. Trump*, No. 24A1007, slip op. at 1 (U.S. May 16, 2025) (Kavanaugh, J., dissenting)

of that uncertainty, Justice Kavanaugh explained that he would have preferred for the Court to take the additional step of granting full review right away, ordering expedited briefing and arguments to provide a clear and definitive answer as quickly as possible.¹³

Justice Alito dissented, joined by Justice Thomas. He argued that the Supreme Court should not have intervened. According to his view, the Court lacked jurisdiction because the District Court had not actually denied relief; rather, it had simply needed more time to review the filings.¹⁴ Additionally, Justice Alito pointed out that the available evidence from April 18 did not clearly show that removals were imminent and criticized the applicants' attorneys for demanding that the District Court issue a ruling within a short amount of time.¹⁵ Moreover, he also objected to the Court's decision to extend relief to an entire putative class through a habeas proceeding. He explained that class-wide habeas relief has historically been rare and argued that the named applicants were not appropriate representatives because they were already protected from removal while their own cases were pending.¹⁶ Finally, Justice Alito criticized the Court for effectively granting review

("Several Federal District Courts have already issued conflicting rulings on the underlying legal issues.").

¹³ *Id.* at 2 ("I would grant certiorari, order prompt briefing, hold oral argument soon thereafter, and then resolve the legal issues.").

¹⁴ *A.A.R.P v. Trump*, No. 24A1007, slip op. at 3 (U.S. May 16, 2025) (Alito, J., dissenting) ("[A]s the judge has noted, he 'was working with utmost diligence to resolve [the] important and complicated issues [presented by the motion] as quickly as possible.'").

¹⁵ *Id.* at 5 ("The declarations certainly did not show that action was urgently needed to protect A.A.R.P. or W.M.M.").

¹⁶ *Id.* at 8 ("First, it is doubtful that class relief may be obtained in a habeas proceeding. We have never so held, and it is highly questionable whether it is permitted."); *also id.* at 11 ("Here, however, the main interim relief sought on behalf of the putative class—adequate notice of plans for removal under the AEA and an opportunity to contest such removal in court . . .—is not needed by either A.

before any lower court had ruled on the merits, calling the decision an unnecessary and improper expansion of the Supreme Court's role.¹⁷

A.A.R.P v. Trump (2025) is likely to become a notable case in immigration law, emergency Supreme Court procedure, and habeas corpus practice. The decision reinforces that when the government invokes national-security authority, noncitizens are still entitled to due process rights before removal. Due process includes notice and a meaningful opportunity to seek judicial review. The Court's emphasis on giving detainees enough time and information to file habeas petitions is significant because AEA removals occur outside the usual immigration procedures under the Immigration and Nationality Act (INA). The ruling makes clear that the AEA cannot serve as a bypass around constitutional protections simply because the Government claims urgency or terrorism-related concerns. More broadly, the case raises several procedural questions that are very likely to appear in future litigation. For example, when—if ever—is class-wide habeas relief appropriate? How long can a district court wait before its delay effectively becomes an appealable decision? Under what circumstances can the Supreme Court intervene on its emergency docket in order to protect its ability to review a case?

As the Fifth Circuit now considers what type of notice and process the Constitution requires in this kind of situation, it will need to address questions left

A. R. P. or W. M. M., who already have a pending habeas proceeding and a promise that they will not be removed until that proceeding concludes.”).

¹⁷ *Id.* at 13 (“Granting certiorari before a court of appeals has entered a judgment is a sharp departure from usual practice, but here neither the Court of Appeals nor the District Court has decided any merits questions.”).

open by the Supreme Court's temporary order. In particular, the court will have to determine how much time detainees must be given before removal, and how courts should balance national security concerns with basic due process protections. Ultimately, the Supreme Court's involvement signals that it is closely monitoring expedited removal efforts and is willing to step in and preserve meaningful judicial review—even in fast-moving national security cases.

