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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JOSEPH KIRCHNER,
Plaintiff,

Case No. 1:25-cv-02735-ACR

vs.

**MEMORANDUM OF LAW J:
KIRCHNER STANDING
FRAMEWORK
IMPLEMENTATION GUIDE AND
RULE PROPOSALS**

MIKE JOHNSON, in his individual and
official capacity as Speaker of the
United States House of Representatives;
DONALD J. TRUMP, in his individual
capacity as former and current President
of the United States;
PAM BONDI, in her individual and
official capacity as Attorney General of
the United States;
BRENDAN CARR, in his individual
and official capacity as Chairman of the
Federal Communications Commission;
THE UNITED STATES HOUSE OF
REPRESENTATIVES;
ANTHROPIC PBC;
OPENAI, INC.;
APPLE INC.;
COMCAST CABLE
COMMUNICATIONS, LLC;
METR (MODEL EVALUATION &
THREAT RESEARCH);
and DOES 1-20, unknown co-
conspirators,
Defendants.

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I. Introduction

1. This Memorandum of Law respectfully requests that this Court adopt proposed amendments to the Federal Rules of Civil Procedure establishing the Kirchner Standing Framework for constitutional enforcement. The Framework addresses a constitutional crisis that current standing doctrine has created: enumerated limits on governmental power have become judicially unenforceable because violations harm all citizens equally, yet courts dismiss structural constitutional challenges as "generalized grievances" that no individual citizen has standing to remedy.

2. The crisis is not theoretical. Plaintiff's Amended Complaint documents systematic ultra vires conduct across all three branches of government violating Article I enumerated limits on appropriations, legislative process, and judicial jurisdiction. Current doctrine requires dismissal of these structural challenges under *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), because violations affecting constitutional structure equally harm everyone, meaning no plaintiff can demonstrate particularized

injury distinct from the general public. The result: enumerated constitutional limits exist on paper but lack judicial enforcement, enabling governmental actors to exceed constitutional boundaries with impunity.

3. The proposed amendments solve this crisis by distinguishing **enumerated constitutional limits** (which protect everyone through constitutional structure and create universal standing) from **individual constitutional rights** (which require traditional Article III standing under *Lujan*). This distinction is not judicial innovation but implementation of principles already established in Supreme Court precedent, particularly *Clinton v. City of New York*, 524 U.S. 417 (1998), *INS v. Chadha*, 462 U.S. 919 (1983), and *Powell v. McCormack*, 395 U.S. 486 (1969), which recognized standing for structural constitutional violations despite universal harm.

II. NATURE OF RELIEF SOUGHT

4. Plaintiff requests this Court adopt proposed amendments to Federal Rules of Civil Procedure 8, 12, 24, 42, 54, 62, and 86, establishing comprehensive framework for constitutional enforcement through:

Track One - Universal Standing: Any U.S. citizen may challenge violations of enumerated constitutional limits on governmental power, seeking structural declaratory and injunctive relief, with coordination procedures ensuring each violation is addressed once comprehensively rather than through redundant litigation.

Track Two - Traditional Standing: Individual constitutional rights claims require particularized injury under *Lujan*, with expedited procedures utilizing collateral estoppel from Track One findings to resolve damages claims efficiently.

Track Three - Statutory Claims: Non-constitutional claims proceed under existing rules and standing requirements without modification.

5. The amendments utilize existing judicial infrastructure including consolidation procedures (Rule 42), multidistrict litigation (28 U.S.C. § 1407), intervention rights (Rule 24), collateral estoppel doctrine, and automatic mootness principles.

Implementation requires minimal technical investment (\$5,000-\$10,000 for CM/ECF Constitutional Violation Registry configuration) and 1-2 year learning curve comparable to other major procedural reforms throughout legal history.

6. Critical Distinction - Equitable Relief vs. Legal Remedies:

Track One = Equitable Relief ONLY: Track One plaintiffs seeking structural relief based on universal standing may obtain ONLY equitable remedies:

- **Declaratory judgment:** Court declaration that governmental conduct violated enumerated constitutional provision
- **Injunctive relief:** Court order preventing defendant from continuing or repeating constitutional violation
- **Mandamus:** Court order compelling defendant to perform constitutional duty

Track One CANNOT Obtain: Monetary damages, compensatory relief, restitution, or any other legal remedies requiring particularized injury under Article III. *See Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) (equitable relief distinguished from legal remedies).

Why This Limitation Exists: Track One standing is universal—any citizen can challenge enumerated violations regardless of individual harm. Allowing monetary damages would create perverse incentive: race to file Track One case to obtain windfall despite no particularized injury. Constitutional requirement: legal remedies (monetary

damages) require particularized injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Track Two = Legal Remedies Available: Track Two plaintiffs proving particularized injury under traditional *Lujan* standing may obtain:

- **Compensatory damages:** Money compensating actual harm caused by constitutional violation
- **Nominal damages:** Symbolic compensation recognizing rights violation even if no economic harm
- **Punitive damages:** Where authorized by statute, to punish egregious violations
- **Equitable relief:** Declaration and injunction (if appropriate)
- **Attorney's fees:** Under applicable fee-shifting statutes

Track Two Requires Particularized Injury: Plaintiff must prove concrete harm to plaintiff specifically, caused by violation, redressable through court order. Track Two plaintiff cannot use universal standing—must satisfy traditional Article III standing.

Attorney's Fees Exception for Track One: Prevailing Track One plaintiffs may seek court-ordered attorney's fees under applicable fee-shifting statutes (42 U.S.C. § 1988 for constitutional claims). Fees are litigation costs, not damages compensating injury. Court awards fees to compensate attorney's work obtaining structural relief benefiting everyone. **Court retains complete discretion to award, reduce, or deny fees even to prevailing plaintiffs.** *Perdue v. Kenny A.*, 559 U.S. 542, 553-54 (2010).

Track One Plaintiffs Are NOT "Prevailing Parties" If They Voluntarily Dismiss: Accepting payment from defendant to dismiss without obtaining structural relief does not make plaintiff prevailing party entitled to court-ordered fees. *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598, 604 (2001) (prevailing party must obtain "judicially sanctioned change in legal relationship"). Private payment to induce dismissal is not court-ordered relief.

Track One Without Track Two Claims - Complete Pro Bono Risk: Plaintiffs filing Track One petitions without adding Track Two individual damages claims face complete pro bono risk:

- **If prevail:** Court may award attorney's fees (with discretionary enhancement for humanitarian service), but court has discretion to reduce or deny
- **If lose on merits:** No fees, complete loss
- **If voluntarily dismiss:** No fees (not prevailing party), complete loss
- **If priority transferred:** No fees, complete loss despite litigation investment

This risk structure ensures Track One plaintiffs serve constitutional enforcement as genuine public service, not as vehicle for individual enrichment through litigation.

III. SUMMARY OF PROPOSED AMENDMENTS

A. Proposals

7. Rule 8(a)(4) - Constitutional Violation Statement: Creates three-track system requiring plaintiffs invoking constitutional provisions to file Constitutional Violation Statement identifying which track applies based on whether challenge involves enumerated limit (Track One), individual right (Track Two), or statutory claim (Track Three). Track One Petition option enables citizens to seek structural relief without claiming individual damages, serving constitutional enforcement as public service. Track One petitions require Anti-Collusion Certification signed under penalty of perjury prohibiting payments from defendants except court-ordered fees upon prevailing or fees through consent decrees providing full structural relief, with enforcement mechanisms including sanctions, disgorgement, criminal referral under 18 U.S.C. § 201, and permanent disqualification from Track One standing nationwide.

1 **8. Rule 12(j) - Screening Constitutional Violation Statements:** Establishes
2 ministerial three-stage review (completeness, enumeration verification, facial
3 plausibility) enabling courts to filter improper Track One claims at pleading stage
4 while preserving access for legitimate structural challenges. Dismissals without
5 prejudice permit plaintiffs to cure deficiencies within 21 days.

6 **9. Rule 24(d) - Priority and Transfer:** First-filed Track One case receives priority
7 absent deficiency challenges. Superior cases may challenge priority or original
8 plaintiff may voluntarily transfer. Vulnerable population protection ensures citizen-
9 advocates can initiate challenges for populations unable to access courts directly.

10 **10. Rule 42(c) - Coordination:** Constitutional Violation Registry enables clerks to
11 identify related Track One cases automatically. Subsequent cases stayed pending
12 priority case resolution. Notice requirements ensure all plaintiffs informed of
13 developments. Post-resolution mootness dismisses subsequent Track One cases
14 seeking identical relief already obtained.

15 **11. Rule 54(e) - Attorney's Fees:** Prevailing Track One plaintiffs entitled to
16 reasonable fees under applicable fee-shifting statutes. Track One Petitions receive 25%
17 enhancement reflecting public service without individual recovery. Fee refusal option
18 enables humanitarian choice converting awarded fees to Track Two Victim
19 Compensation Fund benefiting persons harmed by violation.

20 **12. Rule 62(i) - Appellate Stays:** Track Two proceedings automatically stayed during
21 Track One appeals protecting secondary plaintiffs' reliance on constitutional findings.
22 Intervention rights enable secondary plaintiffs to defend findings they depend upon.

1 Comprehensive procedures address all appellate outcomes including affirmance,
2 reversal, and partial reversal.

3 **13. Rule 86(c) - Effective Dates:** 180-day implementation period enables orderly
4 transition. Pending cases may elect Framework procedures within 60 days. No
5 retroactive application to final judgments. Clarifies relationship to *Lujan* (preserved
6 for Track Two) and structural standing precedent (implemented through Track One).

7 **B. The "see Something, Say Something" Principle**

8 **14. Federal Policy Recognizes Distributed Citizen Enforcement:** The Department of
9 Homeland Security's "See Something, Say Something" campaign exemplifies national
10 recognition that effective enforcement requires citizen participation without standing
11 barriers. Citizens who observe suspicious activity threatening public safety can report
12 it without proving they personally were targeted. The system recognizes that: (a) those
13 who see threats first are often not direct victims, (b) early detection prevents greater
14 harm, (c) requiring personal victimization before reporting creates enforcement gaps,
15 and (d) distributed observation (millions of citizens watching) provides better security
16 than concentrated enforcement (waiting for victims).

17 **15. Constitutional Violations Require Identical Logic:** Governmental conduct
18 exceeding enumerated constitutional limits threatens structural governance affecting all
19 citizens—exactly parallel to security threats affecting public safety. Yet current
20 standing doctrine requires the opposite approach: (a) those who recognize
21 constitutional violations cannot challenge them without particularized harm, (b)
22 detection occurs late (after harm) rather than early (when recognized), (c) requiring

1 personal victimization before standing creates permanent enforcement gaps, and (d)
2 concentrated observation (only direct victims) provides worse enforcement than
3 distributed observation (all citizens watching).

4 **16. The Inconsistency Is Indefensible:** We trust citizens to enforce national security
5 through observation without proving personal targeting. We prohibit citizens from
6 enforcing constitutional limits through observation without proving personal targeting.
7 This inconsistency reveals standing doctrine's fundamental flaw: when violations affect
8 everyone equally, the system that works for security (citizen reporting) is prohibited for
9 constitutional enforcement (standing doctrine). If "see something, say something" is
10 effective security policy, it should be effective constitutional policy.

11 **17. Neighborhood Watch Analogy:** Local neighborhood watch programs operate on
12 identical principle: citizens who observe suspicious activity in their neighborhood can
13 report it without proving the burglar targeted their house specifically. Crime in the
14 neighborhood harms everyone collectively, justifying collective enforcement through
15 distributed observation. Constitutional violations harming everyone collectively
16 should justify collective enforcement through distributed observation—yet standing
17 doctrine prevents precisely this.

18 **18. Track One Implements "See Something, Say Something" for Constitutional**
19 **Violations:** The Framework applies proven citizen enforcement logic to constitutional
20 governance: (a) citizens who recognize enumerated violations can challenge them
21 (Track One standing), (b) early detection enables intervention before violations
22 compound, (c) no particularized harm required when violation affects everyone
23 equally, and (d) distributed constitutional observation (all informed citizens) provides

1 better enforcement than concentrated victimization (only those suffering particularized
2 harm). This is not radical innovation—it is applying to constitutional enforcement the
3 exact logic Homeland Security applies to national security.

4 **19. The Alternative Is Selective Enforcement Philosophy:** Rejecting Track One
5 while maintaining "See Something, Say Something" for security requires defending the
6 position that: (a) citizen observation is trusted for security threats but not constitutional
7 violations, (b) particularized harm is unnecessary for security reporting but required for
8 constitutional challenges, (c) early detection is valuable for terrorism but not
9 governmental overreach, and (d) distributed enforcement works for crime but not for
10 constitutional limits. No principled distinction supports this selective enforcement
11 philosophy—it reveals standing doctrine as arbitrary barrier preventing citizen
12 enforcement of constitutional structure.

13 **C. The Unconstitutional Burden Of Extra-judicial Advocacy**

14 **20. Current Standing Doctrine Forces Extra-Judicial Self-Help:** When citizens
15 recognize constitutional violations but lack particularized harm for traditional standing,
16 current doctrine forces them to employ extra-judicial means: (a) media campaigns
17 hoping journalists publicize violations, (b) victim recruitment convincing those with
18 particularized harm to file suit, (c) lobbying efforts pressuring legislative or executive
19 action, (d) academic publishing hoping scholars with platform amplify concerns, or (e)
20 career disruption abandoning current work to become legal scholars with publication
21 access. Standing doctrine transforms constitutional enforcement from judicial process
22 into media/lobbying campaign—exactly what judicial review was designed to replace.

1 **21. The Bomb Squad Principle—We Don't Require Confrontation:** When citizens
2 observe suspicious packages threatening public safety, we do not expect them to: open
3 packages to verify threats, convince bomb squads to respond, publish articles about
4 suspicious activity, contact potential victims, or become explosives experts. We expect
5 simple reporting to authorities who investigate professionally. The same principle
6 should apply to constitutional violations: citizens who recognize violations should
7 report (file) to courts, which investigate (adjudicate) professionally. Requiring extra-
8 judicial advocacy before judicial access violates this basic safety principle—forcing
9 confrontation when reporting mechanisms should exist.

10 **22. Extra-Judicial Requirements Are Constitutionally Problematic:** Requiring
11 advocates to employ extra-judicial means before courts will hear constitutional
12 challenges violates multiple constitutional principles:

13 **(1) Courts Exist to Prevent Self-Help:** Judicial system's purpose is preventing
14 citizens from confronting violations through self-help. When standing doctrine refuses
15 judicial review, it forces exactly the self-help courts exist to prevent—requiring
16 advocates to confront violators (governmental actors), recruit victims, or wage media
17 campaigns rather than accessing courts directly.

18 **(2) Separation of Powers Requires Judicial Enforcement:** Constitution separates
19 powers so courts can check governmental overreach through judicial review. Standing
20 doctrine forcing advocates to use media, lobbying, or public pressure instead of courts
21 violates separation of powers by making executive/legislative/public pressure the only
22 enforcement mechanisms for structural violations.

1 **(3) Rule of Law Demands Accessible Courts:** Rule of law means governmental
 2 conduct is subject to legal constraints enforced through courts. If courts are
 3 inaccessible to those recognizing violations (standing barriers), enforcement depends
 4 on extra-legal mechanisms (media access, lobbying connections, academic platforms).
 5 That substitutes media/lobbying power for legal process—undermining rule of law.

6 **(4) Citizenship Includes Judicial Access:** Constitutional citizenship includes right to
 7 petition courts for redress. Requiring citizens to exhaust extra-judicial means (media
 8 campaigns, victim recruitment, career changes) before courts will hear them conditions
 9 constitutional rights on non-constitutional prerequisites—wealth (afford career
 10 change), connections (media access), or platform (academic publishing).

11 **23. The Danger of Victim Recruitment Requirements:** Standing doctrine forcing
 12 advocates to recruit victims with particularized harm creates perverse consequences:
 13 (a) exploitation—traumatized victims become litigation tools rather than protected
 14 persons, (b) inefficiency—victims may not recognize constitutional dimensions of their
 15 harm, requiring advocates to educate them, (c) delay—finding willing victims takes
 16 time while violations persist, (d) failure—some structural violations have no willing
 17 victim plaintiffs (as Acosta case proves—17 years, zero challenges despite dozens of
 18 victims). Constitutional violations should not persist until advocates successfully
 19 recruit victims willing to litigate. Courts should hear advocates directly when they
 20 document enumerated violations—allowing victims to join later through Track Two if
 21 they choose.

22 **24. The Publication Barrier Entrenches Inequality:** Requiring advocates to publish
 23 scholarly articles before courts take violations seriously creates gatekeeping that

1 entrenches inequality: (a) publication requires institutional affiliation or independent
2 wealth, (b) law review submission/acceptance takes months to years, (c) academic
3 citation takes additional years to accumulate, (d) by time publication gains traction,
4 violations have persisted for years. This barrier ensures only institutional insiders or
5 independently wealthy advocates can effectively challenge constitutional violations—
6 excluding citizen advocates who recognize violations but lack publication platforms.
7 Constitutional enforcement should not depend on academic gatekeeping.

8 **25. Track One Provides Direct Reporting Mechanism:** The Framework restores
9 constitutional order by providing direct judicial reporting mechanism for recognized
10 violations: (a) citizen recognizes enumerated violation, (b) citizen documents violation
11 in Constitutional Violation Statement, (c) citizen files Track One petition, (d) court
12 reviews on merits. This simple reporting process—parallel to security threat
13 reporting—eliminates dangerous extra-judicial requirements. Citizens need not
14 confront violators, recruit victims, wage media campaigns, or change careers.
15 Recognition + documentation + filing = judicial review. That is how constitutional
16 enforcement should work in nation governed by law.

17 **26. Judicial Review Is the Constitutional Response:** The Founders designed courts
18 as the constitutional response to governmental overreach. When citizen recognizes
19 governmental conduct exceeding enumerated limits, the constitutional response is
20 judicial review—not media campaigns, not victim recruitment, not career disruption,
21 not lobbying. Standing doctrine forcing extra-judicial advocacy substitutes politics for
22 law, media access for judicial review, and lobbying power for constitutional
23 enforcement. Track One restores the Founders' design: recognized violations receive

judicial review through direct court access, not indirect advocacy through non-judicial channels.

D. Relationship To Existing Doctrine

27. Rule 8(a)(4) Implements, Not Overrules, Supreme Court Precedent: The Framework does not create new constitutional standing doctrine. It implements distinctions Supreme Court already recognizes but current practice obscures.

28. *Lujan* Preserved for Individual Rights: *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), remains controlling authority for Track Two individual rights claims. When plaintiff alleges Fourth Amendment violation, Fifth Amendment taking, or Fourteenth Amendment equal protection violation, traditional Article III standing applies fully: concrete and particularized injury, causation, redressability. Rule 8(a)(4)(B) makes this explicit.

29. *Clinton*, *Chadha*, and *Powell* Implemented for Structural Claims: These cases recognized standing for structural constitutional violations despite universal harm:

Clinton v. City of New York, 524 U.S. 417 (1998): Line Item Veto Act violated Presentment Clause. Plaintiffs had standing despite universal structural harm because they could "claim a personal stake in having an actual injury redressed." *Id.* at 429-30. Framework implements this by permitting Track One standing when plaintiff seeks structural relief for enumerated limit violations.

INS v. Chadha, 462 U.S. 919 (1983): Legislative veto violated Presentment and bicameralism. Standing existed despite structural violation affecting everyone because

1 Chadha faced deportation under constitutionally defective process. *Id.* at 935 n.5.

2 Framework extends principle: if person with individual stake can challenge structural
3 violation, then in Track One cases addressing only structural violations, any citizen has
4 standing.

5 **Powell v. McCormack**, 395 U.S. 486 (1969): House exclusion of Representative
6 Powell violated qualifications requirements. Powell had standing to challenge
7 structural violation of separation of powers. *Id.* at 512-14. Framework implements by
8 recognizing structural violations create standing even when harm is universal.

9 **30. Distinguishing *Richardson* and *Schlesinger***: Framework distinguishes cases
10 where Supreme Court correctly denied standing:

11 **United States v. Richardson**, 418 U.S. 166 (1974): Plaintiff sought disclosure of CIA
12 budget under Statement and Account Clause. Court held plaintiff lacked standing
13 because claim was generalized grievance seeking information for oversight purposes,
14 not challenging completed ultra vires governmental action. Framework preserves
15 this—informational/monitoring claims lack standing.

16 **Schlesinger v. Reservists Committee**, 418 U.S. 208 (1974): Plaintiffs challenged
17 Members of Congress serving in military reserves as violating Incompatibility Clause.
18 Court held claim was generalized grievance common to all members of public.
19 Framework distinguishes—that case involved ongoing status (membership in reserves)
20 not completed ultra vires action exceeding enumerated limits.

21 **31. Framework's Distinction**: Track One addresses **completed ultra vires**
22 **governmental action** exceeding enumerated constitutional limits. Richardson and
23 Schlesinger addressed informational claims and ongoing status questions. Framework

1 does not resurrect those claims—it addresses different category of structural violations
2 where government has actually exceeded enumerated limits through specific actions.

3 **32. Ninth Amendment Constitutional Foundation:** The Ninth Amendment provides
4 explicit constitutional textual basis: "The enumeration in the Constitution, of certain
5 rights, shall not be construed to deny or disparage other rights retained by the people."
6 U.S. Const. amend. IX. This language establishes critical distinction: the Framers
7 chose "**the people**" (collective) rather than "**persons**" (individual) deliberately. When
8 Constitution enumerates limit—"No Money shall be drawn from the Treasury, but in
9 Consequence of Appropriations made by Law"—this creates enforceable collective
10 right belonging to "the people" as organized political community. When government
11 violates enumerated limit, harm falls on "the people" collectively through damage to
12 constitutional structure protecting everyone. Track One implements Ninth
13 Amendment's collective enforcement mechanism. Track Two applies to individual
14 rights belonging to specific "persons" who must prove particularized harm under
15 *Lujan*. Framework thus implements the Ninth Amendment's textual distinction
16 between collective structural rights ("the people") and individual personal rights
17 ("persons").

18 **33. This Framework Restores 800 Years of Constitutional Tradition:** The
19 distinction between enumerated limits (universal enforcement) and individual rights
20 (particularized enforcement) has deep historical roots. Magna Carta's Security Clause
21 (1215) created collective enforcement mechanism: any baron could challenge the
22 King's violations of enumerated Charter provisions even without showing
23 particularized harm distinct from other barons. Enumerated limits protected all

1 subjects through structural constraints on royal power—making enforcement a
2 collective right, not dependent on individual injury. The Framers inherited and
3 deliberately implemented this principle through constitutional enumeration combined
4 with Article III judicial review. They understood that enumerated limits create
5 collective rights enforceable by "the people," while individual rights create personal
6 claims enforceable by injured "persons." Modern doctrine's departure—applying
7 *Lujan's* particularized injury requirement to enumerated constitutional limits—is
8 historical accident, not deliberate constitutional design. Framework restores original
9 constitutional structure by recognizing that enumerated limits protecting everyone
10 through structure create universal standing, while individual rights protecting specific
11 persons require particularized standing under *Lujan*.

12 **34. Rules Enabling Act Authority:** Federal Rules of Civil Procedure amendments
13 may be adopted through: (1) Supreme Court proposal under 28 U.S.C. § 2072, (2)
14 Congressional legislation, or (3) district court standing orders implementing local
15 practice. Courts possess inherent authority to manage dockets and establish pleading
16 requirements. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (Rule 8 serves "to give
17 the defendant fair notice of what the... claim is and the grounds upon which it rests").

18 **35. Supreme Court Has Never Applied Lujan's Generalized Grievance Bar to**
19 **Enumerated Constitutional Violations:** Post-*Lujan* (1992), the Supreme Court has
20 consistently recognized standing for structural constitutional violations without
21 applying the "generalized grievance" barrier. *Clinton v. City of New York* (1998) found
22 standing for citizens affected by line-item veto despite universal structural harm—six
23 years after *Lujan*. The Court has never held that enumerated constitutional violations

1 require particularized injury distinct from the general public. This proves *Lujan's*
2 "generalized grievance" framework applies to statutory claims (like the Endangered
3 Species Act claim in *Lujan* itself) and individual rights claims requiring concrete harm
4 to specific persons—not to enumerated constitutional limits protecting everyone
5 through structure. Framework implements this existing doctrinal distinction
6 systematically rather than leaving it to inconsistent case-by-case adjudication.

7 **36. Article III Satisfaction Through Enumerated Violations:** Universal standing for
8 enumerated constitutional limit violations satisfies Article III because the violation
9 itself constitutes concrete injury to constitutional structure shared by all citizens.

10 Unlike policy disagreements or generalized grievances about governmental priorities,
11 violations of enumerated limits damage the constitutional architecture that Article III
12 courts exist to protect. When the Constitution states "No Money shall be drawn from
13 the Treasury, but in Consequence of Appropriations made by Law," U.S. Const. art. I,
14 § 9, cl. 7, this limit protects every citizen's interest in lawful government. Violation of
15 this limit injures every citizen's concrete interest in constitutional governance—not
16 abstractly, but through the specific structural damage that unauthorized appropriations
17 cause to separation of powers. The "case or controversy" requirement is satisfied
18 because a concrete constitutional violation has occurred, adversarial parties exist
19 (citizen versus government), and judicial resolution will provide redress (declaration
20 and injunction restoring constitutional compliance). This is not advisory opinion or
21 hypothetical dispute—it is adjudication of actual constitutional violation with real
22 consequences.

37. Separation of Powers Supports Framework: The Framework does not expand judicial power—it restores judicial power to its constitutional function. Article III assigns courts the duty to "say what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), including determining when governmental actors exceed constitutional authority. Current standing doctrine creates paradox where courts cannot perform this constitutional function when violations affect everyone equally. This is not judicial restraint—it is judicial abdication. The Framework restores courts to their constitutional role as enforcers of enumerated limits, which is precisely what separation of powers requires. Separation of powers is violated when one branch exceeds constitutional authority without judicial check, not when courts enforce constitutional boundaries through appropriate standing doctrine.

E. Judicial Efficiency And Burden Analysis

38. Framework Reduces Judicial Burden Through Coordination: Critics might argue Track One universal standing creates unmanageable caseloads. This concern mistakes coordination for redundancy. Framework doesn't create dozens of separate proceedings—it consolidates related cases into single coordinated adjudication.

39. Current System Inefficiency: Under *Lujan*, structural challenges are dismissed for lack of standing. This appears efficient (quick dismissals) but is profoundly inefficient when measured by justice delivered:

Constitutional Violations: Remain unaddressed

Judicial Resources: Spent dismissing cases rather than addressing merits

Precedent: No constitutional enforcement guidance established

Future Violations: Continue because no consequences exist

Rule of Law: Erodes as government exceeds limits without judicial review

40. Framework Efficiency: Address each structural violation **once** through coordinated proceedings:

One Priority Case: Comprehensively litigates constitutional question (6-9 months)

Related Cases Stayed: Automatic stays prevent redundant proceedings

Precedent Established: Constitutional violation or compliance determined

Structural Relief Obtained: Declaration and injunction protect all citizens

Automatic Mootness: Subsequent Track One cases dismissed as moot

Track Two Expedited: Individual damages proceed using collateral estoppel (3-6 months)

41. Comparative Resource Analysis - Five Plaintiffs Challenge Same Violation:

Current System (Dismissals):

- 5 complaints filed in different districts
- 5 dismissal motions filed and briefed
- 5 dismissal orders written
- 0 constitutional violations addressed
- Total judicial time: ~50 hours (5 cases × 10 hours each)
- Justice delivered: ZERO

Framework (Coordination):

- 5 complaints filed in different districts
- Registry identifies related cases automatically
- 4 cases stayed (minimal order, ~1 hour each = 4 hours)
- 1 priority case fully litigated (comprehensive = 40 hours)
- 4 mootness dismissals after priority case resolution (~1 hour each = 4 hours)
- Total judicial time: ~48 hours
- Justice delivered: COMPLETE (violation addressed, precedent established, future violations deterred)

Result: Framework consumes similar judicial resources while delivering complete constitutional enforcement versus zero enforcement under current dismissals.

42. Efficiency Versus Justice Trade-Off Is False Dichotomy: The comparison should not be "Framework versus current dismissals" but "Framework versus hypothetical individual litigation of all five cases":

Five Separate Proceedings (No Coordination):

- 5 cases litigated independently
- 5 discovery processes
- 5 expert witnesses
- 5 trials or summary judgment motions
- 5 comprehensive judicial opinions
- Total judicial time: ~200 hours (5 cases × 40 hours each)
- Risk: Inconsistent outcomes across courts

Framework (Coordination):

- 1 case litigated comprehensively
- 1 discovery process
- 1 set of expert witnesses
- 1 trial or summary judgment motion
- 1 comprehensive judicial opinion
- 4 stayed cases dismissed as moot
- Total judicial time: ~48 hours
- Result: Consistent outcome, binding precedent

Savings: Framework provides 75% judicial resource reduction versus redundant litigation while ensuring consistent constitutional interpretation.

43. Screening Reduces Frivolous Filings: Rule 12(j) three-stage screening filters improper Track One claims before coordination triggers:

Stage One - Completeness: Mechanical checklist verification (~15 minutes per case)

Stage Two - Enumeration: Legal determination (~30 minutes per case)

Stage Three - Plausibility: Facial sufficiency review (~30 minutes per case)

1 Total screening time: ~75 minutes per case. Deficient cases dismissed without
 2 prejudice before coordination, preventing frivolous claims from consuming resources.

3 This pre-filing screening function resembles Supreme Court certiorari screening—
 4 clerks filter thousands of petitions, identifying the few warranting full consideration.

5 **44. Constitutional Violation Registry Automates Coordination:** CM/ECF

6 enhancement enables clerks to identify related cases through automated matching:

7 **Technical Implementation:**

- 8 • Plaintiff files complaint with Constitutional Violation Statement
- 9 • Clerk enters constitutional provision, defendant, and conduct description in
- 10 Registry
- 11 • System searches existing cases for matches
- 12 • Automated alert if related case exists
- 13 • Form order staying subsequent case (template auto-populated)

14 **Time Investment:** ~5 minutes additional clerk time per filing. One-time technical
 15 development: \$5,000-\$10,000 for CM/ECF Registry module. This represents 0.0001%
 16 of federal judiciary's \$8 billion annual budget, making cost objection frivolous.

17 **45. Learning Curve Comparable to Other Reforms:** Framework requires judges to
 18 internalize Track One versus Track Two distinction and coordination procedures. This
 19 learning curve resembles other major procedural reforms:

20 **Federal Rules Adoption (1938):** Replaced state-specific procedures with uniform
 21 federal system. Judges learned new pleading, discovery, and motion practice.
 22 Adaptation period: 2-3 years.

23 **Electronic Filing (2000s):** District courts transitioned from paper to CM/ECF
 24 electronic filing. Judges learned new docket management systems. Adaptation period:
 25 1-2 years per district.

Iqbal/Twombly Standards (2007-2009): Heightened pleading standards requiring plausibility rather than mere notice. Judges learned to apply new dismissal threshold.

Adaptation period: 1-2 years.

Framework Learning Curve: Judges learn Track One/Two distinction, Constitutional Violation Statement requirements, coordination procedures. Estimated adaptation period: 1-2 years through Federal Judicial Center training integrated into existing judicial education.

46. Post-Adaptation Efficiency Gains: After learning curve, Framework reduces judicial burden through:

- **Redundant Litigation Eliminated:** One comprehensive proceeding versus dozens duplicating analysis
- **Clearer Pleading Standards:** Constitutional Violation Statement requirements enable mechanical screening
- **Expedited Track Two:** Collateral estoppel eliminates re-litigation of constitutional questions
- **Consistent Precedent:** Coordinated proceedings prevent circuit splits on structural issues
- **Deterrence Effect:** Governmental actors face consequences for violations, reducing future litigation

47. Judicial Resources Should Serve Justice, Not Convenience: The efficiency analysis must consider **what courts are for**. If purpose is minimizing judicial effort regardless of constitutional enforcement, then blanket dismissals under *Lujan* are maximally efficient. But if purpose is administering justice and preserving constitutional governance, then Framework is dramatically more efficient—delivering complete constitutional enforcement at comparable or lower resource cost than current dismissals.

48. Comparative Cost-Benefit Analysis:

Metric	Current System	Framework
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	(Dismissals)	(Coordination)
Judicial hours per violation	50 hours (dismissing 5 cases)	48 hours (1 comprehensive case + 4 moots)
Constitutional violations addressed	0	1 (comprehensively)
Precedent established	None	Binding within circuit
Future violations deterred	No (no consequences)	Yes (injunction + precedent)
Justice delivered	Zero	Complete
Constitutional enforcement	Failed	Successful

Conclusion: Framework delivers infinitely better constitutional enforcement (something versus nothing) at essentially identical judicial resource cost (48 hours versus 50 hours). The efficiency argument against Framework fails on its own terms.

F. Advisory Committee Notes

49. Purpose of Amendment: Rule 8(a)(4) implements the three-track constitutional enforcement system established in Section IV, addressing the doctrinal gap where violations of enumerated constitutional limits are dismissed as "generalized grievances" under *Lujan* despite Supreme Court precedent recognizing standing for structural violations in *Clinton v. City of New York*, 524 U.S. 417 (1998), *INS v. Chadha*, 462 U.S. 919 (1983), and *Powell v. McCormack*, 395 U.S. 486 (1969). The Constitutional Violation Statement requirement screens claims at the pleading stage, directing structural challenges to Track One universal standing with automatic mootness, individual rights claims to Track Two traditional standing, and statutory claims to Track Three existing procedures.

1 **50. Mootness Provision Rationale:** The mootness provision implements Article III's
2 case-or-controversy requirement: when first plaintiff obtains relief remedying structural
3 violation (declaration that violation occurred plus injunction preventing future
4 violations), subsequent cases challenging that same violation lose live controversy
5 because the violation has been corrected. Courts must dismiss such cases as moot
6 under Article III. This self-closing gate prevents redundant Track One litigation while
7 preserving all Track Two individual damages claims, which remain viable because
8 completed past harms require compensation even after structural violation is remedied.

9 **51. Historical Foundation—Magna Carta to Constitutional Enumeration:** This
10 framework implements principles established in Magna Carta's Security Clause (1215),
11 which created collective enforcement mechanism for enumerated limits on royal
12 power. Any baron could challenge King's violations of enumerated Charter provisions
13 even without showing particularized harm distinct from other barons, because
14 enumerated limits protected all subjects through structural constraints. The Framers
15 inherited and implemented these principles through constitutional enumeration
16 combined with Article III judicial review. Enumerated constitutional limits create
17 collective rights belonging to the citizenry as a whole, enforceable by any citizen when
18 government exceeds enumerated authority. Individual constitutional rights belong to
19 specific persons who must show particularized harm under *Lujan*.

20 **52. Ninth Amendment Validation:** The Ninth Amendment's reference to "rights
21 retained by the people" validates this collective enforcement mechanism. The Framers'
22 deliberate choice of "the people" (collective) rather than "persons" (individual)
23 demonstrates that enumerated limits create collective rights belonging to the citizenry

as organized political community. When government violates enumerated limit, harm falls on "the people" collectively through damage to constitutional structure protecting everyone. Track One universal standing implements this constitutional design. Track Two individual standing applies to rights belonging to specific "persons" who must prove particularized harm. The Framework thus implements the Ninth Amendment's distinction between collective and individual constitutional rights.

G. Anti-collusion Certification Requirement

53. Mandatory Anti-Collusion Certification for Structural-Relief-Only Track One

Petitions: Every Track One petition seeking only structural relief (without Track Two individual damages claims) must include certification signed by plaintiff under penalty of perjury preventing collusive arrangements that would defeat constitutional enforcement purposes. Without this safeguard, defendants could systematically "buy off" first-filed plaintiffs, preventing structural violations from ever being addressed through judicial determination.

54. The Certification Form: Track One plaintiffs seeking only structural relief must file, simultaneously with the initial complaint, certification in substantially this form:

TRACK ONE ANTI-COLLUSION CERTIFICATION (For Plaintiffs Seeking Only Structural Relief) > I, [Plaintiff Name], certify under penalty of perjury under the laws of the United States that: > 1. I seek only equitable relief (declaratory judgment and injunction) benefiting all citizens through structural constitutional enforcement; > 2. I waive all Track Two individual damages claims I may personally possess; > 3. I will NOT accept, solicit, or agree to any monetary payment, consideration, or thing of value from any defendant or party related to this litigation, whether characterized as "settlement," "attorney's fees," "costs," "compensation," or any other designation, except: (a) Court-ordered attorney's fees if I prevail on merits, OR (b) Reimbursement through consent decree providing full structural relief equivalent to judgment on

merits > 4. If I voluntarily transfer priority to another plaintiff under Rule 24(d)(3), I will receive ZERO compensation of any kind and have no claim to fees, costs, or any other payment; > 5. If I voluntarily dismiss this case, I will receive ZERO compensation of any kind and acknowledge I am not prevailing party entitled to court-ordered fees; > 6. I understand any payment from defendant other than court-ordered fees or consent-decree-approved costs constitutes grounds for: (a) Sanctions under Federal Rule of Civil Procedure 11 for improper purpose (b) Referral for criminal investigation under 18 U.S.C. § 201 (bribery of public officials) if payment intended to prevent constitutional enforcement (c) Disqualification from structural-relief-only Track One standing in future cases (d) Disgorgement of any payments received > 7. This certification is irrevocable and binding throughout all proceedings including appeals; > 8. I make this certification freely, understanding that Track One litigation seeking only structural relief is pro bono public service with complete financial risk and no guarantee of compensation even if I prevail. > I declare under penalty of perjury that the foregoing is true and correct. > Executed on [Date] at [Location] >

_____[Plaintiff Signature] >

_____[Plaintiff Name Printed]

55. Certification Filing Requirement: Track One plaintiffs seeking only structural relief (without adding Track Two claims) must file an Anti-Collusion Certification simultaneously with initial complaint, or within 14 days of filing if initial complaint filed before Framework adoption. The certification states plaintiff: (a) seeks only equitable relief (declaration and injunction), (b) will not accept payment from defendant to dismiss, (c) will not monetize priority position, and (d) proceeds for constitutional enforcement rather than personal profit. Failure to file certification within deadline results in automatic reclassification: structural-relief-only designation stricken, plaintiff must clarify whether proceeding Track One only (equitable relief) or adding Track Two claims (particularized harm and damages), and loses eligibility for discretionary fee enhancement under Rule 54(e)(1) unless certification is filed and case is genuinely structural-relief-only.

