

Universal Injunctions on Appeal

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I. INTRODUCTION

In *Trump v. CASA*,¹ the Supreme Court held that district courts do not have the authority to issue “universal” injunctions that protect nonparties. While the Court put an end to this controversial practice, it did not eliminate the need for interim relief when the executive branch engages in legally questionable action with broad impact. These concerns are especially acute in light of President Trump’s barrage of executive orders in the first few months of his second administration² and the dozens of legal challenges that have been filed in response.³ Going forward, courts will need to grapple with whether and how to provide preliminary relief to thousands or millions of affected people while the legality of executive action is being litigated.

Importantly, the Court’s holding did not affect the availability of several alternative forms of preliminary mass relief.⁴ District judges may still issue injunctions that incidentally protect nonparties, as long as the remedies are necessary to provide complete relief to named parties.⁵ The Court left open the possibility that organizations may use associational standing to seek

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1. 2025 WL 1773631.

2. See Bob Bauer & Jack Goldsmith, *The Trump Executive Orders as “Radical Constitutionalism”*, SUBSTACK: EXECUTIVE FUNCTIONS (Feb. 03, 2025), <https://perma.cc/5A4T-7M6K> (asking why “so many of President Trump’s multitudinous executive orders fly in the face of extant legal principles”); Adam Liptak, *Trump’s Actions Have Created a Constitutional Crisis, Scholars Say*, N.Y. TIMES (Feb. 10, 2025) (quoting legal scholars as characterizing Trump’s executive orders as “illegal,” “unconstitutional,” and “designed to demonstrate maximum contempt for core constitutional values”).

3. See *Are we in a constitutional crisis?*, Nat’l Pub. Radio (Feb. 11, 2025) (describing “dozens of cases challenging the White House’s actions” in the first few weeks of the administration that have resulted in judicial rulings that block “the dismantling of USAID,” the “freeze on federal grants,” the “order ending birthright citizenship,” “the offer encouraging government employees to resign,” and the relocation of “trans women to federal prisons for men.”).

4. See Nicholas Bagley, *The Supreme Court Put Nationwide Injunctions to the Torch*, THE ATLANTIC (Jul. 2, 2025, 1:12 PM), <https://www.theatlantic.com/ideas/archive/2025/06/supreme-court-trump-injunctions/683354/>; Mila Sohoni, *Trump v. CASA and the future of the universal injunction*, SCOTUSBLOG (Jul. 2, 2025), <https://perma.cc/2HCA-N8D9>.

5. See *Trump v. CASA, Inc.*, 2025 WL at *11–*12 (declining to address whether a universal injunction is necessary to provide complete relief to state plaintiffs and remanding to lower courts to make this determination).

injunctive relief on behalf of their members.⁶ Challengers raising similar factual and legal claims may file class actions,⁷ and courts may provide temporary injunctive relief prior to certification.⁸ The Court disclaimed that its holding would have any effect on universal remedies in cases challenging agency action under the Administrative Procedure Act.⁹ Finally, in some instances it may be infeasible for the government to provide different treatment to protected and unprotected parties, so even a limited injunction could effectively force the executive to temporarily suspend enforcement.

Given these alternatives, it remains to be seen how much *Trump v. CASA* will limit the availability of mass relief, and also how it will affect some of the problems associated with universal injunctions. Litigants challenging federal policies often engaged in judge-shopping, filing petitions for universal injunctions in single-judge districts so that they could draw a sympathetic district judge.¹⁰ Because denials were only preclusive as to the specific petitioner,¹¹ different litigants could also file petitions in multiple districts to enjoin the same policy, giving them “multiple bites at the apple.”¹²

Finally, the issuance of universal injunctions was perceived to be strongly politicized. A recent study¹³ documented that district judges issued 64 universal injunctions against policies from President Donald Trump’s first administration; 92% of these judges were appointed by Democratic presidents.¹⁴ By the end of 2023, there were 14 universal injunctions against

6. See *Trump v. CASA Inc.*, 2025 WL at *4 n.2 (declining to address the government’s arguments regarding state and associational standing).

7. Within two weeks of *Trump v. CASA*, a district court certified a class of “current and future persons” who would be affected by the birthright citizenship order and enjoined the government from enforcing the order against class members. See *Barbara v. Trump*, 2025 WL 1904338 (D.N.H. July 10, 2025).

8. See *A.A.R.P. v. Trump*, 145 S.Ct. 1364, 1369 (holding that the Court “may properly issue temporary injunctive relief to the putative class in order to preserve our jurisdiction pending appeal.”).

9. See *Trump v. CASA Inc.*, 2025 WL at *8 n.10 (“Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.”).

10. Alex Botoman, *Note, Divisional Judge-Shopping*, 49 COLUM. HUM. RTS. L. REV. 297, 300–308 (2018) (describing how the state of Texas has used judge-shopping in petitions for nationwide injunctions); Steve Vladeck, *18. The Growing Abuse of Single-Judge Divisions*, SUBSTACK: ONE FIRST (Mar. 13, 2023), <https://perma.cc/8SLP-SYS3> (observing that the State of Texas has publicly admitted that it has filed lawsuits in small cities with no particular connection to the litigation in order to have particular judges hear their cases).

11. See *Developments in the Law—District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701, 1711 (2024) [hereinafter *District Court Reform: Nationwide Injunctions*] (“[A] successful defense against a nationwide injunction in one court is barely a win for the government at all: because that decision has no preclusive effect on new plaintiffs, other plaintiffs are free to bring the exact same lawsuit elsewhere.”).

12. *City of Chicago v. Sessions*, 888 F.3d 272, 298 (7th Cir. 2018) (Manion, J., concurring in part and dissenting in part), *reh’g en banc granted in part, opinion vacated in part*, 2018 WL 4268817 (7th Cir. June 4, 2018), *vacated*, 2018 WL 4268814 (7th Cir. Aug. 10, 2018).

13. See *District Court Reform: Nationwide Injunctions*, *supra* note 11.

14. See *Appendix for District Court Reform: Nationwide Injunctions*, <https://perma.cc/X66M-J56R>,

Biden administration policies, all of which were issued by Republican appointees.¹⁵ These statistics generated the disturbing implication that these injunctions were motivated more by the judges' policy views than the principled application of constitutional or administrative law.

However, as Justice Kavanaugh observed in his *Trump v. CASA* concurrence, while “district courts have received much of the attention (and criticism) in debates” over universal injunctions, they “generally do not have the last word when they grant or deny preliminary injunctions.”¹⁶ Circuit courts and the Supreme Court played an important role in reviewing these injunctions. In theory, the politicization of injunctions issued by district courts could have been mitigated on appeal.

This Article, prepared for an October 2024 “Theorizing the Judicial Process” Symposium at Yale Law School and updated following the Court’s decision in *Trump v. CASA*, examines appellate review of universal injunctions issued against policies promulgated by the first Trump and Biden administrations. The primary finding of this empirical study is that circuit court review of universal injunctions was also pervasively political. Republican appointees were 58 percentage points more likely than Democratic appointees to uphold universal injunctions against the Biden administration. In reviewing universal injunctions against the Trump administration, Democratic appointees were 60 percentage points more likely to uphold than Republican appointees. Similarly, judges were roughly 60 percentage points more likely to vote to vacate a universal injunction against the president of their own party than were judges of the opposite party.

These differences between Democratic and Republican appointees reveal a level of polarization that was substantially higher than in prior studies of circuit judge voting behavior.¹⁷ This may have been due in part to the politically contentious nature of these cases. But it may also have reflected challenges that circuit judges faced in applying deferential review of the malleable standards for preliminary injunctions, often on an accelerated schedule.

Nevertheless, these judges occasionally found common ground. Roughly 20 percent of the time, judges would vote to uphold an injunction as to the

at 2–3.

15. *See id.*

16. 2025 WL 1773631, at *19 (U.S. June 27, 2025).

17. *See* CASS R. SUNSTEIN ET AL., ARE JUDGES POLITICAL? AN EMPIRICAL ANALYSIS OF THE FEDERAL JUDICIARY 20–21 tbl.2-1 (2006) (reporting differences between Democratic and Republican appointees of 40 percentage points in gay rights cases, 28 percentage points in affirmative action cases, 24 percentage points in National Environmental Policy Act and capital punishment cases, and lower percentages for all other case categories); Joshua B. Fischman, *Interpreting Circuit Court Voting Patterns: A Social Interactions Framework*, 31 J. L. ECON. & ORG. 808, 837 tbl. 5 (2015) (reporting differences between Democratic and Republican appointees between six and 17 percentage points for 14 different case categories).

plaintiffs, but not universally. Notably, this occurred one-third of the time with mixed panels (consisting of both Democratic and Republican appointees) but never with ideologically uniform panels. Circuit judges also occasionally voted against type, either upholding a universal injunction against a president of their own party or staying or vacating an injunction against a president of the opposing party.

Some of the injunctions were never reviewed on appeal. In 19 percent of the cases, the federal government did not appeal the universal injunction; in 15 percent, the appeal was withdrawn or dismissed without a written opinion. In at least some of these cases, the federal government decided that its policy was not worth preserving, or that it could be implemented in an alternative form that avoided legal difficulties. However, a large proportion of the cases that were not appealed or dismissed without opinion occurred around the change in administration following President Biden's election in 2020; the Biden administration simply declined to defend Trump administration policies.

