FED COURTS WEEKLY

September 1–8, 2026

An unusually rich week, almost all of it on the interim docket and almost all of it about who may sue and which court may act. The Court granted a stay in the political-broadcast-rates fight on a pure appellate-jurisdiction ground over a Jackson dissent; three more emergency applications arrived in five days, including a stay request aimed at a *state* supreme court judgment and a standing-heavy application in the SAVE database litigation. In the circuits, the D.C. Circuit shut the door on Article III collateral review of court-martial judgments, the Eleventh Circuit found a structural constitutional defect and then declined to vacate anything, and a Ninth Circuit panel put in rem forfeiture jurisdiction on a due process (and, for Judge Bybee, an Article III) footing.

SUPREME COURT — INTERIM DOCKET

The Court stays the Fourth Circuit on a reviewability theory — *National Republican Congressional Committee v. Brown*, No. 26A274 (U.S. Sept. 4, 2026)
The Court put the Fourth Circuit's political-broadcast-rates ruling on hold, reasoning that the committees were likely to prevail on the argument that the court of appeals lacked statutory authority to review an FCC public notice while the candidates' application for review remained pending before the Commission: the Communications Act "contemplates that an aggrieved party will file an application for review with the Commission, that the Commission will resolve that application by order," and only then will court review lie. Justice Jackson dissented alone, invoking the line of cases holding that an agency cannot defeat review by sitting on a petition and that statutory channeling provisions are not jurisdictional. The doctrinal hook is finality and exhaustion as limits on courts of appeals' jurisdiction over agency action — and the deeper question of when a statutory review scheme is jurisdictional at all after *Fort Bend* and *Boechler*. This is the cleanest teaching vehicle of the week: an interim order that turns entirely on jurisdiction, with the merits nowhere in sight. SCOTUSblog

Three bites at the mail-ballot rule — *U.S. Postal Service v. California*, Nos. 26A297, 26A305 (U.S., filed Sept. 3 & 6, 2026)
The administration returned to the Court twice in four days over Judge Talwani's orders blocking the USPS mail-ballot rule: it withdrew No. 26A297 after she replaced her TRO with a preliminary injunction on September 4, then filed No. 26A305 on Sunday, September 6. This is the third application in under six weeks; the Court granted relief on the first (No. 26A124) on the ground that the challenge was premature. The fed-courts interest is procedural rather than substantive — successive emergency applications tracking successive district-court orders, the ripeness holding in the first application arguably having invited the second and third, and the near-total

absence of any reasoned statement about what an earlier grant is supposed to bind. Podcast-worthy as a case study in what "the Court has already spoken" means on the interim docket. SCOTUSblog

A stay application aimed at a state supreme court — *Hoskins v. von Glahn*, No. 26A304 (U.S., filed Sept. 4, 2026)

Missouri's Secretary of State and Attorney General asked the Court to stay a September 3 Missouri Supreme Court judgment holding that the state constitution permits a veto referendum on "any act of the general assembly," including the new congressional map, and ordering use of the 2022 map in November. The federal hook is an Elections Clause claim — that the Clause vests the "Manner" power in the legislature and that 3.3% of a state's voters cannot suspend its exercise — layered on top of a Purcell argument (which the applicants note Missouri has itself adopted as a matter of state law under its *Hadley* doctrine). Justice Kavanaugh ordered a response by noon on Labor Day. Everything a Federal Courts syllabus wants in one filing: Supreme Court appellate jurisdiction over state-court judgments, the adequate-and-independent-state-ground problem lurking under an Elections Clause theory, *Moore v. Harper*'s residue, and Purcell as an equitable timing doctrine. SCOTUSblog

Traceability as the whole ballgame — *Department of Homeland Security v. League of Women Voters*, No. 26A308 (U.S., filed Sept. 8, 2026)

DHS asked the Court to stay Judge Sooknanan's order barring use of the overhauled SAVE system for voter-roll citizenship checks, which she held violated the Privacy Act, the Social Security Act, and the APA; the D.C. Circuit denied a stay but expedited the appeal. The Solicitor General's lead argument is standing: SAVE "does not disqualify any voter; instead, it merely notifies the States whether the federal government can confirm citizenship," so any injury is inflicted by state officials exercising independent judgment. That is a textbook *Lujan* footnote-and-text problem about causation and redressability when the plaintiff is not the object of the challenged federal action, and it will be worth watching whether the Court treats it as standing or as a merits/remedy question. Responses due September 15. SCOTUSblog

Coda: the ballroom stay's aesthetic-injury holding

Just outside the window but dominating the week's commentary: the August 31 order allowing White House ballroom construction to proceed rested on the view that the National Trust likely lacks standing, with the majority writing that "[m]ere offense, disagreement, or distaste does not qualify as a concrete and particularized injury under Article III" — this on a declaration of aesthetic injury from periodic visits to the neighborhood. The Chief Justice dissented with the three Democratic appointees. Worth pairing with *Sierra Club v. Morton* and *Laidlaw*: the order reads less like an application of aesthetic-injury doctrine than a narrowing of it, delivered on the interim docket without briefing. SCOTUSblog

COURTS OF APPEALS

No Article III collateral review of court-martial judgments — *Bergdahl v. United States*, No. 24-5150 (D.C. Cir. Sept. 1, 2026)

