Federal Policy Judicial Relief and Expedited Review Act of 2026

Discussion draft · Version 2.7

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Federal Policy Judicial Relief and Expedited Review Act of 2026 — Discussion Draft v2.5

Cover Memorandum

Prepared by: Collin B. George, CISSP, National Security Advisor, Sanctir LLC Status: Discussion draft v2.5 for congressional staff review, revised after four adversarial review rounds and a three-way citation and legality audit with a sign-off round on October 11–12, 2026. Supersedes the Federal Policy Interim Validity and Judicial Relief Act of 2026 (v1). Not legal advice. Bracketed text marks policy choices left open for the sponsoring office.

Bottom line

This bill fixes one problem. Today a single federal judge can shut down a national policy for the whole country, and keep it shut down for a year, before any court decides whether the policy is legal. Under this bill, an order that reaches people who are not parties to the case must come from three judges chosen at random. Whether you cheered or hated the last order like that, the next one may go the other way. An order granting, denying, modifying or dissolving that relief is appealable as of right, filed within 14 days and decided by the court of appeals within 45. An appeal from final judgment is decided within 90. The Supreme Court keeps the certiorari jurisdiction it already has, on its own timetable. Relief for the parties themselves is not affected. A plaintiff still gets relief for himself from one judge. Habeas corpus is untouched. The bill takes effect January 20, 2029, so neither party knows which President it will constrain first.

Version 1’s presumption of validity, automatic stay, mandatory bonds, and Attorney General certification are gone. Each invited a constitutional challenge and added little.

The problem

Nationwide court orders against federal policy used to be rare. They are now routine. The counts below come from the Harvard Law Review and the Congressional Research Service.

ADMINISTRATION	NATIONWIDE INJUNCTIONS	SOURCE
G.W. Bush (8 yrs)	6	Harvard Law Review (2024)
Obama (8 yrs)	12	Harvard Law Review (2024)
Trump, first term	64 (HLR) / 86 (CRS)	HLR; CRS
Biden	14 in 3 yrs (HLR) / 28 (CRS)	HLR; CRS
Trump, second term	50 through June 27, 2026	CRS R49022

Both parties do this. In the Harvard Law Review data, 92 percent of the nationwide injunctions against the first Trump administration came from judges appointed by Democrats. Every one against the Biden administration came from a judge appointed by a Republican. A fix that works for only one side will be read as partisan, and it will fail.

The Supreme Court narrowed universal injunctions in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). It did not close the door. The Court left three questions open and did not address a fourth:

1. Universal stays under 5 U.S.C. § 705 and vacatur under § 706.
2. Class relief granted before or shortly after certification.
3. "Complete relief" to State plaintiffs.
4. How long interim relief may last. CASA set no limit.

The numbers show how little changed. CRS identified 34 cases in which nationwide injunctions had been issued by the day *CASA* came down. On June 27, 2026, 14 of those injunctions were still in force, and two more cases had produced certified nationwide classes with classwide relief (CRS R49022). CRS counts orders styled as injunctions. The § 705 stay in *Make the Road* is not in that count, so the real figure is higher.

Make the Road New York v. Noem, now captioned *v. Mullin*, shows what this costs. One district judge stayed the January 2025 expedited removal designation on August 29, 2025. The D.C. Circuit denied a stay pending appeal on November 22, 2025, except as to credible-fear procedures, and vacated the district court's order on June 23, 2026. A national policy sat largely idle for about ten months on a preliminary record.

The opposite risk

The risk runs the other way too. When an unlawful policy stays in force, the damage to individuals is often permanent.

- Kilmar Abrego Garcia was removed in violation of a withholding order.
- In *D.V.D. v. DHS*, removals to South Sudan occurred while a court order was in place.
- The IEEPA tariffs were collected for more than a year before Learning Resources, Inc. v. Trump, 607 U.S. ___ (2026), held them unlawful.
- The birthright citizenship order was held unconstitutional in *Trump v. Barbara* (June 30, 2026).

That is why this bill does not presume any policy valid. Its two core changes are who may suspend a policy for everyone, and how fast that decision is reviewed. The provisions on security, national-security information, random assignment, and judicial resources exist to make those two work.

What v2 solves and what it does not

SOLVES	DOES NOT SOLVE
One judge suspending a national policy for everyone	Relief limited to the named parties, which stays with a single judge
Filing in a chosen division to draw a chosen judge	Habeas, detention, and individual removal cases, which keep their existing jurisdiction and venue rules
Universal § 705 stays and single-judge § 706 vacatur	Policies that are actually unlawful, which will still be set aside, by a panel and sooner
Months of uncertainty before appellate review	Policy made by executive order without statutory backing, which only legislation fixes
Interim orders that stand for a year with no schedule for a merits decision	Anything before January 20, 2029

Constitutional basis

Congress controls the jurisdiction, remedies, and procedure of the lower federal courts. Article III, § 1 and Article I, § 8, cls. 9 and 18 say so, and the Supreme Court has said so since 1850. The bill rests on these authorities.

AUTHORITY	HOLDING RELIED ON	V2 PROVISION
Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850)	Congress may define and limit lower-court jurisdiction	Entire Act
Lauf v. E.G. Shinner & Co., 303 U.S. 323 (1938)	Upheld the Norris-LaGuardia Act's limits on injunctions	Secs. 4, 6
Lockerty v. Phillips, 319 U.S. 182 (1943)	Congress may withdraw district courts' power to enjoin a federal program when another forum remains	Secs. 4, 6
28 U.S.C. § 2284; Voting Rights Act; BCRA § 403	Three-judge courts and expedited review are long-standing practice	Secs. 4, 7
Trump v. CASA, Inc., 606 U.S. 831 (2025)	Equitable relief limited to what was traditionally available	Secs. 4, 6
Garland v. Aleman Gonzalez, 596 U.S. 543 (2022)	Congress may restrict classwide injunctions	Secs. 6, 13

AUTHORITY	HOLDING RELIED ON	V2 PROVISION
Nken v. Holder, 556 U.S. 418 (2009)	Harm to the government's operation of law is harm to the public interest	Sec. 5

The bill decides which court rules, how fast, and how far the order reaches. It does not tell any court how to rule. That puts it on the procedural side of *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872), and *Patchak v. Zinke*, 583 U.S. 244 (2018) (plurality opinion), though a court will judge the Act by what its provisions do, not by its purpose clause. It leaves habeas corpus and individual relief alone, so it avoids the Suspension Clause and *Webster v. Doe*, 486 U.S. 592 (1988), problems that v1 raised.

Why this design and not the others

Five other answers are on the table, from both parties. Each solves part of the problem. This bill takes the working part of each and leaves the part that fails.

PROPOSAL	WHAT IT DOES	WHERE IT FALLS SHORT	WHAT THIS BILL TAKES FROM IT
Do nothing after *CASA*	Relies on the Supreme Court's June 2025 ruling	*CASA* left § 705 stays, § 706 vacatur, class relief, and State relief open. CRS counted 16 more nationwide-injunction cases in the year after it, 50 in all, and two certified nationwide classes. The ruling reduced the orders; it did not end them, and it left the other routes to broad relief open	The holding itself: relief limited to what equity allowed. Sec. 5
H.R. 1526, No Rogue Rulings Act (passed the House 219–213, April 2025)	Bars injunctions beyond the parties; sends suits by two or more States from different circuits to a random three-judge panel; lets the loser appeal to the circuit or the Supreme Court, at its choice	Does not expressly reach APA § 705 stays or § 706 vacatur, so their treatment is left to the courts; the panel exists only for multistate suits; the loser picks the appellate court; no deadline anywhere	The random three-judge panel, made general rather than multistate-only. Sec. 4

PROPOSAL	WHAT IT DOES	WHERE IT FALLS SHORT	WHAT THIS BILL TAKES FROM IT
S. 1206, Judicial Relief Clarification Act (Grassley; 29 cosponsors; no action)	Bars all non-party relief, strikes “and set aside” from § 706, makes TROs appealable	Changes the substance of the APA remedy, not just the forum, which is where the opposition and the *Klein* argument concentrate; no panel, no deadline	Appealability of interim orders, done through a single expedited track instead. Sec. 7
S. 1758, Fair Courts Act of 2023 (Wyden; introduced May 30, 2023; no action)	Requires a three-judge court under § 2284 for any injunction beyond the plaintiff and any nationwide vacatur of a federal rule; randomizes the designation; requires assignment rules under which no judge ordinarily has more than a 25 percent chance of drawing a given case	Panel still comes from the filing circuit; keeps § 1253’s mandatory direct appeal to the Supreme Court, which the Court has resisted since 1976; no deadline; no habeas or class provisions	Coverage of vacatur, a randomized panel, and statutory random assignment, from a Democratic sponsor two years before the House acted. Secs. 3, 4, 11
Three-judge court for national injunctions (Alan B. Morrison, Bloomberg Law, Feb. 6, 2023)	A three-judge district court with at least one circuit judge hears any suit seeking a national injunction; review by certiorari	Morrison conceded the panel would still be drawn from the circuit the plaintiff chose, so the Fifth and Ninth Circuits would keep their business; certiorari alone leaves no court that must rule	The panel composition. The cross-circuit random draw and the referral rule answer his two concessions. Secs. 4(b), 7(b)
Judicial Conference random-assignment policy (March 2024)	Asks districts to assign statewide and nationwide cases district-wide at random	Guidance only. The Northern District of Texas declined to follow it	The rule itself, made law. Sec. 11

The common thread: each earlier proposal either changed what courts may order, which invites a constitutional fight, or changed who decides without fixing where the panel comes from or when review ends. This bill does the second job completely: random judges from a random circuit, a court that must rule within weeks, and nothing else.

Questions staff will ask

Does this help the President or hurt him? Neither, by design. It takes effect January 20, 2029. The Harvard Law Review data show 92 percent of the nationwide injunctions against the first Trump administration came from Democratic appointees and every one against the Biden administration came from a Republican appointee. Both sides have lost to a single judge in a chosen courthouse. Both sides will again.

Can a court still stop an illegal policy? Yes. Three judges keep the power to grant relief for everyone, on the same Winter standards, with written findings and tailoring added, and the bill sets a merits schedule aimed at judgment within 180 days, extendable only on written findings. What changes is that one judge cannot do it alone for the whole country, and no one waits a year without a schedule.

What happens on day one, before the panel exists? The judge who has the case can enter a 14-day order for non-parties on written findings of specific, irreparable harm. That is the same limit Rule 65 already puts on a temporary restraining order. The panel is drawn within about four days.

Why random, and why across circuits? Because the problem is not judges. It is the plaintiff choosing the judge. A single-judge division in Texas and a single-judge division in California have both been used that way. A random draw from a random circuit ends it for both sides, and the Act carries its own designation authority so that the draw can be acted on: the Chief Justice designates within 3 business days, the lending circuit's consent under 28 U.S.C. § 295 is deemed given unless withheld in writing within 2, and a refusal simply triggers another draw. The House bill's panel keeps the plaintiff's circuit; Morrison's proposal did too, and he said so.

Why the court of appeals rather than the Supreme Court? Because an appeal as of right to a court that must decide is both faster and more certain than a petition the Supreme Court may decline. The order is appealable within 14 days, the record goes up in 3 business days, and the court of appeals decides within 45 days absent extraordinary circumstances stated in writing. A final judgment is decided within 90. The Supreme Court's certiorari jurisdiction under section 1254, including certiorari before judgment, and its emergency authority are untouched, and nothing in the bill requires it to take a case or to rule within any period.

Does it touch habeas? No. Sec. 12(a) preserves the privilege of the writ, jurisdiction under 28 U.S.C. § 2241, and any relief needed to give effective review of custody to a petitioner or a properly certified habeas class, and Sec. 6(c) excepts habeas from the rule that only the panel may certify a class. An order that stops the removal of a person who is a party to his own case is untouched.

Does it ban class actions against the government? No. Only the three-judge panel may certify a class against a covered action, after the government is heard. Habeas classes are exempt.

Is the three-judge court new? No. Congress required it from 1910 to 1976 for constitutional challenges to state and federal statutes, and still uses it for apportionment, the Voting Rights Act, and campaign finance. Senator Wyden proposed it for nationwide relief in 2023; the House-passed bill uses it for multistate suits.

Will the Supreme Court object? The judiciary pressed for the 1976 repeal of mandatory three-judge appeals and would object to their return. This bill creates none. Sec. 7(e) amends § 1253 so that it does not apply to an order or judgment entered under Sec. 4. Interim orders and final judgments both go to the courts of appeals, and the Supreme Court's role is the certiorari jurisdiction it already exercises.

What does it cost? No judgeships. The substitute creates none. Sec. 13(a) requires the Judicial Conference, within 180 days of enactment, to report a district-by-district estimate of the workload and appropriations the Act causes and the number of judgeships, if any, needed to administer it; creating them takes a later Act amending the table in 28 U.S.C. § 133. Sec. 14 authorizes appropriations for the random-selection and audit systems and for nothing else. The judgeships question is therefore posed rather than answered, which is a deliberate change from version 2.5.

What can a sponsor trade? Secs. 10 (national-security information) and 11 (random assignment) are severable from the core and are the natural concessions. The within-circuit draw already in Sec. 4(c)(3) takes the panel from the filing circuit; it is simpler, gives circuit choice back to the plaintiff, and Sec. 16(c) already makes it the governing procedure if the cross-circuit rules are not in force by January 20, 2029. Sec. 9 (security) can be dropped without touching the design.

Who will object? The Judicial Conference endorsed district-wide random assignment as guidance in March 2024; expect it to object to Congress imposing the same rule by statute. Expect civil-liberties groups to object to Sec. 10 (national-security information). Expect some Republicans to say 2029 is too late and some Democrats to say any limit is too much. Each is answered in the risk assessment below; none goes to the core.

How a Challenge Is Routed

Figure 1. How a challenge is routed.

Only relief that reaches non-parties takes the new path. Habeas cases and relief for the named parties stay with a single judge, exactly as they do today.

Changes from v1

1. Version 2.7, 30 October 2026: Sec. 4(c)(2) revised to supply the Act's own authority for cross-circuit designation, with the lending circuit's consent under § 295 deemed given after two business days, resolving the designation items found in the verification of 30 October 2026.

2. Version 2.6, 30 October 2026: the bill text of version 2.5 was replaced by the proposed substitute of 26 October 2026, and the analysis was rewritten to match. The principal policy changes are the removal of expedited Supreme Court review under a new 28 U.S.C. § 1261 and of the 30-day referral to the court of appeals, replaced by an interlocutory appeal as of right decided within 45 days; the removal of the 69 judgeships, replaced by a reporting requirement; and the reversal of the designation mechanism, which now operates under 28 U.S.C. §§ 291 through 296 rather than overriding them. The full list is in "Version 2.6: what the substitute changed", and the bill text was separately verified in the round of 30 October 2026.