**Case Summary: *TikTok Inc., et al. v. Merrick B. Garland*, Nos. 24–656 and
24–657 (U.S. Jan. 17, 2025)**

Written by Charles Webb

Edited by Madeline Leonard & Maclain Conlin

*(The views expressed are those of the author and do not necessarily represent the
position of the Clemson Law Review or its leadership.)*

TikTok has grown to become a widely recognized short-form video sharing platform in the United States, with six out of ten adults under age 30 saying they use the platform as of early 2026.¹ However, TikTok’s entrance into American society was not accepted by the federal government with open arms, as highlighted by President Trump’s signing of an executive order in August 2020 which declared that TikTok and its Chinese connections are a threat to the American people and national security at large.² Mainly, governmental concern centered on ByteDance, TikTok’s parent company, which was founded and operates in China. The Trump administration attempted to enforce regulations on ByteDance’s activity in the U.S., but the United States District Court for the District of Columbia enjoined the prohibitions before they could take effect.³

¹ Colleen McClain and Kirsten Eddy, *8 facts about Americans and TikTok*, Pew Research Center (March 2, 2026), https://www.pewresearch.org/short-reads/2026/03/02/8-facts-about-americans-and-tiktok/?cb_viewport=mobile, accessed May 5, 2026.

² Exec. Order No. 13,942, 85 Fed. Reg. 51,237 (Aug. 6, 2020) (“The spread in the United States of mobile applications developed and owned by companies in [China] continues to threaten the national security, foreign policy, and economy of the United States.”).

³ *TikTok Inc. v. Garland*, Nos. 24–656 and 24–657, slip op. at 4 (Jan. 17, 2025) (per curiam) (“[F]ederal courts enjoined the prohibitions before they took effect, finding that they exceeded the

After President Biden was inaugurated, the D.C. Circuit placed the case in abeyance in February 2021, allowing executive branch officials to work with ByteDance on non-divestiture solutions throughout 2021 and 2022. However, nothing substantial came of this, and TikTok’s operations appeared to proceed as normal. United States lawmakers again began expressing concerns about ByteDance, noting that its “proprietary algorithm . . . is developed and maintained in China.”⁴ Critics of the platform saw their ties to a geopolitical rival as a threat to national security in the wake of widespread use.

Acting upon those concerns, the United States House of Representatives passed H.R. 7521, the Protecting Americans from Foreign Adversary Controlled Applications Act. Signed into law by President Joe Biden on April 24, 2024 as part of Public Law 118-50, the new legislation prohibited distribution, maintenance, and updating of internet hosting services to applications controlled by a foreign adversary.⁵ A provision within Pub. L. No. 118-50 included a 90 day extension, allowing TikTok’s U.S. operations to continue pursuant to ByteDance engaging in a process called qualified divestiture.⁶ In essence, this process requires a government-approved sale of operations in the United States and the cessation of

Executive Branch’s authority under IEEPA.”).

⁴ *Id.* at 3 (“ByteDance Ltd. owns TikTok’s proprietary algorithm, which is developed and maintained in China.”).

⁵ *Id.* at 4 (“The Act makes it unlawful for any entity to provide certain services to ‘distribute, maintain, or update’ a ‘foreign adversary controlled application’ in the United States.”).

⁶ *TikTok v. Garland* slip op. at 5 (“The Act exempts a foreign adversary controlled application from the prohibitions if the application undergoes a ‘qualified divestiture.’ . . . A ‘qualified divestiture’ is one that the President determines will result in the application ‘no longer being controlled by a foreign adversary.’”).

user data collected from the foreign country.

In response, “ByteDance Ltd. and TikTok Inc.—along with two sets of TikTok users and creators (creator petitioners)—filed petitions for review in the D. C. Circuit, challenging the constitutionality of the Act.”⁷ The D.C. Circuit Court of Appeals consolidated the complaints, “holding that the Act d[id] not violate petitioners’ First Amendment rights.”⁸ Petitioners appealed to the Supreme Court of the United States, which granted certiorari.⁹ In their briefs, TikTok and ByteDance argued that the law should be subject to strict scrutiny.¹⁰

The Supreme Court unanimously upheld the D.C. Circuit’s decision, ruling against ByteDance, TikTok, and the other petitioners. In a per curiam opinion, the Court held that intermediate scrutiny was sufficient as the regulation was not content-based. Specifically, the Court stated that no provisions targeted by petitioners would regulate particular speech based on content, and therefore strict scrutiny was not required.¹¹ To support their decision, the justices referenced *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997), which addressed must-carry regulations of television companies. Ruling in favor of the FCC, the Court held that a content-neutral law does not violate the First Amendment if it

⁷ *Id.* at 6.

