

No. 22-58

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA, ET AL.,
Petitioners,

v.

STATE OF TEXAS AND STATE OF LOUISIANA,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

**BRIEF OF PROFESSOR STEPHEN I. VLADECK
AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

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INTERESTS OF *AMICUS CURIAE*¹

Amicus curiae Stephen I. Vladeck holds the Charles Alan Wright Chair in Federal Courts at the University of Texas at Austin School of Law. He is the author of dozens of academic and popular articles about how federal courts doctrines shape the behavior of parties in challenges to government policies, relevant examples of which include *The Demise of Merits-Based Adjudication in Post-9/11 National Security Litigation*, 64 Drake L. Rev. 1035 (2016); *Pendent Appellate Bootstrapping*, 16 Green Bag 2d 199 (2013); and *Texas Judge’s Covid Mandate Ruling Exposes Federal ‘Judge-Shopping’ Problem*, MSNBC Daily, Jan. 11, 2022. Professor Vladeck has also written extensively about the recent uptick in emergency appellate litigation arising from challenges to government policies, including his forthcoming book, *The Shadow Docket* (Basic Books 2023); *The Supreme Court 2018 Term — Essay: The Solicitor General and the Shadow Docket*, 133 Harv. L. Rev. 123 (2019); and *F.D.R.’s Court-Packing Plan Had Two Parts. We Need to Bring Back the Second*, N.Y. Times, Jan. 7, 2022. And Professor Vladeck has testified before Congress on these topics on multiple occasions, most recently before a September 2021 hearing of the Senate Judiciary Committee.

Professor Vladeck has studied the federal courts for more than fifteen years. Most recently, he has

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amicus*, its members, or its counsel made a monetary contribution to fund the brief. All parties have consented to the filing of this brief.

studied the ways courts may be abused by litigants to promote and facilitate partisan political agendas. This case illustrates this phenomenon. Professor Vladeck is interested in providing data to the Court to aid its understanding of how judge shopping occurs, impairs the public interest, and if unchecked, can damage the credibility of the federal judiciary as a whole.

SUMMARY OF ARGUMENT

Relying upon a boundless theory of standing, the State of Texas has spent the duration of the current presidency litigating against virtually any policy with which Texas's Governor or Attorney General disagree. Texas has been particularly active against its political opponent's immigration policies, wielding an interpretation of Article III that allows Texas to claim a right to sue over all immigration guidance, policies, or rules in contexts in which Texas is no differently situated from any of the other 49 states.

Texas's lawsuits, which are little more than generalized grievances against a political opponent, do great harm on their own to the courts' Article III-mandated role. But Texas's litigation *conduct* considerably increases the damage. Texas has deployed its approach to standing to engage in a deliberate strategy of judge shopping, a strategy that undermines core principles of Article III. Specifically, Texas has abused the federal courts by intentionally, repeatedly, and solely filing its Texas-based lawsuits against the federal government in district court divisions staffed entirely, or almost entirely, by judges appointed during

presidencies of the Texas Governor's and Attorney General's party. In many of these cases, Texas has had a 95% (or greater) chance of drawing a specific judge. Those courts have repeatedly issued nationwide injunctions against a growing array of actions and initiatives undertaken by the Biden Administration.

This case represents a low-water mark in that effort—a judge Texas was guaranteed to draw based upon its choice of division who enjoined the executive's most basic exercise of statutory and constitutional enforcement discretion in the area of immigration law. The facts and data underlying Texas's recent litigation demonstrate that this is indeed a concerted tactic—not a coincidence.

Texas's judge shopping undermines the district court's order in this case with respect to both Texas's standing and Texas's entitlement to preliminary injunctive relief. As to standing, Texas's transparent judge-shopping tactics demonstrate that it is engaged in nothing more than a campaign of generalized grievances against a political opponent—long an improper basis for invoking federal jurisdiction. As to the injunction factors, Texas's judge shopping grossly disserves the public interest. If litigants like Texas are regularly able to obtain nationwide injunctions from judges whom they have hand-picked to hear their complaints, it should go without saying that public faith in the independence of the federal judiciary will be undermined.

ARGUMENT**I. Texas Has Brought This Action As Part Of An Intentional Strategy Of Shopping For Its Preferred Judges To Enjoin Federal Action Nationwide.**

Texas has filed at least 28 lawsuits against the Biden Administration. Among those 28 cases, the Texas Attorney General appears to have filed 20 cases in the Texas district courts and on behalf of Texas, the Governor, or the Attorney General himself.² Of those 20 lawsuits, judges appointed during Republican presidencies are presiding in all but one.³ This situation is no coincidence—Texas has intentionally filed its cases in a manner designed to all-but foreclose having to appear before judges appointed during Democratic presidencies, including by not filing a single case where the Texas state government, including the Office of the Attorney General, is actually located—the Austin Division of the Western District of Texas.

There are 677 federal district judges assigned to 94 district courts across the country. Between full-

² Attached to this filing as an Appendix is a chart identifying: the 20 cases, the division and district in which Texas initially filed the lawsuit, the judge presiding over the lawsuit, the party of the President at the time of the judge's appointment, the number of judges in the division, and the percentage of the division's new civil cases assigned to judges appointed during Republican presidencies. The Appendix also includes citations to each of the districts' division of business orders in place at the times Texas filed its lawsuits.

³ *See id.*

state districts and larger multi-district states, some of those districts are physically enormous. The Western District of Texas, for example, runs from El Paso to east of Austin and down to the Mexican border—more than 92,000 square miles. Thus, Congress has further subdivided some district courts into as many as seven smaller “divisions.” *See, e.g.*, 28 U.S.C. § 124(d) (noting that the Western District of Texas “comprises seven divisions”). And, critically, the district courts are free to allocate the work within and across divisions as they see fit. *See* 28 U.S.C. § 137(a).

In a suit against the United States, Congress has provided that venue lies, *inter alia*, in a district in which “a substantial part of the events or omissions giving rise to the claim occurred” or in which “the plaintiff resides if no real property is involved in the action.” *Id.* § 1391(e)(1)(B)-(C). But the Code does not establish where within a subdivided district an action must be brought, leaving the determination instead to “the rules and orders of the court.” *Id.* § 137(a) (delegating authority to divide the business of the district court).

