Injunction Junction: The Supreme Court and the Politics of Nationwide Relief*

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Abstract

Since the beginning of the first Trump administration in 2017, journalists and Court watchers have raised the alarm about the Supreme Court's use of the so-called "shadow docket" to achieve political ends. While the emergency docket has existed since World War II, politicians (particularly those in the executive branch) have increasingly used to to appeal lower court decisions they claim cause irreparable harm. The Court has, accordingly, adjusted its procedures to accommodate the higher volumes—and has appeared overtly political in the process. But what factors influence the justices' decisions on this unexplained docket? Are they as political as the commentators suggest, or is it business-as-usual using a different case selection mechanism? Using an analysis of 308 emergency appeals from circuit courts from 2003 to 2023, we find the Supreme Court is, in fact, behaving in a political manner on the shadow docket. Emergency appeals from Republican administrations are nearly automatically granted relief. When Democrats are in the White House, the burden for relief is higher: the justices follow more traditional agenda-setting processes and take the law and politics into account.

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Because the judicial system is, by design and default, slow in its decision making, the Supreme Court has long offered litigants use of an "emergency" or "shadow" docket for situations where immediate intervention is needed (Willis 2025). Cases on the emergency docket do not request an immediate ruling on the merits, but instead ask the justices to order either (1) an injunction preventing the government from enforcing a policy or (2) a stay of an injunction that ensures a policy gets enacted, based on the need to prevent "irreparable" harm from occurring while the legal process plays out (Vladeck 2023). These emergency orders are made without formal briefings or oral arguments, and they are issued without explanation or vote counts, leaving room for judges to merits decisions through normal channels (Baude 2015). In recent years, the federal government has asked the Court for such relief in higher numbers and for bigger policy questions. For example, in 2023, the Biden administration asked the Supreme Court to grant a stay and allow the Bureau of Alcohol, Tobacco, Firearms, and Explosives to continue regulating the sale of 3-D-printed ghost gun kits while a lawsuit challenging these regulations made its way through the federal judiciary (Willinger 2024). Similarly, in 2025, the Trump administration asked the Court to issue a stay allowing Immigration and Customs Enforcement officials to continue using identity characteristics to find potential deportees while lower courts dealt with a lawsuit challenging their raids (Chung 2025*a*). The Court sided with the government both times.

Taken at face value, these examples suggest that, as with so many other things (see, e.g., Black and Owens 2012*c*), the Supreme Court defaults to the government's arguments when it comes to requests for immediate action in the face of irreparable harm. A broader view, however, suggests a much different story about partisan politics and differential treatment. During the first Trump administration, the Court regularly sided with the government, granting relief 80% of the time when the administration asked it to do so (Liptak 2025*a*). It continues to do so in the second Trump administration, with the Court granting all requests for relief but one 2025 (Hurley 2025*b*; Howe 2025; Jouvenal 2025; Sherman 2025). But the Biden administration saw significantly less deference to its shadow docket requests; in fact,

the ghost guns case was considered a major shadow docket victory for the Biden administration, as the Court only granted about half of its emergency requests for relief (Epstein, Martin and Nelson 2025; Liptak 2025*a*). The differences between the administrations are so stark that journalists and Court experts now loudly criticize the Court for using the shadow docket—with its different processes, lack of transparency, and divorce from signed and explained opinions—to make political decisions it would otherwise not be able to make (Chung 2025*b*; Guzelian 2025; Hurley 2025*a*; Liptak 2025*b*).

Is this expert concern real, or mere hand-wringing? Are Supreme Court justices using the shadow docket to play politics? In this paper, we seek to understand the drivers of granting relief to emergency petitions. Specifically, we ask whether the traditional legal, strategic, and political factors that influence the justices agenda setting decision on the merits docket are reflected on the shadow docket. Or is it really just politics? To answer this question, we utilize the Kastellec and Taboni (2025) Shadow Docket Database to examine the justices' behavior on 308 emergency docket petitions appealed from the circuit courts to the Supreme Court between 2003 and 2023. We find the justices are, in fact, treating emergency requests on the shadow docket differently under Democratic and Republican administrations. Specifically, our results show the Court simply defaults to granting relief when the government requests it during Republican administrations, while they pay more attention to the broader political and legal environment when Democrats hold the presidency.

