



Andrew Oldham

Potential SCOTUS Nominee

COURT

United States Court
of Appeals for the
Fifth Circuit

Introduction

On February 15, 2018, President Trump nominated Andrew Oldham to the Fifth Circuit Court of Appeals. Oldham was confirmed by the full Senate just a few months later on a party line vote. AFJ opposed Oldham's nomination, highlighting his problematic work for the Texas attorney general and the Texas governor. Oldham refused to substantively engage in the hearing process in front of the Senate Judiciary Committee, dodging questions about his former work and his personal beliefs on the administrative state and role of government. Unfortunately, he was confirmed to the Fifth Circuit despite these concerns.

Oldham spent his career before being elevated to the bench actively dismantling civil rights. Between attacking the Voting Rights Act, opposing racial justice protections under the Fair Housing Act, and defending Texas laws that cut off access to abortion, Oldham consistently made it more difficult for everyday people to exercise their rights and participate in democracy. Oldham's record since joining the Fifth Circuit has shown an equal disdain for the people he is meant to serve: He has regularly granted police immunity for egregious violence, he has stood in the way of governmental actions meant to protect people, and he has even made it difficult for people to exercise their fundamental right to vote.

If nominated and confirmed to the Supreme Court, Oldham would certainly use his power to entrench his extreme beliefs and harmful ideology, affecting everyday people for decades to come.

Biography

Oldham graduated from University of Virginia in 2001 before attending University of Cambridge for his master's degree and graduating in 2002. Oldham then attended Harvard Law School from 2002 to 2005. After graduating law school, Oldham served as a law clerk to Judge David Sentelle on the U.S. Court of Appeals for the District of Columbia Circuit from 2005 to 2006.

Between 2006 and 2008, Oldham worked as an attorney-advisor in the Office of Legal Counsel for the Department of Justice. Oldham left that position in 2008 to serve as a law clerk for Justice Samuel Alito on the U.S. Supreme Court from 2008 to 2009. Following his clerkship, he worked as an associate at Kellogg Hansen Tedd Figel & Frederick in Washington, D.C., from 2009 to 2012. In 2012, he took a position as deputy solicitor general in the Texas Office of the Attorney General; in 2015, he became the deputy general counsel for the Texas Office of the Governor. He was then promoted to acting general counsel in 2017 and general counsel in 2018 and continued to work there until his nomination to the judiciary.

Oldham was confirmed to the United States Circuit Court of Appeals for the Fifth Circuit in July 2018.

AFJ Opposition During Senate Hearing

Alliance for Justice expressed strong opposition to Oldham's nomination and confirmation to the Fifth Circuit during his senate confirmation process. During the Senate confirmation hearing, Oldham faced extensive questions about his time working for the Texas attorney general and the governor. Questions homed in on Oldham's strong stances against the administrative state and his repeated criticisms of the federal government. Oldham refused to respond to many of the questions, stating instead that he could not comment on anything that was the subject of an active judicial proceeding and that any statements while he worked for the Texas government did not necessarily represent his own beliefs. Notably, Oldham refused to give a yes or no answer when asked if *Brown v. Board of Education* was correctly decided. He also refused to answer repeated questions about whether voting discrimination still exists in the U.S., and he was evasive about his role in Texas's scheme to undermine DACA.

Despite extensive written questions for the record from various senators and Democratic opposition to Oldham's nomination, Oldham was confirmed by a 50–49 vote, with all Democratic senators voting against his nomination.

Civil Rights

Government Work

Opposed Racial Justice Protections Under Fair Housing Act

In 2014, Oldham represented Texas on a brief that challenged the use of disparate-impact liability under the Fair Housing Act (FHA) in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* Disparate-impact claims are critical for civil rights enforcement cases because they address policies that might be facially neutral but disproportionately hurt protected groups, consistent with Congress's intent when enacting anti-discrimination statutes like the Fair Housing Act.

