Fed Courts Weekly — November 10, 2026

Covering November 3–10, 2026

An unusually rich week, and almost all of it is Federal Courts rather than merits. The Court's Big Bend stay produced a flat holding that statutory-authority claims dressed in major-questions clothing are not "constitutional" claims for purposes of a jurisdictional channeling provision — a four-page per curiam that will outrun its facts. Alongside it: a *Bivens* argument the government may well win, two habeas/AEDPA arguments, an Article III public-rights argument, a cert denial that leaves the PLRA's mootness trap intact, and Vladeck's Harvard Foreword arriving in print at precisely the right moment.

Supreme Court — Interim Docket

"There is no such thing as a 'constitutional' major-questions claim."
Mullin v. Friends of the Ruidosa Church, No. 26A560, 610 U.S. ___ (U.S. Nov. 9, 2026) (per curiam). Judge Cardone (W.D. Tex.) had preliminarily enjoined DHS's IIRIRA § 102(c) waivers of environmental law for Big Bend-sector wall construction, reasoning that because the major-questions doctrine is "a constitutional clear statement rule grounded in separation of powers," the claim fell within § 102(c)(2)(A)'s grant of jurisdiction over claims "alleging a violation of the Constitution" — the only claims the provision permits. The Court stayed the injunction, holding the government "exceedingly likely to prevail" on jurisdiction: citing *Dalton v. Specter*, it held the claim "alleges instead that the Secretary exceeded his statutory authority," and that canons reflecting constitutional principles are deployed "in service of adjudicating statutory claims, not constitutional ones." Summary reversal was denied; the stay runs through certiorari. Justice Jackson would have denied the application, without opinion. **Hook:** congressional control of jurisdiction — a channeling statute's constitutional-claims carve-out, plus the characterization problem of whether a substantive canon converts a statutory claim into a constitutional one. This is the week's assignment: four pages, a real jurisdictional holding, and a line that will be quoted against every creative pleader for the next decade. Podcast-worthy on the interim-docket-as-lawmaking question too — the equities discussion ("nearly half a million dollars … per day") does the rest of the work. Order | SCOTUSblog

The ballroom returns, now as a merits petition on aesthetic-injury standing.
National Park Service v. National Trust for Historic Preservation, No. 26-599 (petition filed Nov. 5, 2026). The SG seeks summary reversal of Judge Leon's injunction against above-ground construction, arguing the August interim order "has all but answered the question presented." That order (No. 26A203, Aug. 31, 2026) stayed the injunction 5–4 on the ground that the Trust *likely lacks standing*, over a dissent by the Chief Justice joined by Sotomayor, Kagan, and Jackson; Judge Rao had dissented on standing below. The only asserted injury is one member's

aesthetic, cultural, and historical interest in the East Wing's scale and massing. Response due Dec. 7. **Hook:** concrete-and-particularized injury for aesthetic/historic harm — *Sierra Club v. Morton* and *Laidlaw* against a built-environment plaintiff with no recreational-use hook. The second-order point is the better classroom one: the SG is openly treating an unreasoned 5–4 stay as having resolved the merits, which is the *Court Against the Courts* thesis in miniature. SCOTUSblog

Supreme Court — Arguments

***Carlson v. Green* on the table, but a majority looks for the incremental exit.**
Nielsen v. Watanabe, No. 25-417 (argued Nov. 9, 2026). Ninth Circuit held a federal detainee's Eighth Amendment deliberate-indifference claim "identical to *Carlson* in all meaningful respects"; rehearing en banc was denied over a deep division. The SG asked the Court either to treat *Carlson* as obsolete under current *Abbasi*/*Egbert* methodology or to overrule it outright, while pointedly not asking for *Bivens* itself. Neither the Chief nor Kavanaugh bit on the broader ask — Kavanaugh leaned on congressional inaction across "55 years since *Bivens* and 46 years since *Carlson*," the Chief floated "a cautious, incremental approach." Gorsuch and Alito worked the alternative-remedies ground (FTCA availability); Barrett asked whether injunctive relief against federal officers survives; Kagan characterized the complaint as "pretty standard medical malpractice case, bad but standard." Sotomayor invoked the Westfall Act's reservation of *Carlson*-type claims; Jackson would affirm. **Hook:** *Bivens* extension/"new context" plus the special-factors inquiry, with the PLRA and the Administrative Remedy Program as the alleged alternative remedial scheme. Best available vehicle for teaching why *Bivens* is formally alive and functionally dead — and whether "damages or nothing" (the government's phrase) is a reason to deny or to grant a remedy. Argument recap