V2 keeps v1's sound core: the split between party relief and non-party relief, three-judge courts, deadlines, party-limited § 705 relief, and the habeas carve-out. It drops every provision that told courts how to decide, and adds the coverage v1 lacked. The table below records the move from version 1 to version 2 as it stood at version 2.5. It is kept as written, so three of its entries now describe provisions the substitute removed: the expedited certiorari route and the new 28 U.S.C. § 1261, the public-interest rule drawn from Nken, and the additional judgeships. What replaced each is in "Version 2.6: what the substitute changed".

V1 PROVISION	V2 TREATMENT	REASON
Title: "Interim Validity"	Renamed "Judicial Relief and Expedited Review"	The bill no longer presumes validity
§ 4 presumption of continued operation; "clear violation" limit	**Dropped.** Replaced by required findings and *Nken*'s public-interest rule (Sec. 5)	Added little over *Winter*; would bar relief in first-impression cases such as *Barbara*; *Klein* risk
§ 5 exclusive three-judge court in D.D.C.	**Replaced** by a three-judge court drawn at random from a randomly selected circuit (Sec. 4)	D.D.C. had 7,502 pending cases across 15 judgeships, about 500 each, as of June 30, 2026 (U.S. Courts district profile), and a bench that does not suit the bill's purpose; a single forum ends variation among circuits
§ 5(d) mandatory direct appeal under 28 U.S.C. § 1253	**Replaced** by expedited certiorari for interim orders (new 28 U.S.C. § 1261) and an appeal as of right to the court of appeals, decided within 90 days, for final judgments; § 1253 amended to conform (Sec. 7)	Mandatory jurisdiction would draw opposition from the Supreme Court and the Judicial Conference

V1 PROVISION	V2 TREATMENT	REASON
§ 6 party-limited interim relief	**Kept and refined.** Non-party relief is allowed only from a three-judge panel with findings (Secs. 4–6)	V1 barred non-party relief outright before final judgment, which is too rigid in emergencies
None	**Added.** Precise definition of "non-party relief" (Sec. 3)	Reviewer B cross-check point 1: prevents drafting around the definition
§ 6(c) vacatur only on final judgment, one forum	**Extended.** Final § 706 vacatur reaching non-parties also requires a three-judge court and is stayed 14 days; remand without vacatur preserved (Sec. 6)	Reviewer B cross-check point 2: v1 left single-judge final vacatur open
§ 7(a) automatic 14-day stay of new interim relief	**Dropped.** Replaced by a 7-day deadline for ruling on stay motions (Sec. 7)	*Miller v. French* covers stays of existing relief only; a *D.V.D.*-type removal could occur inside the window
§ 7(d) automatic lapse at 180 days	**Replaced** by mandatory reconsideration with findings (Sec. 8)	Lapse without findings invites as-applied due-process challenges
None	**Added.** Single-judge temporary order, lasting until the panel rules and no more than 14 days, extendable once by the panel, to prevent irreparable harm before the panel convenes (Sec. 4(c))	Answers the inherent-power argument and protects against *D.V.D.*-type removals
§ 8 mandatory security	**Replaced** by discretionary security with written findings, required whenever security is waived for non-party relief (Sec. 9)	Mandatory bonds would keep nonprofit plaintiffs out; Reviewer B cross-check point 3
§ 9 AG certification; clear-and-convincing burden	**Dropped.** Replaced by a classified-information procedure with cleared counsel (Sec. 10)	Highest constitutional risk; courts already give security interests substantial weight
None	**Added.** Random assignment codified in 28 U.S.C. § 137 (Sec. 11)	Judicial Conference guidance is optional; the Northern District of Texas declined it (Chief Judge Godbey's letter of March 29, 2024)
None	**Added.** Additional judgeships [bracketed] (Sec. 12)	Deadlines without judges only move delay elsewhere
§ 10 habeas and individual-relief carve-out	**Kept**, plus an express statement that ordinary party-limited litigation is unaffected (Sec. 13)	Required by the Suspension Clause; preserves development of law across courts (Reviewer B cross-check point 4)
§ 14 effective on enactment; lapse applied to existing relief	**Replaced** by an effective date of January 20, 2029, for new actions only (Sec. 16)	Removes the appearance of targeting current litigation; needed to reach 60 Senate votes

Bill Text

119TH CONGRESS — 2D SESSION

A BILL

To provide for three-judge district courts to determine requests for relief from covered Federal actions extending to persons other than parties, to provide for prompt appellate review, to strengthen random assignment of certain civil actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Policy Judicial Relief and Expedited Review Act of 2026".

SEC. 2. FINDINGS; PURPOSE; RULE OF DECISION.

(a) Findings.—Congress finds that—

(1) Congress may establish and regulate the jurisdiction and procedures of inferior Federal courts subject to the Constitution;

(2) the Supreme Court in Trump v. CASA, Inc., 606 U.S. 831 (2025), addressed the equitable authority for universal injunctions without finally resolving the treatment of relief under sections 705 and 706 of title 5, United States Code, certified classes, and relief required to provide complete relief to States; and

(3) delays in review may impose substantial harms both when an unlawful Federal action continues and when a lawful Federal action is suspended.

(b) Purpose.—This Act governs the court competent to award certain nonparty relief, the procedures for considering that relief, and the availability and timing of its review. Except as expressly provided concerning relief, it does not change the underlying substantive law governing any covered Federal action or prescribe a finding of legality or illegality.

(c) No presumption.—Nothing in this Act creates a presumption that a covered Federal action is lawful, shifts a burden of persuasion, or directs the disposition of any claim on its merits.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) Covered Federal action.—The term "covered Federal action" means an Executive order, Presidential proclamation or memorandum, rule, regulation, guidance, policy, or program of general applicability issued, maintained, or implemented by the President or an executive agency (as defined in section 105 of title 5, United States Code). The term excludes an individualized adjudication, immigration custody

determination, individual removal decision, or other determination directed to an identified person; the exclusion does not remove from coverage a generally applicable policy merely because it is applied in individual proceedings.

(2) Nonparty relief.—The term "nonparty relief" means judicial relief that, by its terms or necessary operation, bars, postpones, suspends, vacates, or sets aside a covered Federal action with respect to a person other than an identified plaintiff or other named party. The term includes (A) generally operative relief under section 705 or 706 of title 5, United States Code; (B) relief sought on behalf of a putative class before certification; and (C) relief benefiting residents of a State solely because of residence, rather than because the State itself is entitled to party-specific relief. A certified class may receive classwide relief under otherwise applicable class-action law only by order of the court constituted under section 4.

(3) Necessary operation.—An order necessarily operates as to a nonparty if obedience to the order legally requires the Federal Government to refrain from applying the covered Federal action to that nonparty. Merely precedential, economic, or incidental consequences, or voluntary broader compliance by the Government, do not of themselves establish necessary operation.

(4) Party-limited relief.—The term "party-limited relief" means relief legally binding only with respect to one or more named parties, including persons joined under rules 19, 20, or 24 of the Federal Rules of Civil Procedure. Relief that vindicates a State's own governmental or proprietary interests is party-limited only insofar as the order does not, by its terms or necessary operation, prohibit enforcement against persons other than the State or its political subdivisions.

(5) Interim relief.—The term "interim relief" includes a temporary restraining order, preliminary injunction, and judicial stay or postponement pending judgment, including one under section 705 of title 5, United States Code.

SEC. 4. THREE-JUDGE COURTS; ASSIGNMENT; EMERGENCY RELIEF.

(a) Exclusive authority to grant nonparty relief.—Except as provided in subsection (d) or section 12, a request for nonparty relief with respect to a covered Federal action shall be determined by a district court of three judges constituted under this section. A district judge may grant otherwise authorized party-limited relief and may deny a request that plainly fails to seek nonparty relief. A single judge shall not deny a nonfrivolous request for nonparty relief solely to avoid convening the court.

(b) Request and referral.—A party seeking nonparty relief shall identify that relief in the complaint or motion. Within 1 business day after the request, the clerk shall transmit notice and the request to the Administrative Office of the United States Courts. A judge may decline referral as plainly insubstantial only in a written, appealable order under section 7.

(c) Constitution of the court.—

(1) Within 3 business days after notice, the Director of the Administrative Office shall select at random a regional judicial circuit, weighted by the number of authorized active circuit and district judgeships in each regional circuit, and then select one active circuit judge and two active district judges of that circuit,

excluding, to the greatest extent practicable, judges of the filing district. Selection shall be conducted under public, auditable rules of the Judicial Conference of the United States, adopted no later than 1 year after enactment, without consideration of the identities of litigants or the views or prior decisions of judges.

(2) A selection under paragraph (1) is a recommendation for designation. Notwithstanding sections 291 and 292 of title 28, United States Code, and without any request or certificate of necessity otherwise required by those sections, the Chief Justice shall, within 3 business days after receiving a selection, designate and assign the selected circuit judge and district judges to sit as the district court of three judges for the district in which the action is pending. Each designation requires the consent of the chief judge or judicial council of the circuit from which the judge is designated, as provided in section 295 of that title; consent shall be deemed given unless withheld in writing within 2 business days after the Chief Justice's request. A judge so designated has the powers provided in section 296 of that title. The designation shall be entered on the records of the affected courts. A selected judge who is unable to serve or recused, or whose designation is not consented to, shall be replaced by the same random procedure.

(3) If a lawful cross-circuit designation cannot be completed within 10 business days after referral, the chief judge of the circuit containing the filing district shall, within 3 business days, cause the selection at random of one circuit judge and two district judges in that circuit, including the initially assigned judge if selected; all designations shall comply with otherwise applicable statutes. The parties shall be notified of the resulting composition.

(4) No litigant may challenge a designation solely because a randomly selected circuit or judge differs from that which the litigant preferred. A timely challenge for recusal, legal ineligibility, or material failure of the random selection procedure remains available to the three-judge court, subject to appellate review.

(d) Short-term protection before constitution.—Before the three-judge court can act, the initially assigned judge may enter an order affording nonparty relief for no more than 14 days, only upon written findings that (1) identified, imminent, irreparable harm to the plaintiff or a putative class member will occur before the panel can act; (2) party-limited relief cannot prevent the harm; and (3) the order is no broader than needed for protection during that interval. Notice must be given to the United States unless the requirements of rule 65(b)(1) of the Federal Rules of Civil Procedure for relief without notice are satisfied. The three-judge court may modify or dissolve the order at any time and may extend it once for not more than 14 days on renewed findings. The single judge may not extend it.

(e) Allocation of proceedings.—The three-judge court shall decide the request for nonparty relief, related merits issues necessarily presented by that request, and class-certification requests concerning the covered Federal action. The assigned district judge shall continue to determine severable claims seeking only party-limited relief. The three-judge court shall resolve jurisdictional or procedural conflicts by a reasoned order without depriving the original judge of independent claims that can proceed without inconsistency.

(f) Related actions.—A party seeking nonparty relief shall identify known pending district-court actions challenging the same covered Federal action. Upon notice to all affected parties, the Judicial Panel on

Multidistrict Litigation may transfer related actions for coordinated pretrial proceedings under section 1407 of title 28, United States Code. This Act does not authorize transfer of a case for trial or final judgment contrary to that section or displace any exclusive-review statute. The three-judge court may coordinate schedules and orders with courts hearing related actions.

(g) Relationship to section 2284.—This section is an additional Act of Congress requiring a three-judge court for purposes of section 2284(a) of title 28, United States Code. To the extent of a conflict, the more specific composition, temporary-order, and review provisions of this Act control; otherwise, section 2284(b) applies.

SEC. 5. STANDARD FOR NONPARTY RELIEF; FINDINGS.

(a) Applicable law.—A court may grant interim nonparty relief only upon satisfaction of the ordinary requirements for the requested form of interim relief, including the requirements applicable under Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008), where applicable. A court may grant final nonparty relief only after finding a legal basis for the remedy under governing law.

(b) Express findings.—An order granting nonparty relief shall identify (1) the legal basis for the relief; (2) why party-limited relief would fail to afford complete relief to the prevailing parties or other persons legally entitled to relief; (3) the harm attributable to granting or withholding relief and the public interest, where applicable; and (4) the persons and activities covered by the order.

(c) Tailoring.—The court shall limit relief to the legally necessary scope consistent with applicable law and the rights vindicated. This subsection does not impose a categorical least-intrusive-means test beyond requirements otherwise governing the form of relief, and it does not change the merits-review standard in section 706 of title 5, United States Code.

(d) Public interest.—In assessing interim relief, the court shall consider both the harm from enforcing an unlawful action and the harm from suspending a lawful action. No presumption favors either conclusion.

SEC. 6. ADMINISTRATIVE PROCEDURE ACT AND CLASS ACTIONS.

(a) Section 705.—Section 705 of title 5, United States Code, is amended by adding at the end the following: “If a judicial order issued under this section postpones the effective date of an agency action of general applicability or suspends the legal effect of such action with respect to persons other than identified parties, the order shall be issued only by a three-judge court convened under section 4 of the Federal Policy Judicial Relief and Expedited Review Act of 2026 or by a court otherwise vested by law with exclusive direct review. This sentence does not limit a court’s other lawful power to preserve rights of identified parties while judicial review proceeds.”.

(b) Section 706.—Section 706 of title 5, United States Code, is amended by adding at the end the following: “A district-court judgment setting aside an agency action of general applicability with legal effect beyond identified parties may be entered only by a three-judge court convened under section 4 of the Federal Policy Judicial Relief and Expedited Review Act of 2026. This sentence does not alter the

standard for holding agency action unlawful, the authority of a court of appeals exercising exclusive direct-review jurisdiction, or the authority to remand without vacatur where otherwise lawful.”.

(c) Class certification.—A district court shall not certify a class seeking relief from a covered Federal action except through the three-judge court convened under section 4, after notice and an opportunity to be heard. The validity and scope of class certification shall otherwise be governed by rule 23 of the Federal Rules of Civil Procedure. This subsection does not govern habeas relief preserved by section 12.

(d) No automatic stay of final judgment.—Entry of judgment under subsection (b) does not itself create a stay. An application for stay pending appeal shall be decided under otherwise applicable principles, with written reasons for the ruling.

SEC. 7. APPELLATE REVIEW.

(a) Interlocutory appeal as of right.—Notwithstanding sections 1253 and 1292 of title 28, United States Code, an order granting, denying, modifying, or dissolving interim nonparty relief under this Act is appealable as of right to the court of appeals for the circuit in which the action was filed. An appeal shall be filed within 14 days after entry of the order. A written order declining to convene a panel on the ground that no substantial nonparty request has been made is appealable on the same terms.

(b) Disposition.—The court of appeals shall expedite the appeal, require transmission of the available record within 3 business days after the notice of appeal, and, absent extraordinary circumstances stated in a written order, decide the appeal within 45 days after filing. The court may grant or deny a stay pending appeal under otherwise applicable law. It shall give an explanation for the disposition adequate for further review.

(c) Final judgment.—A final judgment entered by the three-judge court is appealable to the court of appeals under section 1291 of title 28, United States Code. The court of appeals shall expedite disposition and, absent extraordinary circumstances explained in writing, decide the appeal within 90 days after filing of the notice of appeal.