The brief argued that “the text of the Fair Housing Act unambiguously precludes the ‘disparate impact’ interpretation adopted by HUD and the court of appeals” and that “HUD’s ‘disparate impact’ interpretation will give agencies undue

powers over the administration of anti-discrimination laws.” The Supreme Court rejected these arguments and reiterated that the Fair Housing Act “must be construed to encompass disparate-impact claims” where statutory text and structure support that interpretation. Congress’s 1988 amendments to the FHA signaled that “disparate impact claims are cognizable under the FHA.”

Opposed Disability Rights Enforcement

While serving as Texas’s deputy solicitor general, Oldham defended the state’s repeated use of sovereign immunity to limit disability discrimination claims brought under the Americans with Disabilities Act (ADA). In a 2014 Dallas Morning News investigation, Oldham defended this litigation approach, noting, “Good lawyers use all the tools at their disposal.” According to the reporting, Texas asserted sovereign immunity defenses in multiple ADA cases in federal court — at least nine identified by the newspaper — and was unsuccessful in those defenses.

Disability rights advocates criticized the state’s approach, stating that the attorney general’s office had “worked to deny ADA protections by repeatedly and falsely claiming that impaired Texans don’t have the right to sue the state for discrimination.”

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While Serving on the Fifth Circuit

Jackson v. Gautreaux

Travis Stevenson’s survivors sued a police lieutenant and another officer after they killed Stevenson when they open fired on his vehicle. The police lieutenant located Stevenson and parked his patrol vehicle behind Stevenson’s car. Later, the other officer appeared on the scene and during an altercation, one of the deputies fired at the car but did not hit Stevenson. Stevenson began repeatedly driving into the patrol unit and officers open fired on the vehicle, killing Stevenson on the scene. His survivors sued the officers for excessive force and failure to train. The lower court granted summary judgment, granting the police officers qualified immunity for their actions.

Oldham authored the majority opinion, affirming the lower court’s decision to grant summary judgment. The opinion started by acknowledging that excessive force is an objective analysis and reviewed three precedential cases to conclude that there was no Fourth Amendment violation because (1) Stevenson used his car as a weapon, (2) Stevenson exhibited volatile behavior, and (3) plaintiffs have no evidence that officers had a reasonable alternative course of action. The opinion separately noted that the failure to train claim was not raised in the complaint but rather on summary judgment and therefore was not timely.

Salazar v. Molina

A deputy officer attempted to pull over Juan Carlos Salazar for speeding, but instead a police chase ensued. When the chase ended, Salazar got out of the car and laid on the ground with his arms above his head and his legs crossed.

As the officer approached, Salazar uncrossed his legs and Molina, a police officer, fired his taser at Salazar's back. Salazar sued, arguing that the use of the taser constituted excessive force. The district court found that qualified immunity did not apply to the police officer, but the Fifth Circuit overturned this finding, and Oldham authored the opinion that did so.

Oldham authored the majority opinion, finding that Molina's use of force was reasonable and that Salazar's previous attempts at evasion meant that an officer would be reasonable in thinking that Salazar's attempted surrender was "merely a ploy." Oldham concluded that Molina's use of force was justified and that there was no Fourth Amendment violation. In the opinion, Oldham reviewed the precedent Salazar presented and noted that his failure to use Fifth Circuit precedent rather than Supreme Court precedent indicated the weakness of his position. Oldham went through a number of those precedential cases and concluded that various factual distinctions rendered them all inapplicable to the present case. Oldham concluded that Molina was entitled to qualified immunity and reversed the district court's holding.

Dilley v. Domingue

Clifton Scott Dilley sued state trooper Kasha Domingue for excessive force when a shot fired by Domingue paralyzed Dilley from the waist down. The district court denied qualified immunity, and Oldham's opinion, written for the Fifth Circuit, affirmed that holding.

Oldham's opinion noted that the facts had to be viewed in the light most favorable to Dilley and that all reasonable inferences had to be drawn in his favor. Oldham also noted that the appellate court could only overturn the finding of no qualified immunity if they determined that there was no dispute over the material facts of the case. Oldham noted that multiple disputes of material fact existed, arising from Domingue's varying stories about what happened and summary judgment evidence. He noted that while the qualified immunity doctrine prohibited judges from "second-guessing a police's officers' assessment, made on the scene, of the danger presented by a particular situation," Domingue's own statements contradicted what she claimed happened at the scene (and later-revealed security footage disproved her claims), allowing the court to find that qualified immunity did not apply.