How far does *Preiser* reach down the custody ladder?
Maxwell v. Dinis, No. 25-5930 (argued Nov. 2, 2026). Whether § 2241 reaches a BOP refusal to accelerate transfer to a halfway house or home confinement after a good-time-credit recalculation. Petitioner retreated from a broad "distinct and lower level of custody" rule to the government's narrower formulation limited to denials of accelerated transfer to parole, halfway house, or home confinement; court-appointed amicus defended the Fifth Circuit's no-habeas holding while conceding *Preiser* covers movement from incarceration to parole. The government's fallback — that § 3621(b) forecloses review of place-of-imprisonment designations, so no court could grant relief — found few takers, with Kavanaugh and Barrett suggesting it need not be reached. Kagan: parole "looks an awful lot like" the relief sought. Jackson flagged that Maxwell's expected January 2027 transfer may moot the case and questioned the grant. **Hook:** the scope of the habeas writ — duration versus conditions, the *Preiser*/*Bell v. Wolfish* line —

layered with a mootness problem of the Court's own making and a remedial-futility argument masquerading as merits. Two doctrines for the price of one. Argument recap

When does a 2002 rule become "previously unavailable" in 2019?
Guerrero v. Johnson, No. 25-1003 (argued Nov. 4, 2026). AEDPA's successive-petition gateway for a claim resting on a new, retroactive constitutional rule "previously unavailable" to the applicant. Johnson, convicted in 2007, filed a successive *Atkins* petition in 2019 after the DSM-5 (2013) displaced strict IQ cutoffs and Texas adopted it (2018); the district court and Fifth Circuit found the claim previously unavailable. Texas says *Atkins* long predates the crime, so nothing was unavailable. Kagan pressed whether the DSM is part of the legal standard — *Atkins* as a rule with a gap the clinical consensus fills — and suggested unavailability means a claim that "would get you laughed out of court"; Sotomayor floated ripeness; Thomas asked whether *Atkins* ever stops being new; Barrett observed that something new can stop being new. Jackson worried Texas's reading denies Johnson the one clear opportunity Congress provided. Roberts asked nothing. **Hook:** congressional control of postconviction review — the successive-petition bar and the interaction between statutory finality and a constitutional rule whose content is supplied by extralegal professional consensus. Excellent AEDPA-week material; the "rule versus application" problem is as clean as it gets. Argument recap

Public rights, H-2A contracts, and the shrinking domain of agency adjudication.
Department of Labor v. Sun Valley Orchards, LLC, No. 25-966 (argued Nov. 10, 2026). The Third Circuit held that DOL administrative adjudication of whether an employer honored its H-2A employment agreements cannot be reconciled with Article III, where statutory review in district court is deferential. DOL defends the assignment as involving public rights because the dispute concerns immigration and remedies for abusing an executive-granted privilege; the employer characterizes it as an ordinary private contract action historically tried at law. **Hook:** Article III adjudicative power and the public-rights exception — *Crowell v. Benson* through *Atlas Roofing*, *Granfinanciera*, *Schor*, and now *Jarkesy* — with the added wrinkle that the deferential standard of review on the back end is doing the constitutional work. Pairs naturally with the week's jurisdiction-channeling material: both ask what minimum of Article III adjudication Congress must supply. Argument preview

