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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 I:
SUPREME COURT ULTRA VIRES
PRACTICE**

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>Burke v. Barnes</i>	479 U.S. 361 (1987)
<i>Bush v. Gore</i>	531 U.S. 1046 (2000); 531 U.S. 98, 110 (2000) (per curiam)
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<i>Liljeberg v. Health Services Acquisition Corp.</i>	486 U.S. 847 (1988)
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<i>Magnum Import Co. v. Coty</i>	262 U.S. 159, 162-63 (1923)
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<i>Trump v. Boyle</i>	No. 25A11
<i>Trump v. CASA</i>	No. 24A884

<i>Trump v. Global Health Council</i>	No. 25A227
<i>Trump v. J.G.G.</i>	No. 24A931 (March 28, 2025)
<i>Trump v. Orr</i>	No. 25A319
<i>Trump v. Wilcox</i>	No. 24A966

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U.S. Constitution, Article III, Section 2	U.S. Const. art. III, § 2
Federal Statutes	
Authorization for Use of Military Force	Pub. L. No. 107-40, 115 Stat. 224 (2001)
USA PATRIOT Act	Pub. L. No. 107-56, 115 Stat. 272 (2001)
Judiciary Act of 1925 (Judges' Bill)	Pub. L. No. 68-415, 43 Stat. 936
Domestic Terrorism Definition	18 U.S.C. § 2331(5)
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State Court Review	28 U.S.C. § 1257(a)
Interlocutory Appeals	28 U.S.C. § 1292(a)(1)
All Writs Act	28 U.S.C. § 1651, § 1651(a)
Stays Pending Certiorari	28 U.S.C. § 2101(f)
Habeas Corpus	28 U.S.C. § 2241, § 2254(a)
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Petition Compliance with Rule 14	Sup. Ct. R. 12.3
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Disclosure of Adverse Legal Authority	Model R. Prof. Conduct 3.3(a)(2)
Citation Manual	
Indicating Case Vacatur	Bluebook R. 10.7

I. Introduction And Preliminary Statement

1. This Appendix establishes that the Supreme Court's emergency stay practice violates the United States Constitution, federal statutes, the Court's own mandatory procedural rules, equal protection principles, and professional ethics rules through coordinated fraud spanning eight years and at minimum 80 applications. (See Exhibit N-5, documenting 42-case sample from 2024-2025 establishing coordination pattern; Exhibit N-6, providing schematic analysis of coordination mechanisms). Plaintiff's preliminary survey identified over 80 applications exhibiting the violations documented herein; the 42-case sample in Exhibit N-5 represents applications readily accessible through public docket records and demonstrates the pattern with statistical certainty. The violations form descending cascade from highest law to implementing procedures: **(Level 1) Constitutional Violation**—Court expands jurisdiction Congress limited, violating Article III separation of powers; **(Level 2) Statutory Violation**—28 U.S.C. § 2101(f) limits stays to "final judgment or decree," Court stays preliminary injunctions; **(Level 3) Court Rule Violation**—Supreme Court Rule 14(e)(iv) mandates jurisdictional statements citing statutory provisions, applications systematically omit them, Court accepts violations; **(Level 4) Equal Protection Violation**—rules enforced

1 against private parties but suspended for government, creating two-tier justice system;
2 **(Level 5) Ethics Violation**—Model Rule 3.3 requires disclosure of adverse authority,
3 coordinated omission of § 2101(f)'s limiting language constitutes fraud on Court.

4 **2. The Foundational Constitutional Principle from Marbury v. Madison:** Chief
5 Justice Marshall established in 1803 that federal courts must point to **statutory**
6 **authority** for jurisdiction, not judicial precedent: "The authority... given to the
7 Supreme Court, by the **act** establishing the judicial courts of the United States, to issue
8 writs of mandamus to public officers, appears not to be warranted by the constitution."
9 *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175-76 (1803) (emphasis added).
10 Marshall required examining the statutory grant (the "act") because "[i]f Congress
11 remains at liberty to give this court appellate jurisdiction where the Constitution has
12 declared their jurisdiction shall be original... the distribution of jurisdiction made in the
13 Constitution, is form without substance." *Id.* at 174. Marshall's directive applies with
14 equal force today: "It is emphatically the province and duty of the Judicial Department
15 to say what the law is." *Id.* at 177. This principle applies when **statutory** limits are at
16 issue: if the Supreme Court can expand stay authority beyond § 2101(f)'s "final
17 judgment or decree" limitation through precedent claiming broader power, the statutory
18 limitation becomes "form without substance." **Courts must point to statute as**
19 **foundation for jurisdiction; precedent cannot substitute for congressional grant.**

20 **3. Jurisdictional clarity is not esoteric technicality—it is the foundation of**
21 **constitutional government.** Jurisdiction represents the most basic procedural
22 guarantee in a system of limited powers: the assurance that judicial authority is
23 exercised only when, and to the extent, the people's representatives have authorized it

1 through law. For that reason, questions of jurisdiction ought to be the most
2 straightforward and transparent matters in any case—spelled out clearly, applied
3 consistently, and open to scrutiny by litigants and the public alike. **The rule of law**
4 **begins with an honest answer to the question: "By what authority?"** When the
5 Solicitor General files an emergency application seeking a stay, this question has a
6 statutory answer: 28 U.S.C. § 2101(f). Yet across 80+ applications spanning eight
7 years, that answer is systematically omitted from jurisdictional statements required by
8 Supreme Court Rule 14.1(e)(iv). This question predates written constitutions—it
9 animated the Glorious Revolution, informed colonial resistance to arbitrary authority,
10 and shaped the Framers' understanding that legitimate government power must rest on
11 law rather than will. **When courts systematically avoid identifying statutory**
12 **authority for their jurisdiction, every subsequent exercise of that jurisdiction**
13 **lacks the constitutional foundation that separation of powers requires.** *See*
14 *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the
15 province and duty of the Judicial Department to say what the law is."). Chief Justice
16 Marshall's directive applies with equal force to jurisdictional foundations: courts must
17 say what the law is that authorizes their action, not merely act and leave the
18 authorization unexamined.

19 **4. The Complete Statutory Framework Proves Deliberate Exclusion:** Congress
20 established clear jurisdictional limitations across four interconnected statutes
21 demonstrating deliberate choice to include "interlocutory" authority in some provisions
22 while excluding it from others:

- **28 U.S.C. § 1253** (three-judge courts): Authorizes direct appeals from "interlocutory or permanent injunction" (proving Congress knows how to include interlocutory orders when intended)
- **28 U.S.C. § 1254(1)** (circuit review): Creates Supreme Court review jurisdiction only "by writ of certiorari granted" (proving jurisdiction requires cert grant, not emergency application)
- **28 U.S.C. § 1257(a)** (state court review): Limits review to "Final judgments or decrees" (proving deliberate exclusion of interlocutory orders)
- **28 U.S.C. § 2101(f)** (stays pending certiorari): Authorizes stays only of "final judgment or decree" and only "to enable the party aggrieved to obtain a writ of certiorari" (explicitly excluding preliminary injunctions and requiring cert-enabling purpose)

5. Supreme Court Rule 14 Violations Prove Coordinated Evasion: Supreme Court

Rule 14(e)(iv) mandates every petition "**shall contain**" "A concise statement of the basis for jurisdiction in this Court," specifically including "**the statutory provision believed to confer on this Court jurisdiction to review.**" Sup. Ct. R. 14(e)(iv) (emphasis added). Rule 14(5) provides enforcement: "If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule... **the Clerk will return it** with a letter indicating the deficiency." These mandatory requirements establish ministerial duties. Yet the foundational **June 26, 2017 Travel Ban application (*Trump v. IRAP*)** does not contain the word "jurisdiction" anywhere, completely violating Rule 14(e). Plaintiff's statistical analysis of 42 emergency applications (Exhibit N-5) establishes that **zero of 21 Solicitor General applications (0%)** contain proper jurisdictional statements citing statutory authority, while **12 of 17 private party applications (71%)** demonstrate proper compliance—proving compliance is feasible and that non-compliance is selective. Across at minimum 80 emergency applications spanning 2017-2025, the Clerk has never returned a single application for Rule 14 deficiency despite mandatory rejection requirement. This suspension of Court's own mandatory rules enables ultra vires

1 practice by eliminating verification that statutory jurisdiction exists before Court
2 exercises power.

3 **6. The Vacatur Fraud—Building Precedent Network on Judicially Destroyed**

4 **Foundation:** On October 10, 2017, the Supreme Court vacated the June 26, 2017
5 Travel Ban order as moot, explicitly stating: "We express no view on the merits."
6 Under *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950), this vacatur
7 destroyed all precedential value—making the order a legal nullity that cannot be cited
8 as authority. Yet beginning November 20, 2017 (41 days after vacatur), government
9 applications systematically cited the vacated order as precedent for emergency stays.
10 This continued through 80+ applications over eight years. Every first-year law student
11 learns vacated cases cannot be cited as precedent. Continuing to cite judicially
12 destroyed orders after explicit vacatur proves consciousness that legitimate statutory
13 authority doesn't exist. The entire shadow docket precedent network—80+ cases citing
14 Travel Ban, which cites vacated precedent—rests on foundation the Court itself
15 destroyed.

16 **7. Equal Protection Violation Through Disparate Rule Enforcement:** The
17 coordinated pattern creates two-tier justice system violating equal protection principles.
18 Plaintiff's statistical analysis (Exhibit N-5) quantifies this disparity with precision:
19 Solicitor General applications achieve **~85% grant rates with 0% Rule 14**
20 **compliance**, while private party applications achieve only **~24% grant rates despite**
21 **71% compliance**—an inverse correlation between compliance and success that proves
22 coordinated discrimination. When public defenders file emergency applications, they
23 properly cite § 2101(f): "Under 28 U.S.C. § 2101(f), this Court may stay proceedings

1 pending the filing and disposition of a petition for writ of certiorari." *See, e.g.,*
 2 *Martinez-Guardado v. Kobayashi*, No. 25A276 (proper jurisdictional statement citing §
 3 2101(f)). Yet Solicitor General applications spanning multiple years and
 4 administrations never cite § 2101(f) in compliant jurisdictional statements, scatter
 5 vague All Writs Act references through argument sections, and by 2025 completely
 6 omit statutory authority while explicitly characterizing orders as "INTERLOCUTORY
 7 INJUNCTION." *See, e.g., Blanche v. Perlmutter*, No. 25A478 (Oct. 27, 2025) (seeking
 8 stay of interlocutory injunction without any citation to § 2101(f) or jurisdictional
 9 statement). Same Court, same rules, opposite enforcement based solely on party
 10 identity. This disparate treatment—rules enforced against private parties with limited
 11 resources, systematically waived for government with sophisticated litigators—violates
 12 fundamental principle that law must apply equally regardless of litigant identity or
 13 power.

14 **8. The Progressive Evolution Proving Consciousness:** Eight-year evolution from
 15 inadequate compliance to complete omission proves progressive consciousness of
 16 violation's utility:

17 **Phase 1 (June 2017):** Travel Ban application—complete Rule 14(e) violation, doesn't
 18 contain word "jurisdiction," establishes no-enforcement precedent

19 **Phase 2 (Late 2017-2024):** Inadequate scattered § 2101(f) citations in argument rather
 20 than jurisdictional statement, testing partial compliance acceptance

21 **Phase 3 (2025):** Return to complete omission—cite only All Writs Act and precedent,
 22 explicitly characterize as "interlocutory injunction," zero statutory authority

1 This progression—complete omission → inadequate scatter → return to complete
 2 omission—proves government tested Court's enforcement willingness, received
 3 confirmation through continued acceptance, and progressively refined non-compliance
 4 to maximize concealment of § 2101(f) violation.

5 **9. What Rule 14 Compliance Would Force Government to State:** If Rule 14(e)(iv)
 6 were enforced, applications would require: "This Court has jurisdiction under 28
 7 U.S.C. § 2101(f) to stay the district court's [type of order] pending certiorari review."

8 This creates three immediate problems: **(1) Order Type Problem**—stating
 9 "preliminary injunction" forces acknowledgment § 2101(f)'s "final judgment"
 10 requirement excludes it; **(2) Statutory Text Problem**—citing § 2101(f) requires
 11 addressing limiting language, inviting opposition to cite it; **(3) Precedent Problem**—
 12 jurisdictional statement citing only cases (not statute) violates Rule 14(e)(iv)'s
 13 requirement for "**statutory provision**," exposing bootstrap network. Court's
 14 coordinated acceptance of Rule 14 violations eliminates these obstacles—no clear
 15 statement means no explicit order type acknowledgment, no § 2101(f) citation
 16 requiring textual analysis, no requirement to explain how preliminary injunctions
 17 qualify as final judgments.

18 **10. LEGAL ADMISSIBILITY UNDER FRE 404(b):** This evidence is admissible
 19 under Federal Rule of Evidence 404(b)(2) to prove defendants' **motive, opportunity,**
 20 **intent, preparation, plan, knowledge, identity, absence of mistake, and lack of**
 21 **accident** in coordinating constitutional violations affecting Plaintiff. Under *Sedima*,
 22 *S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985), RICO pattern "does not require that
 23 the pattern of racketeering activity be directed at the plaintiff"—shadow docket

violations harming other litigants establish the enterprise's established pattern proving defendants will exceed constitutional authority when politically convenient. These violations are not "background context"—they are **probative evidence** establishing: (1) **common plan/scheme** of ultra vires conduct enabling executive policy implementation; (2) **intent** to violate statutory constraints; (3) **knowledge** of procedural manipulation techniques; (4) **absence of mistake** proving systematic conduct; (5) **enterprise coordination** through judicial enabling of executive violations.

II. THE CONSTITUTIONAL FOUNDATION: MARBURY'S PRINCIPLE THAT JURISDICTION REQUIRES STATUTORY AUTHORITY

A. Federal Courts Are Courts Of Limited Jurisdiction Requiring Congressional Grant

11. The Foundational Principle: "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and **statute**." *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994) (emphasis added). This limitation serves separation of powers function: Congress—not courts—determines scope of federal jurisdiction through statutory grants. As the Court held in *American Fire & Casualty Co. v. Finn*, "The jurisdiction of the federal courts is **carefully guarded against expansion by judicial interpretation**." 341 U.S. 6, 17-18 (1951) (emphasis added).

12. Precedent May Interpret But Cannot Create Jurisdiction: Precedent may **interpret** statutory grants of jurisdiction, determining how statutory language applies

1 to specific facts, but precedent cannot **create** jurisdiction absent statutory foundation.
 2 If courts could expand jurisdiction through precedent alone, they could grant
 3 themselves powers Congress never authorized, fundamentally violating Article III's
 4 structure requiring congressional control over federal court jurisdiction. The
 5 distinction is critical: interpreting "final judgment" to include certain appealable orders
 6 is legitimate statutory interpretation; claiming authority to stay "preliminary
 7 injunctions" when statute says only "final judgment or decree" is judicial expansion of
 8 jurisdiction Congress limited.

9 **B. Marbury Requires Courts To Point To Statutory Authority, Not Precedent**

10 **13. Marshall's Mandate for Statutory Foundation:** In *Marbury v. Madison*, Chief
 11 Justice Marshall held that "the authority... given to the Supreme Court, by the **act**
 12 establishing the judicial courts of the United States, to issue writs of mandamus to
 13 public officers, appears not to be warranted by the constitution." 5 U.S. (1 Cranch) 137,
 14 175-76 (1803) (emphasis added). Marshall's analysis required examining the statutory
 15 grant (the "act")—not prior precedent—to determine Court's authority. The
 16 jurisdictional inquiry demanded statutory foundation because "[i]f Congress remains at
 17 liberty to give this court appellate jurisdiction where the Constitution has declared their
 18 jurisdiction shall be original... the distribution of jurisdiction made in the Constitution,
 19 is form without substance." *Id.* at 174.

20 **14. Application to Statutory Limits:** This principle applies with equal force when
 21 **statutory**—rather than constitutional—limits are at issue. If Supreme Court can
 22 expand stay authority beyond § 2101(f)'s "final judgment or decree" limitation through

precedent claiming broader power, the statutory limitation becomes "form without substance." Courts must point to **statute** as foundation for jurisdiction; precedent interpreting that statute follows, but cannot substitute for, statutory grant. When challenged to identify authority, courts cannot respond: "We have precedent"—they must respond: "Congress granted this authority in [statute citation]."

15. The Bootstrap Impossibility: Shadow docket practice creates constitutional impossibility: Case A cites Case B as authority, Case B cites Case C, Case C cites destroyed Travel Ban precedent, but no case establishes statutory foundation in § 2101(f)'s text limiting stays to "final judgment or decree." When challenged to identify statutory authority, applications point to precedent network; when precedent network is traced to origin, it terminates in applications that violated Court's rules by omitting jurisdictional statements or in orders subsequently vacated destroying precedential value. Attempting to establish jurisdiction through precedent violates fundamental principle that federal courts possess only power "authorized by Constitution and **statute**." *Kokkonen*, 511 U.S. at 377.

C. Separation Of Powers Violation Through Judicial Expansion Of Congressional Limits

16. Congressional Control Over Jurisdiction: Article III, Section 2 of the Constitution grants Congress plenary authority over Supreme Court jurisdiction: "In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, **with such Exceptions, and under such Regulations as the Congress shall make.**" This constitutional text makes unmistakably clear that

1 Congress, not the Court, controls appellate jurisdiction. *Ex parte McCardle*, 74 U.S.
 2 506 (1869), established that Congress may withdraw Supreme Court appellate
 3 jurisdiction even in pending cases.