Each of Texas’s four federal district courts is divided into divisions named for the city in which the divisional courthouse is located. The Texas district courts divide their respective business by designating which of the district’s judges receive the cases in each division. Within multiple-judge divisions, cases are still subject to random assignment, with a standing order dictating at what proportion the random assignment should send a case to each of the division’s judges. Thus, for example, in the Northern District of Texas, civil

cases filed in the Dallas Division are randomly assigned to 11 different district judges at percentages ranging from five to ten percent of new filings per judge.⁴

In other divisions, however, civil cases are assigned to only one, two, or three judges. Of the seven divisions in the Northern District of Texas, for example, five divisions have one judge hearing all or most cases.⁵ Thus, while the divisional approach can ensure random assignment in theory, it does not necessarily do so in practice. In its recent lawsuits challenging federal policies, Texas has consistently exploited this situation, filing *exclusively* in those small divisions where it can all-but guarantee which judge will hear its case. This case exemplifies this practice of Texas hand-selecting its judges.

⁴ Special Order No. 3-340 (N.D. Tex. June 21, 2021), <https://www.txnd.uscourts.gov/sites/default/files/orders/3-340.pdf> (addressing Dallas Division).

⁵ See Special Order No. 3-330 (N.D. Tex. Aug. 9, 2019), <https://www.txnd.uscourts.gov/sites/default/files/orders/03-330.pdf> (assigning 64%, 67%, and 67% of civil cases to a single judge in Lubbock, Abilene, and San Angelo Divisions, respectively); Special Order 3-327 (N.D. Tex. July 3, 2019), <https://www.txnd.uscourts.gov/sites/default/files/orders/3-327.pdf> (assigning 95% of Amarillo Division civil cases to one judge), Special Order No. 3-310 (N.D. Tex. Nov. 29, 2016), <https://www.txnd.uscourts.gov/sites/default/files/orders/03-310.pdf> (assigning 85% of cases in Wichita Falls Division to single judge).

A. Texas Abuses The Orders Assigning Divisional Casework To Virtually Ensure Judges Appointed During Democratic Presidencies Do Not Hear Texas's Cases.

Texas is unwilling to bring its lawsuits in locations where they may be heard by judges appointed by Democratic presidents. Instead, Texas has exclusively filed suits challenging federal policies, including this one, in divisions where all or nearly all cases are assigned to judges appointed by Republican presidents. In fact, almost without exception, Texas has filed its cases in districts presided over entirely or almost entirely by judges appointed by President Trump.

First, Texas has litigated only in divisions with three or fewer judges. That is, of the 20 lawsuits filed by the Texas Attorney General in Texas's federal courts against the federal government since President Biden's inauguration, not one was filed in a district where more than three judges preside over new civil cases. And Texas filed just five of these 20 cases in courthouses with more than two judges.

This is more than forum shopping, it is thinly veiled judge shopping. Each of the 20 cases was filed in a division that assigns all or virtually all cases to judges appointed during Republican presidencies. Twelve of the 20 cases were filed in divisions in which judges appointed during Republican presidencies preside over 100% of newly filed civil cases. The remaining eight cases were filed in divisions where judges appointed

during Republican presidencies preside over at least 95% of new civil cases. Put another way, Texas has filed 20 lawsuits against the federal government without ever risking more than a five-percent chance of having the matter initially assigned to a judge appointed by a Democratic president.

It would be one thing if that pattern were unavoidable, e.g., if every single judge in a single district court, and not just a single division, had been appointed by presidents of the same party. But that's not true of any of the district courts in Texas; and it's not true of any of the larger divisions within those district courts. Texas is *choosing* to file cases hundreds of miles away from the state capital, typically with no explanation of why a challenge to immigration policy, for example, should be heard anywhere other than either the state capital or in courthouses close to the international border.

This case is a perfect example of Texas shopping for judges. The United States District Court for the Southern District of Texas spans forty-three counties and includes the cities of Houston, Corpus Christi, and Laredo. Texas filed this particular suit in the Victoria Division of the Southern District of Texas. Victoria is neither Texas's state capital nor is it on the border, nor does it have any particular connection to the Guidance adopted by Secretary Mayorkas in September 2021 at issue in this case. Texas's Amended Complaint in the case does not contain a single allegation tying Victoria to its lawsuit, claiming only that venue lies "because the State of Texas is a resident of this judicial district, and a substantial part of the events or omissions giving rise to

Plaintiffs’ claims occurred in this District.” That allegation would apply with equal force in each of the 28 district court divisions in Texas.⁶

So why did Texas file this lawsuit in Victoria? Although the Southern District of Texas has 19 authorized judgeships—the fifth-most of any district in the country—the Victoria Division has exactly one district judge to whom new civil cases are assigned: Judge Drew B. Tipton, appointed in 2020 by President Trump. This lawsuit is one of five that Texas has filed against the Biden Administration in the Victoria Division which was then assigned to Judge Tipton.⁷ By filing this case in Victoria, Texas was able to select not just the *location* for its lawsuit, but the *specific* federal judge who would decide this case: a judge Texas likely believed would enjoin the Guidance—and who in fact did so, even as another court has rejected similar challenges. *See Arizona v. Biden*, 40 F.4th 375 (6th Cir. 2022) (reversing injunction against the same Guidance at issue in this case). In other words, when Texas filed this

⁶ First Am. Compl. ¶ 21, *Texas v. United States*, No. 21-cv-16 (S.D. Tex. Oct. 22, 2021), ECF No. 109. The Complaint also asserts that venue is proper under Section VIII of the Texas Agreement, which again does not mention Victoria or connect Victoria to Texas’s claims. *Id.*

⁷ *Texas v. United States*, No. 21-cv-3 (S.D. Tex. filed Jan. 22, 2021) (Tipton, J., presiding); *Texas v. United States*, No. 21-cv-16 (S.D. Tex. filed Apr. 6, 2021) (Tipton, J., presiding); *Missouri v. Biden*, No. 21-cv-420 (S.D. Tex. filed Oct. 21, 2021) (Alvarez, J., presiding) *originally filed as* No. 21-cv-52 (S.D. Tex.) (Tipton, J., presiding); *Texas v. Biden*, No. 22-cv-4 (S.D. Tex. filed Feb. 10, 2022) (Tipton, J., presiding); *Texas v. Walensky*, No. 22-cv-13 (S.D. Tex. filed Apr. 22, 2022) (Tipton, J., presiding).

lawsuit, it had a *100%* chance of drawing Judge Tipton—a fact it knew when it filed.