Environmental Protections

Prior to becoming a federal judge, Oldham repeatedly attacked the federal government's ability to address pollution and climate change. In a [2016 speech to the Federalist Society](#), he suggested that the Environmental Protection Agency (EPA) itself is fundamentally illegitimate, noting, "One of the reasons why the administrative state is enraging is not that you disagree with what the EPA does, although I do disagree with a lot of what it does. That's not the thing that makes it enraging. It's the illegitimacy of it." He described the EPA's Clean Power Plan, an initiative to reduce carbon emissions and combat climate change as an example of "rule by bureaucrat" and questioned the legitimacy of the entire regulatory framework supporting it.

Oldham also sought to weaken the EPA's authority in court. In *Utility Air Regulatory Group v. EPA*, he [argued that the](#)

Clean Air Act does not permit the EPA to regulate greenhouse gas emissions, characterizing the agency's efforts to address climate change as imposing "near-ridiculous regulatory burdens." He likewise challenged the EPA's Cross-State Air Pollution Rule in *EPA v. EME Homer City Generation*, which was designed to protect communities from harmful pollution originating in neighboring states. The Supreme Court rejected the arguments advanced by Oldham in both cases.

At the time, Oldham's record raised serious concerns about his willingness to uphold longstanding environmental protections. Unfortunately, his record as a judge continues to challenge the authority of federal agencies charged with safeguarding public health and addressing climate change.

Gun Safety

In 2015, Oldham was one of the attorneys of record on an amicus brief filed in the Ninth Circuit that attacked a modest and widely supported San Diego law requiring people to show "good cause" before carrying a concealed firearm in public. Oldham's brief argued the law violated the Second Amendment and that "the whole point of the Constitution's text is to protect certain unpopular rights from the zeal of a government bent on squelching them."

In a 2016 speech, Oldham also argued that categorical bans on such weapons deserve Supreme Court constitutional scrutiny, calling the AR-15 "the most popular rifle in the United States." He's also gone on record opposing bans on AR-15-style assault weapons, the same types of weapons of choice (and the deadliest) used for most American mass shootings. Indeed, since becoming a federal judge, Oldham has continued to dismantle gun safety laws that an overwhelming majority of people in America support.

Reproductive Rights and Health Care

While working in the Texas attorney general's office, Oldham repeatedly defended laws and policies that restricted access to abortion and reproductive health care. He helped defend Texas's HB 2, a Targeted Regulation of Abortion Providers (TRAP) law that required physicians performing abortions to obtain admitting privileges at a hospital within 30 miles of the clinic and required abortion facilities to meet the standards of ambulatory surgical centers. TRAP laws and their restrictive requirements have effectively forced the closure of large numbers of abortion clinics across Texas without providing meaningful health benefits. The Supreme Court ultimately struck down the law in *Whole Woman's Health v. Hellerstedt*, holding that its burdens on abortion access outweighed any asserted medical benefits.

Oldham also defended a Texas policy that excluded Planned Parenthood and other providers that offered abortion services from participating in the state's Women's Health Program. The policy reduced access to reproductive health services for many low-income Texans. A subsequent study published in the *New England Journal of Medicine* found that excluding Planned Parenthood affiliates from the program was associated with reduced access to effective contraception and other adverse changes in contraceptive care.

Immigration

As Texas's deputy solicitor general, Oldham played a central role in Texas's strategy to block the Obama administration's Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and the proposed expansion of Deferred Action for Childhood Arrivals (DACA). These programs would have extended deferred action protections to additional dreamers and certain undocumented parents of U.S. citizens and lawful permanent residents.