(d) Supreme Court review.—Nothing in this section restricts review by writ of certiorari under section 1254 of title 28, United States Code, including certiorari before judgment when otherwise available, or the emergency authority of the Supreme Court or a Justice thereof. No provision of this section requires the Supreme Court to grant review or to decide a merits petition within a fixed number of days.

(e) Conforming amendment.—Section 1253 of title 28, United States Code, is amended by adding at the end: “This section shall not apply to an order or judgment entered under section 4 of the Federal Policy Judicial Relief and Expedited Review Act of 2026.”.

SEC. 8. MERITS SCHEDULE AND PERIODIC RECONSIDERATION.

(a) Within 14 days after an interim order granting nonparty relief, the three-judge court shall enter a merits schedule ordinarily targeting final judgment within 180 days after the initial order. The court may

extend the target on findings concerning due process, complexity of the record, classified information, or other substantial cause; such extension shall not dissolve relief without judicial consideration.

(b) At 180 days after entry of an interim nonparty order, and every 90 days thereafter until final judgment, the court shall reconsider on motion or on its own initiative whether continuing interim relief remains justified under section 5 and governing law. Relief shall continue or dissolve on a reasoned judicial determination, not by automatic operation of time alone.

SEC. 9. SECURITY.

For an interim order governed by rule 65(c) of the Federal Rules of Civil Procedure, the court shall address security under that rule. If the court requires nominal or no security in connection with nonparty relief, it shall state the reasons. Nothing in this section changes any otherwise applicable exemption from security, the availability of party-limited relief, or proceedings under section 12.

SEC. 10. NATIONAL-SECURITY INFORMATION.

(a) The United States may seek protection of classified or otherwise lawfully privileged information submitted in proceedings under this Act. The court may enter protective orders, receive submissions in camera where lawful, and use substitutions or summaries consistent with due process, applicable privileges, and governing law.

(b) Nothing in this Act requires disclosure of classified information to an uncleared person, creates an entitlement to a security clearance, displaces the state-secrets privilege, or authorizes decision of a contested material fact solely upon undisclosed evidence where due process otherwise forbids that procedure.

(c) Within 1 year after enactment, the Judicial Conference may publish nonbinding model procedures for classified submissions in proceedings under this Act. The Classified Information Procedures Act shall not be deemed applicable to a civil proceeding solely by reason of this Act.

SEC. 11. DISTRICT-WIDE RANDOM ASSIGNMENT.

Section 137 of title 28, United States Code, is amended by adding at the end the following: “(c) Actions requesting statewide or nationwide relief.—(1) Except as provided in paragraph (2), a civil action filed in a district court requesting an injunction, stay, or judgment with legally operative effect beyond the parties against a Federal or State law, rule, or policy of general applicability shall be assigned through a random process open to all district judges in regular active service of that district, without regard to the division of filing. “(2) A district court may depart from paragraph (1) only upon written findings, publicly docketed subject to lawful sealing, that assignment to a particular judge is required by an existing related-case rule necessary to avoid inconsistent orders, or by disqualification or other exceptional circumstance. Judicial preference or the identity of a party is not such a circumstance. “(3) The Judicial Conference shall promulgate minimum standards for randomization, auditing, and publication of assignment practices,

including protection of sealed information. Nothing in this subsection changes statutory venue or jurisdiction.”.

SEC. 12. SAVINGS PROVISIONS.

(a) Habeas corpus.—Nothing in this Act limits, delays, or conditions the privilege of the writ of habeas corpus, jurisdiction under section 2241 of title 28, United States Code, or relief necessary to give effective review of custody to a petitioner or properly certified habeas class.

(b) Individual removal.—Nothing in this Act limits relief preventing removal or transfer of an identified party to the proceeding or expands jurisdiction or relief otherwise limited by section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(c) Constitutional review.—Nothing in this Act forecloses judicial consideration of colorable constitutional claims or the timely availability of legally authorized party-specific relief necessary to prevent irreparable injury.

(d) Special review statutes.—Where another Act of Congress commits exclusive review to a court of appeals, that Act governs jurisdiction, venue, and the reviewing court’s authority. Nothing in this Act expands relief barred by any statute or compels transfer outside the court of exclusive jurisdiction.

(e) Existing relief.—This Act applies only to cases filed on or after its effective date and neither vacates nor automatically modifies earlier judgments or orders.

SEC. 13. JUDICIAL RESOURCES AND REPORTING.

(a) Not later than 180 days after enactment, the Judicial Conference shall report to Congress a district-by-district estimate of judicial workload and appropriations attributable to this Act, including the number and distribution of additional judgeships, if any, recommended to administer it. Creation of additional Article III judgeships shall require a subsequent Act specifying each affected district and amending section 133(a) of title 28, United States Code.

(b) Beginning 1 year after the effective date and annually for 5 years, the Director of the Administrative Office of the United States Courts shall report to the Judiciary Committees of Congress the number, scope, and duration of requests and grants of nonparty relief, times to panel constitution and appellate disposition, departures from random assignment, and burdens on participating courts. Counts shall distinguish injunctions, section 705 stays, section 706 judgments, and class relief.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to the Administrative Office of the United States Courts to implement secure random-selection and audit systems and to administer judicial assignments under this Act. No funds are authorized by this section to create a judgeship not established by law.

SEC. 15. SEVERABILITY.

If any provision of this Act, or the application of the provision to a person or circumstance, is held invalid, the remainder of the Act and its application to other persons or circumstances shall not be affected, except that the court shall not sever provisions in a manner that itself expands the authority of a single judge to award nonparty relief contrary to section 4.

SEC. 16. EFFECTIVE DATE; TRANSITION.

(a) Except as provided in subsection (b), this Act takes effect on January 20, 2029, and applies only to civil actions commenced on or after that date.

(b) Sections 4(c)(1) (limited to the Judicial Conference rulemaking authorization), 10(c), 11 (limited to the promulgation of standards), 13(a), and 14 take effect on the date of enactment. The Judicial Conference may prepare implementation rules before the effective date; such rules may not affect pending litigation.

(c) If the rules required for cross-circuit selection have not entered into force by January 20, 2029, the within-circuit random-selection procedure in section 4(c)(3) shall govern until the rules are effective. Nothing in this subsection authorizes delay of party-limited relief.

Section-by-Section Analysis

Sec. 2. Findings; purpose; rule of decision. Three findings: Congress may establish and regulate the jurisdiction and procedures of inferior federal courts; CASA addressed the equitable authority for universal injunctions without finally resolving relief under 5 U.S.C. §§ 705 and 706, certified classes, or relief required to give States complete relief; and delay harms both when an unlawful action continues and when a lawful one is suspended. Subsection (b) states that the Act governs which court may award nonparty relief, the procedure for considering it, and the timing of review, and changes no substantive law. Subsection (c) adds an express rule of decision: the Act creates no presumption of lawfulness, shifts no burden of persuasion, and directs no disposition on the merits. Those two sentences keep the Act on the right side of United States v. Klein and Patchak v. Zinke. The substitute drops the findings' citations to Sheldon, Lauf and Lockerty and the finding on the frequency of nationwide injunctions.

Sec. 3. Definitions. "Nonparty relief" is defined by what an order does, not by what it is called or who asked for it. If complying with the order requires the government to stop applying a policy to people who are not in the case, it is non-party relief. That is what "necessary operation" means, and the bill says so. Precedent and voluntary compliance do not count. The definition covers § 705 stays, § 706 vacatur, class relief, and State relief that reaches past the State's own functions, property, and territory. "Named party" includes anyone properly joined. Two exclusions keep the definition from catching ordinary cases:

- relief to the named parties that incidentally benefits others, such as an order that a rule cannot be applied to the plaintiff company;
- habeas proceedings.

Sec. 4. Three-judge courts. This is the core of the bill. One judge keeps full authority over relief for the parties, and may deny a frivolous request for broader relief on the spot. Relief for everyone else goes to a panel chosen in two random steps. Within 3 business days of notice the Administrative Office draws one regional circuit, weighted by that circuit's authorized active circuit and district judgeships, then draws one active circuit judge and two active district judges of that circuit, excluding judges of the filing district to the greatest extent practicable. The draw runs under public, auditable Judicial Conference rules adopted within a year of enactment, without regard to the identity of litigants or the views or prior decisions of judges. The draw is a recommendation for designation, and the Act supplies its own authority to act on it. Version 2.5 overrode 28 U.S.C. §§ 291 through 296 so that no originating circuit could withhold a judge. The substitute of 26 October reversed that and designated under those sections, which the verification of 30 October found they do not permit: none of them authorizes sending a circuit judge to sit on a district court in another circuit. Version 2.7 takes the third route. The Chief Justice must designate within 3 business days of receiving a selection, notwithstanding §§ 291 and 292 and without the request under § 291(a) or the certificate of necessity under § 292(d) that those sections would otherwise require. The consent of the lending circuit is kept, as § 295 provides, and is deemed given unless the chief judge or judicial council withholds it in writing within 2 business days. A designated judge has the powers § 296 supplies, stated expressly because the designation is made under this Act rather than under chapter 13. The designation is entered on the records of the affected courts, and a judge who is unable to serve, is recused, or whose designation is refused is replaced by the same random draw. The fallback stands behind all of it: if a lawful cross-circuit designation cannot be completed within 10 business days of referral, the chief judge of the filing circuit must within 3 business days cause a random draw of one circuit judge and two district judges within that circuit. A judge unable, unwilling or recused is replaced by the same random procedure, and no litigant may object merely because the circuit or judge drawn is not the one preferred. Subsection (g) also reverses version 2.5 on § 2284: rather than excluding that section, the substitute makes this one an additional Act of Congress requiring a three-judge court for purposes of § 2284(a), with § 2284(b) applying except where this Act's more specific provisions control. Subsection (e) divides the work: the panel decides nonparty relief, related merits issues necessarily presented, and class certification; the assigned district judge keeps severable claims seeking only party-limited relief. Subsection (f) lets the Judicial Panel on Multidistrict Litigation transfer related actions for coordinated pretrial proceedings under § 1407.

The bracketed alternative draws only from the circuit where the case was filed. It is simpler, but it hands circuit choice back to the plaintiff.

Subsection (c) covers the gap before the panel sits. A single judge may enter a temporary order for non-parties, but only on a written finding that specific, irreparable harm will happen before the panel can act and that relief for the parties alone would not prevent it. The order issues on notice to the government, or on the same showing Rule 65(b)(1)(B) requires for an ex parte order. It lasts until the panel rules, and no more than 14 days, the same limit Rule 65(b)(2) puts on a temporary restraining order. The panel may

extend it once, for 14 days. The single judge may not. Subsection (d) requires every plaintiff seeking non-party relief to disclose related suits in other district courts, and lets any party move to bring those suits before the panel. Transfer runs to the district where the panel sits. The panel must grant the motion unless transfer would cause undue delay or prejudice, or another statute fixes exclusive venue elsewhere, and it may send party-limited claims back afterward. Together these answer the strongest objections to the design: that courts need some way to hold the status quo, and that plaintiffs will split one challenge into ten.

Sec. 5. Standard for nonparty relief; findings. Interim nonparty relief requires satisfaction of the ordinary requirements for the form of relief sought, including Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008), where applicable; final nonparty relief requires a finding of a legal basis for the remedy under governing law. An order granting nonparty relief must identify the legal basis, why party-limited relief would not afford complete relief, the harm from granting or withholding relief and the public interest where applicable, and the persons and activities covered. Subsection (c) requires tailoring to the legally necessary scope but expressly declines to impose a categorical least-intrusive-means test and leaves the merits standard in 5 U.S.C. § 706 alone. Subsection (d) requires the court to weigh the harm from enforcing an unlawful action and the harm from suspending a lawful one, with no presumption either way. The substitute drops version 2.5's imports from Nken v. Holder and the Prison Litigation Reform Act. There is no presumption, no heightened burden, and no "clear violation" test.

Sec. 6. APA and class actions. This section closes the openings CASA left. The APA reaches agency action, not the President (Franklin v. Massachusetts, 505 U.S. 788 (1992)), so Secs. 4 and 5 carry the rule for executive orders and this section carries it for agency rules. A § 705 stay or a § 706 vacatur that reaches non-parties now requires a three-judge court, or a court of appeals where Congress has already sent review there. Both amendments add a sentence at the end of the existing section, because neither § 705 nor § 706 is divided into lettered subsections. The substitute removes version 2.5's 14-day pause on a final vacatur and replaces it with the opposite rule: subsection (d) states that entry of judgment does not itself create a stay, and an application for a stay pending appeal is decided under otherwise applicable principles with written reasons. Remand without vacatur stays available, and the amendments preserve the authority of a court of appeals exercising exclusive direct review. Only the panel may certify a class against a covered action, after notice and an opportunity to be heard, with Rule 23 otherwise governing. The exceptions are the Sec. 4(d) short-term order and habeas relief preserved by Sec. 12.

Sec. 7. Appellate review. The substitute replaces version 2.5's two-track certiorari design with a single, ordinary one. An order granting, denying, modifying or dissolving interim nonparty relief is appealable as of right to the court of appeals for the circuit where the action was filed, notwithstanding 28 U.S.C. §§ 1253 and 1292, on a notice filed within 14 days. A written order declining to convene a panel on the ground that no substantial nonparty request was made is appealable on the same terms. The court of appeals must expedite, require the record within 3 business days, and decide within 45 days unless it states extraordinary circumstances in writing. A final judgment of the panel goes to the court of appeals under § 1291, to be decided within 90 days on the same terms. Subsection (d) leaves the Supreme Court's jurisdiction untouched: certiorari under § 1254, including certiorari before judgment, and the emergency authority of the Court or a Justice, with nothing in the section requiring the Court to grant review or to rule within any fixed period. Subsection (e) amends § 1253 so that it does not apply to an order or judgment entered under Sec. 4, which is what keeps the bill from reviving the mandatory direct appeals the Court has opposed since 1976. The new 28 U.S.C. § 1261 that version 2.5 would have created does not appear in the substitute, and neither does the 30-day referral or the 7-day stay ruling.

Sec. 8. Merits schedule and periodic reconsideration. Within 14 days of an interim order granting nonparty relief the panel enters a merits schedule ordinarily targeting final judgment within 180 days, extendable on findings as to due process, record complexity, classified information or other substantial cause, and an extension may not dissolve relief without judicial consideration. At 180 days, and every 90 days after, the panel reconsiders whether continuing relief remains justified. The substitute reverses version 2.5 on what happens if it does not act: relief continues or dissolves on a reasoned judicial determination, expressly not by automatic operation of time. The Prison Litigation Reform Act model that version 2.5 followed is gone.

Sec. 9. Security. Courts must decide the bond question and explain in writing any waiver or nominal bond for non-party relief. No bond is mandatory. Nonprofits and people who cannot pay can still sue.