These findings contribute to scholars' understanding of modern judicial behavior in a number of ways. First, we provide one of the first systematic analyses of if and how institutional rules and politics influence the justices' decision making on the shadow docket. While law professors, Court watchers, and journalists have long suspected the Court was treating administrations differently (Vladeck 2023), we are among the first to bring empirical evidence to bear on this question. Second, we shine light on how the justices behave in an environment where collegial demands are lower. Scholarship shows the need to keep five justices aligned on a written and explained legal opinion forces moderation and compromise

(Baum 2006; Maltzman, Spriggs and Wahlbeck 2000). Our findings indicate that removing the need to defend decisions can drive the Court toward more politically-polarized outcomes. Given high media coverage of the shadow docket (Truscott 2024), these outcomes could affect the way people think about the Court (Smart 2024; Davis 2025) and its ability to make fair and legal decisions.

The Shadow Docket

While most people think of the Supreme Court as a slow-moving institution, the Court's work actually falls into one of two different tracks. The first track is merits docket, wherein the justices grant appeals, order the parties to plead their cases via written briefs and oral arguments, and issue written opinions that answer legal questions and provide explanations for those answers (Maltzman, Spriggs and Wahlbeck 2000). It receives the most attention and is the part of the Court's work the public is most likely to see (Vining and Marcin 2014). The other track is the orders list, which is comprised of any Court decision made without the full merits treatment; it is, as its name implies, a simple list of decisions the justices made (Baude 2015). Because decisions on the orders list lack explanation, and because most of the Court's work gets announced via the orders docket (Vladeck 2023),[1] scholars and journalists have nicknamed it the "shadow docket" (Liptak 2025*c*). Orders on the shadow docket include grants or denials for writ of certiorari, calls for the views of the Solicitor General (CVSGs), and grant, vacate, and remands (GVRs), as well as administrative work such as admitting new Supreme Court Bar members and granting split time during oral argument (Kastellec and Taboni 2025).

For much of the Court's history, the orders list has been a barely-noticed side note, but the changing nature of the emergency part of that list has moved it front-and-center in debates about the judiciary. Cases on the so-called "emergency docket" are the types

[1]Vladeck (2023) points out that, by volume, 99% of the Court's work is actually done via the orders list.

of cases the Biden and Trump administration brought to the Court, the cases that have some kind of temporal constraint or require immediate and "extraordinary relief" in the face of "irreparable harm" (Vladeck 2023). Emergency petitions ask the justices to review a lower court's decision and "grant relief" by overturning the lower court's injunction or stay. Importantly, they do not ask the justices to rule on the merits of the case at this point in time; they simply ask the justices to determine the policy landscape that will exist while the case makes its way through the court system, which might include the Supreme Court's merits docket at some later point. Because many of the policies affected by stays and injunctions are federal, the federal government files an overwhelming number of these petitions. Figure 1 shows the volume of emergency applications filed between 2003 and 2024, separated by presidential administration (grey background boxes). As the black line in Figure 1 indicates, parties are increasingly filing emergency appeals and asking the Court to overturn lower court decisions. While emergency petitions were relatively constant and few during the Bush and Obama administrations in the aughts, they skyrocketed during Trump's first administration and remained high through Biden's.