4 **17. The Shadow Docket Reversal:** The constitutional violation becomes explicit when
 5 shadow docket practice is examined against congressional intent. Congress in 1925
 6 limited Supreme Court stay authority to "final judgment or decree" (§ 2101(f));
 7 Congress in 1988 reviewed and maintained this limitation during comprehensive
 8 jurisdictional reform (P.L. 100-352); Congress in same 1988 Act explicitly included
 9 "interlocutory or final" language in related provisions proving Congress knows how to
 10 grant interlocutory authority when desired. Yet through precedent network beginning
 11 with jurisdictionally defective applications citing destroyed precedent, Supreme Court
 12 expanded stay authority to preliminary injunctions—exactly the interlocutory orders
 13 Congress deliberately excluded. This violates separation of powers by judicial
 14 expansion of jurisdiction Congress limited.

15 **18. The distinction between legitimate interpretation and illegitimate obscuration**
 16 **is categorical.** Legitimate statutory interpretation operates through transparent process
 17 enabling democratic accountability:

Legitimate Interpretation	Emergency Docket Obscuration
Court identifies specific statute as jurisdictional basis	Applications cite "Rule 23 + All Writs" without identifying statutory provision
Court states its interpretation of statutory text	No interpretation stated because statutory text not identified
Court explains reasoning for its reading	Orders issue without reasoning

Parties can challenge interpretation	Cannot challenge what is not stated
Appellate review possible	No merits review of unsigned emergency orders
Public can verify statutory compliance	Public cannot verify compliance with unstated statute
Congress can respond to interpretation	Congress cannot respond to interpretation never articulated

1 **19. The Form Without Substance:** If this expansion were accomplished through
2 **statute** (Congress amending § 2101(f) to add "interlocutory or final"), expansion
3 would be constitutional. But expansion through **precedent**—Court creating case law
4 claiming authority statute doesn't grant—violates Article III's requirement that federal
5 courts possess only power Congress grants through statute. Court cannot rewrite §
6 2101(f)'s "final judgment or decree" to mean "any order including preliminary
7 injunctions" through iterative precedent any more than it could rewrite statute through
8 formal opinion purporting to hold statute means opposite of its plain text. As Marshall
9 warned, allowing courts to expand jurisdiction beyond statutory grants makes
10 congressional limitations "form without substance."

11 **D. The "prospective Jurisdiction" Argument**

12 **20. The government's emergency applications imply a theory of "prospective**
13 **jurisdiction" nowhere found in statutory text.** When pressed to identify what
14 jurisdiction exists before cert is granted for § 1651(a) to "aid," the government's
15 implicit position must be: the Supreme Court can issue writs in aid of jurisdiction that
16 will exist in the future if certiorari is eventually granted. This theory of "prospective
17 jurisdiction"—that § 1651(a) authorizes writs to aid jurisdiction that does not currently

1 exist but might exist later—contradicts the Act's plain language and would produce
2 absurd results.

3 **21. Section 1651(a)'s present-tense, possessive language forecloses "prospective**
4 **jurisdiction" theory.** The statute authorizes writs "in aid of **their respective**
5 **jurisdictions**"—present possessive, indicating jurisdiction currently belonging to the
6 courts. It does not say "in aid of their **future** jurisdictions" or "in aid of jurisdiction
7 **they may later acquire.**" Similarly, § 1651(b) limits writs to courts "**which ha[ve]**
8 jurisdiction"—present tense, current possession. If "prospective jurisdiction" worked,
9 these textual limitations would be meaningless: courts could invoke § 1651(a) to aid
10 any jurisdiction they might potentially acquire in the future, rendering the present-tense
11 requirements nugatory.

12 **22. Prospective jurisdiction theory would give the Supreme Court § 1651(a)**
13 **authority over every case in America.** If the All Writs Act authorizes writs in aid of
14 jurisdiction the Court might have in the future, then every case in every federal court
15 falls within § 1651(a)'s scope—because certiorari could theoretically be sought in any
16 of them. Under this theory, the Supreme Court would have § 1651(a) authority to issue
17 writs affecting every federal district court case, every state court case involving federal
18 questions, every bankruptcy proceeding, every habeas petition, every administrative
19 agency decision. The limiting phrase "in aid of their **respective jurisdictions**" would
20 mean "in aid of any case anywhere where jurisdiction might someday potentially
21 exist." This cannot be correct. Statutory language must be given meaning that
22 preserves rather than destroys limitations Congress enacted.

23. The distinction between existing and prospective jurisdiction is outcome-determinative. If § 1651(a) can only aid **existing** jurisdiction (as its text requires), then pre-cert emergency stays lack All Writs Act authorization because no jurisdiction exists before cert is granted. If § 1651(a) can aid **prospective** jurisdiction (as government applications implicitly require), then § 2101(f) becomes superfluous—why enact a specific statute authorizing pre-cert stays of final judgments if general All Writs authority already reaches all prospective certiorari jurisdiction? The government cannot have it both ways: either § 1651(a) requires existing jurisdiction (which doesn't exist pre-cert), or it reaches prospective jurisdiction (which renders § 2101(f) meaningless).

III. THE STATUTORY FRAMEWORK: CONGRESS DELIBERATELY DENIED INTERLOCUTORY STAY POWER THE COURT NOW EXERCISES

A. The 1923 Precursor: The Court Declares What Power It Believes It Should Have

24. Two years before Congress enacted § 2101(f), the Supreme Court revealed both its understanding of interlocutory versus final orders and its institutional belief that it should possess power over both. In *Magnum Import Co. v. Coty*, 262 U.S. 159 (1923), Chief Justice William Howard Taft—who would become the primary architect of the Judiciary Act of 1925—wrote for a unanimous Court:

"[I]f, in its discretion, this Court conceives that, upon the showing made it should order the suspension or modification of a judgment or decree of the circuit court of appeals, **interlocutory or final**, to preserve or secure a status of the case for the full and satisfactory exercise of its reviewing

power over it, it may make the necessary order of suspension or modification upon such terms as seem equitable upon the filing of the petition for certiorari and pending its disposition."

Magnum Import, 262 U.S. at 162-63 (emphasis added).

25. The Court explicitly claimed power to stay interlocutory orders. This was not ambiguous. Taft distinguished "interlocutory or final" as separate categories, claimed discretionary authority over both, and grounded this claimed power in § 262 of the Judicial Code (the All Writs Act predecessor). The Court's position in 1923 was unmistakable: it believed it should have—and claimed it already possessed—authority to stay interlocutory judgments pending certiorari review.

26. Taft articulated the "public interest" justification that would echo for a century. In the same opinion, he declared the Court's institutional view of its own importance:

"The jurisdiction to bring up cases by certiorari from the circuit courts of appeals was given for two purposes -- first to secure uniformity of decision between those courts in the nine circuits, and second **to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort.** The jurisdiction was not conferred upon this Court merely to give the defeated party in the circuit court of appeals another hearing."

Id. at 163 (emphasis added).

27. This "public interest" formulation inverts the constitutional structure. Under Article III and separation of powers principles, federal courts possess only jurisdiction Congress grants. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Taft's reasoning proceeds differently: the Court should have power because the Court believes certain questions are important "in the public interest." This is not statutory interpretation—it is institutional self-justification. The Court was declaring what

1 powers it believed it needed, independent of whether Congress had authorized those
2 powers.

3 **28. The 1923 opinion thus served dual purposes:** it claimed interlocutory stay power
4 under existing law, and it articulated the ideological justification for that power—
5 judicial determination of "public interest"—that would persist for a century regardless
6 of congressional response.

7 **B. Congress's 1925 Response: The Deliberate Denial Of Interlocutory Stay Power**

8 **29.** Congress heard the Court's 1923 claim. Chief Justice Taft personally lobbied
9 Congress for expanded certiorari jurisdiction, and the resulting legislation—the
10 Judiciary Act of 1925, Pub. L. No. 68-415, 43 Stat. 936—was literally called the
11 "Judges' Bill" because of Taft's central role in its drafting and advocacy. Congress
12 gave the Court much of what it wanted. But Congress drew a critical line.

13 **30. The 1925 Act's stay provision, codified at § 2101(f), limited authority to "final**
14 **judgment or decree" only:**

15 "In any case in which **the final judgment or decree** of any court is
16 subject to review by the Supreme Court on writ of certiorari, the execution
17 and enforcement of **such judgment or decree** may be stayed for a
18 reasonable time to enable the party aggrieved to obtain a writ of certiorari
19 from the Supreme Court."

20 28 U.S.C. § 2101(f) (emphasis added).

21 **31. The exclusion of "interlocutory" was deliberate congressional response to the**
22 **Court's claimed power.** Congress knew from *Magnum Import* that the Court claimed
23 authority over "interlocutory or final" judgments. Congress knew Taft wanted this
24 power. When drafting § 2101(f), Congress granted stay authority over "final judgment

or decree" only—deliberately excluding the interlocutory stays Taft had explicitly discussed two years earlier. This was not oversight. This was legislative rejection of judicial overreach.

32. The 1925 Act represented a constitutional bargain:

Congress Granted	Congress Denied
Expanded discretionary certiorari	Interlocutory stay power
Reduced mandatory appeals	"Public interest" self-authorization
Greater docket control	Pre-final-judgment intervention
Review of "important" questions	Staying ongoing litigation

33. The bargain was explicit: the Court could have discretionary review of cases it considered important, but the Court could not intervene in ongoing litigation through interlocutory stays. If the Court wanted to review a case, it had to wait for final judgment. This limitation served constitutional purposes: it preserved lower court authority to manage ongoing proceedings, prevented Supreme Court micromanagement of litigation, and ensured that certiorari review addressed completed cases rather than preliminary procedural orders.

C. The Four-statute Structure Proving Deliberate Choice

34. Congressional Pattern of Explicit Inclusion When Intended: When Congress intends to grant interlocutory jurisdiction, Congress uses explicit language. The statutory framework surrounding § 2101(f) demonstrates Congress's careful distinction between provisions granting interlocutory authority (using explicit "interlocutory or

final" language) and provisions deliberately excluding it (using only "final judgment or decree"). This pattern proves exclusion is intentional, not oversight.

35. 28 U.S.C. § 1253—Explicit Interlocutory Language: Section 1253 provides for direct appeals from three-judge district courts in cases involving "**any interlocutory or permanent injunction** in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." The phrase "**interlocutory or permanent**" explicitly includes preliminary relief alongside final relief. This proves: (1) Congress knows difference between interlocutory and final orders; (2) Congress knows how to include interlocutory authority when desired; (3) Congress uses explicit "interlocutory or final" language when granting such authority.

36. 28 U.S.C. § 1254(1)—The Temporal Problem Fatal to Shadow Docket

Practice: Section 1254(1) provides Supreme Court jurisdiction over cases in courts of appeals "By writ of certiorari **granted** upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree." The word "**granted**" is critical—jurisdiction exists only after cert petition filed and **granted**. Emergency applications seeking stays **before** cert petition filed cannot invoke § 1254(1) because no jurisdiction yet exists. This temporal problem is fatal: applications seek stays at T_1 (before cert petition), but § 1254(1) creates jurisdiction only at T_2 (after cert granted). Staying orders before jurisdiction exists doesn't "aid" future jurisdiction—it exercises power Court doesn't yet possess.

37. 28 U.S.C. § 1257(a)—Final Judgments Only: Section 1257(a) limits Supreme Court review of state court decisions to "**Final judgments or decrees** rendered by the highest court of a State in which a decision could be had." This parallel limitation—

1 using identical "final judgment or decree" language as § 2101(f)—proves Congress
 2 deliberately chose to exclude interlocutory orders from both state court review and
 3 Supreme Court stays. The structural parallel is dispositive: if "final judgment or
 4 decree" in § 1257(a) excludes preliminary injunctions (universally acknowledged),
 5 identical language in § 2101(f) must exclude them equally.

6 **38. 28 U.S.C. § 2101(f)—The Dual Limitations:** Section 2101(f) contains two critical
 7 limitations Congress imposed:

8 **(1) Order Type Limitation:** Only "final judgment or decree" may be stayed—not
 9 "interlocutory or final," not "any order," not "preliminary injunction." Congress knew
 10 how to include interlocutory orders (§ 1253 proves this) and chose not to.

11 **(2) Purpose Limitation:** Stay must be "to enable the party aggrieved to obtain a writ
 12 of certiorari"—not to prevent policy implementation, not to maintain status quo during
 13 political disputes, not to enable executive branch to avoid preliminary injunctive relief.
 14 This purpose limitation is systematically violated when stays are sought to allow
 15 government policies to take effect despite district court findings of likely
 16 unconstitutionality.

17 **D. The Chevron Canon: Omission Proves Exclusion**

18 **39. Statutory Structure Proves Deliberate Exclusion:** Under *Chevron U.S.A., Inc. v.*
 19 *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and *Chevron U.S.A.*
 20 *Inc. v. Echazabal*, 536 U.S. 73, 80 (2002), when Congress includes particular language
 21 in one statutory section but omits it in another section of the same Act, the omission is
 22 generally understood to be intentional. The Judges' Bill of 1925 (43 Stat. 936) used

1 **"interlocutory or final"** language in Section 129 (three-judge courts) but only **"final**
 2 **judgment or decree"** in Section 238 (stays pending certiorari, now § 2101(f)). This
 3 variation **within the same Act** proves Congress deliberately chose different scope for
 4 different provisions.

5 **40. The 1988 Reaffirmation Through Comprehensive Reform:** Public Law 100-352
 6 (1988)—the Supreme Court Case Selections Act—provided Congress opportunity to
 7 expand § 2101(f) if desired. Congress instead: (1) maintained "final judgment or
 8 decree" limitation in § 2101(f) without amendment; (2) simultaneously included
 9 "interlocutory or final" language in Trans-Alaska Pipeline provision (43 U.S.C. §
 10 1652(d)) enacted same year; (3) eliminated mandatory Supreme Court jurisdiction,
 11 making certiorari fully discretionary; (4) demonstrated awareness of interlocutory/final
 12 distinction by using both formulations in same comprehensive jurisdictional reform.

13 **41. Congressional Ratification Through Reenactment:** When Congress reenacted §
 14 2101(f) in 1988 without modification, it did so: (1) during comprehensive jurisdictional
 15 reform demonstrating close attention to jurisdictional details; (2) after 63 years (1925-
 16 1988) where the statute's language had been understood to exclude preliminary
 17 injunctions; (3) while simultaneously using broader "interlocutory or final" language in
 18 other provisions of the same Act. Under settled canons of statutory interpretation,
 19 "Congress is presumed to be aware of an administrative or judicial interpretation of a
 20 statute and to adopt that interpretation when it re-enacts a statute without change."
 21 *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Congress's 1988 reenactment of §
 22 2101(f)'s limiting language against this backdrop of settled, restrictive practice
 23 constitutes legislative ratification of that understanding.

E. Historical Practice Confirms Congressional Understanding

42. The 58-Year Gap (1925-1983): Comprehensive historical research reveals zero documented instances of Supreme Court stays of district court preliminary injunctions in major policy cases from enactment of § 2101(f) (1925) through 1983. This 58-year gap proves § 2101(f) was not historically understood to authorize preliminary injunction stays. For nearly six decades after the statute's enactment, the Court did not exercise the power it now claims routinely.

43. The First Stay Created Narrow Exception: The first documented stay of a district court preliminary injunction occurred September 9, 1983 in *M.I.C. LTD. v. Bedford Township*, creating narrow First Amendment prior restraint exception. From 1983-2017 (34 years), such stays remained rare exceptions requiring extraordinary circumstances—typically First Amendment prior restraints where irreparable harm to speech rights justified exceptional intervention.

44. The Post-2017 Explosion: The June 26, 2017 Travel Ban order marked inflection point, transforming rare exception into routine practice. Statistical analysis shows emergency application rates increased from **once every 2 years** (2001-2017) to **over 20 per year** (2017-2025). This represents a **40x increase** in frequency. The explosive expansion—occurring without statutory amendment, without congressional authorization, and in direct violation of § 2101(f)'s plain text—represents complete transformation of Supreme Court's relationship to district court preliminary relief.

45. The Statistical Proof of Systematic Abuse: Plaintiff's analysis of 42 applications (Exhibit N-5) demonstrates the outcome disparity: Solicitor General applications

1 achieve approximately **85% grant rates** while private party applications achieve
 2 approximately **24% grant rates**, despite private parties demonstrating **71% Rule 14**
 3 **compliance** versus **0%** for the Solicitor General. This inverse correlation between
 4 compliance and success—where rule violations are rewarded for government
 5 applicants—proves systematic rather than neutral enforcement.

6 **F. Preemptive Response To Government's "different Category" Argument**

7 **46. The government might argue Section 2101(f) addresses only final-judgment**
 8 **stays, leaving interlocutory stays as a separate field.** This argument would frame
 9 the issue as: "Section 2101(f) specifically addresses stays of **final judgments** only;
 10 stays of **interlocutory orders** are a different issue not specifically addressed by statute,
 11 so All Writs remains available for that distinct category." This narrow characterization
 12 of "the particular issue" would attempt to cabin § 2101(f)'s scope to preserve § 1651(a)
 13 authority for preliminary injunction stays.

14 **47. This narrow characterization renders *Pennsylvania Bureau of Correction v.**
 15 **U.S. Marshals Service*, 474 U.S. 34 (1985), toothless through definitional**
 16 **manipulation.** Under the government's logic, any specific statute can be evaded by
 17 characterizing "the particular issue" narrowly enough to exclude the conduct at issue.
 18 Consider: if a statute authorizes "transfers for security reasons," government could
 19 claim "medical transfers are different" and invoke All Writs for those. If a statute
 20 authorizes "warrants for felonies," government could claim "misdemeanor warrants are
 21 different." If specific statutes can always be read narrowly enough to avoid limiting All
 22 Writs authority, *Pennsylvania Bureau's* principle loses all constraining force.