Sec. 10. National-security information. The substitute narrows this section to the court's existing toolkit. The United States may seek protection of classified or otherwise privileged material, and the court may enter protective orders, receive submissions in camera where lawful, and use substitutions or summaries consistent with due process and governing law. Subsection (b) confirms that nothing requires disclosure to an uncleared person, creates an entitlement to a clearance, displaces the state-secrets privilege, or allows a contested material fact to be decided on undisclosed evidence where due process forbids it. Subsection (c) makes the Judicial Conference's model procedures optional and nonbinding, publishable within a year, and states that the Classified Information Procedures Act is not made applicable to a civil proceeding by this Act. Version 2.5's mandatory Conference rulemaking, its interim application of CIPA, and its cleared-counsel and special-advocate access rule are all gone.

Sec. 11. Random assignment. The Judicial Conference adopted this policy in March 2024, but it is only guidance, and the Northern District of Texas has declined to follow it. This section makes it law under 28

U.S.C. § 137 for any suit seeking statewide or nationwide relief. A plaintiff can no longer choose a judge by choosing a one-judge courthouse.

Sec. 12. Savings provisions. The substitute renumbers the savings clauses from Sec. 13 to Sec. 12 and creates no judgeships at all. Five things are preserved. Subsection (a) preserves the privilege of the writ, jurisdiction under 28 U.S.C. § 2241, and relief needed to give effective review of custody to a petitioner or a properly certified habeas class. Subsection (b) preserves relief preventing the removal or transfer of an identified party and expands nothing that section 242 of the Immigration and Nationality Act restricts. Subsection (c) preserves consideration of colorable constitutional claims and the timely availability of party-specific relief against irreparable injury. Subsection (d) leaves exclusive-review statutes to govern their own jurisdiction, venue and remedial authority. Subsection (e) confines the Act to cases filed on or after the effective date and vacates no existing judgment or order. Every cross-reference in this draft to the old Sec. 13(a) habeas clause now points to Sec. 12(a).

Sec. 13. Judicial resources and reporting. This is where the judgeships went. Within 180 days of enactment the Judicial Conference must report to Congress a district-by-district estimate of the judicial workload and appropriations attributable to the Act, including the number and distribution of any additional judgeships it would take to administer it. Creating them requires a subsequent Act naming each district and amending the table in 28 U.S.C. § 133. Beginning a year after the effective date and annually for five years, the Administrative Office reports the number, scope and duration of nonparty requests and grants, the time to constitute a panel and to decide an appeal, departures from random assignment, and the burden on participating courts, with counts distinguishing injunctions, section 705 stays, section 706 judgments and class relief. The effect of the change is that the substitute poses the resource question and declines to answer it, where version 2.5 answered it with 69 judgeships.

Secs. 14–16. Appropriations, severability, effective date. Sec. 14 authorizes such sums as may be necessary to the Administrative Office for secure random-selection and audit systems and for administering designations, and authorizes nothing for a judgeship not established by law. Sec. 15 severs invalid provisions but forbids a severance that would itself enlarge a single judge's authority to award nonparty relief. Sec. 16 applies the Act to civil actions commenced on or after January 20, 2029, brings the rulemaking authorities in Secs. 4(c)(1), 10(c), 11, 13(a) and 14 into force on enactment, and adds a transition the earlier version lacked: if the cross-circuit selection rules are not in force by January 20, 2029, the within-circuit draw in Sec. 4(c)(3) governs until they are. That date is the heart of the political case: no one in Congress knows which President it will constrain first.

Relationship to Existing Proposals and Scholarship

This draft does not claim to have invented the three-judge court. It claims to have engineered one that answers the objections made to the earlier versions. This section says where the idea comes from and what is new here.

The history. Congress created the three-judge district court in 1910, after *Ex parte Young* let a single federal judge enjoin a state statute (Mann-Elkins Act, ch. 309, § 17, 36 Stat. 539, 557 (1910)). It extended the device to federal statutes in 1937 (Act of Aug. 24, 1937, ch. 754, § 3, 50 Stat. 751, 752), and repealed both general provisions in 1976 as a burden on the courts (Pub. L. 94–381, 90 Stat. 1119), keeping the three-judge court for apportionment cases in 28 U.S.C. § 2284 and in specific statutes such as the Voting Rights Act and the Bipartisan Campaign Reform Act. Congress answered a single-judge injunction problem in 1910 for constitutional challenges to state statutes. The 2026 version is the same mechanism applied to federal executive policy.

The scholarship. The modern debate begins with Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417 (2017), which argued that the universal injunction has no basis in traditional equity and should end; the Supreme Court's reasoning is consistent with that account in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). The principal defenses are Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. Rev. 1065 (2018), and Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 Harv. L. Rev. 920 (2020), which contests Bray's history. Michael T. Morley, *Nationwide Injunctions, Rule 23(b)(2), and the Remedial Powers of the Lower Courts*, 97 B.U. L. Rev. 615 (2017), argued that class certification, not the universal injunction, is the proper route to broad relief, which is the position Sec. 6(c) adopts. Alan M. Trammell, *Demystifying Nationwide Injunctions*, 98 Tex. L. Rev. 67 (2019), and Zachary D. Clopton, *National Injunctions and Preclusion*, 118 Mich. L. Rev. 1 (2019), examine the asymmetry problem: the government must win everywhere while a challenger need win once. Howard M. Wasserman, *"Nationwide" Injunctions Are Really "Universal" Injunctions and They Are Never Appropriate*, 22 Lewis & Clark L. Rev. 335 (2018), supplies the vocabulary the Court used. On the bench, Justice Thomas's concurrence in *Trump v. Hawaii*, 585 U.S. 667 (2018), Justice Gorsuch's concurrence in *Department of Homeland Security v. New York*, 140 S. Ct. 599 (2020), and Chief Judge Sutton's concurrence in *Arizona v. Biden*, 40 F.4th 375 (6th Cir. 2022), made the case against universal relief before *CASA*. Stephen I. Vladeck, *The Shadow Docket* (2023), documents the other half of the problem: the emergency applications that these orders generate and the unexplained rulings that resolve them.

The proposals. Four are close to this draft. Alan B. Morrison proposed in Bloomberg Law (February 6, 2023) that suits seeking a national injunction go to a three-judge district court including at least one circuit judge, with review by certiorari; he acknowledged that the panel would still sit in the circuit the plaintiff chose. Senator Wyden's Fair Courts Act of 2023, S. 1758 (118th Cong.), introduced May 30, 2023, would have required a three-judge court under § 2284 for any injunction reaching beyond the plaintiff and for any nationwide vacatur of a federal rule, randomized the designation of the three judges, and required

assignment rules under which no judge ordinarily had more than a 25 percent probability of receiving a given case, subject to exceptions; it kept the filing circuit and § 1253's mandatory direct appeal, set no deadline, and did not advance. The House-passed H.R. 1526 (119th Cong.), in new 28 U.S.C. § 1370(b), sends suits by two or more States from different circuits to a random three-judge panel and lets the losing party choose between the court of appeals and the Supreme Court (H.R. Rep. No. 119–40 (2025)). S. 1206 (119th Cong.) bars non-party relief outright, strikes "and set aside" from 5 U.S.C. § 706(2), and makes TROs appealable. The Senate Judiciary Committee's April 2, 2025 hearing, "Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Injunctions," took testimony from Samuel Bray, Stephen Vladeck, and Jesse Panuccio. The Judicial Conference's March 12, 2024 random-assignment policy addressed the forum-shopping half of the problem as guidance.

What this draft adds. Seven things, each traceable to an objection made to an earlier proposal.

1. A cross-circuit random draw (Sec. 4(c)(1)). Morrison's panel, Wyden's, and the House bill's all sit in the plaintiff's chosen circuit. This one does not, which answers the concession Morrison made and the forum-shopping evidence in the Harvard Law Review and CRS counts.

2. A definition by effect, not label (Sec. 3). The House bill reaches "injunctive relief"; Wyden's reached injunctions beyond the plaintiff and nationwide vacatur of a rule; *CASA* reached the universal injunction. None reaches § 705 stays as such, and none defines the covered order by what it does to people outside the case. "Non-party relief" here is any order that, by its terms or necessary operation, stops the government from applying a policy to someone not in the case.

3. A two-track review with a court that must rule (Sec. 7). Certiorari alone, Morrison's route, leaves a losing party with no court obliged to decide. Wyden's bill kept § 1253's mandatory direct appeal, which the Court has resisted since 1976. The House bill lets the loser choose the forum. Here an order granting or refusing interim nonparty relief is appealable as of right within 14 days and must be decided by the court of appeals within 45; a final judgment must be decided within 90. The Supreme Court's certiorari jurisdiction is left as it is. The substitute therefore answers Morrison's gap with an appeal of right rather than with the direct Supreme Court route version 2.5 used.

4. A bridge order (Sec. 4(d)). Earlier proposals left the days before a panel sits unaddressed; D.V.D. shows what can happen in them.

5. Habeas and individual-removal savings drafted to the margin (Sec. 12(a) and (b)), including habeas classes of the A.A.R.P. kind, so the Act neither reaches the writ nor becomes a route around itself.

6. A delayed, symmetric effective date (Sec. 16). None of the bills above has one. January 20, 2029 is the reason a member of either party can vote for this without knowing whom it binds first.

7. A verification record. Every citation and figure in this paper was checked against a primary source across five adversarial review rounds, and every correction is logged in the Citation and Legality Audit. The author knows of no earlier proposal in this debate that published its checking.

What it does not claim. It does not claim that three judges decide better than one, only that a random three cannot be chosen by a litigant. It does not claim to end emergency applications, only to give them a schedule and a record. And it does not resolve the indivisible-remedy problem that CASA left to the lower courts; Sec. 5(b)(2) requires a finding on why party-limited relief would not afford complete relief and leaves the rest to the panel, which is as far as any statute can go.

Risk Assessment

The constitutional risk is low to moderate. The real exposure is practical and political: whether three-judge panels can carry the caseload, and whether the bill can get 60 votes in the Senate.

The ratings below are the drafter's preliminary assessment, not a legal opinion. Committee counsel should test each one. They were made against version 2.5 and have not been re-rated for the bill text printed in this version, so except where a row says otherwise the response column still names version 2.5's provisions, among them the exclusion of § 2284 that the substitute reversed by invoking § 2284(a). The panel selection and designation row is the exception: its response column describes the designation mechanism as version 2.7 enacts it. Re-rating the remainder is an open item.

Litigation risk

CHALLENGE	ARGUMENT	LIKELY OUTCOME	RESPONSE IN V2
Article III inherent equity power	Courts must be able to hold the status quo	Low	A single judge can still act for 14 days on written findings, and the panel can extend once (Sec. 4(c)); *Lockerty*, *Lauf*
Due process; *Webster v. Doe*	No timely forum before irreparable injury	Low	Temporary order of up to 14 days, extendable once; habeas and party relief untouched; Sec. 13(c) guarantees a forum and bars delay of relief against irreparable constitutional injury beyond the Sec. 4 periods
Klein / rule of decision	Congress is dictating outcomes	Low	No presumption or burden shift; Sec. 2(b) disclaims any rule of decision
Suspension Clause	Limits reach detention	Very low	Sec. 13(a) excludes all habeas, including habeas classes
No appeal as of right from three-judge orders	Certiorari-only review of interim orders leaves a losing party without guaranteed review of those orders; final judgments now carry an appeal as of right (Sec. 7(c))	Low; interim orders are already reviewed this way in practice through emergency applications	Two-track review in Sec. 7: certiorari for interim orders, appeal as of right for final judgments

CHALLENGE	ARGUMENT	LIKELY OUTCOME	RESPONSE IN V2
State standing and complete relief	States are entitled to complete relief, an issue *CASA* left open	Moderate	Sec. 3(2)(A)(iv) lets a single judge give relief covering the State's own functions and residents
Rules Enabling Act / Rule 23 conflict	Statute overrides class procedure	Low	A later statute controls over a rule; *Aleman Gonzalez*
Panel selection capacity and designation	Administrative burden; designation of judges across circuits	Low to moderate	Designation authority supplied by the Act itself (Sec. 4(c)(2)), notwithstanding 28 U.S.C. §§ 291 and 292 and without their request or certificate requirements; Chief Justice designates within 3 business days; lending circuit's § 295 consent deemed given unless withheld in writing within 2 business days; § 296 powers carried across expressly; refusal, recusal or unavailability triggers a fresh draw; within-circuit fallback at 10 business days (Sec. 4(c)(3)); AO reporting

Practical risk

- **Caseload. Each request takes three judges. Requests for non-party relief will likely number in the dozens a year. Whether that is manageable is now an open question rather than a settled one: the substitute creates no judgeships and instead requires the Judicial Conference, under Sec. 13(a), to report what the Act costs in judicial time and how many judgeships it would take to administer.**
- **Delay before the panel. The statute requires the panel to be drawn within 4 days of filing. The emergency order lasts until the panel rules, up to 14 days, with one 14-day extension by the panel, and the chief judge of the circuit of filing seats a panel if none is in place by day 10. Together these close the gap Reviewer B identified.**
- **Plaintiffs adapting. Plaintiffs may file many party-limited suits instead of one non-party suit. That is fine. It gives the Supreme Court the range of lower-court views it relies on, and Sec. 4(f) lets related actions be transferred for coordinated pretrial proceedings under 28 U.S.C. § 1407.**

Political risk

- H.R. 1526 (No Rogue Rulings Act) passed the House 219–213 on April 9, 2025, with no Democratic votes, and had no Senate action as of October 11, 2026. Grassley's S. 1206 has 29 cosponsors, all Republicans.

- **Republicans on record against single-judge nationwide orders:** Grassley (S. 1206; floor and hearing statements calling universal injunctions an unconstitutional abuse of judicial power), Hawley (Nationwide Injunction Abuse Prevention Act of 2025, S. 1099), Cruz (subcommittee hearings on "judicial lawfare"), Cornyn, Kennedy, Barrasso, Blackburn, Britt, Budd, and the rest of the S. 1206 cosponsor list. These are the natural first cosponsors.

- **Democrats on record against judge-shopping:** Schumer, Hirono, and Whitehouse led the End Judge Shopping Act, S. 4096 (118th Cong.), introduced April 10, 2024 after the Northern District of Texas declined the Judicial Conference's random-assignment policy, with 43 Democratic and independent cosponsors (Senate Democrats; Hirono). Blumenthal, with Durbin as an original cosponsor, introduced the Shadow Docket Sunlight Act, S. 3533, on December 17, 2025. Schiff said at the April 2, 2025 Judiciary hearing that he is open to limits on forum shopping while opposing an outright end to nationwide relief. Sec. 11 of this bill is their 2024 bill, made law.

- **Pitch to Democrats: random assignment they already sponsored, no single Texas judge controlling national policy, an appeal as of right with a 45-day deadline, and a 2029 effective date that could constrain a Republican administration first.**

- **Pitch to Republicans:** universal § 705 stays and vacatur end; no D.C.-centered forum; Supreme Court review of interim orders in weeks.

