Shadow Docket Singularity

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ABSTRACT: The frequency of "shadow" or emergency docket decisions is increasing, especially in the wake of the inauguration of the second Trump Administration. At the same time, shadow docket dissents are becoming increasingly repetitive. This Essay identifies two trends that demonstrate the shadow docket is approaching singularity. First, as shadow docket decisions grow in number, dissents have more decisions from which to pull contradictory results. In other words, dissents can more easily accuse the majority of hypocrisy and back up their own positions by pointing to prior cases where the Court reached the opposite result. The second trend is that dissents note their disagreement on the merits without adding new analysis. As shadow docket decisions increase, so do the number of dissents that merely explain why the Court misapplied the relevant factors for a stay or preliminary injunction. In this way, the Justices become more like district court judges making specific fact-bound judgments in their writings instead of announcing general rules of law. Taken together, these two trends suggest the shadow docket risks collapsing in on itself. Like an AI bot that has been fed other AI material, the quality of the output slowly continues to degrade until all of it looks the same. The Court can either continue down this black hole–like path and allow the shadow docket to crush itself under its own weight, sucking up surrounding time and energy from the merits docket, or the Court can chart a new course. Contrary to the typical refrain that more transparency is needed on the shadow docket, this Essay's solution is simplicity on the shadow docket: fewer explanations of decisions and dissents. Greater simplicity on the shadow docket would save time, reduce criticism of the shadow docket, and keep the shadow docket from degrading into repetitive disputes over the application of law to facts.

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INTRODUCTION

In astrophysics, singularity is the point at which gravity is so strong that spacetime begins to collapse on itself.[1] All matter degrades into one indistinguishable point where eventually even atoms are torn apart.[2] This trend of collapse and degradation is not limited to black holes. For instance, as artificial intelligence ("AI") produces more content, it tends to degrade over time and begin to collapse on itself as it ingests more of its own content.[3] Eventually, all of the outputs look the same.[4] In a way, then, AI reaches its own singularity. The same is true for emergency decisions at the Supreme Court. As the Court issues more opinions on the emergency docket and those opinions in turn rely on prior emergency opinions, there is a heightened risk that those opinions will degrade over time.

In the decade since Professor Baude coined the term,[5] the "shadow docket" has grown in size, scope, and prominence.[6] During October Term 2024, cases decided on an emergency basis rather than full merits briefing spawned fifty-six opinions, with a marked increase after the inauguration of

1. For the famous exposition of this phenomenon, see R. Penrose, *Gravitational Collapse: The Role of General Relativity*, 1 RIVISTA DEL NUOVO CIMENTO 252, 256 (1969).

2. *See id.*

3. *See* Aatish Bhatia, *When A.I.'s Output Is a Threat to A.I. Itself*, N.Y. TIMES: THE UPSHOT (Aug. 25, 2024), https://www.nytimes.com/interactive/2024/08/26/upshot/ai-synthetic-data.html (on file with the *Iowa Law Review*).

4. *See id.*

5. *See* William Baude, *Foreword: The Supreme Court's Shadow Docket*, 9 N.Y.U. J.L. & LIBERTY 1, 5 (2015). There is some debate over what qualifies as the shadow docket. *Compare id.* at 3–4 (focusing on the Court's orders list and summary reversals), *with* STEPHEN VLADECK, THE SHADOW DOCKET: HOW THE SUPREME COURT USES STEALTH RULINGS TO AMASS POWER AND UNDERMINE THE REPUBLIC 12–17 (2023) (focusing on emergency applications acted upon by the whole Court). For the purposes of this Essay, the shadow docket consists of applications seeking some form of emergency relief that the whole Court acted on (i.e., stays and emergency injunctions).

6. *See* Erwin Chemerinsky, *Why the Shadow Docket Should Concern Us All*, SCOTUSBLOG (Aug. 4, 2025), https://www.scotusblog.com/2025/08/why-the-shadow-docket-should-concern-us-all [https://perma.cc/XT4U-H2EA] (discussing the growth of the emergency relief docket last Term); Jonathan P. Kastellec & Anthony R. Taboni, *A Database of the United States Supreme Court's Shadow Docket, 1993–2025*, J.L. & COURTS 10–12 (Jan. 19, 2026), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/266CoFA883BE4120FB4F37D387EFC61E/S2164657025100119a.pdf/a-database-of-the-united-states-supreme-courts-shadow-docket-1993-2025.pdf [https://perma.cc/E7Z2-5TXE] (discussing the same since 2004).

the second Trump Administration.[7] By comparison, the Supreme Court's merits docket only spawned 164 opinions.[8] In particular, the number of dissents on the shadow docket is growing. Although the Court's decisions on emergency applications produced twelve per curiam opinions or orders with

