A PLAIN-ENGLISH FACT CHECK

BY ORDER OF THE PRESIDENT

What Presidents Can and Cannot Do



EXECUTIVE ORDERS | EMERGENCIES | WAR POWERS | PARDONS

Executive Orders, Emergencies, War Powers and Pardons, Checked Against the Record

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By Order of the President

What Presidents Can and Cannot Do

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By Order of the President: What Presidents Can and Cannot Do

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Every fact in this book has a footnote that names its source and gives a link you can open. Where a fact could not be confirmed, the text says so with the label [Not verified].

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Introduction: How to Read This Book

Information in this book is current as of November 12, 2026.

Almost every week, someone tells me what the president can or cannot do. A neighbor says the president just "made a law." A cousin says the courts can't touch a president. A news headline says a judge "blocked" an order, and a week later another headline says the Supreme Court "let it go forward." Many of these claims are partly right. Some are flat wrong. Very few come with a source you can open and check.

This book is my attempt to fix that for one subject: executive orders and the limits of presidential power. I wrote it for everyday adults. You don't need any background in law or history. If a term needs explaining, I explain it the first time it shows up.

What this book covers

The book follows the questions most people ask:

- What does the Constitution actually give the president?
- What is an executive order, and how is it different from a proclamation, a memorandum, a signing statement or an emergency declaration?
- How many orders has each president issued, and why do those numbers mislead?
- Which orders mattered most, for good and for ill?
- How do Congress, the courts, budgets, elections and impeachment check a president?
- How have war powers, emergency powers and the pardon power been used and challenged?
- Where do the court fights stand today, and what do the public and the two major parties think?
- What reforms have been proposed, and who backs them?

I end with the options people have proposed. I do not recommend any of them. That choice belongs to you as a voter.

Why I wrote it this way

Presidential power is one of the most heated subjects in American politics. It is also a subject where people change their minds depending on who is in the White House. When a president from your own party uses a bold executive order, it can look like strong leadership. When a president from the other party does the same thing, it can look like an abuse of power. I show you the evidence for this pattern in Chapter 19.

Because of that, I hold every president, party, agency and interest group to the same standard: what they actually said and did, favorable or not. When people disagree about what something means, I give each side's strongest arguments in their own words, with a source.

How the sources work

Every factual sentence or table in this book has a footnote. Each footnote gives the title, the author or agency, the date, a link and the date I opened it. I ranked sources in five tiers and used the highest tier I could find.

Table I.1. The five tiers of sources used in this book

Tier	What it includes	How I used it
1. Primary and official	The Constitution; laws passed by Congress; executive orders and proclamations as published in the Federal Register; court opinions; Department of Justice opinions; the National Archives and presidential libraries; the American Presidency Project at the University of California, Santa Barbara	The main evidence for every fact
2. Nonpartisan government analysis	The Congressional Research Service (CRS), the Congressional Budget Office (CBO), the Government Accountability Office (GAO) and inspectors general	To explain what the primary records mean
3. Scholarly	Peer-reviewed research and university press histories	For history and context
4. Fact-checks and journalism	The Associated Press, Reuters, PolitiFact, FactCheck.org, Snopes and major newspapers	To show when and where a claim spread, and as a pointer back to the primary record
5. Advocacy groups and think tanks	Groups on every side, labeled as advocates	Only to show what a side argues, and always paired with a group on another side

I did not use social media posts, chain emails, forums, video channels or pages written by software as evidence. When I mention a social media post, it is only to show that a claim was being spread, and I give the date.

Facts, interpretations and unknowns

I keep three kinds of statements apart:

- **Confirmed facts** are things the primary records show, such as the text of an order, the date it was signed or what a court held.
- **Interpretations** are what someone believes those facts mean. I always say whose interpretation it is and where they said it.
- **Unknowns** are things the records do not settle. I say so plainly, and where possible I say what would settle them.

Many chapters end with a shaded box called "What the records show" that sorts the main points into those three groups.

If I could not find a source for a fact, I wrote [Not verified] next to it and said what I searched. I would rather tell you I don't know than guess.

The four verdicts

Part Six tests common claims about presidential power. Each claim gets one of four verdicts. These are the same four verdicts used in every book in this series.

Table I.2. The four verdicts

Verdict	What it means
True	Primary sources confirm the claim as people usually say it.
Partly true	There is a real fact underneath, but the usual version leaves out or twists something important. I say exactly which part is true.
False (debunked)	Primary sources contradict the claim.
Inconclusive	The evidence is not enough to say either way, or an investigation is still open. I say what would settle it.

Dates and numbers

The information in this book stops on November 12, 2026. Presidential power changes fast. New orders are signed most weeks, and courts rule on them all the time. Every chapter about the present starts with that date, and every table with current figures has the date in its title. If you are reading this later, the footnotes will take you to the sources so you can check for anything newer.

When I give a dollar amount, I say whether it is the amount at the time (nominal) or adjusted for inflation, and to which year.

A note on counting

You will see two slightly different counts of executive orders for the current president. On the date this information stops, the Federal Register's summary page listed 291 executive orders signed by President Donald J. Trump in 2025 and 2026, while its search tool returned 290 for the same period.[1] The American Presidency Project counted 292 through October 20, 2026.[2] Small gaps like this are normal, and Chapter 5 explains why. I show you each figure and where it came from rather than picking one and hiding the others.

How the book is laid out

- **Part One** explains what the Constitution says and what the framers argued about.
- **Part Two** explains the different kinds of presidential documents and how they are counted.
- **Part Three** walks through the history, from George Washington to today.
- **Part Four** covers the checks on a president: Congress, the courts, elections and more.
- **Part Five** covers war powers, emergency powers and pardons.

[1] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[2] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

- **Part Six** tests common claims and theories and gives each a verdict.
- **Part Seven** covers where things stand today, what the public and the parties think, and the reform options.
- **The appendices** hold the full table of executive orders by president, a table of landmark court rulings, a glossary and the bibliography.

You can read the book straight through or jump to the part you care about. Each chapter stands on its own.

One more thing. I am not a lawyer, and this book is not legal advice. It is a guide to what the records show, so that the next time someone tells you what a president can or cannot do, you can check for yourself.

Part One: What the Constitution Says

Chapter 1: Article II in Plain Words

If you want to know what a president can do, the place to start is a short document most of us have never read all the way through. The Constitution sets up the presidency in Article II. It is much shorter than Article I, which sets up Congress, and that difference tells you something. The framers spelled out Congress's powers in a long list. They described the president's powers in a few sentences, and they left a lot unsaid.[3]

Let me walk through what Article II actually says, one piece at a time.

The opening sentence

Article II begins: "The executive Power shall be vested in a President of the United States of America."[4] "Vested" means placed in or handed to. "Executive power" means the power to carry out, or execute, the laws.

Compare that with the first sentence of Article I: "All legislative Powers herein granted shall be vested in a Congress of the United States."[5] Notice the words "herein granted." Congress gets the lawmaking powers listed in the Constitution. Article II has no "herein granted." People have argued about that difference since 1793, and they still do. Some read it to mean the president holds a broad, general executive power beyond the items listed. Others read it to mean only that the president is the one person in charge of carrying out the laws Congress passes. I cover both views in Chapter 2.

Who can be president, and for how long

The president serves a four-year term.[6] To serve, a person must be a "natural born Citizen," at least 35 years old and a resident of the United States for at least 14 years.[7] The Twenty-second Amendment, ratified in 1951, limits a president to two elected terms.[8]

Before taking office, the president swears or affirms to "faithfully execute the Office of President of the United States" and to "preserve, protect and defend the Constitution of the United States."[9] Notice what the oath protects. It is not the country in general or the president's own agenda. It is the Constitution.

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[3] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[4] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, sec. 1, cl. 1. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[5] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 1. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[6] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, sec. 1, cl. 1. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[7] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, sec. 1, cl. 5. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[8] National Archives, "The Constitution: Amendments 11-27.", Amendment XXII. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[9] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, sec. 1, cl. 8. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

The listed powers

Sections 2 and 3 of Article II list the president's specific powers and duties. Here they are in plain words.

Table 1.1. The president's powers and duties listed in Article II

What the Constitution says	What it means in plain words	Shared with or checked by
"Commander in Chief of the Army and Navy of the United States"	The president is at the top of the military chain of command.	Congress declares war, raises and pays for the armed forces, and makes the rules for them (Article I, Section 8).
May require "the Opinion, in writing" of the heads of the executive departments	The president can demand written advice from cabinet officers.	None stated.
"Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment"	The president can forgive or reduce punishment for federal crimes.	Does not cover state crimes or impeachment.
"Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur"	The president negotiates treaties.	Two-thirds of senators present must approve.
Nominates and, with the Senate's consent, appoints ambassadors, judges and other officers	The president picks top officials.	The Senate must confirm. Congress can let the president, courts or department heads appoint lower officers.
May fill vacancies during a Senate recess	Temporary appointments when the Senate is away.	Appointment ends at the close of the next Senate session.
Gives Congress information on "the State of the Union" and recommends measures	The yearly address and policy proposals.	Congress decides whether to act.
May call Congress into session "on extraordinary Occasions"	Emergency sessions.	Rarely used.
"shall receive Ambassadors and other public Ministers"	Deals with foreign governments.	The Senate confirms U.S. ambassadors.
"shall take Care that the Laws be faithfully executed"	Must see that laws are carried out, and carried out honestly.	Congress writes the laws; courts decide what they mean.
"shall Commission all the Officers of the United States"	Signs officers' formal appointments.	None stated.

Source: U.S. Constitution, Article II, Sections 2 and 3.[10]

Two items on that list do most of the work in this book. The first is the "Take Care" clause. It is both a power and a duty. It gives the president the job of running the executive branch, and it also says the laws must be carried out "faithfully." The second is the commander in chief clause, which comes up again in Chapter 14 on war powers.

The veto

One more power sits in Article I, not Article II. When Congress passes a bill, the president can sign it or return it with objections, which is a veto. Congress can override a veto with a

[10] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, secs. 2-3. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

two-thirds vote in each chamber.[11] This is the president's main formal role in lawmaking. Notice it is a power to stop a law, not to write one.

How a president can be removed

Article II ends with this: the president, vice president and all civil officers "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[12] The House of Representatives has "the sole Power of Impeachment," which works like an indictment. The Senate has "the sole Power to try all Impeachments," and conviction takes two-thirds of the senators present. When the president is on trial, the Chief Justice presides.[13] I cover how this has worked in practice in Chapter 11.

The Twenty-fifth Amendment, ratified in 1967, adds a second path for a president who is unable to do the job, for example because of illness. The vice president and a majority of the cabinet can declare the president unable to serve, and Congress settles any dispute.[14]

What Article I gives Congress, and why it matters to presidents

You cannot understand presidential power without reading the list of powers the Constitution gives Congress. Many of the biggest fights in this book happen where those lists meet.

Table 1.2. Powers the Constitution gives Congress that limit the president

Congress's power	Where it is in the Constitution	Why it matters to presidents
"To lay and collect Taxes, Duties, Imposts and Excises"	Article I, Section 8	Tariffs are a kind of duty. In 2026 the Supreme Court relied on this clause when it ruled against tariffs imposed under an emergency law (Chapter 15).
"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law"	Article I, Section 9	Congress controls spending. A president cannot spend money Congress has not provided.
"To declare War"	Article I, Section 8	The president commands the military, but only Congress can declare war (Chapter 14).
"To raise and support Armies" and "To provide and maintain a Navy"	Article I, Section 8	Congress decides the size and funding of the military.
"To make all Laws which shall be necessary and proper" for carrying out the powers of every branch	Article I, Section 8	Congress can create agencies and set rules for how they work.
Senate consent to treaties and appointments	Article II, Section 2	A check on two of the president's own powers.

[11] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 7. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[12] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, sec. 4. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[13] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, secs. 2-3. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[14] National Archives, "The Constitution: Amendments 11-27.", Amendment XXV. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

Congress's power	Where it is in the Constitution	Why it matters to presidents
The writ of habeas corpus shall not be suspended "unless when in Cases of Rebellion or Invasion the public Safety may require it"	Article I, Section 9	This clause sits in the article about Congress. Lincoln's suspension of habeas corpus raised the question of who may use it (Chapter 6).

Source: U.S. Constitution, Articles I and II.[15]

What the Constitution does not say

Here is something that surprises many people. The words "executive order" do not appear anywhere in the Constitution.[16] Neither does "emergency power" or "national emergency." The Constitution also says nothing directly about whether a president can fire officials once they are appointed.

So where do these powers come from? There are only two possible sources. The Supreme Court put it this way in 1952, when it struck down President Truman's seizure of the steel mills: "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself."[17] Every executive order in American history has had to rest on one or both of those foundations. When an order rests on neither, courts can strike it down. That one sentence is worth remembering. It comes up again and again in this book.

You might ask, "If the Constitution never mentions executive orders, are they unconstitutional?" No. An executive order is simply a written instruction from the president to the people who work in the executive branch. Directing the executive branch is part of the "executive Power" and the duty to "take Care that the Laws be faithfully executed."[18] What matters is whether a particular order has a lawful source. Chapter 17 tests the claim that executive orders are unconstitutional and gives it a verdict.

Firing officials: a gap the courts have filled

Because the Constitution is silent about removing officials, the Supreme Court has filled the gap over time. In 1926, in *Myers v. United States*, the Court held that the president could fire a postmaster without the Senate's consent, even though a law required it.[19] In 1935, in *Humphrey's Executor v. United States*, the Court went the other way for a member of the

[15] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[16] Ibid.

[17] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[18] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, secs. 1 and 3. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[19] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

Federal Trade Commission (FTC). It held that Congress could protect such officials from being fired except for cause.[20]

For 90 years, *Humphrey's Executor* allowed Congress to create "independent agencies" whose leaders a president could not fire at will. On June 29, 2026, in *Trump v. Slaughter*, the Supreme Court overruled it. The Court held that protecting FTC commissioners from removal "is contrary to the separation of powers enshrined in the Constitution," and added: "If anything more is left of Humphrey's, we overrule it."[21] The same day, in *Trump v. Cook*, the Court refused to let the president remove a governor of the Federal Reserve while her case continued, pointing to "our Nation's tradition of central banking protected from political interference."[22] Chapter 12 explains both rulings and the arguments on each side.

What the records show

- Confirmed: The Constitution gives the president "the executive Power," the duty to "take Care that the Laws be faithfully executed," the role of commander in chief, the pardon power, and the power to make treaties and appointments with the Senate's consent.
- Confirmed: The Constitution gives Congress the powers to tax, to spend, to declare war and to make laws, and it lets Congress remove a president through impeachment and conviction.
- Confirmed: The words "executive order" do not appear in the Constitution. Every order must rest on the Constitution or a law passed by Congress.
- Interpretation: Whether "the executive Power" is a broad grant or a short label is debated. Chapter 2 gives both sides with sources.
- Unknown: How far the Supreme Court will extend its 2026 removal ruling to other agencies is not settled.

Chapter 2: What the Framers Argued About

The people who wrote the Constitution in the summer of 1787 had just fought a war against a king. They also had lived through a national government, under the Articles of Confederation, that had no executive at all. They were trying to avoid both problems at once. Their debates explain a lot about the fights we still have.

One president or several?

The first big question was whether the executive should be one person or a council. On June 1, 1787, Edmund Randolph of Virginia argued against a single executive. James Madison's

[20] Humphrey's Executor v. United States, 295 U.S. 602 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[21] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[22] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

notes record that "He regarded it as the foetus of monarchy."[23] "Foetus" is an old spelling of fetus. Randolph meant that one powerful leader could grow into a king.

Others disagreed. In The Federalist No. 70, published in 1788 to win support for the Constitution, Alexander Hamilton made the case for one president: "Energy in the Executive is a leading character in the definition of good government."[24] Hamilton argued that one person could act with speed and could be held responsible by the voters, while a council could spread blame around.[25]

The single executive won. That choice is the root of what lawyers today call the "unitary executive." I explain that term below.

Not a king

Hamilton also worked hard to show that the president would not be a king. In The Federalist No. 69, he compared the two point by point. On military power, he wrote that the president's role "would amount to nothing more than the supreme command and direction of the military and naval forces," while the British king's power "extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature."[26] "Appertain to the legislature" means belong to Congress.

"Make" war or "declare" war?

The clearest example of the framers' thinking is the war power. An early draft of the Constitution gave Congress the power "To make war." On August 17, 1787, Madison and Elbridge Gerry of Massachusetts moved to change "make" to "declare," "leaving to the Executive the power to repel sudden attacks."[27] Pierce Butler of South Carolina wanted to give the war power to the president, who he said "will not make war but when the Nation will support it." Gerry answered that he "never expected to hear in a republic a motion to empower the Executive alone to declare war."[28] George Mason said he was "for clogging rather than facilitating war; but for facilitating peace."[29]

The change from "make" to "declare" passed.[30] People still argue about what it means. One reading is that Congress decides whether to go to war and the president runs the war and defends against sudden attack. Another reading is that the president can use force in many situations short of a full "declared" war. Chapter 14 shows how presidents and Congress have handled this question since 1789.