The Article proceeds as follows. Part II describes the data collection, involving all appeals of universal injunctions against Trump and Biden administration policies before the end of 2023. Part III presents the results on appeals of universal injunctions. Most of these injunctions were appealed, except around the transition between the Trump and Biden administrations. While many injunctions were stayed or vacated within three months—typically by a circuit court panel—a sizeable proportion took much longer to resolve. Challenges to Trump administration policies were filed disproportionately in the 9th Circuit, while challenges to Biden administration policies were filed primarily in the 5th Circuit. The judges' voting behavior in these cases was highly politicized, with Democratic judges upholding injunctions against Trump administration policies and Republican judges upholding injunctions against Biden administration policies.

Part IV discusses how litigation for broad interim relief against the executive branch will change following *Trump v. CASA*. It considers whether the judicial polarization documented in this Article is likely to persist in the future. In addition, it discusses whether the alternative forms of broad relief will be susceptible to the same forms of procedural manipulations as universal injunctions. Finally, it addresses some of the arguments raised by Justice Kavanaugh's concurrence about the value of uniform enforcement in the interim and the role of the Supreme Court and the lower courts in determining what policies can be enforced.

II. DATA

A preliminary issue with data collection is that there is no universally

accepted definition of a universal injunction.¹⁸ Amanda Frost, using the term “nationwide injunction,” defined it as “an injunction at any stage of the litigation that bars the defendant from taking action against individuals who are not parties to the lawsuit in a case that is not brought as a class action.”¹⁹ Following a recent comment in the Harvard Law Review, this paper focuses specifically on universal injunctions against the federal government.²⁰ The consequence of such injunctions is that they completely prevented the federal government “from implementing and enforcing a federal statute or executive policy.”²¹

There is similarly no objective method for identifying universal injunctions. Although some district court opinions explicitly stated that injunctions would have universal application, many did not.²²

In this paper, I relied on a list of universal injunctions published in the Harvard Law Review.²³ The Department of Justice assembled a list of cases issuing universal injunctions during the period 1963–2020.²⁴ The Harvard Law Review obtained this list through a FOIA request and then extended it through 2023 using Westlaw searches.²⁵

The list did not include cases in which courts invalidated agency rules through vacatur.²⁶ Although vacatur is considered a “less drastic remedy”²⁷ than a universal injunction, both forms of relief could have similar practical effect. In fact, some of the most controversial district court actions with universal effect took the form of vacatur, such as Judge Matthew Kacsmaryk’s stay suspending the FDA approval of mifepristone.²⁸

18. Scholars also disagree about the correct terminology for injunctions that apply universally throughout the United States; different scholars describe these as “universal,” Mila Sohoni, *The Lost History of the “Universal” Injunction*, 133 HARV. L. REV. 920 (2020), “national,” Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 419 (2017), or “nationwide,” Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1065 (2018).

19. Frost, *supra* note 18, at 1071.

20. See *District Court Reform: Nationwide Injunctions*, *supra* note 11, at 1704 (examining universal injunctions against the federal government).

21. *Id.*

22. See *id.* at 1705 (noting that “judges . . . do not always identify an injunction as ‘nationwide,’ ‘national,’ or ‘universal’ despite issuing an injunction to that effect. For example, in *Casa De Md. v. U.S. Dept. of Homeland Sec.*, 284 F.Supp.3d 758, 779 (D. Md. 2018), *aff’d in part, vacated in part, rev’d in part*, 924 F.3d 684 (4th Cir. 2019), the district court enjoined the federal government “from using information provided by Dreamers through the Deferred Action for Childhood Arrivals (DACA) program for enforcement purposes.” The universal effect was only by implication.

23. See *District Court Reform: Nationwide Injunctions*, *supra* note 11, at 1704–05 (discussing methodology for generating list of universal injunctions).

24. See *id.* at 1704.

25. See *id.* at 1704 & n.31 (discussing methodology for identifying universal injunctions during 2020–23).

26. See *id.* (“[T]he dataset does not include cases in which the court issued vacatur, a distinct remedy affording nationwide relief, even where the plaintiffs initially sought an injunction”).

27. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010).

28. *FDA v. Alliance for Hippocratic Med.*, 668 F. Supp. 3d 507 (N.D. Tex. 2023), *aff’d in part, rev’d in part*, 78 F.4th 210 (2023), *rev’d*, 602 U.S. 367 (2024).

Nevertheless, vacatur is widely understood to automatically apply universally,²⁹ and the Court in *Trump v. CASA* explicitly disclaimed any effect on vacatur.³⁰

The list included 64 universal injunctions issued against Trump administration policies and 14 issued against Biden administration policies.³¹ Although it appears that such injunctions were issued less frequently during the Biden administration, some scholars have speculated that judges substituted vacatur for injunctions.³²

Forty-six of these injunctions (59 percent) involved immigration policy. There were sometimes multiple universal injunctions issued by different district courts against the same or closely related policies. For instance, there were six distinct injunctions against the Department of Homeland Security's public charge rule,³³ five against President Trump's Muslim travel ban,³⁴ four against the transgender ban in the military,³⁵ and four against related cost-cutting measures implemented by the Postal Service.³⁶

For each decision, I reviewed the case history in Westlaw. When Westlaw provided no history, I relied on google searches and litigation history provided by the interest groups who petitioned for universal injunctions. I included all circuit court petitions for stays and appeals of the injunctions. If the same panel considered both the stay petition and the subsequent appeal of the injunction, I only included one decision. However, if separate panels considered the stay and the appeal, I included both. I separately documented review by the Supreme Court and the circuits en banc but excluded circuit court decisions on remand from the Supreme

29. Some lawyers and scholars are now questioning whether vacatur should apply universally but no court thus far has limited the scope of vacatur. See John Harrison, *Vacatur of Rules Under the Administrative Procedure Act*, 10 YALE J. REG. 119 (2023); Sohoni, *The Past and Future of Universal Vacatur*, 133 YALE L.J. 2305 (2024).

30. See *supra* note 9.

31. See *District Court Reform: Nationwide Injunctions*, *supra* note 11, at 1705 tbl. 1.

32. See Nicholas Bagley, *A Single Judge Shouldn't Have This Kind of National Power*, THE ATLANTIC (Apr. 17, 2023, 2:30 PM), <https://www.theatlantic.com/ideas/archive/2023/04/mifepristone-case-problem-federal-judiciary/673724/> (describing a “growing trend in the lower courts” in which “universal vacatur under the APA” is taking the place of nationwide injunctions”) (internal quotes omitted).

33. *New York v. U.S. Dep't of Homeland Sec.*, 408 F. Supp. 3d 334 (S.D.N.Y. 2019); *Washington v. U.S. Dep't of Homeland Sec.*, 408 F. Supp. 3d 1191 (E.D.Wash. 2019); *Make the Rd. N.Y. v. Cuccinelli*, 419 F. Supp. 3d 647 (S.D.N.Y. 2019); *Casa de Md., Inc. v. Trump*, 414 F. Supp. 3d 760 (D.Md. 2019); *New York v. U.S. Dep't of Homeland Sec.*, 475 F. Supp. 3d 208 (S.D.N.Y. 2020); *Make the Rd. N.Y. v. Pompeo*, 475 F. Supp. 3d 232 (S.D.N.Y. 2020).

34. *Darweesh v. Trump*, 2017 WL 388504 (E.D.N.Y. 2017); *Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (D.Md. 2017); *Hawai'i v. Trump*, 245 F. Supp. 3d 1227 (D.Haw. 2017); *Int'l Refugee Assistance Project v. Trump*, 265 F. Supp. 3d 570 (D.Md. 2017); *Hawai'i v. Trump*, 265 F. Supp. 3d 1140 (D.Haw. 2017).

35. *Doe 1 v. Trump*, 275 F. Supp. 3d 167 (D.D.C. 2017); *Stone v. Trump*, 280 F. Supp. 3d 747 (D.Md. 2017); *Karnoski v. Trump*, 2017 WL 6311305 (W.D.Wash. 2017); *Stockman v. Trump*, 2017 WL 9732572 (C.D.Cal. 2017).

36. *Washington v. Trump*, 487 F. Supp. 3d 976 (E.D.Wash. 2020); *Jones v. USPS*, 488 F. Supp. 3d 103 (S.D.N.Y. 2020); *New York v. Trump*, 490 F. Supp. 3d 225 (D.D.C. 2020); *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833 (E.D.Pa. 2020).

Court because these were largely constrained by the Court's decisions. All cases are listed in the online appendix.³⁷

I coded appellate decisions as upholding universal injunctions if they upheld at least part of the universal injunction, or if the appellate panel issued a new injunction that applied universally. Although the original dataset of district court opinions did not include vacatur, I coded an appellate decision as upholding an injunction if it replaced the injunction with a vacatur that applied universally.³⁸ I also noted if the panel agreed with the district courts on the legality of the challenged regulation but held that the universal remedy was an abuse of discretion.

III. RESULTS

A. Decision to Appeal

The federal government appealed roughly 80 percent of the injunctions, although some of these appeals were withdrawn prior to judgment. It is not surprising that the federal government typically appealed decisions by district judges that enjoined national policy; the more interesting question is why the government sometimes declined to do so. There are several potential explanations. An agency could have reissued a modified regulation instead of appealing the injunction, especially if the agency believed that the original regulation was unlikely to be upheld on appeal. The agency may have preferred to comply with a universal injunction rather than implement a non-uniform regulatory regime constrained by various local injunctions.³⁹ The government may also have declined to appeal due to a change in administration.