7. *See generally* West Virginia v. EPA, 145 S. Ct. 2 (2024) (mem.) (Kavanaugh, J., respecting the denial of applications for stay); Roberson v. Texas, 145 S. Ct. 3 (2024) (mem.) (Sotomayor, J., respecting the denial of the application for stay of execution and denial of certiorari); Horseracing Integrity & Safety Auth., Inc. v. Nat'l Horsemen's Benevolent & Protective Ass'n, 145 S. Ct. 8 (2024) (mem.) (Jackson, J., dissenting from the grant of stay); Republican Nat'l Comm. v. Genser, 145 S. Ct. 9 (2024) (mem.) (Alito, J., respecting the denial of the application for a stay); McHenry v. Tex. Top Cop Shop, Inc., 145 S. Ct. 1 (2025) (mem.) (Gorsuch, J., concurring in the grant of stay); *id.* (Jackson, J., dissenting from the grant of stay); Bessent v. Dellinger, 145 S. Ct. 515 (2025) (mem.); *id.* at 516 (Gorsuch, J., dissenting from the order holding the application in abeyance); Dep't of State v. AIDS Vaccine Advoc. Coal. (*AIDS Vaccine I*), 145 S. Ct. 753 (2025) (mem.); *id.* (Alito, J., dissenting from the denial of the application to vacate order); Hoffman v. Westcott, 145 S. Ct. 797 (2025) (mem.) (Gorsuch, J., dissenting); Dep't of Educ. v. California, 604 U.S. 650 (2025) (per curiam); *id.* at 652 (Kagan, J., dissenting); *id.* at 653 (Jackson, J., dissenting); Trump v. J.G.G., 604 U.S. 670 (2025) (per curiam); *id.* at 674 (Kavanaugh, J., concurring); *id.* (Sotomayor, J., dissenting); *id.* at 691 (Jackson, J., dissenting); Noem v. Abrego Garcia, 145 S. Ct. 1017 (2025) (mem.); *id.* at 1018 (Sotomayor, J., respecting the Court's disposition of the application); A.A.R.P. v. Trump (*A.A.R.P. I*), 145 S. Ct. 1034 (2025) (mem.) (Alito, J., dissenting); A.A.R.P. v. Trump (*A.A.R.P. II*), 605 U.S. 91 (2025) (per curiam); *id.* at 99 (Kavanaugh, J., concurring); *id.* at 101 (Alito, J., dissenting); Libby v. Fecteau, 145 S. Ct. 1378 (2025) (mem.) (Jackson, J., dissenting from the grant of the application for injunction); Trump v. Wilcox, 145 S. Ct. 1415 (2025) (mem.); *id.* at 1417 (Kagan, J., dissenting from the grant of the application for stay); Noem v. Doe, 145 S. Ct. 1524 (2025) (mem.) (Jackson, J., dissenting from the grant of the application for a stay); Doe v. Seattle Police Dep't, 145 S. Ct. 1539 (2025) (mem.) (Alito, J., respecting the denial of the application for a stay); Soc. Sec. Admin. v. Am. Fed'n of State, Cnty., & Mun. Emps. (*AFSCME*), 145 S. Ct. 1626 (2025) (mem.); *id.* at 1627 (Jackson, J., dissenting from the grant of application for stay); Dep't of Homeland Sec. v. D.V.D. (*D.V.D. I*), 145 S. Ct. 2153 (2025) (mem.) (Sotomayor, J., dissenting); Dep't of Homeland Sec. v. D.V.D. (*D.V.D. II*), 145 S. Ct. 2627 (2025) (mem.); *id.* at 2630 (Kagan, J., concurring); *id.* (Sotomayor, J., dissenting); Trump v. Am. Fed'n of Gov. Emps., 145 S. Ct. 2635 (2025) (mem.); *id.* (Sotomayor, J., concurring in the grant of stay); *id.* (Jackson, J., dissenting from the grant of application for stay); McMahon v. New York, 145 S. Ct. 2643 (2025) (mem.) (Sotomayor, J., dissenting); Trump v. Boyle, 145 S. Ct. 2653 (2025) (mem.); *id.* at 2654 (Kavanaugh, J., concurring in the grant of the application for stay); *id.* at 2655 (Kagan, J., dissenting from the grant of the application for stay); NetChoice, LLC v. Fitch, 145 S. Ct. 2658 (2025) (mem.) (Kavanaugh, J., concurring in the denial of the application to vacate stay); Nat'l Insts. of Health v. Am. Pub. Health Ass'n, 145 S. Ct. 2658 (2025) (mem.); *id.* at 2660 (Barrett, J., concurring in the partial grant of the application for stay); *id.* at 2662 (Roberts, C.J., concurring in part and dissenting in part); *id.* at 2663 (Gorsuch, J., concurring in part and dissenting in part); *id.* at 2665 (Kavanaugh, J., concurring in part and dissenting in part); *id.* at 2666 (Jackson, J., concurring in part and dissenting in part); Noem v. Vasquez Perdomo, 146 S. Ct. 1 (2025) (mem.) (Kavanaugh, J., concurring in the grant of the application for stay); *id.* at 6 (Sotomayor, J., dissenting); Trump v. Slaughter, 146 S. Ct. 18 (2025) (mem.) (Kagan, J., dissenting from the grant of the application for stay); Dep't of State v. AIDS Vaccine Advoc. Coal. (*AIDS Vaccine II*), 146 S. Ct. 19 (2025) (mem.); *id.* (Kagan, J., dissenting from the grant of the application for stay); Noem v. Nat'l TPS All., 146 S. Ct. 23 (2025) (mem.); *id.* (Jackson, J., dissenting from the grant of application for stay).

8. *See* Jake S. Truscott & Adam Feldman, *Final Stat Pack for the 2024-25 Term*, SCOTUSBLOG 4 (June 27, 2025), https://www.scotusblog.com/wp-content/uploads/2025/06/SCOTUSblog_Statpack_OT24_Final_June_27.pdf [https://perma.cc/7AAG-LHCA].

an explanation,[9] the shadow docket produced twenty-eight dissenting opinions.[10] Go back even a relatively short period of five years to October Term 2019 and the height of COVID-19 restrictions, and the Court's emergency docket only produced fourteen dissenting opinions.[11] In short, the number of shadow docket dissents is increasing. It is on these dissents that this Essay focuses.

