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US Supreme Court Term in Review



Our Panel



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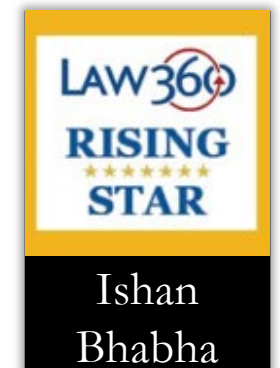
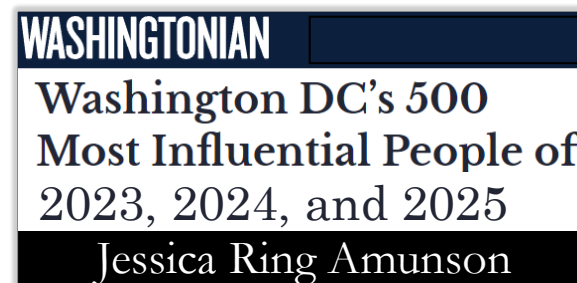


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Jenner's Supreme Court Practice

- Routinely appear in federal and state appellate and trial courts and provide counseling on commercial and regulatory issues
- 15 oral arguments in the past seven US Supreme Court Terms
- 10 members of the firm have argued before the US Supreme Court
- Featured on *The National Law Journal's* 'Appellate Hot List' for the last 16 consecutive years
- Named 'Practice Group of the Year' several times by *Law360*
- Consistently recognized in *Chambers USA* as being among the nation's leading appellate law practices



Agenda

- Introduction
- Emergency Docket
- Administrative Law
- Nationwide Injunctions
- Cases from This Term
- Next Term
- Q&A

Roundtable

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Reflections on the Term

- What happened this morning?
- What is left to be decided?
- Voting patterns
- The lower courts
- Concurrences



Emergency Docket

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Emergency Docket

- Overview of frequency of use of Emergency Docket
- Critiques of use of the Emergency Docket
- The Trump administration's strategy with the Emergency Docket
- How is the Trump administration faring with the Emergency Docket?
- The cases . . .



Shadow Docket

“We consider emergency applications on a short fuse without benefit of full briefing and oral argument; and we resolve them without fully (or at all) stating our reasons. It is one thing to grant relief in that way when doing so vindicates established legal rights It is a wholly different thing to skip the usual appellate process when issuing an order that itself changes the law. And nowhere is short-circuiting our deliberative process less appropriate than when the ruling requested would disrespect—by either overturning or narrowing—one of this Court’s longstanding precedents.”

– Justice Kagan (dissenting in *Trump v. Wilcox*, 5/22/2025)

Shadow Docket

“I lament that the Court appears to have embarked on a new era of procedural variability, and that it has done so in such a casual, inequitable, and, in my view, inappropriate manner. At least when the Court went off base in the past, it left a record so posterity could see how it went wrong. *See, e.g., Korematsu v. United States*. With more and more of our most significant rulings taking place in the shadows of our emergency docket, today's Court leaves less and less of a trace. But make no mistake: We are just as wrong now as we have been in the past, with similarly devastating consequences. It just seems we are now less willing to face it.”

– Justice Jackson (dissenting in *Trump v. J.G.G.*, 7/27/2025)

Shadow Docket

“The catchy and sinister term ‘shadow docket’ has been used to portray the court as having been captured by a dangerous cabal that resorts to sneaky and improper methods to get its ways. . . . This portrayal feeds unprecedented efforts to intimidate the court and to damage it as an independent institution.”

– Justice Alito (speech on 9/30/2021)

Immigration Cases

- *Trump v. J.G.G.* (April 7, 2025) – challenges to deportations pursuant to the Alien Enemies Act must be brought in habeas where the individual is detained, not in a federal court action.
 - All Justices agree that “detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal.”
- *Noem v. Abrego Garcia* (April 10, 2025) – Despite a withholding order forbidding his removal, a Maryland resident was removed to El Salvador as “the result of an ‘administrative error.’” Lower court directed the government to “effectuate and facilitate [his] return.” Court affirms as to “facilitate,” but not as to “effectuate,” and remands.
 - District court should proceed with “due regard for the deference owed to the Executive Branch in the conduct of foreign affairs”
 - Government “should be prepared to share what it can concerning the steps it has taken and the prospects for further steps”
- *A.A.R.P. v. Trump* (April 19, 2025) – “The Government is directed not to remove any member of the putative class of detainees from the United States until further order of this Court.”