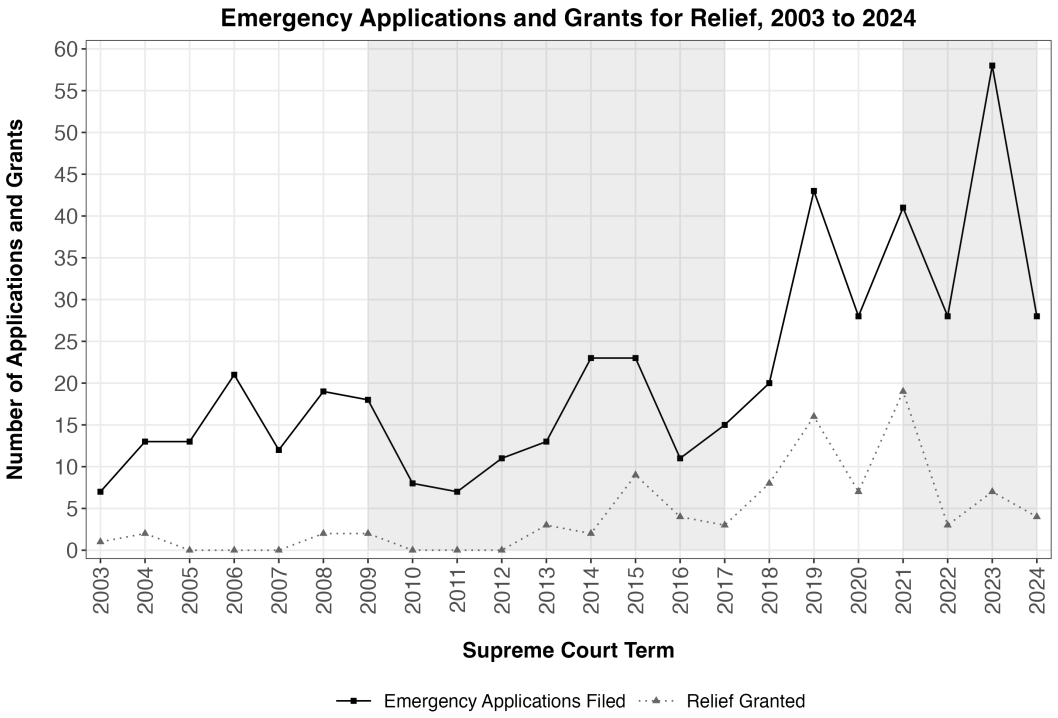


Figure 1: Number of emergency applications filed each term between 2003 and 2024 (black circles), compared to the number of times the Supreme Court granted relief in light of those applications (grey triangles). Grey background boxes separate presidential administrations.

With that said, as the light grey line in Figure 1 suggests and the black line in Figure 2 makes clear, the Court's willingness to grant such applications changes over time. During the Bush and early Obama administrations, the Court showed little willingness to grant relief, sometimes refusing to grant it at all. Tides turned in the second half of the Obama administration, when the Court's willingness to grant relief increased to 23% in 2013 and up to 39% in 2015. The Court's probability of granting relief would stay in that range throughout the first Trump administration, before cratering back to Bush-era levels during the Biden administration in the early 2020s.

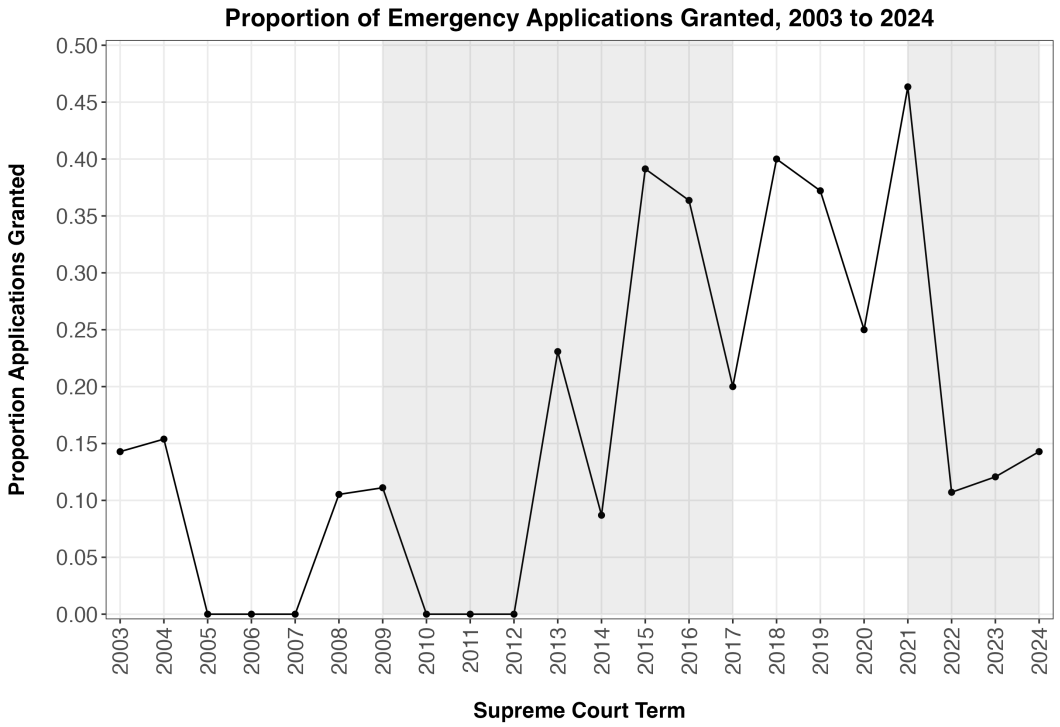


Figure 2: Proportion of emergency applications granted relief between the 2003 and 2024 terms. Grey background boxes separate presidential administrations.

Explanations for Granting Relief

The Court's differing proclivities for granting emergency relief drove much of the conversation over the politicization of the shadow docket that dominated Court coverage in the early 2020s (see, e.g., Biskupic 2023; Greenhouse 2021; Liptak 2025*b*). This coverage forces the question: What factors drive the justices' decisions on the emergency application portion of the shadow docket? Research on other parts of the orders list, specifically the Court's decisions regarding certiorari, should be instructive here. At a minimum, such research offers insight into the justices' approach to work on this secondary track, where their only product is the outcome of a vote and they can behave differently than they would if they had to defend their decisions (Caldeira and Wright 1988). Looking beyond that baseline, the agenda-setting process is particularly useful here because any case on the emergency docket could eventually end up on the Court's merits docket via a petition for

the writ of certiorari, and the justices are well aware of (and occasionally exploit) that fact (Vladeck 2023). Given the justices make cert decisions with an eye toward eventual policy outcomes (Black and Owens 2009), it seems appropriate to determine if the same factors can explain emergency appeals.