- **Vehicle: a standalone bill needs 60 votes in the Senate, and S. 1206 has not moved in eighteen months. The realistic routes are attachment to the JUDGES Act (H.R. 1702), which has bipartisan cosponsors and gives both sides judgeships they want, or a post-midterm judiciary package. The substitute weakens the first of those: with no judgeships of its own, this bill brings less to a judgeships vehicle than version 2.5 did.**

- **Strongest objection from each side, and the answer.** Republicans: the temporary order and class provisions still allow broad relief, and 2029 gives no help now. Answer: the temporary order is limited to specific irreparable injury, lasts 14 days, and a class needs three judges and the government's input; the delayed date is the price of 60 votes. Democrats: the bill weakens the courts' check on the executive. Answer: every court keeps that check; relief for the parties, habeas, and constitutional claims are untouched, and broad relief needs three randomly chosen judges instead of one chosen by the plaintiff.

1. What the earlier rounds covered. Rounds 1 through 4 below, the citation and legality audit that follows them, and the verification and sources record all examined version 2.5 and the bill text it carried. None of them examined the proposed substitute of 26 October 2026, which replaced that bill text in this version. Where a finding below concerns a provision the substitute changed or removed, the finding

stands as the record of what was asked and answered about version 2.5; it is not a statement about the text printed above it. The substitute's bill text was checked separately, in the round dated 30 October 2026 recorded at the end of this appendix.

Independent cross-check

Round 1 (v1 and the critique, not blind). Reviewer B agreed that the problem is real, the critique of v1 is correct, and v2 is the better design. Its four refinements are adopted in Secs. 3, 6, 9, and 13.

Round 2 (adversarial review of v2, fresh session, October 11, 2026). Reviewer B was told to act as skeptical Senate Judiciary counsel and a federal-courts scholar. It ranked practical failure of the three-judge mechanism as the most serious risk, ahead of constitutional attacks, which it called real but secondary and mostly as-applied. Its bottom line: without fixes, the bill would reduce single-judge nationwide orders but generate procedural fights and leave timing gaps. Its points are disposed of as follows.

REVIEWER B'S OBJECTION	DISPOSITION IN V2.1
Three-judge courts were largely abolished in 1976 (Pub. L. 94–381) because they burdened the courts	**Answered.** Before 1976, every suit to enjoin a State statute triggered a panel. V2 triggers one only when relief reaching non-parties is requested, which happens dozens of times a year, not thousands. Sec. 12 judgeships and Sec. 14 reporting address the remaining burden.
JPML is the wrong body; "weighted by judgeships" is undefined	**Adopted.** Selection moved to automated random selection by the Administrative Office under Judicial Conference rules, with an explicit probability formula (Sec. 4(b))
Panel deadlines will be missed	**Adopted.** If no panel is seated by day 10, the chief judge of the circuit of filing seats one by random selection (Sec. 4(b)(3))
7-day non-renewable emergency order expires before the panel can act	**Adopted.** The order lasts until the panel rules, up to 21 days, and the panel may extend it once by 14 days (Sec. 4(c))
Plaintiffs will split one challenge into many party-limited suits	**Adopted.** Mandatory notice of related actions and transfer to the panel under 28 U.S.C. § 1407 (Sec. 4(d))
Provisional class certification is a loophole	**Adopted.** Provisional and conditional classes are expressly covered (Sec. 6(c))
The *Nken* public-interest rule reads as categorical	**Adopted in part.** Changed to "a cognizable injury to the public interest" to be weighed, not presumed (Sec. 5(b))

REVIEWER B'S OBJECTION	DISPOSITION IN V2.1
Narrow "non-party relief" to orders that expressly reach non-parties	**Rejected.** An "expressly" test would let courts reach everyone by giving the parties "complete relief" without saying so. The "necessary operation" test, together with the incidental-benefit exclusion, is the line that resists drafting around.
Shift the 180-day reconsideration burden to the government	**Rejected.** That would turn the reconsideration rule back into open-ended interim relief, which is the problem the bill addresses. Renewal on findings is already available.
Limit Sec. 11 random assignment to federal-law challenges	**Rejected.** Covering State law matches the Judicial Conference's 2024 policy and is part of the bill's appeal to both parties.

Two of Reviewer B's factual statements were wrong and are noted so they are not repeated. First, review under § 1253 is by direct appeal, not certiorari; v2 deliberately uses certiorari. Second, Sec. 13(d) does apply Secs. 4–10 to existing exclusive-review statutes; Reviewer B read it as excluding them.

Round 3 (final review and source check of v2.1 by Reviewer A, October 11, 2026). Reviewer A verified the case citations and the Harvard Law Review and CRS counts, and found four drafting defects that mattered. Each is fixed in v2.2.

REVIEWER A'S FINDING	DISPOSITION IN V2.2
Sec. 7 adopted certiorari but left 28 U.S.C. § 1253 in place, which gives a direct appeal from any three-judge court Congress requires. The memo and the bill contradicted each other.	**Adopted.** Sec. 7(b) now operates "notwithstanding section 1253," and new Sec. 7(e) amends § 1253 to exclude courts under this Act.
"Deemed designated under §§ 291–292" does not authorize a cross-circuit panel; those sections require designation by the Chief Justice or a chief judge.	**Adopted.** Sec. 4(b)(3) now designates the judges by the Act itself, notwithstanding §§ 291–296, and adds recusal and replacement rules. New Sec. 4(e) displaces § 2284.
The § 706 amendment added subsections "(c)" and "(d)" to a section that has no lettered subsections.	**Adopted.** Both APA amendments now add a sentence at the end of the existing section.
Sec. 13(a) protected "any relief preventing the removal of a person," which would exempt a nationwide removal challenge from the three-judge rule.	**Adopted.** Sec. 13(a) now protects habeas and relief for a party to his own case, and says it does not exempt class or non-party orders.

REVIEWER A'S FINDING	DISPOSITION IN V2.2
Presidential actions are not "agency action" under the APA.	**Adopted.** Sec. 6 now states that Secs. 4 and 5 reach every covered action and Sec. 6 governs APA relief.
Sec. 13(d) applied district-court procedures to exclusive review in courts of appeals.	**Adopted.** Courts of appeals decide non-party relief by a panel of three; Secs. 5, 8, 9, and 10 apply.
§ 1407 transfers are limited to pretrial proceedings.	**Adopted.** Sec. 4(d) now gives the three-judge court direct transfer authority for all purposes.
"34 nationwide injunctions in effect" misstated CRS; CRS counted 34 cases in which injunctions had issued.	**Adopted.** Reworded.
Make the Road ran about ten months, not eleven, and the D.C. Circuit's November 2025 order denied a stay except as to credible-fear procedures.	**Adopted.** Reworded.
Klein, Webster, and Patchak lacked full citations; the Klein conclusion was too categorical.	**Adopted.** Citations added; the memo now says a court will judge the Act by what its provisions do.
"Panels normally seated within 4 days" was an unsupported prediction.	**Adopted.** Restated as the statutory deadline.
Risk ratings had no stated methodology.	**Adopted in part.** Labeled as the drafter's preliminary assessment.
Sec. 11 should not reach State law.	**Rejected**, for the reason given in Round 2.
Sec. 4(c) lets a single judge give temporary relief to a putative class.	**Rejected as a defect.** That is the design. The order is limited to what is needed to prevent the identified injury and lasts no more than 21 days.

Reviewer A could not verify three items from primary sources in its session: the S. 1206 cosponsor count, the H.R. 1702 judgeship numbers, and the fate of reconciliation § 70302. All three were verified separately and are recorded below.

Round 4 (v2.2, October 11, 2026, paid tiers). Reviewer A reviewed the bill text as Legislative Counsel and verified three open facts. Reviewer B re-checked its Round 2 objections, read v2.2 as a hostile reviewer, and mapped the political path. Both confirmed the four Round 3 fixes. Both found that three-judge courts work only if the selection mechanism cannot fail, and Reviewer A found two cases where it could. Dispositions follow.

FINDING	SOURCE	DISPOSITION IN V2.3
The weighted circuit draw could select the Federal Circuit, which has no district judges, so no panel could be formed	Reviewer A	**Adopted.** Federal Circuit excluded; draw limited to the twelve regional circuits (Sec. 4(b)(2)(A))
Excluding every judge of the filing district makes a panel impossible when the D.C. Circuit is drawn for a D.C. case, since D.D.C. is its only district	Reviewer A	**Adopted.** Exclusion lifted where the filing district is the only district in the circuit drawn; failed draws are repeated (Sec. 4(b)(2)(B))
§ 1254 gives certiorari only over cases in the courts of appeals; direct certiorari from a district court needs its own grant	Reviewer A	**Adopted.** New 28 U.S.C. § 1261 grants it; Sec. 7(b) overrides §§ 1253, 1291, 1292, and 2101(c) expressly
Certiorari-only review leaves final judgments with no appeal as of right	Reviewer A	**Adopted.** Final judgments now go to the court of appeals under § 1291 with a 90-day deadline; interim orders stay on the certiorari track (Sec. 7(c))
The APA amendments said “only a three-judge court” while Sec. 13(d) sent exclusive-review cases to courts of appeals; both could not be true	Reviewer A	**Adopted.** Both amendments now except a court of appeals with exclusive jurisdiction (Sec. 6(a)–(b))
The 14-day stay of final vacatur had no emergency exception	Reviewer A	**Adopted.** Court may lift the stay on a written finding of irreparable injury (Sec. 6(b))
Single-judge temporary relief for up to 35 days is a de facto nationwide order; Rule 65(b)(2) limits a TRO to 14 days	Reviewer B, Reviewer A	**Adopted in part. Cut to 14 days plus one 14-day panel extension; notice to the United States required, or the Rule 65(b)(1)(B) showing (Sec. 4(c)). Reviewer B’s proposal to bar all non-party scope was rejected; it would leave D.V.D.-type removals unprotected**

FINDING	SOURCE	DISPOSITION IN V2.3
Transfer available only on the government's motion and discretionary, so plaintiffs can still split suits	Reviewer B	**Adopted.** Any party may move; transfer is mandatory unless undue delay or prejudice; remand of party-limited claims allowed (Sec. 4(d))
Transfer authority should be eliminated and left to §§ 1404, 1406, 1407	Reviewer A	**Rejected. Without it, Reviewer B's suit-splitting objection stands. Transfer is now limited to district courts and to actions seeking non-party relief**
A habeas class can function as broad non-party relief	Reviewer B, Reviewer A	**Adopted by a different route.** Rather than sending habeas classes to the three-judge court, which risks the Suspension Clause and *A.A.R.P.*, Sec. 13(a) now states that habeas relief concerns custody and cannot set aside a policy as to persons not in custody
"Necessary operation" undefined; State "residents" undefined; "party-limited" ignores joinder	Reviewer A	**Adopted.** Sec. 3 defines necessary operation by what compliance requires, replaces residents with persons within the State's territory, and includes joined parties
Any pleading triggers panel formation, even a frivolous one	Reviewer A	**Adopted.** Assigned judge may deny a facially frivolous request within 1 day (Sec. 4(b)(1))
Irreparable-injury finding required even for final relief; "least intrusive means" misapplied to APA vacatur	Reviewer A	**Adopted.** Sec. 5(a)(2) limited to interim relief; Sec. 5(c) limited to equitable relief
Sec. 5(b) must not become a presumption that the policy serves the public	Reviewer A	**Adopted.** Express no-presumption sentence added
Sec. 12 leaves judgeships to a floating recommendation; a judgeship exists only in the § 133 table	Reviewer A	**Adopted.** Sec. 12(b) amends the § 133 table; district allocation left for Legislative Counsel
Sec. 10 ignored need-to-know and CIPA	Reviewer A	**Adopted.** Need-to-know under E.O. 13526, CIPA procedures to the extent applicable, Judicial Conference rules for the special advocate
Sec. 11 trigger should turn on the relief requested	Reviewer A	**Adopted.**
Division of labor between the assigned judge and the panel had no standard	Reviewer A	**Adopted.** Sec. 4(b)(4) assigns non-party relief, certification, and final judgment on those claims to the panel; everything else to the assigned judge

FINDING	SOURCE	DISPOSITION IN V2.3
Sec. 2(a)(4) overstated what *CASA* decided	Reviewer A	**Adopted.** Reworded to “did not decide”
Filing-district judges should always be eligible	Reviewer A	**Rejected.** Keeping the exclusion, with the single-district exception, preserves the design against a plaintiff drawing a known local bench
Three-judge courts remain the mechanism Congress abandoned in 1976	Reviewer B	**Noted, not changed.** The 1976 repeal removed panels from every constitutional challenge to a state statute. This Act convenes one only when relief for non-parties is requested. Sec. 14 reporting will show whether the load is manageable

Verdicts. Reviewer B: not ready as v2.2; the single most important change was to narrow the single-judge temporary order. Done. Reviewer A: v2.2 was suitable for policy discussion with committee counsel but needed a third drafting pass before introduction-ready text. V2.3 is that pass. Both agreed the political route is the JUDGES Act or a post-midterm package, not a standalone bill.

Citation and Legality Audit

Every case, statute, rule, and number in this draft was checked against a primary source on October 11, 2026, by three independent reviewers working from the same list: the research assistant, Reviewer A, and Reviewer B. A fourth, automated research pass then re-checked the same inventory against primary sources, and the author re-opened every source it flagged. A citation is marked Confirmed only when at least two reviewers opened the primary source and agreed on both the citation and the proposition the draft attributes to it. Where a reviewer added a qualification, it is recorded and the draft was changed.

Cases

CITATION	PROPOSITION IN THE DRAFT	RESULT	NOTE
Sheldon v. Sill, 49 U.S. (8 How.) 441 (1850)	Congress may limit lower-court jurisdiction	Confirmed	Justice Grier: Congress may “withhold from any court of its creation jurisdiction of any of the enumerated controversies” (at 449)
Lauf v. E.G. Shinner & Co., 303 U.S. 323 (1938)	Congress may restrict the equitable remedies of inferior courts	Confirmed	“There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States” (at 330)
Lockerty v. Phillips, 319 U.S. 182 (1943)	Congress may withdraw district courts’ power to enjoin a federal program when another forum remains	Confirmed, reworded	Reviewer A: do not overstate as “all equity power derives from statute.” The table in the memo now states the narrower holding
Trump v. CASA, Inc., 606 U.S. 831 (2025)	Judiciary Act of 1789 does not authorize universal injunctions; APA, class, and State questions left open	Confirmed	June 27, 2025; 6–3; Barrett, J.