⁸ *Id.* at 6.

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 10 (“The challenged provisions are facially content neutral. They impose TikTok-specific prohibitions due to a foreign adversary’s control over the platform and make divestiture a prerequisite for the platform’s continued operation in the United States. They do not target particular speech based upon its content, . . . or regulate speech based on its function or purpose”); *also id.* at 13 (“On this understanding, we cannot accept petitioners’ call for strict scrutiny. No more than intermediate scrutiny is in order.”).

serves governmental interests which are unrelated to the suppression of free speech, and “does not burden substantially more speech than necessary to further those interests.”¹² In applying *Turner* to *TikTok v. Garland*, the court held that since TikTok was not being evaluated based upon the content on the platform, Pub. L. No. 118-50 should be evaluated under intermediate scrutiny.

In addition to the per curiam opinion, Justice Gorsuch wrote in concurrence that the national security threat posed by TikTok’s operational practices would have warranted prohibitions against Chinese control of the platform, regardless of the level of scrutiny required in evaluating the law.¹³ However, he expressed doubt over whether the court’s evaluation should have escaped a strict-scrutiny review.¹⁴ Justice Sotomayor also addressed concerns in a separate concurring opinion, referencing the Court’s holding in *Arcara v. Cloud Books*, 478 U.S. 697 (1986), which held that “[l]aws that ‘impose a disproportionate burden’ upon those engaged in expressive activity are subject to heightened scrutiny under the First Amendment.”¹⁵ In applying *Arcara* to *TikTok v. Garland*, Justice Sotomayor argued that the prohibitions contained in Pub. L. No. 118-50 imposed precisely these sorts of burdens.¹⁶ Both Justice Gorsuch and Justice Sotomayor agreed in their

¹² *Id.* at 9.

¹³ *Id.* at 3 (Gorsuch, J., concurring in judgment) (“[W]hatever the appropriate tier of scrutiny, I am persuaded that the law before us seeks to serve a compelling interest: preventing a foreign country, designated by Congress and the President as an adversary of our Nation, from harvesting vast troves of personal information about tens of millions of Americans.”).

¹⁴ *Id.* at 2 (“I harbor serious reservations about whether the law before us is ‘content neutral’ and thus escapes ‘strict scrutiny.’”).

¹⁵ *Id.* at 1 (Sotomayor, J., concurring in part and concurring in the judgment) (citing *Arcara v. Cloud Books, Inc.*, 478 U. S. 697, 704 (1986)) (“Laws that ‘impose a disproportionate burden’ upon those engaged in expressive activity are subject to heightened scrutiny under the First Amendment.”).

¹⁶ *Id.* at 1 (“The challenged Act plainly imposes such a burden: It bars any entity from distributing

concurring opinions that Pub. L. 118-50 survived the petitioners' First Amendment challenges. However, their opinions indicated uncertainty about the burdens of the law and whether it was truly content-neutral, and it appears that neither justice agreed with the Court's decision to review the law under intermediate scrutiny.

As a result of TikTok Inc. and other petitioners' unsuccessful appeal, a majority-stake of TikTok United States operations was sold to a joint venture investment group comprised of an American data storage company, Oracle, Inc., a global private equity firm, Silver Lake Technology Management, L.L.C., and an Emirati state-owned investment firm, MGX.¹⁷ This new venture was named TikTok USDS Joint Venture LLC., which restructured the proprietary algorithm for American TikTok users and returned data to the hands of a U.S. firm. ByteDance, Inc. was allowed to retain a 19.9% minority ownership stake in U.S. operations but has ceded operational control completely.¹⁸

Moving forward, this decision potentially expands the scope of intermediate

TikTok's speech in the United States, unless TikTok undergoes a qualified divestiture.").