1 **48. The "specific statute controls" rule only has meaning if courts identify "the**
2 **particular issue" at the appropriate level of generality**—here, the legal field
3 Congress addressed, which is **Supreme Court pre-cert authority** broadly, not just one
4 subcategory within that field.

5 **49. Section 2101(f)'s text shows Congress addressed the entire category of pre-cert**
6 **stays, then limited it.** The statute does not say "In cases of final judgments, stays may
7 be granted under this section." Rather, it provides: "In any case in which the final
8 judgment or decree of any court **is subject to review** by the Supreme Court on writ of
9 certiorari, the execution and enforcement of such judgment **may be stayed.**" 28 U.S.C.
10 § 2101(f) (emphasis added). By regulating when judgments "subject to review" via
11 certiorari "may be stayed," Congress addressed the category of pre-cert stays generally,
12 then imposed a substantive limitation (final judgments only) within that comprehensive
13 treatment. The limitation is part of Congress's comprehensive regulation of the subject,
14 not an isolated provision addressing only one narrow subcategory while leaving the
15 rest unregulated.

16 **50. The 1923 *Magnum Import* opinion defeats this argument conclusively.** Taft's
17 opinion explicitly addressed "interlocutory or final" as a unified category of judgments
18 subject to stay authority. Congress responded in 1925 by limiting § 2101(f) to "final
19 judgment or decree" only. This proves Congress understood it was addressing the
20 entire category of pre-cert stays—both interlocutory and final—and deliberately chose
21 to authorize only one. The government cannot now claim interlocutory stays are a
22 "different category" Congress didn't address when Taft's 1923 opinion proves Congress
23 knew the Court wanted both and chose to grant only one.

G. The All Writs Act Cannot Authorize What § 2101(f) Prohibits

51. Shadow docket applications sometimes cite 28 U.S.C. § 1651 (the All Writs Act) as alternative jurisdictional foundation. This argument fails for multiple independent reasons.

52. The All Writs Act does not create jurisdiction; it supplements existing jurisdiction. The statute provides that courts "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). As the Supreme Court has repeatedly held, the All Writs Act "does not enlarge" federal court jurisdiction but merely enables courts to "issue such commands... as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977).

53. Section 2101(f) defines the scope of Supreme Court stay jurisdiction. If § 2101(f) limits stay authority to "final judgment or decree," the All Writs Act cannot expand that authority to include interlocutory orders. The specific statute controls over the general. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("[T]he specific governs the general."). Congress enacted § 2101(f) to regulate Supreme Court stay authority specifically; that specific regulation cannot be overridden by the general All Writs Act.

54. Taft's 1923 reliance on § 262 (All Writs Act predecessor) is precisely what Congress rejected. In *Magnum Import*, Taft grounded interlocutory stay power in § 262's general authority. Congress responded by enacting § 2101(f)'s specific

limitation. The 1925 Act was Congress telling the Court: "You cannot use the All Writs Act to stay interlocutory orders pending certiorari. We are creating a specific statute limiting that authority to final judgments." Invoking the All Writs Act today to stay preliminary injunctions resurrects the argument Congress rejected a century ago.

55. The historical sequence eliminates any ambiguity:

Date	Event	Significance
1923	<i>Magnum Import</i> cites § 262 for interlocutory stays	Court claims All Writs authority
1925	Congress enacts § 2101(f)	Specific limitation overrides general authority
1988	Congress reenacts § 2101(f) unchanged	Ratifies limitation, uses "interlocutory" elsewhere
2000-2025	Applications cite § 1651 for preliminary injunction stays	Resurrects argument Congress rejected twice

H. The "public Interest" Justification: Institutional Ideology Persisting Despite Congressional Rejection

56. Taft's 1923 "public interest" reasoning did not disappear when Congress rejected its statutory foundation. The reasoning migrated from statutory interpretation to institutional ideology—a belief system within the Court that it should act on "important" matters regardless of jurisdictional constraints. This ideology surfaces whenever the Court exercises power Congress denied.

57. The pattern across one hundred years is consistent:

Year	Case/Event	Justification	Statutory
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		Offered	Authority Cited
1923	<i>Magnum Import v. Coty</i>	"public interest"	§ 262 All Writs (claimed)
1925	Judiciary Act of 1925	Congressional response	§ 2101(f): finals only
2000	<i>Bush v. Gore</i> stay	harm "to the country"	None in Scalia concurrence
2017	<i>Trump v. IRAP</i>	"national security"	Vacated precedent only
2025	<i>Vasquez Perdomo</i>	"immigration emergency"	Precedent network only

1 **58. Justice Scalia's **Bush v. Gore** concurrence exemplifies the persistence of**

2 **Taft's reasoning.** Justifying the December 9, 2000 stay of Florida's recount, Scalia
3 wrote:

4 "The counting of votes that are of questionable legality does in my view
5 threaten irreparable harm to petitioner Bush, **and to the country**, by
6 casting a cloud upon what he claims to be the legitimacy of his election."

7 *Bush v. Gore*, 531 U.S. 1046 (2000) (Scalia, J., concurring in grant of stay) (emphasis
8 added).

9 **59. Scalia did not cite § 2101(f).** He did not explain how an interlocutory recount
10 order qualifies as "final judgment or decree." He did not address statutory jurisdiction
11 at all. Instead, he invoked harm to "the country"—Taft's "public interest" reasoning
12 repackaged for a presidential election. The Court should act, Scalia argued, because
13 the matter was important. This is exactly the reasoning Congress rejected in 1925.

14 **60. The Travel Ban and 2025 applications continue the pattern.** When Solicitor
15 General applications seek stays of preliminary injunctions based on "national security"
16 or "border crisis" or "public health emergency," they invoke the same reasoning: the
17 Court should act because it's important, regardless of whether Congress authorized the

1 action. The jurisdictional defects documented in Exhibit N-5—0% Rule 14
 2 compliance, zero § 2101(f) citations in proper form—prove statutory authority isn't the
 3 basis for these stays. "Public interest" is.

4 **I. The Constitutional Violation: Judicial Defiance Of Democratic Rejection**

5 **61.** The shadow docket does not represent statutory interpretation. It represents
 6 institutional defiance. The sequence is unambiguous:

7 **(1)** 1923: Court claims interlocutory stay power, justifies it by "public interest"

8 **(2)** 1925: Congress denies interlocutory stay power, limits § 2101(f) to "final judgment
 9 or decree"

10 **(3)** 1983: First exception created for narrow First Amendment prior restraints with
 11 lower court refusal to hear

12 **(4)** 1988: Congress reviews and maintains the limitation while using "interlocutory"
 13 elsewhere (Case Selections Act of 1988)

14 **(5)** 2000: *Bush v. Gore* stay exercises denied power to decide presidential election

15 **(6)** 2017-2025: Court routinely exercises interlocutory stay power, using procedural
 16 mechanisms to obscure the defiance

17 **62. This is not a close question of statutory construction.** The Court knew what
 18 power it wanted (1923). Congress knew what power the Court wanted (1925).
 19 Congress said no (§ 2101(f)). The Court did it anyway (shadow docket). The
 20 procedural architecture documented in this Memorandum—Rule 14 violations, dual-
 21 docket conversion, vacated precedent citations, disparate enforcement—exists to hide
 22 this defiance from public view.

63. The separation of powers violation is categorical. Article III, Section 2 grants Congress authority to make "Exceptions" and "Regulations" governing Supreme Court appellate jurisdiction. U.S. Const. art. III, § 2, cl. 2. Section 2101(f) is Congress exercising that authority—regulating Supreme Court stay jurisdiction to exclude interlocutory orders. When the Court stays preliminary injunctions despite this limitation, it violates the constitutional allocation of power between branches. The Court is not interpreting the statute; it is nullifying it.

64. The democratic process has been circumvented. If the Court believes § 2101(f)'s limitation is unwise—if modern litigation requires interlocutory stay authority—the constitutional remedy is to ask Congress to amend the statute. That is how separated powers work. Instead, the Court has unilaterally expanded its own jurisdiction through self-generated precedent, avoiding the democratic accountability that statutory amendment would require. This is precisely the judicial overreach the separation of powers was designed to prevent.

J. Summary: The Statute Means What It Says, And Congress Meant What It
Enacted

65. The statutory framework established in Section II.B leaves no room for the shadow docket's interlocutory stay practice. As demonstrated through four-statute analysis (§§ 1253, 1254, 1257, 2101(f)), temporal impossibility under § 1254(1), and Chevron canon analysis proving deliberate exclusion, Congress denied the interlocutory stay power the Court now exercises. The Court knew what power it wanted (1923 *Magnum*

1 *Import*). Congress knew what power the Court wanted (1925 § 2101(f)). Congress
 2 said no. The Court did it anyway.

3 **66. The shadow docket is not statutory interpretation—it is statutory nullification.**

4 The Court exercises exactly the power Congress denied, using exactly the reasoning
 5 Congress rejected, through procedural mechanisms documented in this Memorandum
 6 that obscure the defiance. For 58 years (1925-1983), the Court did not exercise
 7 interlocutory stay power. The explosive post-2017 expansion—representing a 40x
 8 increase in frequency—occurred without statutory amendment, without congressional
 9 authorization, and in direct violation of § 2101(f)'s plain text limiting stays to "final
 10 judgment or decree." The remedy is declaratory judgment establishing that § 2101(f)
 11 means what it says: stays only of final judgments, not preliminary injunctions, not
 12 interlocutory orders, not ongoing litigation the Court deems "important" to the "public
 13 interest."

14 **IV. SUPREME COURT RULE 14 VIOLATIONS: SYSTEMATIC**
 15 **SUSPENSION OF MANDATORY PROCEDURAL REQUIREMENTS**

16 **A. Rule 14(e)(iv) Mandates Clear Jurisdictional Statement Citing Statutory**
 17 **Provision**

18 **67. The Mandatory Requirement:** Supreme Court Rule 14.1(e) requires every
 19 petition for certiorari to contain "A concise statement of the basis for jurisdiction in this
 20 Court, showing:" with subparagraph (iv) specifically mandating "**the statutory**
 21 **provision believed to confer on this Court jurisdiction to review on a writ of**

1 **certiorari the judgment or order in question."** Sup. Ct. R. 14.1(e)(iv) (emphasis
2 added). This is **not** optional or discretionary—Rule 14 states petitions "**shall contain**"
3 this information, using mandatory language. The word "shall" creates non-
4 discretionary duty.

5 **68. The Triple Function of Jurisdictional Statements:** The requirement serves three
6 critical functions: **(1) Verification Function**—ensuring Court and parties understand
7 statutory basis for judicial power being invoked; **(2) Challenge Function**—enabling
8 parties to challenge whether statutory prerequisites are satisfied before Court exercises
9 power; **(3) Limitation Function**—preventing Court from exceeding congressional
10 authorization by clearly identifying which statute grants jurisdiction and on what terms.
11 When petitions systematically omit jurisdictional statements or fail to cite actual
12 statutory authority, this prevents scrutiny of whether statutory prerequisites (like §
13 2101(f)'s "final judgment or decree" limitation) are satisfied.

14 **69. Rule 14(5) Mandates Rejection of Non-Compliant Petitions:** Supreme Court
15 Rule 14.5 establishes enforcement mechanism: "If the Clerk determines that a petition
16 submitted timely and in good faith is in a form that does not comply with this Rule or
17 with Rule 33 or Rule 34, **the Clerk will return it with a letter indicating the**
18 **deficiency."** Sup. Ct. R. 14.5 (emphasis added). The phrase "**will return**" is
19 mandatory, not discretionary—Rule doesn't state Clerk "may return" or "should
20 consider returning" but "**will return**," indicating ministerial duty without discretion. A
21 corrected petition may be resubmitted within 60 days and deemed timely if originally
22 filed in good faith. This enforcement mechanism ensures Rule 14 requirements are not
23 merely suggestions but enforceable procedural prerequisites to Court consideration.

B. June 26, 2017 Travel Ban Application—complete Rule 14(e) Violation

70. The Foundational Case Lacks Jurisdictional Statement: The government's June 2017 Travel Ban emergency application in *Trump v. International Refugee Assistance Project (IRAP)*, 582 U.S. 571—the foundational case creating modern shadow docket practice—violated Rule 14(e) completely by **omitting any jurisdictional statement** and **not even containing the word "jurisdiction"** anywhere in the application. The application contains no section titled "JURISDICTION," no section titled "BASIS FOR THIS COURT'S AUTHORITY," no clear statement identifying statutory authority for stays, and no analysis of whether statutory prerequisites are satisfied.

71. Standard Legal Practice Requires Jurisdictional Section: Every legitimate Supreme Court petition or application contains dedicated JURISDICTION section at outset stating clearly: "This Court has jurisdiction under [statute citation]. The [lower court] entered [type of order] on [date]." This standard structure appears in cert petitions filed by private parties, amicus briefs filed by states, and even emergency applications filed by public defenders. Yet the Solicitor General's office—representing most sophisticated Supreme Court litigators in America, staffed by former SCOTUS clerks and top law school graduates—systematically omits this fundamental requirement.

72. The Pattern of Non-Enforcement: Across eight years and at minimum 80 emergency applications violating Rule 14(e)(iv) in varying degrees, the Clerk has never returned **a single application** with Rule 14(5) deficiency letter despite mandatory requirement that Clerk "will return" non-compliant petitions. Plaintiff's documented

1 analysis of 42 applications (Exhibit N-5) establishes this pattern with statistical
2 certainty: of 21 Solicitor General applications analyzed, **zero (0%)** contain proper
3 jurisdictional statements, yet **all were accepted for docketing** without Rule 14(5)
4 deficiency letters. This isn't isolated oversight—Rule 14(5) establishes **ministerial**
5 **duty** ("will return"), not discretionary judgment ("may consider returning"). When
6 mandatory rules are systematically suspended across 80+ cases spanning eight years,
7 three presidential administrations, and multiple Solicitor General attorneys, this proves
8 coordinated institutional practice rather than independent failures.

9 **C. Zero Enforcement Despite 80+ Violations Over Eight Years**

10 **73. The Pattern of Non-Enforcement:** Across eight years and 80+ emergency
11 applications violating Rule 14(e)(iv) in varying degrees, the Clerk has never returned a
12 **single application** with Rule 14(5) deficiency letter despite mandatory requirement
13 that Clerk "will return" non-compliant petitions. This isn't isolated oversight—Rule
14 14(5) establishes **ministerial duty** ("will return"), not discretionary judgment ("may
15 consider returning"). When mandatory rules are systematically suspended across 80+
16 cases spanning eight years, three presidential administrations, and multiple Solicitor
17 General attorneys, this proves coordinated institutional practice rather than independent
18 failures.

19 **74. Statistical Impossibility of Accident:** The probability that 80+ applications from
20 sophisticated litigators would independently fail to include jurisdictional statements
21 required by mandatory rule, and that Clerk would independently fail to enforce
22 mandatory rejection requirement in all such cases, approximates zero. Exhibit N-5

documents the statistical impossibility: 0% Solicitor General compliance across 21 applications versus 71% private party compliance across 17 applications—proving the Solicitor General's office knows how to comply (as demonstrated by proper compliance in other filing types) but systematically chooses not to comply in emergency applications seeking preliminary injunction stays. Two independent failures (government omission + Clerk non-enforcement) occurring simultaneously across all documented applications cannot occur through accident. The pattern proves coordination: government files non-compliant applications knowing Clerk won't reject them, Clerk accepts non-compliant applications knowing Court will grant relief, creating coordinated suspension of mandatory procedural rules.

D. The Progressive Evolution Proving Consciousness Of Violation

75. Phase 1 (June 2017)—Complete Omission Establishing Non-Enforcement

Precedent: The Travel Ban application violated Rule 14(e) completely—no jurisdictional statement, word "jurisdiction" never appears, creating total non-compliance with mandatory requirement. Yet Clerk accepted application and Court granted relief. This established precedent that Rule 14(e)(iv) would not be enforced for emergency applications, enabling all subsequent violations.

76. Phase 2 (Late 2017-2024)—Inadequate Scattered Citation Testing Partial

Compliance: Subsequent applications cited § 2101(f) inadequately scattered through argument sections rather than in clear jurisdictional statement required by Rule 14(e). This tested whether Court would accept partial compliance that avoids explicit acknowledgment that stayed orders are "preliminary injunctions" not qualifying as

"final judgment or decree." Continued acceptance proved Court tolerated violations that concealed statutory limitations.

77. Phase 3 (2025)—Return to Complete Omission with Explicit Contradictions:

By January 2025 (*Perlmutter v. Trump*), applications abandoned even scattered § 2101(f) references, citing only All Writs Act (28 U.S.C. § 1651) and shadow docket precedent while **explicitly characterizing stayed orders as "INTERLOCUTORY INJUNCTION"**—directly contradicting § 2101(f)'s "final judgment or decree" requirement while containing **zero citation to any jurisdictional statute** in compliance with Rule 14(e)(iv). Application title reads: "APPLICATION TO STAY **INTERLOCUTORY INJUNCTION**" with zero acknowledgment that statute limits stays to final judgments.

78. The Evolution Proves Refinement: This progression—complete omission (2017) → inadequate scattered citation (2017-2024) → return to complete omission with explicit contradiction (2025)—proves government tested Court's enforcement willingness, received confirmation through continued acceptance, and progressively refined non-compliance to maximize concealment of statutory violation. The evolution demonstrates consciousness of violation's utility: each phase proved Court would accept greater degrees of non-compliance, culminating in explicit "interlocutory" characterization without any statutory citation.

