A week in which almost everything interesting happened on the interim docket or at the threshold. The Court denied a stay in *City of Baltimore v. Texas*, leaving undisturbed a consent judgment procured in a single day before a single-judge division — with the would-be defenders of the rule held to lack standing to intervene — and granted a *Purcell*-based stay over a lone Jackson dissent in the New Hampshire student-ID case. The Ninth Circuit dismissed the United States' appeal in the California ballot-segregation suit for want of jurisdiction, in the term's most useful teaching case yet on § 1292(a)(1) and the limits of *A.A.R.P.*'s "constructive denial" theory. Meanwhile the universal-vacatur question — the footnote *CASA* reserved — is now squarely presented in a pending petition.

SUPREME COURT — INTERIM DOCKET

Court declines to disturb the Texas–DOJ consent judgment on administrative closure.

City of Baltimore v. Texas, No. 26A500 (U.S. Oct. 27, 2026). An unexplained, unsigned denial, with no noted dissents, four days after briefing closed. The underlying sequence is the point: Texas sued in Wichita Falls — Judge O'Connor's single-judge division — challenging EOIR's 2024 administrative-closure rule; within hours Texas and DOJ jointly asked for final judgment vacating the rule and enjoining any successor, and O'Connor granted it the same day. When three cities and Centro Legal de la Raza moved to intervene to appeal, he denied intervention for want of standing, rejecting their fiscal-injury theory (municipal costs flowing from the deportation of taxpayers). The Fifth Circuit refused a stay.

Hook: adversity and the collusive-judgment problem (*Muskrat*/*Lord v. Veazie*) running directly into Article III standing as a gatekeeper to intervention under *Town of Chester* — if no one with standing can intervene, a consent decree between a willing plaintiff and a willing executive is effectively unreviewable. Add forum selection into a one-judge division and you have a near-perfect classroom hypothetical on the structural consequences of standing doctrine. Petitioners' counsel called it "egregious collusion"; the SG answered that the application "attempts to improperly leverage" the intervention dispute. Strongly recommended for class and for the podcast.

SCOTUSblog

Stay granted in the New Hampshire student-ID case; Jackson alone in dissent.

Scanlan v. Coalition for Open Democracy, No. 26A512 (U.S. Oct. 22, 2026). Judge Laplante had declined to enjoin HB 323 itself but barred the Secretary of State's April directive to the extent it told local officials not to consider student IDs under the statute's safety-valve provision. The First

Circuit denied a stay; the Court granted one in a one-paragraph unsigned order resting on *Purcell*. Justice Jackson dissented, arguing that a "targeted order" correcting official misstatements about state law "actually promoted the interests *Purcell* sought to protect."
Hook: Purcell as an equitable-discretion/stay-factor doctrine rather than a merits rule, and the familiar baseline problem — what counts as "altering" election rules when the district court is enforcing state statutes against an executive gloss. Jackson's move is to treat *Purcell*'s underlying interest (voter confusion) as the operative standard rather than the formal status quo. Clean pairing with the *Purcell* discussion in Judge Sanchez's Ninth Circuit concurrence below.
SCOTUSblog

Stay denied on the BOP transgender-care policy; Thomas and Alito would have granted.
Trump v. Kingdom, No. 26A416 (U.S. Oct. 21, 2026). A one-sentence order denying the government's application to stay Judge Lamberth's August 26 injunction against the February 2026 BOP policy, issued twelve days after the reply. Justices Thomas and Alito recorded that they would have granted, without explanation.
Hook: less about the merits than about interim-order practice — an unreasoned denial in a case where the government argued the district court exceeded the record and displaced agency judgment. Worth noting alongside Baude's argument that interim relief should track the Court's merits jurisdiction rather than serve as error correction: the silent denial generates no law in either direction, which is itself the methodological complaint.
SCOTUSblog