B. No Readily Apparent Alternative Explanation Explains Texas’s Conduct.

Consideration of where Texas has *not* filed its lawsuits bolsters the conclusion that Texas is deliberately judge shopping. First, despite being both the seat of its state government and the location of the Attorney General’s Office, Texas has not filed *any* of its lawsuits against the Biden Administration in Austin. This is no coincidence: Half of new cases filed in Austin are assigned to a judge appointed by President Obama.⁸

Second, Texas is not litigating based on the location of most of its residents. Texas has filed only three of its lawsuits against the federal government in a division serving any of Texas’s ten largest cities.⁹ In

⁸ See Amended Order Assigning the Business of the Court, Items IV(a) and IX(a) (W.D. Tex. May 10, 2021), <https://bit.ly/3IFt5Mg> (assigning 50% of civil docket to Judge Lee Yeakel, who was appointed during a Republican administration, and the remaining 50% to Judge Robert Pitman, who was appointed during a Democratic administration).

⁹ See *Texas v. Biden*, No. 21-cv-579 (N.D. Tex. filed Apr. 22, 2021) (filed in Fort Worth Division); *Van Duyne v. CDC*, No. 22-cv-122 (N.D. Tex. filed Feb. 16, 2022) (same); *Paxton v. Richardson*, No. 22-cv-143 (N.D. Tex. filed Feb. 24, 2022) (same). As of 2017, Texas’s ten largest cities were: Houston, San Antonio, Dallas, Austin, Fort Worth, El Paso, Arlington, Corpus Christi, Plano, and Laredo. *Population Estimates of Texas Cities, 2010-2017, Arranged in Descending Order*, Texas State Library & Archives Comm’n (rel. May 2018), <https://www.tsl.texas.gov/ref/abouttx/popcity6.html>. Of

those three cases, Texas filed in the Fort Worth division of the Northern District of Texas, a three-judge division in which no judge appointed during a Democratic administration is regularly assigned civil cases.¹⁰ The Fort Worth Division courthouse is only 12 miles away from the Dallas Division courthouse, where 11 judges appointed by a mix of Democratic and Republican presidents receive civil case assignments.¹¹ Texas has not filed a single lawsuit in the Dallas Division.

Third, proximity to the border also does not explain Texas's division selections for its eight immigration-related Texas-based lawsuits. Texas did not originally file any of its immigration-related suits within 150 miles of the border. Of particular note is Texas's suit challenging the Biden Administration's efforts to rescind the Migrant Protection Protocols ("MPP").¹² Texas filed that case in Amarillo, *over 400 miles* from the nearest segment of the United States-Mexico border. Texas filed in Amarillo even though the MPP program proceedings actually took place in three Texas border cities with federal courthouses (El Paso,

those cities, Houston, San Antonio, Dallas, Austin, Fort Worth, El Paso, Corpus Christi, Laredo, and Plano have federal court houses. The Fort Worth courthouse serves Arlington (Tarrant County).

¹⁰ Special Order No. 3-337 (N.D. Tex. May 25, 2020), <https://www.txnd.uscourts.gov/sites/default/files/orders/SO3-337.pdf> (establishing division of work for Fort Worth Division).

¹¹ Special Order No. 3-340, *supra* note 4 (addressing Dallas Division).

¹² *See generally Texas v. Biden*, No. 21-cv-67 (N.D. Tex. filed Apr. 13, 2021).

Laredo, and Brownsville).¹³ Texas passed over those jurisdictions to file in Amarillo—the northernmost federal court in the state. And, again, that is no coincidence. At present, 42%,¹⁴ 100%,¹⁵ and 50%¹⁶ of cases filed in the El Paso, Laredo, and Brownsville divisions, respectively, are assigned to judges appointed during Democratic administrations.

Fourth, Texas’s filing decisions in immigration cases cannot be explained based on the location of undocumented people. Undocumented people in Texas tend to live overwhelmingly in Texas’s largest cities. A 2017 Pew study showed that the majority of this country’s 11.1 million undocumented persons live in metropolitan areas, with about 500,000 in Houston and 475,000 in Dallas-Fort Worth.¹⁷ Again, Texas has not

¹³ See *Explanation of the Decision to Terminate the Migrant Protection Protocols*, Dep’t of Homeland Sec. at 6 n.18 (Oct. 29, 2021), <https://bit.ly/3c8Rqh0> (identifying El Paso, Laredo, and Brownsville as locations Texas uses for MPP hearings).

¹⁴ See Amended Order Assigning the Business of the Court, *supra* note 8, Items VIII(a), XV(a) (assigning 29% of El Paso cases to Judge David Guaderrama and 13% of El Paso cases to Judge David Briones, both appointed during Democratic presidencies).

¹⁵ See, e.g., General Order No. 2022-13 at 2-3 (S.D. Tex. June 30, 2022), <https://www.txs.uscourts.gov/district/genord> (continuing to provide in most-recent work order that Laredo cases be divided 50/50 between Judges Saldaña and Marmolejo, both appointed during Democratic presidencies).

¹⁶ *Id.* at 3 (assigning 50% of Brownsville cases to Judge Rolando Olvera, who was appointed during a Democratic presidency).

¹⁷ Jeffrey S. Passel & D’Vera Cohn, *20 Metro Areas are Home to Six-in-Ten Unauthorized Immigrants in U.S.*, Pew Rsch. Ctr. (Mar. 11, 2019), <https://pewrsr.ch/3bX0Kob>.

filed a single lawsuit in Dallas or in Houston, where 1/5 and 1/3 of new civil cases, respectively, are assigned to judges appointed during Democratic administrations.¹⁸

Finally, two cases, in particular, provide substantial additional support for the conclusion that the only explanation for Texas's conduct is judge shopping.

In the first, Texas filed a lawsuit against the federal government concerning the Central American Minor Refugee and Parole Program. *Texas v. Biden*, No. 22-cv-780 (N.D. Tex. filed Jan. 28, 2022) (originally numbered 22-cv-14). Texas originally filed the lawsuit in the Amarillo Division. When Texas initially filed the suit, Judge Matthew Kacsmayk, an appointee of President Trump, received 95% of new civil cases in Amarillo.¹⁹ The court assigns the remaining five percent of cases to Chief Judge Barbara Lynn, an appointee of President Clinton who keeps her chambers in Dallas.²⁰

Initially, Texas did not identify any related cases on its civil cover sheet. *See* Civil Cover Sheet at 1, *Texas v. Biden*, No. 22-cv-14 (N.D. Tex. Jan. 28, 2022), ECF No. 1-1 (providing no information in Section VIII. "Related Case(s) If Any"). Against the 1-in-20 odds, the court randomly assigned the matter to Chief Judge Lynn.