In an internal memorandum prepared for the Texas Attorney General's Office, Oldham characterized the immigration initiatives as an unconstitutional executive action, writing that "the President's unprecedented, unilateral actions undermine the rule of law and should be reviewed by the courts" and warning that "[i]f unchallenged, the President's actions threaten to forever change the Nation's constitutional foundation."

This was paired with a Texas-led multi-state lawsuit in *United States v. Texas* that sought to stop the implementation of DAPA and DACA. The complaint advanced sweeping claims about the effects of deferred action policies, alleging that DACA "led directly to a flood of immigration across the Texas-Mexico border and a 'humanitarian crisis' in Texas" and that the challenged directive would "increase human trafficking in the Plaintiff States."

Oldham also argued in support of the preliminary injunction that halted nationwide implementation of DAPA, a ruling that was ultimately left in place after the Supreme Court issued a 4–4 affirmance following Justice Scalia's death, leaving the injunction intact without a precedential merits decision.

Discrimination

Sullivan v. Texas A&M University System

After the Texas A&M University Police Department fired Christopher Sullivan, who had been diagnosed with atrial fibrillation, he filed disability discrimination and retaliation claims with the Equal Employment Opportunity Commission (EEOC) and filed suit in federal court for American with Disabilities Act (ADA) and Family Medical Leave (FMLA) violations. The district court dismissed all of his claims barred by sovereign immunity, and he appealed to the Fifth Circuit. The Fifth Circuit affirmed the lower court's holding that all Sullivan's claims were barred by sovereign immunity.

Oldham authored the opinion, noting that since Texas A&M is a public university and an agent of the state of Texas, Sullivan could only establish jurisdiction if (1) Congress validly abrogated state sovereign immunity, or (2) the state waived its sovereign immunity and consented to suit. Since the ADA's Eleventh Amendment provision was ruled unconstitutional, Sullivan could not make an abrogation claim. The opinion then addressed waiver of sovereign immunity, finding that, in this circumstance, Texas did not waive its immunity by accepting financial assistance under federal law. Because the ADA and FMLA prohibit discrimination by a wide range of entities rather than just those receiving federal funds, Texas's acceptance of financial assistance did not constitute waiver of immunity.

E.T. v. Paxton

After Governor Greg Abbott passed an executive order barring school districts from imposing mask mandates, students with disabilities in Texas public schools sued, alleging the executive order violated the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the American Rescue Plan. The district court sided with the plaintiffs and granted a permanent injunction and enjoined the attorney general from enforcing the order. The Fifth Circuit reversed the ruling on appeal, determining that the plaintiffs lacked standing to bring the case.

Oldham wrote the opinion, finding that the increased risk of contracting COVID-19 and increased risk of complications as a result of COVID-19 (caused by their disabilities) were not a concrete and particularized injury under Article III, because “increased risk” was merely speculative rather than imminent. Oldham then looked at another proposed injury-in-fact, the deprivation of reasonable access to in-person schooling. The opinion suggested that students have not been deprived of reasonable access, because schools had other alternatives for mitigating the risks of COVID-19 and schools could still engage in the case-by-case decision-making required for reasonable access under the ADA — just without the option of a mask mandate.

Oldham’s opinion further found that causality cannot be satisfied, because even if the injury was realized, it would likely be impossible for plaintiffs to establish that the risk of COVID-19 was specifically due to the mask mandate ban. Interestingly, it also alleges that causality cannot be satisfied because multiple schools refused to abide by the executive order and kept their mask mandates in place. After refuting Article III standing, the Fifth Circuit vacated the district court’s injunction and remanded the case with instructions to dismiss for lack of jurisdiction.

Voting Rights

Shelby County v. Holder

Oldham served as counsel on a 2013 Supreme Court amicus brief in *Shelby County v. Holder* that urged the court to strike down the Voting Rights Act’s preclearance framework and defended Texas’s restrictive voter-identification law, SB 14. This brief attacked the U.S. Department of Justice’s Civil Rights Division for not preclearing Texas’s discriminatory ID law, as was (previously) required by the Voting Rights Act, stating, “For nearly two years, the Civil Rights Division of the Department of Justice has used every weapon in its arsenal to thwart the implementation of a law that this Court has recognized as a legitimate and constitutional fraud-prevention measure.”

