

Looking Ahead: October Term 2026

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There is a chess position called zugzwang. In this position, you are not in check. No piece is attacking yours. The problem is that it is your turn. The rules do not let you pass, and every move available to you makes your position worse.

This term, the Supreme Court will hear two cases that could leave federal prisoners in exactly this position. A federal prisoner in the Fifth Circuit filed a habeas petition seeking transfer to a halfway house. Because he was not seeking release from custody, the appeals court ruled that habeas relief was not available to him. A complaint about the conditions of confinement, the court explained, belongs in a suit for damages.

A federal prisoner in the Ninth Circuit filed a damages suit against federal officials about the conditions of his confinement. The government is now telling the Supreme Court that he, like the Fifth Circuit prisoner, has come to the wrong place. A claim about the conditions of confinement arises in a new context, and creating damages remedies in new contexts is Congress's business, not a court's.

Neither court has contradicted the other; each ruled only on what the petitioner's proposed remedy does not cover. Both cases have been briefed by different lawyers, and neither set of briefs has any occasion to mention the other. But if the Court rules against both prisoners—and it may well—a category of federal prisoners will be in zugzwang, purportedly holding rights, with nowhere to go to be heard.

* General Counsel, Center for Individual Rights. In the interests of full disclosure, the Center for Individual Rights represents the petitioners in *Texas Top Cop Shop, Inc. v. Blanche*, discussed in Part IV, and filed an *amicus* brief in support of the petitioners in *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, discussed in Part I.A. The views expressed are the author's and not those of the Center for Individual Rights or its clients.

These two cases are not an oddity. October Term 2026 is a Term about the machinery of litigation. Of the 26 cases the Court has agreed to hear, exactly half of the cases turn on questions like those of the two prisoners—not what the law forbids, but who may complain, in what forum, at what stage, under what pleading standard, with what remedies. Those questions decide whether the substantive victories of recent terms—in religious liberty, the Second Amendment, the separation of powers—are enforceable by ordinary people against ordinary officials or only by institutional litigants who can withstand the process.

The Shape of the Docket

As of August 4, 2026, the Court has agreed to hear 26 cases (2 are consolidated), with 9 additional petitions awaiting the Solicitor General's views and 26 more flagged for the September 28 long conference.¹ More than half the Term does not exist yet.

But the *character* of what the Court has granted is striking. Half of the current docket is about the mechanics of litigation, as noted previously. The rest sort into six subjects. The consolidated Second Amendment cases will finally put to the Court an issue it has deferred since 2008—defining which “Arms” the right protects. A religious liberty case asks how much of *Employment Division v. Smith* survives. Election law returns, in a challenge to Arizona’s registration rules that will be argued weeks before the midterms. Immigration also returns, specifically the terms on which federal courts will supervise a rapidly expanding enforcement apparatus. The Court will also take up the next phase of the administrative-state revolution, cleaning up after *Loper Bright*, *Jarkesy*, and *Kisor*. On the criminal side, the Court will hear two constitutional questions involving the Excessive Fines Clause and the right to a jury. Finally, the Court will hear four statutory cases that will not lead the evening news but will matter a great deal in their fields.

The last two sections of this article take up what has not been granted yet—the interim, or emergency docket, where much of the Court’s recent work has migrated, and the petitions most likely to fill the rest of the term.

¹ *Supreme Court of the United States Granted & Noted List October Term 2026 Cases for Argument*, SUPREMCOURT.GOV (Aug. 4, 2026), <https://www.supremecourt.gov/orders/26grantednotedlist.pdf>.

I. The Machinery: What It Takes to Be Heard

Of the 26 cases the Court has agreed to hear, exactly half turn on questions that are not about what the law permits or forbids. Arranged as the life of a lawsuit, they ask the following: (1) Can a court hear the case at all? (2) Is there a cause of action to carry the claim? (3) What must be pleaded? (4) Can the judgment be enforced? and (5) Who pays the lawyer?

A. Getting Through the Door

Five cases ask whether a federal court may hear a dispute at all: one about the Court's own jurisdiction, three about justiciability, and one about when an agency has done anything a court can review.

1. Jurisdiction

Let's begin at the beginning. On October 5, the first argument of October Term 2026 will be *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*.² On paper, it is the case the energy industry has waited a decade for: It is the first time the Justices will squarely confront whether federal law forecloses state-law tort suits seeking damages for injuries attributed to global greenhouse gas emissions.

In 2018, Boulder County and the City of Boulder sued Suncor and ExxonMobil in Colorado state court, pleading nuisance and other state claims on a theory that the companies knowingly contributed to climate change through decades of production and marketing and misled the public about it. Eight years after filing, with no trial in sight, the defendants persuaded the Colorado Supreme Court to intervene early, and it upheld the trial court's rejection of a preemption defense.

In addition to the preemption issue, the Court granted a second question of its own devising: whether it has statutory and Article III jurisdiction to hear the case at all. Boulder had argued there is no final judgment to review under US Code Title 28, Section 1257(a), and that a nuisance theory built on the aggregate effects of global emissions may not describe an injury a federal court can redress. Enough justices took that seriously to order briefing.

² No. 25-170, 2026 WL 490537 (U.S. Feb. 23, 2026) (on cert. to the Supreme Court of Colorado).

If the Court agrees, the most-watched case of the October sitting would end without a holding on preemption and dozens of copycat lawsuits proceeding. The Court has turned this case away twice before, both times on procedural grounds.³ It has now added a third procedural question of its own. A Court that grants review and then asks whether it may decide this case is a Court thinking about the limits of its own power.

2. Justiciability

The next three cases—including two of the most politically charged grants—involve standing, ripeness, and mootness. Though the labels are less tidy than the casebooks suggest, all three descend from the same case-or-controversy requirement of Article III.

In *International Partners for Ethical Care v. Ferguson*,⁴ the Ninth Circuit held that parents lack standing to challenge Washington’s statute providing that a runaway minor who seeks gender-affirming care may be sheltered and referred for that care without parental notification, with the parents told neither the child’s location nor the child’s condition. The court characterized the parents’ present injuries as self-inflicted and their feared future injuries as insufficiently imminent. The parents’ answer is that a statute altering the legal baseline of the parent-child relationship injures them by operation of law, whether or not any particular child has yet run away. The Ninth Circuit never reached the merits, so there will be no holding on the scope of the parental liberty interest.

*Grand v. City of University Heights*⁵ is about ripeness. Daniel Grand is an Orthodox Jew in University Heights, Ohio. His faith requires prayer three times daily with a minyan—a quorum of 10 men—and forbids driving on the Sabbath, making it difficult to reach a synagogue. On January 19, 2021, he emailed roughly a dozen neighbors, inviting them to prayer sessions at his home, describing the gatherings using the word “shul,” Yiddish for school or synagogue. A displeased neighbor forwarded the email to the mayor, who

³ See *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230 (2021) (GVR); *Suncor Energy (U.S.A.) Inc. v. Bd. of Cnty. Comm’rs of Boulder Cnty.*, 143 S. Ct. 1795 (2023) (cert. denied).

⁴ 146 F.4th 841 (9th Cir. 2025), cert. granted, No. 25-840, 2026 WL 1855126 (U.S. June 29, 2026).

⁵ No. 25-965, 2026 WL 1871301 (U.S. June 30, 2026).

forwarded it to the city’s law director. Two days later, Grand received a cease-and-desist letter because his home was not zoned “as a place of religious assembly and/or in operation of a shul or synagogue.”

