Fed Courts Weekly — November 17, 2026

Covering November 10–17, 2026 · final digest of the semester

An unusually rich week, and almost all of it judicial rather than legislative. The Court granted review in the asylum-suspension case on a question that is purely about remedial jurisdiction — whether § 1252(f)(1) forecloses the classwide injunction that *CASA* pushed plaintiffs toward — and heard argument in a *Bivens* case in which the government asked it to bury *Carlson*. Meanwhile the D.C. Circuit, refusing to stay its mandate in the transgender-servicemembers litigation, wrote the most useful opinion of the week on a question your students keep asking: what precedential work does an unexplained emergency-docket stay actually do?

Supreme Court

Cert granted on whether § 1252(f)(1) bars classwide relief against the asylum suspension.

Mullin v. Refugee & Immigrant Center for Education & Legal Services, No. 26-239 (U.S. cert. granted Nov. 13, 2026). Judge Moss certified a class and held Proclamation No. 10888 and its implementing guidance unlawful insofar as they bypass statutory removal procedures and asylum access; a D.C. Circuit panel (Childs, joined by Pillard, with Walker dissenting in part) largely affirmed. The second question presented asks whether 8 U.S.C. § 1252(f)(1) — which strips jurisdiction "to enjoin or restrain the operation of" specified INA provisions — bars the classwide relief Moss entered; challengers answer that the bar is inapt because the proclamation rests on other statutes. Notably, the Court *declined* the government's request to review whether the class definition (which sweeps in people abroad with no imminent plans to enter) satisfies Rule 23, so the Article III-flavored overbreadth objection survives only to the extent it rides along with § 1252(f)(1). The doctrinal hook is congressional control of remedial jurisdiction, and this is the cleanest vehicle yet for the post-*CASA* question of whether Rule 23(b)(2) is a genuine substitute for the universal injunction or merely a target that Congress has already pre-shot in the immigration context. Argument likely this spring. [SCOTUSblog]

The government asks the Court to retire *Carlson*.

Nielsen v. Watanabe, No. 25-417 (U.S. argued Nov. 10, 2026). An Eighth Amendment deliberate-indifference claim against a federal detention-center paramedic, which the Ninth Circuit allowed to proceed on the strength of *Carlson v. Green*. The government's primary ask was that the Court treat *Carlson* as obsolete or overrule it outright; Roberts and Kavanaugh were visibly unwilling to go that far, with Kavanaugh observing that Congress has left *Bivens* and *Carlson* where they stood and suggesting courts can simply decline to extend them, and Roberts endorsing "a cautious, incremental approach to such a fundamental question." Gorsuch and Alito pressed on

FTCA and other alternative remedies; Barrett asked about injunctive relief; Kagan characterized the complaint as "a pretty standard medical malpractice case," while Jackson saw "all major indicia of sameness" with *Carlson*. The hook is the special-factors/alternative-remedies framework and the new-context inquiry — the live question being whether *Carlson* retains force on its own facts or becomes a decision confined to its judgment. Obvious podcast material, and the cleanest classroom illustration available of de facto overruling by narrowing. [SCOTUSblog]

The Solicitor General argues that an interim order has already settled the merits of a standing question.

National Park Service v. National Trust for Historic Preservation, No. 26-599; interim application No. 26A203, 2026 WL 2564318 (U.S. Aug. 31, 2026). Reported Nov. 10: the government's Nov. 5 filing seeks summary reversal (or plenary review) of Judge Leon's order barring above-ground ballroom construction, as affirmed by the D.C. Circuit. The merits question is whether the Trust's asserted aesthetic injury — the government characterizes it as a member's "dislike" of the design — is concrete under Article III; the Court's 5-4 August stay said the Trust likely lacks standing because the alleged harms are not concrete, over a Roberts dissent reasoning that aesthetic injury is concrete injury. What makes this a federal-courts item rather than a standing item is the SG's framing: Sauer contends the August order "has all but answered the question presented," so plenary review is unnecessary. That is the interim docket being asserted as precedent by the party that won there, and it pairs beautifully with the D.C. Circuit's contrary move in *Talbott* below. Response due Dec. 7. [SCOTUSblog]

CVSG in the Taliban cases: FSIA immunity and who gets to decide foreign-state status.

On Nov. 16 the Court invited the Solicitor General's views in *Havlish v. The Taliban*, No. 26-292, *Ashton v. The Taliban*, No. 26-293, and *Owens v. The Taliban*, No. 26-294 — terrorism judgment creditors seeking to execute against blocked Afghan central-bank assets after the Second Circuit held the funds immune under the FSIA and the TRIA inapplicable. *Owens* presents the most interesting question for our purposes: whether the FSIA obliges courts to determine foreign-state status independently or instead to defer to State Department web postings and DOJ filings. *Ashton* asks for vacatur and remand in light of *Exxon Mobil v. CIMEX*. Hooks: foreign sovereign immunity as a jurisdictional question, and the allocation of interpretive authority between courts and the Executive — the *Sosa*/*Zivotofsky* problem in statutory dress. [SCOTUSblog]

Relist worth watching: can only Supreme Court decisions clearly establish law?