The brief also argued against the VRA’s preclearance requirements, writing, “The preclearance proceedings involving Texas’s voter-identification law illustrate the enormous burdens of the section 5 regime.... The only way for this Court to alleviate these unwarranted and burdensome federalism costs is to declare the reauthorization of section 5 unconstitutional.”

While Oldham’s defense of the Texas ID law was initially rejected by both the district court and Fifth Circuit Court of Appeals, the Supreme Court ultimately upheld his attacks on the VRA in its 5-4 *Shelby County* ruling. The Court’s

decision effectively ended the Voting Rights Act's preclearance requirements, allowing jurisdictions with histories of voter discrimination to implement election-law changes without prior federal approval. Following the ruling, several states advocated for strict voter-ID requirements and polling-place closures — changes that have disproportionately disenfranchised communities of color.

First Amendment

Freedom from Religion Foundation v. Mack

In *FFRF v. Mack*, Texas justice of the peace Wayne Mack held pre-proceeding courtroom prayers and also created a chaplaincy program for volunteer chaplains from all faiths to come in and conduct an opening prayer before proceedings in his courtroom. The Freedom from Religion Foundation (FFRF) filed a complaint with the Texas State Commission on Judicial Conduct, alleging this practice violated the Establishment Clause of the First Amendment, which prohibits the government from establishing, endorsing, or coercing participation in religion. The Texas State Commission on Judicial Conduct then sent Mack a warning letter to stop conducting the chaplain-led opening ceremonies. When Mack did not stop this practice, FFRF sued Mack, first in his official and then in his individual capacity.

Judge Kenneth Hoyt of the United States District Court for the Southern District of Texas sided with FFRF and held that litigants and lawyers appearing before Mack were effectively a “captive audience.” These parties had business before the court and faced pressure to participate in Mack’s pre-proceeding religious exercises before their cases were heard. Hoyt’s decision was overturned by the Fifth Circuit in September 2022.

While Oldham did not write the final Fifth Circuit merits opinion, he authored the Fifth Circuit’s temporary order staying Hoyt’s ruling pending appeal. In his stay opinion, Oldham wrote that Mack made a “strong showing” that the district court’s opinion was wrong and that he was likely to prevail on the merits. Oldham was unconvinced by any of FFRF’s arguments. First, FFRF argued that evidence of courtroom prayers at the founding was “spotty”; Oldham refuted the argument by citing letters from Chief Justice Jay *in the 1790s*. Second, Oldham used other sources from this same historical period to refute the argument that featuring religious components in courtroom proceedings is necessarily coercive. Third, FFRF cited a hypothetical from Justice Kagan that involved instructing parties to participate in prayer; Oldham found it inapposite to the facts given Mack permits non-participation. Finally, FFRF argued that the practice runs afoul of the *Lemon* test, to which Oldham replied that the *Lemon* test no longer governs in Establishment Clause cases.

Oldham’s opinion also found that Mack would be irreparably injured by a failure to grant a stay because the injunction on his courtroom practices violated federalism principles and because, absent a stay, the Judicial Conduct Commission could continue its inquiry into his practices even though the state’s attorney general approved Mack’s chaplaincy program. Therefore, the Fifth Circuit granted Mack’s motion for a stay pending appeal because it would be likely that, on appeal, the volunteer chaplaincy program in Mack’s courtroom would not violate the Establishment Clause.

Oldham's opinion, along with the Fifth Circuit's later decision allowing this prayer practice, continues to enable a coercive religious practice to remain in place, further weakening the separation of church and state. This decision signals and legitimizes that litigants appearing before the court may be required to endure government-sponsored religious exercises in order to access equal justice under the law.

Administrative Law

Texas v. Biden

The Migrant Protection Protocols, implemented by DHS in 2018, returned undocumented individuals to Mexico for the duration of their removal proceedings rather than letting them remain in the United States. On the day of Biden's inauguration, DHS stated that it would suspend new enrollments in the protocol; Texas sued, and the district court vacated the suspension decision. The Fifth Circuit affirmed the district court's decision.