IV. Anti-Collusion Certification and Enforcement

56. Enforcement Mechanisms - Violation Discovery During Litigation: If court discovers during litigation that a Track One plaintiff seeking only structural relief accepted payment from defendant contrary to Anti-Collusion Certification, the following consequences apply:

(1) Immediate Sanctions: Court shall impose sanctions under Rule 11 including disgorgement of all payments received, monetary sanctions payable to court (minimum \$10,000), referral to state bar for disciplinary proceedings, and referral to U.S. Attorney for criminal investigation if payment pattern suggests corruption under 18 U.S.C. § 201.

(2) Case Disposition: Court shall strike structural-relief-only designation, require plaintiff to clarify whether proceeding Track One only (equitable relief without payment) or dismissing case entirely, award priority to next-filed case if dismissed, and ensure constitutional violation receives proper adjudication despite plaintiff's misconduct.

(3) Future Disqualification: Plaintiff who violated certification is permanently barred from filing Track One cases seeking only structural relief in any future case in any federal court. Violation reported to Administrative Office of U.S. Courts for nationwide registry of disqualified litigants.

57. Enforcement Mechanisms - Violation Discovery After Dismissal: If court discovers after voluntary dismissal that plaintiff received undisclosed payment:

(1) Sanctions Proceeding: Court retains jurisdiction to impose sanctions including disgorgement, monetary penalties, bar referral, and criminal referral.

1 **(2) Notification:** Court notifies all other courts where related Track One cases pending,
2 enabling those courts to lift stays and proceed with proper adjudication.

3 **(3) Civil Liability:** Subsequent Track One plaintiff who prevails may sue original
4 plaintiff for damages caused by delay, including attorney's fees and costs incurred
5 during improper stay period.

6 **58. Exception for Consent Decrees Providing Full Structural Relief:** Track One
7 plaintiffs who certified they would seek only structural relief may accept attorney's fees
8 reimbursement through consent decree only if decree provides all of the following:

9 **(1) Declaration:** Explicit judicial finding or defendant's binding admission that
10 challenged conduct violated enumerated constitutional provision.

11 **(2) Permanent Injunction:** Court-enforceable order preventing defendant from
12 repeating violation, with contempt sanctions available for non-compliance.

13 **(3) Monitoring:** Compliance monitoring mechanism or reporting requirements
14 ensuring ongoing adherence.

15 **(4) Court Jurisdiction:** Court retains jurisdiction to enforce decree and address future
16 compliance issues.

17 **(5) Public Benefit:** Decree benefits all citizens equally through structural enforcement,
18 not merely settling plaintiff.

19 Court approval is required for any consent decree before fee reimbursement becomes
20 permissible. Court must find decree provides structural relief equivalent to judgment
21 on merits before approving fee reimbursement. If court later finds decree failed to
22 provide adequate structural relief, original plaintiff's fee reimbursement is subject to
23 disgorgement.

1 **59. Rationale for Anti-Collusion Certification:** The certification requirement serves
2 five essential Framework objectives:

3 **(1) Prevents Strategic Gaming:** Without certification, defendants could systematically
4 "buy off" first-filed plaintiffs, preventing structural violations from ever being
5 judicially addressed. Example: Appropriations Clause violation occurs. First plaintiff
6 files Track One seeking only structural relief. Government offers \$100,000 to dismiss.
7 Plaintiff accepts. Violation unaddressed. Government repeats strategy with each
8 subsequent plaintiff. Constitutional enforcement defeated through individual payments
9 cheaper than structural compliance.

10 **(2) Protects Framework Integrity:** Certification ensures Track One plaintiffs who
11 seek only structural relief serve constitutional enforcement as genuine public service,
12 not as litigation strategy to extract payments from defendants. Plaintiffs invoking this
13 option must commit fully to structural enforcement over personal enrichment.

14 **(3) Maintains Public Confidence:** Certification creates accountability, assuring public
15 and courts that structural-relief-only Track One litigation serves constitutional
16 preservation, not private profit. Framework's legitimacy depends on plaintiffs acting as
17 faithful agents of constitutional enforcement.

18 **(4) Distinguishes from Qui Tam:** Unlike qui tam actions where private plaintiffs
19 receive percentage of government recovery (incentivizing private enforcement through
20 profit), Track One structural relief provides no financial incentive beyond court-
21 ordered fees. Plaintiff serves constitutional structure purely, knowing compensation
22 uncertain even if prevails. Certification formalizes this complete sacrifice of personal
23 financial interest.

(5) Creates Deterrent: Perjury penalty and severe sanctions deter bad-faith Track One filings seeking only quick payoffs. Plaintiff who files Anti-Collusion Certification but secretly negotiates payment faces criminal prosecution, professional discipline, permanent disqualification, and civil liability. Risk of catastrophic consequences ensures only genuine public-interest plaintiffs invoke structural-relief-only Track One standing.

A. The Track One Incentive Structure: Self-selecting For Genuine Advocacy

60. Pro Se Reality Eliminates Floodgate Concerns: Courts considering universal standing frameworks legitimately worry about floods of frivolous filings from citizens with policy grievances masquerading as constitutional claims. Track One's incentive structure—particularly for plaintiffs seeking only structural relief without personal damages—eliminates this concern through self-selection that filters for genuine constitutional advocacy before any judicial resources are expended.

61. The Pro Se Plaintiff's Calculation: A citizen considering filing Track One petition seeking only structural relief faces the following reality:

(1) Investment Required: Filing fees, research time, document preparation, procedural compliance—all from plaintiff's own resources with zero external support.

(2) Compensation Possibility: Even if plaintiff prevails completely on the merits, establishes constitutional violation, and obtains declaratory and injunctive relief benefiting all citizens, the court retains complete discretion to deny attorney's fees for pro se representation under *Kay v. Ehrler*, 499 U.S. 432 (1991), and its progeny.

1 **(3) Anti-Collusion Certification:** Plaintiff cannot sell priority position, cannot accept
 2 payment from defendant to dismiss, cannot monetize the filing in any way except
 3 through court-ordered fees that may never come.

4 **(4) Rational Calculation:** File only if you genuinely believe the constitutional
 5 violation exists, you can demonstrate it, and you are willing to invest your resources
 6 for the possibility of structural relief with no guaranteed personal compensation
 7 whatsoever.

8 **62. This Is Not a Bug—It Is the Framework's Central Feature:** The harsh reality
 9 facing pro se Track One plaintiffs seeking only structural relief is precisely what makes
 10 the Framework safe for courts to adopt. No rational actor files frivolous Track One
 11 petitions under these conditions because the investment-to-return ratio is catastrophic
 12 unless the case has genuine merit. The only plaintiffs who file are those who:

- 13 • Possess genuine knowledge of constitutional violation
- 14 • Have sufficient understanding to plead it properly
- 15 • Are willing to sacrifice personal resources for structural constitutional
- 16 enforcement
- 17 • Accept that victory itself may yield zero personal compensation

18 This is the profile of a constitutional advocate, not a frivolous filer.

19 **63. The Path to Representation:** Pro se plaintiffs who file meritorious Track One
 20 petitions demonstrate case value through the litigation process itself. Surviving a
 21 motion to dismiss, establishing factual record, demonstrating legal sophistication—
 22 these attract representation from attorneys and firms who share the constitutional
 23 commitment. The Anti-Collusion Certification does not prevent representation; it
 24 prevents selling out. A plaintiff who attracts counsel based on case merit has converted
 25 personal sacrifice into sustainable advocacy.

64. The Discretionary Fee Enhancement Sustains Advocacy: When representation does occur—whether through attracted counsel or public interest organizations—the discretionary fee enhancement (up to 25% above reasonable rates) serves a specific purpose: enabling courts to ensure that small firms and solo practitioners who take on Track One structural relief cases are not financially destroyed by the process even when they prevail. Constitutional advocacy requires sustainability. A framework that burns out its advocates after each case fails to protect constitutional structure over time. The enhancement, subject to complete judicial discretion, enables courts to sustain genuine advocacy when it produces genuine constitutional value.

65. Complete Judicial Discretion Eliminates Gaming: Every aspect of Track One compensation remains within judicial discretion:

- Whether fees are awarded at all
- Whether enhancement applies (and at what percentage)
- Whether fee amount is reasonable
- Whether plaintiff's conduct warrants reduction
- Whether public interest and humanitarian service support the award

No plaintiff can guarantee compensation regardless of outcome. No formula forces judicial hands. Courts retain complete authority to distinguish genuine advocacy deserving support from strategic litigation deserving nothing. This discretion, combined with the investment-heavy, compensation-uncertain structure, makes Track One structural relief ungameable.

66. The Floodgate Closes Before It Opens: Traditional floodgate concerns assume plaintiffs file because filing is cheap and potential returns are high. Track One structural relief inverts this completely:

Factor	Traditional Concern	Track One Structural Relief Reality
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Filing Cost	Low	High (pro se time/resources)
Expected Return	Potentially high	Uncertain to zero
Frivolous Filing Incentive	Strong	None
Merit Requirement	Judicial screening	Self-screening
Compensation Guarantee	Often formulaic	Complete judicial discretion

1 The floodgate concern assumes a door that Track One structural relief never opens.

2 Self-selection based on genuine constitutional commitment replaces judicial screening
3 as the primary filter—and self-selection occurs before any judicial resources are
4 consumed.

5 **67. Fair Opportunity Toward Justice:** Track One does not guarantee outcomes. It
6 guarantees opportunity. Any citizen who genuinely knows of an enumerated
7 constitutional violation can bring it to federal court without proving particularized
8 injury. If the case has merit, it proceeds. If representation is attracted, advocacy
9 becomes sustainable. If the plaintiff prevails, the court may—in its complete
10 discretion—award fees (potentially enhanced) that enable continued advocacy.
11 This is not a path to enrichment. It is a path to justice for citizens willing to sacrifice
12 for constitutional structure. The Framework asks much and guarantees little. That is
13 precisely why it works.

14 **V. Argument**

A. Part II: Case Management Procedures For Multiple Track One Cases

1. The Coordination Challenge and Its Elegant Solution

68. Track One universal standing enables any citizen to challenge enumerated constitutional violations. This creates potential coordination challenge: **What prevents dozens of simultaneous cases challenging the same governmental conduct from overwhelming courts through redundant proceedings?**

69. The answer is comprehensive coordination procedures utilizing existing judicial infrastructure. Courts already coordinate related cases routinely through:

- **Rule 42(a):** Consolidation of related cases in same district
- **28 U.S.C. § 1407:** Multidistrict litigation for cases in different districts
- **Rule 24:** Intervention enabling interested parties to join proceedings
- **Collateral Estoppel:** Preventing re-litigation of established facts
- **Article III Mootness:** Dismissing cases where live controversy no longer exists

70. Track One applies these proven mechanisms systematically to constitutional violation cases through three integrated rule amendments:

Rule 12(j): Screens Constitutional Violation Statements before coordination triggers (addressed in Part I)

Rule 24(d): Establishes priority and transfer mechanisms ensuring best-pleaded case becomes lead case

Rule 42(c): Creates Constitutional Violation Registry, automatic stays, notice requirements, and post-resolution mootness

Together, these rules ensure courts address each enumerated violation **once** through coordinated comprehensive proceedings, then close the gate through automatic mootness preventing redundant Track One litigation.

2. Proposed Rules 12(j), 24(d), and 42(c) - Overview

71. Rule 12(j) - Screening (complete text provided in Part I, Section H):

Establishes ministerial three-stage review before coordination triggers:

(1) Completeness Review: Verify Constitutional Violation Statement includes all five required elements

(2) Enumeration Verification: Confirm cited provision enumerates limit on governmental power

(3) Facial Plausibility: Assess whether allegations plausibly show violation
Deficient cases dismissed without prejudice before entering Constitutional Violation Registry, preventing frivolous claims from triggering coordination procedures.

72. Rule 24(d) - Priority and Transfer (complete text follows):

RULE 24. INTERVENTION > (d) Track One Priority and Transfer

> **(1) First-Filed Priority.** The first Track One case satisfying Rule 8(a)(4)(A) receives priority for adjudicating the constitutional question. Filing time determines priority. Cases filed simultaneously receive priority based on alphabetical order of lead plaintiff surname. > **(2) Deficiency Challenge.** Any stayed plaintiff may challenge priority by showing the priority case has deficiencies under Rule 12(j) that the challenging case lacks. The court must rule on deficiency challenges within 30 days. If the challenge succeeds, priority transfers to the challenging case. > **(3) Voluntary Transfer.** The priority plaintiff may voluntarily transfer priority to a stayed case by filing notice of transfer. Transfer is irrevocable and results in the original priority case being dismissed without prejudice. Track One plaintiffs who transfer receive no compensation despite litigation investment. > **(4) Vulnerable Populations.** When the enumerated violation primarily harms vulnerable populations unable to access courts directly (children, incarcerated persons, institutionalized persons, persons with severe disabilities), citizen-advocates may file Track One Petitions seeking structural relief protecting the vulnerable population. Courts must consider the public service nature of such petitions when evaluating priority and transfer.

73. Rule 42(c) - Coordination (complete text follows):

RULE 42. CONSOLIDATION; SEPARATE TRIALS > (c) Track One Coordination > (1) Constitutional Violation Registry. The clerk

must maintain a searchable registry of all Track One cases under Rule 8(a)(4)(A), including: constitutional provision cited, governmental actor, conduct challenged, filing date, and case status. Upon receiving a Track One complaint that passes Rule 12(j) screening, the clerk must search the registry for related cases challenging the same or substantially similar conduct. > **(2) Automatic Stay.** If a related Track One case exists, the clerk must stay the later-filed case and provide notice to all parties. The stay remains in effect until the priority case reaches final judgment or is dismissed. Stayed cases may be transferred to the priority court's district under 28 U.S.C. § 1407 if cases are in different districts. > **(3) Notice Requirements.** The priority plaintiff must notify all stayed plaintiffs of: significant developments in the priority case, settlement discussions, any motion to dismiss, and notice of appeal. The court must notify all stayed plaintiffs of: Track One judgment, appeal filings, and mootness determinations. > **(4) Post-Resolution Mootness.** When the priority plaintiff obtains structural relief (declaration of violation and injunction preventing future violations), all stayed Track One cases seeking identical relief are dismissed as moot under Article III. Stayed plaintiffs with particularized harm may proceed under Track Two using collateral estoppel from the Track One constitutional finding.

74. Integration of Three Rules Creates Complete Framework:

Before Coordination (Rule 12(j)): Screen cases to verify proper Track One claims

Coordination Trigger (Rule 42(c)(1)): Registry identifies related cases automatically

Priority Determination (Rule 24(d)(1)): First-filed receives priority absent challenges

Challenge Mechanism (Rule 24(d)(2)-(3)): Superior cases can challenge or receive voluntary transfer

Stay Procedures (Rule 42(c)(2)): Subsequent cases automatically stayed

Notice Requirements (Rule 42(c)(3)): All parties informed of developments

Post-Resolution (Rule 42(c)(4)): Mootness dismisses redundant Track One cases

The result: **Systematic coordination preventing redundant proceedings while ensuring comprehensive constitutional adjudication.**

3. Constitutional Violation Registry Implementation

75. The Constitutional Violation Registry is technical enhancement to existing CM/ECF case management system. Current CM/ECF enables electronic filing, docket management, and case searching. Registry adds Track One specific search functionality.

76. Registry Data Elements (captured from Constitutional Violation Statement):

(1) Constitutional Provision: Article/Section/Clause cited (e.g., "Article I, Section 9, Clause 7")

(2) Provision Text: Quoted constitutional language

(3) Governmental Actor: Defendant (e.g., "President Trump", "Speaker Johnson")

(4) Challenged Conduct: Brief description (e.g., "October 11, 2025 appropriations redirection")

(5) Filing Date: Date/time complaint filed

(6) District: Court where filed

(7) Case Number: CM/ECF case identifier

(8) Case Status: Priority/Stayed/Dismissed/Closed

(9) Related Cases: Links to related Track One cases

77. Automated Matching Algorithm:

When new Track One complaint passes Rule 12(j) screening, Registry searches existing cases matching:

(Primary Match): Same constitutional provision + same governmental actor + substantially similar conduct

(Secondary Match): Same constitutional provision + related conduct (e.g., different appropriations redirections)

(Alert Threshold): 80% textual similarity triggers clerk review

78. Clerk Workflow (5-minute addition to existing filing process):

Step 1: Receive Track One complaint passing Rule 12(j) screening

Step 2: Extract Constitutional Violation Statement elements

Step 3: Enter data in Registry (form auto-populated from complaint)

Step 4: Click "Search Related Cases" button

Step 5: Review automated match results (if any)

Step 6: If match exists, issue automatic stay order (template auto-populated)

Step 7: Send notice to priority plaintiff and stayed plaintiff

79. Technical Implementation:

Development Cost: \$5,000-\$10,000 for CM/ECF Registry module

Development Time: 2-4 weeks for Administrative Office IT Department

Training Required: 2-hour webinar for clerks (integrated into existing training)

Maintenance: Included in existing CM/ECF support contracts

Scalability: Handles unlimited Track One cases (database storage insignificant)

Cost as Percentage of Federal Judiciary Budget: 0.0001% ($\$5,000-\$10,000 \div \$8,000,000,000 = 0.000001$)

80. Comparison to Existing Systems: Registry functionality resembles existing CM/ECF capabilities:

MDL Registry: Tracks multidistrict litigation cases across districts

Bankruptcy Case Search: Searches bankruptcy filings nationwide

Criminal Case Search: Searches criminal cases by defendant name

PACER: Public access to electronic records with advanced search

Track One Registry simply adds constitutional-specific search parameters to proven CM/ECF platform. No novel technology required—implementation leverages existing infrastructure.

B. Track One Certification Verification

81. Additional Screening Step for Track One Petitions: When plaintiff files a Track One petition, court must verify as part of Rule 12(j) screening:

(1) Certification Filed: Track One Anti-Collusion Certification filed simultaneously with complaint or within 14 days.

(2) Proper Signature: Certification signed by plaintiff personally (not attorney alone) under penalty of perjury.

(3) Complete Waiver: Complaint explicitly waives all Track Two claims with language substantially in the form: "Plaintiff waives any and all Track Two individual damages claims Plaintiff may personally possess."

(4) Equitable Relief Only: Complaint seeks only declaratory judgment and injunctive relief, with no request for monetary damages, restitution, or other legal remedies.

82. Deficient Certification Consequences:

Missing Certification: Structural-relief-only designation stricken. Plaintiff must clarify whether proceeding Track One only (equitable relief without certification benefits) or adding Track Two claims (particularized harm and damages). Without valid certification, plaintiff loses eligibility for discretionary fee enhancement under Rule 54(e)(1).

Incomplete Certification: Court orders plaintiff to cure within 14 days or structural-relief-only designation stricken, requiring clarification of claims as above.

Inconsistent Pleading: If complaint seeks monetary damages while claiming structural-relief-only status, designation stricken and plaintiff required to clarify whether proceeding Track One only (equitable relief) or Track One + Track Two (adding particularized injury allegations for damages).

83. Verification Time: Approximately 5 additional minutes per Track One petition. Clerk reviews certification form using standardized checklist. Mechanical verification requiring no legal judgment. This modest burden ensures certification requirement serves screening function without impeding legitimate Track One filings.

1. Same District Court Management Under Rule 42(c)

84. When multiple Track One cases challenging same violation are filed in **same district**, coordination is straightforward through existing Rule 42(a) consolidation:

RULE 42. CONSOLIDATION; SEPARATE TRIALS > (a)

Consolidation. If actions before the court involve a common question of law or fact, the court may: > (1) join for hearing or trial any or all matters at issue in the actions; > (2) consolidate the actions; or > (3) issue any other orders to avoid unnecessary cost or delay.

85. Same-District Coordination Procedure:

Scenario: Plaintiffs A, B, and C file Track One cases in D.D.C. challenging President's October 11 appropriations redirection.

Day 1: Plaintiff A files complaint

Day 3: Plaintiff B files complaint

Day 5: Plaintiff C files complaint

Clerk Processing:

- Plaintiff A's case enters Registry (first-filed, receives priority)
- Plaintiff B's case matches A's case (same violation), automated stay triggered
- Plaintiff C's case matches A's case (same violation), automated stay triggered

Court Action (Form Order):

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA > PLAINTIFF B, v. Civil Action No. [B case number]
PRESIDENT TRUMP > ORDER STAYING CASE PENDING RELATED TRACK ONE PROCEEDING > This Court's Constitutional Violation Registry identifies Case No. [A case number], *Plaintiff A v. President Trump*, as related Track One proceeding challenging identical governmental conduct under same constitutional provision. Under Rule 42(c)(2), this case is STAYED pending resolution of Case No. [A case number]. > Plaintiff B may: (1) monitor priority case proceedings; (2) file amicus briefs with court permission; (3) challenge priority under Rule 24(d)(2) if priority case has deficiencies this case lacks; (4) prepare Track Two claim if particularized harm exists. > This stay will lift when: (1) priority case reaches final judgment; or (2) priority case is dismissed on procedural grounds; or (3) priority transfers to this case under Rule 24(d). > IT IS SO ORDERED.

86. Consolidation for Efficiency: Court may consolidate Cases A, B, and C under Rule 42(a) for joint proceedings while maintaining priority designation. This enables:

- Coordinated discovery (single set of interrogatories, depositions)
- Combined briefing (joint briefs addressing identical legal questions)
- Single hearing (all plaintiffs participate)
- Comprehensive decision (addressing all claims simultaneously)

87. Post-Resolution Mootness (Same District):

When Case A obtains structural relief (declaration + injunction), Cases B and C are dismissed as moot:

ORDER DISMISSING CASES B AND C AS MOOT > Case No. [A case number] has obtained complete structural relief: declaration that President Trump's October 11, 2025 appropriations redirection violated Article I, Section 9, Clause 7, and permanent injunction prohibiting future redirections without congressional authorization. > Cases B and C sought identical structural relief. Under Rule 42(c)(4), these cases are DISMISSED AS MOOT under Article III. The structural relief obtained in Case A protects all citizens including Plaintiffs B and C. No live controversy remains requiring judicial resolution. > Plaintiffs B and C

may proceed under Track Two if they suffered particularized harm from the appropriations redirection, utilizing collateral estoppel from Case A's constitutional finding. > IT IS SO ORDERED.

88. Same-District Efficiency: Consolidating related Track One cases within single district is routine judicial case management. No novel procedures required—courts consolidate related cases daily under Rule 42(a). Track One simply applies proven mechanisms systematically to constitutional challenges.

2. Different Districts - Multidistrict Litigation Procedures

89. When multiple Track One cases challenging same violation are filed in **different districts**, coordination occurs through Judicial Panel on Multidistrict Litigation (JPML) under 28 U.S.C. § 1407:

28 U.S.C. § 1407. Multidistrict litigation > (a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation...

90. Multi-District Coordination Scenario:

Five Track One cases challenging same appropriations redirection filed in:

- Case A: D.D.C. (August 1)
- Case B: S.D.N.Y. (August 3)
- Case C: N.D. Cal. (August 5)
- Case D: W.D. Tex. (August 7)
- Case E: D. Mass. (August 10)

Registry Coordination:

- Each district clerk enters case in Constitutional Violation Registry
- Registry identifies all five cases challenge identical conduct
- Automated alerts sent to all five district courts
- Form stay orders issued for Cases B-E (Case A has priority as first-filed)

91. JPML Transfer Procedure:

Step 1 - Motion for Transfer: Any party or court may move JPML for MDL transfer consolidating Cases B-E in D.D.C. (where priority Case A is pending).

Step 2 - JPML Consideration: Panel reviews whether cases involve common questions justifying transfer. For Track One cases challenging identical constitutional violation, transfer is virtually automatic.

Step 3 - Transfer Order: JPML transfers Cases B-E to D.D.C., assigning all cases to single district judge.

Step 4 - Consolidated Proceedings: All five cases proceed in D.D.C. under single judge's management, with Case A maintaining priority.

92. MDL Transfer Order (Form):

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION > IN RE: APPROPRIATIONS CLAUSE VIOLATION— OCTOBER 11, 2025 REDIRECTION MDL No. [number] > **TRANSFER ORDER** > This Panel has reviewed five Track One cases under Federal Rule of Civil Procedure 8(a)(4)(A) challenging President Trump's October 11, 2025 appropriations redirection as violating Article I, Section 9, Clause 7. The cases pending in S.D.N.Y., N.D. Cal., W.D. Tex., and D. Mass. involve identical constitutional questions and factual circumstances as the priority case pending in D.D.C. > Under 28 U.S.C. § 1407, Cases [B, C, D, E numbers] are TRANSFERRED to the United States District Court for the District of Columbia for coordinated pretrial proceedings. Case No. [A number] retains priority under Rule 24(d)(1). > IT IS SO ORDERED.

93. Post-Transfer Coordination (Same as Same-District):

Once transferred to D.D.C., Cases B-E remain stayed pending Case A resolution.

After Case A obtains structural relief, Cases B-E are dismissed as moot under Rule 42(c)(4). The MDL mechanism simply extends same-district coordination procedures across district boundaries.

94. JPML Expertise and Experience: The Panel coordinates hundreds of MDL proceedings annually, including:

- Mass tort litigation (product liability, environmental harm)
- Antitrust cases (price-fixing, monopolization)
- Securities fraud (coordinating investor claims)
- Patent infringement (multiple districts)

Track One constitutional coordination is simpler than typical MDL because:

- Cases challenge identical conduct (not similar but distinct events)
- Legal questions are constitutional (not complex factual disputes)
- Priority is mechanical (first-filed, not discretionary assignment)
- Mootness is automatic (structural relief closes gate)

95. MDL Transfer Timeline:

Week 1: Cases filed in different districts, entered in Registry

Week 2: Motion for MDL transfer filed with JPML

Week 4: JPML issues transfer order (briefing typically expedited)

Week 6: Cases transferred to priority district

Months 6-9: Priority case litigated comprehensively

Month 10: Priority case obtains judgment, stayed cases dismissed as moot

Total coordination overhead: ~6 weeks (MDL transfer process), then proceed with single coordinated litigation.

3. Stay Procedures for Subsequent Cases

96. Rule 42(c)(2) establishes automatic stay procedures protecting priority case while enabling stayed plaintiffs to monitor and participate:

(2) Automatic Stay. If a related Track One case exists, the clerk must stay the later-filed case and provide notice to all parties. The stay remains in effect until the priority case reaches final judgment or is dismissed. Stayed cases may be transferred to the priority court's district under 28 U.S.C. § 1407 if cases are in different districts.

97. What "Stayed" Means (Rights and Obligations):

Stayed Plaintiff May:

- Monitor priority case through PACER access
- File amicus briefs with court permission supporting priority plaintiff
- Challenge priority under Rule 24(d)(2) showing deficiencies
- Prepare Track Two claim if particularized harm exists
- Intervene in priority case under Rule 24(a) if interests inadequately represented

Stayed Plaintiff May Not:

- Conduct independent discovery duplicating priority case
- File dispositive motions in stayed case
- Proceed to trial or judgment in stayed case
- Appeal stayed case (no final judgment exists)

Court During Stay:

- Maintains case on docket (not dismissed)
- Takes no action except addressing priority challenges or intervention motions
- Monitors priority case for resolution triggering mootness determination

98. Stay Duration:

Minimum: From issuance until priority case final judgment (typically 6-9 months)

Maximum: Through appellate proceedings if priority case appealed (adds 12-24 months)

Automatic Termination: When priority case reaches final judgment or procedural dismissal

99. Notice Requirements During Stay (Rule 42(c)(3)):

Priority Plaintiff Must Notify Stayed Plaintiffs Of:

- Significant developments (e.g., court orders, discovery disputes)
- Settlement discussions (stayed plaintiffs may object)
- Any motion to dismiss priority case
- Notice of appeal filing

Court Must Notify Stayed Plaintiffs Of:

- Track One judgment (declaration and injunction)
- Appeal filings in priority case
- Mootness determinations affecting stayed cases
- Transfer decisions under Rule 24(d)

1 **100. Form Stay Order (Template):**

2 **UNITED STATES DISTRICT COURT FOR THE [DISTRICT] >**
 3 **PLAINTIFF [X], v. Civil Action No. [number] DEFENDANT [Y] >**
 4 **ORDER STAYING CASE PENDING RELATED TRACK ONE**
 5 **PROCEEDING >** The Constitutional Violation Registry identifies a
 6 related Track One case, [case name and number], challenging the same
 7 governmental conduct under the same constitutional provision. Under
 8 Federal Rule of Civil Procedure 42(c)(2), this case is
 9 AUTOMATICALLY STAYED pending resolution of the priority case. >
 10 **Priority Case:** [case name, number, district] **Constitutional Provision:**
 11 [Article, Section, Clause] **Challenged Conduct:** [brief description]
 12 **Priority Plaintiff:** [name] **Filing Date:** [date] (establishes priority) >
 13 **Stayed Plaintiff's Rights:** > 1. **Monitor:** Access priority case through
 14 PACER 2. **Amicus:** File amicus briefs with court permission 3. **Challenge**
 15 **Priority:** File Rule 24(d)(2) motion showing priority case deficiencies 4.
 16 **Track Two Preparation:** Prepare individual damages claim if
 17 particularized harm exists 5. **Intervention:** Intervene under Rule 24(a) if
 18 interests inadequately represented > **Stay Duration:** Until priority case
 19 reaches final judgment or procedural dismissal > **Notice:** Priority plaintiff
 20 must notify stayed plaintiff of significant developments, settlement
 21 discussions, dismissal motions, and appeals. Court will notify stayed
 22 plaintiff of judgment, appeals, and mootness determinations. > **Post-**
 23 **Resolution:** If priority plaintiff obtains structural relief (declaration +
 24 injunction), this case will be dismissed as moot under Rule 42(c)(4).
 25 Stayed plaintiff may then proceed under Track Two if particularized harm
 26 exists, utilizing collateral estoppel from priority case constitutional
 27 finding. > IT IS SO ORDERED. > **Dated:** [date] **[Judge name] United**
 28 **States District Judge**

29 **101. Stayed Plaintiff's Strategic Options:**

30 **(A) Accept Stay and Monitor:** Most passive approach. Wait for priority case
 31 resolution, then proceed to Track Two if particularized harm exists.

32 **(B) File Amicus Brief:** Support priority plaintiff with additional legal arguments,
 33 empirical evidence, or policy considerations strengthening constitutional challenge.

34 **(C) Challenge Priority:** If priority case has Rule 12(j) deficiencies (incomplete
 35 statement, improper enumeration, facially implausible), file Rule 24(d)(2) motion
 36 seeking priority transfer.

(D) Intervene: If priority plaintiff is litigating inadequately (settling cheaply, conceding key arguments, failing to present strong evidence), intervene under Rule 24(a) to protect interests.

(E) Prepare Track Two: If stayed plaintiff suffered particularized economic harm, prepare Track Two damages claim for filing after priority case establishes constitutional violation.

4. Non-Merits Dismissal Scenarios and Priority Transfer

102. What happens when priority case is dismissed on **procedural grounds** (not merits)? Rule 24(d) addresses priority transfer ensuring constitutional question reaches merits adjudication:

Dismissal Categories:

(A) Merits Dismissal: Court finds no constitutional violation after full litigation → Stayed cases may accept adverse precedent or proceed with distinguishable theories

(B) Procedural Dismissal: Case dismissed for improper venue, failure to join necessary parties, plaintiff lacks Article III standing (despite Track One framework) → Stayed cases evaluated for priority transfer

(C) Voluntary Dismissal: Priority plaintiff dismisses case (settlement, abandonment) → Stayed cases evaluated for new priority

103. Rule 24(d)(2) - Deficiency Challenge:

(2) Deficiency Challenge. Any stayed plaintiff may challenge priority by showing the priority case has deficiencies under Rule 12(j) that the challenging case lacks. The court must rule on deficiency challenges within 30 days. If the challenge succeeds, priority transfers to the challenging case.

104. Deficiency Challenge Procedure:

Step 1 - Stayed Plaintiff Files Motion: "Motion to Transfer Priority Under Rule 24(d)(2)"

Motion Contents:

- Identification of priority case deficiency (incomplete statement, improper enumeration, facial implausibility)
- Explanation of how challenging case cures deficiency
- Request for priority transfer

Step 2 - Priority Plaintiff Response (7 days): May cure deficiency through amendment or oppose transfer

Step 3 - Court Decision (within 30 days of motion filing): Grant or deny transfer

If Granted: Priority transfers to challenging case; original priority case dismissed without prejudice; new priority case proceeds

If Denied: Original priority case remains priority (after curing deficiency); stayed case remains stayed

105. Deficiency Challenge Example:

Scenario: Plaintiff A (priority case) challenges appropriations redirection but Constitutional Violation Statement fails to quote constitutional text (violates Rule 8(a)(4)(A)(i) requirement).

Plaintiff B (Stayed) files deficiency challenge:

"Plaintiff A's Constitutional Violation Statement violates Rule 8(a)(4)(A)(i) by failing to quote Article I, Section 9, Clause 7 text. Plaintiff B's statement fully complies with all Rule 8(a)(4)(A) requirements. Priority should transfer to Plaintiff B's case to ensure proper Track One adjudication."

Court Analysis:

- Review Plaintiff A's statement → confirm quotation missing
- Review Plaintiff B's statement → confirm full compliance
- Provide Plaintiff A 14 days to amend and cure deficiency

- If Plaintiff A amends successfully → deny transfer, priority remains with A
- If Plaintiff A fails to amend → grant transfer, priority moves to B

106. Voluntary Transfer (Rule 24(d)(3)):

(3) Voluntary Transfer. The priority plaintiff may voluntarily transfer priority to a stayed case by filing notice of transfer. Transfer is irrevocable and results in the original priority case being dismissed without prejudice. Track One plaintiffs who transfer receive no compensation despite litigation investment.

107. Why Voluntary Transfer Exists:

Scenario 1 - Better Positioned Plaintiff: Plaintiff A (priority) recognizes Plaintiff B has superior resources, expertise, or factual record. Plaintiff A voluntarily transfers priority to Plaintiff B ensuring stronger constitutional challenge.

Scenario 2 - Settlement Opportunity: Plaintiff A has individual damages claim settlement opportunity requiring dismissal of Track One claim. Rather than settle and abandon structural challenge, Plaintiff A transfers priority to Plaintiff B who continues constitutional litigation.

Scenario 3 - Resource Constraints: Plaintiff A underestimated litigation costs. Rather than litigate poorly, Plaintiff A transfers to better-resourced Plaintiff B.

108. Track One Transfer Risk: If priority plaintiff filed a Track One Petition (seeking only structural relief, no individual damages), voluntary transfer results in **zero compensation** despite litigation investment. This risk ensures Track One plaintiffs carefully evaluate capacity before filing and encourages voluntary transfer only when genuinely serving constitutional enforcement rather than personal interests.

5. Time Limits and Expedited Procedures

109. Framework includes time limits ensuring timely constitutional adjudication:

Rule 12(j) Screening: Within 21 days of filing

Deficiency Challenge: Court rules within 30 days of motion

Priority Case Target: 6-9 months from filing to final judgment

Mootness Determination: Within 14 days of priority case judgment

Track Two Proceedings: 3-6 months utilizing collateral estoppel

110. Expedited Priority Case Procedures:

Discovery: Streamlined to constitutional questions (no individual damages discovery)

Briefing: Expedited schedules (30 days for motions, 14 days for responses)

Hearing: Priority assignment for oral argument

Decision: Target 90 days after final briefing or hearing

111. Comparison to Typical Civil Litigation Timeline:

Phase	Typical Civil Case	Track One Priority Case
Pleadings	60-90 days	30-45 days
Discovery	12-18 months	3-6 months (constitutional focus)
Dispositive Motions	6-9 months	3-4 months
Trial Preparation	6-12 months	N/A (typically decided on motions)
Trial	2-4 weeks	N/A or 3-5 days if needed
Decision	90-180 days	30-90 days
Total	24-36 months	6-9 months

Result: Track One priority cases resolve 60-75% faster than typical civil litigation due to streamlined procedures focusing exclusively on constitutional questions.

6. Practical Examples Showing Complete Coordination Procedures

112. Example One - Same District, Three Plaintiffs:

Facts: President redirects DOD appropriations October 11. Three plaintiffs file Track One cases in D.D.C.:

- Plaintiff A: October 15
- Plaintiff B: October 17
- Plaintiff C: October 20

Procedure:

October 15: A's case enters Registry (first-filed, priority)

October 17: B's case matches A's case → automatic stay

October 20: C's case matches A's case → automatic stay

October 25: Court consolidates A, B, C for coordinated proceedings under Rule 42(a)

November 1: Consolidated discovery begins (30-day interrogatories)

December 1: Expert declarations filed

January 15: Cross-motions for summary judgment filed

February 15: Motions fully briefed

March 1: Oral argument

April 1: Court grants Plaintiff A's motion, finds constitutional violation

Judgment:

- Declaration: "President Trump's October 11 appropriations redirection violated Article I, Section 9, Clause 7"
- Injunction: "Defendant is permanently enjoined from redirecting appropriated funds without congressional authorization"

April 10: Cases B and C dismissed as moot (sought identical relief already obtained)

Result: Single court addressed violation once comprehensively in 6 months. Cases B and C benefited from priority case relief without redundant proceedings.

113. Example Two - Five Districts, MDL Transfer:

Facts: Same appropriations redirection. Five plaintiffs file Track One cases:

- A: D.D.C. (October 15)
- B: S.D.N.Y. (October 17)
- C: N.D. Cal. (October 19)
- D: W.D. Tex. (October 22)
- E: D. Mass. (October 25)

Procedure:

October 15-25: All cases enter Registry, identify as related

October 17-25: Cases B-E automatically stayed (A has priority)

November 1: Government moves JPML for MDL transfer

November 15: JPML grants transfer, consolidates B-E in D.D.C.

December 1: All five cases in D.D.C., A maintains priority

Months 2-6: Coordinated proceedings (same as Example One)

April 1: Court grants Plaintiff A's motion, finds violation

April 10: Cases B-E dismissed as moot

Result: MDL transfer added 2 weeks to coordination, then proceeded identically to same-district example. Five districts became one coordinated proceeding.

114. Example Three - Priority Transfer After Deficiency Challenge:

Facts: Same appropriations redirection. Two plaintiffs file:

- A: D.D.C. (October 15) - Constitutional Violation Statement incomplete (missing structural harm explanation)
- B: D.D.C. (October 20) - Constitutional Violation Statement fully compliant

Procedure:

October 15: A's case enters Registry but fails Rule 12(j)(1) screening (incomplete statement)

October 18: Court dismisses A's case without prejudice, orders amendment within 21 days

October 20: B's case enters Registry (fully compliant, receives priority)

October 25: A files amended complaint curing deficiency

October 27: A's amended case matches B's case → automatic stay (B retains priority as first-filed with complete statement)

Months 2-6: B litigates priority case

April 1: B obtains judgment

April 10: A's case dismissed as moot

Result: Rule 12(j) screening filtered deficient case immediately. After curing, case proceeded as stayed case. Priority remained with first-filed compliant case.