Border-wall waiver application arrives, teeing up whether an ultra vires claim is a "constitutional" claim.
Mullin v. Friends of the Ruidosa Church, No. 26A560 (application filed Oct. 21, 2026; responses due Oct. 29). Judge Cardone (W.D. Tex.) enjoined Big Bend construction and, in an October 14 opinion, found the challengers likely to succeed under the major-questions doctrine on the DHS Secretary's waiver of environmental laws. The government seeks a stay and summary reversal. Its lead argument is jurisdictional: IIRIRA § 102(c)(2) confines review of waiver decisions to claims of constitutional violation, and a claim that the Secretary acted "in excess of his statutory authority" is not a claim alleging a "violation of the Constitution." Cardone held the major-questions doctrine is itself a constitutional rule and therefore within the carve-out.
Hook: congressional control of jurisdiction through review-channeling, and the recurring *Webster v. Doe*–style question whether a statutory carve-out for constitutional claims absorbs ultra vires claims. The characterization of major questions as constitutional-in-nature is a genuinely novel jurisdictional move and will be contested on both sides of the aisle. Likely

resolved within the week.
SCOTUSblog

SUPREME COURT — PENDING MERITS AND PETITIONS

The universal-vacatur question is now presented.
HHS v. Texas Medical Association, No. 26-491 (petition docketed Oct. 14, 2026; BIO due Nov. 13). The SG does not contest the Fifth Circuit en banc's merits holding on the No Surprises Act rules — only the remedy. The argument is that nothing in the APA's text, context, or history vests courts with "new and far-reaching remedial power," and that *CASA*'s reasoning (complete relief to the parties, not beyond them) controls vacatur as it does injunctions. Secondary arguments: forum shopping, and the emergency-docket burden that nationwide remedies generate.
Hook: the footnote *CASA* expressly reserved. Note the alignment: Thomas, Gorsuch, and Barrett have voiced skepticism of universal vacatur; Kavanaugh has defended it. This is the remedies case of the decade for a Federal Courts syllabus, and it is the obvious companion to Sohoni's *The Past and Future of Universal Vacatur*, 133 Yale L.J. 2305 (2024).
SCOTUSblog

Third-country removals: a merits case that will be decided on judicial-power grounds.
DHS v. D.V.D., No. 26-426 (argument set Dec. 9, 2026). Judge Murphy (D. Mass.) vacated the policy under the APA and ordered pre-removal notice; the First Circuit largely affirmed in September. The SG's position is that the INA's review-channeling provisions bar any court from entertaining persecution/torture claims outside an individual petition for review in a court of appeals, so a district-court class action is jurisdictionally foreclosed. The respondents' answer is the now-familiar one: Congress limited *injunctions*, and vacatur is not an injunction. The Court also invited the SG to identify grounds for reversal not previously pressed.
Hook: jurisdiction-channeling plus the injunction/vacatur distinction — the same remedial fault line as *Texas Medical Association*, arriving first and on a fully briefed merits docket. SCOTUSblog's own framing is that the case "is likely to turn on technical questions of judicial power." Pedagogically ideal for showing students that the fed-courts question is the case.
SCOTUSblog

Khalil and Suri: habeas against § 1252 channeling, with an acknowledged circuit conflict.
Trump v. Suri, No. 26-380 (BIO due Nov. 20, 2026); *Khalil v. Trump*, No. 26-530 (government response due late Nov.). The question in both is whether a district court may entertain habeas claims that detention is First Amendment retaliation and Fifth Amendment punishment, or

whether 8 U.S.C. § 1252 channels those claims into a petition for review of a final removal order. The Fourth Circuit affirmed Suri's relief (July 23, 2026); a divided Third Circuit panel held in January 2026 that the district court lacked authority over Khalil's claims, and the full court declined to intervene. The SG asks the Court to take both — expressly to guard against mootness should either man leave the country.
Hook: habeas as the residual channel when a review-channeling statute does not fit the claim (the *St. Cyr*/*Thuraissigiam* line), plus a candid use of the mootness-avoidance rationale in vehicle selection. Both halves are teachable; the second is the rarer sighting.
SCOTUSblog