We might expect that heightened disagreement on the shadow docket would sharpen the distinctions between differing approaches to emergency relief. Yet, despite this proliferation of shadow docket dissents, the law of the shadow docket is not much clearer. Instead, this Essay argues that two trends

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9. *See generally Dep't of Educ.*, 604 U.S. 650 (per curiam); *J.G.G.*, 604 U.S. 670 (per curiam); *Abrego Garcia*, 145 S. Ct. 1017 (mem.); *A.A.R.P. II*, 605 U.S. 1364 (per curiam); *Wilcox*, 145 S. Ct. 1415 (mem.); *AFSCME*, 145 S. Ct. 1626 (mem.); *D.V.D. II*, 145 S. Ct. 2627 (mem.); *Am. Fed'n*, 145 S. Ct. 2635 (mem.); *Boyle*, 145 S. Ct. 2653 (mem.); *Nat'l Insts. of Health*, 145 S. Ct. 2658 (mem.); *AIDS Vaccine II*, 146 S. Ct. 19 (mem.); *Nat'l TPS All.*, 146 S. Ct. 23 (mem.).

10. *See generally Horseracing*, 145 S. Ct. 8 (mem.) (Jackson, J., dissenting from the grant of stay); *McHenry*, 145 S. Ct. 1 (mem.) (Jackson, J., dissenting from the grant of stay); *Bessent*, 145 S. Ct. 515 (mem.) (Gorsuch, J., dissenting from the order holding the application in abeyance); *AIDS Vaccine I*, 145 S. Ct. 753 (mem.) (Alito, J., dissenting from the denial of the application to vacate order); *Hoffman*, 145 S. Ct. 797 (mem.) (Gorsuch, J., dissenting); *Dep't of Educ.*, 604 U.S. 650 (per curiam) (Kagan, J., dissenting); *id.* (Jackson, J., dissenting); *J.G.G.*, 604 U.S. 670 (per curiam) (Sotomayor, J., dissenting); *id.* (Jackson, J., dissenting); *A.A.R.P. I*, 145 S. Ct. 1034 (mem.) (Alito, J., dissenting); *A.A.R.P. II*, 605 U.S. 91 (per curiam) (Alito, J., dissenting); *Libby*, 145 S. Ct. 1378 (mem.) (Jackson, J., dissenting from the grant of the application for injunction); *Wilcox*, 145 S. Ct. 1415 (mem.) (Kagan, J., dissenting from the grant of the application for stay); *Doe*, 145 S. Ct. 1524 (mem.) (Jackson, J., dissenting from the grant of the application for a stay); *AFSCME*, 145 S. Ct. 1626 (mem.) (Jackson, J., dissenting from the grant of application for stay); *D.V.D. I*, 145 S. Ct. 2153 (mem.) (Sotomayor, J., dissenting); *D.V.D. II*, 145 S. Ct. 2627 (mem.) (Sotomayor, J., dissenting); *Am. Fed'n*, 145 S. Ct. 2635 (mem.) (Jackson, J., dissenting from the grant of application for stay); *McMahon*, 145 S. Ct. 2643 (mem.) (Sotomayor, J., dissenting); *Boyle*, 145 S. Ct. 2653 (mem.) (Kagan, J., dissenting from the grant of the application for stay); *Nat'l Insts. of Health*, 145 S. Ct. 2658 (mem.) (Roberts, C.J., concurring in part and dissenting in part); *id.* at 2663 (Gorsuch, J., concurring in part and dissenting in part); *id.* at 2665 (Kavanaugh, J., concurring in part and dissenting in part); *id.* at 2666 (Jackson, J., concurring in part and dissenting in part); *Vasquez Perdomo*, 146 S. Ct. 1 (mem.) (Sotomayor, J., dissenting); *Slaughter*, 146 S. Ct. 18 (mem.) (Kagan, J., dissenting from the grant of the application for stay); *AIDS II*, 146 S. Ct. 19 (mem.) (Kagan, J., dissenting from the grant of the application for stay); *Nat'l TPS All.*, 146 S. Ct. 23 (mem.) (Jackson, J., dissenting from the grant of application for stay).

11. *See generally* Wolf v. Cook County, 589 U.S. 1190 (2020) (mem.) (Sotomayor, J., dissenting from the grant of stay); Republican Nat'l Comm. v. Democratic Nat'l Comm., 589 U.S. 423 (2020) (per curiam) (Ginsburg, J., dissenting); S. Bay United Pentecostal Church v. Newsom, 590 U.S. 965 (2020) (mem.) (Kavanaugh, J., dissenting from denial of application for injunctive relief); Barr v. Lee, 591 U.S. 979 (2020) (per curiam) (Breyer, J., dissenting); *id.* at 983 (Sotomayor, J., dissenting); Barr v. Purkey, 140 S. Ct. 2594 (2020) (mem.) (Breyer, J., dissenting); *id.* (Sotomayor, J., dissenting); Raysor v. DeSantis, 140 S. Ct. 2600 (2020) (mem.) (Sotomayor, J., dissenting from denial of application to vacate stay); Calvary Chapel Dayton Valley v. Sisolak, 140 S. Ct. 2603 (2020) (mem.) (Alito, J., dissenting from denial of application for injunctive relief); *id.* at 2609 (Gorsuch, J., dissenting from denial of application for injunctive relief); *id.* (Kavanaugh, J., dissenting from denial of application for injunctive relief); Little v. Reclaim Idaho, 140 S. Ct. 2616 (2020) (mem.) (Sotomayor, J., dissenting from the grant of stay); Trump v. Sierra Club, 140 S. Ct. 2620 (2020) (mem.) (Breyer, J., dissenting from denial of motion to lift stay); Barnes v. Ahlman, 140 S. Ct. 2620 (2020) (mem.) (Sotomayor, J., dissenting from the grant of stay).

show the shadow docket is approaching singularity—just like a blackhole, the shadow docket risks collapsing into itself in such a way that leaves all of the opinions looking the same. As a result, the Court is faced with a choice: continue to let the shadow docket opinions degrade until they become entirely fact bound or simplify the shadow docket in a way that recognizes its inherent problems.