To that end, research on agenda setting has long suggested the justices consider both law and policy when deciding whether or not to review a case. When it comes to the law, the Supreme Court's Rule 10 outlines the factors that make a case worthy of review, most notably lower court conflict (Owens 2010), which the Court is duty-bound to resolve when possible. The justices look for conflict in a number of places. The most obvious sign of conflict is a circuit split, wherein circuit courts reached different conclusions on the same legal issue (Lane 2022), but lower court judges can also signal legal uncertainty by filing costly dissents or engaging in en banc review (Beim, Hirsch and Kastellec 2016; Black and Boyd 2013). Additionally, given the Supreme Court's trust in and dependence on the Office of the Solicitor General (Schoenherr and Waterbury 2022), the justices also tend to grant review when the government is the one petitioning them for review (Black and Owens 2012*a*). Alternatively, the justices' policy preferences also play a role in the agenda-setting process. More specifically, they are more likely to grant review when the Court as a whole is ideologically distant from the lower court that reviewed the case (Black and Owens 2012*b*; Bryan and Owens 2017), and they are more likely to grant review when they think they will win on the merits (Black and Owens 2009).

Perhaps unsurprisingly, the possibility the justices' shadow docket decisions are just "business as usual" conflicts with popular discourse that suggests the justices make shadow docket decisions for strictly political reasons (Vladeck 2023). Consequently, we opt to see which (if either) explanation is the right one. We thus set up competing hypotheses:

> Business as Usual Hypothesis: The Court treats emergency appeals similarly to its certiorari petitions. That is, when the government is a party to the case, when there is greater ideological distance between the Court and the circuit panel, when there is lower court conflict, and when a circuit panel judge dissents, the Court

is more likely to grant review.

Differential Politics Hypothesis: The predictors of granting relief will vary by the party of the presidential administration.

The first hypothesis reflects the notion that certain features make an appeal cert- or relief-worthy, and that such indicators of case importance are common across merits and emergency petitions. That is, justices consider cases via both mechanisms—merits and emergency dockets—for the same reasons. Alternatively, the second hypotheses reflects observations made by numerous court-watchers, who suggest the Court utilizes the shadow docket differently for Republican presidents than Democratic ones to achieve ideological goals.[2] That is, a Republican administration is, itself, an indicator of relief-worthiness for the conservative Court. Conversely, cases under Democratic presidents require the typical hallmarks of certworthiness in order for relief to be granted.

Data and Approach

To answer these questions, we examine the shadow docket cases in which petitioners sought injunctive relief. We use Kastellec and Taboni's (2025) Shadow Docket Database, which identifies all shadow docket cases between 2003 and 2025. In particular, we identify all non-death penalty cases on the shadow docket between 2003 and 2023 where the petitioner sought emergency injunctive relief after a circuit court ruling on the issue.[3] 393 cases met these criteria. We then researched case histories and past rulings, with a particular focus

[2]In our data, as with all data on the Court since 1969, the Court is consistently conservative. However, the party of the president changes. We return to this consideration in the discussion.

[3]Kastellec and Taboni (2025) follow Vladeck (2023) and define the shadow docket as any judicial decision that is not reached via the "standard" process of docketing a case, hearing it at oral argument, and releasing an opinion announcing the Court's conclusion. That means the shadow docket includes (but is not limited to) rulings on cert petitions, extended time for filing, and split time at oral argument. Our analysis focuses on what Vladeck (2023) identifies as the "emergency" part of the shadow docket, which Kastellec and Taboni (2025) identify with their `emergency_action` variable. As we discuss later, we stop our analysis in 2023 (the 2022 Supreme Court term) because Judicial Common Space, our measure of circuit court panel ideology, only runs through that time period.

on the circuit court's decision regarding the request for injunctive relief. Specifically, we recorded each of judges on the three judge panel in order to calculate the panel median. We found information about 337 of those cases, 308 of which came from panel decisions and 19 of which were unsigned or decided en banc, and those cases form the basis of our analysis.[4]

Because we are interested in the Supreme Court's decision to grant relief, our unit of analysis is the emergency appeal, and our dependent variable is the outcome of that appeal—whether the Supreme Court did (1) or did not (0) grant relief, which is coded in Kastellec and Taboni's (2025) database.[5]

To address the many legal factors outlined in our "business as usual" hypothesis, we control for a number of factors. First, to address circuit court splits, we identify all instances where the Court addressed emergency appeals involving the same issue from different circuits on the same day. Second, we use a dichotomous indicator to note all all instances in which a lower court judge dissented from the circuit court's ruling. Finally, because research suggests the Court responds differently to the federal government's requests for relief, we also identify all situations in which the government is the petitioner or the respondent.

