FED COURTS WEEKLY

October 13–20, 2026

An unusually load-bearing week. The Solicitor General filed the petition that the post-*CASA* remedies literature has been waiting for — a frontal attack on universal vacatur under § 706(2) — and the Court granted a habeas case on whether out-of-circuit law can support a certificate of appealability. It also produced a § 2109 quorum affirmance, which is the kind of thing that happens roughly once a generation. Below, grouped by posture, with the doctrinal hook flagged for each.

SUPREME COURT — CERTIORARI AND MERITS

The government asks the Court to kill universal vacatur.
Department of Health & Human Services v. Texas Medical Association, No. 26-491 (petition filed Oct. 14, 2026), from the en banc Fifth Circuit, No. 23-40605 (Aug. 11, 2026). The question presented is clean to the point of bluntness: "Whether the Administrative Procedure Act… authorizes courts, in Section 706(2), to enter universal vacatur of agency rules that courts have held unlawful and, if so, in what circumstances." Sauer's theory is that *Trump v. CASA*'s equitable-tradition reasoning transfers wholesale from the injunction to the vacatur, that § 706(2)'s "set aside" language does not "vest[] courts with that 'new and far-reaching remedial power,'" and that universal vacatur "incentivize[s] forum shopping" while forcing the government onto the emergency docket. *Hook: scope of remedies against the government — the question* CASA *expressly left open*. This is the single most teachable filing of the term so far; the brief is also a tidy illustration of how a remedial holding migrates across procedural vehicles. Response due Nov. 13. Docket · SCOTUSblog

Cert granted on whether a COA can rest on another circuit's law.
Berry v. United States, No. 25-7026 (granted Oct. 13, 2026), from the Eleventh Circuit, No. 25-12042 (Feb. 18, 2026). Whether a certificate of appealability under § 2253(c) may issue where the petitioner's claim is foreclosed by his own circuit's precedent but would be viable in another. *Hook: postconviction gatekeeping and appellate jurisdiction*. The doctrinal puzzle is whether the "substantial showing of the denial of a constitutional right" standard is indexed to the law of the issuing circuit or to the merits of the federal question at large — which is really a question about whether circuit precedent is law or prediction. Near-perfect exam fodder, and it pairs naturally with a unit on § 2255 and the inadequacy of the "savings clause." SCOTUSblog

A mandamus petition captioned against the district court itself.
U.S. DOGE Service v. U.S. District Court for the District of Columbia, No. 25-1103 (granted Oct.

13, 2026). The dispute is whether the D.C. Circuit, on remand, correctly implemented the Court's June 2025 interim order staying discovery into whether DOGE is an "agency" for FOIA purposes; the government invokes *Cheney*'s "special considerations," and CREW says it followed the interim order "to the letter." *Hook: supervisory mandamus and the precedential force of interim orders*. The genuinely interesting fed-courts question is the second one — what exactly a lower court is obliged to extract from an unexplained stay order on remand. That is the shadow-docket problem in its most concrete and least rhetorical form, and worth a podcast segment.

Four recusals, no quorum, statutory affirmance.
BMG Rights Management v. Vetter, No. 25-1391 (Oct. 19, 2026). Sotomayor, Gorsuch, Barrett, and Jackson took no part — BMG's corporate parent, Bertelsmann, also owns Penguin Random House, which has published all four. With five Justices left, the Court fell below the six-Justice quorum of 28 U.S.C. § 1 and affirmed under § 2109, which directs an order "affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court." *Hook: Supreme Court jurisdiction — the quorum statute, which almost nobody has occasion to teach*. Classroom-usable on two fronts: the mechanics of § 2109, and the structural point that recusal norms at a court of last resort have no substitute-judge backstop. Order list

