FED COURTS WEEKLY

October 6–13, 2026

An unusually load-bearing week. The October sitting's first two argued cases are both, at bottom, Federal Courts cases — *Johnson* on statutory preclusion of district-court review, *Suncor* on the final-judgment rule, Article III injury on review from a state court, and federal common law displacement, stacked three deep. Tuesday's grants added a certificate-of-appealability question and a mandamus posture against a district court. And the Fourth Circuit spent the week testing how much a court of appeals may do after the Supreme Court stays it on jurisdictional grounds, which is the most interesting thing that happened.

SUPREME COURT — ARGUED

Johnson v. United States Congress, No. 25-735 (argued Oct. 5, 2026). Whether a federal district court may entertain a constitutional challenge to 38 U.S.C. § 5313, which caps disability compensation for veterans incarcerated more than sixty days, or whether § 511(a) of the Veterans' Judicial Review Act channels it through the Secretary, the Board of Veterans' Appeals, the CAVC, and the Federal Circuit. Johnson's line — constitutional challenges to *statutes* escape the channel because the Board disclaims authority over them, challenges to agency *action* do not — drew sustained fire, with Justice Jackson calling it "a weird way to slice it" and the government insisting there is "no basis" for the distinction. Kavanaugh and Barrett pressed the familiar answer that the claim survives for later review even if the Board won't touch it; Sotomayor asked why veterans should be routed through a process not built for constitutional litigation. **The hook:** congressional control of jurisdiction, in the *Johnson v. Robison–Webster v. Doe* posture — how clear must Congress be to preclude district-court review of a constitutional claim, and does channeling to an Article I tribunal plus an Article III court of appeals suffice. **Classroom:** this is the preclusion unit, decided live. The reporter's read was that more Justices leaned toward the government. (SCOTUSblog)

Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County, No. 25-170 (argued Oct. 5, 2026). The merits question is whether federal law bars Colorado state-law nuisance and deception claims for climate harms; the questions presented also include, remarkably, "whether this Court has statutory and Article III jurisdiction to hear this case." Boulder says the Colorado Supreme Court's ruling was interlocutory and so not a final judgment; Suncor says it terminated a self-contained proceeding. Thomas opened on jurisdiction and Kagan, Sotomayor, and Jackson returned to it repeatedly — Sotomayor noting that the Colorado court never specified which head of its Rule 21 jurisdiction it was exercising and floating certification back to that court, and questioning whether litigation expense is a cognizable Article

III injury; Suncor's answer was a *Murphy v. NCAA*–style right "to be free from state regulation." Jackson thought piecemeal review premature with personal jurisdiction still open below. On displacement, Kavanaugh called Boulder's reading an "all-time elephant in mousehole," while Gorsuch pressed the anomaly that federal common law supplied a cause of action before the Clean Air Act and, on Boulder's view, "nobody can sue at all" where EPA lacks authority. **The hook:** three at once — the § 1257 final-judgment rule and the *Cox Broadcasting* problem of reviewing a state court mid-stream; standing to be a petitioner; and the *Milwaukee II*/*AEP v. Connecticut* question whether displacing federal common law also displaces state law. **Podcast:** Alito is recused, so a jurisdictional dismissal needs two of the remaining conservatives, and a 4–4 leaves Colorado standing. (Just Security; Stanford Law)

Department of the Air Force v. Prutehi Guåhan, No. 25-579 (argued Oct. 7, 2026). Whether the Air Force's application to renew its RCRA permit to detonate munitions at Tarague Beach is reviewable now, with the Guam EPA yet to rule. The district court called the NEPA suit premature; a divided Ninth Circuit revived it. Jackson saw a "finality problem" because Guam EPA could rewrite the proposal; Kagan would wait until the permit's terms are known; Sotomayor found it odd to decline review now while preserving a later NEPA obligation; Barrett worried about the volume of permitting challenges a ruling for the group would invite. The Air Force's brief for the floodgates: an application is "a request for someone else to act." **The hook:** reviewability timing — finality and ripeness as the gate, and a procedural-injury claim as the thing trying to get through it. Thinner than the other two, but a clean illustration of channeling everything into one end-stage proceeding. (SCOTUSblog)