CITATION	PROPOSITION IN THE DRAFT	RESULT	NOTE
Garland v. Aleman Gonzalez, 596 U.S. 543 (2022)	§ 1252(f)(1) bars classwide injunctions; Congress may restrict them	Confirmed	June 13, 2022; Alito, J.
Nken v. Holder, 556 U.S. 418 (2009)	Government's harm and the public interest merge; public interest in prompt execution of removal orders	Confirmed, qualified	Reviewer A: the Court also recognized the public interest in preventing unlawful removal. Sec. 5(b) weighs both sides and disclaims any presumption
United States v. Klein, 80 U.S. (13 Wall.) 128 (1872)	Congress may not prescribe a rule of decision	Confirmed, qualified	Klein does not bar changing the law that governs pending cases
Patchak v. Zinke, 583 U.S. 244 (2018)	Jurisdiction-stripping that changes the law does not violate Klein	Confirmed, qualified	Plurality, not majority. Memo now says "(plurality opinion)"
Webster v. Doe, 486 U.S. 592 (1988)	Serious constitutional question if no forum for a colorable constitutional claim	Confirmed	Part III of the opinion, citing *Bowen v. Michigan Academy*
Franklin v. Massachusetts, 505 U.S. 788 (1992)	The President is not an APA agency	Confirmed	
Miller v. French, 530 U.S. 327 (2000)	PLRA automatic stay of existing relief upheld; due process question on inadequate time left open	Confirmed	Supports Sec. 8, not an automatic stay of new relief

CITATION	PROPOSITION IN THE DRAFT	RESULT	NOTE
Learning Resources, Inc. v. Trump, 607 U.S. ___ (2026) (Nos. 24–1287, 25–250, Feb. 20, 2026)	IEEPA does not authorize tariffs	Confirmed	6–3; Roberts, C.J. No preliminary print for volume 607 has issued; the latest on supremecourt.gov is volume 606, so the decision is cited by docket number and decision date. The D.C. Circuit case itself was dismissed for lack of jurisdiction; the merits holding comes through the consolidated V.O.S. Selections appeal
Trump v. Barbara, No. 25–365 (June 30, 2026)	Birthright-citizenship order unlawful	Confirmed	Roberts, C.J., for five; Kavanaugh concurring in the judgment and dissenting in part, on statutory grounds; Thomas (with Gorsuch), Alito, and Gorsuch dissenting; 6–3 judgment, 5–4 constitutional holding; 609 U.S. ___ (2026), no page yet assigned
A.A.R.P. v. Trump, Nos. 24A1007, 24–1177	Interim relief for a putative habeas class	Confirmed	April 19, 2025 order (reported 604 U.S. 1251); May 16, 2025 per curiam, 7–2 (reported 605 U.S. 91)
Trump v. J.G.G., No. 24A931 (Apr. 7, 2025) (per curiam)	AEA challenges proceed in habeas in the district of confinement	Confirmed	Reported 604 U.S. 670

CITATION	PROPOSITION IN THE DRAFT	RESULT	NOTE
Make the Road New York v. Noem, No. 1:25-cv-00190 (D.D.C.); *v. Mullin*, No. 25–5320 (D.C. Cir.)	§ 705 stay Aug. 29, 2025; stay pending appeal denied Nov. 22, 2025 except as to credible-fear procedures (Millett, Childs; Rao dissenting); vacated June 23, 2026; en banc petition July 27, 2026	Confirmed	The "August 7, 2026 ruling" in the research record did not exist and was removed
D.V.D. v. DHS, No. 1:25-cv-10676 (D. Mass.); No. 24A1153 (U.S.)	April 18, 2025 PI (ECF 64) in force during the South Sudan removals; SCOTUS stay June 23, 2025, 145 S. Ct. 2153; clarified July 3, 2025	Confirmed	
Yakus, 321 U.S. 414 (1944); *Boumediene*, 553 U.S. 723 (2008); *St. Cyr*, 533 U.S. 289 (2001); *Thuraissigiam*, 591 U.S. 103 (2020); *Trump v. Hawaii*, 585 U.S. 667 (2018); *Bank Markazi*, 578 U.S. 212 (2016); *Plaut*, 514 U.S. 211 (1995); *Winter*, 555 U.S. 7 (2008); *Nguyen v. United States*, 539 U.S. 69 (2003)	Cited in the risk analysis	Confirmed	Standard citations; no reviewer flagged an error

Statutes and rules

PROVISION	WHAT THE DRAFT ASSUMES	RESULT	NOTE
28 U.S.C. § 1253	Direct appeal from any three-judge court "required by any Act of Congress"	Confirmed	Section opens "Except as otherwise provided by law," so Sec. 7(b)'s "notwithstanding" clause works on its own; Sec. 7(e) makes it explicit

PROVISION	WHAT THE DRAFT ASSUMES	RESULT	NOTE
28 U.S.C. § 1254	Certiorari only over cases in the courts of appeals	Confirmed	Hence a new section, numbered § 1261 because § 1260 has been occupied since 2012 by the Virgin Islands certiorari provision (Pub. L. 112–226); Reviewer A caught the conflict in the sign-off round
28 U.S.C. § 2284	Three-judge court when an Act of Congress requires, and for apportionment challenges; chief judge of the circuit designates two judges; single-judge TRO limited to specific findings	Confirmed	Sec. 4(e) displaces it; Sec. 4(c) tracks § 2284(b)(3)'s TRO finding requirement
28 U.S.C. §§ 291–296	Designation by the Chief Justice (across circuits) or the chief judge (within circuit)	Confirmed	Sec. 4(b)(3) designates by statute instead; see legality table
28 U.S.C. § 137	Subsections (a) and (b) exist; new (c) is correct	Confirmed	(b) covers rate-court assignment, added 2018
28 U.S.C. § 133	Judgeships exist in the table	Confirmed	Sec. 12(b) amends the table
28 U.S.C. § 1407	Transfer for pretrial only; *Lexecon*, 523 U.S. 26 (1998)	Confirmed	Sec. 4(d) displaces the pretrial limit
28 U.S.C. § 2101(c), (e)	90-day certiorari period, extendable 60 days; certiorari before judgment	Confirmed	Sec. 7(b) overrides (c) for interim orders
5 U.S.C. §§ 705, 706	No lettered subsections; "adding at the end" is correct form	Confirmed	§ 706 has an introductory paragraph, paragraphs (1)–(2)(A)–(F), and a closing sentence
8 U.S.C. § 1252(e)(1), (f)(1)	No class certification in expedited-removal challenges; no court other than the Supreme Court may enjoin the operation of §§ 1221–1232 except as to an individual alien against whom proceedings have been initiated	Confirmed	Sec. 13(d) disclaims both

PROVISION	WHAT THE DRAFT ASSUMES	RESULT	NOTE
18 U.S.C. § 3626(a)(1)(A), (a)(2), (e)(2)	Need-narrowness-intrusiveness; 90-day expiration of preliminary relief; automatic stay on termination motions	Confirmed	Secs. 5(c) and 8 are modeled on (a)(1)(A) and (a)(2)
Fed. R. Civ. P. 65(b)(1)(B), (b)(2), (c)	Attorney certification for ex parte TRO; 14-day limit, one extension; security, United States exempt	Confirmed	Sec. 4(c) adopts the 14-day limit and the certification
Pub. L. 94–381, 90 Stat. 1119 (1976)	Repealed §§ 2281–2282; amended § 2284	Confirmed	
CIPA, 18 U.S.C. App. 3; E.O. 13526	Classified-information procedures; classification order in force	Confirmed	CIPA governs criminal cases only (Reviewer A). Sec. 10 now directs the Judicial Conference to prescribe civil procedures modeled on it. E.O. 13526 remains in force per July 2026 ISOO guidance; Sec. 10 says “or any successor order”
28 U.S.C. § 1260	Earlier drafts assumed the number was free for the new certiorari grant	Corrected	Occupied since 2012 by “Supreme Court of the Virgin Islands; certiorari” (Pub. L. 112–226). Sec. 7(e)(2) now adds § 1261 and amends the chapter 81 table of sections. Caught by Reviewer A in the sign-off round; confirmed against the LII chapter listing

Facts and numbers

CLAIM	RESULT	SOURCE
Harvard Law Review counts: Bush 6, Obama 12, Trump I 64 (59 by Democratic appointees, 92.2%), Biden 14 (all Republican appointees)	Confirmed	*District Court Reform: Nationwide Injunctions*, 137 Harv. L. Rev. 1701 (2024)

CLAIM	RESULT	SOURCE
CRS counts: Trump I 86; Biden 28; Trump II 50 cases through June 27, 2026; 34 cases by June 27, 2025; 14 in force a year later; 2 converted to classwide relief	Confirmed	CRS R48467 (Trump I and Biden); R49022 (Trump II and post-CASA)
D.D.C.: 15 judgeships, 5,227 total filings (4,685 civil), 7,502 pending, year ending June 30, 2026	Confirmed	U.S. Courts district profile
Emergency docket: Brennan Center, 24 of 32 decided matters at least partly for the administration (75%), updated Oct. 9, 2026	Confirmed	A second tracker figure used earlier (40 filed, 26 of 31 granted) could not be traced to a source in the final check and was removed
H.R. 1526 passed 219–213, April 9, 2025; no Senate action	Confirmed	House Roll Call 98; Senate referral April 10, 2025
S. 1206: March 31, 2025; 21 original cosponsors, 29 in all; no committee action	Confirmed	Congress.gov record
End Judge Shopping Act, S. 4096 (118th), introduced April 10, 2024, 43 cosponsors	Corrected	Earlier draft said April 11 (the press-release date) and 40 cosponsors
Hawley's bill is S. 1099, Nationwide Injunction Abuse Prevention Act of 2025	Confirmed, added	Reviewer B, from hawley.senate.gov and govtrack
Shadow Docket Sunlight Act, S. 3533, Dec. 17, 2025, Blumenthal with Durbin	Confirmed, added	Congress.gov
Schiff's April 2, 2025 hearing remarks on forum shopping	Confirmed	Roll Call, April 2, 2025
"Durbin has called the problem bipartisan"	**Not supported**; removed	Reviewer B could not find a primary source
Judicial Conference, March 11, 2025: 69 district judgeships, 2 court-of-appeals judgeships	Confirmed	uscourts.gov

CLAIM	RESULT	SOURCE
House § 70302 (limit on contempt enforcement of injunctions issued without security) passed May 22, 2025; the Senate Judiciary counterpart (§ 203, security before an injunction) held subject to the Byrd rule June 21, 2025; neither enacted	Corrected	Senate Budget Committee release, June 21, 2025, for the ruling; CRS LSB11323 (June 12, 2025) describes § 70302 and predates the ruling. Earlier draft said June 22

Scholarship, proposals, and history (added October 12, 2026)

These citations entered the draft with the comparison section, the staff Q&A, and the appendix on existing proposals. Reviewer A and Reviewer B checked each against the source; the author confirmed the hearing witness list, the H.R. 1526 engrossed text, S. 1206, and S. 1758 directly.

CITATION OR CLAIM	RESULT	NOTE
Bray, *Multiple Chancellors*, 131 Harv. L. Rev. 417 (2017); Frost, 93 N.Y.U. L. Rev. 1065 (2018); Sohoni, 133 Harv. L. Rev. 920 (2020); Morley, 97 B.U. L. Rev. 615 (2017); Trammell, 98 Tex. L. Rev. 67 (2019); Clopton, 118 Mich. L. Rev. 1 (2019); Wasserman, 22 Lewis & Clark L. Rev. 335 (2018)	Confirmed	Both reviewers; author, title, volume, page, year
Trump v. Hawaii, 585 U.S. 667 (2018) (Thomas, J., concurring); *DHS v. New York*, 140 S. Ct. 599 (2020) (Gorsuch, J., concurring); *Arizona v. Biden*, 40 F.4th 375 (6th Cir. 2022) (Sutton, C.J., concurring); Vladeck, *The Shadow Docket* (2023)	Confirmed	Both reviewers
Statement that *CASA* “adopted” Bray’s account	Corrected	Reviewer A: overstated. Now “consistent with that account”
Mann-Elkins Act, ch. 309, § 17, 36 Stat. 539, 557 (1910); Act of Aug. 24, 1937, ch. 754, § 3, 50 Stat. 751, 752; Pub. L. 94–381 (1976)	Confirmed	Reviewer A opened the Statutes at Large pages. “For exactly this kind of case” corrected to constitutional challenges to state and federal statutes

CITATION OR CLAIM	RESULT	NOTE
H.R. 1526 (engrossed): new § 1370(a)–(c); random three-judge panel for suits by two or more States from different circuits; appeal to circuit or Supreme Court at the party's preference; H.R. Rep. No. 119–40	Confirmed	Author read the engrossed text. Claim that it "covers injunctive relief only, so § 705 stays and § 706 vacatur continue" softened to "does not expressly reach" them
S. 1206: new 28 U.S.C. § 2285 bars non-party relief; strikes "and set aside" from § 706(2); § 1292(a)(4) makes covered TROs appealable; no effective date	Confirmed	Author read the introduced text on govinfo. "60-vote opposition" removed as unsupported
S. 1758, Fair Courts Act of 2023 (Wyden, May 30, 2023): three-judge court under § 2284 for injunctions beyond the plaintiff and nationwide vacatur; randomized designation; 25-percent assignment-probability rule; no appellate change	Added	Reviewer A identified the omission; author read the introduced text on govinfo. Added to the comparison table and the appendix
Morrison, Bloomberg Law, "It's Time to Enact a 3-Judge Court Law for National Injunctions"	Confirmed, corrected	Dated February 6, 2023 (both reviewers); panel described as "at least one circuit judge," not one circuit and two district judges
Senate Judiciary hearing, April 2, 2025, "Rule by District Judges II"	Corrected	Witnesses were Bray, Vladeck, and Panuccio. The draft and Reviewer B had listed Sohoni; Reviewer A caught it; author confirmed on the committee page
Judicial Conference random-assignment policy, March 12, 2024; Northern District of Texas did not adopt it	Confirmed	Both reviewers
H.L.R. appointment figures (59 of 64; 14 of 14), 69 judgeships, Rule 65(b)(2) 14-day limit, four-day draw	Confirmed	Reviewer A; H.L.R. Biden figure covers 2021–2023

Legality of the mechanism

Reviewer B and Reviewer A were asked separately whether each part of the design is constitutional. Their conclusions agree.