Sotomayor and Gorsuch explain two cert denials.
In *O'Donnell v. City of Chicago*, No. 25-1098 (Oct. 19, 2026), Sotomayor, joined by Gorsuch, wrote a statement respecting denial: she has "serious concerns" about the Seventh Circuit's holding (163 F.4th 411, 414 (2025)) that Chicago's vehicle-forfeiture scheme escapes the Takings Clause as police-power enforcement, but concluded the circuit split "would continue to benefit from further percolation" and that a facial challenge to the whole ordinance "is not the best vehicle." The same pair wrote a parallel statement six days earlier in *Herrera-Salazar v. United States*, No. 25-6989 (Oct. 13, 2026), concurring in denial partly because the petitioner had already been removed. *Hook: certiorari criteria — percolation, vehicle quality, and facial-versus-as-applied framing as cert-stage considerations*. Together they are the best recent teaching text on what the Court actually does with a conceded circuit split, and on the quiet growth of the explanatory statement respecting denial. Opinions relating to orders

Cert denied in *Wilcox*, leaving the D.C. Circuit's removal holding standing.
Wilcox v. Trump, No. 26-5 (cert. denied Oct. 19, 2026). The D.C. Circuit held the NLRB's for-cause removal protection unconstitutional; the Court declined review without recorded dissent, after having stayed her reinstatement on the interim docket in 2025. *Hook: the relationship between interim relief and merits review*. The denial is the fed-courts story, not the removal merits: a stay predicated on likelihood of success now functions as the final word, with no opinion of the Court on the question at any stage. Also denied, without comment: *Mohammad v.*

United States, No. 26-13, and *bin 'Atash v. United States*, No. 25-1335, challenging the withdrawal of consent to the 9/11 plea agreements (Kavanaugh not participating in *Mohammad*). SCOTUSblog

CVSG on Iowa's parallel illegal-reentry crime.
Bird v. Iowa Migrant Movement for Justice, No. 26-49 (Oct. 19, 2026). The Court invited the Solicitor General's views on Iowa's statute criminalizing presence in the state after illegal reentry, with no deadline set. *Hook: state–federal relations and obstacle preemption in a field of exclusive federal authority* — Arizona v. United States *reprised at the state-criminal-law level*. Separately, the Court again took no action on the three Alabama redistricting appeals (*Allen v. Caster*, No. 26-116; *Allen v. Milligan*, No. 26-117; *Allen v. Singleton*, No. 26-118), which arrive as direct appeals from a three-judge court under § 1253 — a useful reminder that the Court's docket is not entirely discretionary.

A standing problem surfaces mid-argument in the VPPA case.
Salazar v. Paramount Global, No. 25-459 (argued Oct. 14, 2026). The granted question is statutory — whether a newsletter subscriber is a "consumer" under the Video Privacy Protection Act — but Barrett pressed whether Salazar was injured at all given that his information went to Facebook rather than to a person, and Paramount's counsel offered to brief whether he can sue. *Hook: Article III concrete injury for a bare statutory disclosure violation — the* TransUnion *problem arriving uninvited*. Worth watching whether the Court orders supplemental briefing; a jurisdictional dismissal after full argument on the merits question would be a nice illustration of why standing is not waivable. SCOTUSblog

INTERIM DOCKET

Court stays the Fourth Circuit's deadline order against the FCC.
FCC v. Brown, No. 26A476 (Oct. 14, 2026). A five-page unsigned opinion stayed a divided Fourth Circuit panel's Oct. 7 order directing the Commission to rule on the candidates' petition by noon on Oct. 9; the companion application, *NRCC v. Brown*, No. 26A477, was dismissed as moot. The Court reasoned that no statute sets a deadline, that a 48-hour decisional clock intruded on the agency's control of its own procedures, and that compliance would be irreparably harmful. Sotomayor and Jackson would have denied, without explanation. *Hook: finality and exhaustion — the September order had said the challengers were likely right that the Fourth Circuit could not review the public notice before the full Commission did*. A clean example of ripeness and primary-jurisdiction concerns doing their work through the stay standard rather than through a reasoned opinion. SCOTUSblog