¹⁸ *See* Special Order No. 3-340, *supra* note 4 (addressing Dallas Division); *see also* General Order No. 2022-13, *supra* note 15 (assigning cases to Southern District divisions, including Houston Division).

¹⁹ *See* Special Order 3-327, *supra* note 5 (addressing Amarillo Division).

²⁰ *Id.*

Apparently dissatisfied with this assignment, Texas filed an amended cover sheet only after its new case had been assigned, now contending that the matter was related to a case already pending before Judge Kacsmaryk. *See* Am. Civil Cover Sheet at 1, *Texas v. Biden*, No. 22-cv-14 (N.D. Tex. Jan. 31, 2022), ECF No. 3 (identifying as related Northern District of Texas case No. 21-cv-67). Chief Judge Lynn declined to transfer the matter. Order, *Texas v. Biden*, No. 22-cv-14 (N.D. Tex. Mar. 29, 2022), ECF No. 28.

In the second, Texas challenged the Biden Administration’s decision to walk back its predecessor’s effort to build a border wall. *Missouri v. Biden*, No. 21-cv-420 (S.D. Tex. filed Oct. 21, 2021). Prior to Texas’s filing, the Texas General Land Office, which is not represented by the Attorney General’s office, filed a lawsuit in McAllen—the division serving a portion of the land on which the border wall would actually have been built (“the *GLO* lawsuit”). The court randomly assigned the *GLO* lawsuit to Judge Micaela Alvarez, appointed in 2004 by President George W. Bush.

Several months after the *GLO* lawsuit was filed, Texas, joined by Missouri, filed *Missouri v. Biden*. Texas sued “functionally identical” defendants, seeking “markedly similar” relief, and raising “fundamental questions [that were] the same” *Tex. Gen. Land Off. v. Biden*, No. 21-cv-272, 2021 WL 5588160, at *3-4 (S.D. Tex. Nov. 29, 2021) (granting motion to consolidate earlier filed border wall lawsuit with Texas’s subsequent lawsuit). Despite these overlaps, Texas filed the *Missouri* case in the Victoria Division rather than the

McAllen Division. Judge Tipton, the district judge in the instant case, receives 100% of civil cases filed in Victoria.²¹ And yet, unlike McAllen, the Victoria Division does not encompass land purportedly impacted by the border wall decision. Worse still, Texas’s civil cover sheet made no mention of *any* related cases, including the *GLO* lawsuit filed by another agency of Texas’s own state government. Clearly, Texas is picking and choosing where and how it files to capitalize upon this phenomenon.

Nor does Texas show signs of correcting its conduct. Before this Court granted *certiorari*, *amicus* filed a brief supporting Petitioner’s motion to stay the district court’s injunction, detailing the harm that Texas’s judge shopping does to the public interest. Despite having just had its judge shopping highlighted, Texas responded *the next day* by filing yet another suit against the Biden Administration in a division in which it was virtually certain to, and did, obtain a Republican-appointed judge.²² Texas did so offering no factual basis

²¹ General Order No. 2021-10 at 4-5 (S.D. Tex. May 27, 2021), <https://www.txs.uscourts.gov/file/6043/download?token=RxHEyGIv> (providing, in order applicable in late 2021, that Judge Tipton “receives all civil cases filed in the Victoria Division, except government collection cases and 28 U.S.C. § 2255 cases assigned to other judges . . .”).

²² See generally Compl., *Texas v. Becerra*, No. 22-cv-185 (N.D. Tex. July 14, 2022), ECF No. 1 (challenging abortion-access policy in Lubbock Division and obtaining assignment to Judge Wesley Hendrix, a 2019 appointee of President Trump); see also Special Order No. 3-330, *supra* note 5 (assigning 64% of Lubbock civil cases to Judge Hendrix, 33% of civil cases to Senior Judge Sam

for selecting the division in which it filed.²³ Simply put, there appears to be little reason for Texas to alter its manipulative litigation behavior so long as it comes with no consequences.

C. Texas’s Judge Shopping Cannot Be Justified By Comparing Texas’s Conduct To That Of Other States.

Despite the temptation to argue that Texas’s judge shopping is justified (or, at least, unexceptional) because Democratic state officials engaged in similar conduct during Republican presidential administrations,²⁴ that turns out not to be accurate. And even if it were true (and it isn’t), it would not justify Texas’s conduct.

While Democratic state attorneys general

Cummings, a 1987 appointee of President Reagan, and 3% of civil cases to Chief Judge Lynn).

²³ See Compl. ¶ 10, *Becerra*, *supra* note 22 (justifying venue solely by reference to 28 U.S.C. § 1391).

²⁴ See generally Camilo Montoya-Galvez, *Republican States’ Lawsuits Derail Biden’s Major Immigration Policy Changes*, CBS News (July 22, 2022), <https://www.cbsnews.com/news/immigration-biden-republican-states-lawsuits/> (“Brnovich, the Arizona attorney general, said it’s hypocritical for Democratic officials to criticize the Republican lawsuits against the Biden administration, citing the dozens of legal challenges that Democratic-controlled states filed against the Trump administration.”). See also Taylor Goldenstein, *Paxton’s Legal Tactic: Find The Right Judge*, Houston Chron., 2022 WLNR 13068986 (Apr. 23, 2022) (quoting supporter of Texas’s strategy claiming Texas’s judge shopping is a “long-standing, across-the-board tactic”).

brought and otherwise participated in numerous lawsuits against Trump Administration policies, they did not regularly file their lawsuits in one-, two-, or three-judge divisions. For example, the most common courts in which Democratic-led states filed lawsuits were, by far, the San Francisco and Oakland courthouses of the Northern District of California and in the Manhattan courthouse of the Southern District of New York.²⁵ Eighteen Article III judges sit in the San Francisco and Oakland courthouses,²⁶ while 37 currently sit in Manhattan.²⁷

²⁵ The most exhaustive compilation of lawsuits by state attorneys general against the federal government appears to be a website maintained by Dr. Paul Nolette, an Associate Professor of Political Science at Marquette University. *See generally* Multistate Litigation Database, <https://attorneysgeneral.org/list-of-lawsuits-1980-present/> (last visited Sept. 16, 2022). Dr. Nolette's site identifies 88 lawsuits filed by Democratic state attorneys general against the Trump Administration and originating in the district courts. Twenty-two of those cases were initially filed in the Northern District of California and 25 were initially filed in the Southern District of New York.