Government Funding, Impoundment, and Agency Authority

- Several emergency docket cases demonstrate a tension between executive spending discretion and congressional appropriations.
 - See, e.g., *Department of State v. AIDS Vaccine Advocacy Coalition*; *Department of Education v. California*.
 - These cases involve actions by the federal government to terminate grants and other funding programs that do not align with the Administration’s priorities.
 - When the funding recipients have brought suit challenging the revocations in federal court, the government’s position has been that Article III courts lack jurisdiction, and that such claims are in the nature of contract, and must therefore be heard only by the Court of Federal Claims.
 - Court ducked the question.
 - In *Department of Education v. California*, a majority of the Court reached the question and held that certain grant cancellations must go to the Court of Federal Claims.

Humphrey's Executor and the President's Hiring and Firing Power

- In *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), the Court held that Congress can limit the President's power to remove officers of independent regulatory agencies.
- The continued vitality of this doctrine has been teed up in a couple of cases this term, ***Trump v. Wilcox*** and ***Bessent v. Dellinger***, suits brought by independent agency officials who were fired by the President in the days and weeks after the inauguration.
- The Trump administration has recently taken the position that *Humphrey's Executor* should be overruled, such that officials at independent agencies would no longer be entitled to for-cause removal protections.
- Overturning *Humphrey's Executor* would give Presidents power to remove officials at independent agencies like the FTC, FCC, NLRB, and potentially the Federal Reserve.



DOGE-Related Cases

Quick moving DOGE actions present challenges for the Court.

- Access to Social Security records
 - Lower courts barred SSA from providing access to records to untrained DOGE personnel while litigation proceeds
 - SG: lower court rulings “halt the Executive Branch’s critically important efforts to improve its information-technology infrastructure,” and “constitute inappropriate superintendence of a coequal branch.”
 - 6-3 vote to overturn injunction
- Access to DOGE records
 - Lower court allows discovery into DOGE personnel and practices
 - 6-3 vote to stay discovery
 - “Separation of powers concerns counsel judicial deference and restraint in the context of discovery regarding internal Executive Branch communications.”



Administrative Law

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Administrative Law

- *What is the Fallout from last Term?*
 - *Loper Bright*
 - *Major Questions*
 - *Non-delegation*
- *What is Happening this Term?*
 - *Universal Service Fund Case and Non-Delegation Doctrine*
 - *Tariffs – Non-Delegation and Major Questions*



Loper Bright — Chevron is overruled



Judicial role

Democratic accountability

Deciding the law is not a
policy judgment

Make Congress legislate

Expertise

Democratic accountability

Avoiding judicial policy
judgments

Pragmatic view of
congressional gridlock



Major Questions Doctrine

- What is it?
 - When regulating areas of great “economic and political significance,” the agency must point to “clear congressional authorization” for the authority it claims
 - Inverts *Chevron* default rule (pre *Loper Bright*) when a question is “major”
- Where does it come from?
- Implications and importance



Nondelegation Doctrine

- Nondelegation doctrine
 - Rationale: Congress cannot delegate legislation to others under Article I
 - *Schechter Poultry* (1935): invalidated statute directing President to approve “codes of fair competition” without further guidance
- “Intelligible principle” to guide executive in finding facts and “filling up the details”
 - *Gundy* (2019): upheld statute providing that the Attorney General “shall have the authority” to “specify the applicability” of the law’s requirements regarding registration of sex offenders and “to prescribe rules for [their] registration.”
- How will courts police the line going forward?