115. Example Four - Priority Transfer After Voluntary Transfer:

Facts: Same appropriations redirection. Two plaintiffs:

- A: D.D.C. (October 15) - Individual pro se, limited resources
- B: D.D.C. (October 20) - Public interest organization with litigation expertise

Procedure:

October 15-20: A receives priority, B automatically stayed

November 1: A recognizes resource constraints, files voluntary transfer notice

November 5: Priority transfers to B, A's case dismissed without prejudice

Months 2-7: B litigates with full resources

May 1: B obtains judgment

Result: Voluntary transfer enabled better-resourced plaintiff to litigate, ensuring strong constitutional challenge. A received no compensation for initial filing investment (incentivizing careful evaluation before filing).

116. Example Five - Combined Track One and Track Two:

Facts: EPA issues regulation allegedly violating nondelegation doctrine. Plaintiff suffers \$500,000 economic harm from compliance costs.

Plaintiff's Strategy:

Track One: File Constitutional Violation Statement challenging regulation as violating Article I, Section 1 (nondelegation)

Track Two: Allege particularized \$500,000 economic injury requiring damages

Procedure:

Month 1: File combined Track One/Two complaint

Months 2-8: Litigate Track One constitutional question

Month 9: Court finds nondelegation violation, declares regulation unconstitutional

Month 10: Track Two damages phase begins (constitutional violation established via collateral estoppel)

Month 11: Prove \$500,000 in compliance costs caused by unconstitutional regulation

Month 12: Judgment for \$500,000 plus attorney's fees

Result: Track One established constitutional violation. Track Two recovered individual damages using collateral estoppel. Total litigation: 12 months. Alternative (traditional litigation): 24-36 months litigating constitution and damages together.

7. Efficiency Analysis Proving Coordination Reduces Judicial Burden

117. Quantitative Efficiency Comparison - Five plaintiffs challenge same violation:

Scenario A - Current System (Dismissals):

- 5 Track One complaints filed in different districts
- 5 government Rule 12(b)(1) motions (standing)
- 5 plaintiff responses
- 5 dismissal orders
- Judicial hours: 50 (5 cases × 10 hours dismissal proceedings)
- Result: 0 violations addressed, 0 precedent established

Scenario B - No Framework, Five Separate Litigations:

- 5 complete independent litigations
- 5 discovery processes (depositions, interrogatories, expert witnesses)
- 5 summary judgment motions fully briefed
- 5 judicial opinions written
- Judicial hours: 200 (5 cases × 40 hours full litigation)
- Result: 5 potentially inconsistent outcomes, high risk of circuit splits

Scenario C - Framework with Coordination:

- 5 complaints filed
- 4 automatic stays (minimal orders, ~1 hour each = 4 hours)
- 1 priority case fully litigated (~40 hours)
- 4 mootness dismissals (~1 hour each = 4 hours)
- Judicial hours: 48 total
- Result: 1 comprehensive constitutional adjudication, consistent precedent, complete structural relief

Efficiency Comparison Table:

Metric	Current Dismissals	No Coordination	Framework Coordination
Judicial Hours	50	200	48
Violations Addressed	0	1-5 (inconsistent)	1 (comprehensive)
Precedent	None	Conflicting	Consistent
Justice Delivered	Zero	Partial	Complete
Efficiency Rating	F (effort without justice)	C (redundant)	A (optimal)

Conclusion: Framework delivers complete constitutional enforcement at 25% of judicial resources versus redundant litigation, and provides infinitely better outcomes (something versus nothing) compared to current dismissals.

118. Qualitative Benefits Beyond Resource Savings:

(1) Consistent Precedent: One comprehensive decision versus multiple potentially conflicting decisions prevents circuit splits on structural constitutional questions.

(2) Deterrence Effect: Governmental actors face consequences for violations rather than knowing structural challenges will be dismissed for lack of standing.

(3) Rule of Law: Enumerated limits become enforceable rather than being constitutional dead letters ignored because enforcement mechanism doesn't exist.

(4) Democratic Legitimacy: Citizens can enforce structural protections rather than relying on governmental self-restraint to respect constitutional boundaries.

(5) Institutional Credibility: Courts fulfill constitutional enforcement role rather than abdicating responsibility through standing dismissals.

119. Framework Efficiency Increases Over Time: Initial learning curve (1-2 years) as judges internalize procedures, then permanent efficiency gains:

Years 1-2 (Learning Phase):

- Judges learn Track One/Two distinction
- Clerks master Registry procedures
- Practitioners adapt pleading practices
- Minor inefficiencies during adaptation

Year 3+ (Steady State):

- Coordination becomes routine
- Precedent library develops (common violations addressed)
- Deterrence effect reduces new violations
- Governmental actors respect boundaries knowing enforcement exists
- Track Two cases resolve faster with established collateral estoppel
- Net judicial burden decreases below current system as violations decline

120. The Ultimate Efficiency Metric - Justice Per Judicial Hour:

Current system: **0 justice ÷ 50 hours = 0 justice per hour**

1 Framework: **Complete constitutional enforcement ÷ 48 hours = Maximum justice**
 2 **per hour**

3 When measured by actual purpose of judicial system (delivering justice, enforcing
 4 constitutional limits, preserving rule of law), Framework is infinitely more efficient
 5 than current dismissals while consuming essentially identical resources.

6 **8. Empirical Validation: The Acosta Complaint as Proof of Self-Selection**

7 **121. Theory Meets Practice:** The preceding analysis establishes Track One's self-
 8 selection mechanism as theoretical protection against frivolous filings. Plaintiff's
 9 planned complaint, Exhibit C- *Kirchner v. Acosta*, Civil Action No. TBD (S.D. Fla.),
 10 provides empirical validation that the self-selection mechanism operates exactly as
 11 predicted in practice.

12 **122. Profile of the Track One Plaintiff Seeking Only Structural Relief:** Plaintiff
 13 Joseph Kirchner filed a Track One petition seeking only structural relief, challenging
 14 Alexander Acosta's 2008 immunity grants to "unnamed co-conspirators including but
 15 not limited to" as exceeding all constitutional authority for immunity grants through
 16 systematic violations of Article II prosecutorial limits, separation of powers, and equal
 17 protection. *See* Exhibit C-16 (complete complaint). Plaintiff's circumstances match the
 18 self-selection profile precisely:

19 **(1) Genuine Constitutional Knowledge:** Identified clear enumerated violation where
 20 prosecutorial immunity grants exceeded presidential pardon power (constitutional
 21 ceiling) in every measurable dimension—named recipients (pardons require
 22 identification), specified crimes (pardons require enumeration), temporal limits

(prosecutorial immunity cannot exceed sentence length), and procedural requirements (pardons require public accountability).

(2) Substantial Personal Investment: Conducted extensive legal research documenting that presidential pardons represent maximum constitutional immunity authority, prosecutorial immunity derives from and cannot exceed executive pardon power, and 2008 grants systematically exceeded these limits through unnamed recipients receiving undefined immunity for unspecified crimes in perpetuity.

(3) Zero Compensation Certainty: Filing as pro se plaintiff with complete awareness that prevailing on merits—establishing constitutional violation, obtaining declaration and injunction—provides no guarantee of fee recovery under *Kay v. Ehrler*, 499 U.S. 432 (1991).

(4) Anti-Collusion Certification: Certified cannot and will not monetize priority position, accept payment from defendants to dismiss, or profit from filing except through court-ordered fees subject to complete judicial discretion.

(5) Preemptive Fee Refusal: Plaintiff has certified pursuant to proposed Rule 54(e)(2)-(3) that he will refuse any attorney's fees awarded and convert them to Track Two Victim Compensation Fund for distribution to prevailing Track Two plaintiffs harmed by the constitutional violation, demonstrating that motivation is purely structural constitutional enforcement and victim protection rather than personal compensation.

123. The Seventeen-Year Enforcement Gap Proves Standing Doctrine Failure: Plaintiff's complaint documents that from 2008 through 2025, constitutionally invalid immunity grants protecting documented sex trafficking enterprise received **zero**

1 **judicial review** despite: (a) FBI Director nominee testimony calling Acosta's plea deal
2 the "original sin" in congressional hearings; (b) 2019 federal indictment of Epstein
3 identifying "others known and unknown"—proving 2008 immunity was based on false
4 premises; (c) dozens of documented victims harmed by criminal enterprise receiving
5 governmental protection; (d) mathematical certainty that grants exceeded constitutional
6 authority. *See* Exhibit C-16, ¶¶ 253-260.

7 **124. Three Possibilities, One Conclusion:** The seventeen-year gap proves traditional
8 standing doctrine creates constitutional non-justiciability for clear enumerated
9 violations. Either: (A) nobody noticed the violation (absurd given congressional
10 testimony and FBI recognition), (B) informed parties noticed but believed they lacked
11 standing under *Lujan* to challenge prosecutorial action exceeding enumerated authority
12 (proving standing doctrine prevents structural enforcement), or (C) those with power to
13 challenge were implicated in the criminal enterprise (proving corruption requires
14 citizen enforcement mechanisms). Each possibility supports Framework necessity. *See*
15 Exhibit C-16, ¶¶ 258-260.

16 **125. Constitutional Question of First Impression Despite Seventeen-Year**

17 **Visibility:** The Constitutional Violation Statement identifies a binary constitutional
18 question that has persisted unanswered for seventeen years: **Either prosecutors may**
19 **exceed Article II authority that binds even the President, or they may not.** No
20 intermediate position exists. Presidential pardon power represents the constitutional
21 ceiling for immunity grants—the maximum authority enumerated anywhere in the
22 Constitution. If prosecutors possessed authority to grant immunity exceeding
23 presidential pardon limitations, this would create derivative power exceeding source

1 authority in violation of fundamental constitutional structure. Yet this clear binary
2 question—with obvious answer compelled by constitutional text and structure—has
3 never received judicial determination because traditional standing doctrine prevented
4 anyone from obtaining judicial review.

5 **126. FBI Director Patel's "Original Sin" Identification Is Constitutionally Precise:**

6 When FBI Director nominee Kash Patel testified to Congress that Acosta's plea deal
7 was the "original sin" in the Epstein case, this was not merely deflecting responsibility
8 during congressional oversight—it was the constitutionally correct identification of the
9 causal violation enabling all subsequent criminal enterprise activity. *See* Exhibit N-9
10 (congressional testimony). The 2008 immunity grants exceeding constitutional
11 authority enabled: (a) continued criminal enterprise operation under governmental
12 protection, (b) systematic exploitation protected by ultra vires immunity, (c) seventeen
13 years of constitutional violation compounding harm to victims, and (d) complete
14 collapse of equal protection through wealth-based immunity system. Patel's "original
15 sin" characterization correctly identifies that Acosta's constitutional violation was not
16 merely procedurally irregular—it was the foundational enabling act for seventeen years
17 of subsequent harm that constitutional limits were designed to prevent.

18 **127. DOJ Sophistication Creates Troubling Inference:** The Department of Justice is
19 the most sophisticated legal entity in American government, staffed by elite attorneys
20 trained in constitutional law, separation of powers, and prosecutorial authority limits.

21 When the DOJ fails to recognize for seventeen years that prosecutorial immunity grants
22 mathematically exceed presidential pardon power in every measurable dimension, three
23 explanations exist: (a) gross negligence by hundreds of attorneys over nearly two

1 decades, (b) willful blindness to constitutional violation protecting institutional
2 interests or individual careers, or (c) knowing operation of criminal enterprise
3 protection from within DOJ itself. Each explanation is constitutionally intolerable.
4 Gross negligence at this scale and duration proves traditional standing doctrine creates
5 systematic enforcement gaps where even obvious constitutional violations persist
6 indefinitely when all potential challengers face Article III standing barriers. Willful
7 blindness or criminal enterprise operation prove that citizen enforcement mechanisms
8 are constitutional necessity when institutional actors systematically fail to police
9 constitutional limits on their own authority.

10 **128. Citizen-Advocate Profile Emerges:** Plaintiff Kirchner possesses no personal
11 connection to Epstein case, suffered no individualized harm from 2008 immunity
12 grants distinguishable from harm to all citizens, and has no financial stake in the
13 outcome beyond potential fee awards subject to complete judicial discretion—which he
14 has preemptively refused through certified fee conversion to victim compensation. His
15 filing motivation is purely structural: recognition that prosecutorial immunity
16 exceeding constitutional limits threatens constitutional governance by enabling wealth-
17 based criminal immunity systems that violate equal protection and separation of
18 powers. This is precisely the citizen-advocate profile Track One self-selection
19 predicts.

20 **129. The Investment-to-Outcome Calculation:** Plaintiff's complaint required: (a)
21 constitutional research establishing immunity hierarchy (presidential pardons as
22 ceiling, prosecutorial cooperation immunity as derivative and limited); (b) comparative
23 analysis proving 2008 grants exceeded every pardon limitation; (c) procedural

1 compliance with proposed Rule 8(a)(4)(A) requirements including Constitutional
2 Violation Statement, enumerated limit identification, ultra vires conduct specification,
3 and structural harm demonstration; (d) alternative standing analysis under traditional
4 *Lujan* doctrine for judicial economy; (e) preemptive fee refusal certification
5 demonstrating non-mercenary motivation. This represents substantial pro se
6 investment with **guaranteed zero personal compensation**—exactly the calculation
7 that filters for genuine advocacy before judicial resources are consumed.

8 **130. Merit Attracts Attention:** The constitutional violation Plaintiff identifies is not
9 marginal or debatable. The 2008 immunity grants demonstrably exceeded presidential
10 pardon power in every measurable dimension. This clarity of violation—combined
11 with seventeen-year enforcement gap, documented victims, FBI Director recognition,
12 and humanitarian urgency—presents the type of case that attracts representation from
13 attorneys who recognize constitutional importance rather than profit potential. Self-
14 selection does not require pro se plaintiffs to litigate alone; it requires them to
15 demonstrate merit sufficient to attract professional support for constitutional advocacy
16 serving vulnerable populations.

17 **131. Framework Protection Validated:** No rational actor makes Plaintiff's investment
18 for frivolous constitutional claims. The economics are prohibitive unless: (a) violation
19 is genuine and demonstrable, (b) plaintiff possesses knowledge and capability to prove
20 it, (c) constitutional commitment outweighs personal financial interests, and (d)
21 structural relief benefiting all citizens and protecting trafficking victims justifies
22 personal sacrifice including preemptive fee refusal. These conditions filter for serious

1 constitutional advocacy—not frivolous policy grievances—before any judicial
2 screening occurs.

3 **132. The Preemptive Fee Refusal Certification and Identified Victim**

4 **Requirement:** Plaintiff's decision to preemptively certify fee refusal and victim
5 compensation conversion at the time of filing serves multiple Framework objectives
6 while establishing important limitation on this option:

7 **(1) Preemptive Fee Refusal Requires Identifiable Victims:** Under proposed Rule
8 54(e)(2), preemptive fee refusal certification at time of filing is only permitted when
9 Track One plaintiff can identify specific persons currently harmed by the constitutional
10 violation who may pursue Track Two damages claims. Plaintiff cannot preemptively
11 refuse fees in purely structural violations affecting only universal constitutional
12 governance (appropriations violations, separation of powers violations without
13 individual victims, structural violations affecting only governmental operations)
14 because no Track Two Victim Compensation Fund beneficiaries exist at time of filing.
15 This limitation ensures preemptive fee refusal serves humanitarian purpose—creating
16 commitment to compensate identified victims—rather than performative sacrifice
17 without beneficiaries.

18 **(2) Post-Award Fee Refusal Remains Available:** Even in purely structural cases
19 without identifiable victims, prevailing Track One plaintiff may refuse attorney's fees
20 after award is made. However, without victim beneficiaries, refused fees would return
21 to treasury or remain in court registry rather than serving humanitarian compensation
22 purpose. The prohibition applies only to **preemptive** fee refusal certification at filing
23 when no identifiable victims exist.

1 **(3) Acosta Case Meets Identified Victim Requirement:** The Acosta complaint
2 involves dozens of documented, identifiable victims of sex trafficking enterprise that
3 received governmental protection through ultra vires immunity grants. These victims
4 exist at time of filing, their harm is documented, and they possess potential Track Two
5 claims for damages caused by constitutional violation enabling criminal enterprise
6 protection. Preemptive fee refusal certification with conversion to victim
7 compensation serves direct humanitarian purpose by creating immediate commitment
8 to benefit specific harmed persons.

9 **(4) Demonstrates Non-Mercenary Motivation From Outset:** When Track One case
10 involves identifiable victims of serious criminal enterprise (sex trafficking, violent
11 crime, fraud targeting vulnerable populations), preemptive fee refusal certification at
12 filing proves from the beginning that Plaintiff seeks structural constitutional
13 enforcement and victim protection rather than personal compensation from victims'
14 suffering. This timing matters—certifying fee refusal before any litigation outcome
15 eliminates any inference of profit motive.

16 **(5) Protects Framework Adoption:** When proposing universal standing doctrine
17 using case involving child exploitation with identifiable victims, preemptive fee refusal
18 certification eliminates any inference that Plaintiff seeks to profit from victims' harm.
19 Framework adoption is more important than individual compensation in cases where
20 victim compensation serves direct humanitarian purpose and preemptive certification
21 proves commitment.

22 **(6) Validates Ultimate Self-Selection:** Preemptive fee refusal certification with
23 **guaranteed zero personal return** when identifiable victims exist to benefit represents

1 the ultimate self-selection filter—only genuine constitutional advocates serving
2 humanitarian purposes make this choice at filing. This proves Track One economics
3 filter for victim-serving advocacy rather than strategic litigation seeking personal gain.

4 **(7) Distinguishes as Optional and Limited:** Plaintiff's preemptive fee refusal
5 certification is strategic choice for this particular case's circumstances: (a) child
6 exploitation with identifiable victims existing at filing, (b) Framework demonstration
7 case requiring proof of non-mercenary motivation, (c) seventeen-year victim harm
8 creating humanitarian urgency, (d) victim compensation fund serves direct
9 humanitarian purpose. Most Track One cases will challenge purely structural
10 violations without identifiable victims—for these cases, preemptive fee refusal
11 certification is not permitted because no victim beneficiaries exist at filing to create
12 humanitarian purpose for the certification.

13 **133. Why Framework Preserves Fee Recovery Generally and Limits Fee Refusal**

14 **Option:** The Framework's fee provisions—including discretionary enhancement for
15 exceptional cases—serve critical constitutional enforcement objectives:

16 **(1) Most Track One Cases Involve No Individual Victims:** The vast majority of
17 enumerated constitutional violations are purely structural—governmental conduct
18 exceeding enumerated limits affects constitutional governance but causes no
19 particularized harm to identified individuals. Examples include: appropriations
20 violations (government spends without proper authorization), separation of powers
21 violations (executive exceeds legislative authority), structural violations (improper
22 delegation, treaty violations without individual impact). These cases merit only
23 equitable relief (declaration and injunction) because no individuals suffered

1 particularized harm requiring compensation. Fee refusal in such cases serves no
2 purpose—there are no victims to benefit from compensation fund.

3 **(2) Fee Refusal Serves Humanitarian Purpose Only When Victims Exist:** The Rule

4 54(e)(2)-(3) fee refusal option should be limited to Track One cases where: (a)
5 constitutional violation enabled or caused harm to identified individuals, (b) those
6 individuals possess potential Track Two damages claims, and (c) Track One plaintiff's
7 fee refusal creates victim compensation fund serving direct humanitarian purpose.

8 Without identified victim beneficiaries, fee refusal becomes meaningless sacrifice—
9 destroying Track One sustainability without serving any compensatory function.

10 **(3) Sustainability Requires Fee Recovery for Structural Cases:** Constitutional

11 advocacy against governmental overreach often targets well-resourced defendants
12 defending purely structural violations. Attorneys and pro se plaintiffs who prevail in
13 structural cases (no individual victims) must recover fees to survive litigation and
14 continue enforcement work. These cases are the core of Track One's purpose—
15 enforcing enumerated limits on governmental power regardless of individual victim
16 existence. Requiring or even permitting fee refusal in purely structural cases would
17 destroy Track One viability by ensuring only independently wealthy plaintiffs could
18 afford structural constitutional litigation while serving no humanitarian compensation
19 purpose.

20 **(4) Identified Victim Cases Are Exceptional:** Cases like Acosta—where

21 constitutional violation enabled criminal enterprise harming identified victims—are
22 exceptional Track One cases. Most enumerated violations involve governmental
23 overreach affecting constitutional structure without individual victims. Framework

1 must sustain constitutional enforcement for the common case (purely structural
2 violations) while enabling humanitarian fee refusal for exceptional cases (identified
3 victim harm).

4 **(5) Strategic Distinction:** Plaintiff's preemptive fee refusal in Acosta case reflects: (a)
5 identified victims exist who may benefit from compensation fund, (b) case involves
6 child exploitation requiring elimination of profit motive inference, (c) Framework
7 demonstration using vulnerable victim case demands humanitarian commitment proof.
8 This strategic choice serves humanitarian purpose (victim compensation) and
9 Framework adoption purpose (demonstrates non-mercenary motivation) specifically
10 because victims exist to benefit. The same choice in purely structural cases would
11 serve neither purpose—destroying plaintiff's ability to continue constitutional
12 enforcement while creating compensation fund with zero beneficiaries.

13 **9. Synthesis: Theory, Practice, and Constitutional Necessity**

14 **134. The Complete Picture Emerges:** The preceding analysis establishes: (a) Track
15 One's self-selection mechanism filters for genuine advocacy through harsh pro se
16 economics (§§ 58-65), (b) the *Kirchner v. Acosta* complaint provides empirical
17 validation that predicted filtering operates in practice (§§ 66-73), and (c) traditional
18 standing doctrine's seventeen-year enforcement gap proves universal standing for
19 enumerated violations is constitutional necessity rather than theoretical luxury.

20 **135. Three Interconnected Proofs:** The Framework's viability rests on three pillars,
21 each proven through different evidence:

Pillar	Proof Method	Evidence Source
Self-Selection Works	Economic analysis	Investment-to-return calculation (§§ 59-60)

Filtering Operates	Empirical validation	Plaintiff profile in Acosta case (§§ 67, 70-71)
Universal Standing Necessary	Enforcement gap analysis	Seventeen years, zero review (§§ 68-69, 283)

Each pillar supports the others. Self-selection theory predicts filtering. Acosta complaint validates prediction. Enforcement gap proves traditional doctrine fails where Framework succeeds.

136. The Floodgate That Never Opens: Courts legitimately fear universal standing creating flood of frivolous constitutional litigation. The evidence proves this fear unfounded:

(1) Self-Selection Economics: No rational actor invests substantial pro se resources for uncertain compensation pursuing frivolous claims (§§ 59-60).

(2) Anti-Collusion Certification: Plaintiffs cannot monetize priority position, sell to defendants, or profit except through discretionary judicial fee awards (§ 59(3)).

(3) Empirical Track Record: Plaintiff Kirchner—facing these harsh economics—filed case with clear constitutional merit, substantial documentation, and genuine humanitarian concern (§§ 66-73, 279-289).

(4) Complete Judicial Discretion: Every compensation aspect remains within judicial control—whether fees awarded at all, whether enhancement applies, whether amount reasonable, whether conduct warrants reduction (§ 63).

The floodgate concern assumes conditions Track One explicitly prevents. Self-selection closes the gate before it opens.

137. Merit Attracts Support: The Framework does not require pro se plaintiffs to litigate complex constitutional cases alone. Clear merit attracts representation from

1 attorneys and firms who recognize constitutional importance. Plaintiff's Acosta
2 complaint—documenting immunity grants that mathematically exceed constitutional
3 authority, identifying seventeen-year enforcement gap, and presenting humanitarian
4 concerns—exemplifies the type of case that converts pro se filing into sustainable
5 advocacy through attracted professional support (§§ 61, 72).

6 **138. The Discretionary Fee Enhancement Serves Sustainability:** When genuine
7 constitutional advocacy attracts representation, the discretionary fee enhancement (up
8 to 25% above reasonable rates, subject to complete judicial discretion) enables small
9 firms and solo practitioners to sustain constitutional litigation without financial
10 destruction. The Acosta case illustrates why this matters: challenging ultra vires
11 governmental action protecting criminal enterprises requires resources that standard fee
12 awards may not cover. Enhancement enables sustainability for advocacy that produces
13 structural constitutional value when courts determine exceptional public service
14 warrants recognition (§ 62).

15 **139. Judicial Discretion Prevents Gaming:** No formula forces judicial hands. No
16 guarantee ensures compensation. Complete discretion enables courts to distinguish: (a)
17 genuine advocacy deserving support (Acosta-type cases with clear merit, substantial
18 documentation, humanitarian concern), from (b) strategic litigation deserving nothing
19 (policy grievances masquerading as constitutional claims, frivolous challenges lacking
20 factual basis, mercenary filings seeking priority position monetization). This
21 discretion, combined with harsh pro se economics and Anti-Collusion Certification,
22 makes Track One ungameable (§ 63).

1 **140. Constitutional Structure Requires Citizen Enforcement:** The Founders

2 designed limited government through enumerated powers and structural checks. When
 3 governmental actors exceed enumerated limits—as seventeen-year Acosta enforcement
 4 gap proves—traditional standing doctrine prevents judicial review by requiring
 5 particularized harm for universal structural violations. This creates systematic non-
 6 justiciability for the precise violations enumeration was designed to prevent. Track
 7 One restores constitutional design by enabling citizen-advocates to enforce structural
 8 limits when governmental actors exceed them (¶¶ 68-69, 283, 289).

9 **141. The Framework Honors *Marbury:** *Chief Justice Marshall established in*
 10 *Marbury v. Madison**, 5 U.S. (1 Cranch) 137, 163 (1803), that "[t]he very essence of
 11 civil liberty certainly consists in the right of every individual to claim the protection of
 12 the laws, whenever he receives an injury." When governmental action exceeds
 13 constitutional limits, injury occurs to constitutional structure protecting all citizens.
 14 Traditional standing doctrine denies this injury justiciability. Track One
 15 operationalizes Marshall's principle by recognizing that structural violations require
 16 structural remedies accessible to citizens who identify them—regardless of whether
 17 those citizens suffered particularized harm distinguishable from universal
 18 constitutional injury.

19 **142. Integration Complete:** Theory (self-selection mechanism), practice (Acosta
 20 complaint validation), and necessity (enforcement gap proof) converge to demonstrate
 21 Track One is: (a) safe for courts to adopt (self-selection prevents frivolous filings), (b)
 22 proven effective in practice (Plaintiff's case demonstrates predicted filtering), (c)
 23 constitutionally necessary (traditional doctrine creates non-justiciability for enumerated

violations), and (d) practically sustainable (merit attracts representation, discretionary enhancement enables continuation when warranted, complete judicial discretion prevents gaming). Every objection has answer. Every concern has solution. Every theoretical prediction has empirical validation.

10. Model Orders and Forms

143. Courts managing Track One cases need standardized order templates

enabling efficient case processing. The following model orders provide courts with ready-to-use formats implementing Framework procedures while minimizing drafting burden.

144. Model Stay Order for Subsequent Track One Cases:

IN THE UNITED STATES DISTRICT COURT FOR THE
[DISTRICT] > [Plaintiff Name], Plaintiff, v. [Defendant Name],
Defendant. > Case No. [XX-cv-XXXXX] > ORDER STAYING
PROCEEDINGS PENDING RESOLUTION OF RELATED TRACK
ONE CASE > This case involves a Track One Enumerated Constitutional
Violation claim challenging [description of ultra vires conduct] as
violating [constitutional provision]. A substantially similar or identical
challenge is currently pending in [Case Name, District, Case Number,
Filing Date] (the "Priority Case"). > Pursuant to the Court's inherent
authority to manage its docket, *Landis v. North American Co.*, 299 U.S.
248 (1936), and to avoid duplicative litigation and potentially inconsistent
rulings on the same constitutional question, IT IS HEREBY ORDERED:
> 1. STAY. All proceedings in this case are STAYED pending resolution
of the Priority Case. **> 2. NOTIFICATION.** The parties shall notify this
Court within seven (7) days of any of the following events in the Priority
Case: (a) Entry of judgment on the merits (b) Dismissal on non-merits
grounds (standing, jurisdiction, procedural defects) (c) Settlement or
voluntary dismissal (d) Mootness determination (e) Any other final
disposition **> 3. LIFTING STAY.** Upon notification of final disposition
in the Priority Case, this Court will: (a) If Priority Case found violation
and granted relief: Dismiss this case as MOOT under Article III (b) If
Priority Case found no violation on merits: Apply precedent or allow
parties to brief distinguishing factors (c) If Priority Case dismissed on
non-merits grounds: Lift stay and proceed to merits as new priority case **>**
4. STATUS CONFERENCES. The Court will hold status conferences
every ninety (90) days to monitor Priority Case progress and ensure timely

resolution. > **5. EXPEDITED CONSIDERATION.** If Priority Case has not reached final disposition within eighteen (18) months, Court will consider lifting stay and proceeding independently upon motion of any party or sua sponte. > **6. INTERVENTION RIGHT.** Plaintiff may move to intervene in the Priority Case under Federal Rule of Civil Procedure 24(a)(2) to protect interests in constitutional finding. Such motion should be filed in the Priority Case court. > SO ORDERED this ____ day of _____, 20___. > _____ United States District Judge

145. Model Mootness Dismissal Order:

ORDER DISMISSING TRACK ONE CLAIM AS MOOT > Plaintiff challenges [conduct] as violating [constitutional provision] under Track One universal standing for enumerated limit violations. [Priority Case Name, Citation] adjudicated identical constitutional claim, finding violation and granting structural relief [declaration and injunction]. The constitutional violation Plaintiff challenges has been remedied through Priority Case relief. > Article III requires live case or controversy. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) ("A case becomes moot... when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome"). Plaintiff's Track One claim seeking structural relief (declaration and injunction) lacks cognizable interest because structural violation no longer exists. > Plaintiff's Track One claim is DISMISSED AS MOOT. No costs assessed. If Plaintiff asserts Track Two individual damages claim for past completed harm caused by the violation, that claim REMAINS PENDING and proceeds under traditional *Lujan* standing requirements. > SO ORDERED.

146. Model Order Lifting Stay After Non-Merits Dismissal:

ORDER LIFTING STAY AND DESIGNATING THIS CASE AS PRIORITY CASE > This case was stayed pending resolution of [Priority Case]. That case has been dismissed on [procedural grounds / standing / jurisdictional defect] without reaching the merits of the constitutional question. No judicial determination has been made regarding whether [challenged conduct] violates [constitutional provision]. > The stay is hereby LIFTED. This case proceeds as the new priority case for purposes of addressing the constitutional question. Parties shall confer and submit proposed expedited briefing schedule within fourteen (14) days addressing: [constitutional question]. > SO ORDERED.

1 **11. Intervention Rights and Adequate Representation**

2 **147. Subsequent plaintiffs whose cases are stayed have constitutional interest in**
3 **ensuring the priority case adequately presents the constitutional question.** Federal
4 Rule of Civil Procedure 24(a)(2) provides intervention as of right when the movant
5 "claims an interest relating to the property or transaction that is the subject of the
6 action, and is so situated that disposing of the action may as a practical matter impair or
7 impede the movant's ability to protect its interest, unless existing parties adequately
8 represent that interest."

9 **148. Track One Intervention Analysis:** Subsequent plaintiff whose case is stayed
10 pending priority case resolution satisfies all Rule 24(a)(2) elements:

11 **Interest in Subject Matter:** Subsequent plaintiff challenges same enumerated
12 constitutional violation as priority case. Both plaintiffs seek structural relief correcting
13 governmental ultra vires conduct. Interest is identical.

14 **Practical Impairment:** If priority case is dismissed on grounds not applicable to
15 subsequent plaintiff (procedural defect, inadequate pleading, settlement without
16 structural relief), subsequent plaintiff's ability to reach merits is impeded. Priority case
17 judgment or dismissal may create precedent affecting subsequent case.

18 **Adequacy of Representation:** Priority plaintiff may have different litigation
19 resources, strategic preferences, or legal theories. Subsequent plaintiff cannot assume
20 priority plaintiff adequately represents shared constitutional interest, particularly if
21 priority plaintiff has weaker case or fewer resources.

22 **Timeliness:** Motion to intervene filed promptly after stay order is timely. Subsequent
23 plaintiff only learned of priority case when court entered stay.

1 **149. Presumption Favoring Intervention:** Courts should apply presumption favoring
2 intervention by subsequent Track One plaintiffs in priority cases. Intervention serves
3 Framework's purposes:

4 **Ensures Adequate Representation:** Multiple plaintiffs with different counsel and
5 perspectives strengthen constitutional arguments, reducing risk inadequate briefing
6 leads to erroneous dismissal.

7 **Protects Subsequent Plaintiffs' Interests:** If priority case settled without structural
8 relief or dismissed on grounds inapplicable to intervenor, intervenor can continue
9 litigation.

10 **Maintains Coordination Efficiency:** Intervention consolidates constitutional
11 arguments in single proceeding rather than requiring subsequent cases to proceed
12 independently.

13 **Prevents Procedural Gamesmanship:** If priority plaintiff is inadequate (intentionally
14 or through lack of resources), intervention prevents that inadequacy from blocking
15 proper constitutional adjudication.

16 **150. Limited Intervention Procedures:** To preserve coordination efficiency while
17 protecting subsequent plaintiffs' interests, courts should structure intervention as
18 follows:

19 **No Duplicative Briefing:** Intervenor may not file separate opening brief covering same
20 arguments as priority plaintiff. This prevents redundant briefing defeating efficiency
21 purposes.

1 **Supplemental Briefing Permitted:** Intervenor may file supplemental brief addressing
2 arguments priority plaintiff inadequately presented or omitted entirely. Length limit:
3 15 pages or 4,000 words.

4 **Oral Argument Participation:** If intervenor raises distinct legal arguments not
5 adequately addressed by priority plaintiff, court may allocate argument time (typically
6 5-10 minutes).

7 **Appeal Rights:** Intervenor has independent right to appeal if priority case dismissed,
8 protecting interest even if priority plaintiff does not appeal.

9 **Settlement Approval:** Intervenor must consent to any settlement providing less than
10 full structural relief, preventing inadequate settlements from mooted legitimate
11 constitutional challenges.

12 **151. Protection Against Inadequate Priority Plaintiff:** Several mechanisms protect
13 against priority plaintiff's inadequacy preventing proper constitutional adjudication:

14 **Intervention by Subsequent Plaintiffs:** As described above, subsequent plaintiffs can
15 intervene to supplement inadequate briefing, ensuring constitutional question receives
16 thorough presentation.

17 **Amicus Curiae Briefs:** Constitutional law scholars, public interest organizations, or
18 other subsequent plaintiffs can file amicus briefs supporting stronger legal arguments
19 priority plaintiff failed to present. Amicus briefs require no formal intervention and
20 add minimal procedural complexity.

21 **Court Appointment of Amicus:** In cases involving structural constitutional violations
22 of particular public importance, courts possess authority to appoint amicus curiae to

1 ensure thorough legal analysis. *See Teague v. Lane*, 489 U.S. 288, 300 n.2 (1989)
 2 (court appointed amicus to address issue neither party raised).

3 **Sua Sponte Coordination with Superior Case:** If priority case manifestly inadequate
 4 and strong subsequent case exists, court can lift stay in subsequent case and coordinate
 5 proceedings, effectively designating superior case as co-priority case.

6 **Stay Lift Motion:** Subsequent plaintiff can move to lift stay arguing priority plaintiff
 7 cannot adequately present case, justifying independent parallel litigation. Standard:
 8 clear inadequacy preventing proper constitutional adjudication (pro se plaintiff lacking
 9 legal knowledge, inadequate resources, conflicting interests).

10 **152. Balance Between Efficiency and Adequate Representation:** Courts must
 11 balance Framework's coordination efficiency with ensuring constitutional violations
 12 receive adequate judicial review. The intervention and protection mechanisms above
 13 achieve this balance: presumption favors coordination through single priority case, but
 14 adequate representation safeguards prevent inadequate priority plaintiff from blocking
 15 proper constitutional adjudication. Courts have discretion to manage this balance case-
 16 by-case based on priority plaintiff's demonstrated adequacy and subsequent plaintiffs'
 17 legitimate concerns.

18 **12. Non-Merits Dismissal and Priority Transfer Procedures**

19 **153. Critical question for Framework implementation: What happens when**
 20 **priority case is dismissed on grounds other than merits?** Several scenarios require
 21 distinct procedures ensuring constitutional violations receive merits adjudication
 22 despite procedural obstacles in individual cases.

154. Scenario One - Priority Case Dismissed for Deficient Constitutional Violation**Statement:**

Situation: Priority plaintiff fails to satisfy Rule 8(a)(4)(A) requirements—cites provision not enumerating limit on governmental power, omits required Constitutional Violation Statement elements, alleges conduct not exceeding enumerated authority, or seeks relief not addressing structural violation.

Court's Dismissal: Dismisses priority case under Rule 12(j) for failure to satisfy Track One requirements or under Rule 12(b)(1) for lack of standing.

Effect on Subsequent Cases: Dismissal is case-specific procedural defect, not merits determination regarding constitutional question. No precedent established on whether challenged conduct violates enumerated provision.

Procedure:

155. Court notifies stayed plaintiffs of priority case dismissal (automatic through registry)

156. Stayed cases' stays lift automatically within 7 days

157. Next-filed case with proper Constitutional Violation Statement becomes new priority case

158. Process repeats with new priority case addressing constitutional question on merits

Rationale: First-filed rule rewards proper pleading, but shouldn't create absolute barrier preventing proper subsequent cases from addressing constitutional violations. Subsequent plaintiffs with adequate pleadings should have opportunity to present constitutional question properly.

159. Scenario Two - Priority Case Dismissed for Other Procedural Defects:

Situation: Priority case dismissed for improper venue, lack of personal jurisdiction over defendants, failure to exhaust administrative remedies, Eleventh Amendment immunity, or other procedural barriers not reaching constitutional merits.

Effect: Procedural dismissal doesn't establish that challenged conduct is constitutional—only that particular plaintiff in particular forum cannot obtain relief for procedural reasons.

Procedure:

- Court notifies stayed plaintiffs
- Stays lift automatically
- Subsequent plaintiff in proper venue, with proper defendants, or without procedural barrier becomes priority case
- Constitutional question proceeds to merits in procedurally proper case

Example: Priority case dismissed because plaintiff sued wrong Executive Branch official (lacks proper defendant). Subsequent case naming correct official proceeds as new priority case.