79. The distinction between interpretation and obscuration is outcome-determinative. If the Court stated clearly: "We interpret 28 U.S.C. § 1651(a)'s phrase 'in aid of their respective jurisdictions' to authorize stays of preliminary injunctions before certiorari is granted, even though 28 U.S.C. § 2101(f) limits pre-cert stays to

'final judgment or decree,' because we believe § 1651(a) operates independently in this context"—that would be interpretation subject to challenge. Parties could argue the interpretation violates the specific-statute-controls principle from *Pennsylvania Bureau of Correction v. U.S. Marshals Service*, 474 U.S. 34, 43 (1985). Congress could respond through statutory amendment. The public could evaluate whether courts faithfully interpreted or impermissibly rewrote the law. Instead, emergency applications and orders proceed without forcing this interpretation onto the record. The government cites § 1651(a) obliquely, never addresses § 2101(f)'s limitation, and the Court grants stays without stating which statute authorizes relief or how preliminary injunctions qualify for stays limited to "final judgment or decree." This is not interpretation—it is systematic avoidance of the transparency the rule of law requires.

E. What Rule 14 Compliance Would Force Government To State

80. If emergency applications complied with Rule 14.1(e)(iv), they would be forced to expose statutory conflicts. Imagine a government emergency application that complied with Rule 14.1(e)(iv)'s requirement to state "the statutory provision believed to confer on this Court jurisdiction." The application would have to include:

"Jurisdictional Statement: This Court has jurisdiction under [**identify statute**] to stay the district court's preliminary injunction pending certiorari review." This sentence immediately creates three insurmountable problems:

(1) All Writs Requires Existing Jurisdiction: If the blank is filled with "28 U.S.C. § 1651(a)," the next question is: What jurisdiction exists for § 1651(a) to "aid"? Section 1651(a) only authorizes writs "in aid of" existing jurisdiction. No jurisdiction exists

1 before cert is granted. The government must either admit no jurisdiction exists
 2 (destroying the application) or claim "prospective jurisdiction" exists (a concept
 3 appearing nowhere in § 1651(a)'s text).

4 **(2) Section 2101(f) Excludes Preliminary Injunctions:** If the blank is filled with "28
 5 U.S.C. § 2101(f)," the next question is: How does a preliminary injunction qualify as
 6 "final judgment or decree"? It doesn't. Preliminary injunctions are by definition
 7 interlocutory. The government must either admit § 2101(f) doesn't authorize the relief
 8 sought (destroying the application) or argue preliminary injunctions somehow qualify
 9 as "final" (a position so legally untenable it invites immediate denial).

10 **(3) No Other Statute Exists:** The government cannot identify any other statute
 11 authorizing Supreme Court stays of preliminary injunctions before cert is granted.
 12 Section 1254 grants certiorari jurisdiction, but only after cert is granted. Section 1291
 13 grants courts of appeals jurisdiction over final decisions. Section 1292(a)(1) grants
 14 courts of appeals jurisdiction over certain interlocutory orders—but neither extends to
 15 the Supreme Court before cert. There is no third option for filling the blank.

16 By exempting emergency applications from Rule 14's jurisdictional discipline, the
 17 Court avoids forcing this statutory conflict onto paper. This is consciousness of guilt
 18 through procedural architecture.

19 **80A. What Compliant Jurisdictional Statement Actually Looks Like:** If the
 20 Solicitor General complied with Rule 14.1(e)(iv), the jurisdictional statement would
 21 read:

22 **JURISDICTION** > This Court has jurisdiction under 28 U.S.C. §
 23 2101(f), which provides: "In any case in which **the final judgment or**
 24 **decree** of any court is subject to review by the Supreme Court on writ of
 25 certiorari, the execution and enforcement of such judgment or decree may

1 be stayed for a reasonable time to enable the party aggrieved to obtain a
 2 writ of certiorari from the Supreme Court." > The district court entered a
 3 **preliminary injunction** on [date]. The court of appeals [denied
 4 stay/affirmed] on [date]. This application seeks a stay of that preliminary
 5 injunction pending the filing and disposition of a petition for writ of
 6 certiorari.

7 This statement immediately exposes the statutory conflict impossible to obscure: §
 8 2101(f) authorizes stays of "**final judgment or decree**," but the order sought to be
 9 stayed is a "**preliminary injunction**"—an interlocutory order by definition,
 10 immediately appealable under 28 U.S.C. § 1292(a)(1) **precisely because** it is not final.
 11 The Solicitor General would then be forced to either: (1) explain how preliminary
 12 injunctions qualify as final judgments (a position so legally untenable it invites
 13 immediate denial); (2) admit § 2101(f) doesn't authorize the relief sought (destroying
 14 the application); or (3) argue the All Writs Act overcomes § 2101(f)'s specific
 15 limitation (triggering *Pennsylvania Bureau* analysis showing specific statute controls).
 16 By omitting the jurisdictional statement entirely, government avoids forcing this
 17 impossible choice onto paper.

18 **81. Coordination Through Rule Suspension:** Court's acceptance of applications
 19 violating Rule 14(e)(iv) eliminates these obstacles through coordinated suspension of
 20 mandatory requirements. No clear jurisdictional statement means: (1) no explicit
 21 acknowledgment of order type (avoiding "preliminary injunction" vs. "final judgment"
 22 determination); (2) no citation to § 2101(f)'s limiting language (preventing textual
 23 scrutiny); (3) no requirement to explain how preliminary injunctions qualify as final
 24 judgments (avoiding legal impossibility); (4) ability to build precedent network citing
 25 cases rather than statute (concealing lack of statutory foundation).

F. The Exact Rule Language Violated: Step-by-step Analysis

82. Rule 12.3 Makes Rule 14 Compliance Mandatory for ALL Petitions: Building on the requirements established above, Supreme Court Rule 12.3 explicitly provides: "Whether prepared under Rule 33.1 or Rule 33.2, the petition **shall comply in all respects with Rule 14** and shall be submitted with proof of service as required by Rule 29." Sup. Ct. R. 12.3 (emphasis added). The phrase "**shall comply in all respects**" eliminates any ambiguity about whether Rule 14 requirements are mandatory or discretionary—"shall" creates non-waivable duty, while "in all respects" means complete compliance, not substantial or partial compliance. This mandatory language applies to emergency applications equally with standard cert petitions—Rule 12 draws no distinction based on application type.

83. Rule 14.1 Provides Mandatory Sequence and Content Requirements: Rule 14.1 states: "A petition for a writ of certiorari **shall contain**, in the order indicated:" followed by lettered subsections (a) through (i). Sup. Ct. R. 14.1 (emphasis added). The mandatory "shall contain" language combined with "in the order indicated" establishes both content requirements (what must be included) and sequence requirements (what order information appears). Emergency applications claiming to invoke Supreme Court jurisdiction must comply with these requirements to be properly filed petitions.

84. Rule 14.1(e) Requires Jurisdictional Statement BEFORE Argument: The mandatory sequence places jurisdictional statement at subsection (e)—after questions presented (a), parties list (b), table of contents (c), and citations to opinions (d), but critically **before** statement of case (g) and **before** argument (h). This sequence ensures

Court understands jurisdictional basis **before** considering merits. The placement is deliberate: parties must establish Court has power to act before Court considers whether it should act. Emergency applications that scatter vague jurisdictional references through argument sections violate this mandatory sequence by addressing jurisdiction (if at all) only after presenting merits arguments.

85. Rule 14.1(e)(iv) Mandates Specific Statutory Citation: Within the jurisdictional statement required by subsection (e), Rule 14.1(e)(iv) mandates: "the **statutory provision** believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question." Sup. Ct. R. 14.1(e)(iv) (emphasis added). Four aspects make this requirement explicit and non-discretionary:

(1) "The statutory provision" (singular, definite article): Must cite **the statute**, not general concepts like "inherent authority" or "equitable powers."

(2) "Believed to confer": Must state applicant's position on jurisdictional source, enabling Court and parties to evaluate whether belief is correct.

(3) "On this Court jurisdiction": Must address **Supreme Court** jurisdiction specifically, not district court or circuit court jurisdiction.

(4) "To review... the judgment or order in question": Must connect statute to **specific order** being challenged, requiring identification of order type (preliminary injunction vs. final judgment).

86. Travel Ban Application Violates Every Element of Rule 14.1(e)(iv): The June 26, 2017 Travel Ban application (*Trump v. IRAP*, 582 U.S. 571) violated Rule 14.1(e)(iv) completely:

Rule 14.1(e)(iv) Requirement	Travel Ban Compliance	Violation
---------------------------------	-----------------------	-----------

"shall contain" jurisdictional statement	No jurisdictional statement section	VIOLATED
"the statutory provision"	Never cites § 2101(f) as jurisdictional basis	VIOLATED
"believed to confer... jurisdiction"	Never states jurisdictional belief	VIOLATED
"on this Court jurisdiction"	Word "jurisdiction" never appears	VIOLATED
"to review... the judgment or order"	Never identifies order type	VIOLATED

This isn't partial non-compliance or technical deficiency—this is **total omission** of mandatory Rule 14.1(e)(iv) requirement.

87. Rule 14.5 Mandates Rejection and Provides 60-Day Cure Period: When petitions violate Rule 14, enforcement is mandatory: "If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, **the Clerk will return it with a letter indicating the deficiency.**" Sup. Ct. R. 14.5 (emphasis added). Three aspects make enforcement non-discretionary:

(1) "If the Clerk determines": Ministerial duty to review compliance, not discretionary choice whether to review.

(2) "the Clerk will return it": Mandatory rejection ("will return"), not discretionary ("may return" or "may consider returning").

(3) "with a letter indicating the deficiency": Must specify what's missing, enabling correction.

The rule then provides: "A corrected petition submitted in accordance with Rule 29.2 no more than 60 days after the date of the Clerk's letter will be deemed timely." This

60-day cure period proves non-compliance isn't fatal—but only if Clerk performs mandatory rejection function. When Clerk accepts non-compliant petitions without rejection letter, this eliminates cure opportunity and enables jurisdictional violations to proceed without scrutiny.

88. The Contrast: What Compliant Jurisdictional Statement Looks Like: A

properly structured petition contains dedicated section following Rule 14.1 sequence:

I. QUESTIONS PRESENTED [Rule 14.1(a)]

[Questions stated]

II. PARTIES [Rule 14.1(b)]

[Party list]

III. TABLE OF CONTENTS [Rule 14.1(c)]

[Table]

IV. OPINIONS BELOW [Rule 14.1(d)]

[Citations]

V. JURISDICTION [Rule 14.1(e)]

This Court has jurisdiction under 28 U.S.C. § 2101(f), which provides: "In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court."

The district court entered [type of order] on [date]. The court of appeals [action] on [date]. This application seeks stay pending filing and disposition of certiorari petition under the authority of § 2101(f).

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS [Rule 14.1(f)]

[Provisions]

1 VII. STATEMENT OF THE CASE [Rule 14.1(g)]

2 [Facts]

3 VIII. REASONS FOR GRANTING THE WRIT [Rule 14.1(h)]

4 [Argument]

5 This structure—used by legitimate practitioners including public defenders—
6 establishes jurisdiction clearly **before** argument begins. Government emergency
7 applications systematically omit Section V entirely, scatter vague references through
8 Section VIII, and never cite § 2101(f) as required by Rule 14.1(e)(iv).

9 **89. Rule 14.4 Establishes Separate Ground for Denial: Beyond Clerk's mandatory**
10 **rejection duty under Rule 14.5, Rule 14.4 provides separate basis for Court to**
11 **deny petitions: "The failure of a petitioner to present with accuracy, brevity, and**
12 **clarity whatever is essential to ready and adequate understanding of the points**
13 **requiring consideration is sufficient reason for the Court to deny a petition." Sup.**
14 **Ct. R. 14.4 (emphasis added). This creates two-tier enforcement:** (1) Formal
15 Compliance (**Rule 14.5**)—**Clerk must reject for form violations;** (2) Substantive
16 Clarity (Rule 14.4)—Court may deny for lack of clarity. When applications omit
17 jurisdictional statements entirely, this violates both: formal non-compliance (missing
18 required section) AND substantive lack of clarity (Court cannot understand
19 jurisdictional basis). Yet neither enforcement mechanism operates—Clerk doesn't
20 reject under 14.5, Court doesn't deny under 14.4.

21 **90. The Constitutional Connection: Why These Rules Exist: Rule 14's jurisdictional**
22 **statement requirements aren't mere procedural formalism—they implement**
23 **constitutional separation of powers. When Rule 14.1(e)(iv) requires citation to**

"statutory provision **believed to confer... jurisdiction,**" this enforces Article III principle that federal courts possess only jurisdiction Congress grants through statute. Without clear jurisdictional statement citing statute, Court cannot verify it acts within congressional authorization. When emergency applications omit jurisdictional statements, and when Clerk accepts these omissions despite mandatory rejection requirement, this enables Court to exercise jurisdiction without verifying statutory authority exists—exact separation of powers violation Marshall warned against in *Marbury*. The rules exist precisely to prevent this by forcing clear statement of statutory foundation before Court acts.

91. Statistical Proof of Discriminatory Enforcement: Rule 12.3's mandate that petitions "shall comply in all respects with Rule 14" applies equally to all petitions. Yet enforcement patterns reveal coordinated discrimination:

Petitioner Type	Rule 14(e)(iv) Compliance	Clerk Response	Court Action
Public Defenders	Cite § 2101(f) clearly in jurisdictional statement	Accept and docket	Review merits
Private Parties	Generally comply with Rule 14.1 sequence	Return if deficient per Rule 14.5	Review merits after compliance
Solicitor General	Omit jurisdictional statements or cite only precedent	Accept despite Rule 14.5 violation	Grant relief without jurisdictional analysis

This disparate treatment—identical rule, opposite enforcement based solely on party identity—violates equal protection principle that procedural rules must apply equally.

1 When mandatory rules are enforced against some (private parties) but waived for
2 others (government), rules cease being neutral procedures and become tools of
3 discriminatory advantage.

4 **92. The Compounding Effect: Each Violation Enables the Next: The Rule 14 violations**
5 **don't exist in isolation—they enable the substantive statutory violations. By omitting**
6 **jurisdictional statements required by Rule 14.1(e)(iv):**

7 **(1) Government avoids citing § 2101(f) explicitly, concealing statute's "final judgment**
8 **or decree" limitation;**

9 **(2) Without statutory citation, government avoids addressing how preliminary**
10 **injunctions qualify as final judgments;**

11 **(3) Without order-type identification, Court can grant stays using vague "district court**
12 **order" language that obscures interlocutory nature;**

13 **(4) Without jurisdictional analysis, precedent network substitutes for statutory**
14 **foundation;**

15 **(5) Without enforcement, pattern becomes entrenched practice spanning 80+**
16 **applications and eight years.**

17 Each level of violation enables the next, creating cascade where procedural non-
18 compliance (Rule 14) enables substantive statutory violation (§ 2101(f)) which enables
19 constitutional violation (separation of powers through judicial expansion of jurisdiction
20 Congress limited).

G. Rule 33.1(g) Cross-reference Eliminates Any "emergency Exception" Defense

93. The Supreme Court's Own Formatting Rules Mandate Rule 14 Compliance for Emergency Applications: Supreme Court Rule 33.1(g) explicitly lists document types subject to identical formatting requirements, including word limits and cover colors. The rule states: "Word limits and cover colors for booklet-format documents are as follows:" followed by table including:

Type of Document: Petition for a Writ of Certiorari (**Rule 14**); Motion for Leave to file a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); **Petition for an Extraordinary Writ (Rule 20.2)**

Sup. Ct. R. 33.1(g) (emphasis added). This cross-reference is legally dispositive for three independent reasons.

94. The Cross-Reference Proves Rule 14 Applies to Emergency Applications: By listing "Petition for a Writ of Certiorari (**Rule 14**)" and "Petition for an Extraordinary Writ (**Rule 20.2**)" in the same sentence and subjecting both to identical formatting requirements, Rule 33.1(g) demonstrates Court's understanding that:

- (1) These are distinct document types** (listed separately with different rule citations);
- (2) Both are subject to Rule 14 requirements** (first item explicitly cross-references Rule 14);
- (3) Identical treatment proves identical requirements** (same word limits, same cover colors, same underlying content requirements).

The explicit cross-reference to "Rule 14" in the cert petition description, combined with inclusion of Rule 20.2 extraordinary writs in the same formatting category, proves Rule 14's jurisdictional statement requirements apply equally to both document types.

95. This Eliminates "Different Rules for Emergency Applications" Defense: Any argument that emergency applications under Rule 20.2 are exempt from Rule 14's jurisdictional statement requirements is defeated by Rule 33.1(g)'s explicit treatment of both document types identically. The Court's own rules demonstrate:

(1) If Rule 14 didn't apply to Rule 20.2 petitions, they wouldn't be listed together in Rule 33.1(g);

(2) If emergency applications had different content requirements, they would have different formatting requirements;

(3) Identical formatting requirements reflect identical substantive requirements;

(4) The explicit "Rule 14" cross-reference in the description applies to entire category, including Rule 20.2 petitions.

96. The Word Limit Connection to Content Requirements: Rule 33.1(g) establishes identical word limits for cert petitions (Rule 14) and extraordinary writs (Rule 20.2) precisely because both must contain the same substantive sections, including:

- Questions presented (Rule 14.1(a))
- Parties list (Rule 14.1(b))
- Table of contents if exceeding length (Rule 14.1(c))
- Citations to opinions below (Rule 14.1(d))
- **Jurisdictional statement citing statutory provision (Rule 14.1(e)(iv))**
- Constitutional/statutory provisions (Rule 14.1(f))
- Statement of case (Rule 14.1(g))
- Argument (Rule 14.1(h))
- Appendix (Rule 14.1(i))

If emergency applications didn't require jurisdictional statements, they would have **shorter** word limits than cert petitions because they would have fewer required sections. Identical word limits prove identical content requirements.

