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INCLUDING

RAPP'S REPORTS

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IN-CHAMBERS PRACTICE UPDATE 2025

THE SHADOW DOCKET THRIVES

BUT IN-CHAMBERS OPINIONS REMAIN MORIBUND

Ira Brad Matetsky[†]

We hear of the U.S. Supreme Court's "shadow docket" – or "emergency docket," or "interim docket" – everywhere. In recent years, an unusually large number of emergency applications for stays or injunctive relief were presented to and ruled upon by circuit justices or by the Court as a whole. This trend, already on the rise during the Biden presidency, has accelerated even further. In 2025, numerous urgent applications came before the Court, often in momentous cases involving policies of the second Trump Administration. Robust discussion about whether the Court is handling these cases well, both procedurally and substantively, now extends far beyond the group of Supreme Court procedure specialists who are this journal's regular readers. This has become an everyday topic of conversation for other branches of the legal profession and academy, the press, and at times even the general public.

Indeed, the increased importance of the U.S. Supreme Court's interim docket has just led SCOTUSblog – a major source for current awareness of the Court's activities – to create what might be termed a sub-blog on this topic: The Interim Docket Blog, with contributors including Jack Goldsmith, Dan Epps, and William Baude.[1] Goldsmith's inaugural post explains:

> An interim order is a non-final judicial decision that determines which party's position controls in the interim between the filing of a lawsuit and its final resolution. That sounds boring and technical—and it is. But interim orders are where much of the action has been at the Supreme Court this year and for the last decade. . . .

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[1] https://www.scotusblog.com/interim-docket-blog/.

> In short, interim orders—especially but not exclusively for issues of executive power—have emerged as a track parallel to merits decisions for the practical resolution of important federal questions.[2]

In the past, an increase in high-profile emergency applications to circuit justices would have been associated with an increase in in-chambers opinions (ICOs) resolving them. But the trend that we wrote about in these pages a few years ago remains true: the justices have virtually stopped using ICOs as a means of addressing emergency applications.[3] Sometimes a justice will grant or deny an application with a docket notation or in a written order, and other times the full Court will rule on the application, in an order or an opinion. But in-chambers opinions – which can be defined for this purpose as substantive, rather than merely decretal, writings by an individual justice explaining his or her ruling on an application – have faded from view. As Professor Steve Vladeck, who authored the book *The Shadow Docket* and writes the leading "One First" law blog, recently observed:

> The once-robust practice of writing in-chambers opinions has become largely moribund. . . . Circuit justices [in the past] *regularly* wrote (brief) opinions respecting high-profile emergency applications. The lack of writing in these cases today really does appear to be a byproduct of the post-1980 shift to having so many emergency applications resolved by the full Court – and not a long-settled norm from which contemporary critics are asking the justices to depart.[4]

To a first approximation, Supreme Court justices no longer write in-chambers opinions. In the past decade, there has been just one exception: In 2024, Chief Justice John Roberts authored a one-paragraph ICO in *Navarro v. United States*, reprinted in the opinions section of this issue. One ICO in the past decade, as opposed to dozens of them in some decades past, more-or-less proves the rule that such opinions exist today barely, if at all.

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[2] Jack Goldsmith, "Welcome to the Interim Docket Blog," *id.* (Dec. 11, 2025).

[3] *See, e.g.,* Ira Brad Matetsky, *Introduction: The Current State of In-Chambers Practice*, 6 J. of L. (1 J. of In-Chambers Prac.) 19 (2016).

[4] Steve Vladeck, "The Cambodia Bombing Case," https://www.stevevladeck.com/p/168-the-cambodia-bombing-case. The editors thank Professor Vladeck for his kind words in this blog post about our in-chambers project.