37. See Joshua B. Fischman, "Replication Data for: Universal Injunctions on Appeal." University of Virginia Dataverse. <https://doi.org/doi:10.18130/V3/MPQ52H>.

38. For example, in *Casa De Md.*, 284 F. Supp. 3d 758, the district court declined to enjoin the Trump administration's rescission of DACA but enjoined the federal government "from using information provided by Dreamers through the DACA program for enforcement purposes." *Id.* at 779. On appeal, the Fourth Circuit vacated the rescission of DACA as arbitrary and capricious, rendering the district judge's information-sharing injunction as superfluous. Although the appellate court technically vacated the universal injunction, its decision was clearly a victory for the plaintiffs and imposed a much greater restraint on administration policy.

39. See ZACHARY CLOPTON, MILA SOHONI & EDWARD STIGLITZ, NATIONWIDE INJUNCTIONS AND FEDERAL REGULATORY PROGRAMS 32 (June 4, 2024) (report to the Admin. Conf. of the U.S.) (reporting interviews in which agency officials stated that universal injunctions are easier to comply with than limited injunctions that require the implementation of different policies in different regions).

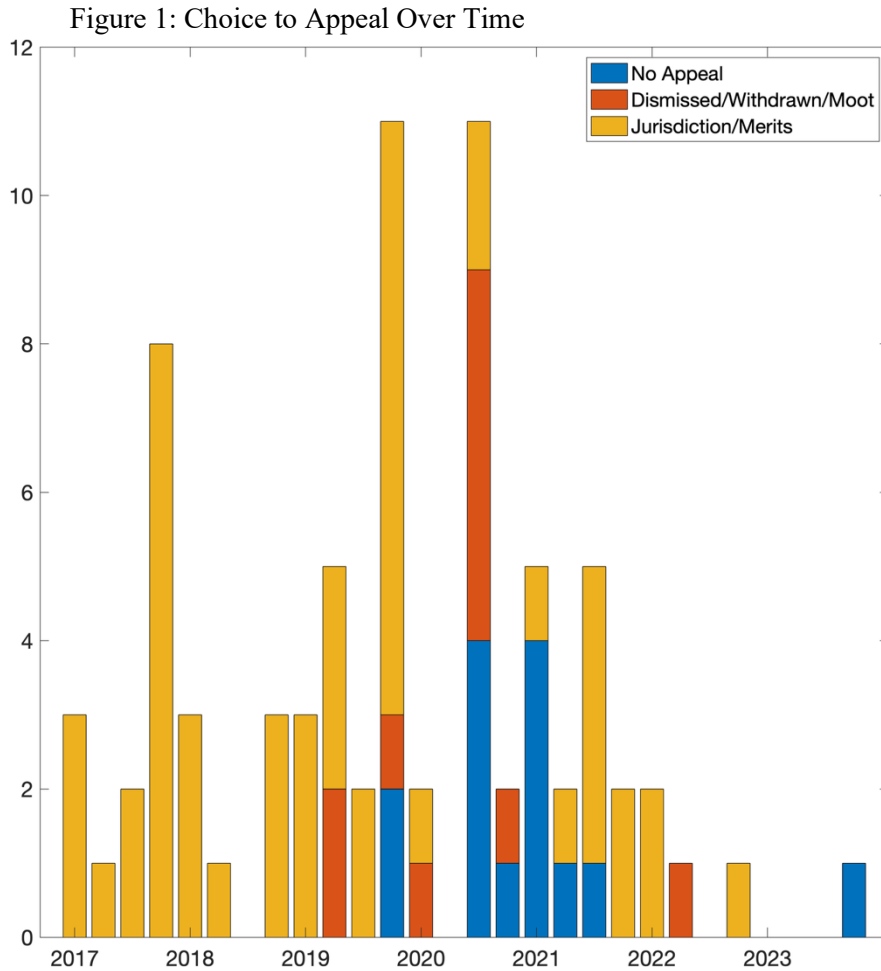


Figure 1 displays the number of universal injunctions over time for the Trump and Biden administrations, divided into three categories: those that were not appealed, those in which the appeals were withdrawn or dismissed without a reasoned opinion, and those that were decided with written opinion. Cases in the last category were typically decided on three grounds: whether there was jurisdiction, whether the agency actual was unlawful, or whether a universal injunction constituted an abuse of discretion.

Although most of the injunctions were appealed by the federal government, the cases that were abandoned occurred mostly around the change in administration. There were 20 universal injunctions issued between July 1, 2020 and July 1, 2021, but only four of these were appealed and litigated on the merits. Unsurprisingly, the Biden administration did not defend controversial rules issued by the Trump administration.

This highlights an important context in which universal injunctions were especially effective. Although an administration could rescind a rule issued

by the previous administration, it was easier not to appeal an injunction against that rule. Choosing not to appeal was faster and required less effort, especially if the rescission would have otherwise required notice-and-comment rulemaking. A rescission could have been challenged under the APA, and a district judge could have held the rescission to be arbitrary and capricious.⁴⁰ By declining to appeal an injunction against the previous administration's policy, a new administration avoided that possibility.

B. Injunctions by Circuit

Figure 2 shows the number of appeals of universal injunctions against policies from both administrations decided within each circuit. There is a clear split among the circuits. More than 40 percent of the injunctions against the Trump administration were issued from districts located in the Ninth Circuit, with most of the remaining injunctions coming from the Second, Fourth, and D.C. Circuits. Two-thirds of the injunctions against the Biden administration came from districts within the Fifth Circuit.

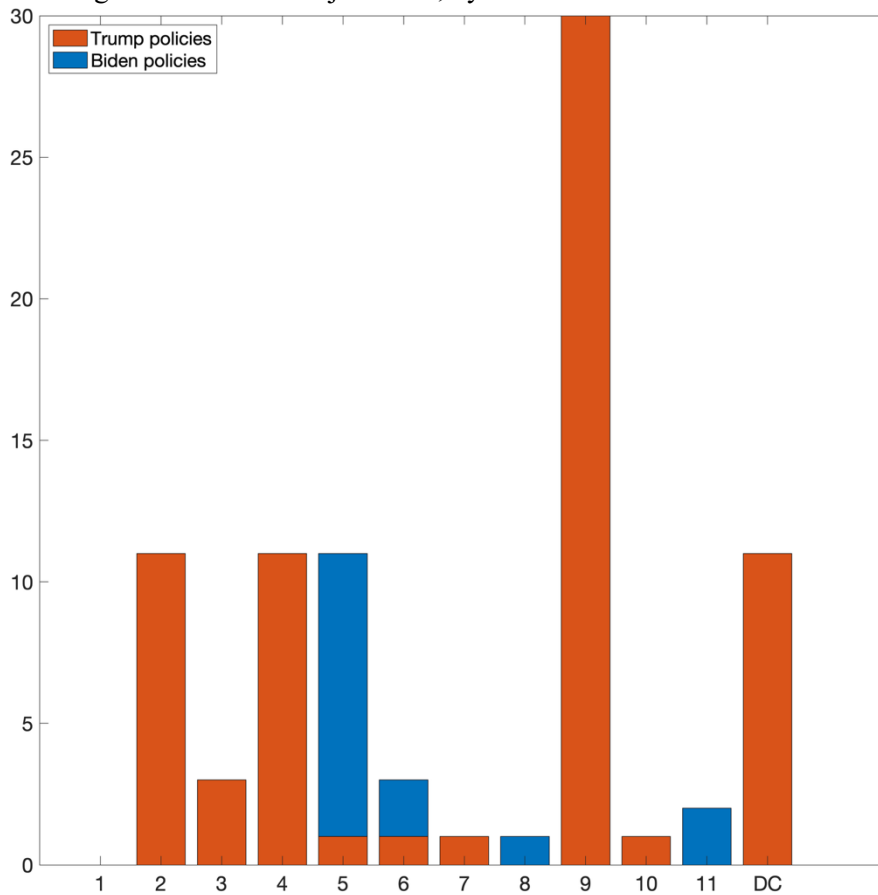
There were multiple factors that explain why many of the injunctions arose from within these circuits. Several districts in Texas have (or recently had) single-judge divisions with notably conservative judges; a case filed in one of these divisions was ensured of being heard by the judge in that division. The State of Texas intentionally chose to file petitions for universal injunctions in such districts to draw particular judges;⁴¹ it even conceded this on one occasion.⁴² The Fifth Circuit has also been widely perceived to be a conservative circuit and therefore more likely to uphold an injunction on appeal.

40. In fact, several of the universal injunctions in the dataset were based on judgments that rescissions were arbitrary and capricious. *See* *Regents of Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D.Cal. 2018) (enjoining Trump administration rescission of DACA); *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401 (E.D.N.Y. 2018) (same); *Texas v. Biden*, 554 F. Supp. 3d 818 (N.D.Tex. 2021) (holding that Biden administration suspension of Migrant Protection Protocols was arbitrary and capricious).

41. *See* *Botoman*, *supra* note 10 (describing how the State of Texas regularly exploited single-judge districts to engage in judge-shopping in several high-profile cases); *Vladeck*, *supra* note 10 (same).

42. When District Judge Drew Tipton asked why the State of Texas filed a case in the single-judge division in Victoria, the state's attorney responded, "The case is being filed in Victoria, quite frankly, Your Honor, because of our experience with you; because we know that you know these statutes; we know that you give them very close and detailed attention; and our office knows how you run a courtroom." Transcript of Hearing on Motion to Transfer at 45–46, *Texas v. U.S. Dep't of Homeland Sec.*, 661 F. Supp. 3d 683 (S.D. Tex. 2023) (No. 6:23-CV-00007).