After initially applying for a permit, Grand withdrew his application, stating he did not wish to operate a house of worship as defined by the ordinance. He then sued for retaliation under the First Amendment and the Religious Land Use and Institutionalized Persons Act,⁶ alleging the city had directed police to monitor his home, encouraged neighbors to report visitors, withheld his certificate of occupancy and tax abatements, and skipped his trash collection—allegations the city disputes. The district court and a unanimous Sixth Circuit panel never reached that dispute. Because Grand withdrew his application before a final decision, his claim was unripe under *Williamson County’s* finality requirement.⁷

The question presented asks whether the First Amendment’s chilling-effect doctrine—under which a credible government threat that deters protected activity is itself a completed injury—can be displaced by a land-use finality rule. The city argues that Grand’s own withdrawal letter disclaimed any intent to operate a house of worship, which makes it hard to say the commission denied him anything. Grand responds that the process was the punishment, and that requiring him to complete it rewards a municipality for delay. *Grand* asks whether the finality requirement applies at all when the plaintiff’s claim is that the process itself was the weapon.

*Genalo v. Black*⁸ carries a mootness question the Court added on its own motion, though neither party had raised one. Because the underlying question concerns prolonged immigration detention, the case is discussed with the immigration docket in Part II.

3. Reviewability

*Department of the Air Force v. Prutehi Guahan*⁹ asks the administrative-law counterpart of the justiciability questions discussed in the previous section: When has an agency done something a court can review? The Department of the Air Force applied to Guam’s environmental

⁶ 42 U.S.C. §§ 2000cc–2000cc-5.

⁷ *Williamson Cnty. Reg’l Plan. Comm’n v. Hamilton Bank*, 473 U.S. 172 (1985).

⁸ No. 25-886, 2026 WL 1718025 (U.S. June 15, 2026) (on cert. to the Second Circuit).

⁹ No. 25-579, 2026 WL 642829 (U.S. Mar. 9, 2026) (on cert. to the Ninth Circuit).

regulator to renew a permit, under the Resource Conservation and Recovery Act (RCRA), to dispose of unexploded ordnance. A local environmental group sued before Guam had acted. The Ninth Circuit held the submission was reviewable as final agency action and further held that the environmental-review procedures of the National Environmental Policy Act (NEPA) apply before such a submission.

Finality requires the consummation of the decisionmaking process and a determination from which legal consequences flow.¹⁰ A permit *application* is necessarily a request that someone else decides. If that is final agency action, a great deal of ordinary agency correspondence becomes a litigation target. Regarding the second holding, last term the Court held that NEPA is a procedural statute and that agencies applying it are owed substantial deference.¹¹ The RCRA, meanwhile, sets out its own procedures for reviewing environmental impacts in exactly this setting. What the Court says about layering one over the other will matter well beyond Guam.

B. Is There a Claim?

Three cases ask whether a claim has any vehicle to bring it to court. Two of them are the prisoners from the introduction, each told the cause of action he chose was the wrong one. The third asks whether Congress may deny a class of litigants any judicial remedy at all.

1. The two doors

The Fifth Circuit prisoner is William Maxwell, serving a 20-year sentence and proceeding without a lawyer.¹² Under the First Step Act of 2018, a federal prisoner who completes recidivism-reduction programming earns credits that *shall* be applied toward transfer into a halfway house or home confinement. Maxwell filed a habeas petition asking to have his credits applied. The district court dismissed for failure to exhaust. The Fifth Circuit affirmed on a different ground, ruling that habeas was the wrong vehicle entirely: He sought to change his place of confinement, not release. Under

¹⁰ *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

¹¹ *Seven Cnty. Infrastructure Coal., v. Eagle County*, 605 U.S. 168 (2025).

¹² *Maxwell v. Thomas*, 133 F.4th 453 (5th Cir. 2025), *cert. granted*, No. 25-5930, 2026 WL 1513325 (U.S. June 1, 2026) (retitled *Maxwell v. Dinis*). The question presented concerns 18 U.S.C. §§ 3631–3635.

circuit precedent, if a favorable ruling would not automatically entitle a prisoner to accelerated release, his claim belongs in a civil rights suit. And the court named the suit it had in mind: A *Bivens*¹³ action for damages is the proper vehicle to attack unconstitutional conditions of confinement and prison procedures.

The Ninth Circuit prisoner is Kekai Watanabe, who was seriously injured in a prison gang fight and sued federal officials on the theory that they knew of the danger and failed to protect him.¹⁴ The Ninth Circuit thought the claim indistinguishable from *Carlson v. Green*, which extended *Bivens* to deliberate indifference to a prisoner's medical needs.¹⁵ The government's answer is the one the Court has been telegraphing since *Ziglar v. Abbasi*: Creating damages remedies in new contexts is Congress's business, and any alternative remedial structure—including a grievance system that awards no damages—forecloses a damages claim.¹⁶

The Solicitor General has not defended the Fifth Circuit's judgment. In a brief supporting vacatur, the government agreed that habeas was the proper vehicle and found no other avenue available. Specifically, it noted a *Bivens* action is "far-fetched," with no meaningful possibility the Court would extend it to a statutory claim seeking no damages.¹⁷

Buried in the same First Step Act that created Maxwell's credits is a sentence providing that a designation of a place of imprisonment "is not reviewable by any court."¹⁸ The government's reading is that when Congress expanded access to prerelease custody, it precluded courts from intervening in disputes about it. Prisoners may

¹³ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

¹⁴ *Watanabe v. Derr*, 115 F.4th 1034 (9th Cir. 2024), *cert. granted sub nom. Nielsen v. Watanabe*, No. 25-417, 2026 WL 1780123 (U.S. June 22, 2026) (on cert. to the Ninth Circuit). The Eighth Amendment failure-to-protect standard is *Farmer v. Brennan*, 511 U.S. 825 (1994).

¹⁵ 446 U.S. 14 (1980). The only other recognized context is *Davis v. Passman*, 442 U.S. 228 (1979).

¹⁶ *Ziglar v. Abbasi*, 582 U.S. 120, 139–40 (2017); *Hernández v. Mesa*, 589 U.S. 93, 102 (2020); *Egbert v. Boule*, 596 U.S. 482, 492–93 (2022).

¹⁷ Brief for the Respondent Supporting Vacatur at 32–33, *Maxwell v. Dinis*, No. 25-5930, 2026 WL 1513325 (U.S. Aug. 5, 2026).

¹⁸ 18 U.S.C. § 3621(b); *see Osorio-Calderon v. Warden*, 179 F.4th 1158, 1164 (8th Cir. 2026) ("[A] designation of a place of imprisonment under this subsection is not reviewable by any court.").

file grievances with the Bureau of Prisons but district courts lack jurisdiction. If that is right, Maxwell may win the vehicle question and find that the vehicle goes nowhere.

Another case may sharpen the question further. *Herzon v. Arias* asks whether *Bivens* excessive-force claim arising from executing an arrest warrant *outside* the home—one step from *Bivens* itself, which involved a warrantless entry *into* a home.¹⁹

2. The courthouse door closed

*Johnson v. United States Congress*²⁰ presents a clean question of jurisdiction stripping. Johnson is a veteran whose incarceration limits his disability compensation. He contends that the statute doing so is a bill of attainder that denies him equal protection under the Fifth Amendment. The Eleventh Circuit held that no district court may hear him: Sovereign immunity has not been waived, and the Veterans' Judicial Review Act (VJRA) channels challenges to veterans' benefits laws through the Court of Appeals for Veterans Claims and the Federal Circuit.

The difficulty is the Court's 1974 decision in *Johnson v. Robison*,²¹ holding that a predecessor no-review provision did not strip district courts of jurisdiction over constitutional challenges to the benefits statutes themselves, as distinct from challenges to individual benefits determinations—in part to avoid the serious constitutional question a total preclusion would raise. Whether the VJRA changed that is an open statutory question. On the Eleventh Circuit's view, Congress may route every constitutional challenge to an entire benefits regime out of the district courts and into a specialized channel of its own design. That proposition reaches well beyond veterans' benefits and sits uneasily beside the Court's concern in *SEC v. Jarkesy*²² about Congress assigning the adjudication of its own statutes to forums of its own design.