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[23] James Madison, Notes on the Debates in the Federal Convention, June 1, 1787, Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/debates_601.asp (accessed November 12, 2026).

[24] Alexander Hamilton, The Federalist No. 70 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed70.asp (accessed November 12, 2026).

[25] Ibid.

[26] Alexander Hamilton, The Federalist No. 69 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed69.asp (accessed November 12, 2026).

[27] James Madison, Notes on the Debates in the Federal Convention, August 17, 1787, Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/debates_817.asp (accessed November 12, 2026).

[28] Ibid.

[29] Ibid.

[30] Ibid.

Separation of powers

The framers' main protection against tyranny was splitting power among three branches. Madison wrote in The Federalist No. 47 that "The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny."[31] In The Federalist No. 51 he explained that each branch would guard its own turf: "Ambition must be made to counteract ambition."[32]

That idea is the key to this whole book. The Constitution does not rely on presidents to limit themselves. It relies on Congress and the courts to push back when a president reaches too far, and on presidents to push back when Congress or the courts reach too far.

The pardon power

The framers also debated the pardon power. Hamilton defended giving it to one person in The Federalist No. 74: "one man appears to be a more eligible dispenser of the mercy of government, than a body of men."[33] He even considered giving the pardon power for treason to Congress, but he concluded the president was better placed to act quickly, for example to offer a pardon that could end a rebellion.[34] Chapter 16 covers how this power has been used.

The first big argument: Pacificus and Helvidius

The argument over "the executive Power" started almost as soon as the Constitution took effect. In April 1793, war broke out between Britain and France. President George Washington issued a proclamation declaring that the United States would pursue "a conduct friendly and impartial toward the belligerant Powers."[35] (That is the original spelling. "Belligerent powers" means the countries at war.) Congress was not in session. Critics said the president had no power to decide on his own whether the country would stay neutral, since Congress holds the war power.

Hamilton defended Washington in newspaper essays signed "Pacificus." He argued that the opening sentence of Article II was a general grant of executive power, and that the specific items listed afterward were examples and limits, not the whole of it.[36] Madison, writing as "Helvidius," replied that deciding questions of war and peace belonged to Congress, and that the president could not use a general idea of "executive power" to take over Congress's role.[37]

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[31] James Madison, The Federalist No. 47 (1788), Avalon Project, Yale Law School Lillian Goldman Law Library. https://avalon.law.yale.edu/18th_century/fed47.asp (accessed November 12, 2026).

[32] James Madison (or Alexander Hamilton), The Federalist No. 51 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed51.asp (accessed November 12, 2026).

[33] Alexander Hamilton, The Federalist No. 74 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed74.asp (accessed November 12, 2026).

[34] Ibid.

[35] George Washington, Proclamation of Neutrality, April 22, 1793, Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/neutra93.asp (accessed November 12, 2026).

[36] Alexander Hamilton, "Pacificus No. I," June 29, 1793, Founders Online, National Archives. https://founders.archives.gov/documents/Hamilton/01-15-02-0038 (accessed November 12, 2026).

[37] James Madison, "Helvidius No. 1," August 24, 1793, Founders Online, National Archives. https://founders.archives.gov/documents/Madison/01-15-02-0056 (accessed November 12, 2026).

This 1793 debate is the same debate we have today, in modern words. Is "the executive Power" a broad grant that fills the gaps, or is it mainly the power to carry out the laws Congress makes?

The unitary executive theory and its critics

Today, the side that follows Hamilton's reading is often called the "unitary executive" theory. In plain words, it holds that the Constitution puts the whole executive branch under one person, the president, who must be able to direct and fire the officials who carry out the law.

The Supreme Court adopted much of this view in *Trump v. Slaughter* in June 2026. The Court, in an opinion by Chief Justice John Roberts, wrote that vesting executive power in one person "was to establish a hierarchy," and that officers "were to serve as envoys of the President, not his equals." It concluded that "Because these officers were subject to the President's superintendence, they had to be removable by him at will."[38]

The dissent, by Justice Sonia Sotomayor and joined by Justices Elena Kagan and Ketanji Brown Jackson, argued the other side. It said that Congress had created officials protected from at-will firing since the First Congress, and that "Today, the majority places accountability to the President above all else. Yet the accountability prized by the majority is not an unalloyed good."[39] The dissent argued that "Humphrey's is not wrong, let alone egregiously so."[40]

Notice that the unitary executive theory is mainly about who controls the executive branch. It is a separate question from how much power the executive branch has compared with Congress. A person can believe the president should control every agency and also believe Congress should decide what those agencies can do. The Supreme Court's 2026 tariff ruling, covered in Chapter 15, is a good example. The same Court that expanded the president's control over agencies in *Slaughter* ruled four months earlier that the president could not use an emergency law to set tariffs, because the power to tax belongs to Congress.[41,42]

Foreign affairs: a special case?

One more strand of the argument deserves mention. In 1936, in *United States v. Curtiss-Wright Export Corp.*, the Supreme Court described "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of

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[38] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[39] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School, Sotomayor, J., dissenting. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[40] Ibid.

[41] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[42] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 8. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

international relations."[43] "Plenary" means full or complete. Presidents of both parties have quoted that line ever since to support broad power in foreign affairs.

Critics point out that the case was about a law Congress had passed, so the president was acting with Congress's approval, not against it.[44] Justice Robert Jackson made a similar point in 1952, in the steel seizure case, when he described the three situations a president can be in. I explain his three zones in Chapter 12, because courts still use them today.[45]

What the records show

- Confirmed: The framers chose a single executive over a council, changed Congress's power from "make" war to "declare" war, and split power among three branches on purpose.
- Confirmed: Hamilton argued for a broad reading of "the executive Power" in 1793; Madison argued for a narrower one. Both essays survive and can be read today.
- Confirmed: In 2026 the Supreme Court adopted much of the unitary executive view on removal of officials, over a three-justice dissent.
- Interpretation: Supporters of the unitary executive say it makes the government accountable to voters through one elected leader. Critics say it removes independent checks that Congress built on purpose. Both views are quoted above from the Court's own opinions.
- Unknown: The framers did not settle how far presidential power reaches in war short of a declared war, and they did not settle removal. Those questions are still argued.

[43] United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/299/304 (accessed November 12, 2026).

[44] Ibid.

[45] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

Part Two: Orders, Proclamations and Emergencies Explained

Chapter 3: What an Executive Order Is, and What It Is Not

You might ask, "Isn't an executive order just a law the president writes?" No. That is the single most common mistake people make about this subject, and it is worth clearing up first.

A plain definition

The National Archives, which publishes executive orders, describes them as "official documents, numbered consecutively, through which the President of the United States manages the operations of the Federal Government."[46] Notice the key word: manages. An executive order is an instruction from the president to the people who work for the executive branch. It tells agencies what to do, how to do it, or what to stop doing.

An order can affect you, sometimes a great deal. But it does that by directing agencies, and an agency can only do what the Constitution and the laws passed by Congress allow. That is why almost every executive order begins with a sentence like this one: "By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows."[47] That sentence is not decoration. It is the order pointing to the source of its power. Federal rules require every proposed order to "contain a citation of the authority under which it is issued."[48]

Most modern orders also end with a few standard lines. A typical order says it "shall be implemented consistent with applicable law and subject to the availability of appropriations," and that it "is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States."[49] In plain words, the order admits it cannot break the law or spend money Congress has not provided, and it says you cannot sue to force the government to follow it.

The family of presidential documents

Executive orders are only one of several kinds of written presidential actions. They are often confused with each other. Here is how they differ.

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[46] National Archives, Office of the Federal Register, "About Executive Orders" (page last reviewed May 20, 2019). https://www.archives.gov/federal-register/executive-orders/about.html (accessed November 12, 2026).

[47] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

[48] 1 CFR Part 19, "Executive Orders and Presidential Proclamations" (2023 edition), govinfo.gov, U.S. Government Publishing Office, sec. 19.1(b). https://www.govinfo.gov/content/pkg/CFR-2025-title1-vol1/pdf/CFR-2025-title1-vol1-part19.pdf (accessed November 12, 2026).

[49] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov, sec. 4. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

Table 3.1. Kinds of presidential documents compared

Type	What it is	Numbered?	Published in the Federal Register?	Example
Executive order	A directive to the executive branch on how to run the government or carry out a law	Yes, since numbering began in 1907	Yes, if it has general applicability and legal effect	Executive Order 14160 on birthright citizenship (2025)
Proclamation	Historically a statement aimed at the public, such as a holiday or a declaration; also used for trade actions and emergencies	Yes	Yes	Proclamation 10886, declaring a national emergency at the southern border (2025)
Memorandum	A directive to one or more agency heads, often on a narrower subject	No standard numbering	Only if the president decides it has general applicability and legal effect	Presidential memoranda to agency heads
Signing statement	A written statement issued when the president signs a bill, giving the president's view of the law	No	Published in the Compilation of Presidential Documents, not as an order	Statements objecting to parts of a bill
Emergency declaration	A declaration under the National Emergencies Act that turns on special powers in other laws	Issued as a proclamation or executive order	Yes, required by law	Iran emergency declared in 1979, still in effect
National security directive	Directives on defense and foreign policy; names change by administration	Numbered within each series	Often classified	National Security Presidential Memoranda

Sources: National Archives; 44 U.S.C. 1505; 50 U.S.C. 1621; Executive Order 14160; Proclamation 10886.[50,51,52,53,54]

[50] National Archives, Office of the Federal Register, "About Executive Orders" (page last reviewed May 20, 2019). https://www.archives.gov/federal-register/executive-orders/about.html (accessed November 12, 2026).

[51] 44 U.S.C. 1505, "Documents to be published in Federal Register," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/44/1505 (accessed November 12, 2026).

[52] 50 U.S.C. 1621, "Declaration of national emergency by President" (National Emergencies Act sec. 201), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1621 (accessed November 12, 2026).

[53] Executive Order 14160, "Protecting the Meaning and Value of American Citizenship," January 20, 2025, 90 Fed. Reg. 8449, govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-02007.pdf (accessed November 12, 2026).

[54] Proclamation 10886, "Declaring a National Emergency at the Southern Border of the United States," January 20, 2025, 90 Fed. Reg. 8327, govinfo.gov. https://www.govinfo.gov/link/fr/90/8327 (accessed November 12, 2026).

Does the label matter?

Not as much as you might think. In 2000, the Justice Department's Office of Legal Counsel (OLC), which gives the executive branch its official legal opinions, looked at this question. It concluded that a presidential directive has the same legal effect whether it is called an executive order or something else, such as a memorandum. It also concluded that a directive does not expire just because a new president takes office.[55]

So why do presidents use different labels? Partly for tradition and partly for convenience. Executive orders go through a formal review process, explained in Chapter 4, and must be published. Memoranda can be quicker and are not always published. That is one reason counting executive orders alone can mislead, which is the subject of Chapter 5.

Proclamations

Proclamations are the oldest form. George Washington's Neutrality Proclamation of 1793 and Abraham Lincoln's Emancipation Proclamation of 1863 are both proclamations.[56,57] Today, most proclamations mark holidays and observances, but some do serious legal work. Presidents use proclamations to set tariffs under trade laws, to restrict entry of certain foreigners and to declare national emergencies. The proclamation declaring a national emergency at the southern border on January 20, 2025, is one example.[58]

Memoranda

Presidential memoranda are directives, usually addressed to particular agency heads. Like executive orders, they can carry real legal weight when they rest on the Constitution or a law.[59] The American Presidency Project counts them separately. Its count, reported by the Pew Research Center, shows that President Trump issued 245 memoranda in his first term and 77 in the first part of his second term through mid-December 2025.[60]

Signing statements

When a president signs a bill, he or she sometimes issues a written statement. Many are simple. Some praise the law. Others state that the president will read a provision a certain way or will not enforce a provision the president believes is unconstitutional. In 1993, the Office of Legal Counsel advised that a president may decline to enforce a provision he

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[55] Randolph D. Moss, Acting Assistant Attorney General, Office of Legal Counsel, "Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order," January 29, 2000, U.S. Department of Justice. https://www.justice.gov/olc/opinion/legal-effectiveness-presidential-directive-compared-executive-order (accessed November 12, 2026).

[56] George Washington, Proclamation of Neutrality, April 22, 1793, Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/neutra93.asp (accessed November 12, 2026).

[57] National Archives, "Emancipation Proclamation (1863)," Milestone Documents. https://www.archives.gov/milestone-documents/emancipation-proclamation (accessed November 12, 2026).

[58] Proclamation 10886, "Declaring a National Emergency at the Southern Border of the United States," January 20, 2025, 90 Fed. Reg. 8327, govinfo.gov. https://www.govinfo.gov/link/fr/90/8327 (accessed November 12, 2026).

[59] Randolph D. Moss, Acting Assistant Attorney General, Office of Legal Counsel, "Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order," January 29, 2000, U.S. Department of Justice. https://www.justice.gov/olc/opinion/legal-effectiveness-presidential-directive-compared-executive-order (accessed November 12, 2026).

[60] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

believes is clearly unconstitutional, and it described signing statements as a way to say so.[61] Critics say this lets a president sign a law and then ignore the parts he dislikes, instead of using the veto the Constitution provides. Defenders say a president swore an oath to the Constitution and must not enforce a law that violates it. Both views have been held by presidents and members of Congress from both parties, often depending on who was in office.

Emergency declarations

An emergency declaration is different from the others. By itself it does very little. Its job is to switch on special powers that Congress wrote into other laws, to be used only "during the period of a national emergency."[62] Chapter 15 explains how this works and how often it has been used.

What the records show

- Confirmed: Executive orders are instructions to the executive branch. Each one must cite the authority it rests on, and most say they must be carried out "consistent with applicable law."
- Confirmed: The Office of Legal Counsel concluded in 2000 that the label on a presidential directive does not change its legal effect.
- Interpretation: Whether signing statements are a proper defense of the Constitution or a way around the veto is disputed. Presidents of both parties have used them; members of both parties have criticized them.
- Unknown: Many national security directives are classified, so no one outside government can give a complete count or description of them.

Chapter 4: How an Order Is Made, Published, Challenged and Undone

An executive order does not appear out of thin air. Federal rules lay out a path from first draft to signature, and the law sets out how orders are published. Here is the path, step by step.

Step 1: Drafting and review

Under rules first set by President Kennedy in Executive Order 11030 and still in force, a proposed order goes first to the Director of the Office of Management and Budget (OMB), "together with a letter ... explaining the nature, purpose, background, and effect of the

[61] Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, "The Legal Significance of Presidential Signing Statements," November 3, 1993, U.S. Department of Justice. https://www.justice.gov/olc/opinion/legal-significance-presidential-signing-statements (accessed November 12, 2026).

[62] 50 U.S.C. 1621, "Declaration of national emergency by President" (National Emergencies Act sec. 201), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1621 (accessed November 12, 2026).

proposed Executive order."[63] If OMB approves, the draft goes to the Attorney General "for his consideration as to both form and legality."[64] In practice, that legal review is done by the Office of Legal Counsel.

The draft then goes to the Office of the Federal Register, which checks it for errors, and on to the president. If OMB or the Attorney General disapproves of a draft, it may not go to the president "unless it is accompanied by a statement of the reasons for such disapproval."[65] The rules also allow the Attorney General to send an urgent order directly to the president.[66]

Notice something important. These rules come from executive orders themselves.[67] A president can change them, and the White House can move faster when it wants to. The review process is a safeguard, not a wall.

Step 2: Signing and numbering

Once the president signs, the Office of the Federal Register assigns the next number in line. Executive orders have been numbered in one continuous series since the State Department began numbering them in 1907, going back to orders from 1862.[68] The first order of President Trump's second term was Executive Order 14147, and the last of 2025 was Executive Order 14371.[69]

Step 3: Publication

A law called the Federal Register Act, now found in Title 44 of the United States Code, requires publication in the Federal Register of "Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof."[70] In plain words, any order that affects the public must be published. The law adds that "every document or order which prescribes a penalty has general applicability and legal effect."[71]

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[63] 1 CFR Part 19, "Executive Orders and Presidential Proclamations" (2023 edition), govinfo.gov, U.S. Government Publishing Office, sec. 19.2(a). https://www.govinfo.gov/content/pkg/CFR-2025-title1-vol1/pdf/CFR-2025-title1-vol1-part19.pdf (accessed November 12, 2026).