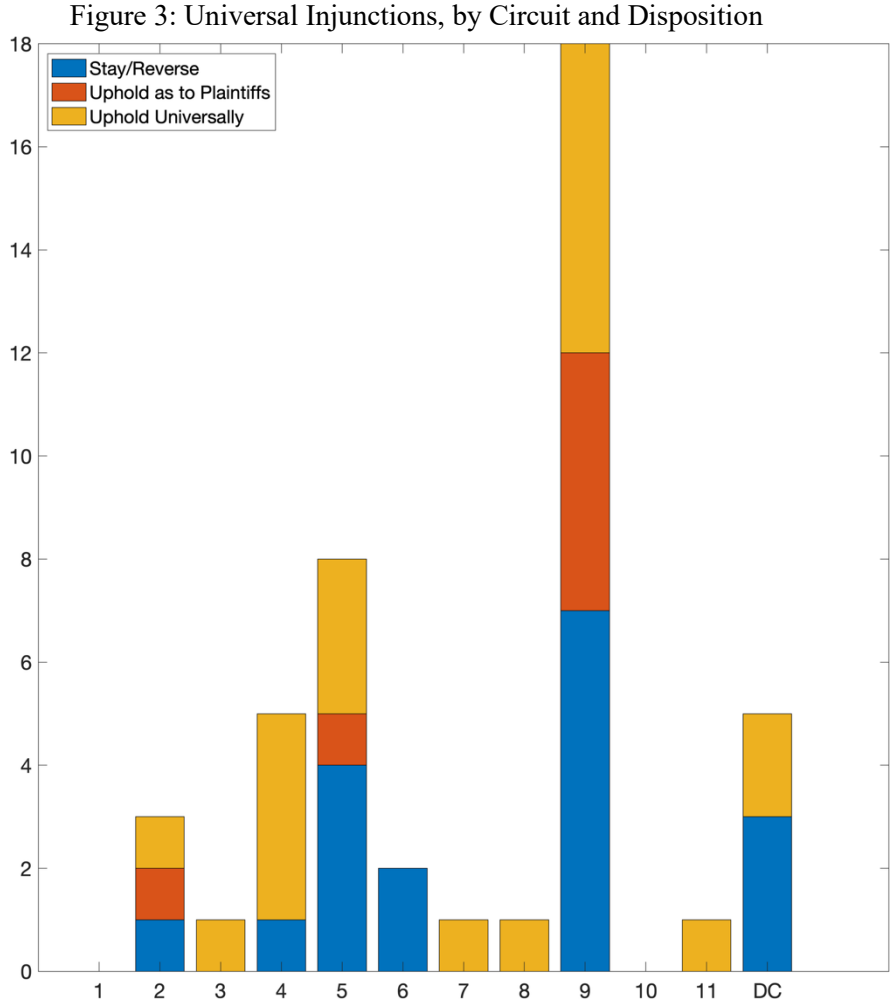
Figure 2: Universal Injunctions, by Circuit and Administration



There was no comparable evidence of judge-shopping among plaintiffs seeking injunctions against Trump administration policies.⁴³ Nevertheless, the fact that parties challenging Trump administration policies filed a disproportionate number of cases in districts within the Ninth Circuit suggests that they perceived these districts as having more sympathetic judges.

43. There are three districts within the Ninth Circuit that assign cases by division and have divisions dominated by a single judge. See Botoman, *supra* note 10, at 340–44 (listing all districts, whether cases are assigned by division, and how many divisions have a single judge who hears a majority of cases). The three districts are the Central District of California, the Eastern District of California, and the District of Montana. Among the universal injunctions issued against the Trump administration, there was one case, *Stockman v. Trump*, 2017 WL 9732572 (C.D. Cal. 2017), decided by Judge Jesus Bernal, who was the sole district judge at the time in the Eastern Division of the Central District of California. See United States District Court, Central District of California, “Judges’ Procedures and Schedules,” (<http://www.cacd.uscourts.gov/judges-schedules-procedures>; June 14, 2017), archived at Wayback Machine (<https://web.archive.org>), <https://perma.cc/J5WD-65KW>. However, there were also several visiting judges who regularly heard cases in this division, *see id.*, and the case assignment procedures in the Central District of California limit the ability of plaintiffs to strategically choose divisions. See General Order No. 24-04 (C.D. Cal. Apr. 18, 2024), <https://perma.cc/AES2-UYBC>.

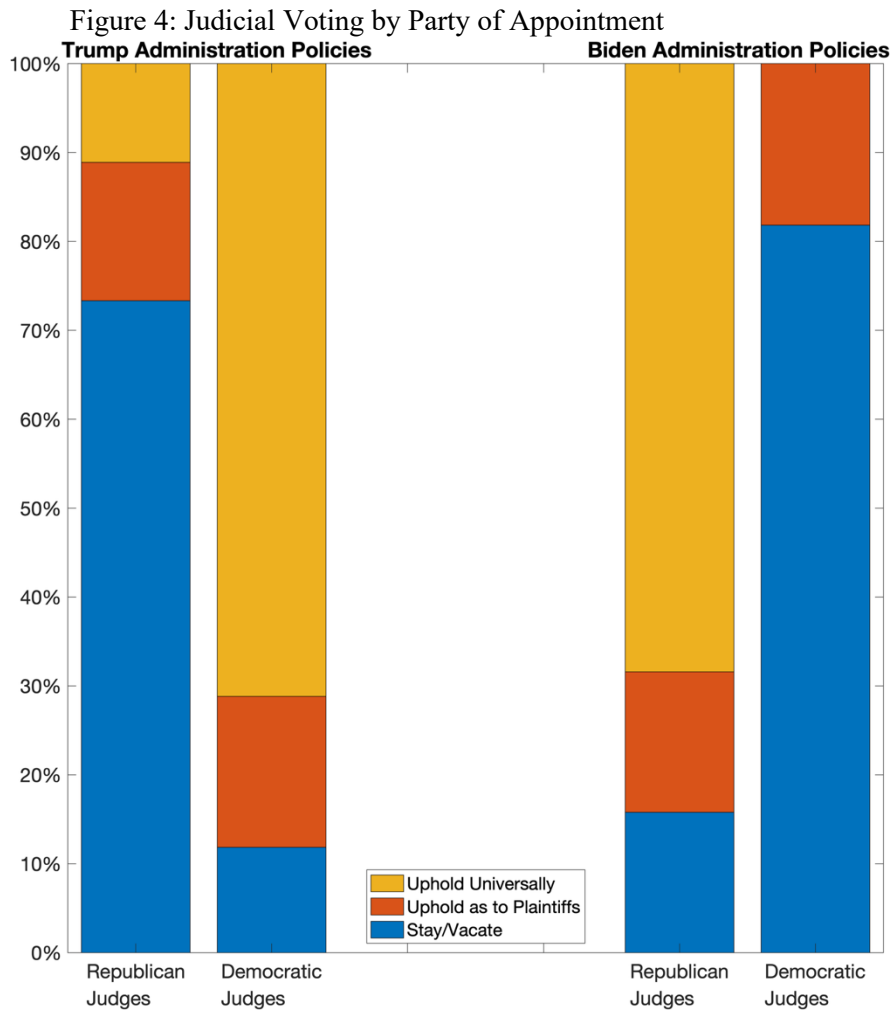
Figure 3 shows dispositions by circuit, including only those cases that were appealed and decided with a written opinion. The injunction was stayed or vacated in 40 percent of these cases; it was upheld or a stay was denied in 44 percent. In 16 percent of the cases, the court upheld the injunction as applied to the plaintiffs but not universally. There were not obvious differences in the dispositions by circuit.



C. Voting Behavior by Party of Appointment

Figure 4 shows voting behavior for individual judges in appeals of universal injunctions, by party of appointment, for cases that were appealed and not dismissed as moot. The differences were stark. In appeals of universal injunctions against Trump administration policies, Democratic appointees voted to uphold the injunctions 71 percent of the time, versus 11

percent for Republican appointees. The proclivities were reversed for Biden administration policies: Republican appointees voted to uphold the injunction 68 percent of the time, while Democratic appointees never voted to uphold them. There were also dramatic differences in votes to stay or vacate injunctions. Democratic appointees voted to stay or vacate injunctions against the Biden administration 82 percent of the time, relative to 16 percent for Republican appointees. For injunctions against Trump administration policies, Republican appointees voted to stay or vacate 73 percent of the time, versus 12 percent for Democratic appointees.



The differences in these voting rates were extraordinarily consistent: judges sided with the administration of their own party 60–70 percentage points more often than judges of the other party. This means that the average

Democratic appointee would disagree with the average Republican appointee about the validity of a universal injunction at least 60 percent of the time, and possibly more.⁴⁴ The true level of disagreement among circuit judges may have exceeded this level, for several reasons. First, this measure represents the difference between averages of the two groups;⁴⁵ an extremely conservative Republican appointee could have disagreed with an extremely liberal Democratic appointee more than 60 percent of the time. To the extent that the party of presidential appointment is an imperfect measure of judicial ideology,⁴⁶ these statistics understate how often judges would have disagreed.⁴⁷

Second, circuit judges decide cases in panels and their votes are widely known to be influenced by colleagues,⁴⁸ an effect that is often attributed to dissent aversion.⁴⁹ There were 13 instances in which judges voted “against type” (i.e., voted to uphold universal injunctions against their own party’s administration or to vacate against the other party’s administration). In six of these instances, the judge was on a panel with two judges of the opposite party. Due to the importance of these cases for federal policy, the influence of panel colleagues was likely much weaker than in typical federal cases; there were dissents in roughly a third of these cases, roughly ten times higher than the overall dissent rate in the circuit courts.⁵⁰ Nevertheless, in at least some of these cases, the vote against type may simply have been a suppressed dissent or a decision to join the majority in exchange for concessions about the holding.