There was also one recent single-justice opinion by Justice Samuel Alito, Jr. that *could* be classified as an ICO, although Alito and the Court did not label it as one. In *Moore v. United States*, a U.S. senator wrote to the Chief Justice, asking him to cause Alito to recuse himself from the pending case. Consistent with the Court's practice that each justice decides questions of disqualification or recusal for himself or herself, this request was referred for Alito's individual consideration. Although under no obligation to do so, Alito penned a short writing explaining his view that he need not, and therefore would not, recuse himself in *Moore*.[5] This document was headed as "Statement by Justice Alito." If this "Statement" had been issued by itself and designated for publication by the Court, the editors would classify it as an in-chambers opinion for inclusion in *Rapp's Reports,* even if not formally labeled as such. But Alito instead appended his statement to a routine court order in the pending case – granting a "motion to dispense with printing the joint appendix" – and so his writing was posted with the "opinions relating to orders" on the Court's website. We have previously included recusal-related writings of this sort among our ICOs, however designated in the writings themselves, on the theory that they are "written on a question to be decided by [an individual justice] on his own – that is, in chambers – rather than as a member of the Court en banc."[6] Some of these were classified by the Court as ICOs while others were not. In this instance, we will defer to the Court's classification and, by a narrow margin, are denying *Moore* admission to these pages; but the editors will continue to reflect on the ever-vexing question of what is or isn't an ICO.[7]

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[5] *Moore v. United States,* 600 U.S. ___, 144 S. Ct. 2 (2024) (Statement of Alito, J.), also available at https://www.supremecourt.gov/opinions/22pdf/22-800_1an2.pdf.

[6] Publisher's notes to *Public Utilities Comm'n of D.C. v. Pollak*, 4 Rapp 1423 (1952) (Frankfurter, J.); *Microsoft Corp. v. United States*, 4 Rapp 1424 (2000) (Rehnquist, C.J.); and *Cheney v. United States District Court*, 541 U.S. 913, 4 Rapp 1441 (2004) (Scalia, J.). *See also Hanrahan v. Hampton*, 446 U.S. 1301, 3 Rapp 945 (1980) (Rehnquist, J.); *Laird v. Tatum*, 409 U.S. 824, 2 Rapp 560 (1972) (Rehnquist, J.).

[7] The following year, when 50 U.S. representatives wrote a letter asking Alito to recuse himself from another two cases, Alito responded with a three-page letter addressed to the 50 representatives. The letter was written on Alito's Supreme Court's stationery, but was neither an opinion nor an order, and was not posted anywhere on the Court's website or treated as a judicial writing. Again, we have concluded that this was not an ICO, despite arguable precedents in these pages the other way. For those interested here it is: Letter from Samuel A. Alito Jr. to Rep. Henry C. ("Hank") Johnson et al. (May 29, 2024), https://www.scotusblog.com/wp-content/uploads/2024/05/Letter-from-Justice-Alito-to-Congressman-Johnson-et-al.pdf.

Meanwhile, a few years ago, the Court started publishing some of the circuit justices' orders – as opposed to opinions – granting stays or injunctions on its website. Once in awhile, when signing an "order" rather than an "opinion," a justice still takes this opportunity to explain his or her reasons for granting or denying an application. These writings can play the same role as an in-chambers opinion even though the order is in a different format and may not be designated for eventual publication in the *United States Reports*.

For example, in November 2025, Justice Ketanji Brown Jackson issued a highly publicized order granting an "administrative stay"[8] of a First Circuit decision ordering the government to make full payment of SNAP (food-stamp) benefits that had been affected by the government shutdown. A week later, Justice Sonia Sotomayor entered a signed order vacating a stay she had previously granted in a dispute, based on a government representation that it would not transfer certain funds outside the country until a pending petition for certiorari was resolved. These documents were captioned as orders rather than opinions, but their purpose – a justice's providing a written explanation for a decision made in an individual capacity – is the same as an ICO. A document's label or physical format has never been the sole determinant of whether it should find a place in *Rapp's Reports*, and so these two orders are included in this issue.