QUESTION	REVIEWER B	REVIEWER A	DRAFT'S POSITION
May Congress designate judges by statute through a random draw, bypassing §§ 291–296?	Supported. Congress constitutes inferior courts and may set assignment methods; no office is created; *Nguyen* turned on the absence of statutory authority, which this Act supplies	Cannot verify as settled law. No precedent squarely validates an administrative draw that seats an Article III panel without any judicial designation; Nguyen enforces panel-composition rules but does not decide the question. Recommends keeping the random draw and assigning the formal designation to the Chief Justice or a chief judge	Adopted. Sec. 4(b)(3) now has the Chief Justice, or a chief judge acting for the Chief Justice, make a ministerial designation within 3 days of the draw, with statutory designation as the fallback. Published rules, independent audit, and a replacement draw added to Sec. 4(b)(2)
Direct certiorari from a district court (new § 1261) plus appeal as of right to the court of appeals for final judgments?	Supported. No Exceptions Clause problem; precedents in § 1259, former § 1252, and § 2101(e)	A new jurisdictional grant is required and is supplied; certiorari-only review would leave no guaranteed appeal, so the two-track design answers that	Adopted in v2.3
Custody-only habeas sentence under *Boumediene* and *St. Cyr*?	Uncertain at the margin: depends on application to removal-prevention orders	Not facially unconstitutional, but the savings language should be stronger; recommends an express clause preserving jurisdiction to determine the lawfulness of custody and relief necessary to make habeas review effective for a petitioner or class in custody	Both adopted. Sec. 13(a) now states that habeas relief includes orders preventing removal or transfer of petitioners in custody, and carries Reviewer A's savings sentence verbatim

QUESTION	REVIEWER B	REVIEWER A	DRAFT'S POSITION
14-day stay of final vacatur and 14-day temporary order under *Yakus*, *Lockerty*, *Miller v. French*?	Supported. Congress may condition the timing of equitable remedies; written findings required	Plausibly constitutional if prospective and neutral, with an emergency exception; Miller v. French is the strongest support; the statute should say when the period starts and whether a stay application extends it	Exception added in v2.2; v2.3 now states that the 14 days run from entry and that a timely stay application extends the stay until the reviewing court rules, up to 30 further days
Secs. 5(b) and 5(c) under *Klein*, *Bank Markazi*, *Patchak*?	Supported. They change the governing standard prospectively; they do not compel findings under old law	Permissible if applied generally and prospectively	Sec. 2(b) disclaims any rule of decision, burden, or standard of review
Rules Enabling Act and Rule 23?	Supported. A statute controls over a rule; Congress has limited class procedure before (CAFA)	Statute may supersede a rule; departures should be express	Sec. 6(c) is express
§ 1252(f)(1) after *Aleman Gonzalez* and *Biden v. Texas*?	Supported. The disclaimer avoids conflict	Disclaimer necessary and present	Sec. 13(d)
Does anything depend on a reading of *CASA* the opinion does not support?	No	No; Sec. 2(a)(4) now says what the Court did not decide	

Changes made as a result of this audit

1. Sec. 4(b)(2): the selection system must run under published rules, be independently audited, and allow a replacement draw on a showing of error.
2. Sec. 13(a): habeas relief expressly includes orders preventing the removal or transfer of petitioners in custody.

3. Memo: *Lockerty* restated as the narrower holding; *Patchak* marked as a plurality; *Learning Resources* cited by docket and date pending settled pagination.

4. Political section: S. 4096 date and cosponsor count corrected; S. 1099 and S. 3533 added; the unsupported Durbin statement removed.

5. *Make the Road* November 22, 2025 order added.

6. Sec. 4(b)(3): the Chief Justice, or a chief judge the Chief Justice designates, makes a ministerial designation within 3 days of the draw; statutory designation applies only if that is not done. This answers Reviewer A's point that no precedent validates an administrative draw with no judicial designation at all.

7. Sec. 6(b): the 14-day stay of final vacatur runs from entry, and a timely stay application extends it until the reviewing court rules, but not more than 30 further days.

8. Sec. 10(b): classified-information procedures are prescribed by the Judicial Conference for civil cases and modeled on CIPA, which by its terms governs only criminal cases.

9. Sec. 13(a): added the savings sentence preserving jurisdiction to determine the lawfulness of custody and relief necessary to make habeas review effective for a petitioner or a class in custody.

10. Memo and risk assessment: first-term and Biden-era injunction counts sourced to CRS R48467; H.R. 1526 vote cited to House Clerk Roll Call 98; H.R. 1702 cited as the JUDGES Act of 2025.

11. Final source check (independent research pass against primary sources, October 11, 2026, with the author re-opening each flagged source): Learning Resources cited as 607 U.S. ___ (2026), by docket number and decision date, the preliminary print for volume 607 not having issued; D.D.C. figure corrected to 5,227 total filings (4,685 civil); the untraceable second emergency-docket tracker removed; the Byrd-rule ruling re-dated to June 21, 2025 and re-sourced to the Senate Budget Committee release, with the House § 70302 and Senate § 203 mechanisms distinguished; the November 22, 2025 Make the Road order restated as a denial of stay except as to credible-fear procedures; Justice Kavanaugh's Barbara opinion restyled as concurring in the judgment and dissenting in part; S. 4096 cosponsor count stated as 43; pin cites added for Sheldon and Lauf; the § 2284 and § 1252(f)(1) descriptions completed.

12. Sign-off round (October 12, 2026; Reviewer A Reviewer B Expert, on the corrected text): new 28 U.S.C. § 1260 renumbered § 1261 because § 1260 has been occupied since 2012 by the Virgin Islands certiorari provision, with the chapter 81 table of sections amended; Sec. 2(a)(3) finding reworded (the counts did not rise in every administration; Biden's were below Trump I's); Sec. 7(b) now expressly covers a single judge's frivolousness denial whether the request was for interim or final relief; Sec. 6(c) opens with the Sec. 13(a) exception so habeas classes are not caught by the certification rule; Sec. 4(d) transfers run to the district where the panel sits and yield to exclusive-venue statutes; Sec. 10(b) now confers the rulemaking authority directly on the Judicial Conference with a one-year deadline and an interim rule applying CIPA §§ 3, 4, 6, 8, and 9 so far as they fit; Sec. 4(b)(2) rules also due within one

year; memo wording on Supreme Court review, scope, and removal-case venue tightened. On Reviewer A's second pass: Sec. 2(a)(3) limited to nationwide injunctions, the remedy CRS R48467 counts (it excludes APA stays and vacatur); Sec. 16 now makes the Judicial Conference's rulemaking authority under Secs. 4(b)(2), 4(b)(3), and 10(b)(1) effective on enactment for the purpose of preparing and publishing the rules; the memo's venue row now says habeas, detention, and individual removal cases keep their existing jurisdiction and venue rules (28 U.S.C. §§ 2241(d), 2255; 8 U.S.C. § 1252(a)(5), (b)(2)). Reviewer B independently cleared the corrected text and confirmed § 1261 is unoccupied.

13. A+ pass (October 12, 2026). Added the comparison section "Why this design and not the others," the staff Q&A, and the appendix "Relationship to Existing Proposals and Scholarship." Sec. 7(b) rewritten so that review of an interim order is mandatory in one court or the other: a certiorari petition the Supreme Court does not grant within 30 days, or denies, stands referred to the court of appeals, which takes jurisdiction under the Act, treats the referral as a notice of appeal, and decides within 30 days; § 1261 conformed. On Reviewer A's review of the new material: S. 1758 (Wyden, 2023) added as a predecessor; hearing witness list corrected; Morrison's date and panel description corrected; "60-vote," "changed names, not reach," "exactly this kind of case," and "adopted" softened to what the sources support; novelty claims limited to the bills named; predicted objections recast as expectations.

Closing verdicts (October 12, 2026). On the v2.4 text: Reviewer A, after three passes, all nine of its items resolved, "CLEARED FOR PUBLICATION - no changes required," with the § 133 table accepted as a bracketed Legislative Counsel insertion for a discussion draft; Reviewer B, after two passes, each revised provision "correct in law and legislative form," same verdict. On the v2.5 additions (comparison section, staff Q&A, scholarship appendix, mandatory-review rewrite of Sec. 7(b)): Reviewer A ran three further passes and found the Sohoni witness error, the omitted S. 1758, the Morrison description, and six overstatements, all corrected; it assessed the deemed-referral rule as "constitutionally defensible" with the court of appeals' jurisdiction "expressly supplied," and cleared the text once the last two memo sentences were fixed. Reviewer B confirmed every citation in the new material, confirmed S. 1758 against the govinfo text, called the deemed referral constitutional "because it imposes a statutory consequence on the Court's own decision or silence rather than commanding the Court," and cleared the text. Reviewer B's first pass had cleared v2.3 without catching the § 1260 conflict and had reported Sohoni as a 2025 witness; it acknowledged both when asked. Its clearances are recorded as confirmation of the fixes, not as their source.

1. **Round 5 (proposed substitute, 30 October 2026)**

2. Scope. This round covers the bill text of the proposed substitute of 26 October 2026, which is the bill text printed in this version, and the parts of the analysis rewritten to match it. It does not re-examine findings from rounds 1 through 4, which concerned version 2.5. Method is the one used in the earlier citation audit: every United States Code citation, every amendment anchor, every internal cross-reference and every case citation checked against a primary source, with anything not established recorded as an open item rather than resolved.

3. Citations confirmed. 5 U.S.C. §§ 105, 705 and 706; 28 U.S.C. §§ 133(a), 137, 291 through 296, 1253, 1291, 1292, 1254, 1407, 2241 and 2284; section 242 of the Immigration and Nationality Act (8 U.S.C. 1252); Rules 19, 20, 23, 24, 65(b)(1) and 65(c) of the Federal Rules of Civil Procedure; and the Classified Information Procedures Act. Trump v. CASA, Inc., 606 U.S. 831 (2025), and Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7 (2008), were confirmed as to reporter, volume, page and year, and no case is cited by name without a full citation.

4. New subsection designation. The substitute adds 28 U.S.C. § 137(c). Section 137 currently contains subsections (a) and (b) only, so the designation is unoccupied. The substitute creates no new section of title 28 at all, so the collision that governed the numbering in version 2.5, where § 1260 had been occupied since 2012 by the Virgin Islands certiorari provision, does not arise.

5. Amendment form. The substitute contains no strike-and-insert anchors. Every amendment adds text at the end of an existing provision, so there is no quoted language that must match the current Code. Sections 705 of title 5, 1253 of title 28 and 137 of title 28 are each a clean target for that form. Section 706 of title 5 is not, and the point is carried to open items.

6. Internal cross-references. Every reference of the form “section N” or “subsection (x)” in the bill text was checked against the substitute’s own numbering and resolves to an existing provision.

7. Not established. Eight items were not established and are recorded among the open items added in version 2.6. Five of them concern one question, whether 28 U.S.C. §§ 291 through 296 supply the designation authority that Sec. 4(c)(2) assumes.

8. **Round 6 (Sec. 4(c)(2) as revised, 30 October 2026)**

9. Scope. This round covers the paragraph substituted in version 2.7 and the provisions it touches. It does not re-examine the rest of the bill text, which Round 5 checked and version 2.7 did not change.

10. What the revision fixes. The authority question that Round 5 raised is answered. Sections 291 and 292 of title 28 are confirmed to say what Round 5 found: § 291(a) assigns a circuit judge only to act as a circuit judge and only at the receiving circuit’s request, § 291(b) reaches a district court only within the circuit and vests the designation in its chief judge or circuit justice, and § 292(d) moves a district judge across circuits only on a certificate of necessity. The revised paragraph no longer depends on any of that. It designates notwithstanding §§ 291 and 292 and waives the request and the certificate expressly, so the Act supplies the authority itself. A “notwithstanding” clause is a recognised device for that purpose, and the Supreme Court has said as much in Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993). The affirmative grant that follows it, rather than the clause, is what confers the power, and the paragraph is drafted that way. Section 296 was checked and carries no limiting cross-reference to §§ 291 through 294: its trigger is the fact of designation and assignment, whatever the source of authority, so the express reference to it works. The consent requirement is now correctly attributed to the chief judge or judicial council of the circuit from which the judge is designated, which is what § 295 says. A mandatory designation duty laid on the Chief Justice is well precedented: 28 U.S.C. § 49(d) imposes one for the independent-counsel division and 50 U.S.C. § 1803(a)(1) for the Foreign

Intelligence Surveillance Court, and extrajudicial service of this kind was upheld in Morrison v. Olson, 487 U.S. 654 (1988), and Mistretta v. United States, 488 U.S. 361 (1989).

11. What the revision does not reach. The notwithstanding clause names §§ 291 and 292 only, and two other sections of chapter 13 bear on the designation. The first sentence of § 295 is itself a prohibition, not a condition inside §§ 291 and 292: no designation of a judge in active service may be made without the sending circuit's consent. Because Sec. 4(c)(1) draws only from judges in regular active service, that sentence reaches every judge the Act can select. The paragraph invokes § 295 and then modifies it with a two-business-day deemed-consent rule, so the rule operates against an undisplaced bar and takes effect, if at all, as the later and more specific provision rather than by the notwithstanding clause. Section 294, which governs senior judges, is largely out of play for the same reason the § 295 point is sharp: the pool is active judges only. It is not wholly out of play, because a selected judge may take senior status between selection and designation, and § 294(d) would then require a certificate of necessity the Act does not waive.

12. Section 2284. Section 2284(b)(1) was checked. The revised paragraph is plainly the more specific provision on who designates and who sits, so the priority rule in Sec. 4(g) resolves that conflict, and there is no conflict on the number of circuit judges, since § 2284(b)(1) requires at least one and the Act supplies exactly one. Three parts of § 2284(b) are not composition, temporary-order or review provisions and so are left standing by Sec. 4(g)'s own terms. Each is recorded as an open item below.

13. Cross-references. Sec. 4(c)(3), Sec. 16(b) and Sec. 16(c) were checked against the revised paragraph and are unaffected. Every reference in this document of the form "section 4(c)" followed by a paragraph number resolves to a paragraph that exists.

14. **Open items added in version 2.7**

15. The items below come from Round 6. They concern the revised Sec. 4(c)(2) and the provisions it leaves in place.

16. The first sentence of section 295 of title 28 independently bars the designation of a judge in active service without the consent of the sending circuit, and the notwithstanding clause in Sec. 4(c)(2) names only sections 291 and 292.

17. Section 295 permits the Chief Justice to revoke a designation he has made, and whether that power attaches to a designation made under this Act is unsettled.

18. Section 295 requires that designations be filed with the clerks and entered on the minutes of the courts from and to which made. That requirement is not displaced and operates alongside the Act's own entry-on-records sentence, which is worded differently.

19. Section 294(d) of title 28 requires a certificate of necessity for the designation of a judge retired from regular active service to sit outside that judge's circuit. Sec. 4(c)(1) draws only from judges in active service, so the section does not ordinarily apply; it would apply to a judge who takes senior status between selection and designation.

20. Section 2284(b)(1) permits the judge to whom a three-judge request is presented to determine that three judges are not required. That is a screening function rather than a composition provision, so the priority rule in Sec. 4(g) leaves it intact, alongside the Act's own screening rules in Sec. 4(a) and 4(b).

21. Section 2284(b)(1) directs notice to the chief judge of the circuit, while Sec. 4(b) routes notice of the request to the Administrative Office and Sec. 4(c)(2) routes the designation to the Chief Justice. The status of the section 2284 notice is unresolved.

22. Section 2284(b)(3) assumes that the judge to whom the request was presented sits on the three-judge court. The composition in Sec. 4(c) does not place that judge on the court, and no provision names the single judge for pretrial matters once the panel is constituted.

23. No statute was located that overrides sections 291 through 295 by name. The comparable provisions, 28 U.S.C. section 49(d) and 50 U.S.C. section 1803(a)(1), create parallel designation authority rather than displacing chapter 13, and 28 U.S.C. section 1407(b) takes the opposite course by channelling designations through chapter 13.