Finally, the lower bound of 60 percent only applies if the judges’ voting

44. See Joshua B. Fischman, *Measuring Inconsistency, Indeterminacy, and Error in Adjudication*, 16 AM. L. & ECON. REV. 40, 48–49, 67–68 (2014) (demonstrating that the absolute value of the difference in voting rates for Democratic and Republican judges is the lower bound on the rate at which these judges would disagree).

45. See *id.* at 80 (observing that the lower bound is only achieved if all judges within each group have identical voting propensities).

46. See generally Joshua B. Fischman & David S. Law, *What Is Judicial Ideology, and How Should We Measure It?* 29 WASH. UNIV. J. L. POL’Y 133 (2009).

47. There is at least one instance in which party of appointment likely misclassified a judge’s vote as being against type. Sixth Circuit Judge Helene White was originally nominated by President Bill Clinton but denied a hearing by Senate Republicans. She was later renominated by President George W. Bush as part of a compromise with Senate Democrats. See Michael Abramowitz, *Ye Shall Be Judged—Not*, WASH. POST. (May 5, 2008). Judge White is nominally a Republican appointee but was initially selected by a Democratic President. Judge White dissented in *Hamama v. Adducci*, 912 F.3d 869 (2018), which vacated an injunction against a Trump administration policy.

48. See Fischman, *supra* note 17, at 827–31 (2015) (finding that circuit judges have a strong effect on each other’s votes in a wide variety of cases); Richard L. Revesz, *Environmental Regulation, Ideology, and the D.C. Circuit*, 83 VA. L. REV. 1717, 1719 (1997) (finding that “a judge’s vote . . . is . . . greatly affected by the identity of the other judges sitting on the panel” in environmental cases).

49. See RICHARD A. POSNER, *HOW JUDGES THINK* 32–34 (2008) (claiming that “judges do not engage in much collective deliberation” and attributing the influence of panel colleagues to “dissent aversion.”); Fischman, *supra* note 17, at 831–34 (arguing that the influence of panel colleagues is consistent with dissent aversion).

50. See Joshua B. Fischman, *How Many Cases Are Easy?*, 13 J. LEGAL ANALYSIS 595, 615 n.29–30 (reporting estimates of dissent rates in the federal circuit courts ranging from 3% to 4.5%).

behavior is *monotonic*.⁵¹ This means that whenever a judge votes against type, a judge of the other party would always agree with their position. If a Republican appointee voted to uphold an injunction against the Trump administration, would a Democratic appointee inevitably have taken the same position? If the same judge voted to vacate an injunction against the Biden administration, would a Democratic appointee have agreed? Monotonicity seems like a sensible assumption, even though it cannot be verified empirically.⁵² If there are occasional violations, however, then Democratic and Republican appointees might disagree even more frequently than the lower bound.

It is possible, however, that disagreement rates might be exaggerated due to selection effects. If a district court enjoined a policy that was blatantly illegal, then the administration might have chosen to modify or abandon its policy rather than filing an appeal. Thus, injunctions that were appealed might be more likely to be hard cases where reasonable judges could disagree about the correct result.

Both Democratic and Republican appointees voted to uphold injunctions as to the plaintiffs, but not universally, roughly 15–20 percent of the time for both administrations. This intriguing consistency suggests that the criteria for upholding universal application of an injunction might be less political than the criteria for assessing the validity of the injunctions in the first place. However, it would be premature to draw this conclusion. Although both groups of judges had similar rates of narrowing the application of injunctions beyond the parties to the litigation, they may not have been willing to do so in the same cases.⁵³

In any event, circuit judges disagreed at very high rates, and largely along party lines, about the validity of universal injunctions. While appellate review may have played a role in mitigating the excesses of some extremely assertive district judges, it also substituted a political judgment at the circuit court level for a political judgment at the district court level.

D. Voting Behavior by Panel Composition

Figure 5 shows the distribution of appellate decisions by panel

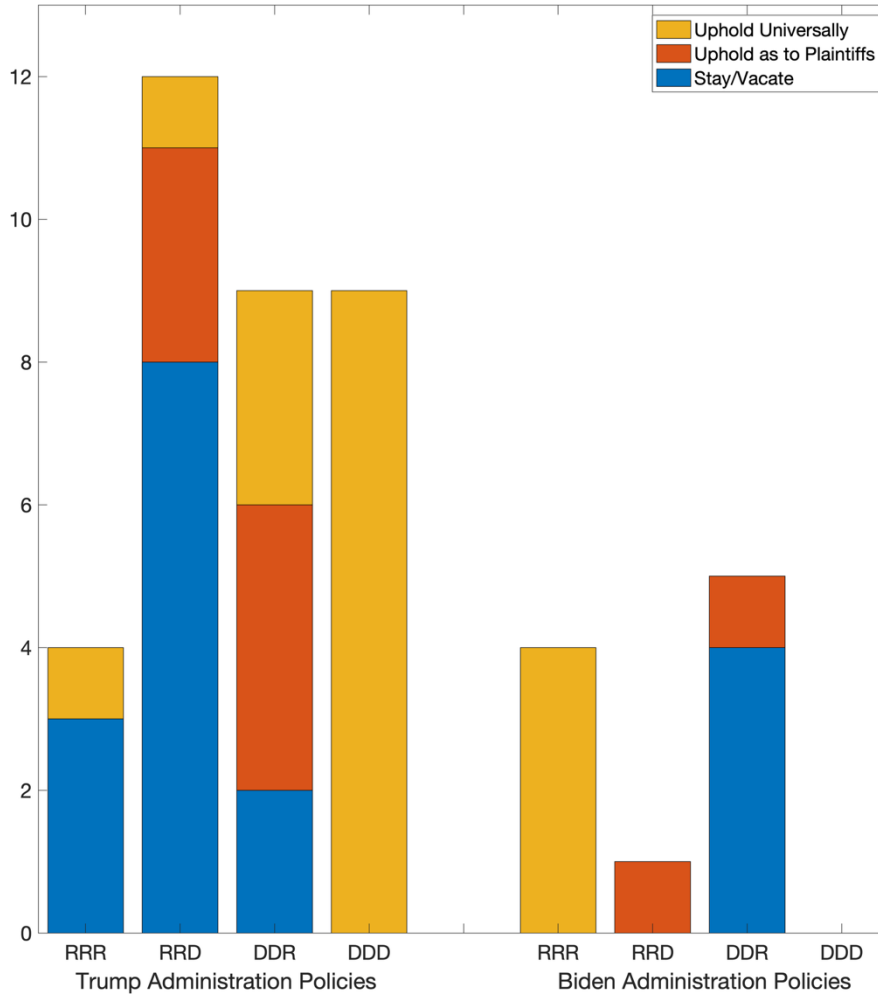
51. See Fischman, *supra* note 44, at 50.

52. Monotonicity seems intuitive as long as all Trump administration policies that were enjoined were conservative and all Biden administration policies that were enjoined were liberal. Monotonicity violations could have arisen for example if the Biden administration issued a policy that represented a compromise between conservative and liberal interests. A liberal judge could issue a universal injunction against conservative parts of the rule. A Democratic circuit might plausibly vote to uphold the injunction against the Biden administration, while a Republican appointee might vote to vacate. If so, monotonicity would be violated, so actual disagreement rates between the groups could be even higher than the lower bounds indicated above. I am not aware of any such examples in the data in this paper, but such examples could plausibly arise in other contexts.

53. We observe the judges' rates of upholding and vacating injunctions in different cases, but we do not necessarily observe how two different judges would vote in the same case.

composition. Many prior studies have shown that homogeneous panels—consisting of three judges appointed by presidents of the same party—vote in ways that are more predictably ideological than mixed panels that include judges appointed by presidents from both parties.⁵⁴ That pattern is strongly evident in this data.

Figure 5: Appellate Decisions by Panel Composition



There are several striking features of this data. First, homogeneous

54. See SUNSTEIN ET AL., *supra* note 17, at 40–43 (finding that ideologically homogeneous panels demonstrated more extreme voting behavior than mixed panels in a variety of issue areas); Frank B. Cross & Emerson H. Tiller, *Judicial Partisanship and Obedience to Legal Doctrine: Whistleblowing on the Federal Courts of Appeals*, 107 YALE L.J. 2155, 2171–73 (1998) (finding that homogeneous panels were less likely to defer to agency decisions that are ideologically contrary); Jonathan P. Kastellec, *Panel Composition and Voting on the U.S. Courts of Appeals Over Time*, 64 POL. RES. Q. 377, 385–86 (2011) (finding that unified panels have a stronger tendency than mixed panels to vote for outcomes that are consistent with the political preferences of the majority).

panels—consisting of three judges appointed by presidents of the same party—decided the appeals in ways that appeared almost purely political. “Hostile” homogeneous panels always upheld universal injunctions: all-Democratic panels upheld all of the universal injunctions against the Trump administration and all-Republican panels upheld all of the injunctions against the Biden administration. “Friendly” panels consisting of all-Republican appointees stayed or vacated three out of four injunctions against the Trump administration. There were no all-Democratic panels that heard cases involving injunctions against the Biden administration.

