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## Court allows border-wall construction to continue

The Supreme Court on Friday turned down a plea from opponents of President Donald Trump's border wall to order a temporary stop to construction. By a vote of 5-4, the justices declined to lift a stay, entered just over a year ago, that allowed the federal government to continue to spend federal funds on construction while a legal challenge to the wall continues. The challengers had urged the Supreme Court to intervene last week, telling the justices that if the stay were not lifted, the Trump administration could finish the wall before the court even decides whether to take up the case on the merits.

The brief one-sentence order was the latest in the dispute over the wall on the U.S.-Mexico border. The clash came to the court for the first time last year, after a federal district judge in California agreed with the challengers, the Sierra Club and the Southern Borders Communities Coalition, that government officials did not have the power to spend more than Congress had already allocated for border security. U.S. District Judge Haywood Gilliam barred the government from using \$2.5 billion in funds originally earmarked for military-personnel funds to build the border wall, and the U.S. Court of Appeals for the 9th Circuit declined to stay that ruling while the government appealed. The Trump administration then went to the Supreme Court, which – by a vote of 5-4 last July – put Gilliam's order on hold and allowed the government to use the Pentagon funds on the wall.

After the 9th Circuit upheld Gilliam's decision last month, the challengers asked the Supreme Court to step in and lift the stay. Otherwise, they contended, the government would be able to finish the parts of the wall that are the subject of their challenge before the litigation concludes.

[The Trump administration urged the court](#) to leave its year-old stay in place. When the justices rejected the challengers' arguments last year, U.S. Solicitor General Jeffrey Wall posited, they were "presumably aware that the result would be construction during litigation." And in any event, Wall added, the government plans to file its cert petition seeking review of the 9th Circuit's decision on Aug. 7, which would allow the justices to consider it at their first conference after the summer recess.

Justice Stephen Breyer filed a short dissent from the court's denial of the challengers' motion to lift the stay, which was joined by Justices Ruth Bader Ginsburg (who, the Court's Public Information Office reported, was discharged from the hospital today after undergoing a non-surgical procedure earlier this week), Sonia Sotomayor and Elena Kagan. Breyer reiterated that when the court granted the stay last year, he had suggested a middle ground that, he said, would avoid irreparable harm on both sides of the dispute: Put Gilliam's order on hold as far as it prevented the government from finalizing the contracts for the construction of the wall, but continue to bar the government from actually spending the Pentagon funds or beginning construction. "Now," Breyer observed, the government "has apparently finalized its contracts, avoiding the irreparable harm" that it said justified the stay last year. Because Friday's order allowing construction to continue may effectively serve as a final judgment in the case, Breyer explained, he would have lifted the stay of Gilliam's order.

In [a statement issued shortly after Friday's order](#), an attorney representing the challengers emphasized that the justices' "temporary order does not decide the case." Dror Ladin, a staff attorney for the American Civil Liberties Union, stressed that the Trump administration "has admitted that the wall can be taken down if we ultimately prevail, and we will hold them to their word and seek the removal of every mile of unlawful wall built."

*This post was originally published at [Howe on the Court](#).*

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