Although the editors' search of old archives and manuscript libraries for ICOs of years past has slowed, we continue to hunt down leads when they arise. In this issue we include two orders, with the effect of ICOs, issued by then-Associate Justice William Rehnquist in 1973. The introductory tables in *Rapp's Reports* show that Rehnquist wrote more known ICOs than any other justice in the Court's history. He joined the Court in 1972, after ICOs had become eligible for inclusion in the *United States Reports*, but the original set of *Rapp's Reports* contained a handful of Rehnquist ICOs that had previously gone unpublished. These newfound Rehnquist writings are again in the form of, and each is labeled as, an "order" rather than an opinion, but they contain enough reasoning to warrant inclusion. Further

[8] The term "administrative stay" refers to a stay granted based entirely on the exigencies of time, to preserve the status quo for long enough to allow a court or justice time to deliberate and rule on an application, without even the preliminary consideration of the merits that is part of an ordinary ruling on a stay or injunction request. A Westlaw search suggests that usage of both this term and the underlying concept are far more common today than they were even a few years ago.

study of the Rehnquist Papers, located at the Hoover Institution Library and Archives in California – and not yet fully open to researchers – may yield more ICOs, and if so, readers of this journal will be the first to know of it.

A final note. In 2020, the Twenty-First Edition of *The Bluebook: A Uniform System of Citations*, updated the citation guidance for ICOs, and listed *Rapp's Reports* as a citable source of ICOs for the first time – a welcome recognition of these reports' value.[9] The *Bluebook*'s Twenty-Second Edition, published in 2025, continues this guidance, although it does not address some minor anomalies previously noted in this column.[10] We will write again to the *Bluebook* editors – it will be nitpicking, but isn't that part of the *Bluebook* editors' job description? – in advance of the Twenty-Third Edition, anticipated for 2030. Meanwhile, we note that the *Bluebook*'s chief competitor, the *ALWD Guide to Legal Citation,* now also acknowledges *"Rapp's In-Chambers Opinions"* as a source for ICOs – a source outranked by *United States Reports or* West's *Supreme Court Reporter*, but preferred over the *Lawyer's Edition* or *United States Law Week*.[11]

With the increased focus on the Supreme Court's [insert-your-own-adjective] docket, and the continuing availability of ICOs through *Rapp's Reports,* we welcome our readers' thoughts on the future of this journal. The editor-in-chief can be reached at imatetsky@dorflaw.com.

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[9] See Ira Brad Matetsky, *In-Chambers Opinions and the Bluebook*, 10 J. of L (4 J. of In-Chambers Practice) 117, 120-21 (2020).

[10] *Compare id.* at 121 n.23 *with* The Bluebook: A Uniform System of Citation 113-14, 257 (22d ed. 2025).

[11] Carolyn V. Williams & Association of Legal Writing Directors, AWLD Guide to Legal Citation 76-77 (7th ed. 2021).

5 Rapp no. 17 (1973)

BOARD OF SCHOOL COMMISSIONERS *V.* U.S.

HEADNOTE

by Ira Brad Matetsky

Source: Papers of William H. Rehnquist, Box 5, the Hoover Institution Library and Archives, Stanford, California.

Opinion by: William H. Rehnquist (given in source).

Opinion date: September 5, 1973 (given in source).

Citation: Board of School Commissioners v. United States, 5 Rapp no. 17 (1973).

Additional information:

This order is typed on an ordinary sheet of paper. It arose from one aspect of decades-long litigation seeking desegregation of the public schools in Indianapolis and, for a time, the surrounding area. Circuit Justice William Rehnquist's order is a practice reminder that, in 1973 as today, the Supreme Court expected lawyers to seek available relief from lower courts before making an emergency application to the Supreme Court. In subsequent history, the Seventh Circuit affirmed the aspects of the District Court order at issue here. *United States v. Board of School Commissioners*, 503 F.2d 68, 78 (7th Cir.), *cert. denied*, 421 U.S. 929 (1974).