Supreme Court — Orders and Cert Watch

The PLRA mootness trap survives.
Westcott v. Voice of the Experienced, No. 26-18, cert. denied (Order List, 610 U.S., Nov. 9, 2026). The petition asked whether the capable-of-repetition-yet-evading-review exception applies where the PLRA's automatic 90-day expiration of preliminary injunctive relief in prison-conditions cases mooted successive appeals before any panel could reach the merits — the Fifth

Circuit having dismissed three appeals in the Angola farm-line litigation as moot and vacated the orders under *Munsingwear*, reasoning that vacatur is warranted even when the plaintiffs are blameless for the mootness. Denied without recorded dissent. **Hook:** mootness and the evading-review exception, plus *Munsingwear* vacatur as a de facto merits windfall for the party that ran the clock. Classroom-usable precisely because the statute, not the defendant, engineers the mootness — a cleaner version of the voluntary-cessation problem. Order List

Two more fed-courts petitions denied the same day.
Walls v. Prince George's County, No. 26-107 (whether takings claimants must exhaust legislative remedies, and whether prudential ripeness can bar a case with adequately pleaded standing — the unfinished business of *Knick*), and *Poppleton Now Community Ass'n v. La Cite Development, LLC*, No. 26-167 (whether non-owners can state a § 1983 claim and obtain redress by a court order invalidating a development contract). Both denied Nov. 9. **Hook:** prudential ripeness as a surviving judge-made abstention device after *Lexmark* and *Susan B. Anthony List*; and redressability plus the scope of § 1983 remedies against local government. Useful short hypotheticals rather than headline cases. Petition summaries

Watch: § 1252(f)(1) and classwide relief, redistributed to the Nov. 13 conference.
Mullin v. Refugee and Immigrant Center for Education and Legal Services, No. 26-239 (D.C. Cir. No. 25-5243). Presents whether 8 U.S.C. § 1252(f)(1) bars classwide injunctive relief against the operation of the removal provisions, and whether the certified class satisfies Article III and Rule 23. Distributed for the Nov. 6 conference, then redistributed Nov. 9 for Nov. 13 — i.e., effectively relisted. **Hook:** the purest live jurisdiction-stripping/remedies question on the docket — a statute that withdraws authority to "enjoin or restrain the operation" of a statutory scheme other than as to an individual, now colliding with class-wide relief as the post-*CASA* workaround. Worth flagging for class discussion before orders issue Nov. 16. Docket

Watch: Alabama's maps and whether a spent injunction is moot.
Allen v. Caster, No. 26-116; *Allen v. Milligan*, No. 26-117; *Allen v. Singleton*, No. 26-118 (relisted). Alabama seeks appeal in two and certiorari before judgment in the third, asking for summary reversal or plenary review. Challengers argue the preliminary injunction reached only the 2026 elections, which have now been conducted under the 2023 map, so nothing remains live; the *Singleton* plaintiffs point to a trial set for early 2027. Alabama answers that election administration continues past Election Day and that the court-drawn-map requirement persists until the State adopts a new plan. **Hook:** mootness of expired election injunctions and the continuing-effects question, with certiorari-before-judgment as the vehicle choice. Relist Watch

Courts of Appeals

D.C. Circuit affirms a permanent injunction against removing the VOA director.
Abramowitz v. Lake, No. 25-5314 (D.C. Cir. Nov. 10, 2026). Panel opinion by Judge Pillard affirming Judge Lamberth's permanent injunction barring Abramowitz's removal absent a majority vote of the International Broadcasting Advisory Board — which has lacked a quorum since 2024. The panel sustained the Board's constitutionality, reasoning that the President retains indirect control because Board members are removable at will. **Hook:** equitable remedies against the government in removal cases — whether an injunction barring removal (as opposed to backpay or a *Humphrey's Executor* defense raised defensively) is an available remedy, against the backdrop of the Court's interim-docket practice of staying reinstatements. Note the structural oddity worth pressing in class: the remedy's practical effect is tenure protection enforced by a body that cannot act. Opinion