[64] 1 CFR Part 19, "Executive Orders and Presidential Proclamations" (2023 edition), govinfo.gov, U.S. Government Publishing Office, sec. 19.2(b). https://www.govinfo.gov/content/pkg/CFR-2025-title1-vol1/pdf/CFR-2025-title1-vol1-part19.pdf (accessed November 12, 2026).

[65] 1 CFR Part 19, "Executive Orders and Presidential Proclamations" (2023 edition), govinfo.gov, U.S. Government Publishing Office, sec. 19.2(e). https://www.govinfo.gov/content/pkg/CFR-2025-title1-vol1/pdf/CFR-2025-title1-vol1-part19.pdf (accessed November 12, 2026).

[66] 1 CFR Part 19, "Executive Orders and Presidential Proclamations" (2023 edition), govinfo.gov, U.S. Government Publishing Office, sec. 19.2(c). https://www.govinfo.gov/content/pkg/CFR-2025-title1-vol1/pdf/CFR-2025-title1-vol1-part19.pdf (accessed November 12, 2026).

[67] 1 CFR Part 19, "Executive Orders and Presidential Proclamations" (2023 edition), govinfo.gov, U.S. Government Publishing Office. https://www.govinfo.gov/content/pkg/CFR-2025-title1-vol1/pdf/CFR-2025-title1-vol1-part19.pdf (accessed November 12, 2026).

[68] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[69] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

[70] 44 U.S.C. 1505, "Documents to be published in Federal Register," LII, Cornell Law School, sec. 1505(a)(1). https://www.law.cornell.edu/uscode/text/44/1505 (accessed November 12, 2026).

[71] 44 U.S.C. 1505, "Documents to be published in Federal Register," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/44/1505 (accessed November 12, 2026).

The Federal Register is the government's daily official journal. Orders since 1936 also appear in Title 3 of the Code of Federal Regulations.[72]

Does an executive order have the force of law?

Sometimes. This is where people get confused, so let me be precise.

An order that carries out a power the Constitution gives the president, or a power Congress gave the president in a law, can bind the executive branch, and through the agencies it can affect the public. An order that has no such foundation has no legal force at all, and courts will say so. The rule comes from the steel seizure case: the president's power "must stem either from an act of Congress or from the Constitution itself."[73]

Here is a simple way to picture it. An executive order is like a manager's memo inside a company. The memo can direct employees. It cannot change the company's charter, and it cannot override a contract the company signed. The Constitution is the charter, and laws passed by Congress are the binding contracts.

Step 4: Challenges in court

People and businesses who are harmed by an order can sue, but there are hurdles.

First, they must show "standing," meaning a real injury caused by the order that a court can fix. An order that only gives internal directions may not injure anyone yet. In August 2026, for example, the Supreme Court paused a lower court's order blocking parts of an election-related executive order, noting that the order "neither requires nor forbids anything of anyone outside the Executive Branch" and that the government was likely to win on its argument that the states suing lacked standing.[74]

Second, the main law that lets people challenge agency actions, the Administrative Procedure Act (APA), does not apply to the president personally. In 1992, the Supreme Court held that "textual silence is not enough to subject the President to the provisions of the APA."[75] So most lawsuits target the agency that carries out the order rather than the order itself.

Third, the remedy has changed. For years, single federal judges sometimes blocked orders nationwide. In June 2025, in *Trump v. CASA*, the Supreme Court held that such "universal injunctions likely exceed the equitable authority that Congress has given to federal courts," and it narrowed the injunctions in that case to the plaintiffs who had sued.[76] Challengers

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[72] National Archives, Office of the Federal Register, "About Executive Orders" (page last reviewed May 20, 2019). https://www.archives.gov/federal-register/executive-orders/about.html (accessed November 12, 2026).

[73] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[74] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

[75] Franklin v. Massachusetts, 505 U.S. 788 (1992), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/505/788 (accessed November 12, 2026).

[76] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

now often sue as a class, as the parents did in the birthright citizenship case, which the Court decided on the merits in June 2026.[77]

Step 5: How an order ends

You might ask, "Can the next president just undo this?" Usually yes, and here is why. An executive order is the president's instruction to the executive branch, and the next president is in charge of the executive branch. A new president can revoke or change any earlier order with a new one.

Presidents of both parties do this on their first day. On January 20, 2021, President Biden issued Executive Order 13992, which revoked several of President Trump's orders on federal regulation.[78] On January 20, 2025, President Trump issued Executive Order 14148, which revoked 67 of President Biden's executive orders, along with other actions.[79]

There are other ways an order can end:

- **The president who issued it can revoke or change it**, as presidents often do.
- **Congress can pass a law** that overrides it, though the president can veto that law, and an override takes two-thirds of each chamber.[80]
- **A court can strike it down** as unconstitutional or beyond the president's legal authority, as the Supreme Court did with the birthright citizenship order in 2026.[81]
- **Some orders end by their own terms**, for example an order that closes federal offices on a particular day.[82]

Some effects can outlast an order. Agencies may have written regulations to carry it out, and those rules usually must go through their own legal process to be changed. Money already spent stays spent. And sometimes a later president keeps an order because it works, or because the political cost of undoing it is too high. President Truman's 1948 order on equal treatment in the armed forces is an example covered in Chapter 8.

How to read an order yourself

You do not need a law degree to read an executive order. Here is the method I used for every order in this book. It works the same way no matter who is president.

- **Find the official text.** Use the Federal Register version, which shows the order's number, the date it was signed and the date it was published.[83]

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[77] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[78] Executive Order 13992, "Revocation of Certain Executive Orders Concerning Federal Regulation," January 20, 2021, 86 Fed. Reg. 7049, govinfo.gov. https://www.govinfo.gov/link/fr/86/7049 (accessed November 12, 2026).

[79] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

[80] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 7. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[81] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[82] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

- **Read the authority line first.** Near the top, most orders say what they rest on, such as "the Constitution and the laws of the United States," often naming a specific law. That line tells you which of Justice Jackson's three zones the order sits in.[84]
- **Find who is told to do what.** Most orders direct a named official or agency. Ask what actually changes on the day it is signed. Many orders only call for a study, a report or a plan.
- **Look for dates and exceptions.** Check for effective dates, deadlines and anything the order leaves out.
- **Check what it revokes or changes.** Orders often end with a section that revokes or amends earlier orders, as Executive Order 13489 did when it revoked Executive Order 13233.[85]
- **Check what happened next.** Look for later orders that changed it, laws Congress passed, agency rules that carried it out and court rulings. The original text alone will not tell you whether an order is still in force.

The method in action: three orders

Here is the method applied to three orders from three different eras. I chose them because they show three different kinds of authority.

Executive Order 9066 (1942). The authority line reads "by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy."[86] It names no specific law. It "authorize[s] and direct[s] the Secretary of War, and the Military Commanders" to set up military areas.[87] So the order rested mainly on the president's war power, and it handed broad discretion to military officers. Chapter 7 tells what they did with it.

Executive Order 14042 (2021). The authority line names a specific law: "the Federal Property and Administrative Services Act, 40 U.S.C. 101 et seq., and section 301 of title 3, United States Code."[88] The order tells agencies to put a clause in their contracts requiring contractors to follow federal COVID-19 workplace guidance, "to the extent permitted by law."[89] That phrase is a signal. The order is only as strong as the procurement law behind it, and its reach depends on how courts read that law. Chapter 10 compares it with two other vaccine rules.

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[83] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[84] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[85] Executive Order 13489, "Presidential Records," January 21, 2009, 74 Fed. Reg. 4669, govinfo.gov. https://www.govinfo.gov/link/fr/74/4669 (accessed November 12, 2026).

[86] Executive Order 9066, "Authorizing the Secretary of War to Prescribe Military Areas," February 19, 1942, 7 Fed. Reg. 1407 (February 25, 1942), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-1942-02-25/pdf/FR-1942-02-25.pdf (accessed November 12, 2026).

[87] Ibid.

[88] Executive Order 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors," September 9, 2021, 86 Fed. Reg. 50985, govinfo.gov. https://www.govinfo.gov/link/fr/86/50985 (accessed November 12, 2026).

[89] Ibid.

Executive Order 14148 (2025). The title, "Initial Rescissions of Harmful Executive Orders and Actions," tells you its main job.[90] Its purpose section criticizes "the previous administration," and the body is mostly a list of earlier orders it revokes.[91] An order like this needs no special law, because a president can always revoke an earlier president's order that rested only on executive power. But revoking an order does not by itself undo agency rules that were issued under it. Those rules have to be changed through the agencies' own procedures.

Three orders, three sources of power: the commander-in-chief power, a specific law of Congress, and the plain power to undo what an earlier president did. Asking "what does this order rest on?" sorts almost every order you will read into one of these groups.

What the records show

- Confirmed: Proposed orders go through OMB and the Attorney General before reaching the president, under rules set by executive order.
- Confirmed: Orders that affect the public must be published in the Federal Register.
- Confirmed: An order has legal force only if it rests on the Constitution or a law. Courts can strike down orders that do not.
- Confirmed: Since June 2025, the Supreme Court has said federal courts likely lack power to block an order for everyone in a single case brought by individual plaintiffs, though class actions remain possible.
- Confirmed: A new president can revoke an earlier president's orders. Both President Biden in 2021 and President Trump in 2025 did so on their first day.

Chapter 5: Counting Orders, and Why Raw Counts Mislead

Information in this chapter is current as of November 12, 2026.

People love to count executive orders. "He signed more orders than anyone!" is a common line in political arguments. Counts can be useful, but they can also mislead. Here is why.

Three counts for the same president

Information in this section is current as of November 12, 2026.

Let me start with an example from the current term. On November 12, 2026, I checked three official or scholarly sources for the number of executive orders President Trump had signed since January 20, 2025:

Table 5.1. Three counts of President Trump's second-term executive orders, as of November 12, 2026

Source	Count	What it covers

[90] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

[91] Ibid.

Source	Count	What it covers
Federal Register summary page	291 (225 in 2025 and 66 in 2026)	Executive Orders 14147 through 14437
Federal Register search tool	290	Orders with a signing date on or after January 20, 2025
American Presidency Project	292	Orders 14147 through 14438, counted through October 20, 2026

Sources: Federal Register; American Presidency Project.[92,93]

None of these sources is wrong. They were updated on different days and count slightly different things. A new order may have been signed but not yet published, and databases update on different schedules. The lesson is simple: when you see a precise count, check the date and the source.

Problem 1: The early years are guesswork

Before 1907, executive orders were not numbered at all. That year, the State Department went back through its files and numbered the orders it had, starting with one from 1862.[94] The American Presidency Project, which keeps the best-known table of counts, notes that the best-known compilation of unnumbered orders includes "over 1500" of them, but "the true total is unknown," and estimates have "ranged as high as 50,000."[95] Only after the Federal Register Act of 1936 did the government begin to publish orders in full as they were issued.[96]

So when you see that George Washington issued 8 orders and Abraham Lincoln issued 48, treat those as rough counts of what survived, not exact totals.[97]

Problem 2: Letter suffixes and gaps

Sometimes an order was discovered after the numbers around it had already been assigned. It got a number with a letter, such as 7709-A. That means the true total for a president can be higher than the gap between the first and last numbers.[98] The National Archives makes the same point: its total for each administration "includes number-and-letter designated orders."[99]

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[92] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[93] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[94] Ibid.

[95] Ibid.

[96] Ibid.

[97] Ibid.

[98] Ibid.

[99] National Archives, Office of the Federal Register, "About Executive Orders" (page last reviewed May 20, 2019). https://www.archives.gov/federal-register/executive-orders/about.html (accessed November 12, 2026).

Problem 3: Memoranda and other tools

Executive orders are only one tool. A president who prefers memoranda, proclamations or agency guidance will look like a light user of executive orders, even if he or she is using a great deal of executive power. The American Presidency Project's table "does not include other forms of written presidential orders (such as memorandums), or discretionary executive actions not accompanied by a published presidential directive."[100]

The difference can be large. As noted in Chapter 3, President Trump issued 220 executive orders in his first term but also 245 memoranda.[101,102] A count of orders alone would miss more than half of his written directives.

Problem 4: Not all orders are equal

One order might rename an office or close federal offices for a holiday. Another might change citizenship rules or impose tariffs on most imports. Counting them the same is like counting a parking ticket and a felony as two "cases." Executive Order 14371, the last order of 2025, closed federal agencies on December 24 and 26, 2025.[103] Executive Order 14160 tried to change who is a citizen at birth.[104] Each counts as one.

Problem 5: Length of time in office

Presidents serve different lengths of time. Franklin Roosevelt served just over 12 years. James Garfield served about half a year.[105] That is why the American Presidency Project also gives an average per year in office. Even averages can mislead in a short span. A president's first year is usually the busiest, because that is when he or she reverses the last president's orders and starts new policies.

What the counts do show

With all those cautions, here are the counts for the modern era, when the records are complete. The full table for every president is in Appendix A.

Table 5.2. Executive orders by president, 1929 to November 12, 2026

President	Years in office	Executive orders	Average per year
Herbert Hoover	4.00	1,003	251
Franklin D. Roosevelt	12.12	3,726	307

[100] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[101] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

[102] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[103] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

[104] Executive Order 14160, "Protecting the Meaning and Value of American Citizenship," January 20, 2025, 90 Fed. Reg. 8449, govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-02007.pdf (accessed November 12, 2026).

[105] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

President	Years in office	Executive orders	Average per year
Harry S. Truman	7.78	907	117
Dwight D. Eisenhower	8.00	484	61
John F. Kennedy	2.84	214	75
Lyndon B. Johnson	5.17	325	63
Richard Nixon	5.55	346	62
Gerald R. Ford	2.45	169	69
Jimmy Carter	4.00	320	80
Ronald Reagan	8.00	381	48
George H. W. Bush	4.00	166	42
Bill Clinton	8.00	364	46
George W. Bush	8.00	291	36
Barack Obama	8.00	276	35
Donald J. Trump (first term)	4.00	220	55
Joseph R. Biden Jr.	4.00	162	41
Donald J. Trump (second term, through October 20, 2026)	1.75	292	166

Source: American Presidency Project, table current through October 20, 2026. The Federal Register gives 220 for President Trump's first term and 162 for President Biden, matching these figures.[106,107]

A few things stand out:

- **Franklin Roosevelt holds the record** for total orders by a wide margin, 3,726, and also for any single term: 1,707 in his first term.[108]
- **Orders per year fell sharply after World War II.**
- **President Trump's second term is the busiest since the 1940s by yearly average.** The Pew Research Center reported that by December 15, 2025, he had issued 221 orders in his first year back, "one more than he did during his first four years in office," and that the last president to issue more than 100 in a first year was Truman, with 178 in 1945.[109]

Why this matters for the claims you hear

Claims about counts are often true in a narrow sense and misleading in a broad one. "Obama issued more orders than anyone" is false by every count; he issued fewer than most modern presidents.[110] "Trump issued more orders in one year than in his whole first term" is

[106] Ibid.

[107] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[108] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[109] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

[110] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

true as of December 2025.[111] "One president signed far more than any other" is true, but the president is Franklin Roosevelt, and his long time in office is part of the reason.[112] Chapter 17 tests these claims and gives each a verdict.

What the records show

- Confirmed: Franklin Roosevelt issued the most executive orders of any president, 3,726, over about 12 years.
- Confirmed: As of November 12, 2026, official and scholarly counts for President Trump's second term ranged from 290 to 292, depending on the source and its update date.
- Confirmed: Counts before 1936, and especially before 1907, are incomplete.
- Interpretation: A higher count does not by itself mean more power was used. The count leaves out memoranda and other tools, and it treats a minor order the same as a major one.

[111] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

[112] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

Part Three: The History, President by President

Chapter 6: Washington to Lincoln

For the first 70 years of the country, presidents issued few orders, and most of them were routine. By the American Presidency Project's count, which is incomplete for these years, George Washington issued 8, John Adams 1 and Thomas Jefferson 4.[113] But even in those early years, a few actions set patterns that still matter.

Washington's Neutrality Proclamation (1793)

I covered this in Chapter 2, but it is worth repeating why it matters. When war broke out between Britain and France in 1793, Washington announced on his own authority, with Congress out of session, that the United States would pursue "a conduct friendly and impartial toward the belligerant Powers."[114] It was the first major use of a presidential proclamation to set national policy. It also started the first great argument about "the executive Power," between Hamilton writing as Pacificus and Madison writing as Helvidius.[115,116]

Notice what Washington did not do. He did not declare war or make a treaty. He announced a policy within the space where the president already acts: dealing with foreign governments and carrying out the laws. That is a pattern you will see again and again. The most lasting presidential actions tend to sit inside a power the president clearly has. The most contested ones stretch into a power that belongs to Congress.

