

THE SHADOW DOCKET TAKES CENTER STAGE: EMERGENCY APPLICATIONS & COURT ACTION

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TALKING POINTS

- Injunctions are typically issued in cases where irreparable harm will occur.
- Stays issued by appellate courts may allow challenged actions to go into effect while appeals are pending.
- Lawyers in the second Trump Administration have increasingly turned to SCOTUS for emergency relief.
- The rise in Shadow Docket rulings is problematic for many reasons.



INTRODUCTION

Applications to the Supreme Court for emergency relief have dramatically increased during the second Trump administration. As of June 2026, [38 applications for emergency relief](#) had been filed with the Supreme Court in cases related to the second Trump administration. This far exceeds the [17 applications filed](#) during the entire Biden presidency. The significant increase likely reflects the Administration's "flood the zone" efforts to reverse existing legal protections and implement new policies through Executive Orders and other policy initiatives executed outside recognized lawmaking processes. This brief refresher explains how emergency relief is different from other forms of relief, and how courts analyze requests for emergency intervention.

PROCEDURAL BACKGROUND: FEDERAL DISTRICT COURTS

Parties typically request emergency relief when there is a risk of irreparable harm absent judicial intervention. Cases involving governmental policies may seek, for example, to prevent deportation, execution of someone on death row, termination of a high-level government official, closure of a government agency, or termination of government-funded research grants.

These proceedings typically start with a request either for a temporary restraining order or a preliminary injunction. Courts often describe the issuance of

injunctive relief as an extra-ordinary remedy because it requires a court to rule before the parties have had an opportunity to present evidence and for issues to be fully vetted through the discovery process. Thus, courts need to be assured that intervention is warranted.

A temporary restraining order generally will be based only on the papers submitted (that is, generally no hearing takes place before the judge) and is granted for a limited period of time until additional briefing on an injunction request can occur. Preliminary injunctions may be issued after a limited hearing in which some evidence, i.e., witnesses and documentary materials, is presented, but less evidence than what would be presented at trial. Consequently, as a matter of fairness, courts often conclude there should be a strong justification before judicial intervention.

To obtain injunctive relief, the applicant must meet a four-part test:

- First, they must **establish a likelihood of success on the merits**, which would include an analysis of any constitutional violations alleged by the person seeking injunctive relief. This involves an abbreviated inquiry into the merits of the claim but does not result in a final ruling on the merits.
- Second, they must **show a likelihood of irreparable harm**. Typically, this involves a showing that the party seeking relief will incur more than just monetary harm -- in other words, that the harm that would result absent judicial intervention is something that cannot be undone, at least not without significant difficulty. [Commentators observe](#) that the current Court has shifted the analysis of irreparable harm in these cases by concluding that the government necessarily would suffer irreparable harm if injunctive relief would cause it to face delay in implementing a desired policy.
- Third, the court will examine whether **the balance of the equities** lies with the applicant. This means that a court will want to know whether the person (or entity) seeking the injunction will suffer greater harm than the governmental entity that is opposing it.
- Finally, the applicant must show that granting **injunctive relief is in the public interest**. Although courts traditionally have employed a presumption against disturbing the status quo, this factor has not figured prominently as challenges to this Administration's policies move through the appellate process. Significantly, in 2025, the Court modified longstanding practice by [repudiating so-called universal nationwide injunctions](#) - orders that would bar enforcement of a federal law or policy anywhere in the country.

A preliminary injunction is not a ruling on the merits; the litigation typically proceeds to adjudicate the validity of the claims.

THE ROLE OF INTERMEDIATE APPELLATE COURTS

Even if a trial court judge grants a preliminary injunction, the parties have a right to appeal and seek a “stay” of the trial court’s ruling. If a stay is issued by the appellate court, the challenged action can then go into effect while the appeal is pending.

So, for example, a stay of a preliminary injunction that halted the implementation of a policy would allow the policy to move forward while litigation on the merits of the challenge proceeds. That means that a stay of an order prohibiting the deportation of an immigrant might allow an immigrant to be removed from the United States or to be transferred to a detention facility in another location or another country while the legality of the detention is litigated.

THE SHADOW DOCKET

In the second Trump administration, lawyers for the government have increasingly turned to the Supreme Court for relief on an emergency basis when an appeals court issues a stay or injunction adverse to the Administration.

This “emergency” docket also has been referred to as the [Shadow Docket](#) because cases come before the Court without full briefing and oral argument. The Court typically does not issue opinions to explain its ruling, as it does when there are full briefing and oral argument on the merits. This term, for the first time, the number of decisions issued on the Shadow Docket—typically without any indication of the Justices’ votes and without reasoning or a written opinion—[exceeded the number issued](#) on the traditional merits docket.

WHY THIS MATTERS

The Supreme Court’s overuse of these emergency orders undermines confidence in the courts because the rulings are issued outside the typical merits briefing process. The decisions typically provide no real guidance to the trial and intermediate appellate courts and frequently overturn well-written, detailed, and fully reasoned opinions.

The rise in these rulings is problematic for numerous reasons. When the Supreme Court does not explain its reasoning in a full opinion, the judges and lawyers who rely on those opinions for guidance are left without a full understanding of the rationale and thus face uncertainty about what legal standards prevail as they litigate subsequent cases. Supreme Court opinions are supposed to provide guidance, but these Shadow Docket orders do not. As emergency relief, these orders are supposed to serve as temporary relief in extraordinary circumstances, but in practice, may be the final word in important disputes. Shadow Docket

emergency rulings have overruled lower court decisions blocking administration policies in cases with [tremendous implications](#), such as the ability to conduct immigration stops based on apparent ethnicity, to deport immigrants to countries with which they have no connection, to strip legal immigration status from thousands of non-U.S. citizens living legally in the country, and to fire thousands of civil servants.

AT A MINIMUM, DECISIONS ABOUT POLICIES OF GREAT MAGNITUDE DESERVE FULL VETTING AND EXPLANATION BY OUR COUNTRY'S HIGHEST COURT.

In many cases, the Supreme Court has adopted a view of irreparable harm that accepts the Government's argument that when the administration's policies are blocked, the government suffers irreparable harm. This ignores the impact on the individual or entity that is being harmed and gives extra weight to the interests articulated by the administration.

The Supreme Court as an independent branch of government traditionally has been seen as a check against the arbitrary use of Executive power. If the Court is unwilling to stop the President's ongoing efforts to amass unchecked power and if it fails to fully explain its reasoning notwithstanding its ever-increasing use of its emergency powers to support the administration, then it is abandoning its constitutional role.

This ***MTM Insights*** was prepared by LDAD volunteers **Professor Julie Goldscheid**, Professor Emerita at CUNY School of Law and an adjunct Professor at New York University School of Law, and **Justice Rosalyn Richter** (ret), who served as an associate justice of the New York Appellate Division of the Supreme Court.

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