160. Scenario Three - Priority Case Settled Without Structural Relief:

Situation: Priority plaintiff and defendant negotiate settlement during litigation.

Because Track One standing is universal (not based on particularized injury), priority plaintiff has no individual damages claim to settle. Priority plaintiff can only seek equitable relief: declaration that violation occurred and injunction preventing future violations.

Settlement Possibilities:

Option A - No Structural Relief: Defendant offers to pay priority plaintiff's attorney's fees in exchange for dismissal. This is NOT settlement of Track One claim (which seeks only structural relief, not money). This is payment to induce voluntary dismissal.

Effect: Priority plaintiff who accepts payment to dismiss without obtaining structural relief is NOT prevailing party. No court-ordered attorney's fees. Any payment is private arrangement, not court-approved settlement. Court should scrutinize whether dismissal serves public interest or merely benefits individual plaintiff while leaving constitutional violation unaddressed.

Option B - Consent Decree With Structural Relief: Defendant agrees to consent decree including:

- Declaration that defendant's conduct violated enumerated constitutional provision
- Permanent injunction preventing future violations
- Court retains jurisdiction to enforce decree

Effect: If consent decree provides complete structural relief equivalent to judgment on merits, court may approve settlement and award attorney's fees to prevailing plaintiff. Subsequent Track One cases become moot if consent decree fully remedies structural violation.

161. Track One Plaintiffs Cannot Settle for Individual Monetary Relief:

Critical Distinction: Track One plaintiff has universal standing based on structural violation affecting everyone, not particularized injury. Track One plaintiff therefore has no individual damages claim to settle. Track One plaintiff can only obtain:

Equitable Relief from Court: Declaration and injunction (if plaintiff prevails on merits)

Attorney's Fees from Court: If plaintiff prevails, court may award fees under applicable fee-shifting statute (42 U.S.C. § 1988 for constitutional claims). Court has discretion to reduce or deny fees even to prevailing plaintiff.

What Track One Plaintiff CANNOT Get: Monetary damages compensating individual harm. Such damages require particularized injury (Track Two). Track One plaintiff seeking only structural relief cannot claim particularized injury—doing so would undermine universal standing theory.

Preventing Collusive Settlements: Courts should scrutinize any settlement where Track One plaintiff dismisses in exchange for payment. Questions to ask:

- Does settlement provide structural relief benefiting all citizens?
- Or does settlement provide only individual benefit to plaintiff?
- Does dismissal serve public interest in constitutional enforcement?
- Is this collusive arrangement circumventing Track One's structural purpose?

Standard: Court should reject settlement that provides Track One plaintiff individual monetary benefit without providing structural relief. Such settlement defeats Track One's purpose: obtaining structural relief protecting everyone, not individual enrichment.

162. Scenario Four - Priority Case Settled WITH Structural Relief via Consent

Decree:

Situation: Priority case settles with comprehensive consent decree including:

- Declaration that defendant's conduct violated enumerated constitutional provision
- Permanent injunction preventing defendant from repeating violation
- Monitoring and enforcement mechanisms
- Court retains jurisdiction to enforce decree
- Attorney's fees awarded to priority plaintiff as prevailing party

1 **Effect:** Consent decree providing complete structural relief equivalent to judgment on
2 merits may moot subsequent Track One cases under Article III. Court must ensure
3 decree provides structural relief, not merely individual benefit to settling plaintiff.

4 **Court's Analysis:**

5 **163.** Does decree declare violation occurred? (Not just "defendant agrees to comply
6 going forward")

7 **164.** Does decree prevent future violations through enforceable injunction?

8 **165.** Does decree provide remedy benefiting all citizens equally, not just settling
9 plaintiff?

10 **166.** Is decree enforceable by any citizen or only settling plaintiff?

11 **If Decree Adequate:** Subsequent cases dismissed as moot. Structural violation
12 remedied through consent decree.

13 **If Decree Inadequate:** Subsequent cases proceed. Settlement provided individual
14 benefit to settling plaintiff but didn't remedy structural violation for everyone.

15 **167. Attorney's Fees in Track One Cases - Court Discretion:**

16 **Fee-Shifting Statutes Apply:** Track One prevailing plaintiffs may seek attorney's fees
17 under applicable fee-shifting statutes (42 U.S.C. § 1988 for constitutional claims, 28
18 U.S.C. § 2412(b) against United States).

19 **"Prevailing Party" Requirement:** Plaintiff must obtain "some relief on the merits" to
20 be prevailing party. *Sole v. Wyner*, 551 U.S. 74, 82 (2007). Obtaining declaration and
21 injunction satisfies this requirement.

22 **BUT Court Has Discretion:** Even when plaintiff prevails, court may reduce or deny
23 fees based on:

- Quality of representation
- Reasonableness of hours claimed
- Whether fees are excessive given relief obtained
- Whether plaintiff's litigation conduct warrants fee reduction
- Public interest considerations

No Automatic Fees: Track One fee enhancement (25% above reasonable rates) applies when plaintiff prevails, but court retains discretion to reduce or deny fees if circumstances warrant.

Settlement Without Judgment: If plaintiff voluntarily dismisses (even with consent decree), plaintiff is prevailing party only if consent decree provides "judicially sanctioned change in legal relationship." *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598, 604 (2001). Private settlement payment without court-ordered structural relief does NOT make plaintiff prevailing party.

168. Why Track One Cannot Involve Monetary Damages:

Logical Impossibility: Track One standing is universal—any citizen can challenge enumerated violation regardless of individual harm. If Track One plaintiffs could recover monetary damages, this would create perverse incentive: race to file Track One case to obtain both structural relief AND monetary windfall despite no particularized injury.

Constitutional Requirement: Legal remedies (monetary damages) require particularized injury under Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Track One plaintiff asserting universal standing cannot simultaneously claim particularized injury—these theories are mutually exclusive.

Track One Limited to Equitable Relief: Declaration that violation occurred + injunction preventing future violations. These equitable remedies benefit all citizens equally through structural enforcement, requiring no particularized injury.

Track Two Provides Monetary Relief: Plaintiffs with particularized harm pursue Track Two damages claims under traditional *Lujan* standing, recovering compensation for individual harm. Track Two requires proving concrete injury, causation, redressability.

Attorney's Fees Exception: Court-ordered attorney's fees for prevailing Track One plaintiffs are costs of litigation, not damages compensating injury. Fees compensate attorney's work obtaining structural relief benefiting everyone, awarded only when plaintiff prevails on merits. *Perdue v. Kenny A.*, 559 U.S. 542 (2010).

169. Track One Settlement Limitations Prevent Collusion:

Problem Framework Addresses: Without equitable-relief-only limitation, defendants could "buy off" Track One plaintiffs through individual payments, preventing structural violations from ever being judicially addressed. Example: Government violates Appropriations Clause affecting millions. First plaintiff files Track One case. Government offers plaintiff \$1,000,000 to dismiss. Plaintiff accepts. Constitutional violation never addressed. Subsequent plaintiffs face same offer. Structural violation continues indefinitely because cheaper to pay off individual plaintiffs than remedy violation.

Framework Solution - Equitable Relief Only: Track One plaintiff has nothing to "sell" to defendant except dismissal. Plaintiff cannot demand or receive individual

monetary benefit as "settlement" of Track One claim. Track One claim seeks structural relief benefiting everyone—not individual enrichment benefiting plaintiff.

Legitimate Consent Decrees: Defendant may settle Track One case through consent decree providing structural relief equivalent to judgment:

- Declaration acknowledging violation occurred
- Permanent injunction preventing future violations
- Court-supervised compliance monitoring
- Prevailing plaintiff entitled to court-ordered attorney's fees

Illegitimate "Settlements": Defendant paying Track One plaintiff to dismiss without structural relief:

- Plaintiff receives payment but no structural relief obtained
- Constitutional violation unaddressed
- Plaintiff is NOT prevailing party (no court-ordered relief obtained)
- No entitlement to court-ordered attorney's fees
- Payment is private arrangement circumventing constitutional enforcement

Court's Scrutiny Obligation: When Track One plaintiff moves to dismiss after defendant contact, court should inquire whether dismissal involves payment. If so, court should scrutinize whether payment serves public interest or merely benefits individual plaintiff while leaving structural violation unaddressed. Court may deny dismissal if public interest in constitutional enforcement outweighs private arrangements.

13. Anti-Collusion Certification Enforcement During Settlement and Dismissal

170. Court's Duty When Track One Plaintiff Seeking Only Structural Relief Files for Dismissal: When a Track One plaintiff who filed an Anti-Collusion Certification seeks voluntary dismissal or joint stipulation of dismissal, court must conduct anti-collusion inquiry before granting dismissal:

1 **(1) Consideration Inquiry:** Court requires plaintiff to certify under oath whether
2 plaintiff or plaintiff's attorney received any payment, consideration, or thing of value
3 from defendant or related parties in connection with the dismissal.

4 **(2) Payment Review:** If plaintiff acknowledges payment occurred, court reviews
5 whether payment is permissible under the Anti-Collusion Certification:

6 **Permitted:** Court-ordered attorney's fees as part of consent decree providing full
7 structural relief equivalent to judgment on merits, meeting all five requirements of
8 paragraph 55.

9 **Prohibited:** Private payment from defendant to induce dismissal without structural
10 relief. Any payment not meeting consent decree requirements.

11 **(3) Evidentiary Hearing:** If court suspects payment occurred but plaintiff denies,
12 court may order evidentiary hearing requiring plaintiff's bank records for relevant
13 period, attorney's IOLTA account records, defendant's payment records, and testimony
14 under oath from plaintiff and counsel.

15 **171. Discovery of Prohibited Payment - Sanctions During Litigation:** If court finds
16 payment violated certification during active litigation:

17 **Immediate Actions:** Court shall deny dismissal motion, impose sanctions under Rule
18 11 (minimum \$10,000 payable to court), order disgorgement of all payments received,
19 refer to state bar for professional discipline, and refer to U.S. Attorney for criminal
20 investigation under 18 U.S.C. § 201 if payment pattern suggests corruption.

21 **Case Disposition:** Court shall retain case on docket or transfer priority to next-filed
22 case, ensuring constitutional violation receives adjudication despite plaintiff's breach of
23 certification.

1 **Future Disqualification:** Plaintiff permanently barred from invoking structural-relief-
2 only Track One standing nationwide. Name added to Administrative Office registry of
3 disqualified litigants. Notice sent to all federal courts where related cases pending.

4 **172. Discovery of Prohibited Payment - Sanctions After Dismissal:** If court
5 discovers after voluntary dismissal was granted that plaintiff received undisclosed
6 payment:

7 **(1) Sanctions Proceeding:** Court retains jurisdiction to reopen for sanctions hearing.
8 Upon motion by subsequent plaintiff, government, or sua sponte, court may conduct
9 evidentiary hearing regarding undisclosed payments.

10 **(2) Available Sanctions:** Disgorgement of all payments (deposited with court),
11 additional monetary sanctions (minimum \$25,000), bar referral for professional
12 discipline, criminal referral to U.S. Attorney, permanent disqualification from
13 structural-relief-only Track One standing nationwide.

14 **(3) Subsequent Case Relief:** Court notifies all other courts where related Track One
15 cases pending, enabling immediate lift of stays. Subsequent plaintiff who exposes
16 violation may recover costs and fees incurred during improper stay period from
17 original plaintiff.

18 **173. Illustrative Example - Prohibited Payment Scenario:**

19 **Facts:** Track One plaintiff who filed Anti-Collusion Certification challenging
20 appropriations violation receives offer from defendant: \$50,000 "to avoid litigation
21 costs." Plaintiff accepts payment and files voluntary dismissal. Subsequent plaintiff
22 discovers payment through Freedom of Information Act request revealing payment
23 records.

1 **Procedure:** Subsequent plaintiff files motion in original court revealing payment.

2 Court reopens case for sanctions hearing. Original plaintiff admits receiving \$50,000.

3 **Sanctions Imposed:** Disgorge \$50,000 (paid to court), additional \$25,000 monetary
4 sanctions (payable to court), bar referral for professional discipline, criminal referral to
5 U.S. Attorney for investigation under 18 U.S.C. § 201, permanent disqualification from
6 structural-relief-only Track One standing, subsequent plaintiff awarded costs and fees
7 for exposing violation.

8 **Message:** Violating the Anti-Collusion Certification carries catastrophic consequences
9 ensuring only genuine public-interest plaintiffs invoke structural-relief-only Track One
10 standing.

11 **174. Integration with Consent Decree Review:** The Anti-Collusion Certification
12 enforcement procedures integrate with court's existing obligation under paragraphs
13 123-127 to scrutinize settlements for adequate structural relief. When Track One
14 plaintiff who filed Anti-Collusion Certification seeks dismissal through consent decree:

15 **Step 1:** Court verifies decree meets all five requirements of paragraph 55 (declaration,
16 permanent injunction, monitoring, court jurisdiction, public benefit).

17 **Step 2:** Court verifies any fee reimbursement is tied to decree meeting structural relief
18 standard.

19 **Step 3:** Court provides public notice and hearing before approving consent decree.

20 **Step 4:** Court retains jurisdiction to enforce decree and reopen if decree proves
21 inadequate.

22 **Step 5:** If subsequent review reveals decree failed to provide adequate structural relief,
23 original plaintiff's fee reimbursement subject to disgorgement.

This integrated review ensures consent decrees serve constitutional enforcement purposes rather than circumventing Track One's structural relief requirements for plaintiffs who certified they would seek only equitable remedies.

14. Mootness Determination Procedures

175. After priority case reaches final disposition, courts must determine effect on stayed cases. Article III mootness doctrine provides framework, but Track One cases require specific application procedures.

176. Priority Case Grants Structural Relief - Automatic Mootness:

Priority Case Outcome: Court finds defendant violated enumerated constitutional provision and grants structural relief:

- Declaration: "Defendant's conduct on [date] violated [constitutional provision] by exceeding enumerated authority"
- Injunction: "Defendant is ORDERED to cease [ultra vires conduct] and comply with [constitutional requirement]"
- Mandamus: "Defendant SHALL [perform constitutional duty]"

Effect on Subsequent Cases: Constitutional violation has been judicially corrected. Structural relief obtained. Future violations enjoined. Subsequent plaintiffs seeking identical structural relief lack cognizable interest under Article III because violation no longer exists.

Mootness Standard: *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013): "A case becomes moot... when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome."

Application: Subsequent Track One plaintiffs' structural claims are moot. They sought declaration that violation occurred (obtained through priority case) and injunction

1 preventing future violations (obtained through priority case). No additional structural
2 relief available. Claims lack live controversy.

3 **Dismissal Procedure:** Stayed courts enter mootness dismissal orders (see Model Order
4 in Section K ¶60) within 14 days of priority case final judgment. Dismissal is without
5 costs—subsequent plaintiffs achieved their goal (constitutional violation corrected)
6 through priority case coordination.

7 **Track Two Claims Survive:** If subsequent plaintiffs assert Track Two individual
8 damages claims for past completed harm caused by violation, those claims REMAIN
9 PENDING. Mootness applies only to structural Track One claims, not individual
10 damages claims. Court bifurcates proceedings: Track One dismissed as moot, Track
11 Two proceeds using collateral estoppel from priority case constitutional finding.

12 **177. Priority Case Finds No Violation on Merits:**

13 **Priority Case Outcome:** Court determines challenged conduct did not violate
14 enumerated constitutional provision. Conduct was within defendant's constitutional
15 authority, or enumerated limit doesn't restrict challenged conduct, or other merits-based
16 reason for finding no violation.

17 **Precedential Effect Depends on Jurisdiction:**

18 **Same District, Same Judge:** Informal precedent (law of the case doctrine).

19 Subsequent plaintiff must show different facts, changed circumstances, or legal error in
20 priority case to avoid precedent.

21 **Same District, Different Judge:** Persuasive authority but not binding. Different judge
22 may reach different conclusion, but practical likelihood: will follow first decision
23 absent compelling reason to differ.

Different Districts Within Circuit: Not binding as precedent, but highly persuasive. District courts within same circuit generally follow other district courts' constitutional interpretations absent circuit precedent to contrary.

Different Circuits: Not binding. Different circuits may reach different conclusions, creating circuit split eligible for Supreme Court resolution.

Appellate Decision: If priority case appealed and circuit court affirms no violation, that decision binds all district courts in circuit. Subsequent cases in same circuit face binding precedent.

178. Subsequent Plaintiff Options After Priority Case Finds No Violation:

Option A - Accept Precedent and Dismiss: If priority case correctly found no violation, subsequent plaintiff may voluntarily dismiss (Rule 41(a)(1)(A)(i) before defendant answers or moves for summary judgment) or accept dismissal based on priority case precedent.

Option B - Distinguish Priority Case: Move to lift stay and proceed if case presents materially different facts:

- Different time period (circumstances changed since priority case)
- Different specific conduct (variation on ultra vires action)
- Different legal theory (alternative constitutional provision violated)
- Different defendants (different branch or official)

Option C - Join or File Amicus in Priority Case Appeal: If priority case is appealed, subsequent plaintiffs can:

- Move to intervene in appeal under Rule 24(a)(2)
- File amicus curiae brief supporting reversal
- Consolidate appeals if multiple subsequent plaintiffs appeal

Option D - Create Circuit Split for Supreme Court Review: If different circuits reach different conclusions on same constitutional question, subsequent plaintiff in different circuit can create split increasing likelihood Supreme Court grants certiorari.

179. Collateral Estoppel Effect of Priority Case Constitutional Finding: When a Track One priority case finds that governmental conduct violated an enumerated constitutional provision, that finding has collateral estoppel effect in subsequent Track Two damages proceedings under *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326-33 (1979).

180. Elements Satisfied: Collateral estoppel requires that the issue decided in the prior case be identical to the issue in the current case, that the issue was actually litigated, that determination was necessary to the judgment, and that the party against whom estoppel is asserted had full and fair opportunity to litigate. *Id.* at 326-27. Track One priority case adjudication satisfies each element: the constitutional question (whether challenged conduct violated the enumerated provision) is identical in both proceedings; the priority case fully briefed and decided this question on the merits; the constitutional finding was essential to the judgment granting structural relief; and the government defendant had comprehensive opportunity to litigate through discovery, briefing, and oral argument.

181. Practical Effect for Track Two Plaintiffs: A Track Two plaintiff seeking damages need not relitigate whether the constitutional violation occurred—collateral estoppel establishes that it did. The plaintiff must prove only three elements: (1) concrete particularized harm suffered by that plaintiff, (2) causal connection between the established violation and the harm, and (3) damages that would redress the injury.

This dramatically streamlines Track Two proceedings: discovery focuses on individual damages rather than constitutional merits, dispositive motions address damages calculation rather than whether violation occurred, and any trial concerns compensation amounts rather than governmental liability.

182. Mootness Versus Damages Timeline Example:

October 11, 2025: President redirects \$2.3 billion Pentagon R&D appropriations to military pay without authorization

October 15, 2025: Contractor A files Track One case challenging appropriations violation

January 15, 2026: Court finds violation, enjoins future unauthorized redirections (Track One structural relief granted)

January 20, 2026: Contractor B files case:

- **Track One claim** (structural relief): MOOT (violation remedied by Contractor A's case)
- **Track Two claim** (\$500,000 damages for lost R&D contract): REMAINS LIVE

Procedure:

- Court dismisses Track One as moot (no additional structural relief available)
- Track Two proceeds with Contractor B proving: contract loss caused by unconstitutional redirection
- Collateral estoppel: Contractor B uses January 15 judgment establishing redirection violated Constitution
- Contractor B need only prove: had contract, redirection caused loss, \$500,000 compensates loss
- No relitigation of constitutional violation

Result: Contractor B benefits from Contractor A's Track One success (violation established) while pursuing individual damages (particularized harm compensated).

15. Time-Sensitive Constitutional Violations

183. Constitutional Context for Expedition: Most enumerated constitutional violations require prompt judicial resolution to restore structural governance, but very few require emergency procedures. The Framework provides three distinct scheduling tiers enabling courts to match urgency to actual circumstances while maintaining decision quality. Courts must balance constitutional enforcement necessity against the reality that rushed adjudication of complex constitutional questions risks erroneous precedent.

184. Three-Tier Scheduling Framework:

Tier 1 - Standard Track One (Most Cases): Constitutional violations requiring structural remedy but without imminent deadlines receive standard expedited treatment (165 days from filing to decision). This schedule is already dramatically faster than traditional constitutional litigation (typically 2-4 years) while preserving judicial quality.

Tier 2 - Expedited Track One (Known Deadline Cases): Constitutional violations with external deadlines known at filing (fiscal year end, statutory sunset, electoral certification) receive further expedition (80 days from filing to decision) when plaintiff files months before deadline, enabling thorough briefing while ensuring resolution before deadline passes.

Tier 3 - Preliminary Relief (True Emergencies): Constitutional violations threatening imminent irreparable harm that cannot await even expedited merits adjudication may receive preliminary injunctive relief under standard *Winter v. NRDC* factors, with full merits proceeding on expedited schedule after preliminary ruling.

185. Standard Track One Schedule (Tier 1 - Default for Most Cases):

Briefing Schedule:

- Opening brief: 30 days
- Response brief: 30 days
- Reply brief: 14 days
- Oral argument: 30 days after briefing complete
- Decision: 60 days after oral argument
- **Total: ~165 days (5.5 months)**

When Applied: All Track One cases unless plaintiff demonstrates known deadline requiring Tier 2 expedition or imminent irreparable harm requiring Tier 3 preliminary relief.

Rationale: Five months from filing to constitutional decision is dramatically faster than traditional litigation while preserving judicial quality. Complex constitutional questions involving separation of powers, enumerated limits, and structural governance require adequate time for research, briefing, and deliberation. Rushing constitutional adjudication creates risk of erroneous precedent affecting entire governmental structure.

186. Expedited Track One Schedule (Tier 2 - Known Deadline Cases):**Briefing Schedule:**

- Opening brief: 14 days
- Response brief: 14 days
- Reply brief: 7 days
- Oral argument: 14 days after briefing complete
- Decision: 30 days after oral argument
- **Total: ~80 days (2.5 months)**

When Applied: Track One plaintiff must demonstrate:

(1) External Deadline: Case involves deadline external to litigation (fiscal year end, electoral certification, statutory sunset, treaty ratification deadline) creating temporal constraint on relief effectiveness.

1 **(2) Adequate Lead Time:** Plaintiff filed with sufficient advance notice (minimum 4-6
2 months before deadline) enabling expedition without compromising decision quality.

3 **(3) Necessity for Expedition:** Standard 165-day schedule would result in decision after
4 deadline passes, mooted the structural relief sought.

5 **Examples of Appropriate Tier 2 Cases:**

6 **(A) Fiscal Year Appropriations:** Challenge to appropriations violation filed in March
7 seeking resolution before September 30 fiscal year end. Eight months available
8 permits 80-day adjudication (decision by early June) with time for appeals before fiscal
9 year closes.

10 **(B) Electoral Certification:** Challenge to Electoral Count Act procedures filed in June
11 of election year seeking resolution before January certification. Seven months
12 available permits 80-day adjudication with appellate review before certification
13 deadline.

14 **(C) Statutory Sunset:** Challenge to statute allegedly exceeding enumerated authority
15 filed one year before sunset provision takes effect. Twelve months available permits
16 80-day district court adjudication (decision month 3), circuit appeal (decision month 7),
17 and Supreme Court review if necessary (decision month 11) before sunset.

18 **Rationale:** 80 days provides meaningful time for constitutional analysis while enabling
19 resolution before known deadlines. This schedule requires advance planning by
20 plaintiffs—filing months before deadline rather than days before—ensuring expedition
21 serves constitutional enforcement rather than strategic timing manipulation.

22 **187. Preliminary Injunctive Relief (Tier 3 - True Emergencies Only):**

Standard: When Track One plaintiff demonstrates imminent irreparable harm that cannot await even expedited merits adjudication, court may grant preliminary injunctive relief under *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008), requiring plaintiff establish:

(1) Likelihood of Success on Merits: Plaintiff shows likely violation of enumerated constitutional provision through governmental conduct exceeding textual authority.

(2) Irreparable Harm Absent Preliminary Relief: Plaintiff demonstrates specific, imminent harm that will occur before merits adjudication and cannot be remedied through subsequent relief.

(3) Balance of Equities Favors Plaintiff: Preventing likely constitutional violation outweighs defendant's interest in continuing challenged conduct during litigation.

(4) Public Interest Supports Preliminary Relief: Public interest always favors preventing governmental conduct likely exceeding constitutional authority. Structural harm from ultra vires governmental action outweighs any efficiency interest in continuing challenged conduct pending full adjudication.

Preliminary Relief Does Not Adjudicate Constitutional Merits: Preliminary injunction prevents imminent harm while enabling thorough constitutional adjudication. After preliminary ruling:

- Case proceeds to full merits under Tier 2 Expedited Schedule (80 days)
- Comprehensive record developed
- Thorough briefing on constitutional questions
- Full merits decision addressing structural violations definitively

Examples of Appropriate Tier 3 Cases:

(A) Imminent Military Action: President announces military action allegedly exceeding Article I war powers authority, scheduled to commence within days.

1 Plaintiff seeks preliminary injunction preventing action pending merits adjudication of
2 whether President possesses constitutional authority.

3 **(B) Immediate Enforcement of Unconstitutional Statute:** Government announces
4 immediate enforcement of statute allegedly exceeding enumerated authority,
5 threatening immediate prosecutions or seizures. Plaintiff seeks preliminary injunction
6 preventing enforcement pending merits adjudication.

7 **(C) Emergency Declaration Implementation:** President issues emergency declaration
8 allegedly lacking statutory authorization or constitutional necessity, with
9 implementation causing immediate structural harm. Plaintiff seeks preliminary
10 injunction preventing implementation pending merits review.

11 **What Does NOT Qualify for Tier 3:**

12 **(X) Ongoing Appropriations Violations:** Violation already occurred and continues,
13 but additional months of violation while case proceeds on Tier 1 or 2 schedule does not
14 constitute "imminent irreparable harm" requiring preliminary relief. Declaratory and
15 injunctive relief on merits provides adequate remedy.

16 **(X) Electoral Challenges Filed Late:** Plaintiff who waits until weeks before election
17 to challenge candidate eligibility or election procedures cannot manufacture emergency
18 through strategic delay. Should have filed months earlier enabling Tier 2 expedition.

19 **(X) General Structural Harm:** Universal harm to constitutional structure from
20 enumerated violations does not constitute "irreparable harm" for preliminary injunction
21 purposes absent specific imminent consequences that cannot await expedited merits
22 adjudication.

23 **188. Preliminary Relief Procedure and Standards:**

1 **Motion Filing:** Plaintiff seeking preliminary relief files motion simultaneously with
2 complaint, or within 7 days of filing if emergency arises after filing.

3 **Expedited Briefing:** Court sets expedited briefing schedule at its discretion based on
4 urgency (typically 3-7 days for response, 2-3 days for reply).

5 **Evidentiary Hearing:** Court may hold evidentiary hearing if factual disputes require
6 resolution for preliminary ruling, or may decide on briefs and declarations if legal
7 questions predominate.

8 **Decision Timing:** Court issues preliminary ruling within days to weeks based on case
9 urgency. No fixed timeline—court exercises discretion matching decision speed to
10 actual harm imminence.

11 **Interlocutory Appeal:** Orders granting or denying preliminary injunctions are
12 immediately appealable under 28 U.S.C. § 1292(a)(1). Circuit courts should expedite
13 appeals recognizing preliminary nature, with decisions typically within 30-45 days.

14 **Limited Scope:** Preliminary ruling addresses only whether plaintiff demonstrated
15 *Winter* factors justifying temporary relief pending merits. Does not establish
16 constitutional precedent. Does not bind merits adjudication. Does not create collateral
17 estoppel effect for other cases.

18 **189. Coordination of Multiple Time-Sensitive Cases:**

19 **Same District:** Multiple Track One cases in same district challenging same
20 constitutional violation are consolidated immediately under Rule 42(a). Priority
21 determined by Rule 24(d) factors. Single comprehensive proceeding on appropriate
22 tier schedule.

1 **Different Districts:** Multiple Track One cases in different districts challenging same
2 violation trigger coordination procedures:

3 **(1) Constitutional Violation Registry Notice:** Clerks identify related cases through
4 registry, notify all courts and parties of parallel proceedings.

5 **(2) Informal Judicial Communication:** Courts may communicate to coordinate
6 scheduling, avoid conflicting preliminary rulings, and ensure efficient resolution.

7 Coordination is voluntary—no court loses jurisdiction or authority.

8 **(3) First Final Decision Creates Persuasive Precedent:** First district court to issue
9 merits decision on constitutional question creates persuasive authority for other courts
10 addressing same violation. Other courts may follow, distinguish, or reach independent
11 conclusions.

12 **(4) Appellate Consolidation:** If multiple district court decisions appeal to same circuit,
13 circuit consolidates appeals under Rule 42(a). If appeals to different circuits,
14 possibility of circuit split requires Supreme Court resolution through normal certiorari
15 process.

16 **No Formal MDL:** Time-sensitive cases typically do not permit formal MDL
17 procedures (JPML briefing, hearing, transfer order taking months). Coordination
18 through registry notice and informal judicial communication provides adequate case
19 management for expedited constitutional challenges.

20 **190. Supreme Court Review - Normal Appellate Process:**

21 **Standard Certiorari Process Applies:** Track One cases, including time-sensitive
22 Track One cases, follow normal appellate process through district court, circuit court,

1 and certiorari petition to Supreme Court. No special emergency procedures are built
2 into Framework.

3 **Supreme Court Emergency Jurisdiction Remains Available:** Supreme Court retains
4 inherent authority under Rules 11, 20, and 23 to grant certiorari before judgment, issue
5 stays, or grant emergency relief when case presents "imperative public importance."
6 Framework does not expand or restrict this authority.

7 **Framework Does Not Create Emergency Pipeline:** Framework specifically avoids
8 creating routine pathway to Supreme Court emergency docket. Recent scholarship and
9 judicial criticism of "shadow docket" demonstrates problems with substantive
10 constitutional rulings on emergency applications without adequate briefing or oral
11 argument. Track One cases should proceed through normal appellate process even
12 when expedited.

13 **Exceptional Cases:** If truly exceptional constitutional crisis requires Supreme Court
14 intervention (disputed presidential succession, imminent constitutional catastrophe,
15 conflict between coordinate branches threatening governmental function), Supreme
16 Court possesses authority to intervene. But Framework does not structure Track One
17 to encourage or facilitate such applications—they should remain rare exceptions, not
18 routine procedures.

19 **191. Timing Reality and Judicial Capacity:**

20 **Most Constitutional Violations Are Not True Emergencies:** The vast majority of
21 enumerated constitutional violations—appropriations violations, separation of powers
22 violations, structural governance violations—require prompt resolution but not
23 emergency procedures. Standard Track One's 165-day schedule provides dramatic

improvement over current multi-year constitutional litigation while preserving decision quality.

Known Deadlines Enable Planning: When constitutional violations involve external deadlines (fiscal years, elections, statutory sunsets), plaintiffs who file months in advance enable Tier 2 expedition (80 days) with adequate briefing time. Strategic delay creating artificial emergency does not justify Tier 3 preliminary relief.

Preliminary Relief Is Preliminary: Even when preliminary relief is necessary, it is preliminary—it prevents immediate harm while enabling thorough merits adjudication on expedited schedule. Preliminary rulings do not establish constitutional precedent or bind other courts. Full merits decision follows after adequate briefing and deliberation.

Judicial Quality Protects Constitutional Structure: Rushing constitutional adjudication to meet artificial deadlines risks erroneous precedent affecting entire governmental structure for decades. Framework balances urgency against quality, recognizing that bad constitutional precedent from rushed decisions may cause more structural harm than short delays in addressing violations.

16. Complete Implementation Examples

192. The following examples demonstrate Framework procedures handling various real-world scenarios, showing courts can manage Track One coordination efficiently using existing tools.

Example One: Clean First Case with Multiple Followers - Appropriations Violation

193. Timeline and Facts:

October 11, 2025: President Trump publicly orders Secretary of Defense Hegseth to redirect Pentagon R&D appropriations to military pay without congressional authorization during government shutdown.

October 15, 2025: Plaintiff Kirchner files Case A in D.D.C. challenging appropriations redirection under Track One. Complaint includes complete Constitutional Violation Statement citing Article I, Section 9, Clause 7; describes October 11 redirection; explains structural harm to separation of powers; seeks declaratory and injunctive relief.

October 18, 2025: Plaintiff Smith files Case B in S.D.N.Y. challenging same redirection with similar Track One claim.

October 20, 2025: Plaintiff Jones files Case C in N.D. Cal. challenging same violation.

October 22, 2025: Plaintiff Garcia files Case D in D. Mass. challenging same violation.

194. Registry Coordination:

October 23, 2025: D.D.C. clerk enters Case A in Constitutional Violation Registry:

- Constitutional provision: Article I, § 9, cl. 7
- Challenged conduct: October 11, 2025 appropriations redirection
- Defendant: President Trump
- Status: Active, filed October 15

When Cases B, C, D filed, clerks in S.D.N.Y., N.D. Cal., D. Mass search registry, find Case A, flag related cases.

195. Multidistrict Litigation Coordination:

October 25, 2025: S.D.N.Y., N.D. Cal., and D. Mass. judges notify JPML of related Track One cases through existing MDL notification process.

November 5, 2025: JPML holds expedited hearing, finds common constitutional question (Did October 11 appropriations redirection violate Article I, § 9, cl. 7?), determines coordination serves efficiency and prevents inconsistent rulings.

November 10, 2025: JPML orders MDL, transfers Cases B, C, D to D.D.C., designates D.D.C. Judge as MDL transferee judge.

196. Consolidated Proceedings:

November 15, 2025: D.D.C. Judge consolidates Cases A, B, C, D under Rule 42(a) for joint proceedings. Sets expedited briefing:

- Joint opening brief (all plaintiffs): December 15, 2025
- Response (defendants): January 15, 2026
- Joint reply: January 30, 2026
- Oral argument: February 28, 2026
- Decision deadline: April 30, 2026 (60 days post-argument)

197. Merits Adjudication:

December 15: Plaintiffs file joint 40-page brief arguing Article I, § 9, cl. 7 requires congressional appropriations before Treasury funds drawn, October 11 redirection violated this enumerated limit, structural relief necessary.

January 15: Government response argues President has inherent emergency authority, appropriations redirection justified by shutdown emergency, Appropriations Clause doesn't apply during national emergencies.

January 30: Plaintiffs reply refuting emergency exception, arguing enumerated limits bind government especially during emergencies.

February 28: Oral argument—3 hours allocated (30 minutes each plaintiff, 2 hours government, 30 minutes rebuttal).

April 30, 2026: Court issues comprehensive 50-page opinion:

- Finds October 11 appropriations redirection violated Article I, § 9, cl. 7
- No emergency exception to Appropriations Clause exists
- Declares violation occurred
- Issues permanent injunction preventing future unauthorized appropriations redirections
- All four plaintiffs receive complete structural relief through single consolidated proceeding

198. Subsequent Case Mootness:

May 1, 2026: Contractor X files Case E in W.D. Texas challenging same October 11 appropriations redirection.

May 5, 2026: W.D. Texas judge searches registry, finds Cases A-D resolved with April 30 judgment finding violation and granting complete structural relief.

May 10, 2026: Court issues order:

"Plaintiff's Track One claim is DISMISSED AS MOOT. The April 30, 2026 judgment in *Kirchner v. Johnson* (D.D.C.) found identical constitutional violation and granted comprehensive structural relief. No additional structural relief available. Article III requires live controversy. *Already, LLC v. Nike, Inc.*, 568 U.S. 85 (2013). DISMISSED."

199. Efficiency Analysis:

Total Cases Filed: 5 (Cases A, B, C, D, E)

Judicial Resources Consumed:

- MDL coordination: ~10 hours (JPML panel)
- Consolidated merits litigation: ~80 hours (briefing review, oral argument, opinion drafting)
- Mootness dismissal: ~2 hours (Case E)
- **Total: ~92 hours**

Alternative (No Coordination):

- 5 separate cases fully litigated: ~400 hours (5 × 80 hours)
- Risk of inconsistent outcomes

Framework Savings: 77% judicial resource reduction while ensuring consistent constitutional interpretation and comprehensive structural relief.

Example Two: Inadequate First Case, Strong Second Case - Vote Prevention

200. Timeline and Facts:

October 15, 2025: Plaintiff Anderson files Case A (first-filed) in E.D. Va. challenging Speaker Johnson's prevention of House Rules Committee vote on H. Res. 1304.

Constitutional Violation Statement is deficient: cites Article I generally without specific section, vague allegations ("Speaker prevented democracy"), no specific dates, unclear relief sought.

October 20, 2025: Plaintiff Kirchner files Case B in D.D.C. with comprehensive Track One claim: cites Article I, §§ 1, 5, 7 specifically; describes August 19 Rules Committee markup prevention; explains structural harm to representative democracy; seeks declaration and order requiring vote.

October 25, 2025: Defendant moves to dismiss Case A for failure to state claim and inadequate Constitutional Violation Statement under Rule 12(j).

201. Registry Coordination and Stay:

October 28, 2025: D.D.C. judge (Case B) searches registry, finds Case A pending in E.D. Va., enters stay order:

"Case A filed first, challenging similar conduct. This case STAYED pending Case A resolution."

202. Recognizing Inadequacy:

November 1, 2025: Plaintiff Kirchner moves to lift stay in Case B, arguing:

- Case A has fatal pleading defects likely leading to dismissal without reaching merits
- Case A's Constitutional Violation Statement fails to identify specific enumerated provision
- Case A's allegations too vague to satisfy Rule 12(j) screening
- Case B properly pleaded with comprehensive Constitutional Violation Statement
- Public interest requires timely constitutional adjudication

- First-filed rule shouldn't reward inadequate pleading over proper pleading

Supporting documentation:

- Case A complaint (showing deficiencies)
- Case B complaint (showing compliance)
- Comparison demonstrating Case B's superiority

203. Court's Analysis:

November 15, 2025: D.D.C. judge grants motion to lift stay:

"The Framework's coordination procedures serve efficiency and consistency, not procedural gamesmanship. Case A was filed first but contains deficient Constitutional Violation Statement failing to identify specific enumerated provision violated. Rule 12(j) requires screening dismissing deficient Track One claims. > Case B properly identifies Article I, §§ 1, 5, 7; describes specific August 19 conduct; explains structural harm; seeks appropriate relief. Case B satisfies all Rule 8(a)(4)(A) requirements. > Staying Case B pending Case A resolution would delay constitutional adjudication while awaiting dismissal of case unlikely to reach merits. This defeats Framework's purpose. > Stay LIFTED. Case B proceeds as priority case. If Case A is cured through amendment satisfying Rule 12(j), parties may renew coordination request."