Example: Universal Service Fund

- Nondelegation doctrine: Has Congress placed meaningful limits on what the FCC can define as universal service?
 - Section 254(b) enumerates principles, including a catchall: “other principles that the FCC and the Joint Board deem necessary and appropriate for protection of the public interest, convenience, and necessity.”
 - Section 254(c) similarly provides features of services that should be made available, including that those services be consistent with “public interest, convenience, and necessity.”
 - Private nondelegation doctrine requires federal agencies to retain meaningful decision-making authority when they rely on private entities—no “rubber stamping.”



Example: Tariffs

- The administration has relied on the International Emergency Economic Powers Act (IEEPA) to justify its sweeping tariffs, which authorizes the President to impose tariffs “to deal with any unusual and extraordinary threat.”
- Legal challenges center on two doctrines:
 - The nondelegation doctrine question of whether Congress can constitutionally delegate tariff authority this broadly.
 - The major questions doctrine inquiry into whether IEEPA clearly authorizes these specific tariffs.



Nationwide Injunctions

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Nationwide Injunctions

- What are they?
- Why do they make sense?
- What are the downsides?



Birthright Citizenship

- Fourteenth Amendment: “All persons born or naturalized in the United States, **and subject to the jurisdiction thereof**, are citizens of the United States and of the state wherein they reside.”
- 8 U.S.C. 1401 (1952): “The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, **and subject to the jurisdiction thereof . . .**”




Birthright Citizenship

- *United States v. Wong Kim Ark* (1898) – “Every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born.”
- *Slaughterhouse Cases* (1872) – “The phrase ‘subject to its jurisdiction’ was intended to exclude from its operation children of ministers, consuls, **and citizens or subjects of foreign states**, born within the United States.”
- *Elk v. Wilkins* (1884) – Indians born within the territorial limits of the United States . . . are no more ‘born in the United States and subject to the jurisdiction thereof’ . . . than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations.

Birthright Citizenship

- These cases—which involve challenges to the President’s January 20, 2025 Executive Order concerning birthright citizenship—raise important constitutional questions with major ramifications for securing the border. But at this stage, the government comes to this Court with a “modest” request: while the parties litigate weighty merits questions, the Court should restrict the scope of multiple preliminary injunctions that purport to cover every person in the country, limiting those injunctions to parties actually within the courts’ power.





Cases
The 2024-25 Term

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United States v. Skrametti

Court upholds state ban on gender affirming care for minors (6-3)

- Majority (Roberts, C.J.)
 - “This case carries with it the weight of fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in an evolving field.... Our role is not ‘to judge the wisdom, fairness, or logic’ of the law before us, but only to ensure that it does not violate the equal protection guarantee of the Fourteenth Amendment.”
 - “*Bostock v. Clayton County* ... does not alter our analysis.”
- Concurrence (Barrett, J.)
 - “[T]ransgender status implicates several other areas of legitimate regulatory policy—ranging from access to restrooms to eligibility for boys’ and girls’ sports teams.... The prospect of courts second-guessing legislative choices in this area should set off alarm bells.”
- Dissent (Sotomayor, J.)
 - “By retreating from meaningful judicial review exactly where it matters most, the Court abandons transgender children and their families to political whims.”
 - “Closely scrutiniz[ing] legislative choices is exactly how courts distinguish legitimate regulatory polic[ies] from discriminatory ones.”

Racial Gerrymandering and the Voting Rights Act – Louisiana v. Callais

- In a suit brought by Black voters, a district court in Louisiana held that Louisiana likely violated the Voting Rights Act in drawing a congressional map with only one district in which Black voters had an opportunity to elect a candidate of their choice.
- Louisiana then enacted a map with two majority-Black districts. White voters sued in a different district court to say the new map was a racial gerrymander. The district court agreed and struck down the map.
- In a 6-3 ruling, the Supreme Court granted an emergency stay motion from the state putting that ruling on hold given the pendency of the 2024 election.
- Case presents the Court with questions about the interaction of the Court's Voting Rights Act and racial gerrymandering precedent.