Second, “mixed” panels were much more likely to generate mixed results. When a panel consisted of judges appointed by presidents from both parties, it was much more likely to uphold at least part of the injunction on the merits but limit the scope of the injunction to the plaintiffs. This occurred one-third of the time with mixed panels (nine times out of 27), but never with homogeneous panels (zero times out of 17). While this observation warrants further exploration, it suggests that having more diverse views within panels may have led them to focus more carefully on the justification for the scope of the injunction, and not only on jurisdiction and the merits.

Finally, the results suggest that the panels were not very constrained by legal materials in their appellate review of the injunctions. Conservative panels (RRR and RRD) almost always stayed, vacated, or limited universal injunctions against Trump administration policies; very liberal panels (DDD) always upheld these injunctions. Uniformly conservative panels (RRR) always upheld universal injunctions against Biden administration policies, while more liberal panels (DDR) always stayed, vacated, or limited these injunctions.

E. Time to Disposition

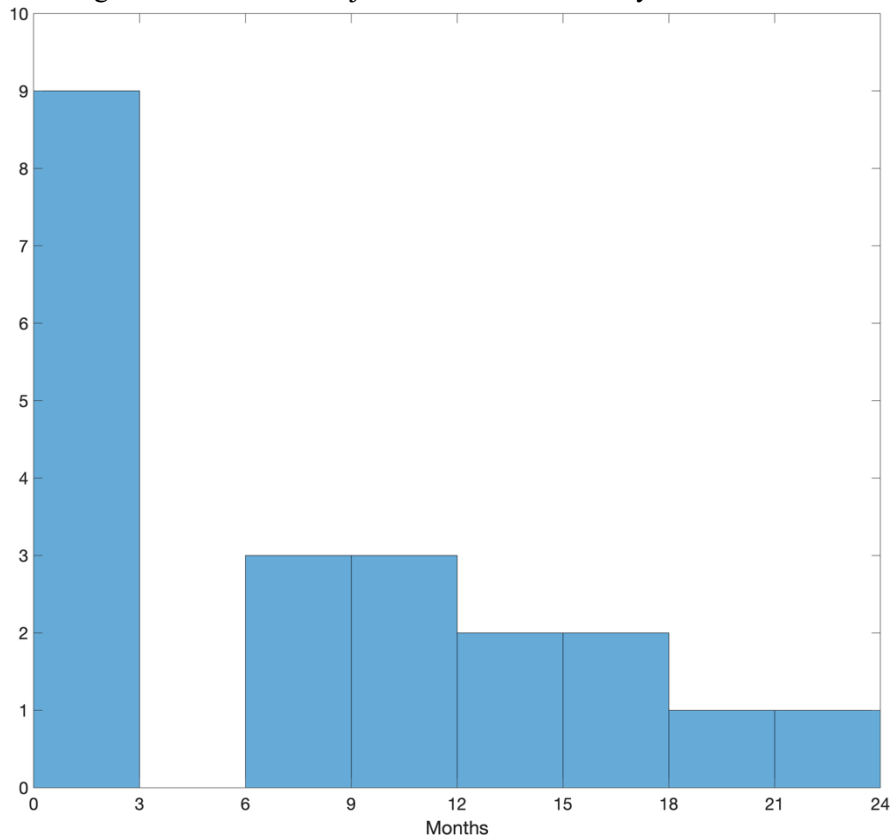
Circuit court review addressed some of the problems associated with unwarranted universal injunctions, but did not always do so quickly. Figure 6 provides a histogram showing the distribution of the duration of injunctions that were ultimately stayed or vacated by a circuit court panel, the circuit acting en banc, or the Supreme Court. Of the injunctions that were stayed or vacated, roughly two-thirds were by a circuit court panel and one-third by the Supreme Court.

Roughly 40 percent of the injunctions were stayed within three months. In cases where the initial motion for a stay was denied, however, the injunctions sometimes lasted for up to two years. Given that so many of these appeals were decided along party lines, the outcome of the stay applications depended largely on the compositions of the panels. If a stay was wrongly denied, it often took a substantial amount of time before the litigation was resolved.

To be clear, Figure 6 shows the distribution of durations of injunctions

that *were* eventually stayed or vacated, not injunctions that *ought* to have been stayed or vacated. If an injunction was warranted, then being in force for two years may be preferable to six months.

Figure 6: Duration of Injunctions That Were Stayed or Vacated



IV. IMPLICATIONS FOR THE FUTURE

This study revealed strong ideological polarization in appellate review of universal injunctions. Going forward, plaintiffs seeking broad interim relief will rely on class actions, lawsuits by associations on behalf of their members, vacatur under the APA, or claims that injunctions that protect nonparties are necessary for complete relief. It remains to be seen how much judicial polarization will persist in these cases.

Claims that complete relief requires an injunction that applies to nonparties will likely be sharply contested after *Trump v. CASA*. District and circuit judges often justified universal injunctions issued during the first Trump and Biden administrations on these grounds. These claims took several forms. Some argued that universal relief was necessary because of spillover effects between jurisdictions. For example, in *Texas v. United*

States,⁵⁵ the district judge held that “a geographically limited injunction [was] insufficient to protect the States from irreparable harm because aliens not detained ... in other states are able to move to” the plaintiff states.⁵⁶

In other cases, judges issued universal injunctions on the grounds that limited injunctions would have violated other legal provisions. For example, in *New York v. United States Department of Commerce*,⁵⁷ a district judge universally enjoined a question about citizenship on the census. The judge held that relief limited to the plaintiffs would result in two separate versions of the census questionnaire, which “would almost certainly run afoul of the Census Act, if not provisions of the Constitution itself.”⁵⁸ After *Trump v. CASA*, a district court would need to make a more definitive determination that limited relief would be contrary to law, and it is debatable whether such a justification would suffice to uphold an injunction that applied universally. A court could still issue a limited injunction and leave it to the executive branch, perhaps in conjunction with other lawsuits, to determine whether policy must be uniform and how it should be implemented.

Finally, some judges issued universal injunctions on the grounds that limited relief would be unworkable.⁵⁹ In *Pennsylvania v. DeJoy*,⁶⁰ several states challenged policy changes implemented by the Postal Service. In granting a universal injunction, the district court held that “it would be highly impractical to craft a remedy specific to the Plaintiff states based on the Postal Service’s operating structure.”⁶¹ Again, such relief is debatable; a court could enjoin the policies as applied to the plaintiff states and let the Postal Service figure out how to comply. Nevertheless, such a limited injunction could be equivalent to universal relief if the agency is effectively compelled to apply the same policy nationwide.

It is likely that challengers will make arguments based on complete relief more often to justify broad injunctions following *Trump v. CASA*, and these may well generate similar levels of polarization in the district and circuit courts. It is possible that the complete relief requirement will serve as an uncontroversial criterion that could reduce disagreement among liberal and conservative judges. But this largely fact-bound inquiry might still offer district judges substantial leeway to pursue ideological ends.

55. 555 F. Supp. 3d 351 (S.D. Tex. 2021).

56. *Id.* at 439.

57. *New York v. U.S. Dept. of Com.*, 351 F. Supp. 3d 502 (S.D.N.Y. 2019), *aff’d in part, rev’d in part and remanded sub nom.* *Dept. of Com. v. New York*, 588 U.S. 752 (2019).

58. *See id.* at 678.

59. *See, e.g., Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022) (holding that “an injunction limited to the plaintiff States, or even more broadly to student loans affecting the States, would be impractical”).

60. 490 F. Supp. 3d 833, 892 (E.D. Pa. 2020), *order clarified*, No. CV 20-4096, 2020 WL 6580462 (E.D. Pa. Oct. 9, 2020).

61. *See id.* at 892.

It is possible that judicial polarization will decline if the executive branch seeks to implement policies so extreme that judges of both parties agree that they are illegal. Indeed, the *New York Times* has documented numerous instances where both Democratic and Republican appointees harshly criticized actions from the second Trump administration as lawless.⁶² Notably, Trump's executive order renouncing birthright citizenship⁶³ was enjoined universally prior to the Supreme Court's decision by a bipartisan group of district judges—two Democratic appointees and two Republican appointees.⁶⁴ These injunctions led to three applications for stays in circuit courts; six Democratic appointees and two Republican appointees voted to deny a stay.⁶⁵ (One Republican appointee did not address the merits but would have limited the application of the injunction to nonparties.⁶⁶)

In the near future, the time to resolution for injunctions seeking broad relief against the executive will likely resemble the distribution for universal injunctions, with one potential difference. When challengers seek to enjoin executive policy through a class action, the certification of the class is subject to an interlocutory appeal by the government,⁶⁷ although it is unclear how much delay this will cause. If parties are unable to obtain universal relief, there could be substantial periods—up to two years—in which executive policy is applied inconsistently throughout the country while various injunctions are being litigated.

A common criticism of universal injunctions was that litigants often used procedural manipulations in obtaining them. It is unclear how much of an impact *Trump v. CASA* will have. To the extent that plaintiffs could engage in judge-shopping by filing in single-judge districts,⁶⁸ that problem will

62. See 'Egregious.' 'Brazen.' 'Lawless.' How 48 Judges Describe Trump's Actions, in *Their Own Words*, N.Y. Times (July 12, 2025).

63. Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025).

64. See *CASA, Inc. v. Trump*, 763 F.Supp.3d 723 (D. Md. 2025) (District Judge Deborah Boardman, appointed by Biden); *Washington v. Trump*, 765 F. Supp. 3d 1142 (W.D. Wash. 2025) (District Judge John C. Coughenour, appointed by Reagan); *Doe v. Trump*, 766 F.Supp.3d 266 (D. Mass. 2025) (District Judge Leo Sorokin, appointed by Obama); *New Hampshire Indonesian Community Support v. Trump*, 765 F.Supp.3d 102 (D. N.H. 2025); (Judge Joseph Laplante, appointed by George W. Bush).

65. See *CASA, Inc. v. Trump*, 2025 WL 654902 (4th Cir. 2025) (Judges Harris and Gregory, appointed by Clinton and Obama, respectively, voting to deny stay and noting "that the government is not prepared to argue that it will likely prevail on the merits of the Executive Order itself"); *Washington v. Trump*, 2025 WL 553485 (9th Cir. 2025) (Judges Canby, Milan Smith, and Forrest, appointed by Carter, George W. Bush, and Trump, respectively, holding that the government has failed to show a likelihood of success on the merits); (Judges Barron, Rikelman and Aframe—all Democratic appointees—voting to deny stay and holding that the government "has not made a strong showing as to ... the Executive Order's lawfulness").

66. See *CASA, Inc. v. Trump*, 2025 WL 654902 (4th Cir. 2025) (Judge Niemeyer, appointed by George H.W. Bush, dissenting from majority's refusal to stay universal scope of injunction, but not taking any position as to the government's likelihood of success on the merits).

67. See Fed. R. Civ. P. 23(f) (providing that a "court of appeals may permit an appeal from an order granting or denying class-action certification" and allowing 45 days to appeal when the United States is a party).

68. See *supra* notes 41–42 and accompanying text.

likely persist. Plaintiffs can still file in districts where they are likely to be assigned a sympathetic judge. One study observed that Texas federal courts had become a “hot zone” for both vacatur and universal injunctions during the Biden administration.⁶⁹

Curbing judge shopping would be an important first step. The Federal Judicial Conference has promulgated guidance for case assignment that would eliminate the assignment of cases within single-judge divisions for any petition to mandate or prohibit the enforcement of any federal or state law.⁷⁰ As of October 2024, six districts had adopted this guidance.⁷¹ Notably, the Northern District of Texas—the source of many controversial injunctions against the Biden administration⁷²—had not.⁷³ Another proposal would address judge shopping even more aggressively, by assigning such cases to districts using a lottery.⁷⁴

Another problem was that groups seeking universal injunctions could get multiple “bites at the apple.” A denial was only preclusive as to the specific petitioner,⁷⁵ so different litigants could file petitions to enjoin the same policy in multiple districts. A single victory among these petitions would have sufficed to enjoin federal policy across the country, even if most district judges would have concluded that the challengers’ claims had no merit.⁷⁶

In one important respect, this will change going forward. A petition for universal relief filed as a class action is generally preclusive as to other class members;⁷⁷ if the injunction is denied on the merits, then other class members are typically barred from pursuing the same claims in other

69. *District Court Reform: Nationwide Injunctions*, *supra* note 11, at 1710.

70. Am. Immigr. L. Ass’n (AILA), *Guidance for Civil Case Assignments in District Courts* (2024), <https://perma.cc/M8AK-6S92>. The American Bar Association has made a similar proposal. See AMERICAN BAR ASSOCIATION, *REPORT TO THE HOUSE OF DELEGATES, 2023 ANNUAL MEETING* (Aug. 7–8, 2023), <https://perma.cc/JM58-KYDJ>.

71. See Avalon Zoppo, *Which 1-Judge Division Districts Have Adopted Anti-Forum Shopping Guidance?*, *BENCH REPORT* (October 11, 2024) (listing districts that have adopted the guidance for civil case assignments).

72. See Vladeck, *supra* note 10.

73. See *id.* (noting that the Northern District of Texas did not adopt the guidance for civil case assignments).

74. See Adam J. White, *Congress Should Fix the Nationwide Injunction Problem with a Lottery*, *YALE J. REG.: NOTICE & COMMENT* (Feb. 11, 2020), <https://perma.cc/VL5P-PZTJ> (proposing a national lottery for district assignment for all petitions for universal injunctions).

75. See *District Court Reform: Nationwide Injunctions*, *supra* note 11, at 1711 (“[A] successful defense against a nationwide injunction in one court is barely a win for the government at all: because that decision has no preclusive effect on new plaintiffs, other plaintiffs are free to bring the exact same lawsuit elsewhere.”).

76. See *id.* (“All it takes is one judge siding with the plaintiffs to enjoin the challenged law. These asymmetric consequences force the federal government to engage in a game of whack-a-mole. If enough plaintiffs sue — and if they can each target the forum most likely to be hostile to the government’s action—it seems almost inevitable that the action will be nationally enjoined.”).

77. See generally Tobias Barrington Wolff, *Preclusion in Class Action Litigation*, 105 *COLUM. L. REV.* 717 (2005) (discussing the preclusive effect of class actions and exceptions where preclusion does not apply).

districts.⁷⁸ In cases where class certification is a contested issue, however, denials of certification are not preclusive,⁷⁹ so plaintiffs could still get multiple bites at the apple as to certification. Similarly, denials of vacatur under the APA are not preclusive as to nonparties, nor are denials of claims that injunctions that protect nonparties are necessary for complete relief.

Another important issue is whether federal courts will provide uniform application of new federal policies while these policies are litigated on the merits. In his concurring opinion in *Trump v. CASA*, Justice Kavanaugh argued that “there often ... should be a nationally uniform answer on whether a *major* new federal statute, rule, or executive order can be enforced throughout the United States”⁸⁰ while its legality is being litigated. Indeed, many district judges cited the need for uniformity as justification for issuing universal injunctions.⁸¹ After *Trump v. CASA*, it seems unlikely that the need for national uniformity would be a valid consideration in determining the scope of an injunction, except insofar as it affects complete relief for a named plaintiff.

To the extent that broad relief is limited going forward and judicial polarization persists, there will likely be less uniformity in the interim application of new executive policies. If some cases are decided by conservative judges and others by liberal judges, there may be different outcomes for different plaintiffs and precedents may vary by circuit. Justice Kavanaugh suggested that the Supreme Court should typically decide what the interim policy should be.⁸² Kavanaugh acknowledged objections that the “Court is not well equipped to make those significant decisions ... on an expedited basis,”⁸³ but brushed them aside, arguing that “district courts and courts of appeals are likewise not perfectly equipped to make expedited

78. See *City of Chicago v. Sessions*, 888 F.3d 272, 298 (7th Cir. 2018) (Manion, J., concurring in part and dissenting in part) (noting that class actions could serve many of the same purposes as universal injunctions while not permitting plaintiffs to file multiple petitions in different districts) *vacated in part*, 2018 WL 4268817 (7th Cir. June 4, 2018), *vacated*, 2018 WL 4268814 (7th Cir. Aug. 10, 2018).

79. See *Smith v. Bayer*, 564 U.S. 299, 315 (2011) (“Neither a proposed class action nor a rejected class action may bind nonparties”).

80. *Trump v. CASA, Inc.*, 2025 WL 1773631, at *20.

81. See, e.g., *New York v. U.S. Dept. of Homeland Sec.*, 475 F. Supp. 3d 208, 230 (S.D.N.Y. 2020) (“A geographically restricted injunction, in particular, would undoubtedly result in inconsistent applications of the Rule.... The effect of the Rule’s application should not depend on what side of the George Washington bridge between New York and New Jersey one fortuitously finds oneself.”); *Louisiana v. Becerra*, 571 F. Supp. 3d 516, 543–44 (W.D. La. 2021), *vacated*, 2022 WL 2116002 (5th Cir. June 13, 2022) (holding that “a nationwide injunction is necessary due to the need for uniformity” and observing that “there are unvaccinated healthcare workers in other states who also need protection”); *Texas v. Biden*, 554 F.Supp.3d 818, 857 (N.D. Tex. 2021), *rev’d* 597 U.S. 785 (2022) (“A geographically limited injunction would be improper because federal *immigration* law must be uniform.”).

82. See *id.* at *22 (“One of this Court’s roles, in justiciable cases, is to resolve major legal questions of national importance and ensure uniformity of federal law. So a default policy of off-loading to lower courts the final word on whether to green-light or block major new federal statutes and executive actions for the several-year interim until a final ruling on the merits would seem to amount to an abdication of this Court’s proper role.”).

83. *Id.* at *23.

preliminary judgments on important matters of this kind.”⁸⁴

Kavanaugh’s assertions notwithstanding, there are reasons to be skeptical that the Supreme Court is well situated to perform this role. As a preliminary matter, the other justices may not even share Kavanaugh’s priorities regarding uniformity. There is an inherent tradeoff between policy uniformity and minimizing the scope of injunctions, and the other justices in the majority emphasized the latter in their opinions.⁸⁵

Second, it is not clear how the Supreme Court would enforce uniformity. Due to its position at the apex of the judicial hierarchy, the Court can issue precedents and expect lower courts to follow them. But an appellate court does not make binding precedent when it reviews a preliminary injunction; it is “deciding only the likelihood of success, not the actual success.”⁸⁶ There is substantial debate among judges and scholars about whether lower courts should defer to the Court’s reasoning in stay decisions as a prudential matter.⁸⁷ And the Court often stays injunctions summarily through its “shadow docket,” or declines to issue stays, providing no reasoning for the lower courts to follow.⁸⁸

To the extent that *Trump v. CASA* poses a meaningful constraint on the ability of parties to seek universal relief against the federal government, it may also weaken the authority of Supreme Court stays. Universal relief may be unavailable if litigants fail to obtain class certification due to lack of commonality among the purported class members. If their claims do not rely on sufficiently similar issues of law and fact, then a stay issued by the Supreme Court in one petition may be distinguishable in other cases.