Oldham penned the majority decision, which determined that the suspension of the Migrant Protection Protocols was arbitrary and capricious in violation of the Administrative Procedure Act. Oldham's opinion noted that the failure of the suspension decision to mention the states' reliance interests on the Migrant Protection Protocols "alone is fatal." However, he continued to address other reasons why the suspension decision was arbitrary and capricious, including (1) it did not rest upon new factual findings supporting allowing migrants to stay in the U.S., (2) it failed to consider alternatives to suspending MPP, and (3) it failed to consider the legal implications of the suspension. Oldham then went on to find that the suspension decision also violated the Immigration and Naturalization Act. Oldham argued that, though the law allowed migrants pending removal proceedings to be released on parole, that "alternative has its limits" and should only be granted on a case-by-case basis for humanitarian reasons or public benefit.

Wages and White Lion Investments v. FDA

Flavored e-cigarette manufacturers filed a lawsuit against the FTC after the administrative agency denied their pre-market tobacco applications. The FDA issued specific instructions regarding what information manufacturers would need to provide to approve their e-cigarette products. Later, the FDA imposed new testing requirements and denied all one million applications for failing to satisfy those requirements. The FDA provided instructions for e-cigarette manufacturers on multiple occasions, hedging those presentations with a warning that the requirements could change. In 2020, they changed requirements specifically for flavored, cartridge-based e-cigarette products, requiring scientific studies as a part of the application.

The Fifth Circuit set aside the FDA's denial orders and remanded the matter to the FDA. Oldham's majority opinion found the FDA's changed requirements for flavored cartridge-based e-cigarette products (and the subsequent rejection of applications) arbitrary and capricious, because it failed to provide applicants with fair notice before "depriving a citizen of property" and should not have faulted the manufacturers for relying in good faith on its previous statements. Oldham acknowledged that the Fifth Circuit opinion departed from other circuits' rulings on this exact issue but stood by his conclusion.

Consumers' Research v. FCC

Congress gave the FCC the ability to levy a tax to subsidize telecommunications services across the country at reasonable and affordable rates. Rather than calculate the tax itself, the FCC worked with a private company called the Universal Service Administrative Company to decide the quarterly universal service tax amount; once the USAC has provided its recommendation, the FCC used this amount to impose a tax on telecommunications carriers. Consumers' Research centered around a challenge to the FCC's subdelegation of this "universal service" tax to a private corporation. Oldham's opinion concluded that the current construction of the universal service fee system constituted a constitutional violation of the Legislative Vesting Clause.

On the standing question, Oldham's majority opinion found that one petitioner, Cause Based Commerce, had Article III standing due to direct financial injury. While Oldham briefly acknowledged that sovereign immunity would bar monetary recovery and make the injury non-redressable, he still found Article III standing under the "capable of repetition yet evading review" doctrine.

Oldham then labeled the universal service fee as a tax, which is understood as a legislative power, and suggested that congressional delegation of the universal service fee to the FTC may have been an impermissible delegation because it lacked an "intelligible principle" to guide the FTC's discretion in determining the amount and method of taxation. He then explained that further delegation to a private entity further entrenched the impermissibility and determined that even if each of these delegations are not individually impermissible, the combination of them would be.

Criminal Law

Texas v. EEOC

In 2012, the Equal Employment Opportunity Commission (EEOC) issued updated enforcement guidance on employers' use of arrest and conviction records, warning that blanket exclusions can violate Title VII of the Civil Rights Act when they have an unjustified disparate impact on workers of color. The guidance encouraged employers to adopt individualized assessments and other fair-chance hiring practices rather than automatically disqualifying applicants based on criminal history.

In 2014, Oldham served as counsel on behalf of Texas and filed suit against the EEOC and the U.S. Department of Justice, challenging the EEOC's guidance and asserting that "[t]he State of Texas and its constituent agencies have the sovereign right to impose categorical bans on the hiring of criminals, and neither the EEOC nor Holder has authority to say otherwise." The complaint sought to invalidate the EEOC's guidance and prevent its enforcement against Texas agencies.