GVR on the FAA's jurisdictional architecture.
Burford German Funding LLC v. FinancialRight Claims GmbH, No. 25-1269 (U.S. Oct. 19, 2026) — last week's order list, noted for completeness. Cert granted, judgment vacated, remanded to the Third Circuit in light of *Jules v. Andre Balazs Properties*, 608 U.S. — (2026) (Sotomayor, J., unanimous), which held that a court that stayed claims under FAA § 3 retains authority over §§ 9 and 10 motions without an independent jurisdictional basis, and that *Badgerow* did not convert the FAA into a scheme requiring independent jurisdiction for every post-award motion. The Third Circuit had dismissed the funders' petition for want of an independent basis.
Hook: federal-question jurisdiction and the look-through problem after *Vaden* and *Badgerow* — a tidy, low-temperature vehicle for teaching that the FAA creates a cause of action but not jurisdiction.
Order list (Oct. 19, 2026)

COURTS OF APPEALS

Ninth Circuit dismisses the United States' ballot-segregation appeal for want of appellate jurisdiction.
United States v. California, No. 26-7070 (9th Cir. Oct. 26, 2026) (per curiam) (Bennett, Sanchez, Bumatay, JJ.). DOJ sought a mandatory injunction ordering California and Los Angeles County to set aside and verify roughly 20,000 vote-by-mail ballots from persons the federal government identified as likely noncitizens. Having given Judge Carter about fifteen hours to rule on its TRO application, DOJ treated the non-ruling as a "constructive denial" and appealed. The panel held it lacked jurisdiction under § 1292(a)(1): inaction can be an effective denial (*Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441 (9th Cir. 1992)), but § 1292(a)(1) is a "limited exception to the final-judgment rule" to be construed narrowly (*Carson v. American Brands*, 450 U.S. 79, 84 (1981)), and this record "bears little resemblance to the extraordinary facts of *A.A.R.P. v. Trump*" — where the risk was removal beyond the judiciary's reach altogether. The panel noted that "the

word ‘jurisdiction’ does not even appear in the United States’s emergency motion,” and that the asserted emergency was “partly created by its own actions.” Judge Bennett concurred (doubting the preemption theory on the merits); Judge Sanchez concurred on *Purcell* grounds; Judge Bumatay dissented at length, reading *A.A.R.P.* to supply jurisdiction over inaction creating a “high risk of serious, perhaps irreparable, consequences.”
Hook: appellate jurisdiction over effective denials of injunctive relief — the *Carson* factors, and how far *A.A.R.P.* (605 U.S. 86 (2025)) travels beyond its facts. Vladeck’s read is that DOJ was seeking mandamus without saying so. This is the single best new teaching case of the week: short, published, three separate writings, and a live doctrinal question about whether the emergency-docket innovations of the last two years have an ordinary-litigation half-life.
Opinion (PDF)

Fifth Circuit, en banc, reverses habeas relief on § 1225(b)(2)(A) detention, 10–7.
Sosnava Rodriguez v. Vergara, Nos. 26-50183, 26-50219, 26-50221 (5th Cir. Oct. 23, 2026) (en banc) (Wilson, J.). The court held that noncitizens detained under 8 U.S.C. § 1225(b)(2)(A) have no due process right to an individualized bond hearing on dangerousness or flight risk, reasoning that persons never admitted remain “applicants for admission” entitled to no more process than the statute provides, applying rational-basis review and treating detention with a “definite termination point” as constitutionally adequate as to duration. It reversed the district courts and vacated their grants of habeas relief, superseding the July 2, 2026 panel decision (*Rodriguez v. Ortega*) that had required bond hearings within ninety days. Seven separate opinions across roughly 159 pages; Judges Southwick, Haynes, Douglas, and Higginson dissented, with separate writings from Judges Richman, Ho, and Oldham. At least one concurrence reserved whether the detainees could instead be held under § 1226, where a hearing might be required.
Hook: habeas as the vehicle for immigration-detention challenges, and the interaction between constitutional avoidance and a pending statutory holding — the Court granted cert on October 1 in *Rhoney v. Barbosa da Cunha*, No. 26-104, on whether § 1225(b)(2)(A) governs at all for long-resident entrants without inspection (the Second Circuit held § 1226(a) applies, rehearing denied over a Menashi dissent). The en banc majority resolved the constitutional question that *Rhoney* may render academic, which is itself worth twenty minutes of class.
Fifth Circuit opinion page