²⁶ *See* Judges, United States District Court for the Northern District of California, <https://www.cand.uscourts.gov/judges/> (last visited Sept. 16, 2022) (listing 18 Article III judges as serving in either the San Francisco or the Oakland courthouses as of September 15, 2022, which number would vary depending on vacancies at the time of a given case filing). *See also* N.D. Cal. Civ. L.R. 3-2(d) (“[A]ll civil actions that arise in the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland Division.”).

²⁷ *See* Judges of the Southern District of New York,

The case assignments further bear out the difference between Texas’s judge shopping and the Democratic-led lawsuits: 20 of the states’ 85 district court-originating suits against the Trump Administration were initially assigned to judges appointed by Republican presidents.²⁸ That roughly 1-in-4 rate is incomparable to Texas’s current 1-in-20, with Texas having tried unsuccessfully to have the one reassigned.

What’s more, even when Democratic state attorneys general had decent odds of having a case randomly assigned to a district judge appointed by a Democratic president, *none* of those cases looked like this one—in which the state knew in advance that it had a 100% chance of drawing a *specific* judge. Simply put, Texas is an outlier when it comes to filing suit based not on where it has allegedly sustained injury or where its Attorney General is located, but rather where it can predict with near-certainty which judge will decide its case.

Furthermore, the political affiliation of a state’s attorney general is and should be irrelevant to this Court’s analysis of judge shopping. If Democratic state attorneys general engage in the same type of blatant judge shopping as Texas (and, again, the actual evidence is to the contrary), it would be entirely appropriate for

<https://www.nysd.uscourts.gov/judges> (last visited Sept. 16, 2022) (listing 37 judges as having chambers in New York City as of September 15, 2022, which number would vary depending on vacancies at the time of a given case being filed).

²⁸ See Appendix A.

the Court to consider that conduct in analyzing those states' entitlement to pursue injunctive relief against the federal government, just as the Court should do here.

II. The Court Should Consider Texas's Judge Shopping In Evaluating Texas's Entitlement To Seek Equitable Relief Against The United States.

This Court should consider Texas's judge shopping in evaluating Texas's entitlement to seek equitable relief against the United States, because of both its implications for whether Texas has suffered a *particularized* injury and the extent to which the public interest weighs against awarding injunctive relief in these circumstances.

To establish standing, Texas must show that the Guidance has caused it an injury in fact that a favorable decision would redress. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-62 (1992). This requirement “serves to prevent the judicial process from being used to usurp the powers of the political branches.” *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). Indeed, the “single basic idea” underlying Article III's standing requirement is the “separation of powers.” *Raines v. Byrd*, 521 U.S. 811, 820 (1997) (citation omitted). In *Lujan*, the Court described Article III's standing requirement as “[o]ne of those landmarks” guiding “the Constitution's central mechanism of separation of powers[, which] depends largely upon common understanding of what activities are appropriate to

legislatures, to executives, and to courts.” 504 U.S. at 559-60. Thus, Article III’s standing requirement both serves and derives from the Constitution’s separation of powers.

This separation of powers function is important to protect the legitimacy of federal courts:

[R]epeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negative the actions of the other branches.

Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 474 (1982) (quoting *United States v. Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring)); *see also Massachusetts v. Mellon*, 262 U.S. 447, 488-89 (1923) (holding that where plaintiff lacked standing, for the Court to decide the case “would be, not to decide a judicial controversy, but to assume a position of authority over the governmental acts of another and coequal department, an authority which plainly we do not possess”).

Invoking this relationship between standing, separation of powers, and judicial legitimacy, the Court has previously rebuffed litigants who sought only to

vindicate a generalized grievance with federal policy. *See, e.g., Mellon*, 262 U.S. at 488-89; *Lujan*, 504 U.S. at 573-74; *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (discussing the Court’s prudential standing doctrine as “encompassing (we have said) at least three broad principles[including a] rule barring adjudication of generalized grievances more appropriately addressed in the representative branches” (internal quotation marks and citation omitted)). In so doing, this Court has made clear that lawsuits fall short of Article III’s requirements where they are “predicated on ‘the right, possessed by every citizen, to require that the Government be administered according to law.’” *Valley Forge*, 454 U.S. at 482-83 (quoting *Fairchild v. Hughes*, 258 U.S. 126, 129 (1922)).

Texas’s strategy of judge shopping reflects that it suffers only a generalized grievance in cases like this one. It has not sued in a venue that is the locus of any particular injury, because the executive action being challenged “does not directly injure the States[, does] not regulate the States by telling them what they can or cannot do. . . . [a]nd it does not purport to preempt any state or local law” *See Arizona*, 40 F.4th at 383 (holding that states lacked standing to challenge the Guidance at issue in this matter). To the contrary, Texas argues only that the Guidance has downstream consequences that might not exist if the United States were to prioritize immigration enforcement efforts differently. This expansive theory of standing would entitle Texas to challenge essentially *every* executive immigration action, and in whatever forum it chooses to

file—Texas need only invoke the potential downstream consequences it will feel to usurp for itself plenary power over immigration.²⁹ It can do so even though “considerable speculation undergirds the claim,” as Chief Judge Sutton put it in rejecting virtually identical standing arguments. *See id.*

And if that’s true for Texas, presumably, it’s true for every state in the union. “Article III standing requires significantly more than just the ‘common sense’ beliefs upon which” Texas claims its injuries lie. *See Maryland v. Dep’t of Educ.*, 474 F. Supp. 3d 13, 34 (D.D.C. 2020) (Jackson, J.). Indeed, Texas never explains why its theory of standing would not allow the exact same suit to be brought by each of the other 49 states. And if every state has standing, no state has standing. Put another way, if there was a specific reason why *Texas* is the proper plaintiff in cases like this one, presumably, that reason would have some connection to the place in which Texas is bringing these suits.

Because no such connection exists, allowing Texas to proceed on its attenuated basis for standing here is irreconcilable with the separation of powers and the limited role of courts in matters of national policy, as conceived by the Framers. The consequences of allowing such an expansive view of standing are magnified when

²⁹ There is no reason to believe that Texas’s theory of standing would be limited to immigration, either. As the Sixth Circuit noted, this theory of standing would be so broad as to allow states “to challenge a ‘disagreeable war.’” *Arizona*, 40 F.4th at 386 (citing Alexander Bickel, *The Voting Rights Cases*, 1966 Sup. Ct. Rev. 79, 89-90 (1966)).

the State asserting a claim can not only invent any claim it wants but can choose the judge who will decide it. Given this Court’s recognition that “public confidence” is “essential” to the judiciary, *Valley Forge*, 454 U.S. at 474, it should consider Texas’s practice of judge shopping as part of its standing analysis, not just on its own (de)merits, but because of what it would mean for future state challenges to future federal policies were it to be sustained.