¹⁷ Kaitlyn Huamani, *TikTok finalizes a deal to form a new American entity*, Associated Press (January 23, 2026), <https://apnews.com/article/tiktok-deal-us-china-ecb46c3bfee4cf3d362a01fe4968a4f>, accessed May 5, 2026 ("TikTok has finalized a deal to create a new American entity, avoiding the looming threat of a ban in the United States that has been in discussion for years on the platform now used by more than 200 million Americans. The social video platform company signed agreements with major investors including Oracle, Silver Lake and the Emirati investment firm MGX to form the new TikTok U.S. joint venture.").

¹⁸ *Id.* ("Apart from an emphasis on data protection, with U.S. user data being stored locally in a system run by Oracle, the joint venture will also focus on TikTok's algorithm. The content recommendation formula, which feeds users specific videos tailored to their preferences and interests, will be retrained, tested and updated on U.S. user data, the company said in its announcement. . . .Oracle, Silver Lake and MGX are the three managing investors, each holding a 15% share. Other investors include the investment firm of Michael Dell, the billionaire founder of Dell Technologies. ByteDance retains 19.9% of the joint venture.").

scrutiny, setting a precedent for the Federal Government to pass laws governing social media so long as they do not target speech based on its content.¹⁹

¹⁹ *Tiktok Inc.*, slip op. at 10 (“As applied to petitioners, the challenged provisions are facially content neutral and are justified by a content-neutral rationale.”).

Case Summary: *Barrett v. United States*, No. 24-5774 (U.S. Jan. 14, 2026)

Written by Patrick Keegan

Edited by Madeline Leonard & Maclain Conlin

(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

In the case of *Barrett v. United States*, 607 U.S. ____ (2026), Dwayne Barrett, a getaway driver in a string of 2011-2012 New York armed robberies, was arrested and indicted on seven charges for being an accomplice in the robbery and killing of Gamar Dafalla.¹ Amongst those charges were two firearm offenses under 18 U.S.C. § 924(c)(1)(A)(i)—for using or carrying a firearm in relation to a crime of violence—and § 924(j)—for causing a death through the use of a firearm during a § 924(c) violation.² In 2013, the United States District Court for the Southern District of New York imposed consecutive sentences on all counts, resulting in a ninety year term of imprisonment.³ After a failed appeal to the Second Circuit in 2018, Barrett petitioned the Supreme Court for a writ of certiorari regarding these gun charges, asserting that he was being charged for the same crime twice.⁴ While Barrett’s case

¹ *Barrett v. United States*, No. 24-5774, slip op. at 2 (U.S. Jan. 14, 2026) (“Dwayne Barrett committed a series of robberies between August 2011 and January 2012. During one, Barrett’s confederate shot and killed Gamar Dafalla.”).

² *Id.* at 1 (“§924(c)(1)(A)(i), criminalizes using, carrying, or possessing a firearm in connection with a federal crime of violence or drug trafficking crime . . . §924(j), prescribes different penalties—including, in certain circumstances, capital punishment— when ‘a violation of subsection (c) causes death.’”).

³ *Id.* at 2 (“A jury found Barrett guilty on all seven counts, and the District Court sentenced Barrett to a total term of 90 years of imprisonment.”).

⁴ *Id.* at 2-3 (“After we decided *United States v. Davis*, 588 U. S. 445 (2019), and vacated the Second Circuit’s disposition of Barrett’s direct appeal in light of that decision, the Second Circuit vacated one of Barrett’s §924(c) convictions not at issue here.”).

remained in post-conviction proceedings, the Supreme Court decided *United States v. Davis*, 588 U.S. 445 (2019), which invalidated § 924(c)'s residual clause as unconstitutionally vague and limited the statute to offenses qualifying under its elements clause. Consequently, the case was remanded to the district court, which vacated one § 924(c) conviction because its predicate offense no longer qualified as a crime of violence.⁵ Although this reduced Barrett's sentence to fifty years, it did not, however, resolve his contention that § 924(c) and § 924(j) imposed multiple punishments for the same conduct.