Part I focuses on the signs that the shadow docket risks collapsing in on itself. There are two trends in October Term 2024 shadow docket dissents that illustrate this risk. First, as the number of opinions grows, subsequent dissents have more contradictory results to cite. Each Justice has voted to grant or deny emergency relief, so a dissent can always accuse the majority of hypocrisy. Second, and relatedly, dissenting opinions increasingly just dispute the majority's application of the usual factors for emergency relief. Rather than providing new insights into the law of the shadow docket, many recent dissenting opinions take on the role of district court judges, focusing on specific factual circumstances rather than broad principles of law, a role that the Supreme Court usually shies away from.[12]

Part II looks to the future of the shadow docket and the choice the Court faces in responding to the prospect of shadow docket singularity. One option, of course, is maintaining the status quo. But that approach risks the shadow docket collapsing in on itself like a dying star, sucking up the Court's time and energy without meaningfully contributing to the development of new law. As a result, this Essay proposes a different way forward. Contrary to the usual calls for greater shadow docket transparency, the Court should move in the direction of shadow docket simplicity. That means fewer and shorter dissents. In doing so, the Court would prevent the shadow docket from degrading into repetitive disputes over the application of law to facts.

But why even care about dissents? After all, dissenting opinions are "generally not the best source of legal advice."[13] The truth is that many shadow docket orders lack any majority opinion explaining them, which means the law of the shadow docket has primarily developed through separate opinions, like dissents. It also means that the effects of shadow docket singularity are felt most immediately in the dissents. Thus, dissents may not be the best expositors of the law, but in the context of the shadow docket, they are often the canary in the coal mine.

I. IS THE SHADOW DOCKET COLLAPSING IN ON ITSELF?

The current state of dissents on the shadow docket suggests the Court is approaching a singularity point. Like AI that has ingested too much of its own material, shadow docket dissents are increasingly recycling old material,

12. *Cf.* Richard C. Chen, *Summary Dispositions as Precedent*, 61 WM. & MARY L. REV. 691, 695 (2020) ("[T]he Court's own rules and norms disfavor granting review to correct errors in fact-bound cases.").

13. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 230 (2023).

accusing the majority of hypocrisy by picking and choosing prior votes as it suits the dissents' needs. Section A discusses this phenomenon. Additionally, as Section B explains, rather than producing any new ideas about how the law of the shadow docket should function, dissenting opinions frequently resort to disagreements about how the Court has applied the traditional rules to the particular facts before it. Both of these trends suggest the shadow docket's dissents are losing value. If these trends continue, the shadow docket will reach singularity—unable to say anything new with each opinion differing from the next only because of their specific facts.

A. *PICKING AND CHOOSING PRECEDENTS*

Every Justice at this point has written or joined opinions both granting and denying emergency relief.[14] Importantly, they have all done so in cases involving the shadow docket's repeat player: the federal government. That means every time the Court grants (or denies) relief in a case, the dissenters can accuse members of the majority of hypocrisy by pointing to prior instances in which they have voted against (or for) relief, often with the same party—the government—seeking relief.

This is a problem of the growing shadow docket. As the Court decides more cases on an emergency basis, its spawns more separate opinions about the propriety of granting relief.[15] More opinions mean more material to draw on in subsequent cases. Normally, that's a good thing in a precedent-based system. But when the opinions are primarily about the propriety of granting relief to a repeat player on a recurring basis, a different effect takes hold. This creates the AI-singularity-like effect where the opinions all start to blend together, slowly evolving into indistinguishable opinions where the losing side can pick the precedents that support its position.

A prime example of this effect is *Trump v. Wilcox*.[16] In that case, Justice Kagan's dissent repeatedly cited prior opinions by members of the majority in shadow docket cases. In particular, she singled out Chief Justice Roberts and Justices Alito and Barrett for critique by citing their prior writings that suggested the shadow docket was an improper forum for considering the merits of overruling a prior case, such as *Humphrey's Executor v. United States*.[17]

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14. *See, e.g.*, *A.A.R.P. II*, 605 U.S. at 99 (per curiam) (Chief Justice Roberts and Justices Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett, and Jackson granting emergency relief); *id.* at 100 (Alito, J., joined by Thomas, J., dissenting); *J.G.G.*, 604 U.S. at 673–74 (per curiam) (Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, and Kavanaugh granting emergency relief); *id.* at 674, 691 (Sotomayor, J., joined by Kagan, Barrett, and Jackson, JJ., dissenting); Austin v. U.S. Navy Seals 1–26, 142 S. Ct. 1301, 1302 (2022) (mem.) (Alito, J., joined by Gorsuch J., dissenting) (voting to deny emergency relief); Merrill v. Milligan, 142 S. Ct. 879, 882 (2022) (mem.) (Roberts, C.J., dissenting from grant of applications for stays); Trump v. Thompson, 142 S. Ct. 680, 680 (2022) (mem.) (Kavanaugh, J., respecting the denial of application).

15. *See* cases cited, *supra* note 7.

16. *Wilcox*, 145 S. Ct. 1415, 1416–21 (2025) (mem.).