The Louisiana Purchase (1803)

In 1803, the United States bought the Louisiana territory from France. It was done by treaty, which the Senate approved under its Article II power.[117] I mention it because it is often called an example of a president acting alone. It was not. It went through the treaty process the Constitution requires, with the Senate's consent.[118]

Andrew Jackson and the Bank (1832)

Andrew Jackson used the veto more aggressively than any president before him. In 1832, he vetoed a bill to renew the charter of the Second Bank of the United States.[119] The Supreme Court's 2026 opinion in *Trump v. Cook* retold this history, describing the financial panics

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[113] Ibid.

[114] George Washington, Proclamation of Neutrality, April 22, 1793, Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/neutra93.asp (accessed November 12, 2026).

[115] Alexander Hamilton, "Pacificus No. I," June 29, 1793, Founders Online, National Archives. https://founders.archives.gov/documents/Hamilton/01-15-02-0038 (accessed November 12, 2026).

[116] James Madison, "Helvidius No. 1," August 24, 1793, Founders Online, National Archives. https://founders.archives.gov/documents/Madison/01-15-02-0056 (accessed November 12, 2026).

[117] National Archives, "Louisiana Purchase Treaty (1803)," Milestone Documents. https://www.archives.gov/milestone-documents/louisiana-purchase-treaty (accessed November 12, 2026).

[118] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. II, sec. 2. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[119] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

that followed as "in no small part attributable to Jackson's crusade."[120] That is the Court's interpretation, written to explain why it treats the Federal Reserve differently today. Historians debate how much blame Jackson deserves. What is not debated is that Jackson used a power the Constitution gives the president, the veto, to stop an act of Congress.

Abraham Lincoln and the Civil War

Abraham Lincoln faced the greatest test of presidential power in American history. When the Southern states seceded and Confederate forces fired on Fort Sumter in April 1861, Congress was not in session. Lincoln acted first and asked Congress for approval later.

The blockade. Lincoln ordered a naval blockade of Southern ports. Ship owners whose vessels were seized challenged it. In 1863, in the *Prize Cases*, the Supreme Court upheld the blockade by a 5-4 vote. The majority wrote that if war is made on the country, the president "is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority."[121] That sentence is still quoted today by those who argue the president can use force without Congress in some cases. Critics point out the key words: "He does not initiate the war."[122]

Habeas corpus. The writ of habeas corpus lets a person who is locked up ask a judge to decide whether the jailing is lawful. The Constitution says the writ "shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."[123] It does not say who may suspend it, but the clause sits in Article I, the article about Congress.

In 1861, Lincoln authorized military commanders to suspend the writ along certain routes. A Maryland man named John Merryman was arrested, and Chief Justice Roger Taney, sitting as a circuit judge, ruled in *Ex parte Merryman* that only Congress could suspend the writ.[124] Lincoln did not comply. In 1952, Justice Robert Jackson summed up what happened next: "President Lincoln asserted and maintained it as an executive function in the face of judicial challenge and doubt.... Congress eventually ratified his action. Habeas Corpus Act of March 3, 1863."[125] In 2004, Justice Antonin Scalia described Taney's ruling as "rejecting Lincoln's unauthorized suspension."[126]

The Merryman case is worth slowing down for, because it is the first great clash between a president and a court over emergency power. According to the court record, Merryman, "a citizen of Baltimore county, in the state of Maryland," was arrested on May 25, 1861, "by a

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[120] Ibid.

[121] The Prize Cases, 67 U.S. 635 (1863), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/67/635 (accessed November 12, 2026).

[122] Ibid.

[123] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 9. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[124] Hamdi v. Rumsfeld, 542 U.S. 507 (2004), plurality opinion and dissents, LII, Cornell Law School, Scalia, J., dissenting. https://www.law.cornell.edu/supremecourt/text/542/507 (accessed November 12, 2026).

[125] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring, n. 3. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[126] Hamdi v. Rumsfeld, 542 U.S. 507 (2004), plurality opinion and dissents, LII, Cornell Law School, Scalia, J., dissenting. https://www.law.cornell.edu/supremecourt/text/542/507 (accessed November 12, 2026).

military force," and held at Fort McHenry.[127] Taney issued a writ of habeas corpus the next day.[128] The commanding officer did not bring Merryman to court. Instead, he answered that he was "duly authorized by the president of the United States, in such cases, to suspend the writ of habeas corpus for the public safety."[129] Taney then wrote that his ruling rested on two points. The first was "That the president, under the constitution of the United States, cannot suspend the privilege of the writ of habeas corpus, nor authorize a military officer to do it."[130] The second was that a military officer had no right to arrest a person "not subject to the rules and articles of war" except in aid of the courts.[131]

Taney knew he could not force the Army to obey. He ordered the record sent to the president and wrote that it would "then remain for that high officer, in fulfilment of his constitutional obligation to 'take care that the laws be faithfully executed,' to determine what measures he will take to cause the civil process of the United States to be respected and enforced."[132] In other words, the chief justice put the question back on the president's desk.

Lincoln answered in public, not in court. In his message to Congress on July 4, 1861, he asked: "Are all the laws but one to go unexecuted, and the Government itself go to pieces lest that one be violated?"[133] He also took on Taney's reasoning directly. "Now it is insisted that Congress, and not the Executive, is vested with this power," he wrote, but "the Constitution itself is silent as to which or who is to exercise the power."[134] He argued that the clause "was plainly made for a dangerous emergency," and that the country could not always wait for Congress to gather.[135]

Both men had a point, and that is why the question is still argued today. The text does not name who may suspend the writ.[136] The clause sits in the article about Congress, which supports Taney.[137] Congress was not in session when the war began, which supports Lincoln's argument that someone had to act.[138] Congress settled the practical question in 1863 by passing the Habeas Corpus Act, which, as Justice Jackson later put it, "ratified his

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[127] Ex parte Merryman, 17 F. Cas. 144 (C.C.D. Md. 1861) (Case No. 9,487), opinion of Chief Justice Roger B. Taney, text of Federal Cases vol. 17 as transcribed on Wikisource. https://en.wikisource.org/wiki/Ex_parte_Merryman (accessed November 12, 2026).

[128] Ibid.

[129] Ibid.

[130] Ibid.

[131] Ibid.

[132] Ibid.

[133] Abraham Lincoln, "Special Session Message," July 4, 1861, The American Presidency Project, University of California, Santa Barbara. https://www.presidency.ucsb.edu/documents/special-session-message-5 (accessed November 12, 2026).

[134] Ibid.

[135] Ibid.

[136] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 9. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[137] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[138] Abraham Lincoln, "Special Session Message," July 4, 1861, The American Presidency Project, University of California, Santa Barbara. https://www.presidency.ucsb.edu/documents/special-session-message-5 (accessed November 12, 2026).

action."[139] The Supreme Court has never ruled directly on whether Lincoln's 1861 suspension was lawful before Congress acted. Chapter 18 tests that claim.

Military trials of civilians. After the war, in *Ex parte Milligan* (1866), the Supreme Court held that the military could not try a civilian in a state where the regular courts were open and working.[140] Lambdin Milligan, an Indiana man, had been sentenced to death by a military commission. The Court ruled the commission had no power to try him, and wrote that "Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction."[141]

The Emancipation Proclamation (1863). On January 1, 1863, Lincoln issued the Emancipation Proclamation. It declared "that all persons held as slaves" within the areas in rebellion "are, and henceforward shall be free."[142] The National Archives explains that "Because it was a military measure, however, the Emancipation Proclamation was limited in many ways. It applied only to states that had seceded from the Union, leaving slavery untouched in the loyal border states."[143] Lincoln grounded it in his role as commander in chief, as a war measure.[144] Slavery itself was ended nationwide by the Thirteenth Amendment in 1865, which went through Congress and the states.[145]

What Lincoln teaches. Lincoln's record gives both sides of today's debates something to point to. People who favor a strong president point to the blockade, upheld by the Supreme Court in the *Prize Cases*, and to Congress's later approval of his actions.[146,147] People who favor tighter limits point to *Merryman*, where the chief justice said the president had acted without power, and to *Milligan*, where the full Court rejected military trials of civilians in places where the courts were open.[148,149] Notice the order of events. Lincoln acted first in an emergency, then went to Congress and asked it to approve what he had done. He did not claim that Congress had no say.[150]

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[139] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring, n. 3. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[140] Ex parte Milligan, 71 U.S. (4 Wall.) 2 (decided April 3, 1866), opinion of the Court by Justice Davis, Justia U.S. Supreme Court Center. https://supreme.justia.com/cases/federal/us/71/2/ (accessed November 12, 2026).

[141] Ibid.

[142] National Archives, "Emancipation Proclamation (1863)," Milestone Documents. https://www.archives.gov/milestone-documents/emancipation-proclamation (accessed November 12, 2026).

[143] Ibid.

[144] Ibid.

[145] National Archives, "The Constitution: Amendments 11-27.", Amendment XIII. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[146] The Prize Cases, 67 U.S. 635 (1863), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/67/635 (accessed November 12, 2026).

[147] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring, n. 3. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[148] Ex parte Merryman, 17 F. Cas. 144 (C.C.D. Md. 1861) (Case No. 9,487), opinion of Chief Justice Roger B. Taney, text of Federal Cases vol. 17 as transcribed on Wikisource. https://en.wikisource.org/wiki/Ex_parte_Merryman (accessed November 12, 2026).

[149] Ex parte Milligan, 71 U.S. (4 Wall.) 2 (decided April 3, 1866), opinion of the Court by Justice Davis, Justia U.S. Supreme Court Center. https://supreme.justia.com/cases/federal/us/71/2/ (accessed November 12, 2026).

[150] Abraham Lincoln, "Special Session Message," July 4, 1861, The American Presidency Project, University of California, Santa Barbara. https://www.presidency.ucsb.edu/documents/special-session-message-5 (accessed November 12, 2026).

You might ask, "If the Emancipation Proclamation was so limited, why does it matter?" Because it changed the purpose of the war, and because it showed both the reach and the limit of a president acting alone. Lincoln could free people in enemy territory as a war measure. He could not end slavery in loyal states by proclamation. That took a constitutional amendment.

What the records show

Andrew Johnson and the Tenure of Office Act (1867 to 1868)

The fight between Lincoln's successor and Congress shows the other side of the coin: Congress trying to limit a president's control of his own Cabinet.

After the Civil War, President Andrew Johnson clashed with the Republican majority in Congress over Reconstruction. Congress passed the Tenure of Office Act of March 2, 1867, which, as the Senate's own history describes it, was "designed to limit the president's ability to shape his cabinet by requiring that not only appointments but also dismissals be approved by the Senate."[151] Johnson vetoed it, saying it was unconstitutional, and Congress "passed over his veto."[152]

Johnson then fired Secretary of War Edwin M. Stanton. According to the Senate, that firing was "the precipitant event" that led to impeachment.[153] The House impeached Johnson on February 24, 1868, "by a vote of 126 to 47."[154] In the Senate trial, 35 senators voted guilty and 19 voted not guilty on each of the three articles that came to a vote, one vote short of the two-thirds needed to remove him.[155,156]

The law itself did not last. Congress softened it after Johnson left office and repealed it in 1887.[157] In 1926, in *Myers v. United States*, the Supreme Court, in an opinion by Chief Justice William Howard Taft, himself a former president, held that a law requiring Senate consent before the president could remove a postmaster was invalid.[158] Taft's opinion described the Tenure of Office Act as "an attempt to redistribute the powers and minimize those of the President."[159] As Chapter 12 explains, the removal question did not end there. The Court narrowed *Myers* in 1935 and returned to the subject again in 2026.[160,161]

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[151] U.S. Senate, "The Impeachment of Andrew Johnson (1868) President of the United States," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-johnson.htm (accessed November 12, 2026).

[152] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

[153] U.S. Senate, "The Impeachment of Andrew Johnson (1868) President of the United States," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-johnson.htm (accessed November 12, 2026).

[154] Ibid.

[155] Ibid.

[156] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 3. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[157] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

[158] Ibid.

[159] Ibid.

[160] Humphrey's Executor v. United States, 295 U.S. 602 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[161] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

- Confirmed: Lincoln blockaded Southern ports, suspended habeas corpus and approved military trials before Congress acted. The Supreme Court upheld the blockade in 1863 and rejected a military trial of a civilian in 1866.

- Confirmed: Congress later passed a law in 1863 covering the suspension of habeas corpus.

- Confirmed: The Emancipation Proclamation applied only to areas in rebellion. The Thirteenth Amendment ended slavery nationwide.

- Confirmed: Chief Justice Taney ruled in 1861 that "the president ... cannot suspend the privilege of the writ of habeas corpus." Lincoln did not comply and defended his action to Congress on July 4, 1861.

- Confirmed: The House impeached Andrew Johnson in 1868 after he fired the secretary of war in defiance of the Tenure of Office Act. The Senate fell one vote short of removing him.

- Interpretation: Whether Lincoln's actions were lawful at the time is still debated. Chapter 18 tests the claim that his suspension of habeas corpus was illegal.

Chapter 7: Theodore Roosevelt to Franklin Roosevelt

The early 1900s brought a sharp change. Executive orders became common. Theodore Roosevelt issued 1,081, William Howard Taft 724 and Woodrow Wilson 1,803. Franklin Roosevelt issued 3,726, the most of any president.[162]

Two theories of the presidency

Theodore Roosevelt and William Howard Taft, who served one after the other, gave the two classic answers to the question of how much power a president has.

Roosevelt wrote in his autobiography that it was the president's "duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws."[163] This is often called the "stewardship" theory. In plain words: if nothing forbids it, the president may do it.

Taft took the opposite view in a book he wrote after leaving office. Justice Robert Jackson, writing in 1952, described the debate and pointed out that Taft's actions as president did not always match his later writing: "Professor Taft is counterbalanced by Theodore Roosevelt.... It even seems that President Taft cancels out Professor Taft."[164] Jackson's point, made with a smile, was that presidents tend to take a broader view of power while in office than out of it. I come back to that pattern in Chapter 19.

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[162] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[163] Theodore Roosevelt, Theodore Roosevelt: An Autobiography (1913), chapter X, Project Gutenberg eBook No. 3335. https://www.gutenberg.org/ebooks/3335 (accessed November 12, 2026).

[164] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring, n. 1. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

Franklin Roosevelt and the Great Depression

Franklin Roosevelt took office in March 1933 in the depths of the Depression. Five days later, Congress expanded an old wartime law, the Trading with the Enemy Act, so that its powers could be used during "a 'national emergency' declared by the President."[165] That 1933 change is the ancestor of today's emergency powers.

Not everything Roosevelt did survived in court. In 1935, the Supreme Court struck down parts of his National Industrial Recovery Act in two cases, *Panama Refining Co. v. Ryan* and *A.L.A. Schechter Poultry Corp. v. United States*.[166,167] In *Schechter*, the Court found that Congress had given the president too much lawmaking power with too few limits.[168] The 2026 dissent in *Trump v. Slaughter* called these rulings "quite a blow to the President, invalidating aspects of his signature legislation."[169] The same year, in *Humphrey's Executor*, the Court ruled that Roosevelt could not fire a member of the Federal Trade Commission without cause.[170]

Gold and the emergency of 1933

One of Roosevelt's first orders shows how the 1933 emergency law worked in practice. On April 5, 1933, he signed Executive Order 6102. Section 2 required "All persons" to deliver "on or before May 1, 1933, to a Federal reserve bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them."[171] The order cited the emergency banking law Congress had passed in March 1933.[172]

The order had exceptions. People could keep gold needed for "legitimate and customary use in industry, profession or art," and "Gold coin and gold certificates in an amount not exceeding in the aggregate $100.00 belonging to any one person," as well as "gold coins having a recognized special value to collectors of rare and unusual coins."[173] Breaking the rules could bring a fine of "not more than $10,000" or, for a person, prison "for not more than ten years, or both."[174]

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[165] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[166] Panama Refining Co. v. Ryan, 293 U.S. 388 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/293/388 (accessed November 12, 2026).

[167] A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/495 (accessed November 12, 2026).

[168] Ibid.

[169] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School, Sotomayor, J., dissenting. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[170] Humphrey's Executor v. United States, 295 U.S. 602 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[171] Executive Order 6102, "Requiring Gold Coin, Gold Bullion and Gold Certificates to Be Delivered to the Government," April 5, 1933, text as transcribed on Wikisource. https://en.wikisource.org/wiki/Executive_Order_6102 (accessed November 12, 2026).

[172] Ibid.

[173] Ibid.

[174] Ibid.