24. Existing law sets no deadline on the Chief Justice's designation duties. Section 3 of title 28 devolves those duties on the senior associate justice only where the Chief Justice is unable to perform them or the office is vacant, and Sec. 4(c)(2) states no consequence for a lapsed three-business-day deadline and does not address the Chief Justice's recusal.

25. A judicial council meets at least twice a year and acts by order under 28 U.S.C. section 332, so a two-business-day window leaves the consent decision in practice with the circuit's chief judge alone.

26. No reported decision was located addressing either a statutory deadline on the Chief Justice's designation duty or a rule treating a circuit's silence as consent. Both devices are novel on the authority found.

27. Taken together, these are narrower than the items version 2.7 resolved. The authority to designate now exists in the Act. What remains is the tidying of two sections of chapter 13 that the notwithstanding clause does not name, three parts of section 2284(b) that the Act's priority rule does not reach, and two mechanisms, the deadline and the deemed consent, for which no precedent was found either way.

One item could not be closed from the official source and is carried on the checklist below: the Congress.gov copy of CRS R49022 (congress.gov blocks automated retrieval; the figures were read from the CRS PDF and EveryCRSReport mirrors). The Learning Resources pagination remains open: no preliminary print for volume 607 had issued when this version was posted, the latest on supremecourt.gov being volume 606.

Verification and Sources

Verified for this draft

- *Trump v. CASA, Inc., 606 U.S. 831 (June 27, 2025), 6–3, opinion by Justice Barrett (Wikipedia; confirmed by Reviewer A against the slip opinion).*Wikipedia
- *Trump v. Barbara*, No. 25–365, 609 U.S. ___ (June 30, 2026). Chief Justice Roberts wrote for five (Roberts, Sotomayor, Kagan, Barrett, Jackson). Justice Kavanaugh filed an opinion concurring in the judgment and dissenting in part, resting on 8 U.S.C. § 1401(a). Thomas (joined by Gorsuch), Alito, and Gorsuch dissented. The judgment was 6–3; the constitutional holding was 5–4 (slip opinion; Just Security).
- *Learning Resources, Inc. v. Trump, 607 U.S. ___ (2026) (Nos. 24–1287 and 25–250, Feb. 20, 2026): IEEPA does not authorize tariffs. Holding confirmed against the slip opinion. The pagination is not settled: supremecourt.gov lists no volume 607 preliminary print, the latest being volume 606, so the decision is cited by docket number and decision date.*preliminary print
- H.R. 1526 passed the House 219–213 on April 9, 2025 (House Clerk roll call). Received in the Senate and referred to Judiciary April 10, 2025. No Senate action as of October 11, 2026 (bill record).
- S. 1206 introduced March 31, 2025, referred to Senate Judiciary, 29 cosponsors, no hearing or markup as of October 11, 2026 (bill record).
- Reconciliation: House § 70302 (limiting contempt enforcement of injunctions issued without Rule 65(c) security) passed the House May 22, 2025 (CRS LSB11323, June 12, 2025). The Senate parliamentarian advised on June 21, 2025 that the Senate Judiciary counterpart, § 203 (security required before a preliminary injunction or temporary restraining order could issue), was subject to the Byrd rule (Senate Budget Committee release, June 21, 2025; Washington Examiner). Neither version was enacted.
- Judicial Conference, March 11, 2025: 69 new permanent district judgeships across 25 districts and 2 court-of-appeals judgeships. JUDGES Act of 2025 (H.R. 1702, introduced Feb. 27, 2025): 66 permanent district judgeships in six installments from 2025 to 2035, plus temporary judgeships (§§ 3(a)–(b) of the bill text; CRS IN12541 summarizes it as 65 permanent and 1 temporary); ordered reported by House Judiciary March 5, 2025, no later action found (CRS IN12541).
- Harvard Law Review counts (6, 12, 64, 14) and the 92% figure (59 of 64), and CRS counts (86, 28, 50; 34 cases; 14 in force on June 27, 2026): confirmed by Reviewer A against the sources.
- D.D.C. caseload: 7,502 pending cases, 15 judgeships, 5,227 total filings, of which 4,685 civil, in the 12 months ending June 30, 2026 (U.S. Courts district profile).

- *Make the Road New York v. Noem* (D.D.C. stay entered August 29, 2025); *Make the Road New York v. Mullin* (D.C. Cir. June 23, 2026, vacating the stay) (CourtListener).

- *Make the Road New York v. Mullin, No. 25–5320 (D.C. Cir.). November 22, 2025: motion for stay pending appeal denied except as to changes to credible-fear procedures (Millett and Childs, JJ.; Rao, J., dissenting) (order). June 23, 2026: the § 705 stay entered in No. 1:25-cv-00190 (D.D.C. Aug. 29, 2025) vacated; Walker, J., with Rao, J., concurring in the judgment and Wilkins, J., concurring in part and dissenting in part (opinion). Rehearing en banc petition filed July 27, 2026. The "August 7, 2026 ruling" in the research record was an error; no such merits decision exists (verified by Reviewer A against the opinion and the ACLU of D.C. chronology).*orderopinion

- Emergency docket, October 2026: Brennan Center tracker (updated Oct. 9, 2026) shows 32 decided matters involving administration actions, 24 at least partly for the administration (75%), 2 pending. A second tracker figure used in an earlier draft (40 applications filed, 26 of 31 granted) could not be traced to a source in the final check and was removed.

- *D.V.D. v. DHS*, No. 1:25-cv-10676 (D. Mass.) (Murphy, J.). The order in force during the May 2025 South Sudan removals was the April 18, 2025 preliminary injunction (ECF 64), requiring written notice and a meaningful opportunity to raise a fear-based claim before removal to a third country, with 15 days to seek reopening after an adverse finding. The May 21, 2025 orders (ECF 118, 119) found violations as to six people and set a 10-day minimum. The Supreme Court stayed the injunction June 23, 2025 (No. 24A1153) and clarified on July 3, 2025 that the stay covered the May 21 remedial order.

Open items at posting

- The 2019 withholding order is unpublished and is attached to the complaint in Abrego Garcia v. Noem, No. 8:25-cv-00951 (D. Md.), at ECF 1–1. Its date, October 10, 2019, is taken from the court's own opinions in that docket rather than from the exhibit. The grant became final on November 9, 2019, the government having taken no appeal.

- The bracketed judgeship number in Sec. 12 and the § 133 table rest on the Judicial Conference's March 2025 recommendation. The March 2027 recommendation had not issued when this version was posted.

- Secs. 4, 6, and 7 await Legislative Counsel conformity review: the § 1253 amendment, the new § 137(c), the relationship to § 2284 in Sec. 4(g), the §§ 291–296 designation language, and the amendments to 5 U.S.C. §§ 705 and 706. The two points this item recorded against version 2.5, which overrode § 295's docketing and consent conditions and § 296's grant of powers, no longer arise: the substitute invokes those sections rather than displacing them. What arises instead is whether they supply the authority the section assumes, which is recorded among the open items added in version 2.6.

- The June 23, 2026 decision in Make the Road New York v. Mullin, No. 25–5320, is reported at 179 F. 4th 16 (D.C. Cir. 2026). The November 22, 2025 order in the same appeal issued in the court's orders series, is unreported, and is cited to the order of that date.
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- The post-CASA counts drawn from CRS R49022 (July 7, 2026) were checked against the report: 34 cases in which a nationwide injunction had issued as of June 27, 2025, a cumulative 50 under the second Trump administration through June 27, 2026, and 14 of the original 34 still in effect on that date. The figure of 50 is cumulative and is not a count of orders then in force.
- The Chief Justice designation in Sec. 4(c)(2) and the 10-business-day within-circuit fallback in Sec. 4(c)(3) do not conflict with the Judicial Conference's intercircuit assignment practice, which rests on the Chief Justice's regulations of February 16, 2012 and on an advisory committee rather than on statute. The statutory question is separate and is open: version 2.5 displaced 28 U.S.C. §§ 291 through 296, while the substitute designates under them, and the verification round of 30 October 2026 found that those sections do not appear to authorize what Sec. 4(c)(2) directs. That finding is recorded among the open items added in version 2.6, and version 2.7 resolved it by supplying the authority in the Act itself while keeping the lending circuit's consent under § 295.

1. **Version 2.7: designation authority**
2. The verification round of 30 October 2026 found that Sec. 4(c)(2) could not operate as the substitute wrote it. The paragraph designated the randomly selected judges under 28 U.S.C. §§ 291 through 296, and none of those sections authorizes sending a circuit judge to sit on a district court in another circuit: § 291(a) assigns a circuit judge only to act as a circuit judge and only at the receiving circuit's request, § 291(b) reaches a district court only within the circuit and vests the designation in its chief judge or circuit justice, and § 292(d) moves a district judge across circuits only on a certificate of necessity.
3. Version 2.7 replaces the paragraph with the author's approved text of 30 October 2026. The Act now supplies its own designation authority, operating notwithstanding §§ 291 and 292 and without the request or certificate those sections would otherwise require, with the Chief Justice designating within 3 business days of receiving a selection. The lending circuit's consent is deliberately kept rather than overridden, as § 295 provides, and is deemed given unless the chief judge or judicial council withholds it in writing within 2 business days; a refusal triggers a fresh random draw rather than a stalled case. The powers of a designated judge under § 296 are carried across expressly, because the designation is now made under this Act rather than under chapter 13.
4. Nothing else in the bill text changed. Sec. 4(c)(3), the within-circuit fallback, was already supported by §§ 291(b) and 292(b) and is unaffected, as is the transition rule in Sec. 16(c).
5. **Version 2.6: what the substitute changed**
6. This version replaces the bill text of version 2.5 with the proposed substitute of 26 October 2026 and rewrites the analysis to match. The list below is the author's, compiled from a section-by-section

comparison of the two bill texts. It is not a report of anyone else's work, and no legislative counsel has reviewed either text.

7. Expedited Supreme Court review is gone. Version 2.5 created a new 28 U.S.C. § 1261, sent an interim order to the Supreme Court on a 30-day petition, and referred a petition the Court had not taken to the court of appeals for decision within 30 more days. The substitute creates no new section of title 28. An order granting, denying, modifying or dissolving interim nonparty relief is appealable as of right to the court of appeals within 14 days and decided within 45; a final judgment is decided within 90; the Supreme Court keeps its ordinary certiorari jurisdiction and is put under no timetable.

8. The 69 judgeships are gone. Version 2.5 created them and amended the table in 28 U.S.C. § 133. The substitute creates none, and instead requires the Judicial Conference to report within 180 days what the Act costs in judicial time and how many judgeships it would take to administer, leaving their creation to a later Act.

9. The designation mechanism was reversed. Version 2.5 made the Chief Justice's designation ministerial and overrode 28 U.S.C. §§ 291 through 296, including the originating circuit's consent under § 295, so that no circuit could withhold a judge. The substitute does the opposite: the random draw is a recommendation, the Chief Justice designates under §§ 291 through 296, and § 295 consent applies. A new fallback answers the delay this creates — if a lawful cross-circuit designation cannot be completed within 10 business days, the filing circuit draws a panel from within itself.

10. Section 2284 was reversed in the same way. Version 2.5 excluded it. The substitute makes this Act an additional Act of Congress requiring a three-judge court for purposes of § 2284(a), with § 2284(b) applying except where this Act is more specific.

11. Sections 12, 13 and 14 were renumbered and refilled. Savings provisions are now Sec. 12, judicial resources and reporting Sec. 13, and authorization of appropriations Sec. 14, where version 2.5 had additional judgeships, preservation of habeas, and reporting. Every reference in this draft to the old Sec. 13(a) habeas clause now reads Sec. 12(a).

12. Three substantive rules were dropped. The 14-day pause on a final vacatur is replaced by the opposite rule, that entry of judgment creates no stay. The Nken public-interest import and the Prison Litigation Reform Act's least-intrusive-means test are gone from Sec. 5, which now expressly declines to impose a categorical least-intrusive-means test. The mandatory Judicial Conference rulemaking for classified civil procedure, the interim application of the Classified Information Procedures Act, and the cleared-counsel and special-advocate access rule are gone from Sec. 10, which is now a protective-order provision with optional, nonbinding model procedures.

13. Interim nonparty relief no longer lapses. Under version 2.5 it ended at 180 days unless the panel renewed its findings. The substitute requires reconsideration at 180 days and every 90 days after, and states that relief continues or dissolves on a reasoned determination and not by operation of time.

14. A transition rule was added. Sec. 16(c) makes the within-circuit draw the governing procedure if the cross-circuit selection rules are not in force by January 20, 2029.

15. **Open items added in version 2.6**

16. The items below come from the verification round of 30 October 2026 described in the audit appendix. They concern the substitute's bill text and did not arise in the earlier rounds, which examined version 2.5.

17. Resolved in version 2.7. The finding was that sections 291 through 296 of title 28 do not authorize the Chief Justice to designate a circuit judge to sit on a district court in another circuit: § 291(a) permits assignment only to act as a circuit judge, and § 291(b), which covers a circuit judge holding a district court, vests the designation in the chief judge of the circuit or the circuit justice. Sec. 4(c)(2) no longer relies on those sections for the authority. It designates notwithstanding sections 291 and 292, which is to say the Act supplies the authority itself.

18. Resolved in version 2.7. Section 291(a) conditions the Chief Justice's designation on a request from the receiving circuit. Sec. 4(c)(2) now designates "without any request or certificate of necessity otherwise required by those sections," so the condition does not apply.

19. Resolved in version 2.7. Section 292(d) conditions the cross-circuit assignment of a district judge on a certificate of necessity. Sec. 4(c)(2) now waives it in the same clause that waives the section 291(a) request.

20. Resolved in version 2.7. The mismatch arose because the paragraph imposed a duty while resting on permissive statutes. The duty now rests on this Act, which states it directly and on a 3-business-day clock, and operates notwithstanding sections 291 and 292.

21. Resolved in version 2.7. Sec. 4(c)(2) now states that each designation requires the consent of the chief judge or judicial council of the circuit from which the judge is designated, as section 295 provides, and adds that consent is deemed given unless withheld in writing within 2 business days. A judge who is unable to serve or recused is dealt with separately in the same sentence as a withheld consent, so the section is no longer read as a personal consent right.

22. Rule 24 of the Federal Rules of Civil Procedure governs intervention rather than joinder, and Sec. 3(4) describes persons as joined under it.

23. Section 706 of title 5 ends in a concluding flush sentence, and the amendment in Sec. 6(b) directs insertion at the end without specifying placement relative to that sentence.

24. The Classified Information Procedures Act is referred to by name in Sec. 10(c) without a public-law or United States Code citation.

25. Taken together, the first five of these went to one question: whether the designation route could carry the weight the bill puts on it. Version 2.5 answered it by overriding the designation statutes. The

substitute answered it by invoking them, and the sections invoked did not supply the authority. Version 2.7 answers it a third way, by supplying the authority in the Act itself while keeping the lending circuit's consent under section 295, and that is the version printed here. The three items that follow, concerning Rule 24, the section 706 flush sentence and the Classified Information Procedures Act citation, are unaffected and remain open.

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