OPINION

THE BOARD OF SCHOOL COMMISSIONERS
OF THE CITY OF INDIANAPOLIS, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA,
DONNY BRURELL BUCKLEY, et al.,

Respondents.

ORDER

Petitioners have requested that I stay the portions of the August 20, 1973 District Court order directing Petitioners to assign their professional planning staff wholly to the services of the court-appointed commissioners and, additionally, to apply for available federal funds. After consideration of the briefs submitted in support and opposition, I am satisfied that petitioners did not make specific application to the District Court for stay of these portions of the order. Consequently, the District Court has not had a full opportunity to consider the contentions of the parties on these issues.

The motion to stay the above-mentioned portions of the District Court's order is therefore denied.

/s/ William H. Rehnquist
Associate Justice of the Supreme
Court of the United States
Dated this 5th day
of September 1973

5 Rapp no. 18 (1973)

HOLDER *V.* BANKS

HEADNOTE

by Ira Brad Matetsky

Source: Papers of William H. Rehnquist, Box 6, the Hoover Institution Library and Archives, Stanford, California.

Opinion by: William H. Rehnquist (given in source).

Opinion date: October 5, 1973 (given in source).

Citation: Holder v. Banks, 5 Rapp no. 18 (1973).

Additional information:

This order is typed on an ordinary sheet of paper. Arthur Banks was a federal prison inmate in Indiana, serving a five-year sentence for Vietnam War-era draft evasion. While in prison, he was charged with assaulting a prison guard, a felony, during an inmate demonstration seeking better conditions. Banks retained the nationally known lawyer William M. Kunstler to represent him at his assault trial, but Kunstler was from out-of-state and District Judge Gale Holder refused to allow Kunstler to appear before him *pro hac vice.* The Seventh Circuit granted Banks a writ of mandamus and directed that Kunstler be allowed to represent Banks at his trial. The district judge – "supported by thirty establishment Indiana lawyers," according to Kunstler's autobiography – then sought a stay of the Seventh Circuit's order, which Circuit Justice William Rehnquist granted. Subsequently, the Supreme Court granted certiorari, *Holder v. Banks*, 414 U.S. 1156 (1974), and heard oral argument; but the Court then dismissed the writ, without explanation, as improvidently granted, leaving the Seventh Circuit's ruling in effect. *Holder v. Banks*, 417 U.S. 187 (1974). Ultimately, Banks was never tried on the assault charge. He was released on a writ of habeas corpus in 1976 and resumed his career as an actor in California. *See* William M. Kunstler with Sheila Isenberg, *My Life as a Radical Lawyer* 371 (Birch Lane/Citadel Press 1994).

OPINION

A-358

HONORABLE CALE J. HOLDER, UNITED STATES JUDGE,

Petitioner,

v.

ARTHUR BANKS,

Respondent.

ORDER

After careful consideration of the petition and decisions below in this case, I have decided that the Order of the Court of Appeals directing petitioner to permit counsel's appearance *pro hac vice* should be stayed pending petitioner's timely application for a writ of Certiorari in this Court. Since respondent's trial is set for Monday, October 8, 1973, and since a trial without his chosen counsel might moot the questions raised on the merits, the stay is expressly conditioned on continuance of respondent's trial, unless respondent should elect to proceed, during the time allowed petitioner to file a petition for Certiorari. If such petition shall be filed, the stay so conditioned shall continue until this Court disposes of the petition and the case.

It is so ordered.

/s/ William H. Rehnquist
Associate Justice of the Supreme
Court of the United States
Dated this 5th day
of October 1973

5 Rapp no. 19 (2024)

NAVARRO *V.* U.S.

HEADNOTE

by Ira Brad Matetsky

Source: U.S. Supreme Court website (under "In Chambers Opinions").

Opinion by: John G. Roberts, Jr. (given in source).

Opinion date: March 18, 2024 (given in source).

Citation: Navarro v. United States, 601 U.S. ___, 144 S. Ct. 771, 5 Rapp no. 19 (2024).