III. The Court Should Consider Texas’s Judge Shopping In Evaluating Whether Equitable Relief Is Appropriate.

Insofar as the preliminary injunctive relief Texas obtained in this case includes consideration of the public interest, that interest would be *undermined* by allowing a state to so transparently manipulate the legal system in order to obtain injunctive relief against any party—including the federal government.

In order to obtain a preliminary injunction, a movant must establish that an injunction is in the public interest. *Ramirez v. Collier*, 142 S. Ct. 1264, 1275 (2022). A judiciary that is perceived as being independent is undoubtedly in the public interest. As the Chief Justice noted in his 2021 Year-End Report on the Federal Judiciary: “Decisional independence is essential to due process, promoting impartial decision-making, free from political or other extraneous influence.”³⁰ In the very

³⁰ Chief Justice John G. Roberts, Jr., *2021 Year-End Report on the Federal Judiciary* at 1 (Dec. 2021), <https://bit.ly/3IFzWoY>.

same report, the Chief Justice singled out the phenomenon of judge shopping in patent cases—in which patent litigants took advantage of the very same quirk in Texas procedure to file a wildly disproportionate percentage of patent suits in the Waco Division of the Western District of Texas. Although Congress has given the district courts broad discretion to manage their dockets, “the Judicial Conference has long supported the random assignment of cases,” as one of the values “important to public confidence in the courts.”³¹ Obviously, that public confidence is jeopardized when hand-picked district judges are allowed to dictate national policy. *See also Arizona v. Biden*, 31 F.4th 469, 484 (6th Cir. 2022) (Sutton, C.J., concurring) (explaining that nationwide injunctions, *inter alia*, “sometimes give States victories they did not earn,” and “incentivize forum shopping”).

This Court can act to curb the practice consistent with the law applicable to preliminary injunctions. As pertinent here, in considering the various public interests that weigh against affirming the district court’s nationwide injunction, this Court may decide that Texas’s blatant judge shopping counsels against the public interest, especially when, as here, there is no countervailing explanation for Texas’s litigation behavior. *See, e.g., Harsman v. Cincinnati Children’s Hosp. Med. Ctr.*, No. 21-cv-597, 2021 WL 4504245, at *6 (S.D. Ohio Sept. 30, 2021) (denying temporary restraining order “tantamount to . . . preliminary

³¹ *Id.* at 5; *see also, e.g.*, J. Jonas Anderson & Paul R. Gugliuzza, *Federal Judge Seeks Patent Cases*, 71 *Duke L.J.* 419 (2021).

injunction” in part due to judge shopping, so court would not “improperly countenance Plaintiffs’ gamesmanship to the detriment of the public’s interest in a well-functioning judicial system”).

Indeed courts in many different contexts have held that judge or forum shopping weighs against the public interest. *See, e.g., Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 64-65 (2013) (explaining that a transfer to enforce a forum-selection clause under 28 U.S.C. § 1404 has “public-interest considerations,” including to discourage “gamesmanship” such as the “creat[ion] or multipl[ication] [of] opportunities for forum shopping” (internal quotation marks and citation omitted); *Ferens v. John Deere Co.*, 494 U.S. 516, 527-28 (1990) (explaining that public interest considerations weighing against a transfer include possibility that movants are forum shopping); *Ellsworth v. Schneider Nat’l Carriers, Inc.*, No. 20-cv-1699, 2021 WL 3417641, at *2 (C.D. Cal. June 14, 2021) (considering forum shopping a public interest factor as part of stay analysis).

Reversing the nationwide injunction in part due to its connection to unabashed judge shopping is firmly in the public interest and would send a strong message about the importance of public confidence in the independence of the judiciary. Conversely, upholding the injunction encourages politically adverse states—both now and for all future administrations of either party—to take even the most generalized grievances over federal policies to judges who the states may presume to be amenable to their arguments. Condoning

(or even continuing) Texas's conduct ensures that the credibility of the federal judiciary, and the public interest as a whole, will suffer. The public interest thus favors reversing the injunction.

CONCLUSION

The Court should reverse the district court and remand this matter to dismiss for lack of standing.

Respectfully submitted,

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APPENDIX

APPENDIX A

List of Texas Challenges to Federal Policy in Texas District Courts

Case name (in order of filing date)	Case Number	Policy or Action Challenged	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)	Number of Judges in Div. Receiving New Civil Cases	Percentage of Div.'s New Civil Cases Assigned to Judges Appointed During Republican Presidencies ¹
Texas v. United States	6:21-cv-3	Temporary deportation moratorium	Victoria (S.D.)	Tipton	Republican (Trump)	1	100
Texas v. Biden	3:21-cv-65	Revocation of permit for building pipeline	Galveston (S.D.)	Brown	Republican (Trump)	1	100
Texas v. United States	6:21-cv-16	Memorandum establishing DHS enforcement priorities	Victoria (S.D.)	Tipton	Republican (Trump)	1	100

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¹ Percentages and number of judges reflect those in effect at the time of the case-at-issue's filing. *See generally* Appendix B (identifying orders dividing courts' work).

Case name (in order of filing date)	Case Number	Policy or Action Challenged	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)	Number of Judges in Div. Receiving New Civil Cases	Percentage of Div.'s New Civil Cases Assigned to Judges Appointed During Republican Presidencies ¹
Texas v. Biden	2:21-cv-67	Termination of Migrant Protection Protocols	Amarillo (N.D.)	Kacsmark	Republican (Trump)	2	95
Texas v. Biden	4:21-cv- 579	Certain exceptions to policy expelling persons pursuant to public health directive	Ft. Worth (N.D.)	Pittman	Republican (Trump)	3	100
Texas v. Yellen	2:21-cv-79	Statutory limitation on use of funds in COVID-19 legislation	Amarillo (N.D.)	Kacsmark	Republican (Trump)	2	95
Texas v. Brooks- Lasure	6:21-cv- 191	Rescission of Medicaid program waiver	Tyler (E.D.)	Barker	Republican (Trump)	2	100

Case name (in order of filing date)	Case Number	Policy or Action Challenged	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)	Number of Judges in Div. Receiving New Civil Cases	Percentage of Div.'s New Civil Cases Assigned to Judges Appointed During Republican Presidencies ¹
Texas v. EEOC	2:21-cv- 194	Guidance regarding application of nondiscrimination laws	Amarillo (N.D.)	Kacsmark	Republican (Trump)	2	95
Missouri v. Biden	7:21-cv- 420 (originally 6:21-cv- 52) ²	Termination of certain border wall construction	Victoria (S.D.)	Tipton	Republican (Trump)	1	100
Texas v. Biden	3:21-cv- 309	COVID-19 vaccine mandate	Galveston (S.D.)	Brown	Republican (Trump)	1	100

² Respondents initially filed this matter in the Victoria Division; however, the matter was subsequently transferred to a different division and judge following a determination that the matter was related to, and should be consolidated with, an earlier-filed case by other plaintiffs.

