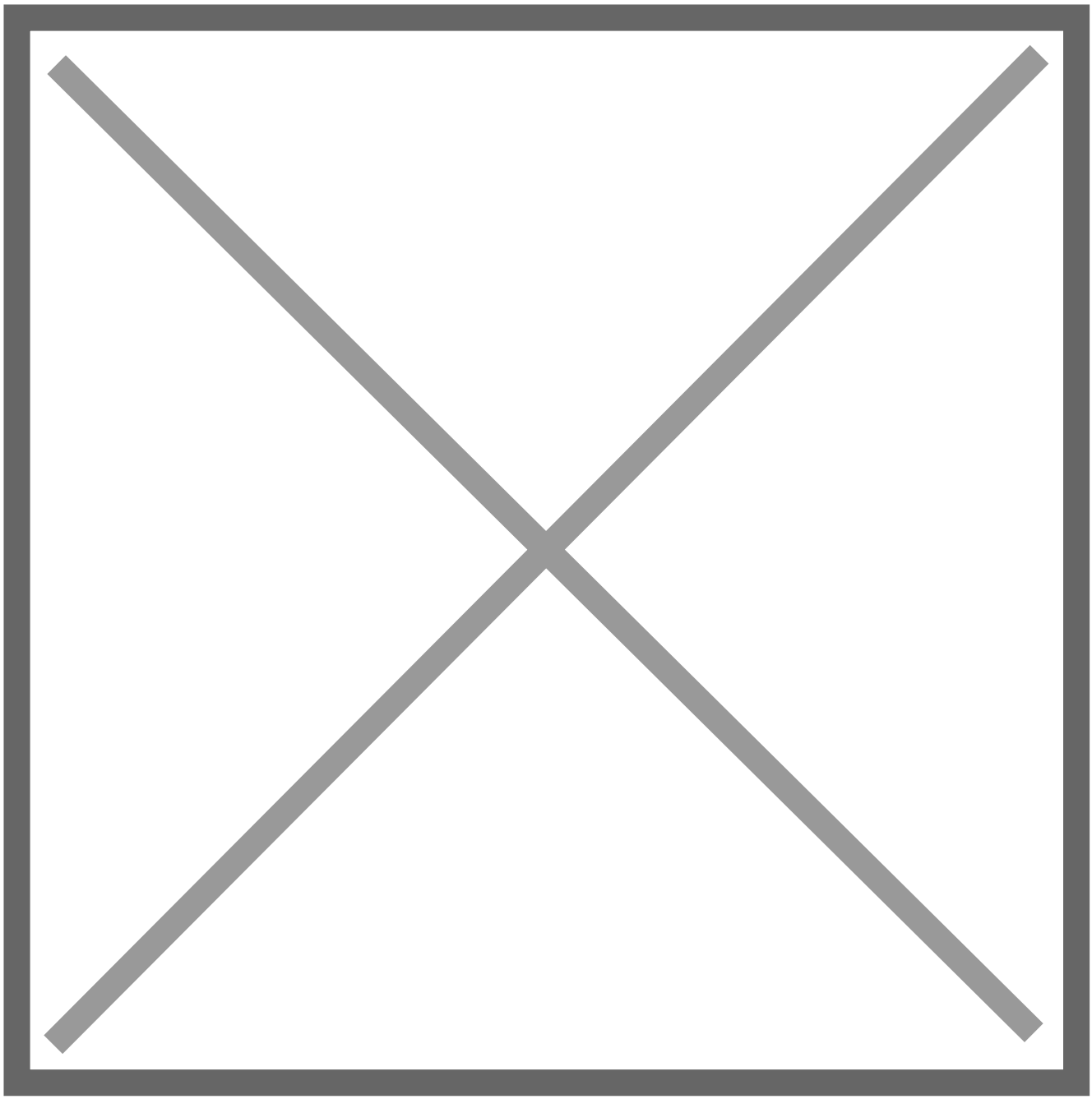
News



Supreme Court Justice Samuel Alito speaks at the University of Notre Dame Sept. 30, 2021, about "The Emergency Docket," which allows the court to issue expedited rulings outside its typical process of hearing arguments and issuing lengthy opinions. (CNS photo/Matt Cashore, courtesy University of Notre Dame)



by Catholic News Service

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In a Sept. 30 talk at the University of Notre Dame, Supreme Court Justice Samuel Alito defended the court's use of what has been termed the "shadow docket" for the court's emergency orders and summary decisions.

He also said he prefers the term emergency docket, which also was the title of his speech presented by the Kellogg Institute for International Studies and its Constitutionalism and the Rule of Law Lab, and co-sponsored by the Notre Dame Law School.

Alito's visit to Notre Dame came just two weeks after Justice Clarence Thomas was on the university's campus delivering the 2021 Tocqueville Lecture.

While he was on the Catholic university campus, Alito also met with members of the Notre Dame faculty and undergraduate and graduate students.

Paolo Carozza, director of the university's Kellogg Institute, said Alito has been in dialogue with the institute about issues in the field of comparative constitutional law for nearly a decade.

In his nearly one-hour address, the Supreme Court justice stressed that the court's emergency docket allows it to make quick decisions when necessary. He also said the term "shadow docket," coined in a 2015 law review article, is partly to blame for the misperceptions and criticism surrounding the court's use of this procedure.

"The catchy and sinister term shadow docket has been used to portray the court as having been captured by a dangerous cabal that resorts to sneaky and improper methods to get its ways," he said. "This portrayal feeds unprecedented efforts to intimidate the court or damage it as an independent institution."

He also blamed politicians and the media for portraying the court's expedited rulings -- that often come without full opinions from the court -- in a negative light.

Alito's comments came a day after the Senate Judiciary Committee held a hearing on the court's use of this process that Senate Democrats said was ideologically driven.

The shadow or emergency docket -- that allows the court to bypass oral arguments and the normal deliberative process -- has been criticized for lacking transparency. But Alito said that rulings on emergency applications are "nothing new" and the number of such cases to come before the justices has increased in recent years.

He cited several recent cases where the court's review of emergency applications has drawn attention, including its ending of a Centers for Disease Control moratorium on evictions during the coronavirus pandemic. The court ruled the CDC doesn't have the power to impose a ban on evictions.

The justices also ruled in the summer against the Biden administration's efforts to roll back a Trump-era order requiring migrants to remain in Mexico pending completion of their removal hearings.

Alito dismissed "false and inflammatory" claims that the court's 5-4 decision in September on keeping the Texas abortion law in place amounted to an overturning of Roe v. Wade, the 1973 Supreme Court decision that made abortion legal in the U.S.

"We did no such thing and we said that expressly in our order," he said. The Texas law that bans abortions after six weeks went into effect Sept. 1.

Alito called the allegation that the Supreme Court issues its rulings in the middle of the night to avoid attention from reporters and the public as "rank nonsense." He said that, often with only hours to make a ruling, the court may not have time to hear oral arguments, but its processes -- aside from private deliberations -- are fully transparent.

"We do the best we can under the time constraints imposed by this situation," he said, comparing the court's work in such cases to emergency room treatment.

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