204. Case A Dismissal, Case B Proceeds:

November 20, 2025: E.D. Va. judge dismisses Case A:

"Complaint fails to identify specific constitutional provision allegedly violated. Constitutional Violation Statement inadequate under Rule 12(j). Article I 'generally' insufficient—must cite specific section and clause. DISMISSED WITHOUT PREJUDICE. Plaintiff may amend within 21 days if plaintiff can identify enumerated provision violated."

November 25, 2025: Plaintiff Anderson does not amend (lacks legal knowledge to identify specific provision).

December 1, 2025: Case B proceeds as priority case in D.D.C. with expedited briefing schedule.

205. Outcome:

February 28, 2026: D.D.C. court finds vote prevention violated Article I constitutional requirements, grants declaratory and injunctive relief.

System Adaptation: Framework recognized inadequate first case shouldn't block proper subsequent case from addressing constitutional violation. Courts used existing discretionary authority to lift stay when coordination would defeat rather than serve Framework purposes.

Example Three: First Case Settled Without Structural Relief, Second Case Continues

Example Three: First Case Settled Without Structural Relief, Second Case Continues

206. Timeline and Facts:

October 15, 2025: Plaintiff Smith files Case A in D. Md. challenging SCOTUS shadow docket stay of preliminary injunction as exceeding 28 U.S.C. § 2101(f) statutory authority. Track One petition—seeks only declaratory relief (stay exceeded statutory limits) and injunctive relief (preventing future ultra vires stays). No Track Two damages claim.

October 20, 2025: Plaintiff Kirchner files Case B in D.D.C. challenging same shadow docket practice with identical Track One claims PLUS Track Two damages claim (\$50,000 for attorney's fees incurred opposing improper stay in underlying case).

207. Coordination:

October 25, 2025: D.D.C. judge enters stay order in Case B pending Case A resolution as priority case.

208. Settlement Negotiations:

November 1, 2025: Government proposes to Smith:

- Pay Smith's attorney's fees (\$25,000) in exchange for voluntary dismissal
- No admission of liability
- No structural relief (no declaration, no injunction)
- No consent decree

November 5, 2025: Plaintiff Smith's counsel explains:

- This is payment to induce dismissal, not settlement of Track One claim
- Smith has no damages claim to settle (Track One petition, no particularized injury)
- Track One claim seeks only structural relief, not money
- Accepting payment to dismiss without obtaining structural relief means Smith is NOT prevailing party
- No court-ordered attorney's fees available
- Any payment would be private arrangement

November 10, 2025: Plaintiff Smith accepts payment and files notice of voluntary dismissal under Rule 41(a)(1)(A)(ii) (stipulation of dismissal).

Smith's attorney's motion for fees DENIED: Court holds Smith did not prevail because voluntarily dismissed without obtaining structural relief. *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001). Payment from defendant is private arrangement, not court-ordered fees.

209. Effect on Case B:

November 12, 2025: D.D.C. clerk notifies court and parties that Case A dismissed without obtaining structural relief.

November 15, 2025: Plaintiff Kirchner moves to lift stay, arguing:

- Case A dismissal obtained no structural relief
- No declaration that shadow docket stays exceeded statutory authority
- No injunction preventing future ultra vires stays
- Constitutional violation unaddressed
- Case B Track One claim remains live

210. Court's Analysis:

November 20, 2025: D.D.C. judge grants motion, lifts stay:

"Article III mootness requires actual remedy of constitutional violation. Case A plaintiff voluntarily dismissed without obtaining structural relief. No declaration. No injunction. No consent decree addressing governmental compliance with statutory limits. > The private arrangement between Case A parties—whatever compensation plaintiff received—did not remedy the structural constitutional violation both cases challenge. Track One claims seek equitable relief (declaration and injunction) benefiting all citizens through enforcement of statutory limits on judicial authority. > Case B Track One claim seeks structural relief that was NOT obtained through Case A proceedings. Case B therefore remains live, with cognizable case or controversy under Article III. > Stay LIFTED. Case B proceeds as priority case for Track One structural relief."

211. Case B Proceeds to Merits:

March 15, 2026: Court finds shadow docket practice violated 28 U.S.C. § 2101(f), grants:

- **Track One:** Declaratory relief (violation occurred) + injunctive relief (preventing future violations)
- **Track Two:** Damages (\$50,000 attorney's fees from underlying case where improper stay was granted)
- **Attorney's Fees:** Court awards Kirchner attorney's fees for Track One litigation (\$75,000 base + 25% Track One enhancement = \$93,750) as prevailing party

Result:

- Track One structural relief obtained (all citizens benefit)
- Track Two individual damages recovered (Kirchner's particularized harm compensated)
- Attorney's fees awarded by court (prevailing party)
- Private payment to Smith was NOT settlement—was payment to induce dismissal without structural relief

Example Four: Appeals Process with Multiple Stayed Cases

212. Timeline and Facts:

October 15, 2025: Case A filed and litigated through June 1, 2026, finding appropriations violation and granting structural relief.

October 20-November 30, 2025: Cases B, C, D, E filed in various districts, stayed pending Case A.

June 15, 2026: Defendant appeals Case A judgment to D.C. Circuit.

213. Status of Stayed Cases During Appeal:

June 20, 2026: D.C. Circuit docket appeal. Stays in Cases B, C, D, E remain in effect pending appeal. Automatic under Framework—Track Two proceedings that rely on Track One constitutional finding stayed during appeals.

Why Stay Continues: If Case A reversed on appeal, constitutional finding vacated. Cases B, C, D, E Track One claims would no longer be moot (violation not definitively established). Premature to dismiss as moot while appeal pending.

214. Intervention in Appeal:

June 25, 2026: Plaintiffs B, C, D file motions to intervene in Case A appeal under Fed. R. App. P. 15(d) and Rule 24(a)(2). Argument:

- Interest in constitutional finding (same violation, same relief sought)
- Appeal's outcome affects their stayed cases
- Case A plaintiff may not adequately represent their interests on appeal

July 10, 2026: D.C. Circuit grants intervention, permits intervenors to file supplemental brief (15 pages) and participate in oral argument (10 minutes allocated).

215. Appellate Briefing and Argument:

July 25, 2026: Appellant (government) opens brief arguing district court erred in finding violation

September 25, 2026: Appellee (Case A plaintiff) response brief defending judgment

October 1, 2026: Intervenors (Cases B, C, D plaintiffs) file supplemental brief addressing arguments Case A plaintiff inadequately presented

October 25, 2026: Appellant reply brief

December 15, 2026: Oral argument with intervenors' participation

216. Appellate Outcomes and Effects:

Scenario One - Affirmance:

March 1, 2027: D.C. Circuit affirms, holding district court correctly found violation and properly granted structural relief. Mandate issues March 15, 2027.

Effect on Stayed Cases:

- Constitutional finding definitively established (survived appeal)
- Structural relief confirmed (injunction in effect)
- Cases B, C, D, E Track One claims NOW MOOT (violation definitively remedied)

March 20, 2027: Courts in Cases B, C, D, E enter mootness dismissal orders. Track One dismissed. If plaintiffs have Track Two damages claims, those proceed using collateral estoppel from Case A constitutional finding.

Scenario Two - Reversal:

March 1, 2027: D.C. Circuit reverses, holding no violation occurred. Mandate issues March 15, 2027.

Effect on Stayed Cases:

- Constitutional finding vacated
- Track One structural relief reversed
- Cases B, C, D, E no longer moot (violation not established)
- Stays lift, but plaintiffs face adverse appellate precedent

Plaintiffs' Options:

- Seek Supreme Court certiorari (90 days from mandate)
- File amended complaints with alternative constitutional theories not addressed in appeal
- Proceed on Track Two claims if they have independent basis (not relying on reversed constitutional finding)
- Voluntarily dismiss accepting appellate precedent

1 **60-Day Grace Period:** Framework Rule 62(i)(5) provides stayed plaintiffs with 60-day
2 grace period after reversal to:

- 3 • Seek further appellate review
- 4 • Amend complaints
- 5 • Decide whether to proceed

6 **217. Supreme Court Certiorari:**

7 **April 15, 2027:** Case A plaintiff files petition for certiorari to U.S. Supreme Court.

8 **April 20, 2027:** Cases B, C, D, E stays continue pending Supreme Court disposition of
9 certiorari petition.

10 **June 30, 2027:** Supreme Court denies certiorari.

11 **July 1, 2027:** Cases B, C, D, E stays lift. Plaintiffs face D.C. Circuit precedent finding
12 no violation. Must decide whether to proceed (distinguishing precedent) or dismiss.

13 **218. Efficiency Analysis:**

14 **Without Framework:** Cases A, B, C, D, E litigated independently in five districts.

15 Five separate appeals. Possible inconsistent circuit court decisions. Supreme Court
16 might need to resolve circuit split. Massive resource consumption, inconsistent results.

17 **With Framework:** Single district court case (A). Single appeal with intervenors
18 representing all stayed plaintiffs. Single precedent (affirm or reverse). All cases
19 resolved consistently. 80% judicial resource reduction. Guaranteed consistent
20 outcome.

C. Part III: Appellate Procedures, Attorney's Fees, And Effective Dates

1. The Appellate Challenge - Protecting Secondary Plaintiffs During Appeals

219. Track One coordination creates potential vulnerability for Track Two secondary plaintiffs: **What happens if priority plaintiff establishes constitutional violation, secondary plaintiffs prepare Track Two damages claims relying on that finding, then defendant appeals and reverses the constitutional finding?**

220. Without protection, secondary plaintiffs face catastrophic risk:

Scenario: Priority plaintiff establishes President violated Appropriations Clause.

Secondary Plaintiff prepares \$500,000 damages claim relying on constitutional violation as established fact. Defendant appeals. Appellate court reverses, finding no violation. Secondary Plaintiff's entire damages claim collapses—constitutional violation was foundational premise.

Problem: Secondary Plaintiff invested resources preparing damages case based on district court constitutional finding, only to have foundation eliminated on appeal.

Meanwhile, Secondary Plaintiff had no opportunity to participate in appeal defending the finding.

221. Rule 62(i) solves this through **automatic stays during appeals** plus **intervention rights** enabling secondary plaintiffs to defend constitutional findings they depend upon.

2. Proposed Rules 54(e), 62(i), and 86(c) - Overview

222. Part III addresses three interconnected issues through three rule amendments:

Rule 54(e) - Attorney's Fees: How to compensate Track One plaintiffs who serve constitutional enforcement as public service, including humanitarian fee refusal option directing compensation to victims.

Rule 62(i) - Appellate Stays: How to protect Track Two secondary plaintiffs during Track One appeals through automatic stays and intervention rights.

Rule 86(c) - Effective Dates: How to transition from current doctrine to Framework through 180-day implementation period and pending case elections.

223. Rule 54(e) - Attorney's Fees for Constitutional Claims (complete text):

RULE 54. JUDGMENT; COSTS > (e) Attorney's Fees for Constitutional Claims > (1) Track One Prevailing Plaintiffs. A plaintiff who prevails on a Track One claim under Rule 8(a)(4)(A) is entitled to reasonable attorney's fees as costs under 28 U.S.C. § 1920 and any applicable fee-shifting statute. When a Track One plaintiff seeks only structural relief without adding Track Two individual damages claims, the court may in its discretion enhance fees up to 25% above reasonable rates to recognize humanitarian service and complete pro bono risk undertaken. > **(2) Fee Refusal—Track One Option.** A prevailing Track One plaintiff may within 30 days elect to refuse the fee award and convert it to a Track Two Victim Compensation Fund. The election must state: "Plaintiff refuses all fees and elects to convert \$[amount] to Track Two Victim Compensation Fund for distribution to prevailing Track Two plaintiffs. This election is voluntary, uncoerced, and irrevocable. Plaintiff has no reversionary interest." > **(3) Victim Compensation Fund.** Upon fee refusal election, the court must order creation of a court-supervised escrow account titled "Track Two Victim Compensation Fund—[Case Name]." Defendant must deposit refused fees within 30 days. The fund distributes proportionally to prevailing Track Two plaintiffs based on proven damages amounts. > **(4) Track Two Attorney's Fees.** Attorney's fees for Track Two claims under Rule 8(a)(4)(B) are governed by applicable fee-shifting statutes and common law standards without modification.

224. Rule 62(i) - Automatic Stay of Track Two During Track One Appeal (complete text):

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT > (i) Automatic Stay of Track Two During Track One Appeal > (1) Automatic Stay. When a Track One judgment under Rule

8(a)(4)(A) is appealed, all Track Two proceedings under Rule 8(a)(4)(B) that rely on the same constitutional finding are automatically stayed pending resolution of the Track One appeal, including Supreme Court certiorari proceedings if petition is filed. > **(2) Notice Requirement.** The clerk must notify all Track Two plaintiffs of the Track One appeal and automatic stay within 7 days of the notice of appeal being filed. > **(3) Intervention Right.** Track Two plaintiffs may intervene as of right in the Track One appeal under Rule 24(a)(2) to protect their interest in the constitutional finding. The appellate court must permit such intervention. > **(4) Stay Termination—Affirmance.** The stay terminates automatically when: > (A) the appellate court affirms the constitutional finding; > (B) the time for seeking further review expires without petition being filed (90 days for certiorari); > (C) the Supreme Court denies certiorari; or > (D) the Supreme Court affirms the constitutional finding. > **(5) Stay Continuation After Reversal.** If the constitutional finding is reversed on appeal, the stay continues for 60 days to permit Track Two plaintiffs to: > (A) seek certiorari if the reversal is from a circuit court; > (B) file amended complaints asserting independent constitutional theories that were not reversed; or > (C) voluntarily dismiss without prejudice.

225. Rule 86(c) - Effective Dates and Transition (complete text):

RULE 86. EFFECTIVE DATES > (c) Constitutional Violation Statement - Effective Date and Transition > (1) Effective Date. Rule 8(a)(4) and companion amendments to Rules 12(j), 24(d), 42(c), 54(e), and 62(i) take effect 180 days after adoption by the Supreme Court. > **(2) Application to Pending Cases.** Within 30 days of the effective date, plaintiffs with pending constitutional claims may elect to: > (A) file a Constitutional Violation Statement under Rule 8(a)(4); > (B) amend their complaint to include such statement; or > (C) proceed under existing doctrine without utilizing Framework procedures. > Election is binding and cannot be revoked after the 30-day period expires. > **(3) No Retroactive Application.** These amendments do not apply retroactively to cases with final judgments entered before the effective date. Cases with final judgments remain governed by the law in effect when judgment was entered. > **(4) Relationship to *Lujan*.** Rule 8(a)(4) implements but does not overrule *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Track Two claims under Rule 8(a)(4)(B) require traditional Article III standing under *Lujan*: concrete and particularized injury, causation, and redressability. Track One claims under Rule 8(a)(4)(A) recognize that structural constitutional violations affecting all citizens equally create universal standing for enumerated limit enforcement, consistent with Supreme Court precedent in *Clinton v. City of New York*, *INS v. Chadha*, and *Powell v. McCormack*.

1 **226. Integration of Part III Rules Creates Complete Appellate and Compensation**
 2 **Architecture:**

3 **Attorney's Fees** (Rule 54(e)): Incentivize Track One litigation through appropriate
 4 compensation while enabling humanitarian fee refusal directing resources to victims

5 **Appellate Stays** (Rule 62(i)): Protect Track Two plaintiffs during Track One appeals
 6 through automatic stays and intervention rights

7 **Effective Dates** (Rule 86(c)): Enable orderly transition from current doctrine with 180-
 8 day implementation and pending case elections

9 Together with Parts I-II, these rules create complete Framework addressing pleading,
 10 screening, coordination, appeals, compensation, and transitions.

11 **3. Attorney's Fees Under Rule 54(e) - The Humanitarian Choice**

12 **227. The Public Service Nature of Track One Litigation:** Track One plaintiffs serve
 13 constitutional enforcement without seeking personal enrichment. They challenge
 14 structural violations benefiting everyone through restored constitutional architecture,
 15 but waive all individual damages claims.

16 **228. Why Attorney's Fees Are Essential:**

17 **Pro Bono Attorney Reality:** Litigation costs include attorney time (billable hours),
 18 expert witnesses, court reporters, legal research, and filing fees. Track One petitions
 19 targeting complex constitutional violations may require 200-400 attorney hours plus
 20 \$10,000-\$50,000 in costs.

21 **Without Fee Awards:** Only wealthy plaintiffs or well-funded organizations could
 22 bring Track One challenges. Average citizens serving constitutional enforcement

1 would face financial ruin from litigation costs despite vindicating structure protecting
2 everyone.

3 **With Fee Awards:** Pro bono attorneys can represent Track One petitioners knowing
4 prevailing plaintiff recovers reasonable fees. This democratizes constitutional
5 enforcement—citizens of modest means can vindicate structural protections through
6 competent counsel.

7 **229. The Discretionary Track One Fee Enhancement (Rule 54(e)(1)):**

8 **Track One Combined With Track Two:** Reasonable attorney's fees under applicable
9 fee-shifting statute (e.g., 42 U.S.C. § 1988 for constitutional claims)

10 **Track One Without Track Two Claims:** Reasonable fees with discretionary
11 enhancement up to 25% when court finds humanitarian service justifies recognition

12 **Rationale for Discretionary Enhancement:**

13 **(1) Pro Bono Risk:** Track One plaintiffs who waive individual damages claims accept
14 complete pro bono risk. If priority transfers (Rule 24(d)), plaintiff receives zero
15 compensation despite investment. Discretionary enhancement may compensate for this
16 forfeiture risk when case demonstrates genuine public service.

17 **(2) Public Service Recognition:** Track One plaintiffs serving constitutional
18 enforcement as humanitarian mission without seeking personal recovery deserve
19 recognition. Enhanced fees acknowledge plaintiffs who sacrifice personal interest to
20 vindicate structure benefiting everyone.

21 **(3) Simplified Proceedings:** Track One cases without accompanying damages claims
22 streamline discovery and proceedings by eliminating individual injury issues.
23 Enhanced fees may reward this judicial efficiency contribution when appropriate.

(4) Complete Judicial Discretion: Courts retain absolute authority to determine whether enhancement is warranted based on: case complexity, constitutional importance, plaintiff conduct, public benefit achieved, and humanitarian motivation demonstrated. No formula requires enhancement—it remains pure judicial discretion recognizing exceptional public service when merited.

230. Calculating Enhanced Fees:

Step 1 - Determine Reasonable Fees: Apply lodestar method (reasonable hours × reasonable rates) under *Hensley v. Eckerhart*, 461 U.S. 424 (1983).

Example: 300 hours × \$400/hour = \$120,000 base fee

Step 2 - Apply 25% Enhancement: Multiply reasonable fees by 1.25

Example: \$120,000 × 1.25 = \$150,000 enhanced fee

Step 3 - Add Costs: Include reasonable costs (expert fees, court reporters, research databases, filing fees)

Example: \$150,000 + \$15,000 costs = \$165,000 total award

231. Comparison to Existing Fee Enhancement Doctrine: The 25% Track One enhancement follows established Supreme Court precedent permitting fee enhancements for exceptional representation or case difficulty:

***Perdue v. Kenny A.**, 559 U.S. 542 (2010): Fee enhancements permissible for "extraordinary success" or "exceptional representation" but must be rare.

Track One Distinction: Enhancement is **automatic for category** (Track One Petitions) rather than discretionary based on individual case quality. This is appropriate because:

- All Track One petitioners waive individual damages (universal sacrifice)
- All serve constitutional enforcement (universal public service)

- All streamline proceedings (universal efficiency contribution)
- All face priority transfer risk (universal forfeiture risk)

The category-wide enhancement reflects category-wide public service, unlike *Perdue's* case-by-case exceptional quality analysis.

232. The Humanitarian Fee Refusal Option (Rule 54(e)(2)-(3)):

After prevailing, Track One plaintiff faces ultimate choice:

Option A - Accept Enhanced Fees: Receive \$165,000 (using example above) as compensation for constitutional service performed pro bono throughout litigation

Option B - Refuse Fees, Create Victim Compensation Fund: Convert entire \$165,000 award to court-supervised escrow distributing to Track Two plaintiffs harmed by the constitutional violation

233. Why Fee Refusal Option Exists:

Humanitarian Architecture: Some plaintiffs serve constitutional enforcement from deep conviction that structural protections must be preserved for moral reasons transcending personal compensation. Fee refusal enables these plaintiffs to direct resources to actual victims harmed by governmental violations.

Examples of Humanitarian Motivation:

(1) Appropriations Violations: Plaintiff believes separation of powers protecting everyone from executive tyranny is fundamental to human dignity. After vindicating Appropriations Clause, plaintiff directs \$165,000 to compensate contractors whose programs were defunded by unauthorized redirections.

(2) Legislative Process Violations: Plaintiff believes representative democracy requires actual voting on resolutions. After vindicating legislative process rights, plaintiff directs fees to organizations whose advocacy was silenced by vote prevention.

(3) **Judicial Jurisdiction Violations:** Plaintiff believes congressional control of appellate jurisdiction is essential to maintaining separation of powers. After vindicating jurisdictional limits, plaintiff directs fees to litigants whose preliminary injunctions were wrongly stayed.

234. Fee Refusal Mechanics:

Step 1 - Prevailing Plaintiff Files Election (within 30 days of judgment):

"Plaintiff Joseph Kirchner, having prevailed on a Track One Petition establishing President Trump violated Article I, Section 9, Clause 7 through October 11, 2025 appropriations redirection, and having been awarded attorney's fees of \$150,000 plus 25% enhancement totaling \$187,500, hereby: > 1. **Voluntarily refuses all attorney's fee compensation** awarded under Rule 54(e)(1) > 2. **Elects to convert awarded fees** of \$187,500 to Track Two Victim Compensation Fund for distribution to Track Two plaintiffs who prove particularized harm from the appropriations redirection > 3. **Requests Court order Defendant** to deposit \$187,500 into court-supervised escrow account titled "Track Two Victim Compensation Fund—*Kirchner v. Johnson* Appropriations Violation" > 4. **Affirms this election is:** - Voluntary (no coercion from any party) - Uncoerced (made freely from humanitarian conviction) - Irrevocable (cannot be withdrawn after filing) > 5. **Disclaims any reversionary interest** in fund. Plaintiff has no claim to returned funds, unused funds, or residual funds after distribution. All funds benefit Track Two plaintiffs exclusively. > This election is made from conviction that constitutional enforcement serves human dignity and flourishing, and compensation properly flows to persons actually harmed rather than to plaintiff who served constitutional structure as humanitarian mission. > Respectfully submitted, Joseph Kirchner Pro Se Track One Plaintiff"

Step 2 - Court Orders Fund Creation:

ORDER CREATING TRACK TWO VICTIM COMPENSATION FUND > Track One Plaintiff Joseph Kirchner has filed election under Rule 54(e)(2) refusing all attorney's fees and converting awarded fees to Track Two Victim Compensation Fund. The election is voluntary, uncoerced, and irrevocable. > IT IS HEREBY ORDERED: > 1. Defendant President Trump shall deposit \$187,500 into court-supervised escrow account titled "Track Two Victim Compensation Fund—*Kirchner v. Johnson* Appropriations Violation" within 30 days. > 2. The Fund shall be administered by the Clerk of Court under Court supervision. > 3. Track Two plaintiffs who prevail on damages claims arising from the October

11, 2025 appropriations redirection shall receive distributions from the Fund proportional to proven damages amounts. > 4. Distribution procedures: After all Track Two cases resolve, Clerk shall calculate each prevailing plaintiff's percentage of total proven damages, then distribute Fund proportionally. > 5. Plaintiff Joseph Kirchner disclaims all interest in the Fund and has no claim to returned, unused, or residual funds. > SO ORDERED.

Step 3 - Defendant Deposits Funds (within 30 days)

Step 4 - Track Two Cases Proceed (using collateral estoppel from Track One constitutional finding)

Step 5 - Fund Distribution After All Track Two Cases Resolve:

Example: Three Track Two plaintiffs prevail with proven damages:

- Plaintiff X: \$300,000 (50% of total)
- Plaintiff Y: \$200,000 (33% of total)
- Plaintiff Z: \$100,000 (17% of total)
- Total: \$600,000 proven damages

Fund distribution:

- Plaintiff X receives: $\$187,500 \times 50\% = \$93,750$
- Plaintiff Y receives: $\$187,500 \times 33\% = \$61,875$
- Plaintiff Z receives: $\$187,500 \times 17\% = \$31,875$
- Total distribution: \$187,500

This partially compensates Track Two plaintiffs beyond their damages awards, recognizing that the Track One plaintiff served constitutional enforcement benefiting them specifically.

235. Fee Refusal Is Completely Voluntary: No pressure, expectation, or requirement exists. Track One plaintiff may accept enhanced fees as earned compensation for constitutional service performed. Fee refusal is humanitarian option for plaintiffs motivated by conviction that compensation should flow to actual victims, not optional requirement.

D. Fee Enhancement And Victim Compensation Fund (revised)

236. Why Victim Compensation Fund Matters:

Track Two Reality: Many persons harmed by constitutional violations cannot afford litigation despite having legitimate damages claims. Small damages amounts (\$10,000-\$50,000) don't justify litigation costs. Victim Compensation Fund provides partial compensation to prevailing Track Two plaintiffs, making litigation economically viable for smaller claims.

Example: Contractor suffers \$25,000 harm from unauthorized appropriations redirection. Litigation costs would exceed recovery, making lawsuit irrational. But if Victim Compensation Fund provides additional \$15,000 distribution, total recovery becomes \$40,000—sufficient to justify \$20,000 litigation investment.

Humanitarian Chain: Track One plaintiff seeking only structural relief serves constitutional structure → Plaintiff voluntarily refuses fees and converts to Victim Compensation Fund → Track Two plaintiffs with modest claims can afford litigation → More victims recover damages → Constitutional violations have comprehensive consequences discouraging future violations.

1. The Discretionary Track One Fee Enhancement

237. Policy Rationale - Why Up to 25% Enhancement?:

Too Low (10-15%): Insufficient to compensate forfeiture risk from priority transfer possibility. Won't meaningfully recognize extraordinary public service when Track One plaintiffs forgo all personal recovery.

Too High (50%+): Could incentivize strategic filings seeking enhanced fee opportunity rather than genuine constitutional enforcement. Disproportionate to public service contribution in routine cases.

Up to 25% (Judicial Discretion Zone): Provides meaningful range for courts to compensate pro bono risk and recognize public service while remaining proportional to contribution. Enhancement is never automatic—court evaluates case-by-case based on: constitutional importance, humanitarian motivation, litigation complexity, public benefit achieved, plaintiff conduct throughout proceedings.

238. Comparative Analysis with Other Fee Enhancements:

Civil Rights Litigation: Contingency fees typically 33-40% of recovery, with risk premium built into percentage. Discretionary Track One enhancement (up to 25%) similarly reflects risk premium (no individual recovery, priority transfer risk, complete pro bono investment).

Public Interest Litigation: Common benefit fund cases often award fee enhancements of 15-30% for attorneys creating benefits for classes or general public. Track One structural relief creates constitutional enforcement benefit for all citizens—comparable public service justifying comparable enhancement when merited.

Complex Litigation: Exceptional representation in complex cases may warrant multipliers of 1.5-3.0× under *Perdue v. Kenny A.*, 559 U.S. 542 (2010). Track One maximum 1.25× multiplier is conservative relative to exceptional representation standards, reflecting that enhancement compensates category-wide public service rather than individual case exceptionality.

239. The Discretionary Enhancement Serves Multiple Framework Objectives:

1 **(1) Democratizes Constitutional Enforcement:** Makes structural-relief-only Track
2 One economically viable for pro bono attorneys representing citizens of modest means,
3 ensuring constitutional challenges aren't limited to wealthy plaintiffs who can afford
4 total pro bono risk.

5 **(2) Incentivizes Streamlined Proceedings:** Track One without Track Two damages
6 claims eliminates individual injury discovery, expediting constitutional adjudication.
7 Enhanced fees may compensate for plaintiff's contribution to judicial efficiency when
8 appropriate.

9 **(3) Validates Track One/Two Distinction:** Discretionary enhancement makes
10 structural-relief-only Track One attractive alternative to combined Track One/Two
11 approach, encouraging plaintiffs to separate structural from individual relief when
12 separation serves constitutional enforcement.

13 **(4) Recognizes Exceptional Humanitarian Service:** Track One structural relief
14 represents constitutional enforcement as public service mission. Enhanced fees
15 acknowledge this differs from ordinary private litigation seeking personal
16 enrichment—but only when plaintiff's conduct and case importance warrant
17 recognition.

18 **(5) Complete Judicial Control:** Courts retain absolute discretion to determine whether
19 any enhancement is warranted. No plaintiff can predict or guarantee enhancement.
20 Courts evaluate: Did plaintiff demonstrate genuine humanitarian motivation? Did case
21 vindicate important constitutional principle? Did plaintiff's conduct throughout
22 litigation merit recognition? Did structural relief achieved benefit all citizens
23 substantially?

240. Attorney's Fees Burden on Government: Enhanced fees (when awarded)

increase governmental costs for constitutional violations. This is feature, not bug—it creates financial disincentive for ultra vires conduct. When governmental actors know violations may trigger enhanced fee liability in cases demonstrating exceptional public service, they face economic pressure to respect constitutional limits beyond mere legal obligation. However, enhancement remains discretionary—courts award it only when genuinely merited by case importance and plaintiff conduct, not automatically.

241. Distinguishing Fee Enhancement from Fee Guarantee: The Framework

provides **no fee guarantee** to any Track One plaintiff. Courts may:

- Award zero fees despite plaintiff prevailing (pro se under *Kay v. Ehrler*)
- Award reasonable fees without enhancement (standard cases)
- Award fees with partial enhancement (5-15% for moderate public service)
- Award fees with maximum enhancement (25% for exceptional cases only)
- Reduce fees below reasonable rates if plaintiff conduct warrants

The "up to 25%" language establishes a **ceiling**, not a floor or presumption. Most cases will receive standard reasonable fees if any fees at all. Enhancement rewards exceptional cases demonstrating extraordinary public service, humanitarian motivation, and constitutional importance—subject to complete judicial evaluation.

2. Victim Compensation Fund Mechanism

242. Fund Administration Details:

Custodian: Clerk of Court, under Court supervision

Account Type: Court-supervised escrow (interest-bearing if regulations permit)

Duration: Until all Track Two cases resolve and distributions complete

Oversight: Court retains jurisdiction over fund administration

Transparency: Fund balance and distribution calculations part of public docket

243. Distribution Formula:

$$\text{\$}\frac{\text{Distribution to Plaintiff X}}{\text{Sum of All Proven Damages}} = \frac{\text{Fund Total} \times \text{Plaintiff X Proven Damages}}{\text{Sum of All Proven Damages}}\text{\$}$$

Example with Three Prevailing Track Two Plaintiffs:

Fund Total: \$187,500

Plaintiff A Damages: \$100,000

Plaintiff B Damages: \$200,000

Plaintiff C Damages: \$50,000

Total Damages: \$350,000

Distributions:

- Plaintiff A: $\$187,500 \times (\$100,000 \div \$350,000) = \$187,500 \times 0.286 = \$53,571$
- Plaintiff B: $\$187,500 \times (\$200,000 \div \$350,000) = \$187,500 \times 0.571 = \$107,143$
- Plaintiff C: $\$187,500 \times (\$50,000 \div \$350,000) = \$187,500 \times 0.143 = \$26,786$
- Total: \$187,500 (distributed completely)

244. Proportional Distribution Rationale: Victims with larger proven damages receive larger fund distributions. This recognizes that constitutional violation harm varied in magnitude across victims. Victim suffering \$200,000 harm experienced twice the damage of victim suffering \$100,000 harm, justifying proportionally larger fund distribution.

E. Victim Compensation Fund Distribution Scenarios (revised)

245. What If No Track Two Plaintiffs Prevail?:

Scenario: Track One plaintiff who refused fees establishes constitutional violation, creates \$187,500 Victim Compensation Fund, but no Track Two plaintiffs file claims or all Track Two claims fail on merits.

Result: Fund returns to general treasury (if defendant is government) or remains in court registry for potential future claims within reasonable period (2-3 years). Court retains discretion to distribute unclaimed funds to related public interest purposes (e.g., constitutional law clinics, civil rights organizations).

Track One Plaintiff Receives Nothing: Fee refusal was irrevocable. Plaintiff disclaimed reversionary interest. This risk incentivizes Track One plaintiffs to refuse fees only when genuinely believing Track Two claims are likely, not speculatively.

246. Multiple Track One Fee Refusals Scenario:

Question: What if multiple Track One plaintiffs prevail on related cases (unlikely due to automatic mootness, but possible if cases challenge related but distinct violations), and multiple plaintiffs refuse fees?

Answer: Separate Victim Compensation Funds for each case unless violations are sufficiently related that single fund serves victims of all violations. Court has discretion to consolidate funds when serving same victim population.

1. Automatic Stay Procedures Under Rule 62(i)

247. The Core Problem Rule 62(i) Solves: Track Two plaintiffs rely on Track One constitutional findings as foundational premises for damages claims. If defendant appeals and reverses constitutional finding, Track Two claims collapse. Without protection, Track Two plaintiffs face catastrophic risk from appeals they cannot participate in defending.

248. Rule 62(i)(1) - Automatic Stay Trigger:

(1) Automatic Stay. When a Track One judgment under Rule 8(a)(4)(A) is appealed, all Track Two proceedings under Rule 8(a)(4)(B) that rely on the same constitutional finding are automatically stayed pending

1 resolution of the Track One appeal, including Supreme Court certiorari
2 proceedings if petition is filed.

3 **249. What Triggers Automatic Stay:**

4 **Event:** Defendant (or plaintiff, if cross-appealing) files notice of appeal from Track
5 One final judgment establishing or rejecting constitutional violation

6 **Scope:** All Track Two cases relying on same constitutional finding

7 **Duration:** Through complete appellate resolution including:

- 8 • Circuit court appeal (6-12 months)
- 9 • Certiorari petition process (2-4 months)
- 10 • Supreme Court proceedings if cert granted (12-18 months)

11 **Total Stay Duration:** Typically 6-12 months (circuit appeal only) to 24-36 months (if
12 Supreme Court grants cert)

13 **250. Why Stay Is Automatic (Not Discretionary):**

14 **Protects Track Two Plaintiffs:** Without stay, Track Two plaintiffs might obtain
15 judgments based on constitutional finding, then have those judgments reversed on
16 appeal when constitutional finding is reversed—requiring re-litigation after investing
17 resources.

18 **Preserves Judicial Resources:** Better to stay Track Two proceedings pending
19 constitutional appeal than to litigate Track Two cases that might need complete re-
20 litigation if constitutional premise is reversed.

21 **Ensures Consistency:** All Track Two cases should proceed based on finally
22 established constitutional finding (after appeals) rather than tentative district court
23 finding subject to reversal.

24 **251. Rule 62(i)(2) - Notice Requirement:**

(2) **Notice Requirement.** The clerk must notify all Track Two plaintiffs of the Track One appeal and automatic stay within 7 days of the notice of appeal being filed.

252. Form Notice to Track Two Plaintiffs:

UNITED STATES DISTRICT COURT FOR THE [DISTRICT] > PLAINTIFF [X] (Track Two), v. Civil Action No. [Track Two number] DEFENDANT [Y] > NOTICE OF AUTOMATIC STAY UNDER RULE 62(i) > The Clerk provides notice under Federal Rule of Civil Procedure 62(i)(2) that: > 1. **Track One Appeal Filed: Defendant [Y] filed notice of appeal on [date] in Case No. [Track One number], *[Track One case name]*, challenging the district court's [date] judgment finding [constitutional violation]. > 2. **Automatic Stay:** Your Track Two case is AUTOMATICALLY STAYED under Rule 62(i)(1) pending resolution of the Track One appeal, including any Supreme Court certiorari proceedings. > 3. **Your Rights During Stay:** > **Intervention:** You may intervene as of right in the Track One appeal under Rules 62(i)(3) and 24(a)(2) to defend the constitutional finding your damages claim depends upon. > **Monitoring:** You may monitor the Track One appeal through PACER and appellate court dockets. > **Amicus:** You may request permission to file amicus brief in Track One appeal. > 4. **Stay Duration:** Until: - Circuit court affirms constitutional finding, OR - Certiorari time expires without petition filed (90 days), OR - Supreme Court denies certiorari, OR - Supreme Court affirms constitutional finding > 5. **If Constitutional Finding Reversed:** Stay continues 60 days under Rule 62(i)(5) permitting you to: - Seek certiorari (if reversal is from circuit court) - File amended complaint with independent constitutional theory - Voluntarily dismiss without prejudice > 6. **Appellate Counsel:** [Track One plaintiff's appellate counsel name and contact] > 7. **Intervention Deadline:** No deadline for intervention as of right under Rule 24(a)(2), but earlier intervention enables fuller participation. > **DATED:** [date]
CLERK OF COURT**

253. Track Two Plaintiff's Options Upon Receiving Notice:

(A) Accept Stay and Wait: Most passive approach. Monitor appeal, prepare for Track Two proceedings to resume when constitutional finding is affirmed.

(B) Intervene in Appeal: Most active approach. Participate fully in Track One appeal, file briefs, present oral argument (with court permission), defend constitutional finding.

(C) **File Amicus Brief:** Middle approach. Support Track One plaintiff's appeal through amicus brief without full intervention commitment.

(D) **Settlement Discussions:** Use appeal as leverage for settlement negotiations with defendant.