Additional information:

This writing, while short, was officially designated by the Court as an in-chambers opinion – the first one in more than a decade. Peter Navarro, who had been convicted and sentenced to four months in prison for contempt of Congress, applied to Chief Justice John Roberts, as Circuit Justice for the D.C. Circuit, for release pending appeal. In this one-paragraph opinion, Roberts denied relief. Navarro then re-presented his application to Justice Neil Gorsuch, who referred it to the full Court, which denied it. *Navarro v. United States*, 144 S. Ct. 1454 (2024); *see also* Steve Vladek, "Shopping for Justices," https://www.stevevladeck.com/p/bonus-74-shopping-for-justices (Apr. 4, 2024) (discussing this case and the "old quirk in the Supreme Court's rules allowing unsuccessful stay applications to be renewed before another justice). Navarro then surrendered and served his sentence. The Court subsequently denied certiorari. *Navarro v. United States*, 145 S. Ct. 998 (2024).

OPINION

SUPREME COURT OF THE UNITED STATES

No. 23A843

PETER K. NAVARRO v. UNITED STATES

ON APPLICATION FOR RELEASE PENDING APPEAL

[March 18, 2024]

CHIEF JUSTICE ROBERTS, Circuit Justice.

The application for release pending appeal under 18 U. S. C. §3143(b) is denied. This application concerns only the question whether the applicant, Peter Navarro, has met his burden to establish his entitlement to relief under the Bail Reform Act. The Court of Appeals disposed of the proceeding on the ground that Navarro "forfeited" any argument in this release proceeding challenging the District Court's conclusion that "executive privilege was not invoked," "forfeited any challenge" to the conclusion that relief would not be required in any event because of the qualified nature of executive privilege, and "forfeited any challenge" to the conclusion that apart from executive privilege, he was still obligated to appear before Congress and answer questions seeking information outside the scope of the asserted privilege. Order in No. 24–3006 (DC, Mar. 14, 2024). I see no basis to disagree with the determination that Navarro forfeited those arguments in the release proceeding, which is distinct from his pending appeal on the merits.

5 Rapp no. 20 (2025)

ROLLINS *V.* RHODE ISLAND STATE COUNCIL OF CHURCHES

HEADNOTE

by Ira Brad Matetsky

Source: U.S. Supreme Court website (under "Orders of the Court").

Opinion by: Ketanji Brown Jackson (given in source).

Opinion date: November 7, 2025 (given in source).

Citation: Rollins v. Rhode Island State Council of Churches, 5 Rapp no. 20, 2025 WL 3124183 (2025).

Additional information:

This document was issued as an order by Justice Jackson and appeared on the Supreme Court website under the designation "Miscellaneous Order," but as discussed in the introductory essay to this issue, it had the same effect as an in-chambers opinion and so is included here. The litigation arose during the October-November 2025 federal government shutdown, after the Administration determined that sufficient funds were not available to pay full SNAP (food-stamp) benefits to recipients. Several non-profit groups and municipalities sued the Secretary of Agriculture seeking to compel her to allocate other available funds to fully fund the benefits. The Administration sought an emergency stay from the First Circuit, which denied relief in an abbreviated order stating that a more detailed opinion would follow. The Administration then turned to the Supreme Court and Jackson, as circuit justice for the First Circuit, granted a two-day "administrative stay" to allow the First Circuit to publish its complete decision. Jackson's issuance of this stay surprised some observers, but others noted that the full Court could have taken control of the stay application and issued a longer-term stay if Jackson had not acted on her own. Indeed, a few days later, the full Court extended the stay for another two days, with Jackson the only noted dissenter. Subsequently, Congress passed and the President signed an appropriation bill, mooting the controversy, and the stay application was withdrawn.

OPINION

Supreme Court of the United States

No. 25A539

BROOKE L. ROLLINS, SECRETARY OF AGRICULTURE, ET AL.,

Applicants,

v.