To address the political factors outlined in both hypotheses, we also model the ideological distance between the Supreme Court and the circuit court that made the decision. To do this, we utilize Epstein et al.'s (2007) Judicial Common Space scores. We took the absolute value of the difference between the circuit court panel of three judges and the Supreme Court median. We use this measure to examine the role ideology might play in the Court's decision to grant relief.[6] We also calculated the absolute ideological distance between the entire circuit and the Supreme Court median to control for the ideology of the circuit itself.

[4]We used a combination of Westlaw, LexisNexis, and broader internet searches to identify each case's history. Given the time period, it is perhaps unsurprising to learn the older cases were harder to find and that most of the "unfindable" cases came from the Bush and Obama administrations.

[5]We use the `relief_granted` variable rather than the four-part `relief` variable.

[6]In Table A1, we also identify cases decide by en banc, rather than by panel, to examine how these dynamics work differently. For cases decided en banc, we use the absolute value of the difference between the circuit and Supreme Court medians.

Finally, to address the "differential politics" hypothesis, we separately analyze Republican administrations (i.e., the Bush and first Trump administrations) and the Democratic administrations (Obama and Biden).

Results and Analysis

To analyze the Court's approach to granting relief on the "shadow docket," we estimate separate logistic regressions by presidential administration.[7] Estimates are in Table 1.

Table 1: Logistic Regression of Supreme Court Granting Relief on Emergency Appeal by Presidential Administrations

	Democratic	Republican
Panel to SCOTUS Ideological Distance	0.570	2.620
	(1.100)	(1.516)
Circuit Judge Dissented	1.100*	0.772
	(0.453)	(0.617)
Circuit Split	−0.157	−1.345
	(0.970)	(1.038)
Circuit to SCOTUS Ideological Distance	−2.341*	0.108
	(1.161)	(1.515)
Government Petitioner	1.720*	3.305*
	(0.699)	(0.708)
Government Respondent	0.705	—
	(0.429)	
Constant	−1.539*	−3.059*
	(0.487)	(0.728)
Observations	182	126
Log Likelihood	−79.363	−49.194
Akaike Inf. Crit.	172.725	110.388
Note:		*p<0.05

As is evident by the right side of Table 1, and in alignment with our "differential politics" hypothesis, very few factors influence the Court's decision to grant relief during Republican administrations. First and foremost, note that government respondent—that

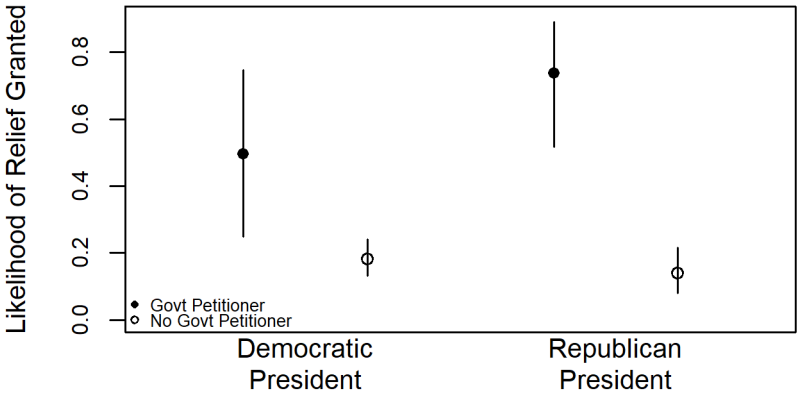
[7]Table A1 provides a pooled model.

is, when a litigant asks the Court to overturn a government victory at a lower court—is dropped from the Republican model. It serves as a perfect predictor of granting relief, with 0 of 32 petitions granted relief when a Republican administration was the respondent. In other words, when a Republican administration won at the lower courts, the Supreme Court *never* granted relief and instead stuck to the conservative status quo. The only significant indicator of granting relief is when the government is the petitioner in the case.[8] As Figure 3a shows, the Court is significantly more likely to grant relief when Republican administrations are the petitioner (0.74) than when the government is not involved in the case (0.14)—a whopping 427% increase in likelihood to grant relief.[9] No other factors influence whether the Court grants relief during Republican administrations—only the government asking for relief increases its likelihood.