SUPREME COURT — GRANTS AND RELISTS

Berry v. United States, No. 25-7026 (cert. granted Oct. 13, 2026). Whether a certificate of appealability may issue under 28 U.S.C. § 2253(c)(2) where the petitioner's claim is foreclosed by his own circuit's binding precedent but would proceed in another circuit. Corey Duran Berry, challenging a § 924(c) conviction arising from an attempted carjacking, was denied a COA by the Eleventh Circuit on a burden-of-proof holding that is itself the subject of a circuit split. **The hook:** gatekeeping in postconviction review — whether "debatable among jurists of reason" under *Miller-El* and *Buck v. Davis* is measured against the law of the deciding circuit or against federal law at large. **Classroom:** it is the cleanest available vehicle for the question of what a circuit split *is* as a matter of law, and it sits squarely on the habeas syllabus. Note that the Court relisted but has not granted *Clark v. United States*, No. 25-1199, which pairs the same COA question with whether § 2255 reaches noncustodial penalties like forfeiture and restitution. (SCOTUSblog; Law360)

U.S. DOGE Service v. U.S. District Court for the District of Columbia, No. 25-1103 (cert. granted Oct. 13, 2026). The caption is the point: the respondent is a district court, so this arrives as supervisory mandamus. After CREW's FOIA request and request for expedited discovery into whether DOGE is an "agency," Judge Cooper allowed most of the discovery, the D.C. Circuit declined to disturb it, and the Court put the orders on hold in June 2025 and remanded. On remand CREW narrowed its requests and the lower courts again declined to block them. The government says the D.C. Circuit failed to apply the deference *Cheney v. U.S. District Court* requires for discovery against presidential advisers; CREW says it followed this Court's instructions and that *Cheney* does not control. **The hook:** mandamus as a vehicle for appellate supervision of interlocutory discovery, plus the separation-of-powers overlay — and a live question about what a remand order with an interim stay actually commands the court below. **Classroom:** pairs naturally with the *Brown* mandamus item below. (SCOTUSblog)

§ 1983 relists worth tracking (Relist Watch, Oct. 7, 2026). Cross-petitions out of Bossier City put two questions in play: whether *Hope v. Pelzer*'s "obvious clarity" route around qualified immunity extends beyond the Eighth Amendment to free speech and free exercise claims (*Hershey v. City of Bossier City*, No. 25-1389), and whether a plaintiff may plead single-incident municipal liability without alleging violation of a clearly established right or a complete failure to train (*City of Bossier City v. Hershey*, No. 25-1323). *Moore v. Romero*, No. 25-1295, asks whether *Barnes v. Felix* requires segmented analysis of each volley in a multi-shot encounter and whether clearly-established law may be assessed at a general level on a Rule 12 motion when body-camera video exists. Also relisted: a cluster of takings petitions on whether the Clause has a police-power exception. **The hook:** *Monell* and qualified immunity, with the pleading-stage posture doing the real work in *Moore*. (SCOTUSblog)

COURTS OF APPEALS — THE WEEK'S MAIN EVENT

In re Brown, No. 26-2230 (4th Cir. Oct. 7, 2026) (King and Wynn, JJ.; Wilkinson, J., dissenting). A panel granted mandamus under the All Writs Act directing the FCC to resolve, by noon on Friday, October 9, the Democratic federal candidates' five-month-old application for review of the Media Bureau's March 30 Public Notice extending the lowest-unit-charge entitlement under 47 U.S.C. § 315(b)(1)(A) to party committees and joint fundraising committees. The procedural history is the doctrine. In *Brown I*, No. 26-1785, 2026 WL 2493115 (4th Cir. Aug. 25, 2026), the same panel held the Public Notice reviewable on a theory of *constructive denial* of the pending agency application and set it aside on the merits. The Supreme Court stayed the mandate and recalled it in *NRCC v. Brown*, No. 26A274, 609 U.S. ___ (Sept. 4, 2026) (per curiam), holding that the Fourth Circuit "likely lacked statutory jurisdiction" because § 155(c)(7) requires the aggrieved party to await a Commission order — reasoning that

pointedly rested on § 155(c)(4)'s command that the Commission "shall pass upon" every application. The candidates then filed for mandamus expressly "to address the Supreme Court's jurisdictional concern," turning the Court's own premise into the clear duty supporting the writ. The panel found no other adequate remedy (APA unreasonable-delay relief being unavailable because, on *Brown I*'s reasoning, the Public Notice is itself final), a clear duty under §§ 155(c)(4) and 155(d), and equities favoring the writ, invoking *Department of Commerce v. New York* for the proposition that a court is "not required to exhibit a naivete from which ordinary citizens are free." Wynn, concurring, framed the stakes as structural: Congress "did not create an administrative process in which the agency holds both the power to impose an interpretation and the power to prevent its timely examination," and "[w]hat was once too early to review has become too late to remedy." Wilkinson dissented in terms that will survive the case — "Litigants far and wide will be eager to purchase the majority's new board game: Make The Supreme Court Say It Twice" — calling the writ "a direct affront" to the stay order and the panel's course "chaotic with a capital C." **The hook:** four doctrines in one order — mandamus and the All Writs Act as the remedy of last resort; finality and the agency-exhaustion precondition to statutory judicial review; what precedential force an unexplained interim order from the Supreme Court carries over the court it reversed; and the duty of a lower court to a stay whose reasoning it thinks it can satisfy on remand. **Both classroom and podcast.** This is the *best* teaching artifact of the term so far on lower-court compliance with the interim docket, and the majority, concurrence, and dissent each state a different, defensible theory of what the September 4 stay actually held. (Fourth Circuit order)