COMMENTARY

Does the United States have a cause of action to sue a State over ballot counting?
Justin Levitt, *The Lack of Any Cause of Action Alone Should Doom DOJ’s Lawsuits in Both Alaska and California*, Election Law Blog (Oct. 24, 2026), argues that Congress has conferred civil enforcement authority on DOJ in specific provisions and that the Department cannot

assume it for every federal question — particularly where Congress supplied a private right but no federal one. Rick Hasen's companion post presses laches, *Purcell*, and major questions. Steve Vladeck, *DOJ's Preemptive Election Interference*, One First No. 259 (Oct. 26, 2026), canvasses cause of action, standing, ripeness, laches, and remedy, noting that the Alaska complaint rests on the NVRA's purpose clause ("a purpose clause is not a cause of action") and that 18 U.S.C. § 611 is a criminal prohibition conferring no civil authority on the Attorney General; he reads the Ninth Circuit appeal as "a Hail Mary procedural play in a Hail Mary substantive case."
Hook: the implied-equitable-cause-of-action question for the sovereign — *In re Debs* and *United States v. San Jacinto Tin* against *Alexander v. Sandoval* and *Armstrong*. It is the rare week in which the government's standing-to-sue and the existence of its cause of action are the whole ballgame in two live cases. Excellent podcast material, not least because the three commentators converge from different doctrinal directions.
Levitt · Hasen · Vladeck

The October sitting's organizing theme was the availability of judicial review.
Adam Feldman, *Assessing the First Round of Oral Arguments of the 2026-27 Term*, SCOTUSblog (Oct. 27, 2026), reads the sitting as preoccupied with "when, where, and under what conditions" judicial intervention is available. Three of the six arguments were threshold cases: *Johnson v. United States Congress*, No. 25-735 (whether constitutional challenges to veterans' benefits legislation must proceed through the specialized administrative-review scheme rather than district court — Gorsuch questioned that system's competence to adjudicate constitutional claims, Sotomayor the burden of exhaustion); *Department of the Air Force v. Prutehi Guåhan*, No. 25-579 (whether a territorial hazardous-waste permit application is final agency action, with Kagan and Jackson probing whether another regulator's power to impose conditions defeats finality); and *Suncor Energy Inc. v. County Commissioners of Boulder County*, No. 25-170 (argued Oct. 5), where the Court added a question on its own jurisdiction over an arguably non-final Colorado Supreme Court judgment — Justice Thomas asked counsel to "spend some time and explain why we have jurisdiction," and Boulder's counsel argued that "petitioners have failed to establish this Court's jurisdiction to hear this interlocutory appeal."
Hook: congressional control of jurisdiction, final agency action and reviewability timing, and § 1257 finality — three distinct doctrines doing the work in three cases, which makes the sitting unusually easy to assign as a unit.
SCOTUSblog

LEGISLATION

Nothing this week. No jurisdiction-stripping or remedies legislation surfaced in searches of the period, and the court-structure items in circulation (expansion, term limits) are politics rather

than doctrine and are omitted under the usual rule. The remedies action is in the Solicitor General's office, not on the Hill.

No merits opinions issued during the period; the term's only slip opinion to date remains *FCC v. Brown*, No. 26A476 (U.S. Oct. 14, 2026) (per curiam). Items dated before Oct. 20 are flagged as such and included only where they frame this week's developments.