Take these cases together and *Marbury*'s promise that every right has a remedy looks more like aspiration than a description.²³

¹⁹ *Herzon v. Arias*, No. 26-111 (July 23, 2026).

²⁰ No. 25-735, WL 922512 (U.S. Apr. 06, 2026) (on cert. to the Eleventh Circuit).

²¹ 415 U.S. 361, 366–67 (1974).

²² 603 U.S. 109, 128 (2024).

²³ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).

C. Inside the Case: Pleadings, Do-Overs, and Second Bites

Three cases refine the machinery a claim must survive once a court has taken it: what a complaint must allege, what a defendant must plead in response, and how many chances a losing litigant gets.

1. What the complaint must allege

*Anderson v. Intel Corporation Investment Policy Committee*²⁴ asks whether an ERISA plaintiff alleging that a fiduciary imprudently invested plan assets must plead a comparator fund or “meaningful benchmark” to survive dismissal. The Ninth Circuit adopted what amounts to a categorical pleading rule. Defenders of this rule note that underperformance, standing alone, is consistent with prudence. A prudent portfolio can trail the market for years, and without a comparator requirement, every plan that lags invites a complaint. Petitioner responds that a categorical rule has no textual support in ERISA, and that comparator data is often in the fiduciary’s hands—which is what discovery is for. Whatever the Court says will govern a very large volume of litigation.

2. What the answer must plead

*Younge v. Fulton Judicial Circuit District Attorney’s Office*²⁵ arose from a retaliation claim brought by a pregnant employee. The defendant answered without pleading the affirmative defense that the claim belonged under Georgia’s public-employment statute rather than Title VII, then, without ever amending its answer, raised the defense at summary judgment, where the magistrate judge entertained it.

Federal Rule of Civil Procedure 8(c) requires affirmative defenses to be pleaded. Rule 15(a) governs amendment. Rule 16(b)(4) requires good cause to modify a scheduling order once its deadline has passed. The Eleventh Circuit allowed the defense anyway. The question is whether a defendant may prevail on an unpleaded affirmative defense without amending at all—and whether it may do so even where amendment would have been barred. Several circuits permit late assertion absent prejudice to the plaintiff. What is unusual here is that never seeking leave is what altogether avoided the good-cause requirement.

²⁴ No. 25-498, WL 120679 (U.S. Jan. 16, 2026) (on cert. to the Ninth Circuit).

²⁵ No. 25-352, WL 858458 (U.S. Mar. 30, 2026) (on cert. to the Eleventh Circuit).

3. *How many chances?*

*Guerrero v. Johnson*²⁶ concerns the gatekeeping provision for successive habeas petitions, which permits a new petition resting on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.”²⁷ Johnson, a Texas death-row inmate, asserts he is intellectually disabled and therefore ineligible for execution under *Atkins v. Virginia*.²⁸

The question is what “previously unavailable” means when the petitioner could have raised a claim based on the rule in an earlier petition. Texas reads it temporally: If the rule existed when the earlier petition was filed, it was available, and a petitioner who did not raise it forfeited it. The Fifth Circuit agreed. Johnson reads it practically, pointing to the subsequent decisions that refined *Atkins*, arguing that the rule as applied to him did not exist in usable form until later.

D. *Making It Stick*

One case asks what happens when an injunction is disobeyed: whether a court may punish a party for conduct the order never mentioned.

*Apple Inc. v. Epic Games, Inc.*²⁹ arises from the antitrust litigation over the App Store and the ensuing injunction barring Apple from preventing developers from steering users elsewhere to pay. Apple complied by letting developers include links to outside payment systems—and charged a commission on the resulting sales. The district court held Apple in civil contempt. The Ninth Circuit acknowledged that the text of the original injunction did not address commissions—but affirmed anyway, on the ground that Apple had violated the injunction’s spirit.³⁰

The question presented is whether contempt may rest on an injunction’s spirit when the order is silent as to the conduct at issue,

²⁶ No. 25-1003, WL 1717983 (U.S. June 15, 2026) (on cert. to the Fifth Circuit).

²⁷ 28 U.S.C. § 2244(b)(2)(A).

²⁸ 536 U.S. 304 (2002); *see also* *Hall v. Florida*, 572 U.S. 701 (2014); *Moore v. Texas*, 581 U.S. 1 (2017).

²⁹ No. 25-1311, WL 1871316 (U.S. June 30, 2026) (on cert. to the Ninth Circuit).

³⁰ Apple has also litigated on the emergency docket. Its application to stay the Ninth Circuit’s mandate was denied in May. After certiorari was granted, it filed a second application seeking to stay the district court proceedings pending review.

or whether it must rest on a violation of an order that clearly and unambiguously proscribes the precise conduct. The Court said as much before in 1967: Contempt power is a potent weapon that may not rest on a decree too vague to be understood.³¹

The Court’s ruling may reach well beyond app stores. Structural injunctions—over school districts, prison systems, police departments, and consent decrees of the kind at issue in the Arizona voter registration case discussed in Part II—all depend on some capacity to reach conduct the decree did not specifically name. Requiring precise textual proscription would make those decrees easier to comply with and easier to evade; the opposite rule leaves defendants guessing about orders they are bound by. Whatever the Court says about Apple’s commission will be quoted for years in cases that have nothing to do with software.

E. Who Pays the Lawyer?

The last question in a lawsuit’s life is who bears its cost—and sometimes the answer determines whether the lawsuit happens at all.

*Montoya Palacios v. Liggins*³² asks whether “any civil action” in the Equal Access to Justice Act encompasses a habeas petition challenging civil immigration detention. The act permits a prevailing party to recover attorney’s fees from the government unless its position was substantially justified.

Whether habeas qualifies is a question of statutory construction. “Any civil action” is broad and habeas is civil in nature for most purposes. But habeas is also a distinct proceeding with its own history and its own body of rules and Congress is presumed to have legislated against that understanding.

Detained noncitizens are not entitled to appointed counsel, and most cannot pay. Fee recovery is what allows an attorney to take such a case. The circuits are split—in the Second, Third, and Tenth, lawyers who win a detention case can recover fees; in the Fourth and

³¹ *Int’l Longshoremen’s Ass’n v. Phila. Marine Trade Ass’n*, 389 U.S. 64, 76 (1967); *see* Fed. R. Civ. P. 65(d).

³² No. 25-1223, WL 1855057 (U.S. June 29, 2026) (on cert. to the Fourth Circuit); 28 U.S.C. § 2412(d)(1)(A).

Fifth, they cannot.³³ Therefore, whether detainees can find counsel depends on where the government chose to detain them.

A claim needs a court with power to hear it, a cause of action, a complaint that survives the pleadings, and a judgment that can be enforced. It also needs a lawyer. The cases in this section are, among them, about all five.

II. The Subjects: What the Cases Are About

A. The Second Amendment: Which Arms?

Perhaps the term's marquee case is *Viramontes v. Cook County*,³⁴ consolidated with *Grant v. Higgins*,³⁵ for a single hour of argument. The question presented in both is whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

Heller established an individual right and struck down a handgun ban, resting substantially on the fact that handguns are in common use for lawful purposes.³⁶ *McDonald* incorporated that right against the states.³⁷ *Bruen* addressed *where* arms may be carried and prescribed a text-and-history methodology.³⁸ *Rahimi* addressed *who* may be disarmed, clarifying that methodology.³⁹ And last term in *Wolford v. Lopez*,⁴⁰ the Court continued the post-*Bruen* work on where arms may be carried. In 18 years, however, the Court has never squarely resolved *which arms* the Second Amendment

³³ *Obando-Segura v. Garland*, 999 F.3d 190, 197 (4th Cir. 2021); *Barco v. Witte*, 65 F.4th 782, 784–85 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 553 (2024); *Vacchio v. Ashcroft*, 404 F.3d 663, 672 (2d Cir. 2005); *Michelin v. Warden*, 169 F.4th 418, 432 (3d Cir. 2026), *reh'g en banc denied*, 169 F.4th 160 (3d Cir. 2026); *Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025), *reh'g en banc denied*, No. 24-1191 (10th Cir. Apr. 3, 2026).