17. *See generally* Humphrey's Ex'r v. United States, 295 U.S. 602 (1935). *See also Wilcox*, 145 S. Ct. at 1418 (mem.) (Kagan, J., dissenting) (quoting Does 1–3 v. Mills, 142 S. Ct. 17, 18 (2021)

Of course, there are plenty of instances in which Justice Kagan has voted to grant emergency relief on a short time frame,[18] but she doesn't cite any of those in her opinion.[19] Instead, like other rhetorically powerful shadow docket dissents, Justice Kagan's opinion cited the seemingly inconsistent votes of members of the majority. But this is a two-way street. Every time a dissent cites the majority's seeming inconsistency, the majority can point to the dissenting Justice's prior votes as well. As a result, the shadow docket dissents risk collapsing into nothingness with each dissent accusing the majority of hypocrisy while ignoring the dissenting Justices' own votes to grant (or deny) relief.

A few of Justice Jackson's dissents illustrate a related point about picking and choosing precedents: Justices are increasingly relying on their own opinions while ignoring the Court's institutional approach to the shadow docket. By picking and choosing among their own prior opinions, Justices' separate opinions make it harder to discern the actual requirements for emergency relief. Instead, the law of the shadow docket appears to be something closer to coalition-building whereby majority decisions are cobbled together with regard to personal precedent rather than institutional precedent.[20] For example, the Court has repeatedly suggested that the government's inability to enforce its policies is an irreparable injury.[21] Yet, Justice Jackson's dissents throughout October Term 2024 embraced the notion that the government is not irreparably harmed when its policies are enjoined.[22] Although not adopted by a majority of the Court, her dissents repeatedly cited her own prior dissents for this point,[23] thereby choosing

(mem.) (Barrett, J., concurring in denial of application for injunctive relief); citing Netchoice, LLC v. Paxton, 142 S. Ct. 1715, 1716 (2022) (mem.) (Alito, J., dissenting from grant of application to vacate stay) and *Merrill*, 142 S. Ct. at 882–83 (mem.) (Roberts, C.J., dissenting from grant of application for stays)).

18. *See, e.g.*, Whole Women's Health v. Jackson, 141 S. Ct. 2494, 2499–500 (2021) (mem.) (Kagan, J., dissenting).

19. *See generally Wilcox*, 145 S. Ct. 1415 (mem.).

20. *Cf.* Richard M. Re, Essay, *Personal Precedent at the Supreme Court*, 136 HARV. L. REV. 824, 828 (2023) (defining personal versus institutional precedent).

21. *See* Labrador v. Poe, 144 S. Ct. 921, 923 (2024) (mem.) (Gorsuch, J., concurring in the grant of stay) (collecting cases); *see also* Samuel L. Bray, *The Purpose of the Preliminary Injunction*, 78 VAND. L. REV. 809, 831 (2025) (suggesting courts will hold "that governments suffer irreparable injury whenever their laws are not enforced" when the courts want to rule for the government).

22. *See* Noem v. Doe, 145 S. Ct. 1524, 1528 (2025) (mem.) (Jackson, J., dissenting from the grant of the application for a stay); *AFSCME*, 145 S. Ct. 1626, 1630 (2025) (mem.) (Jackson, J., dissenting from the grant of application for stay); Trump v. Am. Fed'n of Gov. Emps., 145 S. Ct. 2635, 2642 (2025) (mem.) (Jackson, J., dissenting from the grant of application for stay).

23. *AFSCME*, 145 S. Ct. at 1627 (mem.) (citing *Doe*, 145 S. Ct. at 1528 (mem.)); Libby v. Fecteau, 145 S. Ct. 1378, 1379 (2025) (mem.) (Jackson, J., dissenting from the grant of the application for injunction) (citing *Labrador*, 144 S. Ct. at 922 (mem.) (Jackson, J., dissenting from grant of stay)).

personal precedent over institutional precedent.[24] When Justices pick personal precedent over institutional precedent the result "legitimize[s] informality and erode[s] institutionalism."[25]

In sum, a shadow docket that allows both sides of an argument to throw competing examples of hypocrisy at each other is not a productive one. Likewise, a shadow docket where each Justice embraces their own views rather than the Court's precedents will collapse into a repeating state of affairs where Justices regurgitate their own views and eliminate any cohesive shadow docket precedent. The current situation therefore risks a singularity wherein every opinion picks and chooses among those prior shadow docket opinions that fit the individual needs of the author in that moment but ignores any broader attempt to form a jurisprudence of the shadow docket.

B. NEW FACTS, BUT NO NEW LAW

The next sign that the shadow docket opinions are not adding anything meaningfully new is their increasingly fact-bound nature. Shadow docket dissents in the most recent Term have primarily shied away from outlining a different vision of the law of the shadow docket. Instead, the dissenting opinions focus more on disagreements with the majority over whether the particular facts of a case do or don't warrant emergency relief. A few examples demonstrate this point.

Take Justice Alito's dissent in *A.A.R.P. v. Trump II*.[26] While the dissent certainly disputed some legal aspects of the Court's appellate jurisdiction, the majority of the opinion was devoted to pouring over Justice Alito's read of the factual record to explain why emergency relief was improper.[27] The same can be said of Justice Jackson's dissents in *Department of Education v. California*[28] and *Trump v. American Federation of Government Employees*.[29] Both dissents focused on factual disputes with the majority rather than legal ones.[30] In other words, Justice Jackson did not meaningfully dispute the relevant factors for emergency relief, but she disagreed with how the Court applied the factors.

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24. *See* Re, *supra* note 20, at 832 (discussing the allure of personal over institutional precedent).

25. *Id.* at 851. *But see id.* at 852–57 (discussing principles to maintain personal precedent without all of its ills).