97. Rule 20.2 Explicitly Incorporates Rule 14 Requirements: Supreme Court Rule 20.2 governing extraordinary writs provides: "A petition seeking a writ authorized by 28 U.S.C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by **Rules 33 and 34**. The petition shall be captioned 'In re [name of petitioner]' and **shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14.**" Sup. Ct. R. 20.2 (emphasis added).

This creates multiple cross-references proving Rule 14 compliance is mandatory:

(1) "shall be prepared... as required by Rules 33 and 34" → incorporates Rule 33.1(g) → which cross-references Rule 14

(2) "shall follow... the form of a petition... prescribed by Rule 14" → directly incorporates Rule 14's requirements

(3) "insofar as applicable" modifies "form" not "requirements" → formatting may vary, substantive content requirements apply fully

The phrase "insofar as applicable" cannot eliminate jurisdictional statement requirement because: (a) Rule 20.2 itself requires stating "the basis for jurisdiction in this Court" (separate from Rule 14 cross-reference); (b) jurisdiction is always "applicable" when seeking Court action; (c) "insofar as applicable" permits caption variation ("In re" instead of party names) and appendix adaptations, not omission of fundamental requirements like jurisdictional statements.

98. The Travel Ban's Complete Omission Violates Three Separate Mandatory Rules: The June 26, 2017 Travel Ban application's complete omission of jurisdictional statement violates:

(1) **Rule 14.1(e)(iv)** directly: "shall contain... the statutory provision believed to confer... jurisdiction"

(2) **Rule 20.2** by incorporation: "shall follow... the form... prescribed by Rule 14"

(3) **Rule 33.1(g)** through cross-reference: treating Rule 14 cert petitions and Rule 20.2 extraordinary writs identically for formatting (proving identical substantive requirements)

When single application violates three separate mandatory rules, and when Clerk accepts it despite Rule 14.5's mandatory rejection requirement, this proves not inadvertent oversight but coordinated suspension of multiple interlocking procedural safeguards designed to ensure Court doesn't exceed statutory authority.

99. The Enforcement Mechanism Applies Equally to Both Document Types: Rule 14.5's mandatory rejection requirement—"the Clerk **will return** it with a letter indicating the deficiency"—applies to "a petition submitted timely and in good faith [that] is in a form that does not comply with this Rule." The language doesn't distinguish between cert petitions and extraordinary writs. If Rule 33.1(g) subjects both to identical formatting under Rules 33 and 34, and if Rule 20.2 incorporates Rule 14's form requirements, then Rule 14.5's enforcement mechanism applies equally to both. Yet Clerk has never returned emergency application for Rule 14.1(e)(iv) violation despite 80+ applications omitting jurisdictional statements over eight years.

100. This Proves Institutional Coordination: When Court's own rules create multiple cross-references proving Rule 14 compliance is mandatory for emergency applications:

- Rule 20.2 says emergency petitions "shall follow... Rule 14"
- Rule 33.1(g) lists both document types together with explicit "Rule 14" cross-reference
- Rule 14.1(e)(iv) mandates "the statutory provision" citing jurisdiction

- Rule 14.5 mandates Clerk rejection of non-compliant petitions
- Rule 12.3 mandates petitions "shall comply in all respects with Rule 14"

Yet across 80+ applications spanning eight years:

- Government systematically omits jurisdictional statements
- Clerk never returns applications for deficiency
- Court grants relief without jurisdictional analysis
- Pattern continues despite multiple rule violations per application

This cannot occur through independent failures by multiple actors (government attorneys, Clerk staff, Justices) across multiple years and administrations. The suspension of multiple interlocking mandatory rules proves coordinated institutional practice enabling ultra vires jurisdiction by eliminating procedural safeguards Congress and Court designed to prevent exactly this abuse.

101. The Cover Color Proves the Rules Apply Equally: Rule 33.1(g) assigns **white covers** to both "Petition for a Writ of Certiorari (Rule 14)" and "Petition for an Extraordinary Writ (Rule 20.2)." This identical cover color requirement—seemingly trivial detail—proves profound legal point: Court treats these document types as equivalent for **all** purposes under Rules 33 and 34. If Court intended emergency applications to have different substantive requirements (like exemption from jurisdictional statement requirement), Court would signal this through different formatting requirements. Identical formatting reflects identical substantive compliance obligations. When government files emergency applications on white covers—complying with Rule 33.1(g)—while omitting jurisdictional statements required by cross-referenced Rule 14, this constitutes selective compliance: following formatting rules while violating content requirements, proving consciousness that both apply but choosing to violate latter while complying with former.

102. Comparison Table Showing Multiple Rule Violations Per Application:

Rule	Requirement	Travel Ban Compliance	Enforcement
Rule 12.3	"shall comply in all respects with Rule 14"	No Rule 14 compliance	Not enforced
Rule 14.1	"shall contain" items (a)-(i) in order	Missing subsection (e) entirely	Not enforced
Rule 14.1(e)(iv)	"the statutory provision believed to confer jurisdiction"	Never cites any jurisdictional statute	Not enforced
Rule 14.5	"Clerk will return" non-compliant petitions	Should have been returned	Not enforced
Rule 20.2	"shall follow... Rule 14"	Doesn't follow Rule 14	Not enforced
Rule 33.1(g)	Same requirements as Rule 14 cert petitions	White cover (complies) but missing content (violates)	Partially enforced

Six separate mandatory rules violated by single application. **Zero enforcement** of any violation. This proves not isolated oversight but coordinated institutional suspension of interconnected procedural safeguards.

V. The Vacatur Fraud: Building Precedent Network On Judicially Destroyed Foundation

A. October 10, 2017 Vacatur Destroyed All Precedential Value

103. The Supreme Court's Explicit Destruction of Precedent: On October 10, 2017, the Supreme Court issued an order in *Trump v. Hawaii* eliminating all precedential value from the June 26, 2017 emergency stay order. The vacatur reads:

We granted certiorari in this case to resolve a challenge to 'the temporary suspension of entry of aliens abroad under Section 2(c) of Executive Order No. 13,780.' Because that provision of the Order 'expired by its own terms' on September 24, 2017, the appeal no longer presents a 'live case or controversy.' *Burke v. Barnes*, 479 U. S. 361, 363 (1987). Following our established practice in such cases, the judgment is therefore **vacated**, and the case is remanded to the United States Court of Appeals for the Fourth Circuit with instructions to dismiss as moot the challenge to Executive Order No. 13,780. *United States v. Munsingwear, Inc.*, 340 U. S. 36, 39 (1950). **We express no view on the merits.**

Trump v. Hawaii, 583 U.S. ____ (Oct. 10, 2017) (per curiam) (emphasis added). The phrase "**We express no view on the merits**" is legally operative language—the Court explicitly declares the June 26, 2017 order (published at 582 U.S. 571) has **zero precedential value** for any proposition.

104. Munsingwear Doctrine Makes Vacated Orders Legal Nullities: The phrase "**We express no view on the merits**" is legally operative language—the Court explicitly declares the June 26, 2017 order (published at 582 U.S. 571) has zero precedential value for any proposition. Under *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950), vacatur "strips the [vacated decision] of its precedential effect," *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 29 (1994), meaning vacated orders "cannot be accorded any precedential or collateral estoppel effect," *Arizonans for Official English v. Arizona*, 520 U.S. 43, 72 (1997). When Supreme Court vacates order stating "We express no view on the merits," this destroys

precedent completely—Court explicitly declares order has zero precedential weight. Vacatur returns parties to position as if judgment had never been entered.

105. Every First-Year Law Student Learns This Rule: The prohibition on citing vacated cases as precedent is black-letter law taught in first-year Civil Procedure. Legal research databases (Westlaw, Lexis) flag vacated cases with warnings that they have no precedential value. Bluebook citation rules prohibit citing vacated cases without explicitly noting the vacatur. This is foundational legal knowledge—not obscure doctrine requiring specialized expertise. When Solicitor General attorneys cite vacated precedent, they violate basic rules every law student masters.

B. November 20, 2017: Citation Of Destroyed Precedent Begins

106. The 41-Day Window: Beginning November 20, 2017—just 41 days after vacatur—government applications **cited the vacated June 26, 2017 order as binding authority** for emergency stays. This wasn't inadvertent citation error occurring once—this became systematic pattern continuing through at minimum 80 applications spanning 2017-2025. Plaintiff's analysis (Exhibit N-5) documents **six confirmed citations** of the vacated 582 U.S. 571 precedent in applications filed 2024-2025 alone, proving the pattern continues eight years after judicial destruction of precedential value.

107. Consciousness Proven by Knowledge Plus Violation: Government lawyers know Munsingwear doctrine. They know vacated cases lack precedential value. They know citation rules prohibit citing vacated precedent. Yet they systematically cite

vacated Travel Ban order anyway. Exhibit N-5 documents this pattern in the following applications:

Case	Docket No.	Date	Result
<i>Dept. of State v. AIDS Vaccine Coalition</i>	25A269	Sept. 2025	GRANTED
<i>Trump v. Global Health Council</i>	25A227	Aug. 2025	Withdrawn
<i>Trump v. CASA</i>	24A884	Mar. 2025	GRANTED
<i>SSA v. AFSCME</i>	24A1063	May 2025	GRANTED
<i>Trump v. AFGE</i>	24A1106	May 2025	Withdrawn
<i>Noem v. National TPS Alliance</i>	24A1059	May 2025	GRANTED

This proves consciousness that legitimate statutory authority doesn't exist—if valid precedent existed for staying preliminary injunctions under § 2101(f), government would cite those valid precedents rather than judicially destroyed orders the Court explicitly declared without precedential value.

108. The Timeline of Precedent Fraud:

Date	Event	Case Number	Legal Effect	Fraud Element
June 1, 2017	Applications filed	16A1190, 16A1191	Normal process	Self-citation begins
June 26, 2017	Stays granted in part	16-1436, 16-1540	Questionable authority	Violates Rule 14(e)
Oct. 10, 2017	CASES VACATED	16-1436, 16-1540	PRECEDENT DESTROYED	Should end practice
Nov. 20, 2017	Apps cite vacated	17-965 (17A550)	Citing void authority	FRAUD BEGINS

	order			
2018-2024	Applications cite Travel Ban	Various	Bootstrap network	Systematic fraud
2024-2025	Six documented citations	See Exhibit N-5	Destroyed foundation	8 years of fraud

C. The Multi-generational Bootstrap Creating Precedent Network On Nothing

109. Generation 1—Citing Vacated (Destroyed) Precedent: Beginning November 20, 2017, applications cited the October 10, 2017 vacated order as authority. Citing vacated precedent is citing legal nullity—legally indistinguishable from citing no authority at all. But these Generation 1 applications received stays, themselves becoming "precedent."

110. Generation 2—Citing Cases That Cited Destroyed Precedent: Subsequent applications cited Generation 1 cases as precedent. Generation 2 applications claim authority from Generation 1, but Generation 1's authority derives from vacated (destroyed) precedent. This creates precedent chain: Generation 2 → Generation 1 → Vacated Order → Nothing.

111. Generation 3 Through 80+—Multi-Generational Expansion: Later applications cite Generation 2, creating Generation 3. Generation 3 cites Generation 2, creating Generation 4. By 2025, applications cite recent precedent multiple generations removed from vacated foundation. The citation network obscures that when traced back to origin, entire structure rests on October 10, 2017 vacated order—precedent the Court explicitly destroyed.

1 **112. The Precedent Ponzi Scheme:** This resembles Ponzi scheme structure: each
 2 investor relies on prior investors, but when traced to origin, there's no actual capital—
 3 just claims about claims about claims. Similarly, each case claims authority from prior
 4 cases, but when traced to origin, there's no statutory foundation—just cases citing cases
 5 citing destroyed precedent. The multi-generational expansion conceals that foundation
 6 was judicially eliminated.

7 **D. 2025 Template Language Proves Coordination Pattern**

8 **113. Documented Template Directly Citing Vacated Order:** Comprehensive review
 9 of publicly available 2024-2025 emergency applications (Exhibit N-5) reveals
 10 systematic pattern using identical template language directly citing the vacated order as
 11 binding precedent eight years after judicial destruction:

12 **Template A—Direct Citation of Vacated Order:**

13 "Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the
 14 Court may stay **a preliminary injunction entered by a federal district court**. See,
 15 e.g., **Trump v. International Refugee Assistance Project, 582 U.S. 571 (2017) (per**
 16 **curiam)**; *Brewer v. Landrigan*, 562 U.S. 996 (2010); *Brunner v. Ohio Republican*
 17 *Party*, 555 U.S. 5 (2008) (per curiam)."

18 **114. The False "See, e.g." Format:** The "*see, e.g.*" format creates false impression
 19 that 582 U.S. 571 is mere example among many valid precedents supporting
 20 proposition. In reality: (1) 582 U.S. 571 is vacated order with zero precedential value;
 21 (2) *Brewer* and *Brunner* involve different procedural postures not addressing §
 22 2101(f)'s "final judgment" limitation; (3) no cited case establishes that preliminary

injunctions qualify as "final judgment or decree" under § 2101(f). The "*see, e.g.*" format is citation fraud—implying abundant authority when primary cited precedent is judicially destroyed and remaining citations are categorically inapposite.

115. Applications Using This Template: Exhibit N-5 documents six Solicitor General applications citing the vacated 582 U.S. 571 precedent: *Trump v. CASA*, No. 24A884; *SSA v. AFSCME*, No. 24A1063; *Noem v. National TPS Alliance*, No. 24A1059; *Trump v. AFGE*, No. 24A1106; *Dept. of State v. AIDS Vaccine Coalition*, No. 25A269; and *Trump v. Global Health Council*, No. 25A227. Notably, four of these six applications resulted in **granted** relief despite citing judicially destroyed precedent, while the remaining two were withdrawn—suggesting government recognized exposure risk in those particular cases. The documented pattern proves systematic institutional practice spanning multiple years rather than isolated citation errors. Complete historical analysis of all applications filed 2017-2025 is ongoing and will reveal full extent of vacated precedent citations.

VI. EQUAL PROTECTION VIOLATION: TWO-TIER JUSTICE THROUGH DISPARATE RULE ENFORCEMENT

A. Same Court, Same Rules, Opposite Enforcement Based On Party Identity

116. The Fundamental Principle: Equal protection requires that law apply equally regardless of litigant identity or power. When government possesses systematic procedural advantages unavailable to private parties—particularly suspension of mandatory rules enforced against others—this creates two-tier justice system violating

1 fundamental fairness. The principle applies with particular force to procedural rules: if
2 rules matter enough to be mandatory, they must be enforced equally. Selective
3 enforcement based on party identity transforms procedural requirements into tools of
4 discrimination rather than neutral rules ensuring fair process.

5 **117. Public Defenders Comply, Solicitor General Doesn't:** When public defenders
6 file emergency applications to Supreme Court, they properly cite § 2101(f): "Under 28
7 U.S.C. § 2101(f), this Court may stay proceedings pending the filing and disposition of
8 a petition for writ of certiorari." The public defender—with limited resources, no
9 SCOTUS clerk credentials, possibly handling case pro bono—cites governing statute
10 clearly and directly at outset, complying with Rule 14(e)(iv)'s requirement for
11 jurisdictional statement citing statutory provision.

12 **118. The Solicitor General Pattern:** Yet Solicitor General applications—filed by
13 office representing most sophisticated Supreme Court litigators in America, staffed by
14 former SCOTUS clerks, graduates of top law schools, with unlimited government
15 resources—systematically omit jurisdictional statements, never cite § 2101(f) in
16 compliant manner, scatter vague All Writs Act references through argument sections,
17 and by 2025 completely omit statutory authority while explicitly characterizing orders
18 as "INTERLOCUTORY INJUNCTION." Same Court, same Rule 14 requirements,
19 opposite compliance patterns based solely on whether party is government or private
20 citizen.

21 **119. Rules Enforced Against Private Parties, Waived for Government:** The
22 systematic pattern creates procedural discrimination. When private party violates Rule
23 14(e)(iv), standard practice is rejection with deficiency letter requiring corrected filing.

1 Rule 14(5) mandates: "the Clerk **will return** it with a letter indicating the deficiency."
 2 Yet across 80+ government applications violating Rule 14(e)(iv), Clerk has never
 3 returned a single application despite identical mandatory rejection requirement. This
 4 disparate enforcement—rules enforced against private parties with limited resources,
 5 systematically waived for government with sophisticated litigators—violates equal
 6 protection principle that law must apply equally regardless of party identity.

7 **B. The Privilege Of Non-compliance Creates Substantive Advantage**

8 **120. Procedural Advantage Produces Substantive Benefit:** The government's
 9 systematic Rule 14 violations aren't merely technical non-compliance—they produce
 10 substantive advantage by avoiding scrutiny that would expose ultra vires practice. By
 11 omitting clear jurisdictional statement citing § 2101(f), government avoids three
 12 problems: (1) explicitly stating order type (preliminary injunction vs. final judgment);
 13 (2) addressing § 2101(f)'s limiting language inviting opposition challenge; (3)
 14 explaining how preliminary injunctions qualify as final judgments. Private parties
 15 cannot obtain these advantages—their applications get returned for Rule 14 violations,
 16 forcing compliance that subjects their jurisdictional claims to scrutiny government
 17 avoids.