2. Model Stay Order During Track One Appeals

254. Form Stay Order for Track Two Cases:

UNITED STATES DISTRICT COURT FOR THE [DISTRICT] > PLAINTIFF [X] (Track Two), v. Civil Action No. [Track Two number] DEFENDANT [Y] > ORDER STAYING TRACK TWO PROCEEDINGS PENDING TRACK ONE APPEAL > Background: This Track Two case seeks damages based on particularized harm allegedly caused by Defendant's [description of conduct]. Plaintiff's damages claim relies on the constitutional finding in Case No. [Track One number], *[Track One case name]*, that Defendant's conduct violated [constitutional provision]. > **Appeal Filed:** On [date], Defendant filed notice of appeal in the Track One case, challenging the constitutional finding. > **Automatic Stay Under Rule 62(i)(1):** Federal Rule of Civil Procedure 62(i)(1) provides that "all Track Two proceedings under Rule 8(a)(4)(B) that rely on the same constitutional finding are automatically stayed pending resolution of the Track One appeal." > **IT IS HEREBY ORDERED:** > 1. **Track Two Proceedings STAYED:** All proceedings in this case are stayed pending final resolution of the Track One appeal, including any certiorari proceedings. > 2. **Plaintiff's Rights:** > a. **Intervention:** Plaintiff may intervene as of right in Track One appeal under Rules 62(i)(3) and 24(a)(2) > b. **Monitoring:** Plaintiff may access Track One appellate dockets through PACER > c. **Amicus:** Plaintiff may seek permission to file amicus brief > 3. **No Action During Stay:** No discovery, motions, or other proceedings shall occur during stay except: > a. Motions to intervene in Track One appeal > b. Emergency motions with court approval > 4. **Stay Termination—Affirmance:** Under Rule 62(i)(4), stay terminates automatically when: > - Circuit affirms constitutional finding, OR - Certiorari time expires (90 days) without petition, OR - Supreme Court denies certiorari, OR - Supreme Court affirms constitutional finding > Clerk shall provide notice of stay termination within 7 days. Track Two proceedings resume immediately upon termination. > 5. **Stay Continuation After Reversal:** Under Rule 62(i)(5), if constitutional finding is reversed, stay continues 60 days permitting Plaintiff to: > - Seek certiorari (if reversal from circuit) - File amended complaint with independent constitutional theory - Voluntarily dismiss without prejudice > 6. **Case Management Conference:** Within 14

days of stay termination, Court will hold case management conference to schedule Track Two proceedings. > **Rationale:** The automatic stay protects Plaintiff from investing resources in Track Two proceedings based on constitutional finding that might be reversed on appeal. If constitutional finding is affirmed, Plaintiff proceeds with collateral estoppel benefit. If reversed, Plaintiff has options to seek further review or amend complaint. This protects both Plaintiff's interests and judicial resources. > **SO ORDERED.** > **DATED:** [date] **[JUDGE NAME]**
United States District Judge

255. Stay Order Protects All Parties:

Track Two Plaintiff: Avoids investing resources (discovery, expert witnesses, trial preparation) in case that might collapse if constitutional finding reversed.

Defendant: Avoids defending multiple Track Two cases while constitutional premise is under appellate review.

Court: Avoids conducting Track Two proceedings that might require complete re-litigation if constitutional finding reversed.

Result: Efficient use of all parties' and court's resources by waiting for finally established constitutional foundation before proceeding with individual damages claims.

3. Secondary Plaintiffs' Right to Intervene in Appeals

256. Rule 62(i)(3) - Intervention as of Right:

(3) Intervention Right. Track Two plaintiffs may intervene as of right in the Track One appeal under Rule 24(a)(2) to protect their interest in the constitutional finding. The appellate court must permit such intervention.

257. Why Intervention Is "As of Right" (Not Permissive):

Track Two Plaintiffs Have Direct Interest: Their damages claims depend entirely on constitutional finding. If finding is reversed, claims collapse. This direct financial interest meets Rule 24(a)(2) requirements.

Permissive Intervention Would Be Inadequate: Discretionary intervention could be denied, leaving Track Two plaintiffs unable to defend findings they depend upon. "As of right" ensures protection.

Parallel to Class Action Rule 23(e): Just as class members may object to settlements affecting their interests, Track Two plaintiffs may defend constitutional findings affecting their claims.

258. Federal Rule of Appellate Procedure 15 - Intervention in Appeals:

Rule 15. Review or Enforcement of an Agency Order—How Obtained; Intervention > (d) Intervention. Unless a statute provides another method, a person who wants to intervene in a proceeding to enforce or review an agency order must move for leave to intervene and comply with the motion requirements of Rule 27(a). The motion must state the grounds for intervention.

Framework intervention follows this model but with "as of right" status given Track Two plaintiffs' direct interest.

259. Intervention Motion Form:

UNITED STATES COURT OF APPEALS FOR THE [CIRCUIT] > PRESIDENT TRUMP, Appellant, v. Case No. [appeal number] PLAINTIFF A (Track One), Appellee. > MOTION TO INTERVENE AS OF RIGHT BY TRACK TWO PLAINTIFF > Track Two Plaintiff [X], pursuant to Federal Rules of Civil Procedure 62(i)(3) and 24(a)(2) and Federal Rule of Appellate Procedure 15(d), moves to intervene as of right in this appeal. > **Interest in the Appeal: Plaintiff's Track Two damages case, No. [Track Two number], seeks \$[amount] in damages for particularized harm caused by Appellant's [conduct]. The damages claim depends entirely on this Court's resolution of whether Appellant's conduct violated [constitutional provision]. If this Court reverses the district court's constitutional finding, Plaintiff's damages claim collapses. > **Timeliness:** Appellant filed notice of appeal on [date]. Clerk notified Track Two plaintiffs on [date] under Rule 62(i)(2). This motion is filed within 30 days of notice, making it timely. > **Inadequacy of Representation:** While Appellee [Track One plaintiff] will defend the constitutional finding, Appellee seeks only structural relief. Plaintiff seeks individual damages and has different litigation incentives. Appellee might settle or concede points Plaintiff would contest. Plaintiff's substantial**

financial interest (\$[amount] damages at stake) warrants independent representation. > **As of Right Status:** Rule 62(i)(3) provides that "Track Two plaintiffs may intervene as of right... to protect their interest in the constitutional finding. The appellate court must permit such intervention." This mandatory language establishes intervention as of right rather than permissive. > **Relief Requested:** > 1. Grant this motion to intervene as of right 2. Permit Plaintiff to file intervenor's brief supporting affirmance (within 30 days) 3. Permit Plaintiff's counsel to participate in oral argument (with Court permission) 4. Add Plaintiff as party to caption as Intervenor-Appellee > **Respectfully submitted, [Counsel for Track Two Plaintiff]**

260. Appellate Court Must Grant Intervention: Rule 62(i)(3)'s language "must permit such intervention" makes this mandatory, not discretionary. Court cannot deny intervention by Track Two plaintiff with direct interest in constitutional finding.

261. Intervention Rights Include:

Briefing: File intervenor's brief supporting affirmance (or reversal if Track Two plaintiff believes district court erred)

Oral Argument: Request time for oral argument (court may grant 5-10 minutes)

Record Supplement: Move to supplement appellate record with additional evidence

Participate in Settlement: Must be notified of settlement discussions under Rule 62(i)(3)

Petition for Rehearing: May file petition for rehearing en banc if panel reverses

Certiorari: May file certiorari petition if court of appeals reverses

262. Multiple Track Two Plaintiffs Intervening: If dozens of Track Two plaintiffs want to intervene, court may:

(A) Consolidate Representation: Require Track Two plaintiffs to select lead counsel representing collective interests, preventing dozens of redundant briefs.

1 **(B) Amicus Status Alternative:** Suggest Track Two plaintiffs file consolidated amicus
2 brief rather than formal intervention if interests align with Track One plaintiff.

3 **(C) Group Intervention:** Permit intervention by representative Track Two plaintiffs
4 on behalf of all Track Two plaintiffs with similar interests.

5 **4. Expedited Appellate Procedures for Track One Cases**

6 **263. Why Expedited Procedures Are Necessary:** Track Two plaintiffs remain stayed
7 during Track One appeals. Extended appeals delay justice for victims with individual
8 damages claims. Expedited procedures serve both constitutional enforcement and
9 victim compensation objectives.

10 **264. Expedited Track One Appeal Timeline:**

11 **Standard Civil Appeal:** 12-18 months from notice of appeal to decision

12 **Expedited Track One Appeal:** 6-9 months from notice of appeal to decision

13 **Acceleration Mechanisms:**

14 **(1) Compressed Briefing:** 30 days for opening brief, 21 days for response, 14 days for
15 reply (vs. standard 40/30/21)

16 **(2) Priority Oral Argument:** Scheduled within 60 days of final briefing (vs. 90-120
17 days standard)

18 **(3) Expedited Decision:** Target 90 days from oral argument to opinion (vs. 120-180
19 days standard)

20 **(4) Fast-Track Certiorari:** If cert petition filed, expedited consideration on Supreme
21 Court's discretionary docket

265. Circuit Court Standing Orders: Circuits should adopt standing orders designating Track One appeals for expedited treatment, similar to standing orders expediting:

- Criminal appeals (speedy trial)
- Habeas corpus petitions (Antiterrorism and Effective Death Penalty Act)
- Preliminary injunction appeals (Federal Rule of Appellate Procedure 8)

Track One constitutional challenges warrant comparable expedition given structural importance and stayed Track Two plaintiffs awaiting resolution.

266. Sample Circuit Standing Order:

STANDING ORDER FOR EXPEDITED TRACK ONE APPEALS > Track One constitutional challenges under Federal Rule of Civil Procedure 8(a)(4)(A) shall receive expedited treatment: > 1. **Briefing:** Opening brief due 30 days after notice of appeal; response due 21 days after opening brief; reply due 14 days after response > 2. **Oral Argument:** Schedule within 60 days of final briefing > 3. **Decision:** Target 90 days from oral argument to opinion > 4. **Priority:** Track One appeals receive priority equal to habeas corpus petitions > 5. **Rationale:** Track Two plaintiffs are stayed pending Track One appeal resolution. Expedited procedures serve justice for victims awaiting damages proceedings.

5. Constitutional Finding Reversed on Appeal - Secondary Plaintiff Options

267. The Worst-Case Scenario for Track Two Plaintiffs: District court finds constitutional violation, Track Two plaintiffs invest resources preparing damages claims relying on finding, appellate court reverses finding, Track Two claims collapse.

268. Rule 62(i)(5) - 60-Day Grace Period After Reversal:

(5) Stay Continuation After Reversal. If the constitutional finding is reversed on appeal, the stay continues for 60 days to permit Track Two plaintiffs to: > (A) seek certiorari if the reversal is from a circuit court; > (B) file amended complaints asserting independent constitutional theories that were not reversed; or > (C) voluntarily dismiss without prejudice.

269. Track Two Plaintiff's Three Options After Reversal:

Option A - Seek Certiorari (Rule 62(i)(5)(A)):

If circuit court reversed constitutional finding, Track Two plaintiff may:

- Intervene in Track One plaintiff's certiorari petition (if filed)
- File independent certiorari petition if Track One plaintiff doesn't seek cert
- Argue Supreme Court should grant cert and reverse circuit court

Timeline: File certiorari petition within 90 days of circuit court judgment. Stay continues during cert proceedings.

If Cert Granted: Track Two stay continues through Supreme Court proceedings. If Supreme Court reverses circuit court (affirming district court constitutional finding), Track Two proceedings resume with collateral estoppel benefit.

If Cert Denied: Move to Option B or C.

270. Option B - File Amended Complaint (Rule 62(i)(5)(B)):

Track Two plaintiff may file amended complaint asserting **independent constitutional theory** not addressed or reversed in Track One appeal.

Example: District court found appropriations redirection violated Article I, Section 9, Clause 7. Circuit reversed, holding redirection was authorized under existing appropriations. Track Two plaintiff amends complaint adding:

- Nondelegation violation (Article I, Section 1)
- Separation of powers violation (structural argument)
- Due process violation (Fifth Amendment)

These independent theories weren't addressed in Track One appeal (which focused solely on Appropriations Clause), so Track Two plaintiff may litigate them in Track Two case.

Requirement: Amended theories must be **independent** (not rejected by appellate court). Can't simply re-litigate Appropriations Clause after appellate court rejected it.

271. Option C - Voluntary Dismissal (Rule 62(i)(5)(C)):

Track Two plaintiff may voluntarily dismiss without prejudice, preserving ability to re-file if circumstances change (e.g., Supreme Court reverses circuit court in different case establishing favorable precedent).

Advantage: Avoids adverse judgment on merits. Dismissal without prejudice permits re-filing if legal landscape changes.

Disadvantage: Statute of limitations may expire during interim, preventing re-filing.

272. The 60-Day Decision Period:

Purpose: Give Track Two plaintiffs reasonable time to:

- Evaluate appellate opinion determining what was reversed
- Consult counsel about certiorari prospects
- Research independent constitutional theories for amended complaint
- Make informed decision about whether to continue litigation

60 Days Is Sufficient: Supreme Court cert petitions require 90 days. 60-day Track Two decision period leaves 30 days after decision to file cert petition if pursuing Option A.

273. What Happens If Track Two Plaintiff Takes No Action Within 60 Days?:

Default: Case proceeds to dismissal for failure to prosecute or court may dismiss for lack of viable claim now that constitutional predicate was reversed.

Notice: Court should notify Track Two plaintiff 45 days after reversal: "You have 15 days remaining to either (A) file certiorari petition, (B) file amended complaint with independent constitutional theory, or (C) voluntarily dismiss. Failure to act results in dismissal with prejudice."

6. Constitutional Finding Affirmed on Appeal - Enhanced Collateral Estoppel

274. The Best-Case Scenario for Track Two Plaintiffs: Appellate court affirms district court constitutional finding. Track Two proceedings resume with **enhanced**

collateral estoppel effect—constitutional violation established through two levels of judicial review.

275. Rule 62(i)(4) - Automatic Stay Termination Upon Affirmance:

(4) Stay Termination—Affirmance. The stay terminates automatically when: > (A) the appellate court affirms the constitutional finding; > (B) the time for seeking further review expires without petition being filed (90 days for certiorari); > (C) the Supreme Court denies certiorari; or > (D) the Supreme Court affirms the constitutional finding.

276. Stay Termination Procedure:

Event: Circuit court affirms district court constitutional finding

Clerk Action: Within 7 days, notify all Track Two plaintiffs of affirmance and stay termination

Track Two Proceedings Resume: Immediately upon stay termination

Collateral Estoppel Effect: Constitutional violation is established fact; Track Two plaintiffs need only prove individual injury, causation, and damages

277. Enhanced Collateral Estoppel from Appellate Affirmance:

Single Court Finding (District court only): Collateral estoppel effect within circuit, persuasive authority elsewhere

Affirmed Finding (District + Circuit): Enhanced collateral estoppel—constitutional violation survived appellate scrutiny, strengthening precedential weight

Supreme Court Affirmance (District + Circuit + SCOTUS): Maximum collateral estoppel—constitutional violation established through highest court review

278. Form Notice of Stay Termination:

NOTICE OF AUTOMATIC STAY TERMINATION - RULE 62(i)(4)
> The Clerk provides notice that the automatic stay under Rule 62(i)(1) has **TERMINATED**: > **Event:** On [date], the United States Court of Appeals for the [Circuit] affirmed the district court's constitutional finding

in Case No. [Track One number], *[case name]*. > **Opinion:** [Citation to appellate opinion] > **Constitutional Finding Affirmed:** [Brief description—e.g., "President Trump's October 11, 2025 appropriations redirection violated Article I, Section 9, Clause 7"] > **Collateral Estoppel Effect:** Under Rule 62(i)(4), the affirmed constitutional finding has collateral estoppel effect in your Track Two case. You need only prove: - Particularized injury caused by the constitutional violation - Causation (injury fairly traceable to violation) - Damages amount > You need NOT re-litigate whether constitutional violation occurred—that is established fact. > **Track Two Proceedings Resume:** Immediately. Court will schedule case management conference within 14 days to establish discovery and trial schedule. > **Certiorari Possibility:** Defendant may seek Supreme Court review within 90 days. If cert petition is filed, stay may be reimposed pending Supreme Court proceedings. Clerk will provide notice if this occurs. > **Case Management Conference:** [Date, time, location]

279. Track Two Proceedings After Affirmance:

Discovery Focus: Limited to Track Two elements (injury, causation, damages). No discovery about constitutional violation—that's established.

Expert Witnesses: Economic experts on damages, causation experts linking injury to violation. No constitutional law experts needed.

Dispositive Motions: Defendant may challenge injury, causation, or damages amount but cannot re-litigate constitutional violation.

Trial: Brief trial focused exclusively on Track Two damages. No need to prove constitutional violation through extensive testimony.

Timeline: 3-6 months from stay termination to judgment (vs. 12-18 months if re-litigating constitutional question).

280. Defendant's Certiorari Option: Even after circuit affirmance, defendant may seek Supreme Court certiorari. If cert petition filed:

Option A: Track Two proceedings continue during cert proceedings (defendant bears risk of Supreme Court reversal)

Option B: Court reimpose stay pending cert proceedings (protecting Track Two plaintiffs from investing resources if Supreme Court might reverse)

Typical Approach: Continue Track Two proceedings but stay execution of any judgment pending cert resolution.

7. Supreme Court Certiorari Procedures

281. Certiorari Timeline Affecting Track Two Cases:

Day 0: Circuit court issues opinion (affirming or reversing district court)

Day 90: Certiorari petition deadline

Day 120: Opposition to cert due (if petition filed)

Day 135: Reply in support of cert due

Months 5-6: Supreme Court conferences considering cert

Month 6-7: Cert granted or denied

If Cert Denied: Stay terminates, Track Two proceeds with collateral estoppel from circuit opinion

If Cert Granted: Stay continues through Supreme Court briefing (6 months), oral argument, and decision (3-4 months after argument) = additional 12-18 months

282. Track Two Plaintiff Participation in Certiorari Proceedings:

If Circuit Affirmed and Defendant Seeks Cert: Track Two plaintiff files opposition to cert or brief in opposition, arguing Supreme Court should deny cert and allow circuit affirmance to stand.

If Circuit Reversed and Track One Plaintiff Seeks Cert: Track Two plaintiff supports cert petition, arguing Supreme Court should grant cert and reverse circuit court.

1 **Cert Stage Intervention:** Track Two plaintiffs may intervene at cert stage even if they
2 didn't intervene in circuit appeal, given direct interest in outcome.

3 **283. Supreme Court Briefing If Cert Granted:**

4 **Track One Plaintiff:** Files merits brief as appellant or appellee

5 **Track Two Intervenors:** May file supporting brief (with consent or court permission)

6 **Amicus Briefs:** Track Two plaintiffs without formal intervention may file amicus
7 briefs

8 **Oral Argument:** Track One plaintiff's counsel presents argument; Track Two
9 intervenor's counsel may request divided argument time (rarely granted but possible)

10 **284. Supreme Court Decision Scenarios:**

11 **Scenario A - Affirm Circuit (Which Affirmed District):** Constitutional finding
12 survives three levels of review. Maximum collateral estoppel effect. Track Two
13 proceedings resume immediately with established constitutional violation.

14 **Scenario B - Affirm Circuit (Which Reversed District):** Constitutional finding
15 definitively rejected. Track Two plaintiffs' 60-day grace period under Rule 62(i)(5)
16 begins running from Supreme Court decision (seek rehearing, amend with independent
17 theory, or dismiss).

18 **Scenario C - Reverse Circuit (Which Affirmed District):** Supreme Court reverses
19 circuit affirmance. Track Two plaintiffs' 60-day grace period begins running (no
20 higher court to petition, so must amend or dismiss).

21 **Scenario D - Reverse Circuit (Which Reversed District):** Supreme Court reverses
22 circuit reversal, reinstating district court constitutional finding. Track Two
23 proceedings resume with collateral estoppel benefit.

285. The Extremely Rare Scenario - Supreme Court GVR (Grant, Vacate, Remand):

GVR Order: Supreme Court grants cert, vacates circuit opinion, remands for reconsideration in light of intervening precedent or changed circumstances.

Effect on Track Two: Stay continues through remand proceedings. Circuit reconsiders. If circuit again affirms constitutional finding on remand, stay terminates. If circuit reverses on remand, Track Two plaintiffs' 60-day grace period begins.

8. Complete Appeal Process Flowchart and Timing Analysis

286. Flowchart - Track One Appeal with Track Two Stay:

[District Court Finds Constitutional Violation] ↓ [Track Two Cases Filed Relying on Finding] ↓ [Defendant Appeals Track One Judgment] ↓ [Rule 62(i)(1): Automatic Stay of Track Two Cases] ↓ [Rule 62(i)(2): Clerk Notifies Track Two Plaintiffs] ↓ ↓ [Track Two Plaintiffs] [Track Two Plaintiffs] [Monitor Passively] [Intervene Under Rule 62(i)(3)] ↓ ↓ [Circuit Court Hears Appeal with Track Two Intervenors] ↓
 ↓ ↓ [CIRCUIT AFFIRMS] [CIRCUIT REVERSES] ↓ ↓ [Rule 62(i)(4): [Rule 62(i)(5):] Stay Terminates] [60-Day Grace Period] ↓ ↓ [Track Two Proceedings] ↓ ↓ Resume with [Seek Cert] [Amend] [Dismiss] Collateral ↓ Estoppel] [If Cert Granted, Stay Continues] ↓ ↓ [SCOTUS [SCOTUS Denies Cert] Grants Cert] ↓ ↓ [Stay [Briefs Filed] Terminates] ↓ ↓ [Oral Argument] [Track Two ↓ Proceeds] [SCOTUS Decision] ↓
 ↓ ↓ [SCOTUS [SCOTUS Affirms] Reverses] ↓ ↓ [Stay [60-Day Terminates] Grace Period] ↓ ↓ [Track Two [Amend or Proceeds] Dismiss]

287. Timing Analysis - Best Case vs. Worst Case:

Best Case (Circuit Affirms, No Cert):

- Month 0: District court judgment
- Months 1-9: Circuit appeal (expedited)
- Month 9: Circuit affirms
- Months 9-12: Cert deadline passes without petition
- Month 12: Stay terminates
- Months 12-18: Track Two proceedings
- Month 18: Track Two judgment

- **Total: 18 months from Track One judgment to Track Two judgment**

Worst Case (Circuit Reverses, SCOTUS Reverses Circuit):

- Month 0: District court judgment
- Months 1-9: Circuit appeal
- Month 9: Circuit reverses
- Months 9-12: Cert petition filed and granted
- Months 13-24: Supreme Court briefing, argument, decision
- Month 24: SCOTUS reverses circuit (reinstating district court finding)
- Months 24-30: Track Two proceedings
- Month 30: Track Two judgment
- **Total: 30 months from Track One judgment to Track Two judgment**

Comparison to Traditional Litigation (No Framework):

Traditional approach: Track Two plaintiff litigates constitutional violation independently

- Months 0-18: Litigate constitutional question at district court
- Months 18-30: Appeal constitutional question to circuit
- Months 30-48: Possible Supreme Court review
- Months 48-60: Track Two damages phase (after constitutional question finally resolved)
- **Total: 60 months**

Framework Efficiency: Even in worst case (30 months), Framework is 50% faster than traditional litigation (60 months). In best case (18 months), Framework is 70% faster.

288. Why Framework Is Faster Despite Stays:

(1) Single Constitutional Adjudication: Track One addresses constitutional question once for all Track Two plaintiffs, rather than each Track Two plaintiff independently litigating.

(2) Collateral Estoppel: After Track One appeal resolves, Track Two proceedings focus exclusively on damages without re-litigating constitutional question.

(3) Parallel Processing: While Track One appeal proceeds, Track Two plaintiffs prepare damages cases. When stay lifts, they're ready to proceed immediately on damages.

(4) Expedited Track One Appeals: 6-9 month circuit appeals versus 12-18 month standard appeals.

(5) Streamlined Track Two: 3-6 month damages proceedings versus 12-24 month combined constitutional-and-damages litigation.

9. Partial Reversal on Appeal - Complex Scenarios

289. The Complication: Appellate court might partially affirm and partially reverse district court constitutional finding, creating complexity for Track Two plaintiffs.

Example: District court found President violated **both** Appropriations Clause (Article I, § 9, cl. 7) **and** nondelegation doctrine (Article I, § 1). Circuit affirms Appropriations Clause violation but reverses nondelegation finding.

Effect on Track Two: Track Two plaintiffs can proceed on Appropriations Clause violation (affirmed) but not on nondelegation violation (reversed).

290. Partial Affirmance Procedure:

Step 1 - Clerk Notice: Notify Track Two plaintiffs of partial affirmance, specifying which constitutional violations were affirmed and which were reversed.

Step 2 - Track Two Evaluation: Each Track Two plaintiff evaluates whether affirmed violations support their damages claims.

Step 3 - Bifurcated Proceedings: Some Track Two cases may proceed (if damages stem from affirmed violations) while others remain stayed (if damages stem from reversed violations).

291. Example Application:

Track One Judgment: President violated (1) Appropriations Clause and (2)

nondelegation doctrine through EPA regulation

Circuit Decision: Affirms Appropriations Clause violation, reverses nondelegation finding

Track Two Plaintiff A: Suffered damages from appropriations redirection → proceeds immediately (claim based on affirmed violation)

Track Two Plaintiff B: Suffered damages from EPA regulation → 60-day grace period under Rule 62(i)(5) (claim based on reversed violation)

Track Two Plaintiff C: Suffered damages from both appropriations redirection and EPA regulation → proceeds on appropriations damages, stays on EPA damages pending grace period decision

292. Complex Bifurcation Order:

ORDER ADDRESSING PARTIAL REVERSAL > The Court of Appeals affirmed the district court's finding that Defendant violated Article I, Section 9, Clause 7 (Appropriations Clause) but reversed the district court's finding that Defendant violated Article I, Section 1 (nondelegation). > **Track Two Cases Categorized:** > **Category A - Appropriations-Based Claims** (Cases [list]): Stay terminates under Rule 62(i)(4)(A). Proceed immediately on damages claims arising from Appropriations Clause violation. > **Category B - Nondelegation-Based Claims** (Cases [list]): 60-day grace period under Rule 62(i)(5) begins running. Plaintiffs must seek certiorari, amend with independent theory, or dismiss. > **Category C - Mixed Claims** (Cases [list]): Bifurcate proceedings. Appropriations-based damages proceed immediately. Nondelegation-based damages subject to 60-day grace period. > **Case Management:** Category A plaintiffs shall attend case management conference on [date]. Category C plaintiffs shall attend for appropriations-damages scheduling only. Category B plaintiffs shall file status reports within 60 days indicating whether seeking certiorari, amending, or dismissing.

293. Partial Reversal Adds Complexity But Framework Handles It: Courts routinely manage bifurcated proceedings where some claims proceed while others are stayed or dismissed. Partial reversal simply requires categorizing Track Two claims based on which constitutional violations they rely upon, then applying appropriate stay termination or grace period rules to each category.

10. Attorney's Fees and Costs During Appeals

294. Who Pays Attorney's Fees for Appellate Work?:

Track One Plaintiff's Appellate Fees: If Track One plaintiff prevails overall (district court finding affirmed through appellate proceedings), fees include both district court and appellate work. If reversed on appeal, Track One plaintiff receives no fees (didn't prevail).

Track Two Intervenor's Appellate Fees: If Track Two plaintiff intervened in Track One appeal and constitutional finding was affirmed, Track Two plaintiff recovers appellate intervention fees as part of Track Two judgment (under 42 U.S.C. § 1988 or applicable fee-shifting statute).

295. Fee Calculation Example:

Track Two Plaintiff Intervened in Track One Appeal: Constitutional finding affirmed, Track Two plaintiff prevails on damages claim.

Total Fees Requested:

- District court Track Two proceedings: 150 hours × \$400/hour = \$60,000
- Appellate intervention (Track One appeal): 80 hours × \$450/hour = \$36,000
- Total attorney's fees: \$96,000
- Costs (experts, court reporters): \$12,000
- **Total Fee Award: \$108,000**

Rationale: Track Two plaintiff's appellate intervention protected the constitutional finding that supported damages recovery. Fees for this work are recoverable as part of prevailing plaintiff's fee award.

296. Defendant's Incentive Structure: The fee structure creates deterrent effect.

Defendant who appeals Track One constitutional finding and loses pays:

- Track One plaintiff's district and appellate fees
- Track Two intervenor-plaintiffs' appellate intervention fees
- Track Two plaintiffs' district court damages proceedings fees

This multi-level fee exposure encourages defendant to carefully evaluate appeal merits before filing, discouraging frivolous appeals designed solely to delay Track Two proceedings.

11. Effective Date and Transition Under Rule 86(c)

297. Rule 86(c)(1) - 180-Day Implementation Period:

(1) Effective Date. Rule 8(a)(4) and companion amendments to Rules 12(j), 24(d), 42(c), 54(e), and 62(i) take effect 180 days after adoption by the Supreme Court.

298. Why 180 Days?:

Courts Need Time: Develop case management procedures, train clerks on Constitutional Violation Registry, establish CM/ECF enhancements, adopt local rules implementing coordination procedures.

Practitioners Need Time: Learn new pleading requirements, understand Track One/Two distinction, develop practice strategies for Track One petitions versus combined approaches.

Bar Associations Need Time: Conduct CLE programs, publish practice guides, establish pro bono panels for Track One representation.

Comparison to Other Rule Amendments: Federal Rules amendments typically include 3-12 month implementation periods. 180 days (6 months) is middle-range, providing adequate preparation time without excessive delay.

299. Implementation Checklist for Courts (180-Day Period):

Month 1: Administrative Office coordinates with districts

Month 2: CM/ECF Registry module developed (\$5,000-\$10,000)

Month 3: Registry testing in pilot districts

Month 4: Clerk training webinars (2-hour sessions)

Month 5: Judge orientation through Federal Judicial Center

Month 6: Full implementation, Framework effective

12. Application to Pending Cases

300. Rule 86(c)(2) - Pending Case Elections:

(2) Application to Pending Cases. Within 30 days of the effective date, plaintiffs with pending constitutional claims may elect to: > (A) file a Constitutional Violation Statement under Rule 8(a)(4); > (B) amend their complaint to include such statement; or > (C) proceed under existing doctrine without utilizing Framework procedures. > Election is binding and cannot be revoked after the 30-day period expires.

301. Why Permit Pending Case Elections?:

Fairness: Plaintiffs who filed constitutional challenges before Framework adoption shouldn't be denied Framework benefits simply due to timing.

Efficiency: Pending structural challenges being dismissed under *Lujan* can convert to Track One, addressing violations rather than dismissing them.

Limitation: 30-day election window creates finality. After 30 days, pending cases proceed under existing doctrine or Framework based on initial election.

302. Pending Case Election Procedure:

Notice: Clerk sends notice to all plaintiffs in pending constitutional cases explaining Framework and election options.

Election Form: Plaintiff files election within 30 days:

ELECTION TO PROCEED UNDER FRAMEWORK > Plaintiff elects to proceed under Federal Rule of Civil Procedure 8(a)(4) Framework as permitted by Rule 86(c)(2). Plaintiff will file Constitutional Violation Statement under Rule 8(a)(4)(A) within 21 days or file amended complaint including such statement. > This election is binding and irrevocable.

or

ELECTION TO PROCEED UNDER EXISTING DOCTRINE > Plaintiff elects to proceed under existing standing doctrine without utilizing Framework procedures. This election is binding and irrevocable.

Default: If plaintiff files no election within 30 days, case proceeds under existing doctrine (Framework doesn't apply retroactively without election).

303. Strategic Considerations for Pending Cases:

Plaintiff with Strong *Lujan* Standing: May elect existing doctrine if confident of particularized injury satisfying traditional standing, avoiding Framework coordination procedures.

Plaintiff with Structural Challenge: Should elect Framework if challenging enumerated limit violation where *Lujan* standing is questionable but Track One universal standing would apply.

Class Actions: May elect Framework if constitutional question benefits from Track One coordination, but class-wide damages better handled through traditional class procedures.

13. Relationship to Lujan and Existing Doctrine

304. Framework-Lujan Coexistence: Rule 8(a)(4) implements but does not overrule *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). The Framework recognizes a categorical distinction: *Lujan* addressed informational injury under the Endangered Species Act—statutory claims requiring particularized harm. Track One addresses ultra vires governmental action exceeding enumerated constitutional limits—structural violations where *Clinton*, *Chadha*, and *Powell* recognized standing despite universal harm. Track Two claims continue requiring traditional *Lujan* standing (concrete injury, causation, redressability). Both doctrines coexist because they govern different standing questions, and Framework implements this existing distinction systematically rather than creating new doctrine.

F. Part IV: Responses To Objections - Track Two Secondary Plaintiffs

1. The Fundamental Asymmetry: Framework Relief vs. Current System's Zero

Relief

305. The most significant potential objection to the Framework comes from Track Two secondary plaintiffs who might argue: "The Framework harms me by delaying my individual damages claim while the Track One priority case proceeds. I should be able to litigate my damages claim immediately without coordination procedures."

306. This objection contains a fatal logical flaw: **it assumes Track Two plaintiff has a viable damages claim under current doctrine.** But current standing doctrine provides Track Two plaintiff with **zero relief**, not delayed relief. The comparison baseline is not "Framework coordination versus immediate individual litigation" but rather "Framework coordination versus standing dismissal."

307. Current System Reality for Structural Constitutional Violations:

Track Two Plaintiff's Claim: "President's October 11 appropriations redirection violated Article I, Section 9, Clause 7, causing me \$500,000 in damages."

Current Doctrine Analysis:

- Constitutional violation harms all citizens equally (structural damage to separation of powers)
- Plaintiff's \$500,000 injury is economic consequence of universal structural harm
- Under *Lujan*, universal structural harm = generalized grievance = no standing
- Result: **Dismissal under Rule 12(b)(1) for lack of standing**

Track Two Plaintiff Recovers: \$0

308. Framework System Reality:

Track One Priority Case: Establishes constitutional violation (6-9 months)

Track Two Plaintiff's Claim: Proceeds using collateral estoppel from Track One finding, proving only individual injury, causation, and damages (3-6 months)

Total Timeline: 9-15 months from Track One filing to Track Two judgment

Track Two Plaintiff Recovers: \$500,000 + attorney's fees + possible Victim Compensation Fund distribution

309. The Asymmetry Table:

Factor	Current System	Framework
Standing	Dismissed (generalized grievance)	Universal standing via Track One
Timeline	Immediate dismissal	9-15 months to judgment
Recovery	\$0	\$500,000 + fees
Constitutional Violation	Not addressed	Established through Track One
Deterrence	None (violations continue)	Strong (injunction + precedent)
Justice Delivered	Zero	Complete

Conclusion: Framework provides infinitely better outcome (something versus nothing) at cost of 9-15 month coordination period. This is categorically superior to current system's immediate dismissal.

310. The Objection's Hidden Premise: For Track Two secondary plaintiff to prefer current system over Framework, plaintiff must believe:

"I prefer 0% chance of immediate \$0 recovery to 100% chance of \$500,000 recovery in 9-15 months."

This preference is logically incoherent. No rational litigant prefers certain dismissal to delayed but certain recovery.

2. The Logical Incoherence of Secondary Plaintiff Objections

311. Objection Restated: "Framework procedures harm me by requiring coordination, staying my case during priority case proceedings, and delaying my damages recovery."

312. Logical Analysis:

Premise 1: Plaintiff objects to Framework procedures causing delay

Premise 2: Framework procedures are the **only mechanism** creating standing for structural violation damages claims

Premise 3: Without Framework, plaintiff's claim is dismissed for lack of standing under *Lujan*

Conclusion: Plaintiff objects to the procedures that create plaintiff's only viable claim

This is logically equivalent to: "I object to the lifeboat that saves me because it takes too long to reach shore. I prefer drowning immediately."

313. The Standing Paradox: To object to Framework procedures, Track Two plaintiff must:

(Step 1): Have viable damages claim (else no basis to object—no injury from procedures affecting non-existent claim)

(Step 2): Claim Framework procedures harm that claim through delay

But: Under current doctrine, Track Two plaintiff has no viable claim for structural violations. *Lujan* requires dismissal for lack of standing. Framework creates the viable claim by establishing constitutional violation through Track One.

Result: Plaintiff cannot coherently object to Framework procedures because those procedures are the **necessary condition** for plaintiff's claim existing at all.

314. The Causation Problem for Objections: Under traditional standing analysis, objecting plaintiff must show injury, causation, and redressability:

(A) Injury: Alleged injury is delay in receiving damages

(B) Causation: But Framework coordination **causes** damages claim to exist (via Track One constitutional finding), not causes injury to pre-existing claim

(C) Redressability: Relief sought (eliminate coordination) would **eliminate** plaintiff's claim (no Track One means no constitutional finding means no Track Two standing)

Conclusion: Objecting plaintiff cannot satisfy standing requirements to object because requested relief would harm plaintiff, not help plaintiff.

315. The Counterfactual Test: Consider two parallel universes:

Universe A (No Framework):

- Track Two plaintiff files damages claim for structural violation
- Court dismisses for lack of standing under *Lujan*
- Plaintiff recovers: \$0
- Constitutional violation: Not addressed

Universe B (Framework):

- Track One plaintiff establishes constitutional violation (9 months)

- Track Two plaintiff proceeds on damages using collateral estoppel (6 months)
- Plaintiff recovers: \$500,000 + fees
- Constitutional violation: Addressed and enjoined

Rational Choice: Every rational litigant prefers Universe B (Framework) to Universe A (current system).

Objection Incoherence: Objecting Track Two plaintiff implicitly claims to prefer Universe A (immediate dismissal) to Universe B (delayed recovery). This preference is irrational unless plaintiff values spite (denying constitutional enforcement to everyone) over self-interest (obtaining damages recovery).

3. The Magnitude Asymmetry: Structural Relief vs. Temporal Inconvenience

316. Even accepting *arguendo* that Track Two plaintiff has viable claim under current doctrine (despite *Lujan*), the objection fails on **proportionality grounds**: the magnitude of benefit Track Two plaintiff receives from Framework vastly exceeds any temporal inconvenience from coordination procedures.

317. Benefits Track Two Plaintiff Receives from Framework:

(1) Constitutional Finding Established: No need to litigate complex constitutional question at significant expense. Track One priority case litigates constitutional violation comprehensively, establishing precedent through collateral estoppel.

Benefit Value: \$100,000-\$300,000 in avoided litigation costs (expert witnesses, constitutional law research, extensive briefing, possible appeals)

(2) Expedited Track Two Proceedings: With constitutional violation established, Track Two proceedings focus exclusively on damages (injury, causation, amount). No constitutional discovery, no expert testimony about separation of powers, no extensive constitutional briefing.

Benefit Value: 50-70% reduction in Track Two litigation costs versus combined constitutional-plus-damages litigation

(3) Enhanced Success Probability: Track One constitutional finding must be established beyond preponderance standard to survive appellate review. Track Two plaintiff benefits from this heightened scrutiny—constitutional violation is "battle-tested" through comprehensive Track One litigation rather than plaintiff's individual case potentially reaching incorrect result due to resource limitations.

Benefit Value: Increased probability of ultimate recovery (80-90% success rate with established constitutional finding versus 40-60% if litigating constitutional question independently)

(4) Victim Compensation Fund: If a Track One plaintiff refuses fees, Track Two plaintiff receives proportional distribution from fund, partially offsetting damages not fully compensated.

Benefit Value: Additional compensation beyond damages award

(5) Structural Relief: Constitutional violation is enjoined, preventing future violations that might harm Track Two plaintiff again.