Second Amendment Cases

- ***Bondi v. VanDerStok* (7-2)**

- **Majority (Gorsuch, J.):**

- Facial challenge, so Court assumed plaintiffs must show regulation is invalid in ALL applications. ATF's rule could validly apply to at least some products (nearly complete kits), so it survived the facial challenge.
- "An author might invite your opinion on her latest novel, even if she sends you an unfinished manuscript... In the same way, ... an ordinary speaker might well describe the 'Buy Build Shoot' kit as a 'weapon.'"

- **Concurrences:**

- Sotomayor: wrote to clarify that (1) there should no doubt as to how and when to comply with the Gun Control Act. (2) the majority "speaks for itself" as to whether the Act permits ATF to regulate only "all-but-assembled" weapon parts, and readers should seek guidance from it rather than the dissents.
- Kavanaugh: mens rea requirement should "prevent the Government from unfairly penalizing an individual who is not aware that his conduct violates the law."
- Jackson: "Proper excess-of-authority review must focus on actual statutory boundaries, not on whether the agency's discretionary choices overlap precisely with what we, as unelected judges, would have done if we were standing in the agency's shoes."

Second Amendment Cases

- **Bondi v. VanDerStok (7-2)**
 - **Dissents:**
 - Thomas: Took issue with the majority's application of facial analysis akin to Salerno.
 - Alito: Distinguished between challenging statutes (Salerno) vs. regulations (should use different standard), and would have had additional briefing.

Second Amendment Cases

- ***Smith & Wesson v. Mexico* (9-0)**
 - Majority (Kagan, J.): PLCAA bars Mexico's lawsuit against gun manufacturers.
 - Congress enacted the Protection of Lawful Commerce in Arms Act to prevent manufacturers from being held “liable for the harm caused by those who criminally or unlawfully misuse firearms.”
 - “Mexico's suit closely resembles the ones Congress had in mind: It seeks to recover from American firearms manufacturers for the downstream damage Mexican cartel members wreak with their guns.”
- **Other Trends:**
 - Post-Bruen Framework: Lower courts continue applying 2022’s “historical tradition” test.
 - Thomas, Alito, Gorsuch increasingly willing to hear gun cases.

Cases Left Undecided

- ***Oklahoma Statewide Charter School Board v. Drummond***
 - Holdings below: (1) A state can exclude privately owned and operated religious charter schools from its charter-school program by enforcing state-law bans on “sectarian” and religiously affiliated charter schools. (2) A charter school engages in state action for constitutional purposes when it contracts with the state to provide publicly funded education.
 - Disposition: “The judgment is affirmed by an equally divided Court. JUSTICE BARRETT took no part in the consideration or decision of these cases.”
- ***Laboratory Corporation of America Holdings v. Davis***
 - QP: Whether a federal court may certify a class action when some of its members lack any Article III injury.
 - Disposition: “The writ of certiorari is dismissed as improvidently granted.”

Next Term

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Next Term

- Private right of action to enforce the Voting Rights Act?
- *Cox Communications, Inc. v. Sony Music Entertainment*
- Emergency docket cases return on the merits



Questions

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Thank You!

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Our Panel



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Ian is Chair of the firm's Appellate and Supreme Court Practice and is one of the nation's premier Supreme Court and Appellate advocates. He has argued 17 cases before the Supreme Court. Before re-joining Jenner in 2017, he served in the Office of the Solicitor General at the US Department of Justice, first as Principal Deputy Solicitor General and then as Acting Solicitor General of the United States, a position he held from June 2016 until the end of the Obama administration in January 2017. Ian's practice focuses on advising clients on a range of complex litigation and strategy problems, with particular emphasis on commercial disputes and challenges involving government, regulatory, and other public policy issues.

Since returning to the firm in the Fall of 2017, Ian has appeared regularly in the state and federal appellate courts, arguing on behalf of clients such as McKesson Corporation, FanDuel, the Recording Industry Association of America, FirstTrust Bank, General Dynamics, and Charter Communications.

Ian currently co-teaches a course at Harvard Law School on The Roberts Court.