³⁴ No. 25-238, WL 1871322 (U.S. June 30, 2026) (on cert. to the Seventh Circuit).

³⁵ No. 25-566, WL 1871312 (U.S. June 30, 2026) (on cert. to the Second Circuit, limited to the question presented in *Viramontes*). A companion petition raising the magazine-capacity question directly, *National Association for Gun Rights v. Lamont*, No. 25-421, was pending as this article went to press.

³⁶ *District of Columbia v. Heller*, 554 U.S. 570, 624–25, 627–29 (2008).

³⁷ *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

³⁸ *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

³⁹ *United States v. Rahimi*, 602 U.S. 680 (2024).

⁴⁰ 146 S. Ct. 2032 (2026).

covers—beyond an observation that the right is not confined to Founding-era technology.⁴¹

Viramontes challenges a Cook County ordinance defining “assault weapons” to include semiautomatic rifles capable of accepting a large-capacity magazine together with features like a pistol grip or muzzle brake, plus a list of enumerated models. Applying its earlier precedent, the Seventh Circuit held that AR-platform rifles are not materially distinguishable from the M16 and therefore fall outside the class of “Arms” protected by the Second Amendment.⁴²

Grant challenges the Connecticut statute enacted after the 2012 murders at Sandy Hook Elementary School. The Second Circuit assumed the rifles are bearable arms, acknowledged that they are in common use, and upheld the statute anyway on the basis of a historical tradition that permits regulation of “unusually dangerous” weapons.⁴³

The Second Circuit’s route is more candid and harder to answer. It concedes that *Heller*’s common-use observation appears to be dispositive, then declines to treat it that way. Petitioners respond that if a rifle owned by millions for lawful purposes can be banned because a court finds it unusually dangerous, common use is not a test but a factor and *Heller* collapses into the interest balancing *Bruen* forbade. Respondents answer that common use cannot be a one-way ratchet in which mass-market success immunizes a weapon, and that *Heller* itself preserved regulation of dangerous and unusual weapons.

Cook County also argues that the record contains no instance in which an assault weapon was used in lawful self-defense.⁴⁴ An undeveloped record is a familiar reason to decide a case narrowly.

B. Immigration: How Long Without a Hearing?

Two cases test the terms on which federal courts supervise immigration enforcement. The first case asks whether the Constitution requires a hearing before the government may detain a lawful permanent resident for years. The second case asks a statutory question

⁴¹ *Caetano v. Massachusetts*, 577 U.S. 411, 411 (2016) (per curiam).

⁴² *Bevis v. City of Naperville*, 85 F.4th 1175, 1193–94 (7th Cir. 2023).

⁴³ *National Association for Gun Rights v. Lamont*, 153 F.4th 213, 232–33 (2d Cir. 2025) (deciding the consolidated appeal in *Grant v. Rovella*, No. 23-1344), cert. granted sub nom. *Grant v. Higgins*, No. 25-566, 2026 WL 1871312 (U.S. June 30, 2026).

⁴⁴ Brief in Opposition, *Viramontes v. Cook County*, No. 25-238, 2026 WL 1871322 (U.S. June 30, 2026) (on cert. to the Seventh Circuit).

that determines whether a category of noncitizens can become permanent residents at all.

1. *Detention*

Two lawful permanent residents were detained under US Code Title 8, Section 1226(c), which requires detention without bond for noncitizens removable for certain criminal convictions. Carol Williams Black was held roughly seven months before a district court granted a habeas petition and ordered a bond hearing. Keisy G.M. was held 21 months, much of it during the pandemic. His habeas petition was denied. He was released in 2022, only after the Ninth Circuit dissolved an injunction in a separate class action over the detention of medically vulnerable detainees.⁴⁵

In 2024, in consolidated appeals, a Second Circuit panel held that (1) both detentions had become unreasonably prolonged; (2) due process required an individualized bond hearing; and (3) the government must justify continued detention by clear and convincing evidence.⁴⁶

After G.M.'s release, he and the government agreed the appeal remained live because the department could detain him again. The Court raised the issue of mootness anyway.

For 25 years, the Court has circled around the question of whether prolonged detention requires a bond hearing. To avoid deciding the question, it read a reasonable time limit into post-removal detention⁴⁷ and upheld mandatory detention for the “brief period necessary” to complete proceedings.⁴⁸ In *Jennings v. Rodriguez*, it rejected the statutory construction that had produced periodic bond hearings, while expressly reserving the constitutional question.⁴⁹ Eight years later, *Genalo* is that reserved question.

The government's position is broad: Noncitizens in these proceedings have no due process right to a bond hearing and no limit on how long they can be held without one. The Second Circuit framed

⁴⁵ See *Fraihat v. ICE*, 16 F.4th 613 (9th Cir. 2021).

⁴⁶ See *Black v. Decker*, 103 F.4th 133 (2d Cir. 2024). The Court granted certiorari as to No. 22-70 only.

⁴⁷ *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001).

⁴⁸ *Demore v. Kim*, 538 U.S. 510, 513 (2003).

⁴⁹ *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018); see also *Nielsen v. Preap*, 586 U.S. 392 (2019).

the interest on the other side just as starkly, calling it the most significant liberty interest there is. Between those two positions sits the mootness question, which would let the Court resolve neither.

2. Status

*Wassily v. Blanche*⁵⁰ is narrower, posing a purely statutory question. Section 1159(b) permits adjustment to lawful permanent resident status for a noncitizen “who has been granted asylum.”⁵¹ Does that phrase describe a present condition, as the government contends—so that termination of asylum extinguishes eligibility—or a historical fact that, once true, remains true? The government’s reading draws force from the surrounding conditions of Section 1159(b), most of which are plainly present tense. The petitioner’s reading has the better of the grammar of “has been granted.” The Fifth Circuit says the latter; the Second and Fourth say the former.⁵² For those affected, the answer is dispositive.

C. Religious Liberty: How Much of *Smith* Survives?

*St. Mary Catholic Parish v. Roy*⁵³ is the case to watch for anyone tracking the fate of *Employment Division v. Smith*—the peyote case holding that a neutral law of general application does not violate the Free Exercise Clause merely because it burdens religious practice.⁵⁴

Colorado’s universal preschool program funds public and private providers alike, contingent on compliance with an equal-opportunity mandate prohibiting discrimination. Catholic preschools in the Archdiocese of Denver declined to adopt the policies regarding transgender students that the mandate required, asserting those policies were inconsistent with church teaching. Colorado excluded the Catholic preschools from the program. The parishes note that Colorado grants other exemptions. The state responds that the mandate is a condition of public funding, not a targeting of religion. The Tenth Circuit ruled against the parishes.

⁵⁰ No. 25-842, WL 1855117 (U.S. June 29, 2026) (on cert. to the Second Circuit).

⁵¹ 8 U.S.C. § 1159(b).

⁵² Compare *Siwe v. Holder*, 742 F.3d 603, 606–12 (5th Cir. 2014), with *Wassily v. Bondi*, 150 F.4th 100, 102 (2d Cir. 2025), and *Cela v. Garland*, 75 F.4th 355, 363–65 (4th Cir. 2023), cert. denied, 144 S. Ct. 2657 (2024).

⁵³ No. 25-581, WL 1052111 (U.S. Apr. 20, 2026) (on cert. to the Tenth Circuit).

⁵⁴ *Emp. Div. v. Smith*, 494 U.S. 872 (1990).