INTERIM RELIEF DOCKET

FCC v. Brown, Nos. 26A476 & 26A477 (stay application pending). Within a day of the Fourth Circuit's writ, the Solicitor General sought a stay, calling the order "a flagrant abuse of the extraordinary writ of mandamus" and "a baseless effort to circumvent" the September 4 stay. The Chief Justice stayed the Fourth Circuit's judgment on October 8 "pending further order of the undersigned or of the Court," with a response due October 10; the candidates filed in opposition, the FCC replied October 11, and nothing has issued as of this morning. **The hook:** the Court is now being asked to say what its own interim order meant — the purest possible version of the question whether and how unreasoned emergency orders bind. **Watch for:** whether it comes as a reasoned per curiam or a one-line grant, and whether any Justice writes on the mandamus standard as distinct from the merits. Timing matters: the Commission's comment period in the companion TVB matter closes October 19, and election day is November 3. (SCOTUSblog docket)

Trump v. Kingdom, No. 26A416 (application pending). The government asks the Court to stay Judge Lamberth's August 26 order barring the BOP from implementing its February 2026

policy ending hormone therapy, surgery, and social accommodations for inmates with gender dysphoria; a divided D.C. Circuit panel declined to stay it on September 18. The theory below is ordinary arbitrary-and-capricious review — no reasoned explanation, a record "silent about BOP's extensive experience providing" the care it withdrew. The SG argues the district court substituted its policy judgment for the agency's, went outside the administrative record, faulted the agency for following a presidential directive, and denied prison administrators their due deference. Respondents filed in opposition October 8. **The hook:** remedies against government — the relief runs to a putative class of inmates in BOP custody, so the scope question lurks even though the reported briefing does not join it, and the equitable-discretion analysis is doing the work. (SCOTUSblog)

SCHOLARSHIP & COMMENTARY

Taraleigh Davis, "A snapshot of the Supreme Court's 2025-26 interim relief docket — and some surprises on it," SCOTUSblog (Oct. 13, 2026). Empirical write-up, with a companion stat pack. Of 123 emergency applications resolved last term, 36 were substantive (down from 49), and the entire decline came from the federal government, which fell from 21 applications to 9 and from a 90% success rate to 56%. Overall grant rate held at 50%. Written opinions accompanied 39% of substantive applications, up from 31% and 23% in the two prior terms, and average time to decision fell from 30 days to 18. Public disagreement appeared in 61% of substantive applications — down from 76% but far above the pre-2014 baseline of 13.5% — and in 91% of those, the noted dissenters shared an appointing party. Jackson led with 15 noted dissents; Barrett noted none. All 41 applications to halt an execution were denied. **The hook:** the interim docket as an institution. **Useful because** it cuts against the standard narrative in two directions at once: the Court is explaining itself more and faster, and the government's advantage shrank considerably. (SCOTUSblog)

Steve Vladeck, "So Unexplained: Justice Alito's Non-Responsive Emergency Docket Defense," One First No. 256 (Oct. 6, 2026). A reply to Chapter 8 of Alito's *So Ordered*, which Vladeck reads as a five-year-old Notre Dame speech bolted to a postscript, rebutting a caricature of the critique rather than the process objections actually on the table — unexplained orders above all. His tally: 133 full-court emergency rulings against 56 merits rulings last term, with 21 grants of emergency relief, against roughly 70 rulings and 8–10 grants five years ago. **Worth reading alongside Davis**, because the two sets of numbers are not in conflict so much as counting different things, and the gap between the denominators is itself the interesting datum: how one defines the docket largely determines whether it looks like it is growing or shrinking. **Podcast-ready** as a two-hander. (One First)

NOTED AND EXCLUDED

No legislative development this week squarely implicated jurisdiction-stripping or remedies, and nothing turned up at the circuit level on abstention, sovereign immunity, or *Ex parte Young* worth your time. Three stories that drew coverage do not pass the test: *Blanche v. Ozurumba*, No. 25-1343 (also granted Oct. 13), is a substantive "material support" question with no federal-courts edge; Trump's petition seeking to revive his suit against Hillary Clinton raises a limitations-tolling theory and a Rule 11 sanctions question, not jurisdiction; and the National Guard litigation produced nothing new since *Trump v. Illinois*.