Fifth Circuit, Nov. 2–6: a § 2241 holding squarely in *Maxwell*'s path, plus three teachable thresholds.
In *McDonald v. Warden Heckard*, No. 26-10056 (5th Cir.) (unpublished), the court affirmed denial of a § 2241 petition on the ground that a request for home confinement is a challenge to conditions, not duration, and so is not cognizable — Judge Graves dissenting in part. That is the Fifth Circuit holding the line its own *Maxwell* ruling drew, one week after the Supreme Court argued the question; the panel's duration/conditions framing is precisely what petitioner and the government jointly tried to displace. Also from the same week: *Davis v. Forshey*, Nos. 25-10905 & 25-11071 (appeal dismissed as moot where appellants obtained no stay and the property was sold to good-faith purchasers — the classic failure-to-stay mootness); *Payton v. LeBlanc*, No. 25-30498 (judgment modified so that official-capacity claims barred by sovereign immunity are dismissed *without* prejudice for lack of jurisdiction — immunity as a jurisdictional rather than merits bar, with real consequences for preclusion); and *Guerdan v. State Automobile Mutual Insurance Co.*, No. 25-60491 (reversing denial of remand; abuse of discretion to pierce the pleadings to find claims time-barred). **Hook:** habeas scope; mootness and the duty to seek a stay; the jurisdictional characterization of sovereign immunity; and removal/remand with improper-joinder-style piercing. Weekly roundup

Scholarship and Commentary

Vladeck's Foreword lands in print.
Stephen I. Vladeck, *The Supreme Court, 2025 Term — Foreword: The Court Against the Courts*, 140 Harv. L. Rev. 1 (2026), in the November issue. The thesis: "The story of the Supreme Court since early 2025 is, in the main, a story about the Court against the courts" — the Court has used the interim docket to stay, narrow, or vacate district court orders, treating lower-court

factfinding and legal conclusions as "provisional placeholders to be revisited at the justices' discretion" and recasting the district judge from an Article III adjudicator whose orders bind the United States into something less. Restoring district court authority, he argues, belongs at the center of court reform. **Hook:** appellate and Supreme Court jurisdiction/procedure; the allocation of adjudicative authority within Article III. Read against this week's *Mullin* stay and the SG's ballroom petition, which treats an unreasoned 5–4 interim order as having decided the merits, it is unusually well-timed. SSRN

Two takes on *Sun Valley Orchards* ahead of argument.
Steven Calabresi, *The poisoned public rights doctrine and Sun Valley Orchards*, SCOTUSblog (Nov. 6, 2026) — arguing (as an amicus signatory) that the public-rights doctrine properly tracks the rights/privilege distinction, that *Atlas Roofing* "poisoned" it by permitting agency deprivations of property, and that *Jarkesy* entitles a fine-facing respondent to an Article III court and a jury; the immigration framing, he adds, cannot work as an unconstitutional condition. Rachel Bayefsky, *Whose tradition, which history? Agency adjudication and Sun Valley Orchards*, SCOTUSblog (Nov. 9, 2026) — on the historical method the public-rights inquiry now demands. **Hook:** Article III adjudication and the public-rights exception. The pairing is a ready-made seminar session on whether the doctrine has a principle or only a list. Calabresi | Bayefsky

A three-circuit split ripening fast.
Stephen Vladeck, *Sports Bets, Swaps, and the Kalshi Mess*, One First No. 262 (Nov. 9, 2026), arguing that with three circuits now divided over whether prediction-market sports contracts are Commodity Exchange Act "swaps" that displace state gambling law, "the Supreme Court will soon have to step in." **Hook:** less a doctrinal item than a cert-practice one — percolation, the conditions under which a split becomes unavoidable, and the preemption question as the federal hook. Worth a mention only if you cover certiorari criteria this term. One First

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Nothing passing the selection test surfaced this week on the legislative side: no new jurisdiction-stripping or remedies bill was introduced, and the *No Rogue Rulings Act* and its Senate companions remain where they were. General judiciary news — nominations, conduct, administration — omitted by design.