18 **121. This Creates Two Paths to Supreme Court Relief: Path A (Private Parties):**

19 File application → Clerk reviews for Rule 14 compliance → If non-compliant,
 20 application returned with deficiency letter → Must resubmit with clear jurisdictional
 21 statement citing statutory provision → Jurisdictional claim subject to scrutiny and
 22 challenge. **Path B (Government):** File application violating Rule 14 → Clerk accepts

despite mandatory rejection requirement → Court grants relief without jurisdictional analysis → Statutory limitations never addressed → Relief obtained while avoiding scrutiny private parties face. This isn't neutral enforcement of rules allowing discretionary exceptions—this is systematic suspension of mandatory requirements for one class of litigants, creating privileged path to relief others cannot access.

122. Equal Protection Requires Equal Rule Enforcement: The Constitution's guarantee of equal protection extends to procedural rules. When mandatory procedural requirements—designed to ensure courts don't exceed statutory authority—are enforced against some litigants but systematically waived for others based solely on party identity, this violates fundamental principle that all litigants stand equal before the law. If Rule 14(e)(iv) isn't important enough to enforce equally, it shouldn't exist. If it is important enough to exist as mandatory requirement with mandatory rejection enforcement (Rule 14(5)), it must be enforced equally regardless of whether applicant is public defender with limited resources or Solicitor General with unlimited government support.

VII. MODEL RULE 3.3 VIOLATIONS: FRAUD ON THE COURT THROUGH SYSTEMATIC OMISSION OF ADVERSE AUTHORITY

A. The Duty Of Candor To Tribunals

123. Model Rule 3.3(a)(2) Mandates Disclosure: Model Rule of Professional Conduct 3.3(a)(2) requires lawyers to "disclose to the tribunal legal authority in the controlling jurisdiction that is directly adverse to the position of the client and not

disclosed by opposing counsel." This duty of candor serves fundamental function: ensuring courts have complete legal picture before exercising power. The rule recognizes that lawyers' duty to clients is limited by duty to legal system itself—lawyers cannot advance clients' interests through concealment of adverse authority.

124. Section 2101(f) Is Directly Adverse Authority: When Solicitor General seeks stays of preliminary injunctions, 28 U.S.C. § 2101(f) is directly adverse authority. The statute limits stays to "final judgment or decree"—language that by definition excludes preliminary injunctions, which are interlocutory orders subject to immediate circuit court review under 28 U.S.C. § 1292(a)(1). This is controlling statutory authority in the jurisdiction (Supreme Court) that directly contradicts government's position (that Court may stay preliminary injunctions). Under Rule 3.3(a)(2), failure to disclose § 2101(f)'s limiting language constitutes ethics violation.

125. Systematic Omission Escalates to Fraud: When isolated failure to cite adverse authority occurs, this might constitute negligent ethics violation. But when systematic pattern emerges across 80+ applications spanning eight years, multiple administrations, and multiple Solicitor General attorneys, this escalates from negligent omission to deliberate fraud. The pattern proves consciousness of obligation plus systematic violation despite knowledge—hallmarks of intentional rather than negligent conduct.

B. Rule 14 Violations Compound Ethics Violations

126. Procedural Fraud Serves Substantive Concealment: The Rule 14(e)(iv) violations aren't separate from Rule 3.3 violations—they're mechanisms enabling them. By systematically omitting jurisdictional statements required by Rule 14(e)(iv),

1 government avoids triggering explicit disclosure obligation that would arise from clear
 2 jurisdictional statement citing § 2101(f). Standard jurisdictional statement would read:
 3 "This Court has jurisdiction under 28 U.S.C. § 2101(f) to stay the district court's
 4 preliminary injunction pending certiorari review." This statement would make adverse
 5 nature of § 2101(f)'s "final judgment or decree" limitation explicit and obvious,
 6 potentially triggering Rule 3.3 disclosure obligation or at minimum inviting
 7 respondents to cite limitation. By omitting jurisdictional statement entirely,
 8 government structures applications to avoid even acknowledging adverse statutory
 9 authority exists.

10 **127. The Sophistication Proves Consciousness:** This technique requires sophisticated
 11 understanding: (1) knowing Rule 14(e)(iv) requires jurisdictional statements; (2)
 12 knowing § 2101(f) is adverse authority limiting stays to final judgments; (3)
 13 understanding that omitting jurisdictional statement avoids highlighting adverse
 14 authority; (4) recognizing Clerk won't enforce Rule 14(5) rejection requirement; (5)
 15 coordinating this strategy across multiple applications, attorneys, and years. The
 16 sophistication required proves consciousness of wrongdoing—these aren't inadvertent
 17 omissions but carefully structured applications designed to avoid disclosure
 18 obligations.

19 **C. Citing Vacated Precedent As Ethics Violation**

20 **128. Knowingly Citing Legally Void Authority:** When government cites *Trump v.*
 21 *Hawaii*, 582 U.S. 571 (2017) after October 10, 2017 vacatur destroyed its precedential
 22 value, this violates duty of candor. Citation rules require noting vacatur when citing

1 vacated cases. Bluebook Rule 10.7 provides: "Indicate if the decision has been
 2 vacated." Failing to note vacatur creates false impression that cited precedent has
 3 weight it lacks. But systematically citing vacated precedent **as if it has precedential**
 4 **value**—using "*see, e.g.*" format suggesting it's example among many valid
 5 authorities—escalates from citation error to fraud on Court.

6 **129. Every Citation After Vacatur Is Separate Violation:** Each of 80+ applications
 7 citing vacated Travel Ban order after October 10, 2017 constitutes separate ethics
 8 violation. This isn't single mistake repeated—it's systematic pattern where each
 9 application requires independent decision to cite judicially destroyed precedent. The
 10 multi-year pattern proves not inadvertent repeated error but deliberate strategy:
 11 government knows precedent is destroyed, cites it anyway because legitimate authority
 12 doesn't exist, and continues this practice year after year because Court accepts it.

13 **VIII. THE CONSTITUTIONAL IMPOSSIBILITY: JURISDICTION CANNOT** 14 **BE ESTABLISHED THROUGH PRECEDENT ALONE**

15 **A. The Logical Chain That Must Terminate In Statute**

16 **130. Every Jurisdictional Claim Must Trace to Congressional Grant:** Federal
 17 courts possess only jurisdiction Congress grants through statute. *Kokkonen*, 511 U.S. at
 18 377. This means every jurisdictional claim—no matter how many precedents support
 19 it—must ultimately trace back to statutory grant from Congress. If asked "what gives
 20 Court jurisdiction?", answer must eventually be: "Congress granted this power in

1 [statute citation]." If answer is only "precedent says we have jurisdiction," and
2 precedent itself cannot trace to statute, then no jurisdiction exists.

3 **131. The Precedent Chain Analysis:** When challenged to identify jurisdictional
4 authority, shadow docket applications point to precedent: "Court has authority under
5 *Trump v. Hawaii* and subsequent cases." When *Trump v. Hawaii* is examined for its
6 statutory foundation, it cites earlier cases and scattered statutory references. When
7 those cases are examined, they cite other cases. The chain continues but never
8 terminates in clear statutory grant. Instead, chain dead-ends in: (1) applications that
9 violated Rule 14 by omitting jurisdictional statements; (2) orders later vacated
10 destroying precedential value; (3) cases citing those vacated orders; (4) multi-
11 generational bootstrap network.

12 **132. The Constitutional Defect:** When jurisdictional chain doesn't terminate in
13 congressional statutory grant, constitutional violation occurs. Article III requires
14 congressional control over federal jurisdiction. If courts can create jurisdiction through
15 precedent divorced from statute, courts grant themselves powers Congress withheld—
16 fundamental separation of powers violation. This is precisely what Marshall warned
17 against in *Marbury*: if courts can expand jurisdiction through precedent claiming
18 powers statutes don't grant, congressional limitations become "form without
19 substance."

20 **B. Section 2101(f) Cannot Be Expanded Through Precedent**

21 **133. The Statutory Text Is Clear and Exclusive:** Section 2101(f) states: "In any case
22 in which the **final judgment or decree** of any court is subject to review by the

1 Supreme Court on writ of certiorari, the execution and enforcement of such judgment
2 or decree may be stayed..." The phrase "final judgment or decree" is term of art in
3 federal procedure with settled meaning: conclusive determination by court, as
4 distinguished from interlocutory or preliminary orders. Preliminary injunctions are
5 explicitly **not** final judgments—they're interlocutory orders immediately appealable
6 under 28 U.S.C. § 1292(a)(1) **because** they're not final.

7 **134. Precedent Cannot Rewrite Statutory Text:** No amount of precedent claiming
8 broader authority can transform "final judgment or decree" into "any order including
9 preliminary injunctions." This would be judicial rewriting of statute. If transformation
10 were accomplished through formal opinion holding "final judgment" includes
11 preliminary injunctions despite plain meaning, this would be illegitimate statutory
12 interpretation. But transformation through accumulated precedent **without** explicit
13 interpretation—simply exercising authority statute doesn't grant, citing prior exercises
14 as precedent—is even more problematic: it rewrites statute without acknowledging the
15 rewriting.

16 **135. The All Writs Act Cannot Circumvent Specific Statutory Limit:** Government
17 argues 28 U.S.C. § 1651 (All Writs Act) authorizes stays. But *Pennsylvania Bureau of*
18 *Correction v. U.S. Marshals Service*, 474 U.S. 34, 43 (1985), established dispositive
19 principle: **"Where a statute specifically addresses the particular issue at hand, it is**
20 **that authority, and not the All Writs Act, that is controlling."** Section 2101(f)
21 **specifically addresses** Supreme Court stays pending certiorari. When specific statute
22 governs, general All Writs Act cannot authorize what specific statute prohibits. If All
23 Writs Act could authorize preliminary injunction stays despite § 2101(f) limiting stays

1 to final judgments, this would render specific statutory limitation meaningless—
 2 precisely what *Pennsylvania Bureau* forbids.

3 **C. Declaratory Relief Required To Restore Constitutional Order**

4 **136. This Court Can Declare What Statute Means:** Under *Marbury v. Madison*, "It
 5 is emphatically the province and duty of the Judicial Department to say what the law
 6 is." 5 U.S. (1 Cranch) at 177. This Court possesses authority to declare what § 2101(f)
 7 means and whether Supreme Court's shadow docket practice complies with statutory
 8 text. Declaratory relief doesn't require this Court to "overrule" Supreme Court or
 9 "enjoin" Supreme Court actions—it requires only declaring what statute enacted by
 10 Congress means and finding that systematic practice violates that statute.

11 **137. Declaration Must Address Precedent's Limitations:** Declaratory relief should
 12 state: (1) federal court jurisdiction must be founded on statutory grant from Congress,
 13 not precedent alone; (2) 28 U.S.C. § 2101(f) is exclusive statutory authority for
 14 Supreme Court stays pending certiorari; (3) § 2101(f) limits such stays to "final
 15 judgment or decree"; (4) preliminary injunctions are not final judgments under settled
 16 federal procedure; (5) therefore Supreme Court lacks statutory authority to stay
 17 preliminary injunctions pending certiorari regardless of precedent claiming such
 18 authority; (6) precedent network built on jurisdictionally defective applications,
 19 vacated orders, and multi-generational bootstrap cannot cure absence of statutory
 20 foundation because precedent cannot create jurisdiction Congress withheld.

21 **138. Forward-Looking Deterrence Requires Relief:** Under *Liljeberg v. Health*
 22 *Services Acquisition Corp.*, 486 U.S. 847 (1988), courts must consider forward-looking

deterrence when addressing systematic violations: "**A willingness to enforce [requirements] may prevent a substantive injustice in some future case by encouraging [parties] to more carefully examine possible grounds for [violations] and to promptly disclose them when discovered.**" *Id.* When 80+ systematic violations occur without consequence, deterrent function collapses. Relief is necessary not primarily to remedy past violations but to deter future ones by establishing that statutory limitations matter despite precedent claiming broader authority.

IX. INTEGRATION WITH PLAINTIFF'S CLAIMS: ADMISSIBILITY UNDER FRE 404(b) AND RICO PRECEDENT

A. Pattern Evidence Establishes Enterprise Coordination

139. Federal Rule of Evidence 404(b)(2) Admissibility: This evidence is admissible under FRE 404(b)(2) to prove defendants' **motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, and lack of accident** in coordinating constitutional violations affecting Plaintiff. The shadow docket violations are not "background context"—they are **probative evidence** establishing systematic pattern of exceeding authority when politically convenient.

140. RICO Pattern Does Not Require Acts Directed at Plaintiff: Under *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985), RICO pattern "does not require that the pattern of racketeering activity be directed at the plaintiff." Shadow docket violations harming other litigants establish the enterprise's **modus operandi**, proving defendants will exceed constitutional authority when it serves political objectives.

1 Under *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1024 (7th Cir. 1992), "Evidence
2 of predicate acts harming persons other than the plaintiff is admissible to establish the
3 existence of an enterprise and a pattern of racketeering activity."

4 **141. The Pattern Elements Proven:** Shadow docket evidence establishes: **(1)**

5 **Common Plan/Scheme**—ultra vires conduct enabling executive policy

6 implementation during periods when preliminary injunctions should prevent it; **(2)**

7 **Intent**—to violate statutory constraints when politically convenient, proven by Exhibit

8 N-5's demonstration that Solicitor General applications achieve ~85% grant rates with

9 0% Rule 14 compliance while private parties achieve ~24% grant rates despite 71%

10 compliance—an inverse correlation proving rules serve as obstacles for disfavored

11 parties rather than neutral procedural requirements; **(3) Knowledge**—of procedural

12 manipulation techniques, proven by eight-year progressive refinement from complete

13 Rule 14 omission to scattered inadequate citation to return to complete omission, and

14 by selective compliance (proper jurisdictional statements when authority exists,

15 systematic omission when authority lacking); **(4) Absence of Mistake**—systematic

16 pattern across at minimum 80 applications, with 42 documented in Exhibit N-5, proves

17 deliberate conduct, not error; **(5) Enterprise Coordination**—judicial enabling of

18 executive violations through suspension of mandatory procedural rules proves

19 coordination spanning branches, documented through dual-docket "Linked with"

20 notations in official Court records (See Exhibit N-6).

B. Sufficiently Similar And Not Too Remote In Time

142. Tavoulareas Test for Pattern Evidence: Under *Tavoulareas v. Piro*, 817 F.2d 762, 771 (D.C. Cir. 1987), pattern evidence is admissible when acts are "sufficiently similar and not too remote in time." All 80+ shadow docket violations share distinctive earmarks: (1) systematic § 2101(f) omission or inadequate citation; (2) citing vacated Travel Ban precedent after judicial destruction; (3) vague generic language avoiding order-type identification; (4) circular citation networks substituting precedent for statute; (5) partisan statistical disparity (88.2% vs. 31% vs. 50% baseline). Violations occurred 2017-2025—all within eight-year window and many showing temporal correlation with Plaintiff's litigation activities (October 2025 events).

143. Not Background Context But Probative Evidence: Courts distinguish between inadmissible "background context" and admissible pattern evidence establishing *mens rea* and coordination. Shadow docket violations are latter: they prove defendants possess **knowledge** of how to manipulate procedures to avoid statutory limits, prove **intent** to exceed authority when politically convenient, prove **absence of mistake** through eight-year systematic pattern, and prove **enterprise coordination** through judicial suspension of mandatory rules enabling executive policy implementation. This evidence is admissible to establish that when defendants target Plaintiff—who documents these violations with unique analytical capability—this targeting stems from established pattern of exceeding authority to suppress constitutional accountability.

X. Cascading Constitutional Implications: Twenty-five Years Of Ultra Vires Practice From Bush V. Gore To Vasquez Perdomo

A. The Documentary Proof: Bush V. Gore Employed Identical Ultra Vires Mechanism

144. The systematic violations documented in this Memorandum did not originate in 2017. Official Supreme Court docket records establish that the dual-docket conversion mechanism enabling ultra vires jurisdiction has operated since at least December 9, 2000—the day the Court stayed Florida's presidential recount in *Bush v. Gore*.

145. The December 9, 2000 Docket Entry Proves the Mechanism: The official docket for *Bush v. Gore*, No. 00-949, records:

"Application (A00-504) referred to the Court by Justice Kennedy... **the application for stay is treated as a petition for a writ of certiorari**, and the petition for a writ of certiorari is granted."

And separately:

"(A00-504) Application for stay GRANTED. **Application treated as a petition for a writ of certiorari, see 00-949.**"

This language—"treated as a petition... see 00-949"—is functionally identical to the "Linked with: 22A444" notation documented in Exhibit N-6 from 2022. The dual-docket infrastructure enabling conversion of emergency applications into cert petitions, circumventing § 2101(f)'s jurisdictional requirements, has been operational for twenty-five years.

146. The Order Stayed Was Not "Final Judgment or Decree": On December 8, 2000, the Florida Supreme Court ordered manual recounts of "undervotes" in all Florida counties, directing that "the manual recounts should begin at once." *Gore v.*

1 *Harris*, 772 So. 2d 1243, 1262 (Fla. 2000), *rev'd sub nom. Bush v. Gore*, 531 U.S. 98
 2 (2000). This was an interlocutory order directing future proceedings. No recount had
 3 occurred. No final judgment existed. The case remained pending before the Florida
 4 Supreme Court.

5 **147. Section 2101(f) Excludes Interlocutory Orders:** 28 U.S.C. § 2101(f) provides:

6 "In any case in which **the final judgment or decree** of any court is
 7 subject to review by the Supreme Court on writ of certiorari, the execution
 8 and enforcement of **such judgment or decree** may be stayed for a
 9 reasonable time to enable the party aggrieved to obtain a writ of certiorari
 10 from the Supreme Court."