A unanimous panel vacated the district court's partial grant of relief and ordered the suit dismissed for want of jurisdiction, holding that Article III district courts lack jurisdiction on collateral review to vacate court-martial judgments — that authority residing in the military appellate system. Bergdahl, long since discharged and not in custody, had sought vacatur and expungement outside the habeas channel, which is precisely why the case is useful: it isolates the question of what collateral review of military judgments survives once § 2241 is off the table, against the *Burns v. Wilson* / *Schlesinger v. Councilman* background. A clean classroom illustration that "unreviewable by an Article III court" is a live category, not a hypothetical. Justia · Opinion (PDF)

A structural violation with no remedy — *Russo v. Secretary, U.S. Department of Commerce*, No. 26-10171 (11th Cir. Sept. 3, 2026)

The panel largely agreed that the Gulf of Mexico Fishery Management Council's statutory veto powers make its members' appointments constitutionally deficient, then held the remedy limited to invalidating actions actually taken through those veto powers — and because the gag grouper catch-limit rule emerged from the Council's advisory process and was ratified by the Secretary, it stood. The court vacated the district court's judgment for the plaintiffs and remanded for entry of judgment for the government. The hook is remedial: *Collins v. Yellen*'s demand that a structural defect actually have caused the complained-of action, plus *Arthrex*-style severance, doing the work that vacatur would otherwise do. Pairs well with any unit on why declaratory relief and vacatur have come apart. Courthouse News · Justia

In rem jurisdiction, due process, and Article III — *United States v. Nasri*, No. 22-55685 (9th Cir. Sept. 2, 2026)

The panel held that the Due Process Clause requires a court to have control or constructive control over the res to exercise in rem jurisdiction in a civil forfeiture action, notwithstanding 28 U.S.C. § 1355(b)(2)'s apparent grant of jurisdiction over property "located in a foreign country," and remanded because the district court had expressly declined to make that finding. It also held that neither forfeiture nor the party-presentation principle barred review, and doubted that in rem jurisdiction — which adjudicates the rest of the world's rights to the property — is waivable at all. Judge Bybee concurred to argue that a forfeiture proceeding over property the United States does not hold is "premature and nonjusticiable" under Article III, not merely a due process problem; Judge Bennett dissented. The nonwaivability discussion and the due-process-versus-Article-III framing are both directly classroom-usable. Opinion (PDF) · Short Circuit

On deck

The Fifth Circuit hears *Sosnava Rodriguez v. Ortega*, No. 26-50183, en banc on September 24, having vacated the July 2 panel decision that affirmed habeas grants and required bond hearings within 90 days for long-resident noncitizens detained under INA § 235(b)(2)(A). Mandatory no-bond detention is back in force in the circuit in the meantime. Am. Immigration Council

LITIGATION

Classwide relief does the work universal injunctions used to — *CASA, Inc. v. Trump* (D. Md. Sept. 2, 2026)

Judge Boardman preliminarily enjoined the 2026 birthright citizenship executive order as applied to a previously certified class of children born in the United States on or after February 19, 2025 to parents unlawfully present or here on temporary visas, holding the order "almost certainly unconstitutional as applied to the certified class for the simple reason that the Supreme Court in *Barbara* already decided that the children in the class are citizens at birth." *Trump v. Barbara*, No. 25-365. The doctrinal hook is remedial architecture post-*Trump v. CASA*: Rule 23(b)(2) certification supplying the breadth that a universal injunction would have supplied, and the same district judge and the same plaintiff organization now operating through the class device. A near-perfect vehicle for teaching what *CASA* did and did not change — and for the question of whether a re-issued executive order gets a fresh round of litigation or is simply foreclosed by an existing merits precedent. Volokh Conspiracy · CBS News

SCHOLARSHIP & COMMENTARY

Jonathan Hafetz, *Free Speech, Deportation, and the Suspension of Habeas Corpus*, Lawfare (Sept. 4, 2026)

Hafetz argues that denying habeas review of detention predicated on protected speech "risks accomplishing in practice what the Constitution forbids" absent a formal suspension, working through the *Khalil*, *Mahdawi*, and *Suri* proceedings. The framing is de facto suspension — jurisdictional channeling and immigration-review preclusion as functional substitutes for the Suspension Clause act Congress has not passed. Useful assigned reading alongside *Boumediene*'s adequate-substitute analysis and *St. Cyr*. Lawfare

Josh Blackman, *Enhance the Supreme Court minority's procedural powers*, SCOTUSblog (Sept. 1, 2026)

A set of "Rules of Three" the Chief Justice could adopt unilaterally: an automatic courtesy fourth vote for cert, a three-Justice DIG, a three-Justice power to compel publication of vote counts on cert denials and emergency orders, a three-Justice power to force a conference within 24 hours

on emergency applications, and a three-Justice power to require argument in emergency cases (paired with denial of automatic administrative stays). Whatever one makes of the proposals, the last three are a concrete proceduralization of the interim docket and pair naturally with the Vladeck critique. Worth a class discussion on whether shadow-docket pathologies are institutional-design problems with institutional-design fixes. SCOTUSblog

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Deliberately omitted: the House's failed vote on H.J. Res. 1 (constitutional amendment fixing the Court at nine, 212–206, short of two-thirds), Justice Alito's financial disclosure, and the SCOTUSblog court-reform symposium's non-procedural entries. Court structure and court-reform politics, not Article III doctrine. Nothing this week on abstention, sovereign immunity, or § 1983 cleared the bar.