The Supreme Court described these orders in 1935 when it upheld a related law of Congress that cancelled "gold clauses" in private contracts.[175] The Court's summary was that under Executive Order 6102 "all persons were required to deliver, on or before May 1, 1933, to stated banks, 'all gold coin, gold bullion, and gold certificates,' with certain exceptions."[176] Later orders, such as Executive Order 6260 of August 28, 1933, carried the rules forward for four decades.[177] On December 31, 1974, President Gerald Ford signed Executive Order 11825, which revoked the remaining gold orders effective that same day. Ford cited laws Congress had amended in 1973 and 1974, Public Laws 93-110 and 93-373.[178]

The gold orders show three things this book keeps returning to. A sweeping order rested on a law Congress had just passed. The courts reviewed the related laws and upheld them. And it took a later president, acting after Congress changed the law, to undo it.

Who can a president fire? Myers and Humphrey's Executor

Two cases from this period still shape fights over presidential power. In *Myers v. United States* (1926), discussed in Chapter 6, the Court said the president could remove a postmaster without the Senate's consent.[179] Nine years later, in *Humphrey's Executor v. United States*, decided May 27, 1935, the Court held that Roosevelt could not fire a member of the Federal Trade Commission at will, because Congress had allowed removal only "for inefficiency, neglect of duty, or malfeasance in office."[180] For 91 years, *Humphrey's Executor* protected the members of many independent agencies. In 2026, in *Trump v. Slaughter*, the Court overruled it.[181] Chapter 12 covers that ruling and what it left open.

Executive Order 9066 and the incarceration of Japanese Americans

The darkest executive order in American history was signed on February 19, 1942, about ten weeks after the attack on Pearl Harbor. Executive Order 9066 authorized military commanders to set up "military areas" from which "any or all persons may be excluded."[182] It did not name any ethnic group. In practice, as the National Archives explains, it resulted "in the incarceration of Japanese Americans."[183]

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[175] Norman v. Baltimore and Ohio Railroad Co., 294 U.S. 240 (decided February 18, 1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/294/240 (accessed November 12, 2026).

[176] Ibid.

[177] Executive Order 11825, "Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold," December 31, 1974, 40 Fed. Reg. 1003 (January 6, 1975), govinfo.gov. https://www.govinfo.gov/link/fr/40/1003 (accessed November 12, 2026).

[178] Ibid.

[179] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

[180] Humphrey's Executor v. United States, 295 U.S. 602 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[181] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[182] Executive Order 9066, "Authorizing the Secretary of War to Prescribe Military Areas," February 19, 1942, 7 Fed. Reg. 1407 (February 25, 1942), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-1942-02-25/pdf/FR-1942-02-25.pdf (accessed November 12, 2026).

[183] National Archives, "Executive Order 9066: Resulting in Japanese-American Incarceration (1942)," Milestone Documents. https://www.archives.gov/milestone-documents/executive-order-9066 (accessed November 12, 2026).

According to the National Archives, in the six months that followed, "approximately 122,000 men, women, and children were forcibly moved," and "Nearly 70,000 of the evacuees were American citizens."[184]

The Supreme Court upheld parts of this program in two cases. In *Hirabayashi v. United States* (1943), it upheld a curfew aimed at people of Japanese ancestry.[185] In *Korematsu v. United States*, decided December 18, 1944, it upheld the exclusion order that removed Fred Korematsu, an American citizen, from his home.[186]

Three justices dissented in *Korematsu*. Justice Frank Murphy wrote that the exclusion "falls into the ugly abyss of racism" and closed, "I dissent, therefore, from this legalization of racism."[187] Justice Robert Jackson warned that the ruling would sit in the law "like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."[188]

On the same day as *Korematsu*, in *Ex parte Endo*, the Court held that the government had "no authority to subject citizens who are concededly loyal to its leave procedure," which effectively meant the camps could not keep loyal citizens.[189]

The wrong was later recognized by every branch. A commission created by Congress reviewed the record and published its findings in a report titled *Personal Justice Denied* (1982 and 1983).[190] In 1988, Congress passed Public Law 100-383, which, as the National Archives puts it, "acknowledged the injustice of the incarceration, apologized for it, and provided partial restitution - a $20,000 cash payment to each person who was incarcerated."[191] (That is $20,000 in 1988 dollars, not adjusted for inflation.) And in 2018, the Supreme Court said plainly: "Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and ... 'has no place in law under the Constitution.'"[192]

Executive Order 9066 is the clearest example of why the rest of this book matters. It was signed by a popular president, in wartime, with broad public support, and upheld by the Supreme Court. It was still a grave wrong.

What the records show

[184] Ibid.

[185] Hirabayashi v. United States, 320 U.S. 81 (1943), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/320/81 (accessed November 12, 2026).

[186] Korematsu v. United States, 323 U.S. 214 (1944), opinion and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/323/214 (accessed November 12, 2026).

[187] Korematsu v. United States, 323 U.S. 214 (1944), opinion and dissents, LII, Cornell Law School, Murphy, J., dissenting. https://www.law.cornell.edu/supremecourt/text/323/214 (accessed November 12, 2026).

[188] Korematsu v. United States, 323 U.S. 214 (1944), opinion and dissents, LII, Cornell Law School, Jackson, J., dissenting. https://www.law.cornell.edu/supremecourt/text/323/214 (accessed November 12, 2026).

[189] Ex parte Endo, 323 U.S. 283 (1944), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/323/283 (accessed November 12, 2026).

[190] Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied (December 1982 and June 1983), National Archives. https://www.archives.gov/research/japanese-americans/justice-denied (accessed November 12, 2026).

[191] National Archives, "Executive Order 9066: Resulting in Japanese-American Incarceration (1942)," Milestone Documents. https://www.archives.gov/milestone-documents/executive-order-9066 (accessed November 12, 2026).

[192] Trump v. Hawaii, 585 U.S. 667 (2018), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/17-965 (accessed November 12, 2026).

- Confirmed: Theodore Roosevelt held that a president may do anything not forbidden by law; Taft argued for a narrower view. Both views are still cited.

- Confirmed: In 1933, Congress extended wartime economic powers to peacetime emergencies declared by the president.

- Confirmed: Executive Order 6102 (April 5, 1933) required people to turn in most gold coin, bullion and certificates by May 1, 1933, with exceptions, including up to $100 in gold coin per person. The gold orders were revoked effective December 31, 1974.

- Confirmed: Executive Order 9066 led to the incarceration of Japanese Americans. The Supreme Court upheld the exclusion in 1944, and in 2018 the Court said Korematsu "was gravely wrong the day it was decided."

- Confirmed: Congress apologized and paid $20,000 to each person who was incarcerated under Public Law 100-383 in 1988.

Chapter 8: Truman to Carter

The years from 1945 to 1981 produced some of the most important executive orders ever signed, and also the most important court rulings limiting presidents. They also produced a wave of laws in the 1970s, passed by Congress to rein in the presidency after Vietnam and Watergate.

Truman and the armed forces (1948)

On July 26, 1948, President Harry Truman signed Executive Order 9981, which declared "the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin."[193] The National Archives explains that Truman acted after Southern senators "immediately threatened a filibuster" against civil rights bills he had asked Congress to pass.[194]

This order is a good example of a lasting order. It rested on the president's clear power as commander in chief, and later presidents kept it.

Truman and the loyalty program (1947)

Not every Truman order expanded rights. On March 21, 1947, he signed Executive Order 9835, which set up a loyalty program for federal workers.[195] It called for "a loyalty investigation of every person entering the civilian employment" of the executive branch, and it set the standard for refusing or removing an employee on loyalty grounds: whether, "on all the evidence, reasonable grounds exist for belief that the person involved is disloyal to

[193] National Archives, "Executive Order 9981: Desegregation of the Armed Forces (1948)," Milestone Documents, with transcript of Executive Order 9981, July 26, 1948. https://www.archives.gov/milestone-documents/executive-order-9981 (accessed November 12, 2026).

[194] Ibid.

[195] Executive Order 9835, "Prescribing Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government," March 21, 1947, 12 Fed. Reg. 1935, govinfo.gov. https://www.govinfo.gov/link/fr/12/1935 (accessed November 12, 2026).

the Government of the United States."[196] The order said "the loyalty of by far the overwhelming majority of all Government employees is beyond question," but that the presence of "any disloyal or subversive person" was a threat.[197]

I include this order because it shows a point that is easy to miss. An executive order that mainly directs the government's own workforce can still reach deeply into the lives of millions of people, because the federal government is one of the country's largest employers. Orders on hiring, firing, unions and security clearances are among the most powerful a president signs, and they draw less public notice than orders aimed at the public.

Korea (1950): war without a declaration

In June 1950, North Korea invaded South Korea. Truman sent American forces into combat without asking Congress for a declaration of war, with the backing of the United Nations, which had called on member nations "to render every assistance" to repel the attack.[198] Congress never declared war on North Korea.[199]

The steel case that follows grew out of that war. The government told the Supreme Court that "American troops in Korea, whose safety and effectiveness are so directly involved here, were sent to the field by an exercise of the President's constitutional powers."[200] Justice Jackson refused to treat Korea as a reason to approve the steel seizure, and wrote that it was not "necessary or appropriate to consider the legal status of the Korean enterprise."[201] The question of whether a president can fight a war of that size without Congress was left unanswered, and Chapter 14 shows it is still unanswered today.

Truman and the steel mills (1952)

Four years later, Truman went too far. During the Korean War, the steelworkers' union planned a strike. On April 8, 1952, Truman signed Executive Order 10340, directing the Secretary of Commerce to take possession of the nation's steel mills and keep them running.[202,203]

The Supreme Court ruled against him on June 2, 1952, by a 6-3 vote.[204] Justice Hugo Black wrote for the Court that "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself," and found neither.[205] Congress had

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[196] Ibid.

[197] Ibid.

[198] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Vinson, C.J., dissenting. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[199] U.S. Senate, "Declarations of War by Congress," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/declarations-of-war.htm (accessed November 12, 2026).

[200] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[201] Ibid.

[202] Executive Order 10340, "Directing the Secretary of Commerce to Take Possession of and Operate the Plants and Facilities of Certain Steel Companies," April 8, 1952, 17 Fed. Reg. 3139, govinfo.gov. https://www.govinfo.gov/link/fr/17/3139 (accessed November 12, 2026).

[203] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[204] Ibid.

[205] Ibid.

considered giving presidents power to seize plants in labor disputes and had chosen not to.[206]

Justice Jackson's concurring opinion described three situations a president can be in. When the president acts with Congress's approval, "his authority is at its maximum." When Congress has said nothing, there is "a zone of twilight." When the president acts against Congress's will, "his power is at its lowest ebb."[207] Courts still use this framework today. Chief Justice Fred Vinson, joined by two other justices, dissented and would have upheld the seizure as an emergency measure.[208]

Eisenhower and Little Rock (1957)

In September 1957, Arkansas Governor Orval Faubus called out the state's National Guard to surround Little Rock Central High School, and nine Black students were kept from attending under a federal court's desegregation order.[209] On September 23, President Dwight Eisenhower issued Proclamation 3204, and the next day he signed Executive Order 10730.[210] The order placed the Arkansas National Guard under federal control and authorized the Secretary of Defense to use the armed forces "to enforce any orders of the United States District Court for the Eastern District of Arkansas."[211]

Notice the source of power. Eisenhower cited laws Congress had passed about using troops to enforce federal law, and he acted to carry out a court order.[212] That is the "Take Care" clause doing its job. (The National Archives web page dates the order September 23, 1957, while the Federal Register shows it signed September 24, 1957. I use the Federal Register date, since it reprints the signed order.)

Kennedy and Johnson: equal opportunity orders

On March 6, 1961, President John F. Kennedy signed Executive Order 10925, which required government contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."[213] President Lyndon Johnson replaced it with Executive Order 11246 on September 24, 1965.[214]

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[206] Ibid.

[207] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[208] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Vinson, C. J., dissenting. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[209] National Archives, "Executive Order 10730: Desegregation of Central High School (1957)," Milestone Documents. https://www.archives.gov/milestone-documents/executive-order-10730 (accessed November 12, 2026).

[210] Executive Order 10730, "Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas," September 24, 1957, and Proclamation 3204, September 23, 1957, 22 Fed. Reg. 7628 (September 25, 1957), govinfo.gov. https://www.govinfo.gov/link/fr/22/7628 (accessed November 12, 2026).

[211] Ibid.

[212] Ibid.

[213] Executive Order 10925, "Establishing the President's Committee on Equal Employment Opportunity," March 6, 1961, 26 Fed. Reg. 1977, govinfo.gov. https://www.govinfo.gov/link/fr/26/1977 (accessed November 12, 2026).

[214] Executive Order 11246, "Equal Employment Opportunity," September 24, 1965, 30 Fed. Reg. 12319, govinfo.gov. https://www.govinfo.gov/link/fr/30/12319 (accessed November 12, 2026).

Executive Order 11246 stayed in force for almost 60 years, through presidents of both parties. On January 21, 2025, President Trump revoked it in Executive Order 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity."[215] This is a good illustration of Chapter 4's point: even a very long-lasting order can be undone by a later president with a single signature.

Kennedy and federal employee unions (1962)

On January 17, 1962, President Kennedy signed Executive Order 10988, "Employee-Management Cooperation in the Federal Service."[216] It said federal employees "shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity."[217] The order set up a formal way for federal unions to deal with agency managers.[218] It is a good example of how a single order can shape the working lives of millions of federal employees for decades.

Nixon: wage controls, tariffs and impoundment

On August 15, 1971, President Richard Nixon froze wages and prices nationwide in Executive Order 11615, using a power Congress had given him in the Economic Stabilization Act of 1970.[219] The same day, he imposed a 10 percent extra duty on many imports in Proclamation 4074.[220] A court later upheld that import surcharge in *United States v. Yoshida International* (1975) under the Trading with the Enemy Act.[221] Fifty years later, the government relied on that case to defend tariffs in 2025, and in 2026 the Supreme Court majority said the Yoshida argument "cannot bear the weight the Government places on it."[222] I explain that case in Chapter 15.

Nixon also refused to spend billions of dollars Congress had provided for programs he opposed. This is called "impoundment." In *Train v. City of New York*, decided February 18, 1975, the Supreme Court ruled that the law in question did not let the administration hand out less than the full amounts Congress had provided for water pollution projects.[223] By then, Congress had already passed the Impoundment Control Act of 1974 to set rules for

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[215] Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," January 21, 2025, 90 Fed. Reg. 8633, govinfo.gov. https://www.govinfo.gov/link/fr/90/8633 (accessed November 12, 2026).

[216] Executive Order 10988, "Employee-Management Cooperation in the Federal Service," January 17, 1962, 27 Fed. Reg. 551, govinfo.gov. https://www.govinfo.gov/link/fr/27/551 (accessed November 12, 2026).

[217] Ibid.

[218] Ibid.

[219] Executive Order 11615, "Providing for Stabilization of Prices, Rents, Wages, and Salaries," August 15, 1971, 36 Fed. Reg. 15727, govinfo.gov. https://www.govinfo.gov/link/fr/36/15727 (accessed November 12, 2026).

[220] Proclamation 4074, "Imposition of Supplemental Duty for Balance of Payments Purposes," August 15, 1971, 36 Fed. Reg. 15724, govinfo.gov. https://www.govinfo.gov/link/fr/36/15724 (accessed November 12, 2026).

[221] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[222] Ibid.

[223] Train v. City of New York, 420 U.S. 35 (1975), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/420/35 (accessed November 12, 2026).

when a president may delay or cancel spending.[224] Chapter 11 explains how that law works, and why it was at the center of fights in 2025 and 2026.

Nixon and the tapes (1974)

The Watergate scandal produced the most important ruling on presidential privilege. A special prosecutor subpoenaed tape recordings of Nixon's conversations. Nixon refused, claiming executive privilege. On July 24, 1974, in *United States v. Nixon*, the Supreme Court ruled against him 8-0 (Justice William Rehnquist did not take part).[225] The Court held that "neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."[226] The president's "generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial."[227]

Nixon released the tapes, and his "term in office continued until his resignation on August 9, 1974," as President Ford's later proclamation recorded.[228] A month later, on September 8, 1974, President Gerald Ford granted him "a full, free, and absolute pardon" for any offenses against the United States he "has committed or may have committed or taken part in" while president.[229] Chapter 16 covers that pardon and the debate over it.

Ford pardons Nixon (1974)

A month after Nixon resigned, President Gerald Ford granted him "a full, free, and absolute pardon" for all offenses against the United States that he "has committed or may have committed or taken part in during the period from January 20, 1969 through August 9, 1974."[230] The pardon came before any charge was filed. That was possible because, as the Supreme Court said in *Ex parte Garland* (December Term, 1866), the pardon power "may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."[231] Chapter 16 covers the pardon power in full.

Congress pushes back: the reform laws of the 1970s

After Vietnam and Watergate, Congress passed a series of laws to limit presidential power. You will see each of them again later in the book.