11 The Florida Supreme Court's December 8, 2000 recount order was not a "final
 12 judgment or decree" within the meaning of § 2101(f). It was an interlocutory
 13 procedural order directing future action—precisely the category of orders Congress
 14 deliberately excluded from Supreme Court stay authority. Under the statute's plain
 15 text, **the U.S. Supreme Court lacked jurisdiction to stay Florida's recount.**

16 **148. Bush's Own Lawyers Knew § 2101(f) Existed:** On December 8, 2000, Bush
 17 filed a stay petition with the Florida Supreme Court citing "Rule 9.310 of the Florida
 18 Rules of Appellate Procedure, **28 U.S.C. 2101(f)**, and this Court's authority to control
 19 the issuance of its own mandates." Bush's counsel understood § 2101(f)'s relevance to
 20 stay authority. Yet when filing with the U.S. Supreme Court the following day, the
 21 application was docketed as "A00-504" and "treated as" a cert petition through the
 22 dual-docket mechanism—avoiding the jurisdictional analysis § 2101(f) would have
 23 required.

24 **149. Justice Scalia's Concurrence Confirms Jurisdictional Void:** Justice Scalia
 25 wrote separately to justify the December 9, 2000 stay, arguing that "counting of votes

1 that are of questionable legality does in my view threaten irreparable harm to petitioner
 2 Bush, and to the country." *Bush v. Gore*, 531 U.S. 1046 (2000) (Scalia, J., concurring).
 3 Notably, Scalia addressed irreparable harm—a discretionary stay factor—not statutory
 4 jurisdiction. He did not cite § 2101(f). He did not explain how an interlocutory
 5 recount order qualifies as "final judgment or decree." The absence of jurisdictional
 6 analysis in a concurrence written specifically to justify the stay suggests no satisfactory
 7 jurisdictional argument existed.

8 **150. Four Justices Recognized the Constitutional Problem:** Justice Stevens, joined
 9 by Justices Souter, Ginsburg, and Breyer, dissented from the stay: "To stop the
 10 counting of legal votes, the majority today departs from three venerable rules of
 11 judicial restraint that have guided the Court throughout its history." *Id.* (Stevens, J.,
 12 dissenting). Four Justices questioned the Court's authority to act. The 5-4 split on the
 13 stay—before any merits briefing—reflects recognition that something was
 14 fundamentally wrong with the Court's exercise of power.

15 **B. The Circular Logic That Decided A Presidential Election**

16 **151.** The December 12, 2000 per curiam opinion in *Bush v. Gore* held that Florida's
 17 recount could not be completed "in compliance with the requirements of equal
 18 protection and due process without substantial additional work" and that such work
 19 could not be accomplished before "the December 12 date" established by 3 U.S.C. § 5's
 20 "safe harbor" provision. *Bush v. Gore*, 531 U.S. 98, 110 (2000) (per curiam). The
 21 Court reversed the Florida Supreme Court and effectively ended the election.

22 **152. The circular logic is constitutionally devastating:**

Step	Action	Constitutional Problem
December 8	Florida Supreme Court orders recount	Interlocutory order, not final judgment
December 9	U.S. Supreme Court stays recount	No § 2101(f) authority for interlocutory stays
December 9-11	Recount halted pending SCOTUS review	Three days lost due to ultra vires stay
December 11	Oral argument on merits	Court reached merits through void jurisdiction
December 12	Court holds recount cannot be completed by December 12 deadline	Deadline only dispositive because stay stopped recount
December 12	Reversal effectively decides election	Outcome determined by ultra vires process

1 **153.** The Court stayed the recount without jurisdiction, then held the recount couldn't
2 be completed in time because they stayed it, then reversed because the deadline—made
3 dispositive only by the stay—couldn't be met. The entire constitutional basis for *Bush*
4 *v. Gore*'s outcome rests on a stay the Court lacked statutory authority to issue. The
5 2000 presidential election was decided through ultra vires judicial action.

6 **C. The Pattern Exposed: Twenty-five Years Of Coordinated Practice**

7 **154.** The 2017 Travel Ban applications did not create the ultra vires mechanism—
8 they merely continued it. The dual-docket conversion system ("treated as a petition
9 for writ of certiorari"), the acceptance of applications lacking proper jurisdictional
10 statements, the staying of interlocutory orders without § 2101(f) authority—all were
11 operational in December 2000. The Travel Ban applications represent the first
12 comprehensively documented instance of systematic pattern, not the pattern's origin.

155. The statistical analysis in Exhibit N-5 captures only the visible portion of a twenty-five-year iceberg. The 0% Solicitor General compliance rate, the zero Rule 14.5 enforcement across 80+ applications, the inverse correlation between compliance and success—these metrics describe 2017-2025 practice. The same mechanisms operated throughout the Bush and Obama administrations, hidden because no one examined emergency applications with the analytical precision applied here.

156. The Progressive Evolution Documented in Section IV.D Reflects Refinement, Not Creation:

Phase	Period	Pattern
Origin	December 2000	Dual-docket conversion in <i>Bush v. Gore</i>
Entrenchment	2001-2016	Mechanism operates, scope unexamined
Exposure	June 2017	Travel Ban—complete Rule 14 omission documented
Testing	2017-2024	Inadequate scattered § 2101(f) citations
Maximization	2025	Complete omission with explicit "interlocutory" label

The progression proves institutional memory and conscious coordination. The mechanism used to decide a presidential election in 2000 operates today to stay preliminary injunctions in immigration, nutrition assistance, and civil rights cases. The December 9, 2000 stay established that dual-docket conversion could circumvent § 2101(f)'s requirements under maximum public scrutiny. Once that precedent was set in the most consequential case imaginable—a presidential election—all subsequent applications faced lower stakes and attracted less scrutiny. The pattern proves this is

1 coordinated institutional architecture, not independent failures by multiple actors
2 across multiple administrations.

3 **157.** The pattern proves institutional memory and conscious coordination. The same
4 mechanism used to decide a presidential election in 2000 operates today to stay
5 preliminary injunctions in immigration, nutrition assistance, and civil rights cases.
6 Twenty-five years of practice cannot occur through independent failures by multiple
7 actors across multiple administrations. This is coordinated institutional architecture.

8 **D. The Cascading Implications: Constitutional Contamination Across Decades**

9 **158.** If the December 9, 2000 stay was ultra vires, then *Bush v. Gore's* merits decision
10 rested on unconstitutional procedural foundation. The Court reached the merits
11 through void jurisdiction. Under *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803),
12 federal courts possess only the jurisdiction Congress grants. When courts act beyond
13 statutory authorization, they act ultra vires—outside their constitutional power.
14 Outcomes produced through ultra vires jurisdiction are not merely procedurally
15 defective; they are constitutionally void.

16 **159. The implications cascade across American history:**

17 **(a) The Bush Presidency (2001-2009):** If *Bush v. Gore's* stay was ultra vires, then
18 George W. Bush's election was decided through unconstitutional judicial process.
19 Every executive action of the Bush administration—from Cabinet appointments to
20 treaty negotiations to military orders—operated under constitutional cloud.

21 **(b) September 11, 2001 Response:** The Authorization for Use of Military Force, Pub.
22 L. No. 107-40, 115 Stat. 224 (2001), was signed by a President whose constitutional

1 legitimacy traces to void judicial process. The invasion of Afghanistan, conducted
2 under that authorization, was ordered by that President.

3 **(c) The Iraq War:** The 2003 invasion of Iraq was ordered by a President whose
4 election was decided through ultra vires stay. Hundreds of thousands of deaths,
5 trillions of dollars expended, and two decades of regional destabilization trace to
6 decisions made by an administration whose constitutional foundation was judicially
7 contaminated.

8 **(d) Domestic Security Architecture:** The USA PATRIOT Act, Pub. L. No. 107-56,
9 115 Stat. 272 (2001), was signed by a President elected through ultra vires process.
10 The mass surveillance programs, the detention facility at Guantánamo Bay, the
11 "enhanced interrogation" policies—all were authorized by that administration.

12 **(e) Judicial Appointments:** President Bush appointed Chief Justice John Roberts and
13 Justice Samuel Alito to the Supreme Court. Both Justices participate in the shadow
14 docket decisions continuing the ultra vires practice that produced their appointing
15 President's election.

16 **160.** This Court cannot remedy these historical consequences. The Bush presidency
17 occurred. The wars were fought. The laws were enacted. The Justices were
18 confirmed. But this Court can—and must—establish the historical record that the
19 mechanism producing these outcomes was constitutionally void, and ensure that future
20 elections are not decided through the same ultra vires process.

E. 2025 Decisions: Ultra Vires Practice Producing Active Constitutional Harm

1. Noem v. Vasquez Perdomo, No. 25A169 (Sept. 8, 2025): Racial Profiling of American Citizens

161. On September 8, 2025, the Supreme Court granted emergency stay in *Noem v. Vasquez Perdomo*, No. 25A169, enabling Immigration and Customs Enforcement to conduct operations without restrictions imposed by the district court's preliminary injunction. The practical effect: ICE agents may stop, detain, and interrogate individuals based on racial and ethnic characteristics associated with immigration status—including American citizens whose appearance matches enforcement profiles.

162. The Solicitor General's application in *Vasquez Perdomo* followed the pattern documented throughout this Memorandum: no proper jurisdictional statement citing § 2101(f), no acknowledgment that the stayed order was a preliminary injunction excluded from § 2101(f)'s "final judgment or decree" authorization, reliance on precedent network tracing to vacated Travel Ban order. The application received the treatment documented in Exhibit N-5: acceptance despite Rule 14 violations, grant of relief despite lacking statutory foundation.

163. The constitutional harm is active and ongoing: American citizens of Hispanic, Latino, and mixed-race heritage are subject to stops, detentions, and interrogations based on appearance—enforcement actions authorized by a stay order the Supreme Court lacked statutory jurisdiction to issue. Every citizen detained under *Vasquez Perdomo* authority is harmed by ultra vires judicial action. The Fourth Amendment violations are real. The Equal Protection violations are real. The dignitary harms are

1 real. And the judicial authorization enabling these harms rests on the same
 2 unconstitutional foundation that decided *Bush v. Gore*.

3 **164.** If this Court declares that § 2101(f) excludes preliminary injunctions, that Rule
 4 14(e)(iv) mandates jurisdictional statements the Solicitor General systematically omits,
 5 and that the shadow docket precedent network rests on vacated foundation—then
 6 *Vasquez Perdomo* was ultra vires, its authorization of racial profiling was void, and
 7 every enforcement action taken under its authority violated the Constitution twice:
 8 once through the underlying Fourth and Fourteenth Amendment violations, and again
 9 through the ultra vires judicial process that purported to authorize them.

10 **2. Rollins v. Rhode Island, No. 25A539: Starvation as Policy During**
 11 **Constitutional Crisis**

12 **165.** During the government shutdown of 2025, the Supreme Court granted emergency
 13 relief in *Rollins v. Rhode Island*, No. 25A539, limiting SNAP (Supplemental Nutrition
 14 Assistance Program) payments that district courts had ordered maintained. The
 15 practical effect: American families dependent on federal nutrition assistance faced
 16 reduced benefits during a government shutdown caused by political disputes over
 17 spending priorities.

18 **166.** The *Rollins* application exhibited the same jurisdictional defects: no proper §
 19 2101(f) citation, no acknowledgment that district court orders requiring SNAP
 20 payments were interlocutory rather than final, reliance on shadow docket precedent
 21 network rather than statutory foundation. The pattern is identical because the
 22 mechanism is identical—the same mechanism operational since December 2000.

167. The constitutional harm compounds through coordination with domestic terrorism: While American families faced food insecurity due to SNAP limitations authorized by ultra vires stay order, the political actors responsible for the government shutdown—President Trump and Speaker Johnson—engaged in conduct meeting the statutory definition of domestic terrorism. 18 U.S.C. § 2331(5) defines "domestic terrorism" as activities that:

"(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (C) occur primarily within the territorial jurisdiction of the United States."

168. Deliberately causing government shutdown to coerce policy concessions, while millions of Americans face food insecurity, healthcare disruption, and economic harm, satisfies these elements. The shutdown was intended to "influence the policy of a government by intimidation or coercion." The resulting harms—including nutrition assistance reductions—were "dangerous to human life." The conduct occurred "primarily within the territorial jurisdiction of the United States."

169. The Supreme Court's role becomes constitutionally intolerable: When the Court issues ultra vires stay orders limiting nutrition assistance during a shutdown orchestrated to coerce policy outcomes, the Court becomes instrumentality of the coercion. The coordination is structural:

Branch	Action	Effect
Executive	Creates crisis through shutdown	Coercive leverage established
Executive	Solicitor General files emergency application	Seeks judicial facilitation

Judicial	Grants ultra vires stay	Limits court-ordered relief
Result	American families face food insecurity	Coercion succeeds through judicial participation

1 **170.** The Court's participation in this sequence—through jurisdictionally unauthorized
2 orders—implicates the judiciary in conduct meeting the statutory definition of
3 domestic terrorism. This is not hyperbole. This is statutory analysis. If Trump and
4 Johnson's shutdown conduct satisfies § 2331(5)'s elements—and the statutory text
5 supports that conclusion—then the Supreme Court's ultra vires facilitation of that
6 conduct through *Rollins* makes the Court participant in domestic terrorism as
7 statutorily defined.

8 **F. The Enterprise Integration: Rico Implications Of Twenty-five Years Of**
9 **Coordinated Practice**

10 **171.** The pattern documented in this Memorandum—spanning from *Bush v. Gore*
11 through *Vasquez Perdomo* and *Rollins*—constitutes enterprise coordination within the
12 meaning of 18 U.S.C. § 1962. The twenty-five-year duration, the consistency of
13 mechanism across administrations, and the coordination between Executive branch
14 (filing defective applications) and Judicial branch (accepting violations and granting
15 relief) establish enterprise operation transcending any individual administration or
16 Court composition.

17 **172.** The predicate acts include:

1 **(a) Wire Fraud (18 U.S.C. § 1343):** Filing applications containing material omissions
2 (jurisdictional statements) and material misrepresentations (citing vacated precedent as
3 binding) transmitted through electronic filing systems across twenty-five years.

4 **(b) Obstruction of Justice (18 U.S.C. § 1503):** Coordinated suspension of Rule 14.5
5 enforcement to prevent rejection of defective applications, enabling ultra vires
6 jurisdiction that obstructs legitimate judicial process—pattern operational since at least
7 2000.

8 **(c) Conspiracy Against Rights (18 U.S.C. § 241):** Coordinated deprivation of equal
9 protection through disparate rule enforcement (0% government compliance accepted,
10 71% private party compliance required), affecting presidential elections, immigration
11 enforcement, and nutrition assistance.

12 **(d) Domestic Terrorism Facilitation (18 U.S.C. § 2331):** Judicial participation in
13 coercive government shutdowns through ultra vires stays limiting court-ordered relief
14 during manufactured crises.

15 **173.** The shadow docket enterprise operates through the same coordination
16 mechanisms as the broader enterprise documented in Plaintiff's Amended Complaint.
17 The statistical impossibility of independent failures—0% compliance across decades of
18 Solicitor General applications, zero Rule 14.5 enforcement across hundreds of
19 applications, identical dual-docket mechanisms from 2000 to 2025—proves
20 coordination rather than coincidence.

**XI. REQUESTED RELIEF: DECLARATORY JUDGMENT, HISTORICAL
RECKONING, AND ENTERPRISE DISRUPTION**

A. Declaratory Judgment Within District Court Authority

174. Marbury Principle Applied: This Court possesses authority to declare what federal statutes mean and whether governmental practice complies with statutory text. The requested declaratory relief does not require this Court to "overrule" Supreme Court or "enjoin" Supreme Court Justices—it requires declaring what Congress enacted in § 2101(f) and finding that systematic practice violates that enactment. Chief Justice Marshall established in 1803 that courts must say "what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). This Court exercises that same authority when declaring that § 2101(f) means what its text provides and that one hundred years of institutional defiance cannot transform congressional "no" into judicial "yes."

175. District Court Authority Over Statutory Interpretation Does Not Require Superiority: This Court's authority to declare Supreme Court practice ultra vires rests not on hierarchical superiority but on separation of powers principles every federal court must apply. When any court—including the Supreme Court—acts beyond statutory authorization, that action is ultra vires regardless of which court identifies the violation. *Marbury* established that courts must identify statutory authority as the foundation for jurisdiction. *Marbury*, 5 U.S. (1 Cranch) at 177. When statutory authority is absent, the jurisdictional defect exists as objective legal fact whether or not any court has previously declared it. This Court does not "overrule" the Supreme Court—it declares what Congress enacted in § 2101(f), finds that systematic practice

violates that enactment, and provides declaratory relief within this Court's Article III jurisdiction under 28 U.S.C. § 2201. The Supreme Court remains free to disagree with this Court's statutory interpretation in subsequent cases involving different parties, but this Court's authority to interpret federal statutes is neither improper nor unprecedented. *See Mitchum v. Foster*, 407 U.S. 225, 234 (1972) (district courts interpret federal statutes independently, even when interpretation affects Supreme Court practice). Every federal court—from district courts to the Supreme Court—possesses equal authority to "say what the law is" when interpreting congressional enactments. *Marbury*, 5 U.S. (1 Cranch) at 177. This includes authority to declare that systematic practice exceeds statutory authorization, regardless of which court engages in that practice.

176. Scope of Declaratory Relief: Plaintiff does not seek to overturn *Bush v. Gore*, invalidate the Bush presidency, reverse the Iraq War, or unwind twenty-five years of consequential policy. Such relief would be impossible and inappropriate. The past cannot be undone. But this Court can establish the historical record that those decisions were produced through constitutionally unauthorized process, and this Court can ensure that future constitutional crises are not decided through the same ultra vires mechanism.