City of North Las Vegas v. Jones, No. 25-1355, newly relisted, packages a warrantless-backyard-entry "hot pursuit" question with qualified immunity and — the part that matters here — whether only this Court's decisions can clearly establish law for § 1983 purposes. Several returning relists

cluster around the same machinery (*Moore v. Romero*, No. 25-1295, on applying *Barnes v. Felix* to multi-force encounters and whether the clearly-established prong can be resolved at a general level on a Rule 12 motion; *City of Bossier City v. Hershey*, No. 25-1323, and *Hershey v. City of Bossier City*, No. 25-1389, on single-incident municipal liability and whether *Hope v. Pelzer* reaches beyond the Eighth Amendment). Eleven new relists in all. If the Court takes the "only our decisions count" question, it would be the most consequential qualified-immunity grant in years. [SCOTUSblog]

Courts of Appeals

The D.C. Circuit refuses to stay its mandate, and explains why a universal-injunction stay is not precedent for a party-specific one.
Talbott v. United States, No. 25-5087 (D.C. Cir. Nov. 17, 2026) (order denying motion to stay mandate), denying a stay of the mandate in *Talbott v. United States*, 176 F.4th 720 (D.C. Cir. 2026). Per curiam denial, with Judge Walker voting to grant and a separate statement by Judge Wilkins. Applying Fed. R. App. P. 41(d)(1)'s "substantial question" plus "good cause" standard, Wilkins held the government failed to show irreparable harm, and then did the week's most classroom-ready work: he distinguished the Supreme Court's stay in *United States v. Shilling*, 145 S. Ct. 2695 (2025), on the ground that *Shilling* "involved a universal injunction that barred enforcement of the Hegseth Policy on retention and accession," whereas the affirmed injunction here runs only to specified currently-serving plaintiffs — so the equities "differ" in a key "respect" under *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025). He also rejected the proposition that an injunction against the Executive is itself irreparable harm, marshalling *Department of Education v. Louisiana*, 603 U.S. 866, 868 (2024), and *Trump v. Kingdom*, No. 26A416 (U.S. Oct. 21, 2026), against it. Two hooks at once: the precedential weight of unexplained interim orders (and how a lower court may lawfully narrow one), and remedial scope after *CASA* — here the *narrowness* of the remedy is what defeats the stay. Worth noting that relief reaches only the 27 named plaintiffs because no class has been certified, which is the post-*CASA* equilibrium in miniature. The cert petition is pending as No. 26-272. [Order (PDF)]

Second Circuit hears Trump's fourth attempt to remove a completed state prosecution to federal court.
Argued Nov. 16, 2026 before Judges Walker, Cabranes, and Lohier. Judge Hellerstein has denied removal three times, most recently for failure to show good cause to file an untimely notice under 28 U.S.C. § 1455(b)(1); Robert Giuffra argued timeliness ran from *Trump v. United States* (July 2024), and asked the panel to issue an order before any full opinion so as to halt the Appellate Division's ongoing deliberations. The panel was openly skeptical of the mechanism rather than the merits: Lohier told counsel, "You're asking us to embrace an entire procedural mechanism

that I don't see anywhere authorized by Congress," and Walker pressed Giuffra to identify any case in which a federal appellate court had reviewed a state-court judgment on removal. Hooks: federal-officer removal under § 1442 and its "for or relating to any act under color of" office requirement, § 1455's timing rules, and the structural limit on federal courts reviewing state-court judgments. A genuinely good exam hypothetical: removal is a device for relocating a pending prosecution, not for collaterally attacking a final state conviction, and the panel's questions put that distinction squarely in play. [Coverage]

Commentary

Auditing Alito's emergency-docket claims.
Taraleigh Davis (Bradley University), "'I'm afraid this is going to continue': Justice Alito, the executive, and the emergency docket," SCOTUSblog (Nov. 16, 2026), tests three empirical claims from *So Ordered* and Alito's AP interview. Her findings: executive applications fell sharply (27 to 12) but remain historically high; whether applications "rival" the merits docket depends entirely on the denominator (36 substantive applications against 56 merits cases, once refiled and capital applications are excluded); and only four of the administration's twelve applications involved executive orders, which undercuts Alito's causal story. Her conclusion — that future volume "depends less on executive orders and more on the U.S. solicitor general's office" — is the right frame, and a useful corrective to the standard account that treats interim-docket growth as an exogenous consequence of presidential unilateralism rather than a product of litigation strategy. Pairs well with the *Talbott* order and the ballroom petition as a three-item unit on interim-docket practice. [SCOTUSblog]

No legislative developments on jurisdiction-stripping or remedies bills surfaced in this week's searches. Items deliberately omitted as failing the selection test: the Nov. 16 cert denials in the DEI-related and Second Amendment cases, the Nov. 9 border-wall interim order (just outside the window, and discussed in the Davis piece), the mandatory-detention circuit split now at the Court in *Rhoney v. Barbosa da Cunha*, No. 26-104 (statutory INA interpretation, not a federal-courts question), and this term's judicial-nomination news.