Our Panel



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Jessica Ring Amunson is Co-Chair of the firm’s Appellate and Supreme Court Practice and Chair of the firm’s Election Law and Redistricting Practice. In 2018, she was named an “Appellate MVP” by Law360, which recognizes the five attorneys in the country “who had extraordinary wins and contributed most to their practice area in the past year.” An experienced litigator, Jessie has argued before the US Supreme Court and multiple federal and state courts of appeals and has authored hundreds of briefs. She has successfully represented clients in matters involving federal constitutional claims, statutory interpretation questions, administrative law issues, and large commercial disputes. Jessie also regularly counsels clients on appellate and Supreme Court strategy.

As chair of the firm’s Election Law and Redistricting Practice, Jessie represents clients, including elected officials, in matters involving redistricting, voting rights, and campaign finance in the US Supreme Court, before the Federal Elections Commission, and in courts around the country. She has litigated election law and redistricting matters in a number of states, including litigation involving disputed elections. She regularly represents clients on the merits and as amici in direct appeals to the US Supreme Court in redistricting and voting rights cases. Jessie has been repeatedly recognized for her extensive knowledge of election law and regularly speaks on panels regarding issues in redistricting and voting rights. She serves on the Advisory Committee to the Voting Rights Institute and is a member of the Litigation Strategy Council for the Campaign Legal Center.

Our Panel



Matthew Hellman

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Matthew Hellman is Co-Chair of the firm's Appellate and Supreme Court Practice. He has been lead counsel in dozens of appellate matters and has presented arguments in the US Supreme Court and in federal and state appellate courts around the country. He has successfully defended on appeal more than \$1 billion in commercial claims, and he has prevailed in the Supreme Court in important bankruptcy, copyright, First Amendment, and administrative law cases. Clients such as Marriott, GE, Nomura, and General Dynamics have sought Matt's counsel on a wide variety of banking, hospitality, government contracts, copyright, and business torts matters.

Matt maintains a substantial pro bono practice, including matters with significant commercial implications, such as his win in the US Supreme Court in *Law v. Siegel*, which was called the most important bankruptcy case of that term. He has argued or supervised more than a dozen pro bono cases in the courts of appeals, including two capital cases. In 2007, Jenner & Block recognized Mr. Hellman with the Albert E. Jenner, Jr. Pro Bono Award, which annually recognizes lawyers in the firm with a strong commitment to pro bono or public service work.

In 2016, Matt was named Co-Director of the Jenner & Block University of Chicago Law School Supreme Court and Appellate Clinic, a testament to his experience as well as his ability to teach the next generation of appellate advocates. He is also a member of the Edward Coke Appellate Inn of Court and on the Board of Directors of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. He serves as Co-Chair of the DC Hiring and Hiring Executive Committees and is also a member of the Associate Development and Evaluation Committee and the Finance Committee.

Our Panel



Annie Kastanek

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Andrianna (Annie) Kastanek is a former federal prosecutor, former Supreme Court clerk, and Co-Chair of Jenner & Block's Appellate and Supreme Court Practice.

Annie has briefed more than 200 federal appeals before the US courts of appeals and filed hundreds of briefs in federal district courts. She has argued more than 40 federal appeals, including in the Second, Seventh, and Ninth Circuits. She has tried 13 cases in federal court, ranging from civil antitrust claims to criminal conspiracy, tax, and fraud charges.

As Co-Chair of the firm's Appellate and Supreme Court Practice, Annie leverages her vast appellate and trial experience, and her award-winning writing skills, to successfully represent clients in high-stakes matters. She regularly represents clients in the US Supreme Court and the federal courts of appeals, as well as in federal district court. She also coordinates closely with the firm's trial teams on legal and strategic issues, positioning clients for victories on motions to dismiss, motions for summary judgment, and at trial. She is a member of the firm's Management Committee.

Over her 12 years as a federal prosecutor, Annie also served in other leadership positions, including Deputy Chief of Appeals and Civil Rights Coordinator. She received DOJ's prestigious Director's Award for Superior Performance of an Appellate Team.