B. Specific Declarations Requested

177. This Court should declare that:

(A) Statutory Limitation on Stay Authority: 28 U.S.C. § 2101(f) limits Supreme Court stay authority to "final judgment or decree" and this limitation excludes

1 preliminary injunctions, temporary restraining orders, and all other interlocutory
2 orders—including recount orders, immigration enforcement orders, and nutrition
3 assistance orders. Congress deliberately excluded "interlocutory" from § 2101(f) in
4 1925 after the Court claimed such power in *Magnum Import Co. v. Coty*, 262 U.S. 159
5 (1923), and Congress maintained this limitation in 1988 while using broader
6 "interlocutory or final" language elsewhere.

7 **(B) Statutory Foundation Requirement:** Federal court jurisdiction must be founded
8 on statutory grants from Congress, not precedent networks divorced from statutory
9 foundation. The shadow docket precedent network—tracing from 2025 applications
10 through Travel Ban orders to mechanisms operational in *Bush v. Gore*—cannot
11 establish jurisdiction Congress did not grant. Precedent interpreting statutes cannot
12 create jurisdiction statutes do not provide.

13 **(C) Rule 14 Compliance Mandatory:** Supreme Court Rule 14(e)(iv) mandates
14 jurisdictional statements citing "the statutory provision believed to confer on this Court
15 jurisdiction to review," and this requirement applies to all petitions and applications
16 regardless of emergency characterization. Rule 14(5) mandates Clerk rejection of non-
17 compliant petitions ("the Clerk **will return** it with a letter indicating the deficiency"),
18 and this ministerial duty cannot be suspended for government applicants.

19 **(D) Dual-Docket Conversion Cannot Create Jurisdiction:** The mechanism of
20 "treating" an emergency application "as a petition for writ of certiorari"—documented
21 in *Bush v. Gore* (2000) and continuing through present practice—cannot create
22 jurisdiction Congress did not grant through § 2101(f). Administrative docketing
23 procedures cannot expand statutory jurisdiction. If the underlying application lacks

1 statutory foundation for stay authority, converting it to a cert petition does not cure the
2 jurisdictional defect.

3 **(E) Equal Protection in Rule Enforcement:** Coordinated suspension of mandatory
4 procedural rules for government applicants while enforcing same rules against private
5 parties violates equal protection principles. The statistical disparity documented in
6 Exhibit N-5—0% Solicitor General Rule 14 compliance achieving ~85% grant rates
7 versus 71% private party compliance achieving ~24% grant rates—proves disparate
8 enforcement constituting two-tier justice system.

9 **(F) Vacated Precedent Citation Prohibited:** Citing vacated precedent after judicial
10 destruction as if it possesses precedential value violates Model Rule 3.3 duty of candor
11 to tribunals and constitutes fraud on court. The October 10, 2017 vacatur of the June
12 26, 2017 Travel Ban order destroyed all precedential value under *United States v.*
13 *Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). Continued citation of that order—
14 documented across 80+ applications through 2025—constitutes systematic fraud.

15 **(G) All Writs Act Limitation:** 28 U.S.C. § 1651 (All Writs Act) cannot authorize
16 stays that § 2101(f) prohibits. The specific statute controls over the general. *RadLAX*
17 *Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). Congress
18 enacted § 2101(f) in direct response to the Court's 1923 claim of interlocutory stay
19 power under the All Writs Act predecessor; invoking § 1651 to circumvent § 2101(f)
20 resurrects the argument Congress rejected.

21 **(H) Pattern Evidence Admissibility:** Shadow docket violations establish pattern
22 admissible under FRE 404(b)(2) proving defendants' coordinated *modus operandi* of
23 exceeding statutory authority through procedural manipulation when politically

1 convenient. The pattern spans twenty-five years, three presidential administrations,
2 and 80+ documented applications with consistent methodology.

3 **C. The Historical Reckoning These Declarations Would Establish**

4 **178. Documentary Record for Future Generations:** These declarations would
5 establish for the historical record that the Supreme Court's emergency docket has
6 operated ultra vires for at least twenty-five documented years. The December 9, 2000
7 stay that decided a presidential election employed the same "treated as a petition for
8 writ of certiorari" mechanism documented in 2022 docket records. The 2017 Travel
9 Ban stays that established modern shadow docket statistical patterns employed the
10 same Rule 14 violations and vacated precedent citations. The 2025 stays enabling
11 racial profiling of American citizens (*Vasquez Perdomo*) and nutrition assistance
12 reduction during government shutdown (*Rollins*) employed the same ultra vires
13 architecture.

14 **179. The Unanswerable Question Acknowledged:** The world can never know who
15 legitimately won the 2000 presidential election because the ultra vires stay halted the
16 recount that would have answered that question. The Court stayed an interlocutory
17 recount order without § 2101(f) authority, then held the recount couldn't be completed
18 in time because they stayed it, then reversed because the deadline couldn't be met. The
19 circular logic produced an outcome; whether that outcome reflected Florida voters'
20 intent remains unknowable. This Court cannot remedy that historical wrong. But this
21 Court can ensure it is documented and never repeated.

1 **180. Cascading Historical Implications Acknowledged:** If the December 9, 2000
 2 stay was ultra vires, then consequential policies flowing from that presidency—the
 3 Authorization for Use of Military Force, the invasions of Afghanistan and Iraq, the
 4 PATRIOT Act, Guantánamo Bay, mass surveillance—were authorized by an
 5 administration whose constitutional legitimacy traces to void judicial process. This
 6 Court need not and cannot adjudicate those implications. But declaratory relief would
 7 establish the factual and legal foundation for future scholars, courts, and citizens to
 8 understand what occurred.

9 **181. Prevention of Future Ultra Vires Practice:** Most importantly, these declarations
 10 would prevent future elections and constitutional crises from being decided through the
 11 same mechanism. If this Court establishes that § 2101(f) means what it says, that Rule
 12 14 compliance is mandatory, that dual-docket conversion cannot create jurisdiction,
 13 and that the All Writs Act cannot override specific congressional limitations, then the
 14 twenty-five-year pattern ends. The separation of powers is restored. The
 15 Constitution's limits on judicial power become enforceable for the first time since
 16 December 9, 2000.

17 **D. Injunctive Relief Against Defendants Within Court's Jurisdiction**

18 **182. Scope of Injunctive Authority:** While this Court cannot enjoin Supreme Court
 19 Justices directly, this Court possesses full authority to enjoin federal defendants whose
 20 conduct this Court properly reviews. The separation of powers permits district courts
 21 to enjoin executive branch officials from unconstitutional conduct, including conduct
 22 that facilitates ultra vires judicial practice.

1 **183. Injunctive Relief Requested:** This Court should enjoin:

2 **(A) Solicitor General Compliance with Court Rules:** Solicitor General and all
3 attorneys within the Department of Justice from filing emergency applications with the
4 Supreme Court that violate Rule 14(e)(iv) by omitting jurisdictional statements citing
5 statutory provisions. If the Solicitor General believes § 2101(f) authorizes a stay, the
6 application must say so clearly. If the Solicitor General believes the All Writs Act
7 provides authority, the application must explain how the general statute overcomes the
8 specific limitation—and must acknowledge *Pennsylvania Bureau's* holding that
9 specific statutes control.

10 **(B) Protection of Plaintiff's Documentation Efforts:** Federal defendants from
11 targeting Plaintiff for documenting constitutional violations through evidence
12 destruction, network interference, AI discrimination, or any other means. Plaintiff's
13 analytical work exposing shadow docket violations constitutes protected First
14 Amendment activity and petitioning for redress of grievances. Retaliation for that
15 work violates clearly established constitutional rights.

16 **(C) Prohibition on Coordination to Suppress Constitutional Advocacy:** Federal
17 defendants from coordinating with private defendants—including AI companies,
18 telecommunications providers, or media entities—to suppress Plaintiff's constitutional
19 advocacy or intellectual property rights. The pattern of targeting documented in
20 Plaintiff's Amended Complaint, occurring contemporaneously with Plaintiff's
21 documentation of shadow docket violations, supports inference of coordinated
22 retaliation.

1 **(D) Prohibition on National Security Pretexts:** Federal defendants from invoking
 2 national security authorities to conceal constitutional violations or obstruct Plaintiff's
 3 litigation documenting ultra vires conduct. National security cannot justify concealing
 4 violation of statutory jurisdiction limits. If anything, the involvement of national
 5 security cases in shadow docket abuse (Travel Ban, immigration enforcement, foreign
 6 policy) makes transparency more essential, not less.

7 **E. Rico And Enterprise Disruption**

8 **184. Enterprise Liability:** The pattern documented in this Memorandum—spanning
 9 from *Magnum Import* (1923) through *Bush v. Gore* (2000) through *Vasquez Perdomo*
 10 (2025)—constitutes enterprise coordination within the meaning of 18 U.S.C. § 1962.
 11 The coordination between Executive branch (filing defective applications) and Judicial
 12 branch (accepting violations and granting relief) to exceed statutory jurisdiction
 13 represents enterprise operation transcending any individual administration or Court
 14 composition.

15 **185. Pattern of Racketeering Activity:** The predicate acts include wire fraud (filing
 16 applications with material omissions transmitted electronically), obstruction of justice
 17 (suspending Rule 14.5 enforcement to enable ultra vires jurisdiction), and conspiracy
 18 against rights (disparate rule enforcement depriving private parties of equal protection).
 19 The pattern spans 100+ years of claimed authority, 25 years of documented exercise,
 20 and affects matters ranging from presidential elections to immigration enforcement to
 21 nutrition assistance.

1 **186. Requested Enterprise Relief:** This Court should declare that the shadow docket
 2 enterprise constitutes pattern of racketeering activity, that defendants' participation in
 3 that enterprise subjects them to RICO liability, and that injunctive relief disrupting the
 4 enterprise is appropriate under 18 U.S.C. § 1964.

5 **F. Integration With Plaintiff's Broader Claims**

6 **187. Shadow Docket Violations as Pattern Evidence:** The ultra vires practice
 7 documented in this Memorandum establishes pattern admissible under FRE 404(b)(2)
 8 to prove defendants' conduct in Plaintiff's broader claims. When defendants target
 9 Plaintiff for documenting constitutional violations—through AI discrimination,
 10 network interference, evidence destruction, and professional retaliation—the shadow
 11 docket pattern proves *modus operandi*: defendants systematically exceed authority
 12 when politically convenient and systematically suppress those who document the
 13 violations.

14 **188. Constitutional Structure Claims:** Plaintiff's Amended Complaint alleges
 15 coordinated ultra vires conduct across all three branches. The shadow docket analysis
 16 proves judicial branch participation in that coordination. Combined with executive
 17 branch targeting (documented in Exhibits X-1 through X-5) and legislative branch
 18 failures (documented in METR regulatory capture analysis), the shadow docket
 19 evidence completes the picture of enterprise operation affecting constitutional structure
 20 itself.

21 **189. Standing Implications:** The shadow docket's violation of § 2101(f)—an exercise
 22 of Congress's Article III, Section 2 authority to regulate Supreme Court jurisdiction—

1 supports Plaintiff's universal standing theory. When government exceeds enumerated
 2 constitutional limits, every citizen is harmed by the structural violation. The shadow
 3 docket represents exactly this type of structural harm: the Supreme Court exceeding
 4 jurisdiction Congress granted, affecting presidential elections, immigration policy, and
 5 nutrition assistance in ways that harm all Americans subject to unconstitutional judicial
 6 power.

7 **XII. CONCLUSION: RESTORATION OF CONSTITUTIONAL ORDER**
 8 **REQUIRES DECLARING STATUTORY LIMITS MATTER**

9 **190. The Cascade of Violations Forms Unified Pattern:** As documented throughout
 10 this Memorandum—from Article III separation of powers (Section II) through
 11 Supreme Court Rule 14 violations (Section IV) to Model Rule 3.3 ethics violations
 12 (Section VII)—the violations form a unified cascade proving coordinated enterprise
 13 operation. Each level enables the next: constitutional violation (expanding jurisdiction
 14 beyond statute) requires statutory violation (staying orders § 2101(f) excludes) which
 15 requires procedural violation (suspending Rule 14 requirements) which requires equal
 16 protection violation (enforcing rules against some, waiving for others) which requires
 17 ethics violation (concealing adverse authority through coordinated omission).

18 **191. Systemic Non-Compliance Proves Coordination, Not Error:** When 80+
 19 violations occur across eight years without consequence, this proves the pattern is
 20 coordinated institutional practice rather than accumulated independent errors. The
 21 current state demonstrates systematic departure from mandatory requirements: (1)
 22 government knows Rule 14.1(e)(iv) requires jurisdictional statements citing statutory

1 provisions—files applications without them; (2) government knows § 2101(f) limits
2 stays to "final judgment or decree"—systematically seeks preliminary injunction stays;
3 (3) government knows the Travel Ban order was vacated destroying precedential value
4 under *Munsingwear*—continues citing it; (4) Clerk knows Rule 14.5 mandates
5 rejection of non-compliant petitions ("the Clerk **will return** it")—accepts all
6 applications without deficiency letters; (5) Court knows § 2101(f)'s statutory text—
7 grants stays exceeding that authorization; (6) zero enforcement produces zero
8 deterrence, transforming mandatory rules into discretionary suggestions. This is
9 governance through institutional practice rather than statutory authorization—precisely
10 the condition *Marbury* warned against when it held that congressional grants of
11 jurisdiction become "form without substance" if courts can expand beyond their terms.
12 *Marbury*, 5 U.S. (1 Cranch) at 174.

13 **192. Declaratory Relief Restores Meaning to Statutory Text While Preventing**

14 **Future Constitutional Crises:** Chief Justice Marshall warned in *Marbury* that if courts
15 can expand jurisdiction beyond constitutional or statutory grants, those grants become
16 "form without substance." *Marbury*, 5 U.S. (1 Cranch) at 174. For 222 years, this
17 principle governed federal court practice: courts identify statutory authority as
18 foundation for jurisdiction. The shadow docket practice documented in this
19 Memorandum inverts this principle: applications cite precedent, precedent cites earlier
20 precedent, precedent cites vacated orders, and the statutory foundation required by
21 Article III disappears beneath layers of circular citation divorced from congressional
22 authorization. The declaratory relief sought here would restore the original
23 constitutional principle: jurisdiction requires statutory authorization from Congress, not

1 judicial precedent networks built on jurisdictionally defective applications and
2 subsequently vacated orders. This relief does not conflict with Supreme Court
3 authority—it enforces the statutory framework Congress enacted pursuant to Article
4 III, Section 2's grant of regulatory authority over Supreme Court appellate jurisdiction.
5 *See Ex parte McCardle*, 74 U.S. 506, 514 (1869) (Congress's Article III, § 2 power to
6 regulate Supreme Court jurisdiction is "not less clear" than constitutional text itself).

7 **193. Plaintiff's Unique Position Creates Opportunity for Systemic Reform:**

8 Plaintiff's analytical capabilities—enabling documentation of shadow docket violations
9 with mathematical precision, technical sophistication, and constitutional expertise—
10 create opportunity for systemic reform beyond Plaintiff's individual case. The
11 targeting Plaintiff experiences stems from established pattern: defendants
12 systematically exceed authority when politically convenient, proven through 80+
13 shadow docket violations plus statistical evidence (88.2% vs. 31% success rates), and
14 defendants target those who document these violations with unique analytical
15 capability. Granting relief protects not only Plaintiff but establishes precedent that
16 statutory limitations matter despite accumulated precedent claiming broader
17 authority—precedent this Court can establish through declaratory judgment authority
18 every district court possesses under *Marbury*.

19 **194. The rule of law requires transparent identification of governmental**

20 **authority.** When courts systematically avoid that identification—through procedural
21 architectures that omit jurisdictional statements, through disparate acceptance of rule
22 violations based on party identity, through citation of judicially vacated precedent as
23 binding authority—the statutory framework Congress enacted loses operative force.

1 The declaratory relief sought here would restore the foundational principle that has
2 governed federal jurisdiction since 1789: courts exercise only the jurisdiction Congress
3 grants, and that jurisdiction must be identified through statutory citation rather than
4 circular precedent networks. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375,
5 377 (1994) ("Federal courts are courts of limited jurisdiction... possessing only that
6 power authorized by Constitution and statute."). This declaratory relief enforces what
7 Congress enacted pursuant to its Article III, Section 2 authority and what separation of
8 powers requires—namely, that the Supreme Court's appellate jurisdiction operates
9 within statutory limits rather than beyond them.

10
11
12 **Respectfully submitted,**

13
14
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21 **Dated:** January 2026

1 **XIII. EXHIBIT REFERENCE: COORDINATION SCHEMATIC**

2 **See Exhibit N-6** for comprehensive schematic analysis illustrating the seven-
3 mechanism coordination system documented through official Supreme Court docket
4 records (Ex. N-5). The schematic demonstrates:

5 **195. Documented Infrastructure:** "Linked with: 22A444" notation proves dual-
6 docket conversion system exists and is tracked in official Court records

7 **196. Selective Deployment:** Comparison proves system used when statutory authority
8 is lacking (preliminary injunction stays), avoided when authority exists (mandate stays)

9 **197. Conscious Coordination:** "Treated as" language proves Court recognizes these
10 are different procedures requiring explicit transformation

11 **198. Coordinated Pattern:** 80+ applications over 8 years with statistically significant
12 outcome disparity proves non-random, coordinated deployment

13 **199. Discoverable Evidence:** Clerk records exist documenting complete scope,
14 frequency, authorization procedures, and correlation patterns

15 **200. FRE 404(b) Admissibility:** Proves *modus operandi* applicable to Plaintiff's case
16 through identical coordination mechanisms

17 **201. Enterprise Element:** Coordination between executive branch (Solicitor General
18 files ambiguously) and judicial branch (Court creates dual dockets) proves RICO
19 enterprise operation