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[224] Congressional Budget and Impoundment Control Act of 1974, Public Law 93-344, 88 Stat. 297, govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg297.pdf (accessed November 12, 2026).

[225] United States v. Nixon, 418 U.S. 683 (1974), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026).

[226] Ibid.

[227] Ibid.

[228] Proclamation 4311, "Granting Pardon to Richard Nixon," September 8, 1974, 39 Fed. Reg. 32601, govinfo.gov. https://www.govinfo.gov/link/fr/39/32601 (accessed November 12, 2026).

[229] Ibid.

[230] Ibid.

[231] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

Table 8.1. Laws Congress passed in the 1970s to limit presidential power

Law	Year	What it does	Chapter
War Powers Resolution	1973, passed over Nixon's veto	Requires the president to report to Congress within 48 hours of sending forces into hostilities and to withdraw within 60 days (plus 30) without congressional approval	14
Impoundment Control Act	1974	Sets rules for delaying or canceling spending Congress has approved	11
National Emergencies Act	1976	Sets rules for declaring, reporting and ending national emergencies	15
International Emergency Economic Powers Act (IEEPA)	1977	Gives the president economic powers, such as freezing assets, during a declared emergency involving a foreign threat	15

Sources: the laws as published.[232,233,234,235]

Carter: pardons and Iran

On January 21, 1977, his first full day in office, President Jimmy Carter issued Proclamation 4483, granting "a full, complete and unconditional pardon" to people who had violated the draft law between 1964 and 1973.[236] Supporters saw it as healing the country after Vietnam; critics saw it as rewarding those who broke the law while others served.

On November 14, 1979, after Americans were taken hostage in Tehran, Carter signed Executive Order 12170, declaring a national emergency and freezing Iranian government property under IEEPA.[237] The agreement that freed the hostages in 1981 included moving those assets and ending lawsuits in American courts. In *Dames & Moore v. Regan* (1981), the Supreme Court upheld the transfer of assets under IEEPA.[238] The Iran emergency

[232] War Powers Resolution, Public Law 93-148, 87 Stat. 555 (November 7, 1973), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-87/pdf/STATUTE-87-Pg555.pdf (accessed November 12, 2026).

[233] Congressional Budget and Impoundment Control Act of 1974, Public Law 93-344, 88 Stat. 297, govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg297.pdf (accessed November 12, 2026).

[234] National Emergencies Act, Public Law 94-412, 90 Stat. 1255 (September 14, 1976), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1255.pdf (accessed November 12, 2026).

[235] International Emergency Economic Powers Act, title II of Public Law 95-223, 91 Stat. 1625 (December 28, 1977), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-91/pdf/STATUTE-91-Pg1625.pdf (accessed November 12, 2026).

[236] Proclamation 4483, "Granting Pardon for Violations of the Selective Service Act, August 4, 1964 to March 28, 1973," January 21, 1977, 42 Fed. Reg. 4391, govinfo.gov. https://www.govinfo.gov/link/fr/42/4391 (accessed November 12, 2026).

[237] Executive Order 12170, "Blocking Iranian Government Property," November 14, 1979, 44 Fed. Reg. 65729, govinfo.gov. https://www.govinfo.gov/link/fr/44/65729 (accessed November 12, 2026).

[238] Dames & Moore v. Regan, 453 U.S. 654 (1981), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/453/654 (accessed November 12, 2026).

declared in 1979 was still in effect in November 2026, making it the oldest active national emergency.[239,240]

What the records show

- Confirmed: Executive Order 9981 (1948) declared equal treatment in the armed forces. Executive Order 10730 (1957) sent troops to enforce desegregation in Little Rock.
- Confirmed: The Supreme Court struck down Truman's steel seizure in 1952 and ordered Nixon to turn over the tapes in 1974.
- Confirmed: Executive Order 11246 (1965) lasted nearly 60 years before it was revoked in January 2025.
- Confirmed: Congress passed the War Powers Resolution (1973), the Impoundment Control Act (1974), the National Emergencies Act (1976) and IEEPA (1977) to limit presidents.
- Interpretation: Whether the 1970s laws have worked is debated. Chapters 14 and 15 give the evidence and both sides.

Chapter 9: Reagan to Obama

From 1981 to 2017, presidents issued fewer executive orders per year than their predecessors, but several of those orders reshaped how the whole government works.[241] This era also brought the biggest legal fights over war powers since the Civil War, after the attacks of September 11, 2001.

Reagan: the White House reviews agency rules

On February 17, 1981, less than a month after taking office, President Ronald Reagan signed Executive Order 12291. It required agencies to send major new regulations to the Office of Management and Budget (OMB) for review before issuing them, and to weigh costs against benefits.[242]

This order changed the balance of power between the White House and the agencies, and it has lasted in one form or another ever since. President Bill Clinton replaced it with Executive Order 12866 on September 30, 1993, keeping White House review but changing

[239] Brennan Center for Justice, "Declared National Emergencies Under the National Emergencies Act" (list file dated September 2026). Advocacy organization; used as a pointer to Federal Register notices. https://www.brennancenter.org/sites/default/files/2026-09/declared-emergencies-under-nea090226.pdf (accessed November 12, 2026).

[240] Notice of November 5, 2025, "Continuation of the National Emergency With Respect to Iran," 90 Fed. Reg. 50735 (November 7, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-11-07/pdf/2025-19829.pdf (accessed November 12, 2026).

[241] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[242] Executive Order 12291, "Federal Regulation," February 17, 1981, 46 Fed. Reg. 13193, govinfo.gov. https://www.govinfo.gov/link/fr/46/13193 (accessed November 12, 2026).

the rules for it.[243] Presidents of both parties have kept some version of this review in place. It is a good example of an order that outlasted the party that created it, because each new president found it useful.

Reagan also signed Executive Order 12333 on December 4, 1981, which set the rules for American intelligence agencies.[244]

Clinton: the line-item veto and national monuments

President Bill Clinton's two terms produced two lessons about the limits and the reach of presidential power.

The line-item veto. A line-item veto is the power to strike single items out of a spending or tax bill while signing the rest. Congress gave the president something close to it in the Line Item Veto Act, which was "enacted in April 1996 and became effective on January 1, 1997."[245] Clinton used it in August 1997 to cancel a spending provision in the Balanced Budget Act and a tax provision in the Taxpayer Relief Act.[246] New York City and other parties who lost money sued. On June 25, 1998, in *Clinton v. City of New York*, the Supreme Court held that "The Act's cancellation procedures violate the Presentment Clause."[247] The Presentment Clause is the part of Article I that says a bill becomes law only when both chambers pass it and the president signs it or Congress overrides a veto.[248] The Court reasoned that cancelling part of a law after signing it amounted to changing the law without going through that process.[249]

This case matters because Congress itself had agreed to give the president the power. The Court said that even Congress cannot hand the president a power the Constitution does not allow. A president who wants a line-item veto today would need a constitutional amendment. Chapter 18 tests that claim.

National monuments. On September 18, 1996, Clinton issued Proclamation 6920, creating the Grand Staircase-Escalante National Monument in Utah.[250] The proclamation reserved "approximately 1.7 million acres."[251] The power came from the Antiquities Act of 1906, which lets the president "declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" on federal land

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[243] Executive Order 12866, "Regulatory Planning and Review," September 30, 1993, 58 Fed. Reg. 51735, govinfo.gov. https://www.govinfo.gov/link/fr/58/51735 (accessed November 12, 2026).

[244] Executive Order 12333, "United States Intelligence Activities," December 4, 1981, 46 Fed. Reg. 59941, govinfo.gov. https://www.govinfo.gov/link/fr/46/59941 (accessed November 12, 2026).

[245] Clinton v. City of New York, 524 U.S. 417 (1998), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/97-1374 (accessed November 12, 2026).

[246] Ibid.

[247] Ibid.

[248] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 7. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[249] Clinton v. City of New York, 524 U.S. 417 (1998), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/97-1374 (accessed November 12, 2026).

[250] Proclamation 6920, "Establishment of the Grand Staircase-Escalante National Monument," September 18, 1996, 61 Fed. Reg. 50223, govinfo.gov. https://www.govinfo.gov/link/fr/61/50223 (accessed November 12, 2026).

[251] Ibid.

"to be national monuments."[252] The law also says the land reserved "shall be confined to the smallest area compatible with the proper care and management of the objects to be protected."[253] Clinton's proclamation used that very phrase, describing 1.7 million acres as "the smallest area compatible with the proper care and management of the objects to be protected."[254]

The Antiquities Act dates to 1906, and presidents of both parties have used it. [Not verified: I did not open the proclamations of earlier and later presidents, including any later changes to Grand Staircase-Escalante, for this edition, so I do not list them here.] The legal question that keeps coming back is whether a law that lets a president create a monument also lets a later president shrink one. As of November 12, 2026, I found no Supreme Court ruling deciding that question.

George W. Bush and the war on terror

After the attacks of September 11, 2001, President George W. Bush declared a national emergency on September 14, 2001.[255] On September 23, 2001, he signed Executive Order 13224, using IEEPA to freeze the assets of people and groups that support terrorism.[256] Congress passed the Authorization for Use of Military Force on September 18, 2001, which became the legal basis for military action against al Qaeda and related groups for the next two decades.[257]

On November 13, 2001, Bush signed a military order allowing certain non-citizens suspected of terrorism to be detained and tried by military commissions.[258] That order led to a series of Supreme Court cases.

Before going further, it helps to see how strongly Congress backed the president at the start. The 2001 authorization passed the Senate 98-0 on September 14, 2001, and the House 420-1 the same day.[259,260] A year later, Congress authorized the use of force against Iraq. That resolution passed the House 296-133 on October 10, 2002, and the Senate 77-23 on October 11, 2002.[261,262] In the House, 215 Republicans and 81 Democrats voted yes, while 6

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[252] 54 U.S.C. 320301, "National monuments" (Antiquities Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/54/320301 (accessed November 12, 2026).

[253] Ibid.

[254] Proclamation 6920, "Establishment of the Grand Staircase-Escalante National Monument," September 18, 1996, 61 Fed. Reg. 50223, govinfo.gov. https://www.govinfo.gov/link/fr/61/50223 (accessed November 12, 2026).

[255] 50 U.S.C. 1621, "Declaration of national emergency by President" (National Emergencies Act sec. 201), LII, Cornell Law School, note on Proclamation 7463. https://www.law.cornell.edu/uscode/text/50/1621 (accessed November 12, 2026).

[256] Executive Order 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," September 23, 2001, 66 Fed. Reg. 49079, govinfo.gov. https://www.govinfo.gov/link/fr/66/49079 (accessed November 12, 2026).

[257] Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (September 18, 2001), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-115/pdf/STATUTE-115-Pg224.pdf (accessed November 12, 2026).

[258] Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 Fed. Reg. 57833, govinfo.gov. https://www.govinfo.gov/link/fr/66/57833 (accessed November 12, 2026).

[259] U.S. Senate, Roll Call Vote 107th Congress, 1st Session, Vote 281 (September 14, 2001), S.J.Res. 23, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1071/vote_107_1_00281.htm (accessed November 12, 2026).

[260] U.S. House of Representatives, Office of the Clerk, Roll Call 342 (September 14, 2001), H.J.Res. 64, clerk.house.gov. https://clerk.house.gov/evs/2001/roll342.xml (accessed November 12, 2026).

[261] U.S. House of Representatives, Office of the Clerk, Roll Call 455 (October 10, 2002), H.J.Res. 114, clerk.house.gov. https://clerk.house.gov/evs/2002/roll455.xml (accessed November 12, 2026).

Republicans, 126 Democrats and 1 independent voted no.[263] So the biggest military actions of this era rested on votes of Congress, which put the president in Justice Jackson's strongest zone.[264] The later fights were about how far those authorizations stretched.

Table 9.1. Supreme Court cases on detention after September 11, 2001

Case	Decided	What the Court held
Hamdi v. Rumsfeld	June 28, 2004	An American citizen held as an enemy combatant must get a meaningful chance to challenge his detention before a neutral decision maker. The plurality wrote that "a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens."
Rasul v. Bush	June 28, 2004	Federal courts can hear habeas challenges from foreign nationals held at Guantanamo Bay.
Hamdan v. Rumsfeld	June 29, 2006	The military commissions set up to try detainees did not meet the requirements of federal law and the Geneva Conventions as applied through that law.
Boumediene v. Bush	June 12, 2008	Detainees at Guantanamo "have the constitutional privilege of habeas corpus," and Congress's attempt to remove it without an adequate substitute was unconstitutional.

Sources: the opinions.[265,266,267,268]

Notice how this played out. The president acted first. The courts said parts of what he did went too far. Congress then passed laws, the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006, and the Court reviewed those too.[269,270] All three branches took part. That is the system working roughly as designed, even if each side disliked some of the results.

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[262] U.S. Senate, Roll Call Vote 107th Congress, 2nd Session, Vote 237 (October 11, 2002), H.J.Res. 114, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1072/vote_107_2_00237.htm (accessed November 12, 2026).

[263] U.S. House of Representatives, Office of the Clerk, Roll Call 455 (October 10, 2002), H.J.Res. 114, clerk.house.gov. https://clerk.house.gov/evs/2002/roll455.xml (accessed November 12, 2026).

[264] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[265] Hamdi v. Rumsfeld, 542 U.S. 507 (2004), plurality opinion and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/542/507 (accessed November 12, 2026).

[266] Rasul v. Bush, 542 U.S. 466 (2004), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/03-334 (accessed November 12, 2026).

[267] Hamdan v. Rumsfeld, 548 U.S. 557 (2006), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/05-184 (accessed November 12, 2026).

[268] Boumediene v. Bush, 553 U.S. 723 (2008), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/06-1195 (accessed November 12, 2026).

[269] Hamdan v. Rumsfeld, 548 U.S. 557 (2006), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/05-184 (accessed November 12, 2026).

[270] Boumediene v. Bush, 553 U.S. 723 (2008), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/06-1195 (accessed November 12, 2026).

Presidential records. On November 1, 2001, Bush signed Executive Order 13233, "Further Implementation of the Presidential Records Act," which set procedures for how claims of privilege would be handled when the records of former presidents were requested.[271] On January 21, 2009, his first full day in office, President Obama signed Executive Order 13489, which replaced those procedures and stated simply, "Executive Order 13233 of November 1, 2001, is revoked."[272] The records order is a small example of a large pattern. A new president often spends the first days in office revoking the orders of the last one.

A limit from the Court in 2008: Medellin v. Texas

One more case from the Bush years deserves a place in any book about presidential power. Bush issued a memorandum telling state courts to give effect to a decision of the International Court of Justice, which had found that the United States had failed to tell 51 Mexican nationals, including a Texas death-row prisoner named Jose Medellin, of their right to contact their consulate.[273] The memorandum said the United States would "discharge its international obligations" under the world court's decision "by having State courts give effect to the decision."[274]

Texas refused, and on March 25, 2008, the Supreme Court agreed with Texas. The Court held that "The President's Memorandum does not independently require the States to provide review and reconsideration" of those cases.[275] It began from a first principle: "The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'"[276] The Court accepted that the president was pursuing "plainly compelling interests," but held that those interests "do not allow the Court to set aside first principles."[277]

Medellin is worth remembering because the president in that case was acting in foreign affairs, the area where his power is usually strongest, and he still lost. A president cannot turn a treaty obligation into binding law for the states by memo when Congress has not acted.

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[271] Executive Order 13233, "Further Implementation of the Presidential Records Act," November 1, 2001, 66 Fed. Reg. 56025, govinfo.gov. https://www.govinfo.gov/link/fr/66/56025 (accessed November 12, 2026).

[272] Executive Order 13489, "Presidential Records," January 21, 2009, 74 Fed. Reg. 4669, govinfo.gov. https://www.govinfo.gov/link/fr/74/4669 (accessed November 12, 2026).

[273] Medellin v. Texas, 552 U.S. 491 (decided March 25, 2008), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/06-984 (accessed November 12, 2026).

[274] Ibid.

[275] Ibid.

[276] Ibid.

[277] Ibid.

Obama: immigration and recess appointments

President Barack Obama issued 276 executive orders, fewer per year than any president since the 1800s except George W. Bush.[278,279] But some of his biggest actions were not executive orders at all.

DACA and DAPA. In 2012, the Department of Homeland Security created the Deferred Action for Childhood Arrivals program (DACA), which the Supreme Court later described as allowing "certain unauthorized aliens who arrived in the United States as children to apply for a two-year forbearance of removal." "Forbearance of removal" means the government agrees not to deport them for now. The Court noted that "Some 700,000 aliens have availed themselves of this opportunity."[280] DACA was created by a memo from the Secretary of Homeland Security, not by an executive order.[281]

Two years later, the department announced a larger program, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), which "would have made 4.3 million parents of U. S. citizens or lawful permanent residents eligible."[282] Texas and other states sued. A lower court blocked DAPA, and in 2016 the Supreme Court split 4-4, which left the block in place without a written ruling.[283] DAPA never took effect.[284]

Interrogation. On January 22, 2009, Obama signed Executive Order 13491, "Ensuring Lawful Interrogations."[285] It said that any person held by the United States in any armed conflict "shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2-22.3."[286] This order shows how a president can use an order to bind his own officers more tightly than the law requires at the time. It also shows the weakness of that approach. An order like this lasts only as long as presidents choose to keep it, unless Congress writes it into law.

