



A CIVICS IN REAL LIFE SERIES THE DOCKET

Department of Homeland Security v. Texas

Civics is all around us. The United States Supreme Court is the highest court in the land. Through its power of judicial review, its decisions have a lasting impact on "We the People". So what is the Court hearing this session and how might the justices rule? Let's help each other expand our civic literacy.

Application to Vacate

Before examining the facts of this case, it is important to understand what an [application to vacate](#) is. Under [Rule 27](#) of the Federal Rules of Appellate Procedure, a party adversely affected by a court's decision may file an application, or motion, to [vacate](#), which if granted, sets aside a court's previous order.

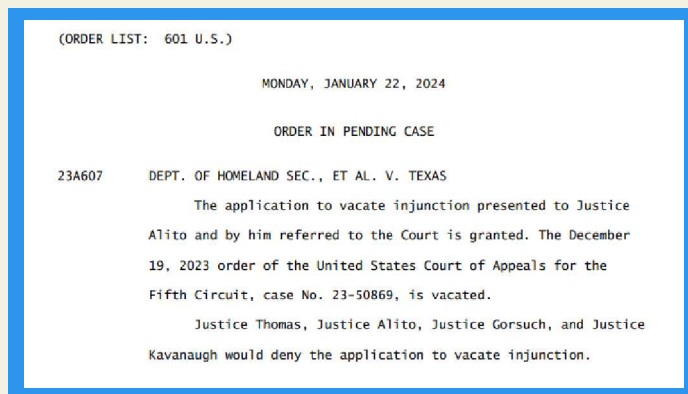
The Facts of [Department of Homeland Security v. Texas](#):

The United States Supreme Court has long held that the determination of immigration into the United States and the policies that affect it is a [power held by the national government alone](#). This means that the states, under the [U.S. Constitution](#), do not possess the power to regulate or determine immigration policy.



However, in response to the influx of migrants crossing the U.S. southern border, the State of Texas installed 29 miles of concertina (razor) wire fencing along the Rio Grande River, which forms part of the U.S. southern border with Mexico.

The [U.S. Border Patrol](#), a federal agency under the [Department of Homeland Security \(DHS\)](#), started to cut and remove the wire fencing placed by Texas as part of their federal authority. Following the Border Patrol's tampering and removing of the wire fencing, on October 24, 2023, the State of Texas sued DHS in the United States District Court for the Western District of Texas. In their suit, Texas accused Border Patrol agents of violating their "[common law trespass to chattels](#)" and asked the District Court to issue an [injunction](#) to stop the Border Patrol from cutting and removing their wire fencing (Texas did allow the wire fencing to be cut only in the case of a medical emergency). The U.S. District Court for the Western District of Texas denied Texas' request for an injunction, finding that the United States did not waive its sovereign immunity under [federal law](#). This generally means the United States government cannot be sued by a state unless Congress says it is okay. Under circumstances like this, Congress has never given its permission for the U.S. to be sued.



The State of Texas appealed the District Court's decision to the United States Court of Appeals for the Fifth Circuit. As part of that appeal, Texas asked the 5th Circuit to issue [preliminary injunction](#) against DHS and its Border Patrol to prevent its agents from cutting and removing any of its fencing along the Rio Grande while its appeal is pending before the court. The 5th Circuit agreed with Texas' request and [enjoined](#) DHS and its Border Patrol from further removal or destruction of the fencing.

On January 2, 2024, the Department of Homeland Security submitted an application to vacate the 5th Circuit's preliminary injunction pending Texas' appeal to U.S. Supreme Court Justice Samuel Alito, who oversees the 5th circuit.

Justice Alito referred the application to vacate to the full Court, and on January 22, 2024, the U.S. Supreme Court vacated the 5th Circuit's preliminary injunction, allowing the U.S. Border Patrol to continue to cut and remove Texas' fencing along the Rio Grande while the case is heard on appeal. In so doing, as U.S. Solicitor General Elizabeth Prelogar argued on behalf of the U.S. government, the lifting of the 5th Circuit's injunction will "restore Border Patrol's access to the border it is charged with patrolling and the migrants it is responsible for apprehending, inspecting, and processing."

To Think and To Do: Texas attempted to use its state laws to prevent the U.S. Border Patrol from carrying out its federal authority to patrol the border and apprehend, inspect, and process migrants. Which clause under the U.S. Constitution prohibits state law from usurping federal power? Which U.S. Supreme Court precedent supports this understanding? What did the court decide in that case that may have contributed to Chief Justice Roberts, and Justices, Sotomayor, Kagan, Brown-Jackson, and Barrett voting to vacate the 5th Circuit's injunction?

to [Learn MORE](#) about this case, view the [U.S. Government's application to vacate injunction](#), which includes the decisions of the 5th Circuit Court of Appeals and the District Court of Western Texas



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