During Barrett's resentencing under the new *Davis* precedent, the Supreme Court decided *Lora v. United States*, 599 U.S. 453 (2023), holding that § 924(j) does not incorporate § 924(c)'s mandatory consecutive-sentencing requirement.⁶ Because Barrett's firearm counts had previously been treated as mandatorily consecutive, this ruling directly affected his sentencing structure. In response to *Lora*, the District Court held that § 924(j) no longer required a mandatory consecutive sentence and therefore attempted to avoid an unlawful sentencing structure by merging Barrett's § 924(c) and § 924(j) convictions into a single sentence during their resentencing.⁷ On review, the Second Circuit held that this approach was

⁵ *Id.* at 3 (“The District Court then resentenced Barrett to 50 years in prison. Twenty of those years came from concurrent sentences on three Hobbs Act robbery counts, including, as relevant here, count five. Twenty-five years came from a consecutive term on count seven (the subsection (j) conviction), into which the District Court merged count six (the subsection (c) conviction).”).

⁶ *Id.* at 3 (citing *Lora v. United States*, 599 U. S. 453, 459 (2023)) (“*Lora* held that subsection (j) does not incorporate subsection (c)'s consecutive-sentence mandate. That mandate requires a subsection (c) sentence to run consecutively to ‘any other term of imprisonment imposed on the person.’ §924(c)(1)(D)(ii). It does not, we held in *Lora*, require the same of a subsection (j) sentence.”).

⁷ *Id.* at 3 (“When the District Court sentenced Barrett in this case, it had been under the opposite impression. So Barrett appealed again, and, bound by *Lora*, the Second Circuit vacated Barrett's sentence and remanded for another resentencing.”).

incorrect. The Circuit Court concluded that *Lora* addressed only whether § 924(j) mandates consecutive sentences, not whether it permits separate convictions or punishments.⁸ The Court then looked to the precedent set in *Blockburger v United States*, 284 U.S. 299 (1932), which outlines whether two charges arising from the same act constitute the same offense in order to avoid Double Jeopardy by asking whether each crime requires proof of a fact the other does not. Because § 924(j) requires proof that a death resulted and §924(c) does not, the Court held that Congress presumptively authorized separate punishments. Accordingly, the Court ruled that the two counts could not be merged and remanded the case for resentencing with separate sentences, even though those sentences were not required to run consecutively.⁹

Barrett again petitioned for certiorari, and the Supreme Court granted review to resolve whether both statutes may support convictions arising from a single act. In a unanimous decision, the Supreme Court ruled that only one conviction is permitted when a single act violates both § 924(c)(1)(A)(i) and § 924(j).¹⁰ Congress must provide clear language in the statute itself if it wishes to allow for multiple convictions, and it did not. Writing for the Court, Justice Jackson

⁸ *Id.* at 3 (“The Court of Appeals rejected Barrett’s argument that the Double Jeopardy Clause required the District Court to stay that course when the case returned for resentencing.”).

⁹ *Id.* at 4 (“And it recognized that the two provisions qualify as the same offense under the governing test laid out in *Blockburger*. 102 F. 4th, at 89–90. But it believed that, ‘[a]s construed in *Lora*,’ the two provisions ‘are separate offenses for which Congress has clearly authorized cumulative punishments.’ *Id.*, at 89.”).

¹⁰ *Id.* at 20 (“Congress has not authorized convictions under both 18 U. S. C. §§924(c)(1)(A)(i) and (j) for one act that violates both provisions. The part of the judgment of the Court of Appeals that held otherwise is reversed, and the case is remanded for further proceedings consistent with this opinion.”).