[8] All discussions of significance are with respect to two-tailed tests where $p<0.05$.

[9] Figure A1 provides first difference estimates for Figure 3.

(a) Likelihood of Granting Relief: Government as Petitioner



(b) Likelihood of Granting Relief: Presence of Circuit Court Dissent

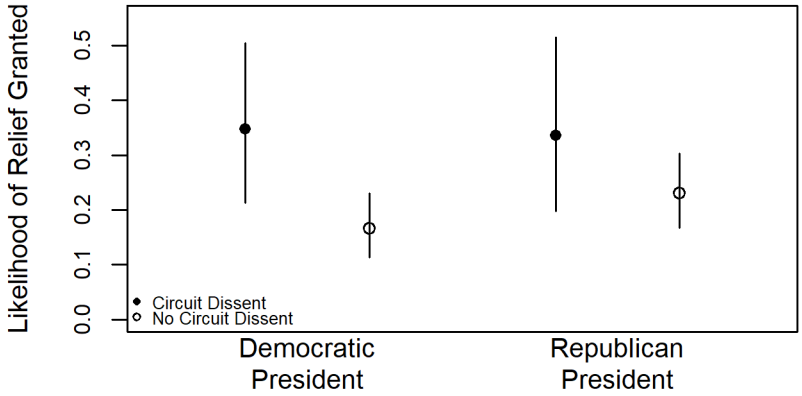


Figure 3: The predicted likelihood of the Supreme Court granting relief if a) the government is the petitioner in the case and b) there is a dissent at the circuit court.

During Democratic administrations, however, we find more factors influence the Court's decision to grant relief. Similar to Republican administrations, the government as petitioner increases the likelihood of relief (0.50) compared to non-governmental petitioners (0.18)—a 173% increase. Though still a large advantage for the government, the effect is about 2.5 times weaker for Democratic administrations than Republican ones. Further, as Figure 3b shows, the presence of a dissent at the circuit level increases the likelihood of Supreme Court involvement via the shadow docket (0.35; 0.17). Similar to the cert granting process, lower court dissents increase the likelihood of Supreme Court action on the emergency docket but with a caveat: only under Democratic administrations.

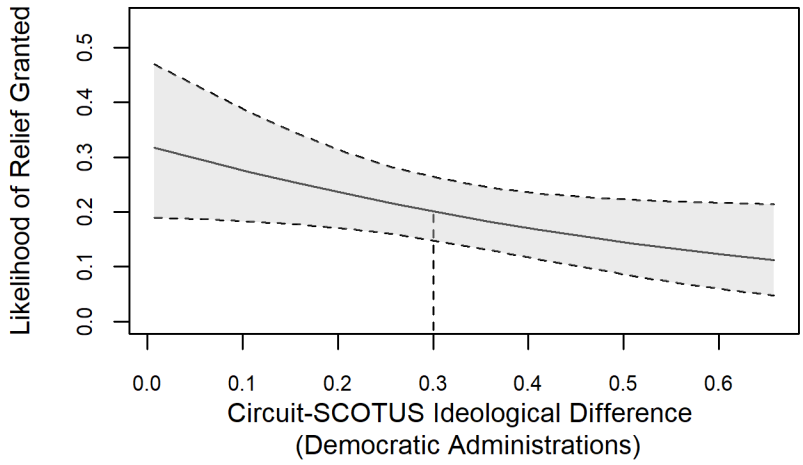


Figure 4: Likelihood of granting relief based on the ideological distance between a circuit and SCOTUS during Democratic administrations. Values to the right of the dotted line are significantly less likely to be granted relief while values to the left of the dotted line do not significantly differ.

Perhaps the most surprising finding is in Figure 4, which shows the likelihood of granting relief across the range of ideological distance between the circuit and the Court during Democratic administrations. As ideological distance increases, the likelihood of the Court granting relief in that case *decreases*.[10] That is, during Democratic administrations, the conservative Court is less likely to grant relief to decisions from more liberal circuit courts. This finding is in stark contrast to the Court's operations during the cert granting process (Black and Owens 2012*b*; Bryan and Owens 2017), where the Court supervises ideologically distant lower courts. This provides further evidence of the uniqueness of the shadow docket.

These findings, at least in part, align with traditional explanations of review-granting behavior. Specifically, circuit dissent, the government as petitioner, and ideological distance predict whether the Court grants relief, just as they predict whether the Court grants certiorari. However, these results also suggest the Court behaves differently when Republicans petition the Court. Thus, there is support for our "business as usual" hypothesis, but only for Democratic administrations. By the nature of "business as usual" only applying to one

[10]Figures A2 and A3 provide circuit-SCOTUS ideological differences during Republican administrations and the first differences plot of Figure 4, respectively.

political party, and by the nature of the sign for ideological distance being reversed from expectation for Democrats, we also find support for the "differential politics" hypothesis. The baseline for granting relief appears higher for Democratic administration, who must signal to the Court that the irreparable harm may happen without intervention. A Republican administration requesting relief, on the other hand, faces fewer hurdles; the petition, itself, appears to signal relief-worthiness.