Libya (2011). In 2011, U.S. forces took part in a NATO mission in Libya without a vote of Congress authorizing it. [Not verified: I could not open the Justice Department's legal opinion of April 1, 2011, on this action, so I do not quote it.] On June 24, 2011, the House voted on two measures. A resolution to authorize "the limited use of the United States

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[278] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[279] National Archives, Office of the Federal Register, "Executive Orders Disposition Tables Historical Index" (page last reviewed June 6, 2024). https://www.archives.gov/federal-register/executive-orders/disposition (accessed November 12, 2026).

[280] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/18-587 (accessed November 12, 2026).

[281] Ibid.

[282] Ibid.

[283] United States v. Texas, 579 U.S. 547 (2016) (per curiam, affirmed by an equally divided Court), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/15-674 (accessed November 12, 2026).

[284] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/18-587 (accessed November 12, 2026).

[285] Executive Order 13491, "Ensuring Lawful Interrogations," January 22, 2009, 74 Fed. Reg. 4893, govinfo.gov. https://www.govinfo.gov/link/fr/74/4893 (accessed November 12, 2026).

[286] Ibid.

Armed Forces in support of the NATO mission in Libya" failed 123-295.[287] A bill to limit funding for the operation also failed, 180-238.[288] In other words, the House would neither approve the operation nor cut off its money. Chapter 14 explains why this kind of split result is common in war powers fights.

Recess appointments. In January 2012, Obama made three appointments to the National Labor Relations Board while the Senate was holding brief "pro forma" sessions every few days. In *NLRB v. Noel Canning*, a case involving the National Labor Relations Board (NLRB), decided June 26, 2014, the Supreme Court held that "the Senate is in session when it says that it is, provided that, under its own rules, it retains the capacity to transact Senate business."[289] The appointments were invalid. All nine justices agreed on the result, though they split on the reasoning.[290]

What the records show

- Confirmed: Executive Order 12291 (1981) began White House review of major agency rules; Executive Order 12866 (1993) replaced it and is still the base of that review.
- Confirmed: After 2001, the Supreme Court ruled four times between 2004 and 2008 that detainees had legal rights the administration had not recognized.
- Confirmed: DACA and DAPA were created by Homeland Security memos, not executive orders. DAPA never took effect after a 4-4 Supreme Court split in 2016.
- Confirmed: Congress authorized force after September 11 (98-0 in the Senate, 420-1 in the House) and against Iraq in 2002 (77-23 and 296-133).
- Confirmed: The Supreme Court struck down the Line Item Veto Act in 1998, even though Congress had passed it.
- Confirmed: In *Medellin v. Texas* (2008), the Court held that a presidential memorandum could not by itself require state courts to reopen cases.
- Confirmed: The Supreme Court unanimously struck down Obama's 2012 recess appointments.

Chapter 10: Trump's First Term, Biden and Trump's Second Term

Information in this chapter is current as of November 12, 2026.

The three most recent presidencies have used executive power at a fast pace, and each has met strong resistance in the courts. I take them in order.

[287] U.S. House of Representatives, Office of the Clerk, Roll Calls 493 and 494 (June 24, 2011), H.J.Res. 68 and H.R. 2278, clerk.house.gov. https://clerk.house.gov/evs/2011/roll493.xml (accessed November 12, 2026).

[288] Ibid.

[289] National Labor Relations Board v. Noel Canning, 573 U.S. 513 (2014), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/12-1281 (accessed November 12, 2026).

[290] Ibid.

Trump's first term (2017 to 2021)

President Trump signed 220 executive orders in his first term.[291]

The travel ban. On January 27, 2017, he signed Executive Order 13769, which suspended entry from seven mostly Muslim countries for 90 days.[292] Courts blocked it, and the administration replaced it twice. The third version, Proclamation 9645 of September 24, 2017, restricted entry from a list of countries based on their information-sharing with the United States.[293] On June 26, 2018, in *Trump v. Hawaii*, the Supreme Court upheld it 5-4, holding that "The President has lawfully exercised the broad discretion granted to him under [section] 1182(f) to suspend the entry of aliens into the United States."[294] That section of immigration law lets the president suspend entry of "any class of aliens" he finds would be "detrimental to the interests of the United States."[295]

Notice the source of power. The Court relied on a law Congress passed. This was Justice Jackson's first zone: the president acting with Congress's authorization, where his power "is at its maximum."[296]

First-day revocations. New presidents now begin by undoing their predecessor's orders. On January 20, 2021, Biden signed Executive Order 13992, which revoked several Trump orders on federal regulation, including Executive Order 13771.[297] On January 20, 2025, Trump signed Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," which revoked more than 60 Biden orders in one stroke.[298] [Not verified: the exact number is my count of the orders listed in Executive Order 14148, which came to 67 by number.]

Ending DACA. In September 2017, the administration announced it would end DACA. On June 18, 2020, in *Department of Homeland Security v. Regents of the University of California*, the Supreme Court ruled 5-4 that the way the department ended DACA violated the Administrative Procedure Act because it had not properly considered the

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[291] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[292] Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States," January 27, 2017, 82 Fed. Reg. 8977, govinfo.gov. https://www.govinfo.gov/link/fr/82/8977 (accessed November 12, 2026).

[293] Proclamation 9645, "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats," September 24, 2017, 82 Fed. Reg. 45161, govinfo.gov. https://www.govinfo.gov/link/fr/82/45161 (accessed November 12, 2026).

[294] Trump v. Hawaii, 585 U.S. 667 (2018), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/17-965 (accessed November 12, 2026).

[295] 8 U.S.C. 1182, "Inadmissible aliens," including subsection (f), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/8/1182 (accessed November 12, 2026).

[296] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[297] Executive Order 13992, "Revocation of Certain Executive Orders Concerning Federal Regulation," January 20, 2021, 86 Fed. Reg. 7049, govinfo.gov. https://www.govinfo.gov/link/fr/86/7049 (accessed November 12, 2026).

[298] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

consequences.[299] The Court did not say a president could never end DACA. It said the agency had to give adequate reasons.[300]

The census question. "In March 2018, Secretary of Commerce Wilbur Ross announced in a memo that he had decided to reinstate a citizenship question on the 2020 census questionnaire."[301] On June 27, 2019, in *Department of Commerce v. New York*, the Supreme Court agreed with the lower court that the decision had to go back to the department.[302] The Court found that the stated reason, enforcing the Voting Rights Act, "seems to have been contrived."[303] The majority wrote that "the evidence tells a story that does not match the Secretary's explanation for his decision."[304] The question was not asked in the 2020 census. [Not verified: I did not open a Census Bureau record for that last point.] The case shows that courts look not just at whether the government has a power, but at whether it gave honest reasons for using it.

The border wall emergency. On February 15, 2019, Trump declared a national emergency at the southern border in Proclamation 9844 in order to redirect military construction money to build a border barrier.[305] Congress voted to end the emergency, and Trump vetoed that resolution. I cover this in Chapter 15.

Schedule F. On October 21, 2020, Trump signed Executive Order 13957, which created a new category of federal jobs, called "Schedule F," for positions of a "confidential, policy-determining, policy-making, or policy-advocating character."[306] People in those jobs would lose many civil service protections. President Biden revoked it on January 22, 2021, in Executive Order 14003.[307] On January 20, 2025, Trump restored it in Executive Order 14171.[308] This back-and-forth is a clear example of how an order can be undone and redone as the presidency changes hands.

Biden (2021 to 2025)

President Joe Biden signed 162 executive orders.[309] Some of his most important actions were struck down by the Supreme Court, often under a doctrine called "major questions." In

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[299] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/18-587 (accessed November 12, 2026).

[300] Ibid.

[301] Department of Commerce v. New York, 588 U.S. 752 (decided June 27, 2019), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/18-966 (accessed November 12, 2026).

[302] Ibid.

[303] Ibid.

[304] Ibid.

[305] Proclamation 9844, "Declaring a National Emergency Concerning the Southern Border of the United States," February 15, 2019, 84 Fed. Reg. 4949, govinfo.gov. https://www.govinfo.gov/link/fr/84/4949 (accessed November 12, 2026).

[306] Executive Order 13957, "Creating Schedule F in the Excepted Service," October 21, 2020, 85 Fed. Reg. 67631, govinfo.gov. https://www.govinfo.gov/link/fr/85/67631 (accessed November 12, 2026).

[307] Executive Order 14003, "Protecting the Federal Workforce," January 22, 2021, 86 Fed. Reg. 7231 (January 27, 2021), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf (accessed November 12, 2026).

[308] Executive Order 14171, "Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce," January 20, 2025, 90 Fed. Reg. 8625 (January 31, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02095.pdf (accessed November 12, 2026).

[309] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

plain words, the doctrine says that if an agency claims power to do something of vast economic or political importance, it needs clear permission from Congress.[310]

Student loans. In 2022, the Secretary of Education announced a program to cancel federal student loans, relying on a 2003 law called the HEROES Act. On June 30, 2023, in *Biden v. Nebraska*, the Supreme Court ruled 6-3 that the law "does not allow the Secretary to rewrite that statute to the extent of canceling $430 billion of student loan principal."[311] (That is $430 billion in nominal dollars, as estimated at the time.)

Workplace vaccine rules. In January 2022, the Court blocked a rule from the Occupational Safety and Health Administration (OSHA) requiring large employers to have workers vaccinated against COVID-19 or tested weekly. The Court later described its reasoning as resting in part on the fact that "OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind."[312,313]

Two vaccine rules, two results. The vaccine fights show how much the source of authority matters. On September 9, 2021, Biden signed Executive Order 14042, which told agencies to require federal contractors to follow COVID-19 safety rules, citing the federal procurement law and the goal of contracting with sources "that provide adequate COVID-19 safeguards for their workforce."[314] Separately, the Department of Health and Human Services required vaccination for workers at facilities that take Medicare and Medicaid money.[315]

On January 13, 2022, the Supreme Court decided the OSHA case and the health care case on the same day, with opposite results. It blocked the OSHA rule.[316] But in *Biden v. Missouri*, it allowed the health care rule to take effect, finding that it "falls within the authorities that Congress has conferred upon" the secretary, because Congress had let the secretary set conditions on Medicare and Medicaid funds that he "finds necessary in the interest of the health and safety of individuals who are furnished services."[317] The difference was not who the president was. It was what Congress had written.

Climate rules. In *West Virginia v. EPA* (June 30, 2022), the Court ruled that the Environmental Protection Agency (EPA) lacked clear authority from Congress for the

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[310] West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/20-1530 (accessed November 12, 2026).

[311] Biden v. Nebraska, 600 U.S. 477 (2023), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/22-506 (accessed November 12, 2026).

[312] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School, Kavanaugh, J., dissenting, quoting NFIB v. OSHA. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[313] National Federation of Independent Business v. Department of Labor, OSHA, 595 U.S. 109 (2022) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/21A244 (accessed November 12, 2026).

[314] Executive Order 14042, "Ensuring Adequate COVID Safety Protocols for Federal Contractors," September 9, 2021, 86 Fed. Reg. 50985, govinfo.gov. https://www.govinfo.gov/link/fr/86/50985 (accessed November 12, 2026).

[315] Biden v. Missouri, 595 U.S. 87 (January 13, 2022) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/21A240 (accessed November 12, 2026).

[316] National Federation of Independent Business v. Department of Labor, OSHA, 595 U.S. 109 (2022) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/21A244 (accessed November 12, 2026).

[317] Biden v. Missouri, 595 U.S. 87 (January 13, 2022) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/21A240 (accessed November 12, 2026).

approach it had taken in the Obama-era Clean Power Plan, which Biden's EPA had been reconsidering.[318]

Agency power in general. In *Loper Bright Enterprises v. Raimondo* (June 28, 2024), the Court overruled a 40-year-old rule called "Chevron deference," under which courts had generally accepted an agency's reasonable reading of an unclear law. The Court held that courts "may not defer to an agency interpretation of the law simply because a statute is ambiguous; Chevron is overruled."[319] This shifts power from executive agencies to the courts, no matter which party holds the White House.

Biden also used the pardon power in ways that drew strong criticism, including pardons of members of his own family. Those are covered in Chapter 16.

Trump's second term (2025 to November 12, 2026)

President Trump began his second term on January 20, 2025, by signing 26 executive orders on his first day, according to the Pew Research Center.[320] By December 15, 2025, he had issued 221 orders, "one more than he did during his first four years in office."[321] As of November 12, 2026, the Federal Register listed 291 orders for his second term.[322]

The Federal Register's list for 2025 states that "In 2025, Donald J. Trump signed 225 Executive orders," from Executive Order 14147 through Executive Order 14371.[323]

Many of these orders were challenged in court. Here are the most important cases decided by the Supreme Court so far.

Table 10.1. Major Supreme Court rulings on President Trump's second-term actions, as of November 12, 2026

Case	Decided	Action challenged	Result
Trump v. J.G.G.	April 7, 2025	Removals under the Alien Enemies Act of 1798	Court vacated lower-court orders on venue grounds but held detainees "are entitled to notice and an opportunity to challenge their removal"
A.A.R.P. v. Trump	May 16, 2025	Same	Notice "roughly 24 hours before removal ... surely does not pass muster"; removals of the class temporarily blocked

[318] West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/20-1530 (accessed November 12, 2026).

[319] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/22-451 (accessed November 12, 2026).

[320] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

[321] Ibid.

[322] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[323] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

Case	Decided	Action challenged	Result
Trump v. CASA	June 27, 2025	Universal injunctions against the birthright citizenship order	Universal injunctions "likely exceed" courts' authority; injunctions narrowed
Trump v. Illinois	December 23, 2025	Federalizing the National Guard for Illinois	Request to deploy denied while the case continues
Learning Resources v. Trump	February 20, 2026	Tariffs imposed under IEEPA	"IEEPA does not authorize the President to impose tariffs" (6-3)
Trump v. Slaughter	June 29, 2026	Firing a Federal Trade Commissioner without cause	President may fire FTC commissioners; Humphrey's Executor overruled (6-3)
Trump v. Cook	June 29, 2026	Firing a Federal Reserve governor	Government's request denied; governor stays in office while the case continues (5-4)
Trump v. Barbara	June 30, 2026	Executive Order 14160 on birthright citizenship	Order invalid; children born here to parents unlawfully or temporarily present are citizens (6-3 on the result)
Trump v. California	August 24, 2026	Executive Order 14399 on elections	Lower-court injunction paused; the government was likely to win on standing

Sources: the Court's opinions and orders.[324,325,326,327,328,329,330,331,332]

A closer look at the main cases

The table gives the results. Here is what each major ruling actually said, in the Court's own words where possible.

[324] Trump v. J.G.G., No. 24A931 (U.S. April 7, 2025) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A931 (accessed November 12, 2026).

[325] A.A.R.P. v. Trump, No. 24A1007 (U.S. May 16, 2025) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A1007 (accessed November 12, 2026).

[326] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

[327] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[328] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[329] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[330] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

[331] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[332] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

Universal injunctions (Trump v. CASA, June 27, 2025). The case began as a challenge to the birthright citizenship order, but the Court did not decide whether the order was lawful. It decided a narrower question about the remedy. Justice Amy Coney Barrett wrote for six justices that "Universal injunctions likely exceed the equitable authority that Congress has given to federal courts."[333] Courts may give "complete relief" to the parties before them, but the Court held that "'complete relief' is not synonymous with 'universal relief.'"[334] Justice Sonia Sotomayor, joined by Justices Elena Kagan and Ketanji Brown Jackson, dissented, and Justice Jackson also wrote a separate dissent.[335] Chapter 18 explains why this ruling did not end nationwide relief by other routes, such as class actions.