explained that although § 924(j) increases the penalties available when a § 924(c) violation causes death, Congress did not clearly authorize an additional conviction on top of the underlying § 924(c) offense.¹¹ Grounding its analysis in the Fifth Amendment’s Double Jeopardy Clause, the Court rejected the Second Circuit’s application of *Blockburger*. The Court concluded that Congress intended § 924(j) to operate as an alternative, not a supplement, to § 924(c)(1)(A)(i). The Court emphasized that “the Court of Appeals, Barrett, the Government, and Court-appointed amicus agree that §924(c)(1)(A)(i) and §924(j) define the same offense” and therefore the usual presumption against multiple punishments for the same offense applies.¹²

Justice Gorsuch wrote separately, agreeing in part. He agreed that Barrett could not receive two convictions for the same conduct but questioned the majority’s characterization of *Blockburger* as a presumption of legislative intent. In his view, when two statutory provisions fail the *Blockburger* test, they are the same offense under the guidelines of the Fifth Amendment.¹³ Accordingly, imposing separate convictions presents a direct constitutional violation under the Double Jeopardy Clause, not simply a problem of statutory interpretation. He wrote that Barrett

¹¹ *Id.* at 6 (“Congress has not authorized convictions under both 18 U. S. C. §§924(c)(1)(A)(i) and (j) for one act that violates both provisions. The part of the judgment of the Court of Appeals that held otherwise is reversed, and the case is remanded for further proceedings consistent with this opinion . . . Congress has not authorized convictions under both 18 U. S. C. §§924(c)(1)(A)(i) and (j) for one act that violates both provisions. The part of the judgment of the Court of Appeals that held otherwise is reversed, and the case is remanded for further proceedings consistent with this opinion.”).

¹² *Id.* at 9 (“The Court of Appeals, Barrett, the Government, and Court-appointed amicus agree that §924(c)(1)(A)(i) and §924(j) define the same offense.”).

¹³ *Id.* at 1 (Gorsuch, J., concurring in part) (“Under *Blockburger*, two provisions create the same offense for double jeopardy purposes unless each provision has an element the other lacks.”).

“was set to be criminally punished twice.”¹⁴ Justice Gorsuch highlighted what he described as tension in the Court’s Double Jeopardy jurisprudence, noting that the Court sometimes treated *Blockburger* as a constitutional rule and other times as a tool of statutory interpretation. He suggested that the better approach would be to give “the constitutional phrase ‘the same offence’ a consistent meaning,” so that Congress could not authorize multiple convictions for the same offense simply because charges are brought in a single proceeding rather than successive ones.¹⁵ His concurring opinion calls for a future reevaluation of how Double Jeopardy doctrine operates in cases involving overlapping federal statutes, especially in regards to the application of *Blockburger*.

Barrett v. United States is important because it reinforces a strong limit on prosecutors’ ability to stack multiple convictions for the same criminal act, protecting Fifth Amendment rights. By requiring clear Congressional authorization before permitting cumulative convictions, the Court strengthened Double Jeopardy protection against multiple punishments. *Barrett* is likely to influence how courts interpret overlapping federal criminal statutes, especially when one of the overlapping offenses is categorized as greater or lesser than other included offenses. By treating aggravated provisions as alternatives rather than cumulative add-ons, the precedent set by *Barrett* may limit excessive sentencing in cases involving

¹⁴ *Id.* at 6 (“Mr. Barrett really was charged twice for one offense. He really was convicted twice. Before our intervention, he really was set to be criminally punished twice. And whatever Congress might or might not intend, that is double jeopardy.”).

¹⁵ *Id.* at 4 (“True, this approach would require us to admit that *Blockburger* is not, after all, a mere presumption in the concurrent-prosecution context. But saying that much would give the constitutional phrase ‘the same offence’ a consistent meaning and treat like cases alike.”).

overlapping federal offenses.

Case Summary: *Donald J. Trump, President of the United States, et al. v. Illinois, et al.* (Docket No. 25A443), 25A443 (U.S. Dec. 23, 2025)

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(The views expressed are those of the author and do not necessarily represent the position of the Clemson Law Review or its leadership.)

