

# Highlights from the Supreme Court's 2025 Term



**Mark D. Harris**

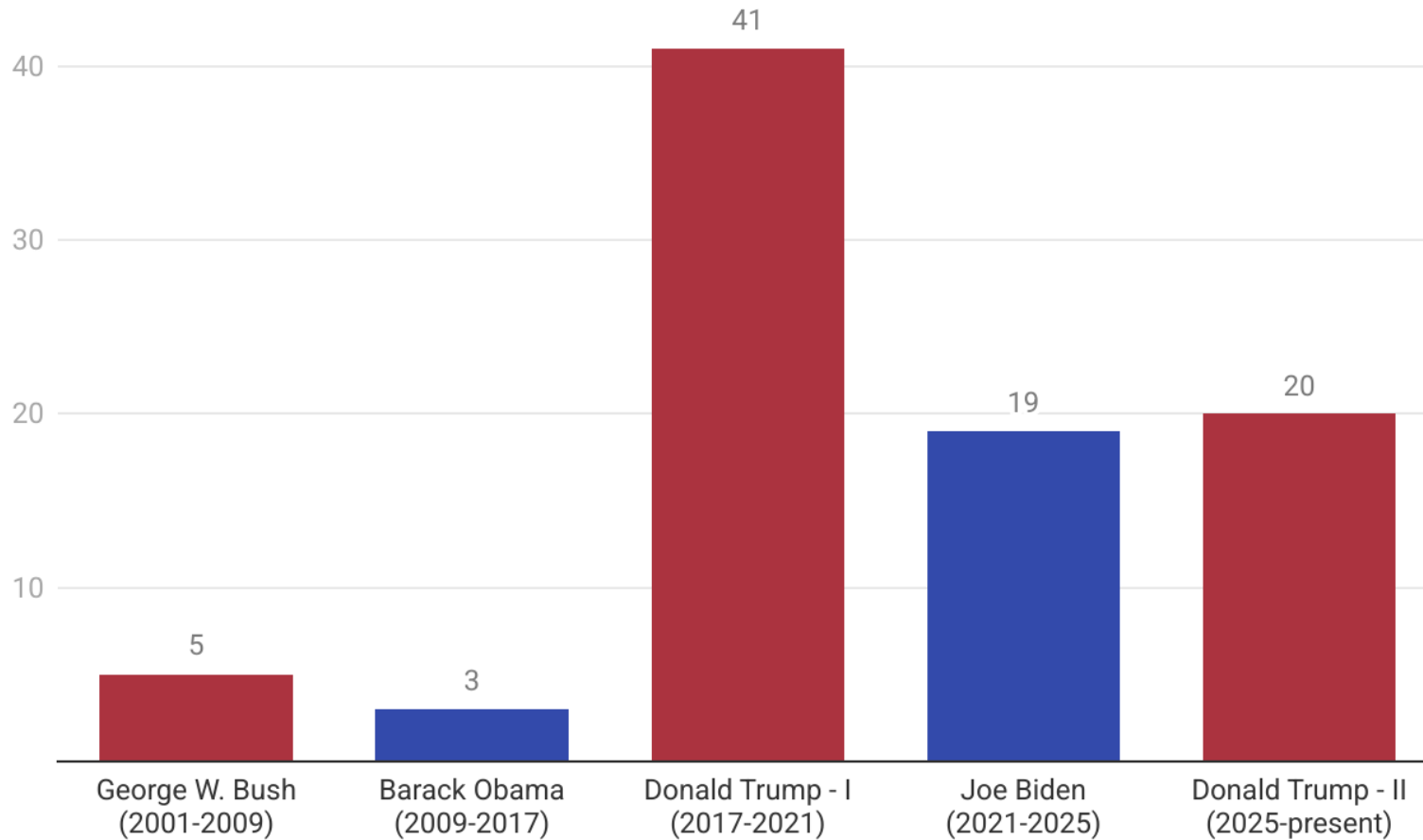
**Partner**  
Proskauer

# The Shadow Docket

# The Shadow Docket

- In 2015, William Baude, professor at the University of Chicago law school, coined the term: “shadow docket”.
- The “shadow docket” refers to the Court’s emergency docket where cases are decided, without full briefing and oral argument, and sometimes without any written opinion.
- These cases are brought to the Court after a state, company, or individual has lost in the lower courts—often early in the litigation—and that party wants the Court to block the lower court order as the case proceeds through the appeals process.

## Supreme Court emergency applications from the federal government, 2001-2025



Source: Steve Vladeck's One First

**BALLOTPEDIA**

Briana Ryan, BALLOTPEDIA NEWS, *U.S. Supreme Court grants the Trump administration's 16th emergency order* (July 17, 2025), available at <https://news.ballotpedia.org/2025/07/17/u-s-supreme-court-grants-the-trump-administrations-16th-emergency-order/>



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 way. And this portrayal feeds unprecedented efforts to intimidate the court or damage it as an independent institution.