The Texas State Conference of the NAACP moved to intervene in the litigation to defend the EEOC guidance and the interests of individuals affected by rigid hiring exclusions. One such individual, Beverly Harrison, a 58-year-old African-American grandmother from Dallas, was reportedly denied employment as a school crossing guard because of a decades-old felony assault conviction from 1975 that was later dismissed.

Responding to Texas's lawsuit, an NAACP official stated: "We are deeply troubled by Attorney General Abbott's attempt to use this meritless lawsuit to not only attack the EEOC's thoughtful and well-reasoned guidance, but also to try and undermine vital civil rights laws and protections. At a time when millions of people are still struggling to find work, the Texas attorney general should not be working to erect barriers to employment, particularly when those barriers disproportionately and unfairly affect workers of color."

Ultimately, the Fifth Circuit invalidated the EEOC's criminal background check guidance on Administrative Procedure Act grounds, limiting the agency's ability to use the guidance to challenge state hiring practices.

While Serving on the Fifth Circuit

United States v. Yusuf

Abdullah Yusuf was charged with transporting undocumented immigrants within the United States. Yusuf's vehicle was stopped at a Border Patrol checkpoint and an inspection revealed that his flatbed trailer contained 84 individuals inside wooden crates. Yusuf claimed he had no knowledge of the contents of his cargo hold, but two of the individuals found in the trailer testified that they paid thousands of dollars to be transported into the United States. On appeal, Yusuf argued the evidence was insufficient for his conviction, but Oldham affirmed his conviction.

Oldham found that the insufficiency claim was not properly preserved, and was therefore subject to plain error review, which Oldham describes as "tantamount to the eye of a virtually impassable needle. Taking all the evidence in the light most favorable to the verdict and drawing all reasonable inferences as such, the court did not find that Yusuf satisfied the plain error burden and therefore affirmed his conviction.

Executive Power

Feds for Medical Freedom v. Biden

Feds for Medical Freedom is a nonprofit organization that challenged President Biden's COVID-19 vaccine mandate for federal employees on behalf of its members, arguing that the president lacked Article II authority to issue the mandate and that the mandates violated the Administrative Procedure Act. The district court issued a preliminary injunction halting enforcement, which the Fifth Circuit affirmed.

Oldham's majority opinion primarily tackled the jurisdictional question, looking at whether the Civil Service Reform Act (CSRA) strips federal courts of their § 1331 jurisdiction. Oldham concluded that the CSRA's jurisdictional clause only applies to personnel actions. Through a long series of interpretations of the text, structure, and purpose of the CSRA, Oldham concluded that Biden's executive order was not a personnel action, so Oldham concluded it was appropriate for this organization, on behalf of federal employees, to bring a facial, pre-enforcement action against a federal policy.

The opinion then very briefly reviewed the preliminary injunction itself. Oldham noted that the Supreme Court had recently stayed nationwide injunctions, but since they had not explicitly said that those injunctions are forbidden, they were still an appropriate remedy in this case.

Federalism

United States v. Abbott

The federal government filed a suit against Texas and Gov. Greg Abbott, claiming that installation of a floating barrier on the Rio Grande violated the Rivers and Harbors Appropriation Act. The U.S. Circuit Court of Appeals for the Fifth Circuit, sitting en banc, sided with Texas and vacated a preliminary injunction that previously required Texas to remove the structure. Oldham authored a separate concurrence that went beyond the Fifth Circuit panel's narrow procedural holding in which he endorsed an expansive and sweeping view of state authority in the immigration enforcement context. He further noted that dismissing the case for lack of jurisdiction would have "far-reaching consequences." Specifically, he noted that "the State of Texas and the Justice Department are currently litigating whether the Biden administration can remove concertina wire erected by the State of Texas along its border with Mexico," and that "[t]hankfully, the majority opinion does nothing to interfere with the wire case."