26. *A.A.R.P. II*, 605 U.S. 91, 100–38 (2025) (per curiam) (Alito, J., dissenting).

27. *Compare id.* at 100–06, 109–12 (discussing the record), *with id.* at 107–09 (discussing legal analysis).

28. Dep't of Educ. v. California, 604 U.S. 650, 653 (2025) (per curiam) (Jackson, J., dissenting).

29. Trump v. Am. Fed'n of Gov't Emps., 145 S. Ct. 2635, 2635 (2025) (mem.) (Jackson, J., dissenting from the grant of application for stay).

30. *See Dep't of Educ.*, 604 U.S. at 653–58, 661–68 (per curiam) (Jackson, J., dissenting); *Am. Fed'n*, 145 S. Ct. at 2636–43 (mem.) (Jackson, J., dissenting from the grant of application for stay).

Finally, Justice Sotomayor's dissent in *McMahon v. New York*[31] followed a similar trend. Once again, there was little dispute in the opinion about the applicable law; the main source of disagreement is whether the relevant facts met the standard for emergency relief.[32] These opinions contribute little to the development of the law of the shadow docket. Instead, they push the shadow docket toward a future where all of the opinions look more like error correction disputes than the normal work of the Court.

To be sure, October Term 2024 did see some opinions that made substantive points about how the shadow docket should operate. For example, Justice Kavanaugh's concurrence in *Trump v. Boyle*[33] provided new analysis on when it is appropriate for the Court to grant certiorari before judgment on the shadow docket.[34] Likewise, Justice Gorsuch's opinion in *Bessent v. Dellinger*[35] offered his legal views about the appealability of temporary restraining orders, which remains a pressing issue on the shadow docket.[36] These opinions, however, are few and far between. And even when the Court does engage in substantive legal developments on the shadow docket, it still receives criticism.[37]

Putting aside those opinions, the frequently fact-bound nature of shadow docket opinions illustrates the risk of the shadow docket collapsing in on itself. If the Court is not developing any new law on the shadow docket, then it is primarily engaged in error correction of lower courts. An error correction shadow docket will reach singularity. Every opinion will restate the usual standards for emergency relief and the only real difference between opinions will be their read of the facts.

II. THE FUTURE OF THE SHADOW DOCKET

Where does all of this leave the shadow docket? As Section A explains, there are dangers to shadow docket singularity. Therefore, the Court faces a choice: It can continue down the current path and reach a singularity point, or it can recognize that the shadow docket risks collapsing in on itself and choose a different path. This Essay proposes such a path in Section B:

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31. McMahon v. New York, 145 S. Ct. 2643, 2643 (2025) (mem.) (Sotomayor, J., dissenting).

32. *See id.* at 2644–53.

33. Trump v. Boyle, 145 S. Ct. 2653, 2654 (2025) (mem.) (Kavanaugh, J., concurring in the grant of the application for stay).

34. *Id.* at 2654–55.

35. Bessent v. Dellinger, 145 S. Ct. 515, 516–18 (2025) (mem.).

36. *Id.* at 515–17 (Gorsuch, J., dissenting from the order holding the application in abeyance).

37. *See* Michael C. Dorf, *SCOTUS Severely Undercuts* Humphrey's Executor, *Its Own Authority, and Constitutional Democracy*, DORF ON L. (May 26, 2025), https://www.dorfonlaw.org/2025/05/scotus-severely-undercuts-humphreys.html [https://perma.cc/7XFL-V2HG]; Pema Levy, *The Supreme Court Makes Sure the Law Does Not Get in the Way of Trump's Takeover*, MOTHER JONES (May 23, 2025), https://www.motherjones.com/politics/2025/05/supreme-court-wilcox-harris-humphrey-executor-ignore-roberts-trump [https://perma.cc/6YHT-KCFE].

Contrary to common proposals for shadow docket reform,[38] the Court should say less on the shadow docket. Justices can note their votes and provide a one sentence explanation for any dissents, but separate opinions should be eliminated. It is through shadow docket simplicity that the Court can avoid singularity.

A. SINGULARITY

The path of shadow docket singularity should be clear by this point. This Section serves only to highlight some of the dangers that singularity poses.

First, the shadow docket will consume as much of the Court's time and energy as the Court allows. Deciding cases on an emergency basis necessarily takes time away from the Court's regular merits docket because the Court must prioritize emergency applications given their urgent nature (otherwise applications for emergency relief on the shadow docket would serve no real purpose).[39] Thus, it is unsurprising that the shadow docket's substantial rise in scope has coincided with a substantial decrease in the number of cases on the Court's merits docket.[40] If the Court continues on the path of full-fledged dissents in most emergency relief cases, the Justices will have to devote more and more of their time to writings that make them play the role of a district court judge weighing factual considerations rather than appellate judges trying to explain and develop the law itself.

Second, the shadow docket, because of its compressed time frame, allows for potential gamesmanship in a way that the merits docket does not. With one exception this Term, the Court has held all of its emergency orders until the dissent was ready to be published.[41] In some cases, that means the Court is unable to publish its order before the relief requested becomes moot.[42] In such cases, dissenting Justices have an incentive to draw out the drafting process. Now, that is not to say the Justices act in bad faith or deliberately sit on opinions to moot a case. But the worry is that the risk of such gamesmanship fosters distrust among the Court's members. Granted, if the Justices really want to engage in such gamesmanship, there are other mechanisms by which they can do so—namely, the Circuit Justice has a great deal of discretion as to how quickly the briefing moves for emergency

38. *See* Stephen I. Vladeck, *A Court of First View*, 138 HARV. L. REV. 533, 582–83 (2024); Chemerinsky, *supra* note 6; *see also* E. Garrett West, *Taming the Shadow Docket*, 112 VA. L. REV. (forthcoming 2026) (manuscript at 19–20), https://dx.doi.org/10.2139/ssrn.5329091 [https://perma.cc/8GA2-42KD] (collecting proposed transparency reforms).