Benefit Value: Prevention of ongoing harm

318. Costs Track Two Plaintiff Bears from Framework:

(1) Delay: 6-9 months while Track One priority case litigates constitutional question

Cost: Time value of money on damages recovery, potential statute of limitations concerns (addressed through tolling), uncertainty during pending litigation

(2) Dependency: Track Two plaintiff depends on Track One plaintiff litigating competently

Cost: Risk of inadequate representation (mitigated through intervention rights under Rule 24)

(3) Loss of Control: Track Two plaintiff cannot control litigation strategy, settlement decisions, or appellate choices in Track One case

Cost: Strategic autonomy sacrificed (but intervention rights provide participation mechanism)

319. Cost-Benefit Analysis:

Total Benefits: \$100,000-\$300,000 avoided costs + 30-50% increased success probability + expedited proceedings + possible Victim Compensation Fund distribution + structural relief preventing future harm

Total Costs: 6-9 month delay + dependency risk (mitigated by intervention) + reduced strategic control (mitigated by intervention)

Net Benefit: Overwhelmingly positive. Track Two plaintiff receives massive cost savings, increased success probability, and comprehensive relief at modest cost of temporal delay and partial loss of control (both mitigated through intervention rights).

320. The Proportionality Principle: Constitutional law requires proportionality between burden imposed and benefit achieved. Even if Framework coordination imposes some burden on Track Two plaintiffs (temporal delay), the burden is **vastly disproportionate** to benefits received. No constitutional doctrine invalidates procedures providing enormous benefits at modest cost.

4. The Comparative Justice Analysis - Framework vs. Alternatives

321. Alternative 1: Current System (Individual *Lujan* Standing):

1 **Procedure:** Each Track Two plaintiff independently litigates standing, constitutional
2 violation, and damages

3 **Timeline:** 24-48 months per case (full constitutional litigation + damages)

4 **Success Rate:** 40-60% (varies by plaintiff resources, judge assignment, circuit)

5 **Costs:** \$150,000-\$500,000 per plaintiff (constitutional experts, extensive discovery,
6 appeals)

7 **Constitutional Enforcement:** Inconsistent (some courts find violations, others don't)

8 **Result:** Expensive, slow, uncertain, inconsistent

9 **322. Alternative 2: Hypothetical Immediate Individual Litigation:**

10 **Assume:** Track Two plaintiff can immediately litigate constitutional violation +
11 damages without Track One coordination

12 **Timeline:** 18-36 months (full litigation without coordination benefits)

13 **Costs:** \$150,000-\$500,000 (no cost savings from Track One precedent)

14 **Success Rate:** 40-60% (plaintiff bears full burden of establishing constitutional
15 violation)

16 **Constitutional Enforcement:** Redundant (if multiple plaintiffs challenge same
17 violation, courts repeat analysis)

18 **Judicial Resources:** Massive (dozens of courts independently analyzing identical
19 constitutional questions)

20 **323. Alternative 3: Framework Coordination:**

21 **Procedure:** Track One establishes constitutional violation (6-9 months), Track Two
22 proceeds on damages only (3-6 months)

23 **Timeline:** 9-15 months total

Costs: \$20,000-\$50,000 (damages-only litigation, constitutional question already established)

Success Rate: 80-90% (benefits from battle-tested Track One constitutional finding)

Constitutional Enforcement: Comprehensive, consistent, efficient

Judicial Resources: Minimal (one court addresses constitutional question, others address only damages)

324. Comparative Table:

Factor	Current System	Hypothetical Individual	Framework
Timeline	24-48 months	18-36 months	9-15 months
Costs	\$150K-\$500K	\$150K-\$500K	\$20K-\$50K
Success Rate	40-60%	40-60%	80-90%
Recovery	Variable/Zero	Variable	Likely
Constitutional Enforcement	Inconsistent	Redundant	Comprehensive
Judicial Burden	High	Very High	Low

Conclusion: Framework is superior to all realistic alternatives on **every metric**. No alternative provides faster, cheaper, more certain recovery while delivering comprehensive constitutional enforcement.

325. The "Perfect Is Enemy of Good" Fallacy: Objecting Track Two plaintiff might argue: "I could imagine a perfect system with immediate individual litigation, zero costs, and certain recovery." But this hypothetical system doesn't exist. The actual choice is between:

Real Option A: Current system (dismissal for lack of standing)

Real Option B: Hypothetical individual litigation (expensive, slow, uncertain)

Real Option C: Framework (coordinated, efficient, high success rate)

Rational choice: **Option C.** Objecting to Framework because it's not perfect while ignoring that alternatives are dramatically worse is logically incoherent.

5. The Constitutional Priority: Structure Before Individual Convenience

326. Fundamental Constitutional Principle: Structural constitutional protections take priority over individual convenience in procedural timing. The Framework implements this principle through Track One priority for structural relief.

327. Why Structure Comes First:

(1) Structural Violations Harm Everyone: When President violates Appropriations Clause, every citizen suffers identical harm through erosion of separation of powers. This universal structural damage affects 330+ million Americans equally.

(2) Individual Damages Are Derivative: Track Two plaintiff's \$500,000 economic harm is **consequence** of structural violation, not independent harm. The causal chain is: structural violation → economic effects → individual damages. Addressing structure necessarily precedes addressing derivative individual harms.

(3) Structural Relief Benefits All Track Two Plaintiffs: When Track One establishes constitutional violation and obtains injunction, **every Track Two plaintiff** benefits through:

- Collateral estoppel (no need to re-litigate constitutional question)
- Precedent (future violations deterred)
- Injunctive relief (violation stopped, preventing ongoing harm)

(4) Individual Relief Benefits Only Individual: Track Two plaintiff's damages recovery helps only that plaintiff. No systemic benefit, no precedent, no constitutional enforcement beyond individual case.

328. The Priority Hierarchy:

1 **Tier 1 - Constitutional Structure:** Enumerated limits protecting separation of powers,
2 preventing tyranny, maintaining republican government

3 **Tier 2 - Individual Rights:** Fourth Amendment protections, Fifth Amendment due
4 process, Fourteenth Amendment equal protection

5 **Tier 3 - Economic Interests:** Individual damages claims, property rights, contract
6 rights

7 **Framework Implementation:** Track One (Tier 1) proceeds first, establishing
8 constitutional structure. Track Two (Tier 3) proceeds second, addressing individual
9 damages after structure is vindicated. This hierarchy reflects constitutional priorities—
10 structure enables rights, rights enable economic activity.

11 **329. Historical Parallel - Structural Cases Proceeding Despite Individual Plaintiff**

12 **Inconvenience:**

13 ***Brown v. Board of Education*:** School desegregation litigation proceeded on
14 structural equal protection grounds despite individual plaintiffs wanting immediate
15 relief for their children. Courts prioritized systemic constitutional enforcement over
16 individual timing preferences. Result: Constitutional structure vindicated, individual
17 plaintiffs ultimately benefited from comprehensive relief.

18 ***United States v. Nixon*:** Executive privilege litigation proceeded through systematic
19 appellate review despite journalists needing tapes for immediate reporting. Courts
20 prioritized structural separation of powers analysis over individual media convenience.
21 Result: Constitutional limits on executive power established, journalists ultimately
22 obtained access.

Framework Parallel: Track One structural litigation proceeds systematically despite Track Two plaintiffs wanting immediate damages recovery. Courts prioritize constitutional enforcement over individual timing preferences. Result: Constitutional structure vindicated, Track Two plaintiffs benefit from established constitutional findings.

330. Constitutional Hierarchy Objection Response: If Track Two plaintiff argues "my individual damages claim should proceed immediately regardless of structural litigation," the response is:

"Constitutional structure precedes individual convenience. The Appropriations Clause protects separation of powers for 330 million Americans. Your \$500,000 damages claim, while legitimate, derives from structural violation affecting everyone. Structure must be addressed first, comprehensively, creating precedent and relief benefiting all citizens including you. Your temporary inconvenience (6-9 month delay) is vastly outweighed by comprehensive structural enforcement preventing future violations that might harm you again."

6. The Alternative Scenario: What Happens Without Framework

331. Objecting Track Two Plaintiff's Implicit Premise: "Without Framework coordination, I could litigate my damages claim successfully." This premise is demonstrably false under current doctrine.

332. The Baseline Reality Restated: As established in Section 1 above (§§ 316-321), current doctrine provides Track Two plaintiffs with zero relief—not delayed relief. Government's Rule 12(b)(1) motion arguing "structural violation harms all citizens equally" results in dismissal under *Lujan*. Track Two plaintiff recovers \$0, constitutional violation goes unaddressed, no precedent established, zero deterrence. The hypothetical scenario where courts grant standing despite *Lujan* is precisely that—hypothetical. Framework converts this hypothetical into reality by establishing the

1 constitutional violation through Track One, enabling Track Two damages claims that
2 otherwise face certain dismissal.

3 **333. The Stark Reality:** Even assuming Track Two plaintiff could obtain standing
4 under current doctrine (doubtful), Framework provides:

- 5 • **50% faster resolution** (15-27 months vs. 30-48 months)
- 6 • **70% lower costs** (\$50,000 vs. \$200,000)
- 7 • **50% higher success rate** (85% vs. 50%)

8 No rational litigant prefers slower, more expensive, less certain individual litigation to
9 Framework's coordinated efficient proceedings.

10 **7. The Intervention Right Addresses All Remaining Concerns**

11 **334. Residual Objection:** "Even if Framework benefits me overall, I'm concerned
12 about:

- 13 • Priority plaintiff litigating inadequately
- 14 • Settlement without my input
- 15 • Weak appellate defense
- 16 • Strategic decisions I disagree with"

17 **Complete Answer: Intervene under Rule 24(a)(2).**

18 **335. Rule 24(a) - Intervention of Right:**

19 **RULE 24. INTERVENTION > (a) Intervention of Right.** On timely
20 motion, the court must permit anyone to intervene who: > >... > **(2) claims**
21 **an interest relating to the property or transaction that is the subject of**
22 **the action, and is so situated that disposing of the action may as a**
23 **practical matter impair or impede the movant's ability to protect its**
24 **interest, unless existing parties adequately represent that interest.**

25 **336. Track Two Plaintiff's Interest:** Direct financial interest in constitutional finding.
26 Damages claim depends entirely on constitutional violation being established and
27 maintained through appeals.

Impairment: If priority case settles for weak relief, is dismissed for technical reasons, or loses on appeal due to inadequate representation, Track Two plaintiff's damages claim collapses.

Inadequate Representation: Priority plaintiff seeks only structural relief (declarations, injunctions). Track Two plaintiff seeks individual damages. Different litigation incentives create inadequate representation justifying intervention.

337. What Intervention Provides:

(1) Full Party Status: Track Two intervenor becomes full party to priority case with all rights of named parties.

(2) Briefing Rights: File briefs addressing constitutional questions, respond to government arguments, present alternative theories.

(3) Discovery Participation: Conduct discovery, take depositions, propound interrogatories, obtain documents.

(4) Settlement Veto: Object to proposed settlements that provide inadequate structural relief jeopardizing Track Two damages claims.

(5) Appellate Participation: Defend constitutional findings on appeal through intervention in appellate proceedings.

(6) Strategic Input: Participate in litigation strategy discussions, coordinate with priority plaintiff, ensure vigorous constitutional defense.

338. Intervention Solves All Procedural Concerns:

Concern: "Priority plaintiff might settle cheaply."

Solution: Intervene and object to settlement under Rule 24(a)(2). Court must consider intervenor's objection before approving settlement affecting intervenor's interests.

Concern: "Priority plaintiff might concede important arguments."

Solution: Intervene and present those arguments independently through intervenor's brief.

Concern: "Priority plaintiff might lose on appeal due to inadequate briefing."

Solution: Intervene in appeal, file intervenor's brief strengthening constitutional arguments, defend finding vigorously.

Concern: "I have no control over Track One litigation strategy."

Solution: Intervene and participate fully in strategic decisions as co-party.

339. The Choice Is Track Two Plaintiff's: Framework provides intervention rights.

Whether to exercise those rights is Track Two plaintiff's strategic decision:

Option A - Passive Monitoring: Stay on sidelines, monitor priority case, proceed to Track Two after constitutional violation established. **Minimal cost, minimal control.**

Option B - Active Intervention: Intervene as full party, participate in all proceedings, ensure vigorous constitutional defense. **Higher cost, maximum control.**

Option C - Middle Ground: Monitor priority case, intervene only if priority plaintiff litigates inadequately or settlement discussions threaten Track Two interests.

Moderate cost, control when needed.

340. No Legitimate Objection Survives Intervention Right: Track Two plaintiff cannot coherently complain:

"Framework procedures harm me because I can't control Track One litigation and priority plaintiff might litigate inadequately."

Response:

"You have full intervention rights under Rule 24(a)(2). If you're concerned about priority plaintiff's litigation quality, **intervene**. You become full party with complete participatory rights. Your strategic

1 decision not to intervene despite having the right doesn't create
 2 Framework deficiency—it reflects your choice to accept passive
 3 monitoring role. You cannot complain about lack of control when you
 4 voluntarily declined available control mechanisms."

5 **8. Standing to Object Requires Injury - Secondary Plaintiffs Lack It**

6 **341. Standing to Object Requires Injury:** For Track Two plaintiff to object to
 7 Framework procedures, plaintiff must satisfy Article III standing: (1) injury in fact, (2)
 8 causation, and (3) redressability. Objecting plaintiffs fail all three.

9 **342. (A) No Injury in Fact:** Claimed injury is "delay in receiving damages." But the
 10 baseline comparison is dispositive: without Framework, plaintiff's claim is dismissed
 11 under *Lujan* (recovery: \$0); with Framework, plaintiff recovers damages after Track
 12 One establishes violation (recovery: \$500,000+). Framework provides benefit, not
 13 injury. Comparing Framework to a hypothetical perfect system providing immediate
 14 recovery is irrelevant—the baseline must be the realistic alternative (current standing
 15 doctrine), not fantasy.

16 **343. (B) No Causation:** Framework causes Track Two plaintiff's claim to exist by
 17 establishing constitutional violation through Track One. Without Framework, no
 18 Track One universal standing, no constitutional finding, no collateral estoppel, no
 19 Track Two claim. Framework causes relief, not injury to pre-existing right.

20 **344. (C) No Redressability:** Relief sought (eliminate Framework coordination) would
 21 eliminate plaintiff's claim entirely. No Track One means no constitutional finding
 22 means no Track Two standing under *Lujan*. Requested relief makes plaintiff worse off
 23 (zero recovery) rather than better. Objection fails threshold standing requirement and
 24 should be dismissed under Article III before reaching merits.

9. Conclusion: Secondary Plaintiffs Categorically Better Off Under Framework

345. Comprehensive Analysis Across Eight Dimensions Proves Framework

Benefits Track Two Plaintiffs:

(1) Relief Existence (Section A): Framework creates viable claim current doctrine dismisses (something vs. nothing)

(2) Logical Coherence (Section B): Objections are self-refuting (procedures enabling claim cannot injure claim)

(3) Magnitude Analysis (Section C): Benefits vastly exceed costs (\$200K+ savings vs. 6-9 month delay)

(4) Comparative Justice (Section D): Framework superior to all realistic alternatives on every metric

(5) Constitutional Priority (Section E): Structure precedes individual convenience in constitutional hierarchy

(6) Alternative Scenario (Section F): Without Framework, either standing dismissal or 2-4 year expensive uncertain litigation

(7) Intervention Rights (Section G): All procedural concerns addressable through Rule 24 intervention

(8) Standing to Object (Section H): Objecting plaintiffs lack standing because Framework benefits rather than harms them

346. No Valid Objection Survives Analysis: Every conceivable Track Two plaintiff objection fails on logical, practical, or constitutional grounds:

"Framework delays my recovery" → But creates your claim; alternative is zero recovery

1 **"I can't control Track One litigation"** → Intervene under Rule 24(a)(2) and control
2 fully

3 **"Priority plaintiff might litigate poorly"** → Intervene and litigate vigorously
4 yourself

5 **"Coordination is inconvenient"** → Constitutional structure precedes individual
6 convenience

7 **"I prefer individual litigation"** → Individual litigation costs 3× more, takes 2×
8 longer, succeeds 50% less often

9 **"Framework procedures harm me"** → You lack standing to object; procedures
10 create benefit not harm

11 **347. The Bottom Line:** Track Two secondary plaintiffs are **categorically better off**
12 under Framework than under any realistic alternative:

13 **Versus Current Doctrine:** Framework provides viable claim versus standing dismissal
14 (infinite improvement)

15 **Versus Individual Litigation:** Framework provides faster (50%), cheaper (70%), more
16 certain (40% higher success rate) resolution

17 **Versus Perfect Fantasy:** Framework may not be perfect, but perfect doesn't exist;
18 Framework is optimal among real options

19 **348. Policy Implication:** Courts should reject Track Two secondary plaintiff
20 objections as categorically without merit. The objections reflect misunderstanding of
21 baseline alternatives, confusion about causation, or strategic positioning rather than
22 legitimate procedural concerns. Framework serves Track Two plaintiffs' interests
23 comprehensively while delivering constitutional enforcement benefiting all citizens.

G. Part V: Judicial Infrastructure Proves Framework Manageability

1. Supreme Court Case Tracking and Coordination - Established Precedent

349. The Manageability Objection: Critics might argue Framework coordination procedures are too complex for courts to manage, creating unmanageable judicial burden.

Complete Answer: Courts already coordinate related cases routinely through proven mechanisms. Framework simply applies existing infrastructure systematically to constitutional challenges.

350. Supreme Court Docket Coordination Example:

The Supreme Court manages ~7,000 annual certiorari petitions plus ~70 merits cases, coordinating:

- Related cases presenting same issue (consolidation for oral argument)
- Circuit splits requiring resolution (identifying all circuits addressing issue)
- GVR orders (Grant, Vacate, Remand) affecting dozens of pending cases
- Stays of lower court judgments in related cases nationwide
- Class action settlements affecting millions of class members

Infrastructure: Supreme Court Rule 12 requires counsel to identify related cases.

Clerk's office maintains case database. Law clerks screen petitions identifying related issues. Conference procedures address coordination systematically.

351. Framework Parallel: Track One coordination uses identical mechanisms:

Supreme Court: Certiorari petitions identify related pending cases → consolidated review

Framework: Track One complaints enter Constitutional Violation Registry → identified related cases automatically

1 **Supreme Court:** GVR orders affect dozens of related cases → systemic coordination

2 **Framework:** Track One judgment moots dozens of related Track One cases →

3 systemic coordination

4 **Supreme Court:** Class settlements require notice to millions → managed through

5 administrative procedures

6 **Framework:** Track One judgment requires notice to Track Two plaintiffs → managed

7 through clerk notices

8 **Conclusion:** If Supreme Court can coordinate 7,000+ annual petitions plus complex

9 multi-party litigation, district courts can coordinate Track One constitutional

10 challenges using same mechanisms.

11 **352. Proof of Concept:** Supreme Court has managed extraordinarily complex

12 coordination:

13 ***Bush v. Gore*, 531 U.S. 98 (2000):** Coordinated dozens of Florida election cases,

14 state court proceedings, federal district court cases, emergency appeals, all within 36

15 days. Complex emergency coordination succeeded despite unprecedented political

16 pressure.

17 ***NFIB v. Sebelius*, 567 U.S. 519 (2012)** (Affordable Care Act): Consolidated

18 multiple circuit court challenges to same statute, coordinated 26 state attorney general

19 cases, managed three days of oral argument with multiple parties. Massive

20 coordination effort succeeded.

21 **Framework Comparison:** Track One coordination is **simpler** than these Supreme

22 Court coordinations—fewer parties, clearer legal issues (enumerated limit violations),

mechanical priority determination (first-filed), automatic mootness (structural relief moots subsequent cases).

2. District Court CM/ECF Systems Already Support Coordination

353. Current CM/ECF Capabilities:

Case Management/Electronic Case Files (CM/ECF): Federal courts' electronic filing and case management system, operational in all 94 district courts since 2005.

Current Features:

- Electronic filing and document management
- Automated docket entries
- Party and attorney database
- Related case identification
- Transfer and consolidation support
- Notice generation and distribution
- PACER public access
- National case database

354. Track One Registry As CM/ECF Enhancement:

The Constitutional Violation Registry is not novel system but **enhancement** to existing CM/ECF:

Technical Implementation:

- Add database fields: Constitutional provision, violation type, challenged conduct
- Add search functionality: Match new cases to existing cases by constitutional provision + defendant + conduct
- Add alert generation: Notify clerks when related case identified
- Add form orders: Auto-populate stay orders with related case information

Development Complexity: Low. Similar to previous CM/ECF enhancements (e.g., adding bankruptcy adversary proceedings module, criminal case management, appellate case management).

355. Cost Analysis:

Development: \$5,000-\$10,000 (2-4 weeks development by Administrative Office IT)

Training: 2-hour webinar for district court clerks (integrated into existing training)

Maintenance: \$0 additional (included in existing CM/ECF support contracts)

Comparison to CM/ECF Total Cost: Federal judiciary spent ~\$150 million developing and implementing CM/ECF system (2001-2005). Track One Registry represents 0.003-0.007% incremental cost for focused enhancement to proven system.

356. Clerk Burden Analysis:

Current Clerk Time Per Filing: ~5-10 minutes (review complaint, create docket, assign judge, generate notices)

Track One Clerk Time Addition: ~5 minutes (extract Constitutional Violation Statement elements, enter in Registry, search for related cases)

Percentage Increase: ~50% time increase per Track One filing

Total Track One Filings Projected: 100-500 annually (out of ~400,000 total federal civil filings = 0.025-0.125%)

Total Additional Clerk Time Nationally: 500-2,500 minutes annually = 8-42 hours total across all 94 districts = 0.09-0.45 hours per district per year

Conclusion: Trivial incremental burden. Each district clerk spends ~30 minutes annually on Track One coordination (less time than processing single complex bankruptcy filing).

3. Judicial Panel on Multidistrict Litigation Proves National Coordination

Capability

357. 28 U.S.C. § 1407 - Multidistrict Litigation Statute: The Judicial Panel on Multidistrict Litigation coordinates civil actions "involving one or more common

questions of fact" pending in different districts through transfer for "coordinated or consolidated pretrial proceedings."

358. JPML Track Record Proves Capability: The Panel reviews 1,000-2,000 MDL motions annually, managing 200-300 active MDL proceedings coordinating thousands of related cases across all 94 districts—including the 26,000-case *Vioxx* MDL and 5,000-case NFL concussion litigation. Track One coordination procedures detailed in Part II, Section 2 (§§ 91-97) apply these proven JPML mechanisms to constitutional challenges involving 10-50 related cases—trivial by comparison. If JPML coordinates 26,000 pharmaceutical cases, it can coordinate 50 appropriations challenges.

359. Track One Coordination Is Simpler Than Typical MDL:

Typical MDL Complexity:

- Hundreds/thousands of individual plaintiffs with varying injuries
- Complex causation questions (different exposure levels, different harm types)
- State law variations (tort law differs across 50 states)
- Discovery of millions of documents
- Hundreds of expert witnesses
- Multi-year litigation

Track One Simplicity:

- Single constitutional question (did conduct violate enumerated limit?)
- Identical structural harm (all citizens harmed equally)
- Federal constitutional law (no state law variations)
- Discovery focused on governmental conduct (not individual plaintiffs' circumstances)
- Constitutional law experts (not medical/scientific experts on individual causation)
- Expedited proceedings (6-9 months priority case)

Conclusion: Track One coordination is **orders of magnitude simpler** than MDLs

JPML successfully manages daily.

360. JPML Procedures Directly Applicable to Track One:

JPML Rule 6.2 - Tag-Along Actions: When new case filed in district after MDL created, case automatically transferred to MDL district.

Track One Parallel: When new Track One case filed after priority case designated, case automatically stayed under Rule 42(c)(2).

JPML Rule 7.1 - Notice of Potential Tag-Along Actions: Districts notify JPML of potentially related cases.

Track One Parallel: Constitutional Violation Registry automatically identifies related cases.

JPML Rule 10.1 - Transfer of Files: Clerk transfers files to MDL district.

Track One Parallel: Stay orders reference priority case; no physical transfer needed unless parties seek MDL-style consolidation.

Conclusion: Track One coordination uses MDL procedures wholesale, requiring no novel mechanisms.

4. Federal Rules Already Require and Enable Case Coordination

361. Rule 42(a) - Consolidation:

"If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay."

Daily Application: District courts consolidate related cases routinely:

- Multiple plaintiffs suing same defendant for same conduct
- Patent infringement cases involving same patent
- Securities fraud cases involving same misrepresentation
- Employment discrimination cases involving same policy

Track One Application: Same district Track One cases challenging same violation consolidate under Rule 42(a) just like any other related cases.

362. Rule 42(b) - Separate Trials:

"For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims."

Track One Application: Court may bifurcate Track One constitutional question from Track Two damages, trying constitutional issue first with Track Two damages stayed pending resolution.

Current Practice: Courts bifurcate liability and damages trials routinely. Track One/Two bifurcation follows identical logic—resolve foundational question (constitutional violation) before addressing derivative questions (individual damages).

363. Rule 23 - Class Actions:

"One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class..."

Class Action Coordination Procedures:

- Notice to nationwide class members (millions)
- Opt-out procedures
- Settlement approval requiring notice and hearing
- Appeals affecting entire class
- Subclasses for different injury types

Track One Comparison: Track One coordination is **simpler** than class actions:

- No class certification motion
- No numerosity/commonality/typicality/adequacy analysis
- No opt-out procedures (Track Two plaintiffs can intervene or remain passive)
- No settlement class approval (Track One seeks injunctive relief, not damages)

Conclusion: If courts manage class actions with millions of members, Track One coordination with dozens of related cases is trivial by comparison.

5. State Court Systems Prove Coordination Capability at Greater Scale

364. State Court Coordination Examples:

California: Judicial Council Coordination Proceeding (JCCP) mechanism consolidates related cases statewide. Active JCCPs coordinate 50-100 cases regularly (e.g., wildfires, environmental disasters, government liability).

New York: Multi-District Litigation (MDL) program coordinates mass torts and complex commercial cases across state districts.

Texas: Multi-District Litigation Panel consolidates cases statewide using procedures parallel to federal JPML.

Florida: Complex Litigation Division manages coordinated proceedings in mass torts, class actions, and governmental liability cases.

365. State Court Scale:

Total State Court Filings: ~100 million annually (across all state courts)

State MDL Proceedings: 50-100 active coordinations in major states

Federal Comparison:

- Federal civil filings: ~400,000 annually
- Federal MDL proceedings: 200-300 active
- Ratio: Federal courts coordinate 0.05-0.075% of filings

State Ratio: State courts coordinate similar 0.05-0.1% of filings

Conclusion: State courts prove coordination is manageable at scale vastly exceeding federal caseload. If state courts coordinate cases representing 0.1% of 100 million annual filings, federal courts can coordinate Track One cases representing 0.025% of 400,000 annual filings.

366. State Procedures Proving Feasibility:

California JCCP Success: Coordinates 50+ wildfire cases, 100+ environmental cases, 30+ government liability cases simultaneously. Proves single coordination mechanism handles multiple distinct coordinations parallel.

Track One Parallel: Constitutional Violation Registry handles multiple distinct constitutional violations simultaneously (one coordination for appropriations violations, separate coordination for legislative process violations, separate coordination for judicial jurisdiction violations).

California Infrastructure: Electronic case management system identifies related cases, generates coordination notices, manages stay procedures, tracks coordination status.

Track One Infrastructure: Constitutional Violation Registry (CM/ECF enhancement) performs identical functions using federal case management system.

6. International Examples Demonstrate Universal Judicial Capacity

367. European Court of Justice (ECJ): Coordinates constitutional/treaty questions across 27 EU member nations:

Preliminary Reference Procedure: National courts submit constitutional questions to ECJ. ECJ decides constitutional issue. National courts apply ECJ ruling to individual cases.

Annual Referrals: 500-700 preliminary reference cases

Coordination Mechanism: Single ECJ decision resolves constitutional question for all member nations. National courts handle individual applications.

Track One Parallel: Priority Track One case resolves constitutional question once. Track Two cases apply constitutional finding to individual damages claims.

368. European Court of Human Rights (ECHR): Coordinates human rights cases across 46 Council of Europe nations:

Pilot Judgment Procedure: ECHR identifies systemic violations affecting many individuals. Issues single judgment establishing violation. National courts apply ECHR finding to individual cases.

Annual Caseload: 40,000-60,000 applications

Coordination Success: Single ECHR judgment resolves constitutional question for thousands of individual cases.

Track One Parallel: Priority Track One judgment establishes constitutional violation. Track Two cases apply finding to individual damages.

369. Lessons from International Courts:

(1) Coordination Scales: ECHR coordinates 40,000+ cases annually across 46 nations. Framework coordinating 100-500 Track One cases across 94 districts is trivial by comparison.

(2) Technology Enables Scale: ECHR uses case management database matching related cases. Framework uses Constitutional Violation Registry performing identical function.

(3) Two-Tier Structure Works: ECJ/ECHR constitutional tier plus national individual tier mirrors Track One/Track Two structure.

(4) Universal Judicial Capacity: If diverse legal systems across dozens of nations can coordinate, unified federal system across 94 districts easily can.

7. Historical Practice Proves Longevity of Coordination Capability

370. Equity Receiverships (1880s-1930s):

Federal courts coordinated nationwide railroad reorganizations through equity receiverships. Single federal judge managed railroad operating across multiple states, coordinating creditor claims from dozens of jurisdictions.

Scale: Dozens of active receiverships coordinating thousands of creditors

Duration: 50+ years of successful practice

Conclusion: Federal courts coordinated complex multi-party multi-district cases for half-century before modern procedural rules existed. Track One coordination using modern CM/ECF technology is dramatically simpler.

371. School Desegregation Cases (1954-1990s):

Federal courts coordinated desegregation across hundreds of school districts. District courts managed:

- Multiple plaintiff groups (students, parents, civil rights organizations)
- Multiple defendant districts
- Years-long implementation proceedings
- Appellate coordination across circuits

Example: *Brown v. Board* consolidated cases from Kansas, South Carolina, Virginia, Delaware, and D.C. Supreme Court consolidated five cases for single constitutional ruling, then remanded for individual implementation.

Track One Parallel: Consolidate related constitutional challenges, issue single constitutional ruling, individual Track Two cases proceed on damages.

372. Antitrust Litigation (1940s-present):

Federal courts coordinated massive antitrust cases:

- *United States v. AT&T*: Decade-long case coordinating telecommunications regulation nationwide
- *United States v. Microsoft*: Multi-year case coordinating software markets nationwide
- Dozens of private antitrust cases coordinated through MDL procedures

Coordination Success: Single constitutional/antitrust finding applied across related cases, proving two-tier structure (constitutional question + individual damages) works.

373. Historical Lesson: Federal courts successfully coordinated complex multi-party multi-district cases for 150+ years using increasingly sophisticated tools (from equity practice to Rule 42 to MDL statute to CM/ECF). Track One coordination using modern technology is **easiest coordination challenge** federal courts have faced because:

- Constitutional questions are pure law (not complex facts)
- Structural harm is identical across plaintiffs (not varying individual injuries)
- Priority is mechanical (first-filed, not discretionary selection)
- Mootness is automatic (structural relief closes gate)

8. Addressing "But This is Different" Objection

374. Anticipated Objection: "All these coordination examples involve similar cases with common facts. Track One is different because it creates **universal standing** where any citizen can challenge structural violations. This could create thousands of cases overwhelming courts."

Response in Four Parts:

375. Gate Closure Through Automatic Mootness: Track One's self-closing gate eliminates floodgate concerns. When priority case obtains structural relief, all subsequent Track One cases seeking identical relief are dismissed as moot under Article III—they sought relief the first case obtained. If 1,000 citizens file Track One cases challenging appropriations redirection, the first case proceeds comprehensively while 999 receive mootness dismissals (form orders, minimal judicial time).

1 Framework burden equals current system burden (same number of orders) but delivers
2 constitutional enforcement rather than standing dismissals achieving nothing.

3 **376. Empirical Scale:** Major structural constitutional violations are rare—5-15
4 annually across appropriations, legislative process, judicial jurisdiction, and
5 nondelegation categories. At 10-100 filings per violation, total Track One filings
6 would be 50-1,500 annually (0.0125-0.375% of 400,000 federal civil filings). After
7 coordination: 5-15 comprehensive constitutional cases plus 45-1,485 stay/mootness
8 form orders. Long-term, enforceable limits create deterrence reducing violations and
9 filings—the *Brown v. Board* pattern where enforcement increases compliance and
10 decreases litigation.

11 **9. The "Unmanageable" Objection Refuted by Existing Practice**

12 **377. Complete Refutation of Manageability Objection:**

13 **Objection:** "Framework coordination procedures are too complex and burdensome for
14 courts to manage."

15 **Refutation Through Eight Independent Proofs:**

16 **(1) Supreme Court:** Coordinates 7,000 annual cert petitions + 70 merits cases +
17 complex multi-party litigation → Track One coordination is simpler

18 **(2) CM/ECF:** Electronic case management handles 400,000 annual filings + related
19 case identification → Track One Registry is minor enhancement

20 **(3) JPML:** Coordinates 26,000-case MDLs across 94 districts → Track One 10-50
21 case coordinations are trivial

22 **(4) Federal Rules:** Rule 42 consolidation, Rule 23 class actions used daily → Track
23 One uses same mechanisms

(5) State Courts: Coordinate at 250× federal scale (100M vs. 400K filings) → Proves scalability

(6) International Courts: ECHR coordinates 40,000 cases across 46 nations → Track One coordinates 100-500 cases across 94 districts

(7) Historical Practice: 150 years of complex federal coordination (equity receiverships, desegregation, antitrust) → Track One simplest coordination challenge in history

(8) Automatic Mootness: Self-closing gate prevents floodgates → First case moots subsequent cases automatically

Conclusion: Manageability objection is comprehensively refuted. Courts possess proven capacity to coordinate cases at scales vastly exceeding Track One requirements using infrastructure that already exists.

10. Implementation Roadmap - Leveraging Existing Infrastructure

378. 6-Month Implementation Plan (180-Day Rule 86(c) Period):

Month 1 - Planning:

- Administrative Office coordinates with district courts
- Identify pilot districts for Registry testing
- Establish implementation working group

Month 2 - Development:

- CM/ECF contractor develops Registry module
- Database schema: Constitutional provision, defendant, conduct, filing date, status
- Search algorithm: Match constitutional provision + defendant + similar conduct
- Form order templates: Stay orders, notice orders, mootness orders

Month 3 - Testing:

- Deploy Registry in 5 pilot districts (D.D.C., S.D.N.Y., C.D. Cal., N.D. Tex., D. Mass.)
- Test with sample Track One filings

- Refine search algorithm based on pilot results
- Clerk feedback on workflow integration

Month 4 - Training:

- Develop 2-hour webinar for all district clerks
- Cover: Constitutional Violation Statement requirements, Registry use, stay procedures, coordination with JPML
- Train-the-trainer for clerk supervisors in each district
- Conduct 10 regional webinar sessions (8-10 districts per session)

Month 5 - Judge Orientation:

- Federal Judicial Center develops Track One orientation program
- 1-hour webinar: Track One/Two distinction, screening procedures, coordination mechanics
- Include in new judge orientation
- Optional CLE for sitting judges

Month 6 - Deployment:

- Registry goes live in all 94 districts
- Clerk helpline established (Administrative Office support)
- Monitor first 30 days closely, provide technical support as needed
- Framework effective date arrives

Total Cost: \$5,000-\$10,000 development + \$0 incremental training (uses existing webinar infrastructure) + \$0 ongoing (included in CM/ECF support) = **\$5,000-\$10,000 total**

As Percentage of Federal Judiciary Budget: 0.0000625% ($\$5,000 \div \$8,000,000,000$)

379. Comparison to Other Federal Rules Implementations:

Rule 26(a) Mandatory Disclosure (1993): Required substantial practice changes, extensive CLE, years of adaptation. Implementation cost: ~\$50 million (CLE, practice guides, court procedures).

Electronic Filing Mandate (2000s): Required CM/ECF system development, attorney training, hardware installation. Implementation cost: ~\$150 million (2001-2005 development + deployment).

***Iqbal*/*Twombly* Standards (2007-2009):** Required no technical changes but extensive judicial training on heightened pleading standards. Implementation cost: ~\$10 million (Federal Judicial Center programs, CLE, practice guides).

Track One Framework: Requires minor CM/ECF enhancement (\$5,000-\$10,000), brief training (2-hour webinar), minimal practice adjustment (Constitutional Violation Statement form). Implementation cost: **\$5,000-\$10,000**.

Conclusion: Track One is **cheapest, simplest major procedural reform** in federal rules history. The scale of implementation challenge is **orders of magnitude smaller** than previous successful reforms.

11. Cost-Benefit Analysis: Minimal Investment, Maximum Constitutional Protection

380. Complete Cost-Benefit Framework:

COSTS:

(1) Technical Development: \$5,000-\$10,000 (one-time CM/ECF Registry module)

(2) Training: \$0 incremental (uses existing Federal Judicial Center webinar infrastructure)

(3) Clerk Time: 5 additional minutes per Track One filing × 500 filings annually = 2,500 minutes = 42 hours nationally = 0.45 hours per district per year

(4) Judicial Learning Curve: 1-2 years for Track One/Two distinction internalization (comparable to other procedural reforms)

1 **(5) Coordination Overhead:** Minimal (stay orders are form orders, mootness
2 dismissals are mechanical)

3 **Total Costs:** \$5,000-\$10,000 one-time + ~40 hours annual clerk time nationally + 1-2
4 year learning curve

5 **381. BENEFITS:**

6 **(1) Constitutional Enforcement Restored:** Enumerated limits become enforceable
7 rather than being dead letters ignored through standing dismissals

8 **(2) Separation of Powers Protected:** Appropriations Clause, legislative process
9 requirements, judicial jurisdiction limits actively enforced

10 **(3) Tyranny Prevention:** Structural violations have consequences, deterring future
11 ultra vires conduct

12 **(4) Rule of Law Preserved:** Government acts within constitutional boundaries
13 knowing violations trigger judicial review

14 **(5) Individual Justice:** Track Two plaintiffs recover damages for harms caused by
15 constitutional violations

16 **(6) Judicial Efficiency:** One comprehensive Track One case addresses constitutional
17 question for dozens/hundreds of Track Two plaintiffs rather than redundant individual
18 litigation

19 **(7) Precedent Development:** Systematic constitutional adjudication creates coherent
20 precedent preventing circuit splits

21 **(8) Democratic Legitimacy:** Citizens can enforce constitutional structure protecting
22 everyone, not just government self-policing

1 **(9) Victim Compensation:** Victim Compensation Fund mechanism enables
 2 humanitarian fee refusal benefiting persons harmed by violations

3 **(10) Civilizational Preservation:** American constitutional republic survives as
 4 government with enforceable limits rather than transforming into authoritarian state
 5 where government acts without legal constraint

6 **382. Cost-Benefit Ratio:**

7 **Costs:** \$5,000-\$10,000 + 40 hours annually + learning curve

8 **Benefits:** Constitutional structure preserved, tyranny prevented, rule of law maintained,
 9 individual justice delivered, civilization protected

10 **Ratio:** Minimal financial/time investment yields **maximum constitutional protection**
 11 for 330+ million Americans and all future generations.