RHODE ISLAND STATE COUNCIL OF CHURCHES, ET AL.

ORDER

The applicants are seeking a stay of two orders of the United States District Court for the District of Rhode Island, case No. 1:25-cv-569. See D. Ct. Minute Entry (Oct. 31, 2025) and Docket Number 34 (Nov. 6, 2025). These orders require the applicants to fully fund benefits for the Supplemental Nutritional Assistance Program ("SNAP") for the month of November, and to distribute that funding by the end of the day on November 7, 2025 (today).

Earlier today, the applicants asked the United States Court of Appeals for the First Circuit to stay the District Court's orders pending appeal, and to issue an administrative stay to facilitate its consideration of that stay motion. At 6:08 p.m., the First Circuit denied the applicants' request for an administrative stay, but stated that it "intend[s] to issue a decision on [the stay pending appeal] motion as quickly as possible." *Rhode Island State Council of Churches v. Rollins*, No. 25-2089 (CA1 Nov. 7, 2025).

The applicants filed an application in this Court this evening, requesting a stay of the two District Court orders "pending the disposition of the government's appeal to the United States Court of Appeals for the First Circuit and, if the court of appeals affirms those orders, pending the timely filing and disposition of a petition for a writ of certiorari in this Court." Application at 1. The applicants assert that, without intervention from this Court, they will have to "transfer an estimated $4 billion by tonight" to fund SNAP benefits through November. *Ibid.*

Given the First Circuit's representations, an administrative stay is required to facilitate the First Circuit's expeditious resolution of the pending stay motion.

IT IS ORDERED that the District Court's orders are hereby administratively stayed pending disposition of the motion for a stay pending appeal in the United States Court of Appeals for the First Circuit in case No. 25-2089 or further order of the undersigned or of the Court. This administrative stay will terminate forty-eight hours after the First Circuit's resolution of the pending motion, which the First Circuit is expected to issue with dispatch.

/s/ Ketanji Brown Jackson
Associate Justice of the Supreme
Court of the United States
Dated this 7th
day of November, 2025

5 Rapp no. 21 (2025)

DURAN *V.* U.S.

HEADNOTE

by Ira Brad Matetsky

Source: U.S. Supreme Court website (under "Orders of the Court").

Opinion by: Sonia Sotomayor (given in source).

Opinion date: November 14, 2025 (given in source).

Citation: Duran v. United States, 5 Rapp no. 21, 2025 WL 3186207 (2025).

Additional information:

This document was issued as an order by Justice Sotomayor and appeared on the Supreme Court website under the designation "Miscellaneous Order," but as discussed in the introductory essay to this issue, it had the same effect as an in-chambers opinion and so is included here. The case involves a efforts to collect a judgment from the estate of the late President of the Philippines, Ferdinand Marcos. The Jardycean nature of Marcos-related litigation is reflected in the fact that allegations of Marcos family corruption were the subject of an in-chambers opinion by then-Chief Justice Warren E. Burger almost 40 years ago – Burger's last opinion of any kind before retiring from the Court. *Araneta v. United States*, 478 U.S. 1301, 3 Rapp 1243 (1986) (Burger, C.J., in Chambers).

OPINION

Supreme Court of the United States

No. 25A515

JOSE DURAN, INDIVIDUALLY AND AS REPRESENTATIVE
OF A CLASS OF JUDGMENT CREDITORS
OF THE ESTATE OF FERDINAND E. MARCOS,

Applicant

v.

UNITED STATES, ET AL.

ORDER

UPON FURTHER CONSIDERATION of the application of counsel for the applicant and the response filed thereto,

IT IS ORDERED that the stay heretofore issued by the undersigned on November 5, 2025, is hereby vacated. Given the Government's representation that it will not transfer the funds outside of the United States before the disposition of any petition for a writ of certiorari, the application for stay is denied.

/s/ Sonia Sotomayor
Associate Justice of the Supreme
Court of the United States
Dated this 14th
day of November, 2025