39. This also precludes the Court from shifting more of its work to the shadow docket but adopting the full briefing and oral argument approach the Court took in cases like *TikTok Inc. v. Garland*, 604 U.S. 56 (2025), and *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). *See* West, *supra* note 38, at 19.

40. *See* Kastellec & Taboni, *supra* note 6, at 8, 10–12.

41. *See A.A.R.P. I*, 145 S. Ct. 1034, 1034 (2025) (mem.).

42. *See, e.g.*, Bessent v. Dellinger, 145 S. Ct. 515 (2025) (mem.) (holding the application in abeyance until the relevant temporary restraining order expired).

applications[43]—but those decisions are at least docketed, so the media and public can see if systematic manipulation is occurring. We have no way of knowing just how fast Justices are moving to draft a shadow docket dissent, so the shadow docket presents a unique opportunity for Justices to slow play the process in hopes that the requested relief will become moot before the Court can act.

Finally, the Court will never be able to balance the need for speed that interim relief requires with the degree of transparency that its critics wish to see. A common critique of the shadow docket is that most majority opinions or orders are under- or unexplained.[44] But the nature of the shadow docket means the Court must often act quickly, limiting the Court's ability to issue a fully fleshed out majority opinion that at least five members will join. By contrast, a separate opinion need not worry about who will join it, so a Justice can produce it faster. Because of this asymmetry, dissents may often be ready in time, but full-fledged majority opinions may not. This produces a situation in which the Court is often able to issue dissenting opinions but not majority ones on the shadow docket, heightening the feeling that the Court is not being transparent about its rationales. But that asymmetry is a function of the Court's majority decision-making. So long as it continues and the Court needs to make decisions on an emergency basis, there will be cases in which the Court cannot produce a majority opinion,[45] and that means critics will never think the Court is offering enough of an explanation.

These problems with the shadow docket as it currently exists mean that something needs to change. The next Section offers an alternative to shadow docket singularity that can avoid these dangers.

B. SIMPLICITY

The Court has not yet reached singularity; it still has time to divert from the path it is following. The Court ought to embrace shadow docket simplicity. This Section details what shadow docket simplicity would look like and its advantages.

Start with what a simplified shadow docket would look like. For the majority, it will often be enough to enter an order granting or denying relief. There may be some rare instances in which the Court may want to clarify the reason for its decision (such as forecasting an overruling of precedent[46]), but even this can be accomplished in a brief summary. The real bite of shadow docket simplicity occurs with respect to separate opinions. Concurrences should be a thing of the past. While valuable for gaining an individual Justice's perspective, shadow docket concurrences tell us little about the law of the

43. *See* SUP. CT. R. 22.

44. *See* Baude, *supra* note 5, at 40; VLADECK, *supra* note 5, at 18–19; Chemerinsky, *supra* note 6.

45. One option would be to have the Court issue its opinions later, *see* VLADECK, *supra* note 5, at xiii, but this does not avoid the other problems with the current shadow docket.

46. *See* Trump v. Wilcox, 145 S. Ct. 1415, 1415 (2025) (mem.) (calling *Humphrey's Executor* into question).

shadow docket because they do not speak for the Court. To the extent Justices use concurrences to get their views across to their colleagues, an internal memo can have the same effect (and the same can be said for dissents). Finally, on a simplified shadow docket, dissents can still be noted, but Justices should limit themselves to a single sentence explaining their decision. So, the order could still say, "Justice Jackson dissents because the government has failed to show irreparable injury"[47] or "Justice Alito dissents because the Court lacks jurisdiction."[48] This gets the basis for the Justice's dissent across and preserves transparency by recording votes, but it does not bog the shadow docket down in disputes about the specific facts in the case. In fact, many shadow docket dissents already look similar to this proposal. In death penalty cases, Justices often note their dissent without an explanation,[49] and many of the Court's other shadow docket orders offer only a sparse explanation for an evolution in the law.[50] In other words, shadow docket simplicity can be done because the Court is already embracing it in many areas of the shadow docket.

To be sure, there is a signaling value in writing a full-fledged dissent. A full dissent can tell the public how strongly a Justice feels about an issue, increase political pressure on the majority, or help a Justice develop his or her personal precedent. However, the Justices have other mechanisms to accomplish these values. The Justices are more than capable of expressing to the public their frustration with the Court, shadow docket, or presidential administration outside of their writings.[51] To the extent they want to express heightened disagreement in a particular case, the simplified shadow docket could use "respectfully dissents" for most cases and give Justices the option to only use "dissents" in cases of extreme disagreement. Finally, the shadow docket is already of somewhat nebulous personal precedent value,[52] but nothing stops the Justices from building personal precedent on the shadow docket through simplified dissents relating back to their merits opinions. Justice Jackson has done so in the grant, vacate, and remand context,[53] and

47. *Cf.* Dep't of Educ. v. California, 604 U.S. 650, 661–62 (2025) (per curiam) (Jackson, J., dissenting).

48. *Cf. A.A.R.P. II*, 605 U.S. 91, 100–01 (2025) (per curiam) (Alito, J., dissenting).

49. *See, e.g.*, Prosecuting Att'y, 21st Jud. Cir., *ex rel.* Williams v. Missouri, 145 S. Ct. 114 (2024) (mem.).

50. *See, e.g.*, *Wilcox*, 145 S. Ct. at 1415 (mem.).