Case name (in order of filing date)	Case Number	Policy or Action Challenged	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)	Number of Judges in Div. Receiving New Civil Cases	Percentage of Div.'s New Civil Cases Assigned to Judges Appointed During Republican Presidencies ¹
		for federal contractors					
Texas v. Becerra	2:21-cv- 229	COVID-19 vaccine mandate for certain healthcare professionals	Amarillo (N.D.)	Kacsmaryk	Republican (Trump)	2	95
Texas v. Becerra	5:21-cv- 300	COVID-19 vaccine mandate for Head Start programs	Lubbock (N.D.)	Hendrix	Republican (Trump)	3	97
Abbott v. Biden	6:22-cv-3	COVID-19 vaccine mandate for National Guard members	Tyler (E.D.)	Barker	Republican (Trump)	2	100

Case name (in order of filing date)	Case Number	Policy or Action Challenged	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)	Number of Judges in Div. Receiving New Civil Cases	Percentage of Div.'s New Civil Cases Assigned to Judges Appointed During Republican Presidencies ¹
Texas v. Biden	3:22-cv- 780 (originally 2:22-cv- 14) ³	Central American Minors Program	Amarillo (N.D.)	Lynn	Democrat (Clinton)	2	95
Texas v. Biden	6:22-cv-4	Increased minimum wage for federal contractors	Victoria (S.D.)	Tipton	Republican (Trump)	1	100
Van Duyne v. CDC	4:22-cv- 122	Requiring masks for public transportation	Ft. Worth (N.D.)	O'Connor	Republican (G.W. Bush)	3	100

³ The Court later transferred this matter to the Dallas Division. Chief Judge Lynn's assignment occurred at the initial filing in Amarillo, and remained unchanged with the transfer to Dallas. The case number changed following transfer as the Northern District numbers cases by division.

Case name (in order of filing date)	Case Number	Policy or Action Challenged	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)	Number of Judges in Div. Receiving New Civil Cases	Percentage of Div.'s New Civil Cases Assigned to Judges Appointed During Republican Presidencies ¹
Paxton v. Richardson	4:22-cv- 143	Regulation of firearm suppressors	Ft. Worth (N.D.)	Pittman	Republican (Trump)	3	100
Texas v. Walensky	6:22-cv-13	Termination of policy expelling persons pursuant to public health directive	Victoria (S.D.)	Tipton	Republican (Trump)	1	100
Texas v. Mayorkas	2:22-cv-94	Changes to credible fear screening of asylum seekers	Amarillo (N.D.)	Kacsmaryk	Republican (Trump)	2	95
Texas v. Becerra	5:22-cv- 185	Abortion guidance	Lubbock	Hendrix	Republican (Trump)	3	97

Appendix B**Texas Federal District Court Division-of-Work Orders in Effect During Relevant Timeframes****Northern District**

- Dallas Division
 - September 8, 2022 – present
 - Special Order No. 3-342 (N.D. Tex. Sep. 8, 2022), <https://www.txnd.uscourts.gov/sites/default/files/orders/03-342.pdf>
 - July 5, 2021 – September 7, 2022
 - Special Order No. 3-340 (N.D. Tex. June 21, 2021), <https://www.txnd.uscourts.gov/sites/default/files/orders/3-340.pdf>
 - September 28, 2020 – July 4, 2021
 - Special Order No. 3-339 (N.D. Tex. Sept. 28, 2020), <https://www.txnd.uscourts.gov/sites/default/files/orders/3-339.pdf>
- Fort Worth Division
 - May 25, 2020 – present
 - Special Order No. 3-337 (N.D. Tex. May 25, 2020), <https://www.txnd.uscourts.gov/sites/default/files/orders/SO3-337.pdf>
- Lubbock, Abilene, and San Angelo Divisions
 - August 9, 2019 – present
 - Special Order No. 3-330 (N.D. Tex. Aug. 9, 2019), <https://www.txnd.uscourts.gov/sites/default/files/orders/03-330.pdf>

- Amarillo Division
 - September 14, 2022 – present
 - Special Order 3-344 (N.D. Tex. Sep. 14, 2022), <https://www.txnd.uscourts.gov/sites/default/files/orders/3-344.pdf>
 - July 3, 2019 – September 13, 2022
 - Special Order 3-327 (N.D. Tex. July 3, 2019), <https://www.txnd.uscourts.gov/sites/default/files/orders/03-330.pdf>
- Wichita Falls Division
 - September 14, 2022 – present
 - Special Order No. 3-343 (N.D. Tex. Sep. 14, 2022), <https://www.txnd.uscourts.gov/sites/default/files/orders/3-344.pdf>
 - November 29, 2016 – September 13, 2022
 - Special Order No. 3-310 (N.D. Tex. Nov. 29, 2016), <https://www.txnd.uscourts.gov/sites/default/files/orders/03-310.pdf>

Eastern District

- December 16, 2021 – present
 - General Order Assigning Civil & Criminal Actions, Gen. Order 21-19 (Dec. 16, 2021), <https://www.txed.uscourts.gov/sites/default/files/goFiles/GO%2021-19%20Assigning%20Civil%20and%20Criminal%20Actions.pdf>.

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- April 30, 2021 – December 16, 2021
 - General Order Assigning Civil & Criminal Actions, Gen. Order 21-08 (Apr. 30, 2021), <https://www.txed.uscourts.gov/sites/default/files/goFiles/GO%2021-08%20Assigning%20Civil%20and%20Criminal%20Actions.pdf>.
- June 15, 2020 – April 30, 2021
 - General Order Assigning Civil & Criminal Actions, Gen. Order 20-14 (June 15, 2020), <https://www.txed.uscourts.gov/sites/default/files/goFiles/GO%2020-14%20Assigning%20Criminal%20and%20Civil%20Actions.pdf>.