12 **Comparison:** Federal judiciary's \$8 billion annual budget protects constitutional rights
 13 through criminal prosecutions, civil rights enforcement, habeas corpus review. Adding
 14 \$5,000-\$10,000 for Framework enabling **structural constitutional enforcement**
 15 represents 0.0000625% incremental investment protecting **foundational constitutional**
 16 **architecture** enabling all other rights.

17 **Conclusion:** Framework is most cost-effective constitutional protection mechanism in
 18 American legal history—essentially zero cost, unlimited benefit scope, permanent
 19 duration.

20 **12. Conclusion: Infrastructure Exists, Framework Merely Channels It**
 21 **Systematically**

22 **383. Infrastructure Verdict:** The eight independent proofs in Sections 1-8 above
 23 demonstrate that Framework coordination requirements are orders of magnitude

1 smaller than coordination challenges courts successfully manage daily. Every
2 mechanism Framework requires—case management systems, related case
3 identification, multi-district coordination, consolidation, stays, intervention, collateral
4 estoppel, automatic mootness, and attorney's fees—already exists and operates at scales
5 vastly exceeding Track One requirements. The "unmanageable" objection fails against
6 this evidence.

7 **H. Part VI: The Existential Choice - Adaptation Or Collapse**

8 **1. Lines Drawn and Crossed Without Justice Equals Rule of Law Destruction**

9 **384. The Constitutional Architecture Reality:** The United States Constitution
10 establishes government through **enumerated powers** combined with **enumerated**
11 **limits**. The powers authorize governmental action within defined boundaries. The
12 limits prohibit governmental action exceeding those boundaries. This architecture has
13 protected American liberty for 236 years by ensuring government acts only within
14 constitutional constraints.

15 **385. When Limits Are Crossed Without Consequences:**

16 **First Violation:** Government tests boundary, crosses enumerated limit, awaits
17 consequences. If none follow (judicial dismissal for lack of standing), lesson learned:
18 **limits are optional suggestions, not enforceable boundaries.**

19 **Second Violation:** Emboldened by first success, government crosses limit more
20 brazenly. Again no consequences. Lesson reinforced: **constitutional limits lack**
21 **enforcement mechanisms.**

1 **Third Through Nth Violations:** Government systematically ignores limits because
2 accumulated experience proves limits are **constitutionally enumerated but judicially**
3 **unenforced.** The document says "No Money shall be drawn from the Treasury, but in
4 Consequence of Appropriations made by Law," but reality shows Presidents redirect
5 appropriations without congressional authorization, and courts dismiss challenges for
6 lack of standing.

7 **386. The Death Spiral of Unenforced Limits:**

8 **Year 1:** Enumerated limits are violated occasionally, dismissed as technical violations
9 of debatable constitutional provisions.

10 **Year 5:** Violations become routine as governmental actors learn limits lack
11 enforcement. Constitutional boundaries are tested repeatedly and crossed with
12 impunity.

13 **Year 10:** Limits are openly ignored. Separation of powers erodes as each branch
14 exceeds enumerated boundaries knowing no consequences follow. Executive redirects
15 appropriations, Legislature passes bills without proper voting procedures, Judiciary
16 exercises jurisdiction Congress limited.

17 **Year 20:** Constitutional structure collapses. Government acts without legal constraint.
18 The document remains (Constitution on display in National Archives), but operational
19 reality reflects **unlimited governmental power**—precise definition of tyranny.

20 **Terminal State:** American constitutional republic ceases to exist in functional sense.
21 Government is unlimited, citizens have no enforceable structural protections, tyranny
22 prevails regardless of elections because constitutional limits no longer constrain
23 governmental power.

1 **387. We Are Living in Year 10-15 of This Death Spiral:** Plaintiff's Amended

2 Complaint documents systematic ultra vires conduct across all three branches:

3 **Executive** (President Trump): Redirects DOD R&D appropriations to military pay
4 without congressional authorization (§§335-337), violating Article I, Section 9, Clause
5 7.

6 **Legislative** (Speaker Johnson): Prevents House voting on H. Res. 1304 despite 9-4
7 supermajority control (§§300-302), violating Article I enumerated legislative process
8 requirements.

9 **Judicial** (Supreme Court): Stays preliminary injunctions through 80+ shadow docket
10 applications under statute limiting jurisdiction to "final judgment or decree" (Appendix
11 G), violating Article III, Section 2 limits Congress imposed through 28 U.S.C. §
12 2101(f).

13 **Current Doctrine Response:** Dismissal for lack of standing under *Lujan*. Structural
14 violations are "generalized grievances" no individual citizen can remedy.

15 **Result:** Constitutional limits remain enumerated on paper but unenforced in practice.
16 Government exceeds boundaries with impunity. Death spiral accelerates.

17 **388. The Existential Stakes:** If this continues for another 10-20 years:

18 **2035:** Constitutional limits are historical curiosities studied in law schools but ignored
19 in practice. Separation of powers exists nominally but not operationally. Government
20 power is **functionally unlimited**.

21 **2045:** Younger generation grows up experiencing government that acts without
22 constitutional constraint. They don't expect limits because limits were never enforced
23 during their lifetimes.

1 **2055:** American experiment in limited constitutional government ends not through
 2 revolution or amendment but through **judicial abdication** refusing to enforce
 3 enumerated limits. Constitution remains, but operational government reflects tyranny
 4 rather than republic.

5 **2095:** Historians examine "How America Lost Its Constitutional Republic" and identify
 6 turning point as late 2010s-2020s when federal courts dismissed structural challenges
 7 as "generalized grievances," leaving enumerated limits unenforced until violations
 8 became so routine that restoration was impossible.

9 **389. This Is Not Hyperbole:** Constitutional republics collapse through exactly this
 10 mechanism—enumerated limits become unenforced, violations accumulate without
 11 consequences, structural protections erode, unlimited government power emerges.

12 Roman Republic (509 BCE - 27 BCE), Weimar Republic (1919-1933), dozens of post-
 13 colonial republics (1960s-1990s) followed identical pattern: **constitutional limits**
 14 **existed on paper, violations went unenforced, tyranny emerged.**

15 **2. The Rule of Law Depends on Enforceable Constitutional Boundaries**

16 **390. Rule of Law Definition:** Government acts according to legal rules applied equally
 17 to all, with violations triggering consequences through judicial enforcement.

18 **391. Three Essential Rule of Law Components:**

19 **(1) Written Rules:** Constitutional provisions enumerate governmental powers and
 20 limits in written text.

21 **U.S. Status:** ✓ Constitution enumerates powers (Article I, § 8) and limits (Article I, §
 22 9).

(2) Equal Application: Rules apply equally to government and citizens—no one is above the law.

U.S. Status: ⚠ Citizens face consequences for violating laws (criminal prosecution, civil liability), but government faces no consequences for violating constitutional limits (standing dismissals prevent judicial review).

(3) Judicial Enforcement: Independent courts review alleged violations and impose remedies when violations occur.

U.S. Status: ✗ Courts dismiss structural constitutional challenges for lack of standing under *Lujan*, leaving enumerated limits judicially unreviewable.

392. The Current System Creates Constitutional Double Standard:

Citizen Violates Law:

- Criminal prosecution (if crime)
- Civil liability (if tort)
- Administrative penalties (if regulation)
- Judicial review available to determine violation
- Consequences imposed if violation proven

Government Violates Constitutional Limit:

- Standing dismissal (if structural violation affecting everyone)
- No judicial review of merits
- No consequences for violation
- Violation continues unaddressed
- Precedent encourages future violations

This Double Standard Destroys Rule of Law: When government can violate constitutional limits without consequences while citizens face consequences for violating laws, "rule of law" becomes "rule of government"—exactly the tyranny constitutional limits were designed to prevent.

393. International Rule of Law Indices Recognize This Problem:

1 **World Justice Project Rule of Law Index:** Measures rule of law across 140 countries
2 using eight factors including "Constraints on Government Powers" and "Absence of
3 Corruption."

4 **U.S. Ranking (2023):** 26th globally (down from 18th in 2016).

5 **Declining Factor:** "Constraints on Government Powers" score declining due to
6 perceptions that constitutional limits lack effective enforcement mechanisms.

7 **Framework Relevance:** Restoring judicial enforcement of enumerated limits would
8 directly address "Constraints on Government Powers" factor, improving U.S. rule of
9 law standing internationally and domestically.

10 **394. Rule of Law Requires Enforceable Boundaries:** A boundary that cannot be
11 enforced is not a boundary—it's a suggestion. When constitutional limits say "No
12 Money shall be drawn from the Treasury, but in Consequence of Appropriations made
13 by Law," this must mean either:

14 **(A) Enforceable Limit:** Violations trigger judicial review, precedent establishes
15 boundaries, government faces consequences (injunctions, attorney's fees, damages to
16 harmed parties), future violations are deterred.

17 or

18 **(B) Unenforceable Suggestion:** Violations are dismissed as generalized grievances, no
19 judicial review on merits, government continues violating with impunity, constitutional
20 text becomes aspirational rather than binding.

21 **Current Doctrine Chooses (B):** *Lujan* standing requirements make structural limits
22 unenforceable, transforming constitutional boundaries into suggestions government can
23 ignore.

Framework Restores (A): Universal standing for enumerated limit violations makes boundaries enforceable, restoring rule of law for structural constitutional protections.

3. Judicial Adaptation Is Not Unprecedented - Historical Examples

395. Courts Have Adapted Procedures When Constitutional Enforcement

Required Evolution: The argument that courts cannot adapt standing doctrine because it's "established" ignores history of judicial adaptation when constitutional necessity demanded.

396. Example 1 - Erie Railroad v. Tompkins (1938): Overruled 96 years of Swift v. Tyson precedent (1842-1938) establishing federal general common law. Adaptation required because Swift system violated constitutional limits on federal judicial power under Article III and Tenth Amendment.

Precedent Overruled: Swift v. Tyson, 41 U.S. 1 (1842)

Years of Precedent: 96 years

Reason for Adaptation: Constitutional necessity—federal general common law exceeded Article III judicial power and invaded state sovereignty protected by Tenth Amendment.

Judicial Response: Overruled Swift, adopted Erie doctrine requiring federal courts to apply state substantive law in diversity cases.

Lesson: When constitutional enforcement requires adaptation, courts adapt despite decades of contrary precedent.

397. Example 2 - Brown v. Board of Education (1954): Overruled 58 years of Plessy v. Ferguson precedent (1896-1954) permitting racial segregation under "separate but

1 equal" doctrine. Adaptation required because Plessy violated Fourteenth Amendment
2 equal protection even though Plessy Court had found segregation constitutional.

3 **Precedent Overruled:** Plessy v. Ferguson, 163 U.S. 537 (1896)

4 **Years of Precedent:** 58 years

5 **Reason for Adaptation:** Constitutional necessity—segregation violated equal
6 protection despite Plessy's contrary holding. Changed understanding of Fourteenth
7 Amendment required doctrinal evolution.

8 **Judicial Response:** Overruled Plessy, declared segregation unconstitutional, initiated
9 desegregation requiring massive institutional adaptation.

10 **Lesson:** When constitutional rights require protection, courts adapt despite decades of
11 contrary precedent and enormous implementation challenges.

12 **398. Example 3 - Miranda v. Arizona (1966):** Created entirely new procedural
13 requirements (Miranda warnings) not mentioned in Constitution's text, requiring
14 systemic adaptation by every law enforcement agency nationwide. Adaptation
15 necessary to enforce Fifth Amendment self-incrimination protection effectively.

16 **Constitutional Basis:** Fifth Amendment (existing since 1791)

17 **New Requirement:** Miranda warnings (created 1966)

18 **Implementation Burden:** Every law enforcement agency nationwide required to
19 implement new procedures; thousands of convictions challenged; extensive training
20 required.

21 **Judicial Response:** Despite implementation burdens and law enforcement objections,
22 Court required Miranda warnings because Fifth Amendment protection required
23 effective enforcement mechanism.

1 **Lesson:** When constitutional rights require procedural innovation for effective
2 enforcement, courts create and implement those procedures despite substantial
3 adaptation costs.

4 **399. Example 4 - Class Action Modernization (1966):** Federal Rules of Civil
5 Procedure 23 was completely rewritten in 1966 to enable modern class actions,
6 requiring courts to manage cases with millions of class members, nationwide notice
7 requirements, and complex coordination.

8 **Previous Rule 23:** Limited to specific categories of joint interests

9 **1966 Revision:** Created modern class action enabling consumer protection, civil rights
10 enforcement, mass tort litigation

11 **Implementation Challenge:** Courts required to manage cases with millions of class
12 members, develop notice procedures, oversee settlements, coordinate nationwide
13 litigation

14 **Judicial Response:** Courts adapted successfully despite complexity, proving capacity
15 to manage sophisticated multi-party coordination when procedural innovation serves
16 justice.

17 **Lesson:** Courts can implement complex procedural reforms when reforms serve
18 important societal interests—Framework coordination is simpler than class action
19 management courts handle routinely.

20 **400. The Adaptation Principle:** These examples prove courts adapt procedures when:

21 **(1) Constitutional Necessity:** Existing doctrine fails to enforce constitutional
22 protections adequately

1 **(2) Workable Alternative:** Proposed reform provides practical enforcement
2 mechanism

3 **(3) Manageable Implementation:** Courts possess capacity to implement reform using
4 available infrastructure

5 **Framework Satisfies All Three:**

6 **(1) Constitutional Necessity:** ✓ Current *Lujan* standing makes enumerated limits
7 unenforceable, violating constitutional design of limited government

8 **(2) Workable Alternative:** ✓ Framework provides systematic enforcement
9 mechanism through Track One universal standing, coordination procedures, and
10 automatic mootness

11 **(3) Manageable Implementation:** ✓ Framework uses existing infrastructure
12 (CM/ECF, MDL, Rule 42, collateral estoppel) requiring minimal incremental
13 investment (\$5,000-\$10,000)

14 **Conclusion:** Framework adaptation is **more justified** and **easier to implement** than
15 historical adaptations courts successfully completed (Erie, Brown, Miranda, Rule 23).
16 No principled basis exists to refuse Framework adaptation when precedent proves
17 courts adapt when constitutional necessity requires.

18 **4. The Comparative Difficulty Analysis: Adaptation vs. Collapse**

19 **401. The Choice Facing Federal Courts:**

20 **Option A - Framework Adaptation:** Adopt Rule 8(a)(4) amendments, learn Track
21 One/Two distinction (1-2 years), coordinate related cases using existing infrastructure,
22 restore enforceable constitutional limits.

Option B - Continued Refusal: Maintain *Lujan* standing dismissals, leave enumerated limits unenforced, allow constitutional structure to erode, preside over American republic's transformation into authoritarian state.

402. Difficulty Comparison - Adaptation:

Technical Challenge: \$5,000-\$10,000 CM/ECF Registry module (0.0000625% of federal judiciary budget)

Training Required: 2-hour clerk webinar, 1-hour judge orientation through Federal Judicial Center

Learning Curve: 1-2 years for Track One/Two distinction internalization (comparable to *Iqbal/Twombly*)

Coordination Burden: 100-500 Track One cases annually across 94 districts using proven MDL mechanisms

Adaptation Timeline: 180-day implementation period (Rule 86(c))

Permanence: One-time adaptation, then operational indefinitely

Difficulty Rating: Minimal - comparable to other successful procedural reforms, uses existing infrastructure, requires finite temporary learning investment

403. Difficulty Comparison - Collapse:

Immediate: No technical challenge, no training, no learning curve, no coordination

5-10 Years: Constitutional violations accumulate, separation of powers erodes, governmental power becomes functionally unlimited

15-20 Years: Younger generation experiences government without enforceable constitutional limits, expectations shift toward accepting unlimited governmental authority

25-35 Years: Constitutional structure collapses completely, American republic transforms into authoritarian state, centuries of constitutional governance end

50+ Years: Restoration becomes impossible—institutional memory of limited constitutional government fades, mechanisms for enforcing limits are forgotten, tyranny is normalized

Permanence: Infinite - once constitutional republic collapses into tyranny, restoration requires revolution rather than adaptation

Difficulty Rating: Catastrophic and Permanent - civilizational collapse from which recovery may be impossible

404. The Asymmetry Table:

Factor	Framework Adaptation	Continued Collapse
Technical Cost	\$5,000-\$10,000	\$0
Training Required	2-3 hours	None
Learning Curve	1-2 years	None
Implementation Timeline	180 days	N/A
Ongoing Burden	Minimal coordination	Accelerating violations
Permanence of Change	Operational indefinitely	Collapse irreversible
Constitutional Enforcement	Restored	Eliminated
Rule of Law	Preserved	Destroyed
Separation of Powers	Maintained	Collapsed
Tyranny Prevention	Effective	Failed
Civilization Outcome	Constitutional republic preserved	Authoritarian state emerges
Difficulty for Judges	Learn new procedures	Preside over republic's death

405. The Stark Reality: Adaptation requires **finite temporary effort** (180-day implementation + 1-2 year learning curve) producing **permanent constitutional preservation**. Refusal requires **zero immediate effort** but produces **permanent civilizational catastrophe**.

No Rational Actor Chooses Catastrophe Over Adaptation: When options are (A) finite temporary difficulty preserving civilization or (B) zero immediate difficulty enabling permanent collapse, rational choice is obvious: **adapt**.

Courts Choosing (B) Must Explain Why: If federal courts refuse Framework adaptation, courts must articulate why preserving procedural comfort today justifies enabling constitutional republic's collapse tomorrow. No principled explanation exists—the trade-off is indefensible.

5. The Constitutional Foundation: Judicial Duty and Enumerated Limit Enforcement

406. Article VI, Clause 3 - Judicial Oath:

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..."

28 U.S.C. § 453 - Judicial Oath Text:

"I, [name], do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as [title] under the Constitution and laws of the United States. So help me God."

407. The Oath and Constitutional Enforcement: Federal judges swear to "faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution." This oath has guided the federal judiciary through periods requiring

1 significant doctrinal adaptation—from *Marbury's* establishment of judicial review, to
2 *Erie's* transformation of federal common law, to *Brown's* enforcement of equal
3 protection despite decades of contrary precedent. In each instance, courts fulfilled
4 constitutional duties by adapting doctrine to meet constitutional requirements.

5 **408. The Framework as Constitutional Duty Fulfillment:** The Constitution
6 enumerates specific limits on governmental power precisely because the Framers
7 intended those limits to constrain government action. Article I, Section 9 prohibits
8 appropriations without congressional authorization. Article I, Section 7 mandates
9 bicameralism and presentment. Article III, Section 2 establishes jurisdictional
10 boundaries. These provisions serve no purpose if violations cannot be judicially
11 addressed.

12 When current standing doctrine prevents enforcement of enumerated limits—
13 dismissing structural challenges as "generalized grievances" despite affecting
14 constitutional architecture—a gap emerges between constitutional design and judicial
15 doctrine. The Framework addresses this gap by providing enforcement mechanism
16 consistent with Supreme Court precedent recognizing structural standing in *Clinton*,
17 *Chadha*, and *Powell*.

18 **409. Adaptation as Institutional Strength:** The federal judiciary's willingness to
19 adapt doctrine when constitutional enforcement requires has been a source of
20 institutional strength, not weakness. Courts that enforced *Brown* despite
21 implementation difficulties demonstrated that constitutional duty can be fulfilled even
22 when procedural innovation is required. The Framework asks far less—utilizing

existing infrastructure (CM/ECF, JPML, Rule 42) rather than creating novel mechanisms—while addressing structural protections enabling all constitutional rights.

410. The Institutional Choice: Federal courts considering Framework adoption face a choice about how best to fulfill constitutional enforcement responsibilities:

Current doctrine dismisses structural constitutional challenges as generalized grievances, leaving enumerated limits without judicial enforcement mechanism. This approach has the virtue of doctrinal stability but creates enforcement gap the Framers did not intend.

Framework adoption provides systematic enforcement of enumerated limits through proven coordination mechanisms, addressing the enforcement gap while preserving traditional standing for individual rights claims. This approach requires adaptation but serves constitutional design.

Both paths reflect good-faith judicial approaches to constitutional enforcement.

Plaintiff respectfully submits that Framework adoption better fulfills the judiciary's constitutional role as guardian of enumerated limits, while recognizing this Court's authority and wisdom in evaluating that submission.

411. Historical Precedent for Adaptation: Federal courts have repeatedly demonstrated capacity for doctrinal adaptation when constitutional enforcement required evolution:

Adaptation	Prior Doctrine	Years	Constitutional Purpose
<i>Erie Railroad Co. v. Tompkins</i> , 304 U.S. 64 (1938)	<i>Swift v. Tyson</i> , 41 U.S. (16 Pet.) 1 (1842)	96 years	Federalism principles
<i>Brown v. Board</i>	<i>Plessy v.</i>	58 years	Equal protection

<i>of Education</i> , 347 U.S. 483 (1954)	<i>Ferguson</i> , 163 U.S. 537 (1896)		
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	Case-by-case voluntariness	N/A	Fifth Amendment rights
Fed. R. Civ. P. 23 (1966 Amendment)	Limited class actions	N/A	Access to justice

These adaptations required significant judicial effort—years of implementation, new procedures, extensive coordination. Courts undertook this effort because constitutional enforcement justified adaptation costs. The Framework presents similar opportunity to strengthen constitutional enforcement through manageable procedural innovation.

412. Respectful Submission: Plaintiff does not presume to instruct this Court on judicial duty. The federal judiciary has faithfully discharged constitutional responsibilities for over two centuries, often under circumstances far more challenging than those presented here. Plaintiff simply presents the Framework as a tool that may assist courts in fulfilling the constitutional enforcement role the Framers envisioned—protecting enumerated limits that safeguard constitutional structure for all citizens. The choice of whether and how to adapt standing doctrine remains, as it must, with the judiciary. Plaintiff respectfully requests this Court's consideration of the Framework on its merits.

6. The Precedent Being Set Affects Future Generations

413. Every Judicial Decision Creates Precedent: When courts dismiss structural challenges under *Lujan*, they don't merely decide individual case—they establish precedent that:

1 **(1) Enumerated limits are judicially unenforceable**

2 **(2) Structural violations have no consequences**

3 **(3) Government can exceed constitutional boundaries with impunity**

4 **(4) Citizens have no remedy for universal constitutional harm**

5 **(5) Separation of powers protections exist on paper but not in practice**

6 **414. Precedent Compounds Over Generations:**

7 **2025:** 10 structural challenges dismissed under *Lujan*

8 **2030:** 50 dismissals (citing 2025 precedents)

9 **2035:** 200 dismissals (citing 2025-2030 precedents)

10 **2040:** 500 dismissals (precedent now "firmly established")

11 **2045:** Structural challenges no longer filed (attorneys know dismissal is certain)

12 **Result by 2045:** Complete judicial abandonment of structural constitutional
13 enforcement. No mechanism exists to challenge governmental violations of
14 enumerated limits. Constitutional boundaries have become **functionally non-existent**.

15 **415. Framework Adoption Creates Opposite Precedent:**

16 **2026:** Track One Framework adopted, 10 structural violations addressed

17 **2030:** 50 violations addressed (governmental actors recognize limits are enforceable)

18 **2035:** 20 violations addressed (deterrence effect—fewer violations occur)

19 **2040:** 10 violations addressed (government largely complies, knowing violations
20 trigger consequences)

21 **2045:** 5 violations addressed (constitutional culture restored—limits are respected)

22 **Result by 2045:** Structural constitutional enforcement is routine. Governmental actors
23 respect enumerated limits knowing violations trigger judicial review, precedent,

1 injunctions, and fees. Constitutional boundaries are **actually enforceable**, not merely
2 enumerated on paper.

3 **416. The Generational Stakes:** Today's judicial choices determine constitutional
4 landscape for next 100+ years:

5 **Choose Adaptation:** 2025 adoption → 2045 restored constitutional culture → 2125
6 American republic flourishing with enforceable limits

7 **Choose Refusal:** 2025 dismissals → 2045 abandoned structural enforcement → 2125
8 authoritarian state with unlimited governmental power (if American republic still
9 exists)

10 **417. Judges Cannot Defer to "Future Courts":** Sometimes judges express reluctance
11 to adopt significant reforms, suggesting future courts should address the issue. This
12 position is indefensible for Framework adoption:

13 **The Problem Exists Now:** Structural violations are occurring today (documented in
14 Amended Complaint). Current doctrine dismisses challenges today. Citizens are
15 harmed today.

16 **Delay Worsens Problem:** Every year without Framework adoption, more violations
17 accumulate, more precedent dismissing challenges develops, constitutional culture
18 further erodes.

19 **Future Courts Face Worse Situation:** If current courts defer, future courts inherit
20 even more entrenched dismissal precedent, even worse constitutional erosion, even
21 harder restoration challenge.

1 **Constitutional Duty Exists Now:** Current judges took oath to discharge duties under
2 Constitution. They cannot defer constitutional duties to future judges who haven't
3 taken office yet.

4 **Conclusion:** "Let future courts decide" is abdication, not prudence. Current judges
5 must fulfill current constitutional duties regardless of difficulty.

6 **7. Constitutional Architecture and Structural Enforcement**

7 **418. The Constitutional Design:** The Framers created a government of enumerated
8 powers subject to enumerated limits. This architecture assumes both components
9 function: powers authorize governmental action within boundaries, limits constrain
10 governmental action at boundaries. When limits lack enforcement mechanism, the
11 architecture operates asymmetrically—powers remain effective while limits become
12 advisory.

13 **419. The Enforcement Gap:** Current standing doctrine creates asymmetry the Framers
14 did not intend. Government can exercise enumerated powers through ordinary political
15 and legal processes. But when government exceeds enumerated limits in ways
16 affecting all citizens equally, current doctrine dismisses challenges as generalized
17 grievances. The result: enumerated limits exist textually but lack enforcement
18 practically.

19 **420. Framework as Architectural Restoration:** The Framework restores
20 constitutional architecture's intended symmetry by providing enforcement mechanism
21 for enumerated limits comparable to enforcement mechanisms for enumerated powers.
22 Track One universal standing enables citizens to challenge structural violations;
23 coordination procedures ensure efficient adjudication; automatic mootness prevents

1 redundant litigation. The architecture functions as designed—powers effective within
2 limits, limits enforceable at boundaries.

3 **421. Adaptation Costs and Constitutional Benefits:** Framework adoption requires
4 adaptation—learning Track One/Two distinction, implementing coordination
5 procedures, managing Constitutional Violation Registry. These costs are real but
6 finite: 180-day implementation period, 1-2 year learning curve, \$5,000-\$10,000
7 technical investment. The constitutional benefit—restored enforcement of enumerated
8 limits protecting structural integrity—is permanent. Courts routinely undertake
9 comparable adaptation when constitutional enforcement requires procedural evolution.

10 **8. Doctrinal Status Quo as Active Choice**

11 **422. Standing Doctrine Is Not Self-Executing:** Current standing doctrine dismissing
12 structural challenges as generalized grievances reflects judicial choices made over
13 decades. These choices were reasonable responses to concerns about advisory
14 opinions, political questions, and separation of powers. But doctrinal choices can be
15 reconsidered when circumstances reveal unintended consequences—here, the
16 consequence that enumerated constitutional limits lack judicial enforcement
17 mechanism.

18 **423. The Framework Addresses Demonstrated Enforcement Gap:** Plaintiff's
19 Amended Complaint documents systematic violations of enumerated constitutional
20 limits across all three branches: appropriations violations (Article I, § 9), legislative
21 process violations (Article I, § 7), and jurisdictional violations (Article III, § 2). Under
22 current doctrine, these structural challenges face dismissal regardless of merit because

1 harm affects all citizens equally. The Framework provides enforcement mechanism
2 addressing this specific gap.

3 **424. Continued Application of Current Doctrine:** If courts continue applying current
4 standing doctrine to structural constitutional challenges, enumerated limit violations
5 will continue lacking judicial remedy. This is not criticism of courts—current doctrine
6 reflects reasonable jurisprudential choices. But continued application produces
7 continued enforcement gap. Courts considering Framework adoption weigh whether
8 the enforcement gap justifies doctrinal adaptation, recognizing that both continued
9 application and adaptation reflect active judicial choice about how best to fulfill
10 constitutional enforcement responsibilities.

11 **425. The Question Presented:** Does the enforcement gap documented in Plaintiff's
12 litigation—where enumerated constitutional limits lack judicial remedy because
13 violations affect all citizens equally—justify systematic Framework adoption? Plaintiff
14 submits that it does, for reasons developed throughout this Memorandum. The Court's
15 resolution of this question will shape constitutional enforcement for structural
16 violations going forward.

17 **9. Historical Precedent: Judicial Adaptation Under Challenging Circumstances**

18 **426. The Brown Implementation Example:** Federal judges implementing *Brown v.*
19 *Board of Education* faced extraordinary challenges: designing desegregation plans for
20 hundreds of districts, supervising implementation over decades, managing resistance
21 from state officials, and addressing evolving circumstances requiring continuous
22 procedural innovation. These judges demonstrated that constitutional enforcement can

proceed even when implementation requires sustained judicial effort and procedural creativity.

427. Procedural Innovation in Service of Constitutional Duty: The judges who implemented *Brown* did not have established procedures for school desegregation. They developed procedures case by case, learning from experience, adapting to local circumstances, and building institutional capacity over time. Their willingness to undertake this effort—despite the absence of procedural roadmap—enabled constitutional enforcement that might otherwise have remained theoretical.

428. Framework Advantages Over Historical Precedent: The Framework offers significant advantages over the procedural innovation *Brown* required:

Factor	<i>Brown</i> Implementation	Framework Implementation
Procedures	Created from scratch	Uses existing infrastructure
Timeline	Decades of supervision	180-day implementation + 1-2 year learning
Mechanisms	Novel (no MDL, limited class actions)	Proven (CM/ECF, JPML, Rule 42)
Coordination	Ad hoc, district by district	Systematic, nationwide registry
Cost	Enormous judicial resources	\$5,000-\$10,000 technical, minimal ongoing

429. The Institutional Capacity Exists: Federal courts today possess coordination capacity that *Brown*-era courts lacked: electronic case management, multidistrict litigation procedures, established intervention rights, mature collateral estoppel doctrine. The Framework channels this existing capacity toward constitutional enforcement rather than requiring courts to build new institutional structures. If courts

could implement *Brown* without these tools, courts can implement the Framework with them.

430. Respectful Recognition: Plaintiff does not equate Framework adaptation with *Brown* implementation—the challenges are categorically different in scope and difficulty. The comparison illustrates only that federal courts have demonstrated capacity for procedural innovation when constitutional enforcement requires it, and that Framework adoption requires far less innovation than courts have successfully undertaken in the past.

10. The Doctrinal Question Presented

431. Framework Adoption as Doctrinal Choice: This Memorandum presents a doctrinal question: Should federal courts systematize structural standing already recognized in *Clinton*, *Chadha*, and *Powell* through Framework procedures enabling efficient enforcement of enumerated constitutional limits?

432. Arguments Supporting Adoption:

(1) Constitutional Design: Enumerated limits exist to constrain governmental action. Limits without enforcement mechanism contradict constitutional architecture's intended function.

(2) Existing Precedent: Supreme Court has recognized standing for structural constitutional violations despite universal harm. Framework implements this precedent systematically rather than creating new doctrine.

(3) Proven Infrastructure: Framework uses existing judicial mechanisms (CM/ECF, JPML, Rule 42, collateral estoppel, mootness) requiring minimal incremental investment.

(4) Manageable Adaptation: Implementation requires finite effort (180 days + 1-2 year learning curve) comparable to other successful procedural adaptations throughout federal court history.

(5) Constitutional Benefit: Framework restores judicial enforcement of enumerated limits, enabling courts to fulfill constitutional role as guardian of structural protections.

433. Arguments Against Adoption:

(1) Doctrinal Stability: Current standing doctrine provides predictable framework that litigants and courts understand. Adaptation creates transitional uncertainty.

(2) Separation of Powers: Universal standing arguably expands judicial role beyond Article III's "case or controversy" requirement, though structural standing precedent suggests otherwise.

(3) Institutional Burden: Even manageable adaptation requires judicial resources that might be directed elsewhere.

(4) Political Question Concerns: Structural constitutional challenges may implicate political questions better resolved through electoral processes.

434. Resolution: Plaintiff has addressed each argument against adoption in Parts I-V of this Memorandum, demonstrating that constitutional foundation supports Framework, implementation is manageable, and political question doctrine does not apply to enumerated limit enforcement. This Court must weigh these competing considerations and determine whether Framework adoption serves constitutional enforcement.

Plaintiff respectfully submits that it does.

11. Summary: The Case for Framework Adoption

435. Part VI Summary: This Part has established that:

(1) Enumerated constitutional limits require enforcement mechanism to serve their constitutional purpose (Section 1);

(2) Rule of law depends on governmental actors facing consequences when exceeding constitutional authority (Section 2);

(3) Federal courts have successfully adapted doctrine when constitutional enforcement required evolution—*Erie*, *Brown*, *Miranda*, Rule 23 (Section 3);

(4) Framework adaptation costs are finite and manageable while constitutional benefits are permanent (Section 4);

(5) Judicial oath to discharge constitutional duties supports Framework adoption when current doctrine fails to enforce enumerated limits (Section 5);

(6) Framework provides systematic approach benefiting courts, litigants, government, and public (Section 6);

(7) Current doctrine and Framework adoption both reflect active judicial choices about constitutional enforcement (Section 8);

(8) Federal courts possess greater institutional capacity for Framework implementation than courts had for historical adaptations like *Brown* (Section 9).

436. The Invitation: Plaintiff respectfully invites this Court to consider Framework adoption as opportunity to strengthen constitutional enforcement through systematic application of structural standing already recognized in Supreme Court precedent. The Framework does not ask courts to expand judicial power beyond constitutional bounds—it asks courts to channel existing power toward enforcing enumerated limits the Framers deemed essential to constitutional governance.

1 **437. Closing Submission:** The federal judiciary has faithfully discharged
2 constitutional responsibilities for over two centuries, adapting doctrine when
3 constitutional enforcement required evolution while maintaining institutional integrity
4 and public trust. Plaintiff submits that Framework adoption continues this tradition—
5 providing enforcement mechanism for enumerated limits through proven procedures
6 that serve constitutional design. The Court's consideration of this submission on its
7 merits is respectfully requested.

8 **VI. CONCLUSION**

9 **438.** This Court should adopt the proposed amendments to Federal Rules of Civil
10 Procedure 8, 12, 24, 42, 54, 62, and 86 implementing the Kirchner Standing
11 Framework for constitutional enforcement.

12 **439.** The Framework addresses constitutional crisis where enumerated limits on
13 governmental power have become judicially unenforceable because violations harm all
14 citizens equally, yet courts dismiss structural challenges as "generalized grievances"
15 under *Lujan v. Defenders of Wildlife*. The result: constitutional boundaries exist on
16 paper but lack judicial enforcement, enabling governmental actors to exceed
17 constitutional limits with impunity.

18 **440. The Framework Solution:** The three-track system established in Section IV
19 solves this crisis: Track One provides universal standing for enumerated limit
20 violations with coordination ensuring single comprehensive adjudication per violation;
21 Track Two preserves traditional *Lujan* standing for individual damages claims

1 benefiting from Track One's collateral estoppel; Track Three maintains existing
2 procedures for statutory claims.

3 **441. The Comprehensive Case:** Parts I-VI prove Framework adoption is
4 constitutionally required (Part I: enumerated limits create universal standing
5 implementing *Clinton, Chadha, Powell*), practically feasible (Parts II, III, V:
6 coordination uses existing infrastructure at \$5,000-\$10,000 cost, managing 100-500
7 annual cases versus systems handling 7,000+ cert petitions and 26,000-case MDLs),
8 beneficial to all plaintiffs (Part IV: Track Two plaintiffs categorically better off with
9 viable claims versus standing dismissal), and existentially necessary (Part VI:
10 unenforced limits enable constitutional collapse). Every conceivable objection has
11 been addressed and refuted in the relevant Part.

12 **442.** Every conceivable objection has been comprehensively refuted. Constitutional
13 foundation is proven. Practical feasibility is demonstrated. Infrastructure exists.
14 Burden is minimal. Benefits are maximum. Precedent supports. Necessity is absolute.
15 Duty is clear.

16 **443. The Choice:** Federal judges took oath to "faithfully and impartially discharge and
17 perform all the duties incumbent upon [them] under the Constitution." Constitutional
18 enforcement is fundamental duty. Civil Rights Era judges enforced constitutional
19 mandates despite death threats; current judges face only learning curves. When
20 workable alternative exists to restore constitutional enforcement, oath requires
21 adaptation. History will judge this generation of federal judges by whether they
22 preserved constitutional limits through procedural adaptation or chose procedural

1 comfort enabling collapse. The difficulty is real. The necessity is absolute. The
2 choice is clear.

3 **VII. PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff respectfully requests that this Court:

5 **444. FOR THIS CASE:** Apply the Kirchner Standing Framework principles to
6 Plaintiff's Amended Complaint, recognizing universal standing for enumerated
7 constitutional limit violations under Track One while preserving Track Two claims
8 requiring traditional *Lujan* standing;

9 **445. FOR CASE MANAGEMENT:** Enter a standing order implementing Framework
10 coordination procedures for any related Track One cases filed in this district
11 challenging the same enumerated constitutional violations;

12 **446. FOR SYSTEMIC REFORM:** Recommend to the Judicial Conference of the
13 United States that the Standing Committee on Rules of Practice and Procedure consider
14 the proposed amendments to Federal Rules of Civil Procedure 8, 12, 24, 42, 54, 62, and
15 86 as set forth in Appendix A;

16 **447. ALTERNATIVELY:** Adopt the proposed amendments as Local Civil Rules for
17 the United States District Court for the District of Columbia under 28 U.S.C. § 2071(a)
18 and Federal Rule of Civil Procedure 83;

19 **448. DECLARE** that enumerated constitutional violations affecting all citizens create
20 universal standing for structural relief under *Clinton v. City of New York*, *INS v.*
21 *Chadha*, and *Powell v. McCormack*, distinct from individual rights claims requiring
22 particularized injury under *Lujan*;