51. *See, e.g.*, Josh Gerstein, *Ketanji Brown Jackson Sharply Condemns Trump's Attacks on Judges*, POLITICO (May 1, 2025, at 09:31 ET), https://www.politico.com/news/2025/05/01/ketanji-brown-jackson-sharply-condemns-trumps-attacks-on-judges-00323010 (on file with the *Iowa Law Review*); Abbie VanSickle, *Justice Kagan Urges Supreme Court to Explain Itself in Emergency Decisions*, N.Y. TIMES (July 24, 2025), https://www.nytimes.com/2025/07/24/us/justice-kagan-supreme-court-emergency-decisions.html (on file with the *Iowa Law Review*).

52. *See D.V.D. II*, 145 S. Ct. 2627, 2630 (2025) (mem.) (Kagan, J., concurring) (declining to adhere to a prior dissent in *D.V.D. I* and instead following the precedent set in *D.V.D. I*).

53. *See* Turtle Mountain Band of Chippewa Indians v. N.D. Legis. Assembly, 144 S. Ct. 2709, 2710 (2025) (mem.) (Jackson, J., dissenting) (citing Acheson Hotels, LLC v. Laufer, 601 U.S. 1, 18–20 (2023) (Jackson, J., concurring in the judgment)).

Justice Stevens did something similar with respect to in forma pauperis petitions.[54]

This simplified approach also has a number of advantages. For one, it would dramatically reduce the shadow docket workload. Instead of requiring dissenters to draft an opinion explaining their position on a tightened timeframe, the shadow docket would become something closer to the petition-for-certiorari docket. The Justices would still need to figure out how to vote (which takes time), but the dissenters would need only note their votes and offer one of the usual rationales for that vote. To pick on one chambers, shadow docket simplicity would have saved Justice Sotomayor's clerks ninety-six pages of opinion writing last Term.[55] This allows the Justices to devote more time to the merits docket and spend less time focusing on fact-bound error correction disputes.

Additionally, members of the Court could still explain themselves. But these short explanations would avoid the repetitive, fact-bound aspect of the current shadow docket. In this way, shadow docket simplicity is a compromise measure. It does not wholly erase the transparency of having Justices note their dissents. In fact, it offers more transparency for the basis of those dissents than many shadow docket orders currently do.[56] And it still allows Justices to distinguish between merits issues and jurisdictional ones. In essence, shadow docket simplicity cuts to the heart of the matter that ultimately determines the outcome of the case without wasting the Court's time and resources on opinions that do nothing to affect the law outside of that particular case.

Finally, shadow docket simplicity might reduce some of the attention paid to the shadow docket. To be sure, many shadow docket decisions would still be contentious and garner headlines, but so are many decisions on the certiorari docket. Yet denials or grants of certiorari typically generate a few hours of discussion on social media before fading out of the collective conscious because there is simply not that much to discuss about a brief order. Additionally, no one is writing op-eds or proposing congressional hearings about the dangers of the certiorari docket;[57] in fact, when we complain about the shadow docket and its ills, very few people talk about one of the most common forms of the shadow docket: the denial of a stay of execution with noted, but unexplained, dissents.[58] My proposal would make all of the shadow

54. *See* Plummer v. California, 558 U.S. 1021, 1021 (2009) (mem.) (Stevens, J., dissenting) (citing Martin v. D.C. Ct. of Appeals, 506 U.S. 1, 4 (1992) (Stevens, J., dissenting)).

55. This is the value of slip opinion pages of Justice Sotomayor's opinions cited *supra* note 7.

56. *See, e.g.*, Beals v. VA Coal. for Immigrant Rts., 220 L. Ed. 2d 179, 179 (2024) (mem.).

57. *Cf. The Supreme Court's Shadow Docket: Hearing Before the Subcomm. on Cts., Intell. Prop., & the Internet of the H. Comm. on the Judiciary*, 117th Cong. (2021) (discussing the shadow docket); Barry P. McDonald, Opinion, *This Is the Shadiest Part of the Supreme Court*, N.Y. TIMES (Nov. 3, 2021), https://www.nytimes.com/2021/11/03/opinion/supreme-court-shadow-docket.html [https://perma.cc/S3ZX-WVLP] (discussing legal problems posed by the shadow docket).

58. *See, e.g.*, Prosecuting Att'y, 21st Jud. Cir., *ex rel.* Williams v. Missouri, 145 S. Ct. 114 (2024) (mem.).

docket look more like these decisions, and in doing so, hopefully shift some of the Court's and the public's attention back to the merits docket.

CONCLUSION

The shadow docket, and in particular, dissents on the shadow docket are growing at a rapid pace. Yet, for all of the increased effort the Justices are devoting to the shadow docket, their work product is not generating much in the way of new law. Instead, the Justices increasingly play district court judge. As a result, the shadow docket risks collapsing in on itself. Like a black hole that has absorbed everything around it and compacted all of the surrounding matter into one condensed form, the shadow docket is approaching a singularity point at which the only thing differentiating one opinion from another will be the particular facts of that case. Innovation in the law of the shadow docket will stall even as the shadow docket swallows up more of the Court's resources. The Court ought to resist this outcome, and it can do so by embracing shadow docket simplicity. This simplicity requires exercising self-restraint on the shadow docket. Justices can note their dissents and provide a brief explanation, but separate opinions should become a thing of the past. This approach would save time, remove some of the attention paid to the shadow docket, and avoid repetitive, fact-bound shadow docket opinions. Time will tell whether the Court can reverse current shadow docket trends some other way, but in the interim, it should think long and hard about the value of its current shadow docket practices.