Southern District

- **Note:** The internet addresses provided for the Southern District Orders automatically trigger a download of a PDF copy of the corresponding court order
- July 1, 2022 - present
 - Third Am. Division of Work Order for 2022, Gen. Order 2022-13 (S.D. Tex. June 30, 2022), <https://www.txs.uscourts.gov/file/6532/download?token=jQaaRfvg>.
- April 11, 2022 – June 30, 2022
 - Second Am. Division of Work Order for 2022, Gen. Order 2022-8 (S.D. Tex. Apr. 11, 2022), <https://www.txs.us>

[courts.gov/file/6408/download?token=rbaJpcjK](https://www.txs.uscourts.gov/file/6408/download?token=rbaJpcjK).

- April 1, 2022 – April 10, 2022
 - Am. Division of Work Order for 2022, Gen. Order 2022-6 (S.D. Tex. Mar. 31, 2022), <https://www.txs.uscourts.gov/file/6406/download?token=8LA7NKhC>
- January 1, 2022 – March 31, 2022
 - Division of Work Order, Gen. Order 2022-1 (S.D. Tex. Dec. 30, 2021), <https://www.txs.uscourts.gov/file/6352/download?token=GxFxj2EG>.
- June 1, 2021 – December 31, 2021
 - Third Am. Division of Work Order, Gen. Order 2021-10 (S.D. Tex. May 27, 2021), <https://www.txs.uscourts.gov/file/6043/download?token=RxHEyGIv>.
- April 1, 2021 – May 31, 2021
 - Second Am. Division of Work Order, Gen. Order 2021-7 (S.D. Tex. Apr. 1, 2021), <https://www.txs.uscourts.gov/file/5973/download?token=qYAcMMSQ>.
- March 4, 2021 – March 31, 2021
 - Am. Division of Work Order, Gen. Order 2021-4 (S.D. Tex. Mar. 4, 2021), <https://www.txs.uscourts.gov/file/5908/download?token=hyDceGID>.
- January 1, 2021 – March 3, 2021
 - Division of Work Order, Gen. Order 2021-1 (S.D. Tex. Dec. 31, 2020),

<https://www.txs.uscourts.gov/file/5798/download?token=dDvvri0x>.

Western District

- May 10, 2021 – present
 - Amended Order Assigning the Business of the Court (W.D. Tex. May 10, 2021), <https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/District/Amended%20Order%20Assigning%20Business%20of%20the%20Court%20051021.pdf>.
- Mar. 8, 2021 – May 10, 2021
 - Amended Order Assigning the Business of the Court (W.D. Tex. Mar. 8, 2021), <https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/District/Amended%20Order%20Assigning%20Business%20of%20the%20Court%20030821.pdf>.

APPENDIX C

List of Democratic Challenges to Trump Administration Policies in Federal District Courts Presided Over by Judges Appointed During Republican Administrations

Case name (in order of filing date)	Case Number	Subject	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)
Washington v. Trump	2:17-cv-141	Travel ban	Seattle (W.D. Wash.)	Robart	Republican (G.W. Bush)
California v. Trump	3:17-cv-5895	Health insurance cost share subsidies	SF/Oak (N.D. Cal.) ¹	Armstrong	Republican (G.H.W. Bush)
Massachusetts v. DHS	1:17-cv-12022	FOIA immigration records	Boston (D. Mass.)	Saylor	Republican (G.W. Bush)
California v. Dep't of Interior	4:17-cv-5948	Royalties on extracted resources	SF/Oak (N.D. Cal.)	Armstrong	Republican (G.H.W. Bush)

¹ The Northern District of California initially assigns all civil cases to a Magistrate Judge. The case is then assigned to a district judge if either party does not consent prior to the consent deadline. The court eventually assigned a district judge to all but two of the Northern District of California cases. Cases included here rely upon the first district judge assigned to the case following reassignment away from a magistrate judge.

Case name (in order of filing date)	Case Number	Subject	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)
Massachusetts v. Dep't of Educ.	1:17-cv-2679	Failure to discharge student loans	D.D.C.	McFadden	Republican (Trump)
New York v. HHS	1:18-cv-683	Basic Health Programs funds	Manhattan (S.D.N.Y.)	Sullivan	Republican (G.W. Bush)
New York v. Pruitt	1:18-cv-773	Methane emissions	D.D.C.	Walton	Republican (G.W. Bush)
Washington v. United States	2:18-cv-939	Family separation	Seattle (W.D. Wash.)	Jones	Republican (G.W. Bush)
New York v. Dep't of Labor	1:18-cv-1747	Health plans and ACA compliance	D.D.C.	Bates	Republican (G.W. Bush)
New Jersey v. Acosta	1:19-cv-621	Workplace injury reporting	D.D.C.	Kelly	Republican (Trump)
New Jersey v. Mnuchin	1:19-cv-6642	Rule re: state/local tax credit for donor	Manhattan (S.D.N.Y.)	Gardephe	Republican (G.W. Bush)
California v. McAleenan	2:19-cv-7390	Rule violating permanent injunction	Western (C.D. Cal.)	Walter	Republican (G.W. Bush)

Case name (in order of filing date)	Case Number	Subject	Original Filing Div. (District)	Original Presiding Judge	President's Party at Judge's Appointment (President)
New Jersey v. Wheeler	1:19-cv-3247	Ozone pollution	D.D.C.	Nichols	Republican (Trump)
Washington v. Dep't of State	2:20-cv-111	3D printed guns	Seattle (W.D. Wash.)	Jones	Republican (G.W. Bush)
Pennsylvania v. Devos	1:20-cv-1468	Title IX rule	D.D.C.	Nichols	Republican (Trump)
Maryland v. EPA	1:20-cv-2530	Chesapeake Bay Agreement	D.D.C.	Nichols	Republican (Trump)
New York v. EPA	1:20-cv-10642	Pesticide regulation	Manhattan (S.D.N.Y.)	Liman	Republican (Trump)
Washington v. Vought	2:21-cv-2	Sale of National Archives facility	Seattle (W.D. Wash.)	Coughenour	Republican (Reagan)
Pennsylvania v. Scalia	2:21-cv-258	Tipped minimum wage	Philadelphia (E.D. Pa.)	Robreno	Republican (G.H.W. Bush)
New York v. Dep't of Interior	1:21-cv-448	Migratory birds	Manhattan (S.D.N.Y.)	Gardephe	Republican (G.W. Bush)