Conclusions

The shadow docket has received a great deal of attention in recent years from legal experts, academics, and judges alike. Much of this consternation falls into one of two camps: (1) the shadow docket is utilized as a procedural workaround to achieve ideological goals and (2) for an institution for whom transparency is linked to legitimacy, opaque procedures—especially when they produce large scale policy—are risky. Both concerns are sensible. Not only has use of the shadow docket increased, but the Supreme Court has increasingly used it to decide important cases, often in the dead of night, with no legal reasoning. While extant scholarship has focused on public attitudes regarding the shadow docket, we are aware of little research focusing on the procedural aspects.

Using more than two decades of emergency relief decisions appealed from the circuit courts, we show that the Court applies fundamentally different standards depending on the party of the presidential administration. During Republican administrations, the Court largely defaults to granting emergency relief when the federal government petitions for it, and there is little evidence the traditional indicators of certworthiness constrain decisions about granting relief. Under Democratic administrations, however, relief mirrors the standard agenda-setting process and is premised on factors such as lower court dissents and ideological distance between the circuit and Supreme courts. These patterns indicate that the shadow docket does not function as a neutral extension of the Court's typical agenda setting process.

These findings have important implications for judicial power, transparency, and ac-

countability. Emergency procedures are intended to prevent irreparable harm while legal disputes proceed, and the emergency docket is supposed to ensure lower court legal proceedings work within the appropriate status quo. Despite the legitimacy of the procedure, numerous observers have pointed out that the lack of oral arguments, signed opinions, and transparent voting can facilitate politically asymmetric outcomes. Our evidence corroborates this concern. When access to emergency relief varies systematically across administrations, the Court risks undermining the appearance of neutrality, particularly given the shadow docket's growing role in shaping national policy and its increasing public visibility.

Of course, our findings are not without limitations. While we rely on the most comprehensive data available, emergency appeals are relatively rare. Although our models are parsimonious, this limits statistical power. Additionally, emergency relief decisions may be shaped by issue-specific considerations that are opaque to researchers, and different administrations may be prone to filing emergency appeals on different subsets of issues. Finally, our data almost exclusively encompass the Roberts Court, which limits our ability to separate patterns from the administration of a single (Republican-nominated) Chief Justice. With that said, Roberts has seen seven new justices join his bench and the Court's median has shifted multiple times in the process, which suggests scholars can glean useful information from even this single-Court analysis. We encourage subsequent research on these questions.

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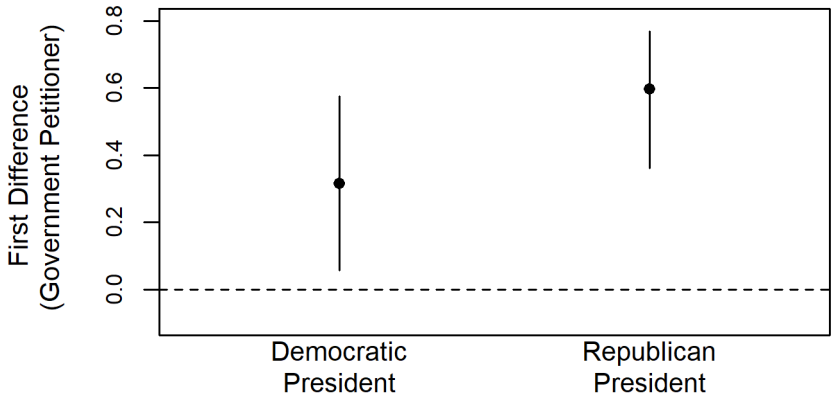
Supplemental Appendix

Table A1: Probability of Supreme Court Granting Relief on Emergency Appeal

	With En Banc	Panels Only
Ideological Distance from SCOTUS	0.309	0.891
	(0.724)	(0.837)
Appeal from En Banc Decision	1.213*	—
	(0.599)	
Circuit Judge Dissented	1.170*	1.087*
	(0.337)	(0.349)
Circuit Split	-0.595	-0.789
	(0.691)	(0.710)
Circuit to SCOTUS Ideological Distance	—	-1.412
		(0.880)
Government Petitioner	2.369*	2.588*
	(0.420)	(0.456)
Government Respondent	0.153	-0.011
	(0.344)	(0.364)
Constant	-2.070*	-1.792*
	(0.349)	(0.380)
Observations	324	308
Akaike Inf. Crit.	305.418	284.380
Bayesian Inf. Crit.	331.884	310.490
Note:		*p<0.05