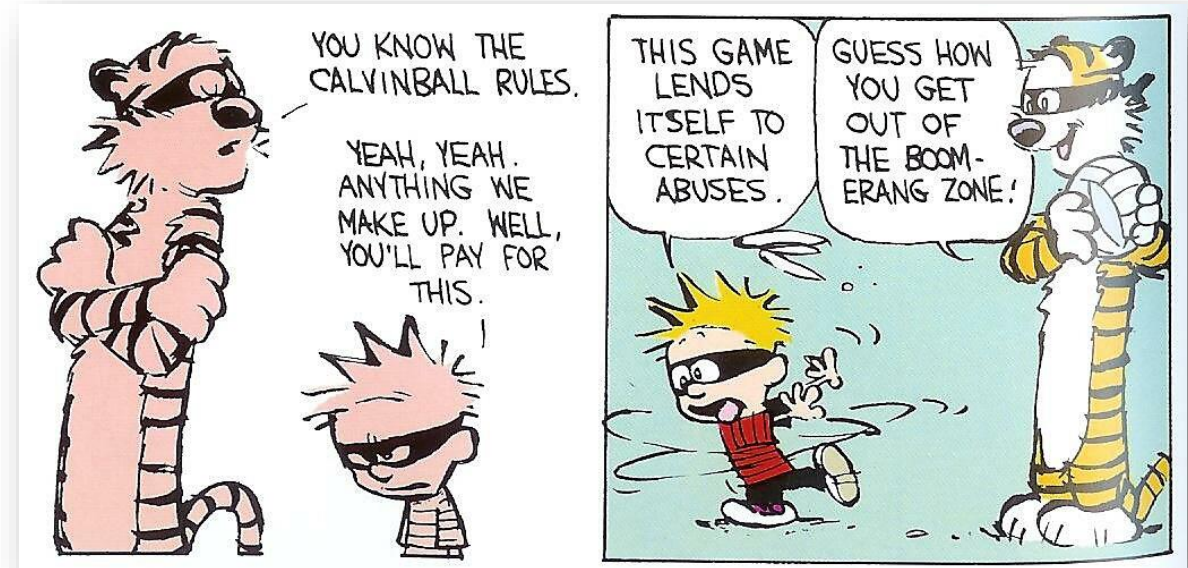
*Justice Samuel Alito, Lecture at the  
University of Notre Dame, 2021*



# Criticism of the Shadow Docket

“This is Calvinball jurisprudence with a twist. Calvinball has only one rule: There are no fixed rules. We seem to have two: that one, and this Administration always wins.”

*Nat'l Insts. of Health, et al., v. Am. Pub. Health Assoc.*, 145 S.Ct. 2658, 2675 (2025) (Jackson, J., dissenting)





## *Trump v. CASA, Inc. (2025)*

# Trump v. CASA, Inc. | Background

- Plaintiffs sought to enjoin the implementation and enforcement of President Trump's Executive Order No. 14160, which re-defined birthright citizenship to exclude certain circumstances.
- Various district courts entered universal preliminary injunctions barring application of the policy to anyone in the country.
- On appeal, each Court of Appeals denied the Government's request to stay the relief.



# ***Trump v. CASA, Inc.* | Majority Opinion**

- **The majority held that the Government was “likely to succeed on the merits” that universal injunctions exceed the “equitable authority that Congress has granted to federal courts.”**
- **The Court explained that the Judiciary Act of 1789, which “authorizes the federal courts to issue equitable remedies,” only encompasses those remedies “traditionally accorded by courts of equity at our country’s inception.”**
  - “The universal injunction was conspicuously nonexistent for most of our Nation’s history. Its absence from 18th- and 19th-century equity practice settles the question of judicial authority.”

# Trump v. CASA, Inc. | Dissenting Opinions

## Counter-Arguments

1. Universal injunctive relief is analogous to a “bill of peace,” a form of group litigation in English courts.
2. Universal injunctions are consistent with the principle that a court of equity may fashion a remedy that awards “complete relief.”
3. As a matter of policy, universal injunctions are the only practical way to protect large groups from unlawful government action.

## Majority’s Response

1. The bill of peace only bound “small and cohesive” groups and did not resolve “question[s] of legal interpretation for the entire realm.”
2. The complete-relief principle only authorizes the courts to administer complete relief between the parties.
3. “[T]he policy pros and cons are beside the point.” Because “[n]othing like a universal injunction was available at the founding,” federal courts “lack authority to issue them.”



Make no mistake: Today's ruling allows the Executive to deny people rights that the Founders plainly wrote into our Constitution, so long as those individuals have not found a lawyer or asked a court in a particular manner to have their rights protected. This perverse burden shifting cannot coexist with the rule of law. In essence, the Court has now shoved lower court judges out of the way in cases where executive action is challenged, and has gifted the Executive with the prerogative of sometimes disregarding the law. As a result, the Judiciary—the one institution that is solely responsible for ensuring our Republic endures as a Nation of laws—has put both our legal system, and our system of government, in grave jeopardy.