Third, the Supreme Court has limited capacity to review stay applications on an emergency basis. In the Courts of Appeals, stay applications are typically decided by three-judge panels; in the Supreme Court, every justice must participate. The workload will likely increase if injunctions proliferate

84. *Id.*

85. *See id.* at *12 (majority opinion) “[T]o say that a court *can* award complete relief is not to say that it *should* do so. Complete relief is not a guarantee—it is the maximum a court can provide. And in equity, ‘the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff’s story needs to be.’” (quoting Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 NOTRE DAME L. REV. 1763, 1797 (2022)); *id.* at *16 (Thomas, J., joined by Gorsuch, J., concurring) (emphasizing that “the complete-relief principle operates as a ceiling” and that “[c]ourts therefore err insofar as they treat complete relief as a mandate); *id.* at *17 (arguing that “cases requiring an ‘indivisible remedy’ that incidentally benefits third parties . . . are by far the exception”); *id.* (dismissing argument for universal relief on the grounds that “a ‘plaintiff-specific injunction’ would be difficult to administer and would subject the associations’ members to the burden of having ‘to identify and disclose to the government’ their membership”); *id.* at *17–*18 (Alito, J., joined by Thomas, J., concurring) (arguing that courts should scrutinize state standing and class certification to enforce limits on universal relief).

86. Samuel L. Bray, *The Purpose of the Preliminary Injunction*, 78 VAND. L. REV. 809, 820 (2025).

87. *See* Trevor N. McFadden & Vetan Kapoor, *The Precedential Effects of the Supreme Court’s Emergency Stays*, 44 HARV. J. L. & PUB. POL’Y 827, 829–30 (2021) (describing disagreement among judges regarding whether they should follow the reasoning in Supreme Court stays).

88. Some judges have treated Supreme Court stays without opinion as signals that lower-court judges ought to obey, but others have not. *See* William Baude, *Foreword, the Supreme Court’s Shadow Docket*, 9 N.Y.U. J.L. & LIBERTY 1, 8–9 (2015).

following *Trump v. CASA*. Supreme Court justices are also “not generally in the business of crafting injunctions, and ... do not have the benefit of district courts’ experience enforcing injunctions over time to observe their workability and consequences.”⁸⁹

Finally, the Supreme Court has a discretionary docket and does not need to explain why it grants or denies stays. When the government petitions to a circuit court for a stay of an injunction, a three-judge panel must decide the case. It may uphold or stay the injunction, but it must justify its decision in a written opinion.

When the Supreme Court decides whether to issue a stay, however, it does not need to give reasons. Although the Court is bound by some standards, these decisions are largely discretionary.⁹⁰ Not surprisingly, this has led to allegations that the Court has taken an inconsistent approach toward emergency applications, granting relief to the Trump administration while denying relief in similar contexts to the Biden administration.⁹¹ In two prominent cases, for example, the Court declined to stay universal injunctions against Biden administration immigration policies, even though the Court itself subsequently upheld the policies on appeal.⁹² Yet the Court exercised its discretion to review the injunctions in *Trump v. CASA* after a bipartisan group of district and circuit judges had already held the government would likely lose on the merits and the government did not appeal this finding.⁹³

While the Supreme Court will inevitably play a major role in reviewing

89. Milan D. Smith, Jr., *Only Where Justified: Toward Limits and Explanatory Requirements for Nationwide Injunctions*, 95 NOTRE DAME L. REV. 2013, 2036 (2020). Judge Smith was referring to circuit judges, but his argument applied with equal force to the Supreme Court.

90. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (“To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.”). But the Court does not have to explain its application of these factors, and the first factor is merely a prediction about how the justices would exercise their discretion regarding certiorari in the future.

91. See STEPHEN VLADECK, *THE SHADOW DOCKET: HOW THE SUPREME COURT USES STEALTH RULINGS TO AMASS POWER AND UNDERMINE THE REPUBLIC* 20 (2023) (“It’s difficult to dismiss as coincidence that the Court’s [emergency] interventions in immigration cases ... generally allowed President Donald Trump’s policies to go into effect and generally blocked President Joe Biden’s policies.”).

92. In *Texas v. Biden*, 554 F.Supp.3d 818 (N.D. Tex. 2021), District Judge Matthew Kacsmaryk issued a universal injunction against the Biden administration’s temporary suspension of the Migrant Protection Protocols. The Supreme Court denied a stay on the grounds that the government “failed to show a likelihood of success,” *Biden v. Texas*, 142 S.Ct. 926 (2021), but later upheld the suspension on the merits, *Biden v. Texas*, 697 U.S. 785 (2022). In *Texas v. United States*, 555 F.Supp.3d 351 (S.D. Tex. 2021), District Judge Drew Tipton issued a universal injunction against a Biden administration guidance document stating immigration enforcement priorities. Following a partial stay by the Fifth Circuit, *Texas v. United States*, 14 F.4th 332 (5th Cir. 2021), Judge Tipton vacated the guidance under the Administrative Procedure Act, *Texas v. United States*, 606 F.Supp.3d 437 (S.D. Tex. 2022). The Supreme Court denied a stay, *United States v. Texas*, 143 S.Ct. 51 (2022) but subsequently reversed on the grounds that the state plaintiffs lacked standing, *United States v. Texas*, 599 U.S. 670 (2023).

93. See *supra* notes 63–66 and accompanying text.

temporary relief against federal policies, it may be preferable in the long run to create a specialized court to serve this role. For example, Representative Sean Casten had proposed a multi-circuit panel of 13 judges to review “cases in which the United States or a Federal agency is a party, cases concerning constitutional or statutory interpretation of Federal law, or cases to clarify the functions or actions of an executive order.”⁹⁴ This panel would consist of one judge randomly chosen from each circuit, plus one randomly chosen chief judge, who serve in temporary capacity.⁹⁵ This proposed court shares some features with the Temporary Emergency Court of Appeals⁹⁶ that existed in the early 1970s and the proposed “National Court of Appeals” from the same era.⁹⁷

Given the levels of judicial polarization observed in this study, a large, diverse court that specializes in reviewing emergency relief against the federal government might be better able to avoid rulings that are far outside the judicial mainstream. As this study showed, ideologically diverse panels were also better able to focus on the scope of an injunction and whether universal application was warranted, while homogenous panels typically ruled in more ideologically predictable ways.⁹⁸ A court that specializes in reviewing interim orders and issues written opinions would provide more guidance to district judges and would be perceived as more legitimate than unwritten orders for the Supreme Court. Of course, such a specialized court would require an act of Congress and many details would need to be worked out.

CONCLUSION

In denying a stay of a universal injunction against President Trump’s birthright citizenship order, Ninth Circuit Judge Danielle Forrest observed, “When we decide issues of significant public importance and political controversy hours after we finish reading the final brief, we should not be surprised if the public questions whether we are politicians in disguise.”⁹⁹ The Supreme Court’s decision in *Trump v. CASA* eliminated universal injunctions, but it did not address the fundamental problems that Judge Forrest identified.

When the executive branch engages in legally questionable conduct with

94. Restoring Judicial Separation of Powers Act Summary, <https://perma.cc/JY3D-JPA8>.

95. *See id.*

96. *See The Appellate Jurisdiction of the Temporary Emergency Court of Appeals*, 64 MINN. L. REV. 1247, 1247–49 (1980) (describing the role of the Temporary Emergency Court of Appeals in adjudicating executive price control orders issued pursuant to the Economic Stabilization Act of 1970).

97. *See* ROMAN L. HRUSKA ET AL., COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM, STRUCTURE AND INTERNAL PROCEDURES: RECOMMENDATIONS FOR CHANGE (1975).

98. *See supra* Section III.D.

99. *Washington v. Trump*, 2025 WL 553485 at *3 (Forrest, J., concurring). Ironically, this decision appeared less political than most, with two Republican appointees (including Judge Forrest) voting to deny a stay of President Trump’s order.

widespread impact, affected parties will still seek broad relief using vacatur, class actions, state or associational standing, and injunctions based on claims of complete relief. It remains to be seen how these changes will affect the availability of interim relief.

To the extent that such relief is still available, it may suffer from many of the same problems as universal injunctions. Without further reforms, litigants can still engage in judge-shopping, and judges must still issue and review injunctions under time constraints. The issuance and stays of injunctions may well show similar levels of polarization.

To the extent that interim relief is curtailed, federal courts may be unable to provide practical remedies, even for egregiously illegal executive conduct. There could also be nonuniform application of federal law, as injunctions protect particular plaintiffs, class members, or residents of plaintiff states. Various circuits may also reach different interim holdings on the legality of the executive action.

It is impossible to eradicate politics from judging, especially when judges are called upon to decide contentious legal issues with broad impact under severe time pressure. But all judges would be wise to keep Judge Forrest's warning in mind. Judicial legitimacy will be imperiled if the public perceives decisions about interim relief to be dominated by politics.