The Court has repeatedly found ways to rule for religious claimants without revisiting *Smith*—finding the challenged law not generally applicable because it allowed discretionary exemptions or treated comparable secular conduct more favorably.⁵⁵ What *St. Mary's* asks is how easily that showing can be made: whether it takes unfettered official discretion or a categorical exemption for identical secular conduct, or whether any meaningful secular exemption will do. A second question asks whether *Carson v. Makin*⁵⁶ displaces *Smith* altogether where the government excludes religious institutions from a public benefit—which would resolve the case without reaching general applicability at all.

If any meaningful exemption suffices, *Smith* will remain formally standing while becoming nearly impossible for a regulatory scheme of any complexity to satisfy—few such schemes have no exemptions at all. That is a functional overruling accomplished through the general-applicability prong rather than through candid reconsideration, and it serves no one, least of all the state legislatures drafting around a precedent that is nominally good law.

The Court's interest in this area is not confined to funding conditions. A pending petition, *Missionaries of Saint John the Baptist, Inc. v. Frederic*,⁵⁷ asks whether barring a religious institution from building on its own land is a “substantial burden” under the Religious Land Use and Institutionalized Persons Act (RLUIPA),⁵⁸ and whether restrictions imposed on religious assemblies but not comparable secular ones violate RLUIPA's equal-terms provision. Together with *Grand*, the petition suggests the Court is interested in land use as a religious-liberty battleground—which is where much of the real-world friction now lies.

D. Elections: Who Sets the Rules?

*Republican National Committee v. Mi Familia Vota*⁵⁹ involves two Arizona measures. One requires applicants who register using the

⁵⁵ See, e.g., *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Tandon v. Newsom*, 593 U.S. 61 (2021) (per curiam).

⁵⁶ *Carson v. Makin*, 596 U.S. 767 (2022); see also *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464 (2020).

⁵⁷ Petition for a Writ of Certiorari, *Missionaries of Saint John the Baptist, Inc. v. Frederic*, No. 25-1131 (filed Mar. 18, 2026).

⁵⁸ 42 U.S.C. §§ 2000cc(a), (b)(1).

⁵⁹ No. 25-1017, WL 1855101 (U.S. June 29, 2026) (on cert. to the Ninth Circuit).

state form to produce satisfactory evidence of United States citizenship. The other directs officials to cancel the registrations of noncitizens within 90 days of a federal election.

The first question presented is whether the National Voter Registration Act (NVRA)—or a 2018 federal consent decree entered into by a prior Arizona secretary of state—prohibits the citizenship-evidence requirement. The statutory ground is the sequel to *Arizona v. Inter Tribal Council*, which held in 2013 that the NVRA preempts state efforts to require documentary proof of citizenship from applicants using the *federal* registration form, while noting that states retain authority over their own registration processes.⁶⁰ Arizona argues that *Inter Tribal Council* rested on the Elections Clause and on the federal form’s particular statutory pedigree, neither of which reaches a form the state designs for its own elections. Respondents counter that the NVRA’s requirements do not turn on which piece of paper an applicant happens to use, and that a state-form carve-out would let states accomplish indirectly what *Inter Tribal Council* forbade directly.

Notably, the dissent below questioned whether a decree entered by one state officer can bind the state against a later-enacted state law. This ground may be the more interesting question because it reached well beyond election administration. Consent decrees govern police departments ground may be the more interesting question, because it reaches well beyond election administration. Consent decrees govern police departments, prison systems, and school districts across the country, many of them entered decades ago by officials long out of office.

The second question is whether the NVRA’s 90-day quiet period bars canceling registrations in the run-up to a federal election. The statute requires that any program to systematically remove ineligible voters from the rolls be completed no later than 90 days before a federal election.⁶¹ Arizona says removing noncitizens is not the kind of systematic purge the provision was written to prevent and that a state may act against ineligible registrants whenever it discovers them. Respondents claim the text is specific, the 90-day window exists because last-minute removals cannot be corrected before an

⁶⁰ *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12, 15 (2013).

⁶¹ 52 U.S.C. § 20507(c)(2)(A).

election, and a program directed at a category of registrants is systematic by definition.

Two petitions await the Solicitor General's views: *Pennsylvania v. Eakin* and *Republican National Committee v. Eakin*, concerning Pennsylvania's requirement that people voting by mail handwrite a date on the return envelope.⁶² Two others—*Trevino v. Hobbs* and *Garcia v. Hobbs*—raise standing and mootness questions arising from court-drawn remedial maps, which look rather different after *Callais*.⁶³

Election law will not be confined to the merits docket: Two applications concerning the president's executive order on federal elections are pending on the emergency docket, discussed in Part III.

E. The Administrative State: Who Decides?

Loper Bright and *Jarkesy* told courts what not to defer to. Neither said what follows. Two cases this Term take up the question from opposite ends: Who may adjudicate a claim for money, and how much deference a court owes an agency's gloss on its own rules.

1. Who adjudicates?

*Department of Labor v. Sun Valley Orchards, LLC*⁶⁴ asks whether Article III permits the Department of Labor to adjudicate proceedings imposing monetary remedies on employers who violate the employment terms of H-2A agricultural guest workers, and whether US Code Title 8, Section 1188(g)(2) authorizes it to do so. The Third Circuit held the scheme unconstitutional. The government petitioned.

The argument turns on the public-rights doctrine. *Jarkesy* held that a civil-penalty action for securities fraud replicating a common-law suit must go to a jury in an Article III court. But it preserved the long-standing rule that adjudication of public rights—obligations created by statute as conditions of participating in a federal program—may be assigned to the executive. The H-2A program, the government

⁶² *Pennsylvania v. Eakin*, No. 25-967 (U.S. June 29, 2026) (calling for the views of the Solicitor General); *Rep. Nat'l Comm. v. Eakin*, No. 25-962 (U.S. June 29, 2026) (same).

⁶³ *Petition for Writ of Certiorari, Trevino v. Hobbs*, No. 25-918 (Jan. 23, 2026); *Petition for Writ of Certiorari, Garcia v. Hobbs*, No. 25-901 (Jan. 23, 2026).

⁶⁴ No. 25-966, WL 1127242 (U.S. Apr. 27, 2026) (on cert. to the Third Circuit).

argues, is a benefit an employer opts into, and the monetary remedies are compliance measures rather than common-law-style damages. Sun Valley's answer is that a monetary award running to a private worker for breach of employment terms is a private right by any historical measure, and that the opt-in framing would let Congress convert any regulated activity into a "program" and then adjudicate disputes about it in-house.

The posture is ironic. An administration that has spent considerable energy contesting the legitimacy of agency adjudication is here defending it, asking the Court to read *Jarkesy* narrowly less than two years after winning it. While institutional litigants defend institutional powers, the situation is a reminder that the line between public and private rights is carrying enormous weight for a distinction nobody has ever stated crisply.

2. How much deference?

*Beaird v. United States*⁶⁵ asks whether *Stinson v. United States* still governs deference to the Sentencing Guidelines commentary. *Stinson* held in 1993 that commentary interpreting or explaining a guideline "is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline."⁶⁶ That standard was borrowed from *Seminole Rock* and *Auer*,⁶⁷ and both have since been narrowed. *Kisor* now requires genuine ambiguity, after exhaustion of the traditional tools of construction before *Auer* deference applies,⁶⁸ and *Loper Bright* eliminated *Chevron* deference altogether.⁶⁹ Several circuits have concluded that *Stinson* cannot have survived unchanged;⁷⁰ others adhere to it.⁷¹

⁶⁵ No. 25-5343, WL 1052007 (U.S. Apr. 20, 2026) (on cert. to the Fifth Circuit). Beaird pleaded guilty to a violation of 18 U.S.C. § 922(g)(1).

⁶⁶ *Stinson v. United States*, 508 U.S. 36, 38 (1993).

⁶⁷ *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945); *Auer v. Robbins*, 519 U.S. 452 (1997).

⁶⁸ *Kisor v. Wilkie*, 588 U.S. 558 (2019).