Challengers call a Texas–DOJ consent judgment collusive.
City of Baltimore v. Texas, No. 26A500 (filed Oct. 15, 2026). Texas sued in the Wichita Falls division of the Northern District of Texas challenging EOIR's 2024 administrative-closure rule; within hours, Texas and DOJ jointly asked Chief Judge O'Connor to enter final judgment for Texas, vacate the rule, and enjoin EOIR from readopting it. He did all three, and denied intervention to Baltimore, New Haven, Columbus, and Centro Legal de la Raza for want of standing; the Fifth Circuit declined to disturb the judgment. Democracy Forward calls it the product of "egregious collusion." *Hook: Article III adverseness in a consent posture (*Lord v. Veazie*), intervenor standing, and nationwide vacatur obtained by stipulation*. This is the richest single item of the week for teaching: it stacks the collusive-judgment problem, the intervention-to-defend question the Court ducked in *Arizona v. City and County of San Francisco*, forum selection within a single-judge division, and remedial scope. Strongly podcast-worthy. SCOTUSblog

Still pending.
Trump v. Kingdom, the application to let the Bureau of Prisons enforce its transgender-inmate healthcare policy notwithstanding Judge Lamberth's order, remains fully briefed and undecided; the D.C. Circuit declined to lift the injunction. *Hook: classwide relief after* CASA. The case proceeds below as a class action, which makes it a live test of whether Rule 23(b)(2) certification is the durable substitute for the universal injunction — the same remedial question as *Texas Medical Association*, arriving from the opposite direction.

COURTS OF APPEALS

D.C. Circuit argument on the National Guard deployment turns on who was injured.
The panel (Pillard, Garcia, and Senior Judge Rogers) heard argument Oct. 14, 2026 on the appeal from Judge Cobb's order holding the deployment unlawful. The deployment continues under a stay; the earlier stay panel had found that the District "has not identified any ongoing injury to its statutory interests." *Hook: sovereign and quasi-sovereign standing for a non-state entity, plus the familiar problem of a stay that effectively resolves the case through delay*. No decision yet. Courthouse News

Nothing else at the circuit level this week clearly turned on a fed-courts doctrine rather than on the merits of the underlying claim. The Fifth Circuit's en banc rehearing in the § 1225(b)(2) immigration-detention habeas litigation remains undecided and is worth watching.

SCHOLARSHIP & COMMENTARY

Feldman's numbers on the emergency docket complicate the standard story.
Adam Feldman, "Where the Supreme Court favors Trump on the emergency docket – and where it doesn't," SCOTUSblog (Oct. 19, 2026), codes 165 executive-action applications from Jan. 2017 through Oct. 12, 2026, reducing to 109 controversies and 93 with determinate outcomes. Headline finding: once you weight by controversy rather than by application, the three administrations converge — Trump I 75%, Biden 74%, Trump II 77% — and the apparent Trump advantage in raw rates is largely an artifact of who is applying (the government was the applicant in 87% and 93% of Trump I and II applications, but only 22% under Biden). Subject matter dominates: immigration ran 11-of-12 for both Trump administrations. *Hook: interim-orders practice as an empirical object*. Useful corrective for the shadow-docket week of the syllabus, and the applicant-versus-defender distinction is the part students consistently miss. SCOTUSblog

A note arguing the District cannot assert sovereign standing.
Robert F. Steiner, *On Standing, Sovereignty, and Constitutional Awkwardness*, 112 Va. L. Rev. 1569 (published Oct. 7, 2026 — just outside the window, but directly on point for the D.C. Circuit argument above). The claim is that D.C.'s status is "fundamentally non-sovereign" because its authority is congressionally delegated and revocable, so importing *Massachusetts v. EPA*-style special solicitude is both doctrinally incoherent and institutionally unwise — creating a municipal "omniplaintiff." *Hook: state standing and special solicitude.* Virginia Law Review

LEGISLATION

Nothing new this week. The pending proposals to limit district-court injunctive authority and to route certain state-brought suits to three-judge courts saw no recorded action; *Texas Medical Association* may make the legislative track moot in either direction.

Items included only where verified against a primary document or a report at a live link. Citations are as full as the sources support.