Following the inauguration of President Donald Trump in his second term in office, the federal government has largely increased immigration-enforcement activities throughout the United States, with the stated focus of deporting and removing undocumented immigrants. Within Chicago, federal immigration-enforcement efforts have encountered significant resistance.¹ According to the Government, federal officers have been obstructed, threatened, and assaulted in pursuit of their official duties.² Moreover, the Government alleges that an Immigration Customs and Enforcement processing center located in Broadview, Illinois has been the site of frequent violent protests that have impeded its efforts in enforcing federal immigration laws.³

In response to this backlash, on October 4, 2025, President Donald Trump called 300 members of the Illinois National Guard (“Guard”) into active federal service to protect federal personnel and property in Illinois, specifically in areas in

¹ *Trump v. Illinois*, No. 25A443, slip op. at 1 (U.S. 2025).

² *Id.*

³ *Id.*

and around Chicago.⁴ The following day members of the Texas National Guard were also federalized and sent to Chicago.⁵ In calling forth the Guard the Government relied on 10 U. S. C. §12406(3), a statute which purportedly empowers the President to federalize members of the Guard if “unable with the regular forces to execute the laws of the United States.”⁶

In response to Trump’s federalization of these troops, the United States District Court for the Northern District of Illinois entered a temporary restraining order barring the federalization and deployment of the Guard in Illinois.⁷ The U.S. Department of Justice (US DOJ) immediately sought appellate review at the Seventh Circuit. The Seventh Circuit denied any sort of relief for the executive branch, largely in part for the Government’s justification for stay permitting the Guard to remain federalized.⁸ The US DOJ then sought review of the 7th Circuit and lower court rulings before the U.S. Supreme Court, seeking a stay to the District Court’s order on an emergency basis.⁹ During the Court’s review process, the parties were instructed to file supplemental briefs on the meaning of the term “regular forces” in §12406(3).¹⁰ The Government posited that the term refers to civilian law enforcement officers, such as those employed by the Immigration Customs and Enforcement Agency.¹¹ The State of Illinois maintained that the term

⁴ *Id.* at 2.

⁵ *Id.*

⁶ 10 U.S.C. § 12406(3).

⁷ *Trump v. Illinois*, No. 25A443, slip op. at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2–3.

refers to regular forces of the United States military.¹²

In a 6-3 decision, Chief Justice Roberts, Justice Sotomayor, Justice Kagan, Justice Barrett, Justice Jackson, and Justice Kavanaugh, in a “per curiam” order on the emergency docket, concluded that the term “regular forces” likely refers to the regular forces in the United States military.¹³ This interpretation implies that to call the National Guard into active federal service the President must be unable with the regular military to execute the laws of the United States.¹⁴ The contention with this implication is twofold.¹⁵ First, the statute requires an assessment of the military’s ability to execute laws; it likely would only apply to when the military was the only actor who could execute such laws.¹⁶ Such a circumstance is rare, as defined by the Posse Comitatus Act, the military is prohibited from “executing the laws” “except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.”¹⁷ 18 U. S. C. §1385.¹⁸ Concerning the second leg of this issue, the Government has yet to put forth a source of authority that would constitute the execution of these laws in Illinois.¹⁹ The President has not invoked a statute that provides an exception to the Posse Comitatus Act, instead exclusively relying on inherent constitutional authority.²⁰ However, in line with the

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (per curiam).

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ 18 U.S.C. § 1385.

¹⁹ *Trump v. Illinois*, No. 25A443, slip op. at 4.

²⁰ *Id.*

longstanding view of the Executive Branch, an executive order does not constitute “executing the laws.”²¹ With this interpretation, the Government has not in this instance provided sufficient evidence to prove its burden to show that §12406(3) permits the President to federalize the Guard in the exercise of inherent authority to protect federal personnel and property in Illinois.²²

Justice Kavanaugh concurs in judgment through the lens of narrowing the grounds for which the judgment is denied.²³ In agreeing with the definition of regular forces as stated in the majority opinion, there is a further emphasis on the President’s determination of the statute.²⁴ On the current record, there is yet to be any sort of determination that the Government is “unable” with the U.S. military, as distinct from federal civilian law enforcement officers to ensure execution of federal law in Illinois.²⁵ Kavanaugh posits that the Court need not decide more, for the further analysis put forth could lead to potentially significant implications for further crises that the Court cannot foresee.²⁶ Before the Court addresses far-reaching statutory questions they must at least invite further briefing or an oral argument.²⁷

Justice Alito, with whom Justice Thomas joins, delivers a lengthy and rather scathing dissent concerning the unnecessary departure from standard practice onto

²¹ *Id.* at 4–5.