⁶⁹ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

⁷⁰ See, e.g., *United States v. Nasir*, 17 F.4th 459, 470–71 (3d Cir. 2021) (en banc); *United States v. Dupree*, 57 F.4th 1269, 1275–77 (11th Cir. 2023) (en banc).

⁷¹ *United States v. Vargas*, 74 F.4th 673, 683 (5th Cir. 2023) (en banc); *United States v. Maloid*, 71 F.4th 795, 789 (10th Cir. 2023).

The stakes are not academic. Guidelines commentary drives sentencing exposure in thousands of cases each year, and it is promulgated by a body that is neither Congress nor, in any ordinary sense, an executive agency—which makes the usual rationales for deference unusually hard to state. A defendant sentenced according to commentary rather than on guideline text is sentenced according to a document that was never enacted.

Johnson v. United States Congress, discussed previously, sits awkwardly beside both. A Court solicitous in *Jarkesy* of the Article III jury right, and perhaps asked in *Beard* to curtail deference to a sentencing commission's glosses, is asked in *Johnson* to bless a scheme that routes constitutional challenges out of the district courts and into a forum of Congress's own design.

F. Criminal Law: What a Conviction Costs

Two cases ask what the Constitution permits a state to do to criminal defendants. One concerns what a conviction may cost; the other, how many jurors it takes to convict at all.

1. Excessive fines

Retired pilot Ken Jouppi has been fighting to get his \$95,000 Cessna airplane back since 2012.⁷² On April 3 of that year, Jouppi was preparing to fly a passenger with groceries from Fairbanks to Beaver, a village that prohibits alcohol. State troopers searched the plane before takeoff. Tucked into the passenger's luggage were two cases of Budweiser and four additional six-packs—72 beers in all. One six-pack sat in plain view. The passenger pleaded guilty. A jury convicted Jouppi and his air-taxi company of a misdemeanor—knowingly transporting alcohol into a dry community. He was sentenced to three days in jail and fined; the maximum statutory fine was \$10,000. Alaska law also makes an aircraft used in the offense automatically subject to forfeiture.

Years of litigation followed. The trial court found the forfeiture unconstitutionally excessive. In 2025, the Alaska Supreme Court reversed, holding that no remand was needed to determine whether Jouppi was culpable for all 72 beers or only the visible six-pack, because “the legislature determined that the harm from even a six-pack

⁷² *Jouppi v. Alaska*, No. 25-246, WL 2082257 (U.S. July 20, 2026) (on cert. to the Supreme Court of Alaska).

of beer knowingly imported into a dry village is severe enough to warrant forfeiture of an aircraft.”⁷³ Fourteen years after the troopers searched his plane, Jouppi’s case reached the Supreme Court.

The question presented is whether gross disproportionality under the Excessive Fines Clause is measured against the offense *in the abstract*—by reference to the legislature’s judgment about the category—or against what this defendant *actually did*. *United States v. Bajakajian*, still the only case in which the Court has struck down a fine as excessive, framed the inquiry around the defendant’s conduct.⁷⁴ *Timbs v. Indiana* incorporated the clause against the states but said little about method.⁷⁵

Alaska says it applied *Bajakajian*’s factors faithfully and that any error was in the weighing. Jouppi says the court assessed his offense at a level of generality that made the outcome inevitable: If the legislature has already decided a six-pack is worth an airplane, no forfeiture it authorizes can be disproportionate.

2. Jury size

*Kian v. Florida*⁷⁶ asks the Court to revisit *Williams v. Florida*, which held in 1970 that the Sixth Amendment permits six-person juries in criminal cases.⁷⁷ Florida law is categorical: 12 jurors in capital cases, 6 in every other criminal case.⁷⁸ Forty-four states require 12 jurors for all felonies.

Williams has not worn well. It adopted a functional rationale: 6 jurors and 12 jurors perform the same function. *Ballew v. Georgia* later drew a line at five without defending six.⁷⁹ Then, rather than focusing on how juries function now, *Ramos v. Louisiana* asked what the Sixth Amendment meant when it was ratified and held that a jury

⁷³ Jouppi v. State, 566 P.3d 943, 954–58 (Alaska 2025).

⁷⁴ *United States v. Bajakajian*, 524 U.S. 321, 334, 337–40 (1998) (contrasting \$357,144 forfeiture for failing to report currency against a \$5,000 statutory maximum).

⁷⁵ *Timbs v. Indiana*, 586 U.S. 146 (2019).

⁷⁶ No. 25-6623, WL 1718018 (U.S. June 15, 2026) (on cert. to the Florida District Court of Appeal, Fourth District).

⁷⁷ *Williams v. Florida*, 399 U.S. 78 (1970).

⁷⁸ Fla. Stat. § 913.10; See Petition for Writ of Certiorari, *Kian v. Florida*, No. 25-6623 (Jan. 9, 2026) (discussing that Arizona, Connecticut, Indiana, Massachusetts, and Utah permit juries of fewer than 12 in some criminal trials).

⁷⁹ *Ballew v. Georgia*, 435 U.S. 223 (1978).

must be unanimous to convict.⁸⁰ Applied to jury size, that method points away from *Williams*. Justice Neil Gorsuch has twice dissented from denials of certiorari on this issue, writing in one that Florida “does what the Constitution forbids because of us.”⁸¹

Florida’s answer is less about whether *Williams* was right and more about what overruling it would cost: thousands of convictions in Florida and five other states. But the Court has tools for managing retroactivity.⁸²

G. Odds and Ends

Four statutory cases remain, each consequential in its own corner of the law.

1. Video privacy

*Salazar v. Paramount Global*⁸³ construes the Video Privacy Protection Act, enacted in 1988 after a Washington newspaper obtained Judge Robert Bork’s video-rental records during his confirmation fight. The act gives a cause of action to a “consumer,” defined as one who obtains “goods or services from a video tape service provider.” Salazar subscribed to an email newsletter from a sports website Paramount owns. He alleges that the site sent his video-viewing data to Facebook. The Sixth Circuit held he was never a consumer because the newsletter was not an audiovisual product. Salazar’s response is that “goods or services” is unqualified. The case is a clean example of a recurring problem: an analog-era privacy statute meeting a business model nobody in 1988 imagined.

2. Employment discrimination

*Crowther v. Board of Regents of the University System of Georgia*⁸⁴ asks whether Title IX affords employees of federally funded schools an

⁸⁰ *Ramos v. Louisiana*, 590 U.S. 83 (2020), overruling *Apodaca v. Oregon*, 406 U.S. 404 (1972).

⁸¹ *Cunningham v. Florida*, 144 S. Ct. 1287, 1287 (2024) (Gorsuch, J., dissenting from denial of certiorari); see also *Khorrani v. Arizona*, 143 S. Ct. 22 (2022) (Gorsuch, J., dissenting from denial of certiorari).

⁸² *Edwards v. Vannoy*, 593 U.S. 255 (2021).

⁸³ No. 25-459, WL 189831 (U.S. Jan. 26, 2026) (on cert. to the Sixth Circuit); 18 U.S.C. § 2710(a)(1).

⁸⁴ No. 25-183, WL 1377024 (U.S. May 18, 2026) (on cert. to the Eleventh Circuit).

implied private right of action for sex discrimination in employment. *Cannon* implied a private right under Title IX for students; *North Haven* held that Title IX reaches employment.⁸⁵ Whether those two propositions combine is contested, and *Alexander v. Sandoval* has made the Court less generous about implied rights in the years since *Cannon*.⁸⁶ The strongest argument against is structural: Title VII already supplies a detailed remedial scheme for this claim—charge-filing deadlines, Equal Employment Opportunity Commission procedures, damages caps—and a parallel Title IX action would let plaintiffs bypass all of it.