(a) First Differences: Government as Petitioner



(b) First Differences: Presence of Circuit Court Dissent

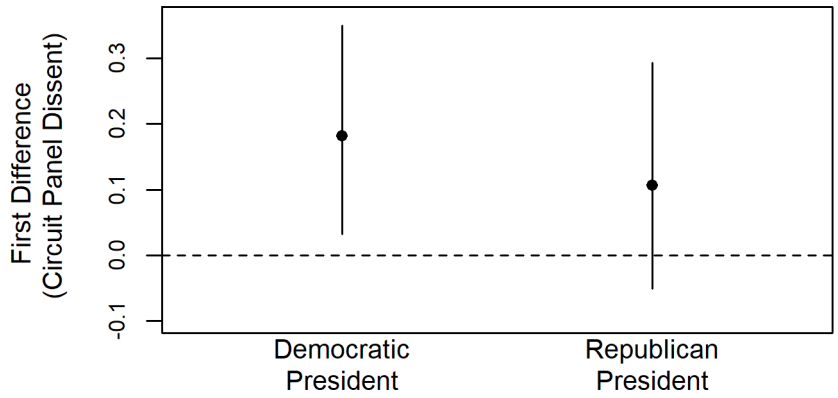


Figure A1: The first differences of the Supreme Court granting relief if a) the government is the petitioner in the case and b) there is a dissent at the circuit court. Values above the dotted line at zero represent significantly more likely to grant relief while values below zero mean significantly less likely. 95% confidence intervals that cross the dotted line at zero represent a lack of statistical significance.

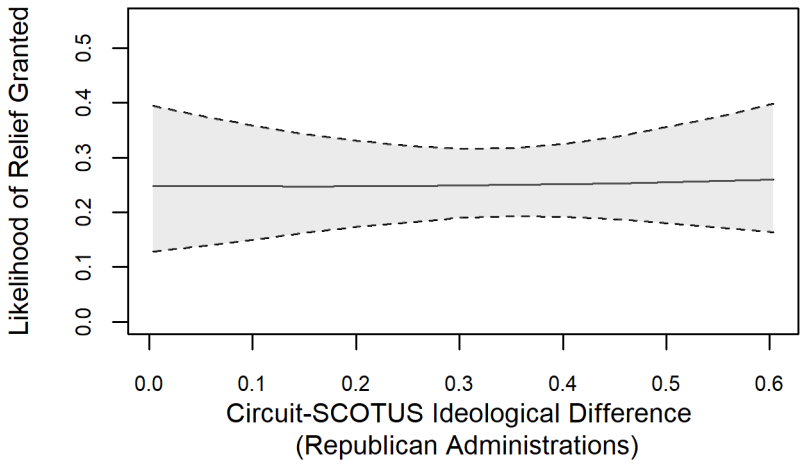


Figure A2: Likelihood of granting relief based on the ideological distance between a circuit and SCOTUS during Republican administrations.

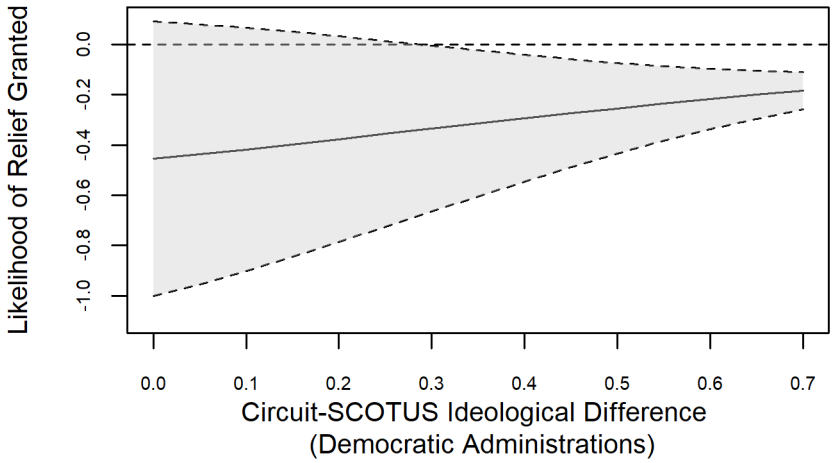


Figure A3: First differences of granting relief based on the ideological distance between a circuit and SCOTUS during Democratic administrations. Shading represents 95% confidence intervals with shading crossing the dotted line at zero indicating a lack of statistical significance.