²² *Id.* at 5.

²³ Kavanaugh, J., concurring in judgment, *Trump v. Illinois*, No. 25A443, slip op. at 1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 1–2.

²⁷ *Id.* at 2.

which there is no relevant legal precedent nor comprehensive briefing for.²⁸ Within the lower courts, the parties had agreed upon this definition that “regular forces” means civil federal law enforcement with the State of Illinois distinctly adopting this viewpoint in the District Court.²⁹ It was only within the argument before the Supreme Court in which this definition changes, contrary to their position below, that “regular forces” means the military.³⁰ In accepting this eleventh hour argument, the Court has significantly departed from past precedent in which even if the Justices had doubts over the interpretation of the phrase “regular forces” it could assume for the sake of the argument that the parties interpretation was correct.³¹ Secondly Justice Alito posits that the interpretation of “regular forces” is practically implausible.³² If the term “regular forces” means federal civilian law enforcement officers, that would mean the President would have to determine that immigration laws would have to put on hold every other law enforcement agency in the country, including every member of the FBI, Secret Service, postal service, deputy marshal, would have to prove their incapability of dealing with the situation at hand.³³ Instead, there must be an emphasis on how “unable” is interpreted within our day-to-day context.³⁴ A person may say he or she is “unable” to perform a duty simply because the adverse consequences of performing that act would be

²⁸ Alito, J., dissenting, *Trump v. Illinois*, No. 25A443, slip op. at 1.

²⁹ *Id.*

³⁰ *Id.* at 1–2.

³¹ *Id.* at 2.

³² *Id.*

³³ *Id.* at 3.

³⁴ *Id.*

unacceptable.³⁵ This exceedingly high standard for how we define the most basic words in our legal jargon, sets an impossible standard for the Government to function within any sort of execution, if the Court is termed it with such a binary approach.³⁶

Justice Gorsuch dissents under the open-ended questions the Court's interpretation leaves for how the National Guard and U.S. Military may play in domestic law enforcement.³⁷ The conclusion given forth by the Court leaves a looming question over when, if ever, may the federal government deploy the professional military for domestic law enforcement purposes consistent with the Constitution.³⁸ In taking a more cautious approach, Justice Gorsuch decides this application narrowly based on *United States v. Sineneng-Smith*, 590 U. S. 371, 375 (2020).³⁹ Within this briefing the Court decided §12406(3) permits the President to call up and deploy the National Guard when he is unable to execute federal law with civilian federal law enforcement officials.⁴⁰ Offering no opinion beyond that, Justice Gorsuch cautions making weighty decisions before another case in which the facts are properly preserved arises.⁴¹

Moving forward, *Trump v. Illinois* has undoubtedly set a unique standard in how future cases will interpret the executive branch's deployment of the National

³⁵ *Id.*

³⁶ *Id.* at 3–4.

³⁷ Gorsuch, J., dissenting, *Trump v. Illinois*, No. 25A443, slip op. at 1.

³⁸ *Id.*

³⁹ *Id.* (citing *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020)).

⁴⁰ *Id.*

⁴¹ *Id.* at 1–2.

Guard.⁴² Through grounding its reasoning in a strict textualist reading of 10 U. S. C. §12406(3), the Court signaled a recalibration in how they balance presidential discretion and statutory constraint.⁴³ Shifting from the acceptance of broad assertions of emergency or generalized threats, the Court insisted the Government must fulfill their burden of proving a source of legitimate authority.⁴⁴ In doing so, the Court effectively narrowed the space in which Presidents may invoke military enforcement for domestic purposes, demanding a more legally rigorous justification for federalization.⁴⁵

⁴² *Trump v. Illinois*, No. 25A443 (U.S. 2025).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*