3. Condemnation

*Hoffmann v. WBI Energy Transmission, Inc.*⁸⁷ asks whether just compensation in a private condemnation under the Natural Gas Act is measured by state law. The act delegates eminent-domain power to private pipeline companies but says nothing about the measure of compensation. The question is whether federal common law fills the gap or state property law supplies the rule of decision. Landowners generally prefer state law, often more generous on items such as severance damages; the industry prefers a uniform federal rule.

4. Trademark

*RiseandShine Corp. v. PepsiCo, Inc.*⁸⁸ asks whether the strength of a trademark is a question of fact in the likelihood-of-confusion analysis. The dispute arises between RISE Brewing’s canned nitro coffee and Mountain Dew’s RISE ENERGY drink. The practical stake is the standard of appellate review: clear error under Rule 52(a)(6) if strength is a question of fact; something closer to *de novo* if it is a legal conclusion. The answer determines how much deference a district court’s injunction ruling receives in a very large category of cases.

⁸⁵ *Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979); *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982).

⁸⁶ 532 U.S. 275 (2001); *see also* *Lakoski v. James*, 66 F.3d 751 (5th Cir. 1995).

⁸⁷ No. 25-159, WL 1855073 (U.S. June 29, 2026) (on cert. to the Eighth Circuit); 15 U.S.C. § 717f(h).

⁸⁸ No. 24-1016, WL 1855011 (U.S. June 29, 2026) (on cert. to the Second Circuit); 15 U.S.C. § 1114.

III. The Emergency Docket

Anyone forecasting a Supreme Court Term from the merits docket alone is reading half the box score. Over the past two Terms, the Court's most consequential work has migrated to the emergency docket. The removal questions about the Federal Trade Commission and the Federal Reserve and the tariffs litigation all reached the Court first as emergency applications, and how those applications were resolved largely determined what followed.

A couple of conventions make the emergency docket easier to understand. Applications carry an "A" suffix on the docket number. A stay entered pending certiorari is a standing invitation: The Court has told the parties it expects a petition and it has preserved the status quo to receive one. As the Court put it last term, its interim orders, while not conclusive on the merits, inform how a court should exercise its equitable discretion in like cases⁸⁹—a considerable amount of doctrinal freight for an order that may run three sentences.

As this goes to press, the docket is unusually busy. Two applications this summer show what is at stake.

The more consequential concerns the president's executive order directing federal agencies to compile citizenship lists for state election officials and directing the Postal Service not to handle mail-in or absentee ballots for voters not on state-submitted eligibility lists.⁹⁰ Twenty-three states and the District of Columbia sued; a district court enjoined both provisions as to those states for the 2026 cycle. *Trump v. California* and *Alabama v. California*,⁹¹ challenge that injunction. On August 24, 2026, the Court stayed that injunction on the grounds that the states had sued too early: the order directed federal agencies and its effect on the states would depend on a rule the Postal Service had not yet issued. Whether a President may impose conditions on federal elections that Congress and the States have not is an Elections Clause question of the first order. The Court did not reach it.

Three days earlier, the Court had gone the other way. In *National Park Service v. National Trust for Historic Preservation*,⁹² the Solicitor

⁸⁹ *Trump v. Boyle*, 145 S. Ct. 2653 (2025).

⁹⁰ Exec. Order No. 14399, 91 Fed. Reg. 17125 (Mar. 31, 2026).

⁹¹ Application for a Stay, *Trump v. California*, No. 26A124 (July 27, 2026); Application for a Stay, *Alabama v. California*, No. 26A139 (July 29, 2026).

⁹² Application for Stay of Injunction Pending Appeal, *Nat'l Park Serv. v. Nat'l Tr. for Hist. Pres.*, No. 26A203 (U.S. Aug. 14, 2026).

General sought to stay an injunction halting aboveground construction of a \$400 million, 90,000-square-foot White House ballroom on the site of the demolished East Wing. A divided D.C. Circuit panel had affirmed the injunction, writing that each president is a temporary tenant rather than the owner of the White House.⁹³ On August 21, the Court denied the stay. The merits question is whether the President may reshape federal property without congressional authorization. But the threshold question is whether a preservation organization has standing to sue over a building its members find objectionable. The most conspicuous construction project in Washington may turn on whether anyone is entitled to complain about it.

Compare that denial with the Court's other dispositions. It granted stays in the redistricting cases—Texas, New York, and Alabama—while declining to disturb rulings that protected officials from removal, in the latter instance because it was holding those questions for merits argument.⁹⁴ In *Mirabelli v. Bonta*, it partially vacated a Ninth Circuit stay in a parental-notification case, with Justice Amy Coney Barrett writing for herself, the Chief Justice, and Justice Brett Kavanaugh.⁹⁵ Anyone reading *International Partners* closely should read that lineup first.

The emergency docket has become the place where the Court signals which precedents remain good law without saying so in an opinion. *Humphrey's Executor*⁹⁶ was functionally dead through a series of stay orders well before *Slaughter* made it official. A reader trying to anticipate what becomes of *Bivens*, or of prolonged immigration detention, should watch the “A” orders as closely as the argument calendar.

IV. The Certiorari Pipeline

More than half the term remains to be granted. Five clusters seem likeliest to fill it.

⁹³ No. 26-5123, WL 2276494 (D.C. Cir. Aug. 7, 2026) (Millet and Garcia, JJ.; Rao, J., dissenting), affirming a preliminary injunction entered April 16, 2026 (Leon, J.).

⁹⁴ *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418 (2025) (Texas); *Malliotakis v. Williams*, 146 S. Ct. 809 (2026) (New York); *Allen v. Milligan*, 146 S. Ct. 1377 (2026) (Alabama).

⁹⁵ 607 U.S. 492 (2026) (Barrett, J., concurring, joined by Roberts, C.J., and Kavanaugh, J.; Kagan, J., dissenting, joined by Jackson, J.).

⁹⁶ See *Trump v. Wilcox*, 145 S. Ct. 1415 (2025); *Trump v. Boyle*, 145 S. Ct. 2653 (2025).

A. Presidential Immunity

Trump v. Carroll and *United States v. Carroll*⁹⁷ arise from the \$83.3 million defamation judgment against the president. Under the Westfall Act, the attorney general may certify that a federal employee sued in tort was acting within the scope of employment, substituting the United States as defendant—which ends a defamation case because the government has never waived immunity for that tort. In 2020, Attorney General William Barr certified that statements the president made during his first term fell within the scope of his office. The department declined to certify on remand. The case went to a jury with no substitution motion pending. Only after the appeal was briefed did Trump and the government jointly renew the request. The Second Circuit held it was too late.

The president’s petition adds two questions of greater reach: whether presidential immunity can be forfeited because a first responsive pleading did not invoke it by name, and whether a sitting president’s statements from the White House denying allegations of personal wrongdoing are official acts under *Trump v. United States*. The second is the one to watch—a holding that a president’s public denials of personal misconduct are official acts would extend that decision well past the criminal-prosecution context into ordinary civil liability.

B. Enumerated Powers

Two petitions ask whether the Corporate Transparency Act (CTA) exceeds Congress’s power under the Commerce Clause: *National Small Business United v. Bessent*, out of the Eleventh Circuit, which upheld the act in December, and *Texas Top Cop Shop v. Blanche*, from the Fifth.⁹⁸

⁹⁷ Petition for a Writ of Certiorari, *Trump v. Carroll*, No. 26-141 (July 28, 2026); Petition for a Writ of Certiorari, *United States v. Carroll*, No. 26-142 (July 30, 2026); see *Trump v. United States*, 603 U.S. 593 (2024); 28 U.S.C. § 2679.

⁹⁸ Nat’l Small Bus. United v. Bessent, No. 25-1201; Tex. Top Cop Shop, Inc. v. Blanche, No. 25-1290. The Eleventh Circuit decided *NSBU* on December 16, 2025; Justice Thomas extended the time to petition to April 15, 2026. The government waived its right to respond and the Court subsequently called for a response. In the interests of full disclosure, the Center for Individual Rights represents the petitioners in *Texas Top Cop Shop*.