*Jackson, J., dissenting*



In justiciable cases, this Court, not the district courts or courts of appeals, will often still be the ultimate decisionmaker as to the interim legal status of major new federal statutes and executive actions—that is, the interim legal status for the several-year period before a final decision on the merits.

*Kavanaugh, J., concurring*



# Justice Kavanaugh's Concurrence

“Kavanaugh is effectively inviting both the government and litigants challenging government policies to use the emergency docket *even more*—not just in cases in which there is some compelling exigency, but in *any* case in which there’s a need for that kind of nationwide (interim) uniformity.”

Stephen Vladeck, author of *The Shadow Docket: How the Supreme Court Uses Stealth Rulings to Amass Power and Undermine the Republic*

# The Shadow Docket in Practice

# Employment



## *Trump v. Boyle (2025)*

# ***Trump v. Boyle* | Background – *Trump v. Wilcox***

- was decided two months prior to *Boyle*.
- In *Wilcox*, the Government applied for a stay of orders from the District Court for the District of Columbia enjoining the President's removal of a member of the National Labor Relations Board and a member of the Merit Systems Protection Board.
- The Supreme Court granted the stay.

## ***Trump v. Wilcox*, 134 S. Ct. 1415, 1418 (2025) (Kagan, J., dissenting)**

“Our emergency docket, while fit for some things, should not be used to overrule or revise existing law. We consider emergency applications ‘on a short fuse without benefit of full briefing and oral argument’; and we resolve them without fully (or at all) stating our reasons. It is one thing to grant relief in that way when doing so vindicates established legal rights, which somehow the courts below have disregarded. It is a wholly different thing to skip the usual appellate process when issuing an order that itself changes the law. And nowhere is short-circuiting our deliberative process less appropriate than when the ruling requested would disrespect—by either overturning or narrowing—one of this Court’s longstanding precedents, like our nearly century-old *Humphrey’s* decision.”

# Trump v. Boyle | Order

The application for stay presented to THE CHIEF JUSTICE and by him referred to the Court is granted. The application is squarely controlled by *Trump v. Wilcox*, 605 U. S. \_\_\_\_ (2025). Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases. The stay we issued in *Wilcox* reflected “our judgment that the Government faces greater risk of harm from an order allowing a removed officer to continue exercising the executive power than a wrongfully removed officer faces from being unable to perform her statutory duty.” *Ibid.* (slip op., at 1). The same is true on the facts presented here, where the Consumer Product Safety Commission exercises executive power in a similar manner as the National Labor Relations Board, and the case does not otherwise differ from *Wilcox* in any pertinent respect.

The June 13, 2025, order of the United States District Court for the District of Maryland, No. 8:25–cv–01628, ECF Doc. 25, is stayed pending the disposition of the appeal in the United States Court of Appeals for the Fourth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of the Court.

# *Trump v. Boyle*

“When an emergency application turns on whether this Court will narrow or overrule a precedent, and there is at least a fair prospect (not certainty, but at least some reasonable prospect) that we will do so, the better practice often may be to both grant a stay and grant certiorari before judgment.” (Kavanaugh, J., concurring)

“Once again, this Court uses its emergency docket to destroy the independence of an independent agency.” (Kagan, J., dissenting)

# Immigration



## *Noem v. Abrego Garcia (2025)*

# Noem v. Garcia | Order

“The application is granted in part and denied in part, subject to the direction of this order. Due to the administrative stay issued by THE CHIEF JUSTICE, the deadline imposed by the District Court has now passed. To that extent, the Government’s emergency application is effectively granted in part and the deadline in the challenged order is no longer effective. The rest of the District Court’s order remains in effect but requires clarification on remand. The order properly requires the Government to “facilitate” Abrego Garcia’s release from custody in El Salvador and to ensure that his case is handled as it would have been had he not been improperly sent to El Salvador. The intended scope of the term “effectuate” in the District Court’s order is, however, unclear, and may exceed the District Court’s authority. ***The District Court should clarify its directive, with due regard for the deference owed to the Executive Branch in the conduct of foreign affairs.*** For its part, the Government should be prepared to share what it can concerning the steps it has taken and the prospect of further steps.”

# Civil Unrest

# Deployment of the National Guard to Chicago

- On October 9, 2025, U.S. District Judge April Perry issued a TRO that blocked the federal government from “ordering the federalization and deployment of the National Guard of the United States within Illinois” for two weeks.”
- The 7th Circuit upheld that portion of Judge Perry’s order that barred the government from deploying the National Guard in Illinois.
- On October 17, 2025, the Trump Administration asked the Supreme Court to intervene.
- The Court ordered Illinois and Chicago to file their responses by October 20, 2025.
- The Court’s decision is pending.

# Thank You



**Mark D. Harris**

**Partner**  
New York

+1.212.969.3530  
[mharris@proskauer.com](mailto:mharris@proskauer.com)