The act requires some 32 million companies to report sensitive personal information about their owners to a law-enforcement database maintained by the Treasury Department's Financial Crimes Enforcement Network (FinCEN). What triggers the reporting obligation is not selling anything, shipping anything, or crossing any state lines. It is simply filing formation papers in a state.

Congress may regulate commercial activity, including local activity that substantially affects interstate markets.⁹⁹ The CTA, however, does not regulate activity; it regulates existence. Incorporate, and you owe the report. Petitioners note that the Constitutional Convention of 1787 rejected giving the federal government power over "charters of incorporation."¹⁰⁰

The government's response is to assert the challenges are effectively moot, since on August 11, FinCEN issued a final rule exempting domestic corporations and persons from the reporting requirement.¹⁰¹ The rule does not, however, exempt foreign corporations or their beneficial owners from reporting, and the Act itself remains unchanged.

Ream v. Department of the Treasury raises a similar question, asking whether the federal ban on home distilling exceeds that power and whether *Raich* should be cabined at last.¹⁰²

C. Immigration Detention

Rhoney v. Barbosa da Cunha and *Raycraft v. Lopez-Campos*¹⁰³ both ask whether US Code Title 8, Section 1225(b)(2)(A) requires detention throughout removal proceedings for noncitizens who entered unlawfully. *Raycraft* adds a due process question about bond hearings. This is the mandatory-detention theory the administration has

⁹⁹ *Gonzales v. Raich*, 545 U.S. 1 (2005); *see also* *Wickard v. Filburn*, 317 U.S. 111 (1942); *United States v. Lopez*, 514 U.S. 549 (1995).

¹⁰⁰ 2 RECORDS OF THE FEDERAL CONVENTION OF 1787 615–16 (Max Farrand ed., 1911).

¹⁰¹ Beneficial Ownership Information Reporting Requirement Revision, 91 Fed. Reg. 52508 (Aug. 11, 2026) (effective Aug. 14, 2026).

¹⁰² Petition for a Writ of Certiorari, *Ream v. United States Dep't of the Treasury*, No. 26-93 (July 20, 2026).

¹⁰³ Petition for a Writ of Certiorari, *Rhoney v. Barbosa da Cunha*, No. 26-104 (July 23, 2026) (docket notes a filing error); Petition for a Writ of Certiorari, *Raycraft v. Lopez-Campos*, No. 25-1415 (June 22, 2026).

pressed for entrants generally, as distinct from the criminal-conviction provision at issue in *Genalo*. The courts of appeals have divided seven to two against the government with the First Circuit joining the majority in August. If *Genalo* is resolved on mootness, one of these becomes the natural vehicle for the constitutional question—which may be why the Court is holding them. Separately, *Mullin v. National TPS Alliance*¹⁰⁴ challenges the Ninth Circuit’s affirmance of an order setting aside the termination of temporary protected status for Venezuela and partial vacatur for Haiti.

D. Removal-Power Remedies

*Community Financial Services Association of America v. CFPB*¹⁰⁵ presents the question left over from *Collins v. Yellen*: whether a party challenging action by an officer who remained in office because of an unconstitutional removal restriction must show that a lawfully removable officer would have acted differently. After *Slaughter*, this determines whether the removal-power cases have retrospective consequences at all—whether the past six years of separation-of-powers holdings generate remedies or only declarations. The petition has been pending an unusually long time.

E. Takings

Four petitions test the outer edges of the Takings Clause. *Pena v. City of Los Angeles*¹⁰⁶ and *Hadley v. City of South Bend*¹⁰⁷ ask whether the clause has a police-power exception, both involving police who destroyed an innocent person’s property while pursuing a fugitive. *O’Donnell v. City of Chicago*¹⁰⁸ challenges the city’s practice of impounding and selling vehicles over unpaid parking tickets while retaining the proceeds and extending the practice to other vehicles

¹⁰⁴ Petition for a Writ of Certiorari, *Mullin v. Nat’l TPS All.*, No. 26-48 (July 9, 2026).

¹⁰⁵ Petition for a Writ of Certiorari, *Cmt. Fin. Servs. Ass’n of Am., Ltd. v. CFPB*, No. 24-969 (Mar. 7, 2025); see *Collins v. Yellen*, 594 U.S. 220 (2021); *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020).

¹⁰⁶ Petition for a Writ of Certiorari, *Pena v. City of Los Angeles*, No. 25-1163 (Apr. 6, 2026).

¹⁰⁷ Petition for a Writ of Certiorari, *Hadley v. City of South Bend*, No. 25-1158 (Apr. 6, 2026).

¹⁰⁸ Petition for a Writ of Certiorari, *O’Donnell v. City of Chicago*, No. 25-1098 (Mar. 16, 2026).

registered to the same driver—a question *Tyler v. Hennepin County*¹⁰⁹ answered in the property-tax context three years ago. *The Coalition for Fairness in SoHo and NoHo v. City of New York*¹¹⁰ asks whether *Nollan* and *Dolan* extend to monetary exactions beyond those imposed in lieu of a dedication of real property.

A handful of others are worth watching, including whether a state may compel private commercial property owners to host unwanted expressive activity,¹¹¹ the Federal Reserve’s discretion to deny master accounts to state-chartered banks, the felon-in-possession ban as applied to nonviolent felons, criminal forfeiture without a jury finding, the standard for religious accommodation in employment,¹¹² the dormant Commerce Clause question reserved in *Mallory*,¹¹³ the Justice Department’s effort to obtain state voter rolls, and whether Maine may require lobstermen to carry GPS trackers subject to continuous surveillance.¹¹⁴ Nine more await the Solicitor General’s views.

* * *

What can be said about the upcoming Term is that the cases already taken share a preoccupation with the machinery. Even the cases that look substantive may turn on it. *Viramontes*, the AR-15 case, is a Second Amendment case whose scope will likely be set by an objection about the record below. *St. Mary*, the Colorado preschool case, is a religious liberty case the parishes may well win without

¹⁰⁹ 598 U.S. 631 (2023).

¹¹⁰ Petition for a Writ of Certiorari, Coal. for Fairness in SoHo & NoHo, Inc. v. City of New York, No. 25-1187 (May 18, 2026); see *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

¹¹¹ Petition for a Writ of Certiorari, Majestic Realty Co. v. Salazar, No. 25-1322 (May 26, 2026); see *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980).

¹¹² *Groff v. DeJoy*, 600 U.S. 447 (2023).

¹¹³ *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023).

¹¹⁴ Petition for a Writ of Certiorari, Custodia Bank, Inc. v. Fed. Rsrv. Bd. of Governors, No. 26-62 (July 10, 2026); Petition for a Writ of Certiorari, *United States v. Hembree*, No. 25-1219 (filed Apr. 2026); Petition for a Writ of Certiorari, *Mizrahi v. United States*, No. 25-1238 (Apr. 27, 2026); see *Libretti v. United States*, 516 U.S. 29 (1995); Petition for a Writ of Certiorari, *Petersen v. Snohomish Reg’l Fire & Rescue*, No. 25-1210 (Apr. 16, 2026); Petition for a Writ of Certiorari, *Norfolk S. Ry. Co. v. Mallory*, No. 25-1208 (Apr. 22, 2026); Petition for a Writ of Certiorari, *Thompson v. Wilson*, No. 25-1105 (Mar. 19, 2026).

the Court ever revisiting the precedent that governs it. *Mi Familia Vota*, the Arizona voter-registration case, is a voting case in which the most significant question might be whether a consent decree signed by a single state official binds the state against a later statute.

A Court that expands rights while contracting the mechanisms for asserting them will have built something impressive and largely ornamental. Whether this Term looks like that will depend as much on what the Court adds between now and June as on what it has already taken.