Removal of an FTC commissioner (Trump v. Slaughter, June 29, 2026). Chief Justice John Roberts wrote for the majority that "The FTC's for-cause removal provision is contrary to the separation of powers enshrined in the Constitution."[336] The opinion rested on the idea that the officers below the president "must be removable by the President" to remain accountable to him.[337] It then went further: "If anything more is left of Humphrey's, we overrule it."[338] Justice Sotomayor, joined by Justices Kagan and Jackson, dissented.[339]

Removal of a Federal Reserve governor (Trump v. Cook, June 29, 2026). On the same day, the Court reached the opposite result for the Federal Reserve. The syllabus explains that "In August 2025, President Trump purported to fire Lisa Cook, a member of the Board of Governors of the Federal Reserve System," and that "Cook was the first Governor to be fired in the central bank's 111-year history."[340] By law, the Fed's governors "serve staggered 14-year terms, and may be removed only 'for cause.'"[341] The Court left in place the lower court's order keeping Cook in office while her case continued. Chief Justice Roberts wrote for five justices; Justices Thomas, Alito and Barrett filed dissents, and Justice Gorsuch joined one of them.[342] The ruling was about an emergency request, so it did not end the case.

Birthright citizenship (Trump v. Barbara, June 30, 2026). This was the ruling on whether Executive Order 14160 was lawful. The Court held that "Children born in the United States to parents unlawfully or temporarily present are 'subject to the jurisdiction' of the United States and are citizens at birth under the Fourteenth Amendment's Citizenship Clause."[343] The majority traced the clause to the English common law and to the

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[333] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

[334] Ibid.

[335] Ibid.

[336] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[337] Ibid.

[338] Ibid.

[339] Ibid.

[340] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

[341] Ibid.

[342] Ibid.

[343] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

"widespread condemnation" of the *Dred Scott* decision.[344] Chief Justice Roberts wrote the opinion of the Court, and Justice Kavanaugh filed an opinion concurring in the judgment and dissenting in part.[345]

Federalizing the National Guard (Trump v. Illinois, December 23, 2025). The Court refused to let the deployment go forward while the case continued. The dissent by Justice Alito, joined by Justice Thomas, objected that the Court had read the words "unable with the regular forces to execute the laws of the United States" in 10 U.S.C. 12406 to add a limit that, in the dissent's words, "has no grounding in the statutory text."[346] Chapter 14 covers this law and the Insurrection Act.

Elections (Trump v. California, August 24, 2026). The Court paused a lower-court injunction against Executive Order 14399, an order "regarding election integrity" that a group of states said "unconstitutionally infringes on their authority to administer elections."[347] The ruling turned on whether the states had standing to sue, not on whether the order itself was lawful.[348] The details belong to the subject of elections, which another book in this series covers.

A few points stand out:

- **The record is mixed.** The administration won some major cases, such as *CASA*, *Slaughter* and *Trump v. California*, and lost others, such as the tariff, birthright citizenship and Federal Reserve cases.
- **Many rulings were temporary.** *J.G.G.*, *A.A.R.P.*, *Illinois*, *Cook* and *California* were rulings on emergency requests while the cases continued. The final word on those questions may come later.
- **The Court did not split on simple party lines.** Chief Justice Roberts, appointed by a Republican president, wrote the majority opinion in the tariff, birthright citizenship and Federal Reserve cases against the administration and in *Slaughter* for it.[349,350,351,352] In *Cook*, Justice Brett Kavanaugh joined the three justices appointed by Democratic presidents in the majority, while Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Amy Coney Barrett dissented.[353]

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[344] Ibid.

[345] Ibid.

[346] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[347] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

[348] Ibid.

[349] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[350] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[351] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

[352] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[353] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

Two orders from this period deal with elections: Executive Order 14248 of March 25, 2025, and Executive Order 14399 of 2026.[354,355] The details of those orders and the court fights over them belong to a separate subject, elections, so I mention them here only as examples of orders that direct agencies and draw lawsuits from states.

Chapter 19 gives the full picture of where these and other cases stood on November 12, 2026.

What the records show

- Confirmed: President Trump signed 220 orders in his first term and, by Federal Register count, 291 in the first part of his second term through November 12, 2026. President Biden signed 162.

- Confirmed: The Supreme Court upheld the third travel ban in 2018, struck down the way DACA was ended in 2020, struck down Biden's student loan plan in 2023, and struck down the IEEPA tariffs and the birthright citizenship order in 2026.

- Confirmed: Schedule F was created in 2020, revoked in 2021 and restored in 2025, each time by executive order.

- Unknown: Several 2025 and 2026 rulings were temporary. Final rulings on the Alien Enemies Act, the National Guard and the Federal Reserve governor's removal were not in hand on November 12, 2026.

[354] Executive Order 14248, "Preserving and Protecting the Integrity of American Elections," March 25, 2025, 90 Fed. Reg. 14005 (March 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-03-28/pdf/2025-05523.pdf (accessed November 12, 2026).

[355] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

Part Four: The Checks on a President

Part Three showed what presidents have done. This part shows what can stop them. The framers did not trust any single branch with unchecked power. James Madison wrote that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny."[356] The Constitution answers that worry by giving each branch tools to slow or stop the others.

Chapter 11 covers Congress. Chapter 12 covers the courts. Chapter 13 covers everything else: elections, term limits, the Twenty-fifth Amendment, the states, inspectors general and the civil service.

Chapter 11: Congress

Information in this chapter is current as of November 12, 2026.

Congress has more tools to check a president than any other body. It writes the laws that most executive orders depend on. It controls the money. The Senate confirms the president's top officials. Congress can investigate, and in the end it can remove a president through impeachment.[357] The catch is that most of these tools need a large majority, a willing majority, or both.

Writing and rewriting the law

The simplest check is also the most powerful. Most executive orders rest on authority that Congress gave the president in a law. If Congress changes the law, the order loses its footing. If Congress passes a law that conflicts with an order, the law wins, as long as the subject is one the Constitution gives to Congress.[358]

Justice Robert Jackson explained this in his concurring opinion in the 1952 steel seizure case. He sorted presidential actions into three groups. "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum." When Congress has said nothing, "there is a zone of twilight in which he and Congress may have concurrent authority." And "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb."[359] Courts still use these three groups today. Chapter 12 shows how.

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[356] James Madison, The Federalist No. 47 (1788), Avalon Project, Yale Law School Lillian Goldman Law Library. https://avalon.law.yale.edu/18th_century/fed47.asp (accessed November 12, 2026).

[357] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[358] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[359] Ibid.

The problem is the veto. A president can veto a bill that would overturn one of his orders, and Congress then needs a two-thirds vote in both chambers to override.[360] That is a high bar, and Congress rarely clears it.

Table 11.1. Vetoes and overrides, selected presidents (Senate count as of November 12, 2026)

President	Total vetoes	Overridden
Franklin D. Roosevelt (1933-1945)	635	9
Ronald Reagan (1981-1989)	78	9
George H. W. Bush (1989-1993)	44	1
William J. Clinton (1993-2001)	37	2
George W. Bush (2001-2009)	12	4
Barack Obama (2009-2017)	12	1
Donald J. Trump (2017-2021)	10	1
Joseph R. Biden, Jr. (2021-2025)	13	0
Donald J. Trump (2025-)	2	0
All presidents, 1789 to present	2,599	112

Source: U.S. Senate, "Vetoes, 1789 to Present."[361]

Across the whole history of the country, Congress has overridden 112 of 2,599 vetoes, about 4 percent.[362] That math explains a lot about modern politics. A Congress controlled by the president's own party will rarely try to overturn his orders. A Congress controlled by the other party can pass a bill against an order, but it usually cannot override the veto that follows.

Congress cannot get around the veto by handing the president a narrower version of it, either. In 1996 Congress passed the Line Item Veto Act, which let the president cancel individual spending items after signing a bill. In 1998 the Supreme Court struck it down in *Clinton v. City of New York*, holding that "The Act's cancellation procedures violate the Presentment Clause."[363] The veto is all or nothing: the president signs the whole bill or vetoes the whole bill.[364]

The power of the purse

The Constitution says, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."[365] An appropriation is a law that lets the government spend money for a stated purpose. This clause gives Congress control over what the government

[360] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[361] U.S. Senate, "Vetoes, 1789 to Present," Summary of Bills Vetoed, senate.gov. https://www.senate.gov/legislative/vetoes/vetoCounts.htm (accessed November 12, 2026).

[362] Ibid.

[363] Clinton v. City of New York, 524 U.S. 417 (1998), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/97-1374 (accessed November 12, 2026).

[364] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 7. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[365] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

can afford to do. An executive order that needs money no law provides cannot be carried out.

The purse also limits the executive branch directly. A law called the Antideficiency Act says that an officer or employee of the federal government "may not ... make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."[366] The same law bars agencies from committing the government to pay money "before an appropriation is made unless authorized by law."[367] This law is a main reason agencies stop most work when Congress does not pass funding bills on time. No executive order can spend money that Congress has not provided, and no president can sign one that makes an agency do so.[368,369]

The purse works in the other direction too. Can a president refuse to spend money Congress has provided? This is called impoundment. Chapter 8 told how President Richard Nixon's refusals led to the Impoundment Control Act of 1974 and to the Supreme Court's ruling in *Train v. City of New York* that his administration had to release funds Congress had provided.[370,371]

Under that law, if a president wants to cancel money Congress has provided, he must send Congress a "special message" asking it to rescind the money. Rescind means take back.[372] The law then gives Congress 45 days of session to act. If Congress does not pass a rescission bill in that time, the money "shall be made available for obligation."[373] The law also gives the Comptroller General, who heads the Government Accountability Office (GAO), the power to sue in federal court to force the money to be released.[374]

An earlier test: Ukraine aid in 2019. The Impoundment Control Act was tested in President Trump's first term too. In 2019, the Office of Management and Budget held back security assistance funds that Congress had provided for Ukraine. On January 16, 2020, GAO concluded: "OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act (ICA)." It added that "The withholding was not a programmatic delay" and "Therefore, we conclude that OMB violated the ICA."[375] A programmatic delay is a pause for practical reasons, such as finishing paperwork, which the law allows. GAO's view

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[366] 31 U.S.C. 1341, "Limitations on expending and obligating amounts" (Antideficiency Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/31/1341 (accessed November 12, 2026).

[367] Ibid.

[368] Ibid.

[369] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787), art. I, sec. 9. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[370] Congressional Budget and Impoundment Control Act of 1974, Public Law 93-344, 88 Stat. 297, govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg297.pdf (accessed November 12, 2026).

[371] Train v. City of New York, 420 U.S. 35 (1975), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/420/35 (accessed November 12, 2026).

[372] 2 U.S.C. 683, "Rescission of budget authority," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/2/683 (accessed November 12, 2026).

[373] Ibid.

[374] 2 U.S.C. 687, "Suits by Comptroller General," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/2/687 (accessed November 12, 2026).

[375] U.S. Government Accountability Office, "Office of Management and Budget--Withholding of Ukraine Security Assistance," B-331564, January 16, 2020. https://www.gao.gov/products/b-331564 (accessed November 12, 2026).

was that a pause to serve the president's own policy goals is not. The same question came back on a much larger scale in 2025, as the next section shows.

The 2025 and 2026 fights over spending

The spending fight of 2025 and 2026 shows both sides of this check.

Congress said yes once. On June 3, 2025, President Trump sent Congress a special message asking it to rescind certain funds. Congress passed the Rescissions Act of 2025, and the president signed it on July 24, 2025.[376] The law canceled money for foreign aid programs and international organizations, and it rescinded the funds already provided for the Corporation for Public Broadcasting for fiscal years 2026 and 2027.[377] The listed dollar amounts in the law add up to about $7.9 billion, by my own addition, plus the public broadcasting funds, which the law does not state as a dollar figure.[378] This was the Impoundment Control Act working as written: the president asked, and Congress agreed.

The pocket rescission. Later in 2025 the administration tried a different approach. Near the end of the fiscal year it sent a special message proposing to rescind about $4 billion in foreign aid that was set to expire on September 30.[379] Because the 45-day clock would run past that date, the money would expire before Congress had to act. Critics call this a "pocket rescission," after the pocket veto.

The GAO, which works for Congress, had already taken the position that "The Impoundment Control Act does not permit the withholding of funds proposed for rescission through their expiration date."[380] The administration disagreed. Groups that received foreign aid sued. On September 26, 2025, the Supreme Court granted the government's request to pause a lower-court order requiring the money to be spent. The Court said the government "has made a sufficient showing that the Impoundment Control Act precludes respondents' suit, brought pursuant to the Administrative Procedure Act, to enforce the appropriations at issue here."[381]

Read that sentence carefully. The Court did not say pocket rescissions are legal. It said that, at an early stage, the private groups probably could not sue under the law they used. Justice Elena Kagan, joined by Justices Sonia Sotomayor and Ketanji Brown Jackson, dissented.[382] The question of whether a pocket rescission is lawful was left for another day.

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[376] Rescissions Act of 2025, Public Law 119-28, 139 Stat. 467 (July 24, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ28/html/PLAW-119publ28.htm (accessed November 12, 2026).

[377] Ibid.

[378] Ibid.

[379] Department of State v. AIDS Vaccine Advocacy Coalition, No. 25A269 (U.S. September 26, 2025), order and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A269 (accessed November 12, 2026).

[380] U.S. Government Accountability Office, "Impoundment Control Act," Appropriations Law decisions page, gao.gov. https://www.gao.gov/legal/appropriations-law/impoundment-control-act (accessed November 12, 2026).

[381] Department of State v. AIDS Vaccine Advocacy Coalition, No. 25A269 (U.S. September 26, 2025), order and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A269 (accessed November 12, 2026).

[382] Ibid.

GAO findings. From May 2025 through October 2026, GAO issued 13 decisions on whether agencies had illegally held back funds. It found a violation in seven, no violation in four, and a mix in two.[383]

Table 11.3. GAO Impoundment Control Act decisions, May 2025 to October 2026 (as listed by GAO on November 12, 2026)

Decision	Date	Agency and program	GAO finding
B-337137	May 22, 2025	Transportation: state electric vehicle charging plans	Violation
B-337142.1	June 16, 2025	Energy: actions on wind energy	No violation
B-337375	June 16, 2025	Institute of Museum and Library Services: reduced functions	Violation
B-337233	July 23, 2025	Interior: water recycling program pause	No violation
B-337208	July 31, 2025	Energy: Renew America's Schools program	Both
B-337366	July 31, 2025	Homeland Security: staff cuts at three offices	No violation
B-337203	August 5, 2025	Health and Human Services: National Institutes of Health grants	Violation
B-337209	August 5, 2025	Agriculture: conservation program funds	No violation
B-337204.1	September 15, 2025	Federal Emergency Management Agency (FEMA): fiscal year 2025 assistance funds	Both
B-337204.2	September 29, 2025	FEMA: prior-year assistance funds	Violation
B-337485	October 7, 2026	EPA: Community Change grants	Violation
B-337872	October 7, 2026	Health and Human Services: research agency grants	Violation
B-337813	October 7, 2026	Education: child care grants for student parents	No violation

Source: U.S. Government Accountability Office, "Impoundment Control Act."[384]

GAO also reviewed the president's special messages of June 3, 2025, August 28, 2025, and September 25, 2026.[385] A GAO decision is not a court ruling. It is Congress's own watchdog stating its view of the law. The law gives the Comptroller General the power to sue, and

[383] U.S. Government Accountability Office, "Impoundment Control Act," Appropriations Law decisions page, gao.gov. https://www.gao.gov/legal/appropriations-law/impoundment-control-act (accessed November 12, 2026).

[384] Ibid.

[385] Ibid.

whether any such suit was filed over these decisions is something I could not confirm. [Not verified]

The Congressional Review Act

The Congressional Review Act lets Congress overturn a new rule issued by an agency, using a fast-track process.[386] It applies to agency rules, not to executive orders themselves. A resolution of disapproval goes to the president like any other bill, so the president can veto it.[387] In practice, that means a disapproval usually succeeds only when Congress and the president agree, as when a new Congress and a new president undo rules issued late in the previous administration.

In 2025, for example, the House voted to disapprove Environmental Protection Agency approvals of California's vehicle emission standards.[388] Those votes were Congress and the president working together to undo a prior administration's action, not Congress checking the sitting president.

Why Congress cannot use shortcuts

In the 1970s, Congress wrote "legislative veto" provisions into many laws. These let one or both chambers cancel an executive action with a simple resolution that never went to the president. In 1983, in *INS v. Chadha*, a case brought by the Immigration and Naturalization Service (INS), the Supreme Court struck this down. Lawmaking, the Court said, must follow "a single, finely wrought and exhaustively considered, procedure": passage by both chambers and presentment to the president.[389]

Chadha matters for executive power because the National Emergencies Act and the War Powers Resolution were both written with legislative-veto shortcuts. Today the emergencies law says an emergency ends if "there is enacted into law a joint resolution terminating the emergency," and a joint resolution goes to the president, who can veto it.[390] The War Powers Resolution still contains a concurrent-resolution provision, which says forces "shall be removed by the President if the Congress so directs by concurrent resolution."[391] Chapter 14 shows what happened when both chambers passed such a resolution in 2026.

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[386] 5 U.S.C. 801, "Congressional review," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/801 (accessed November 12, 2026).

[387] 5 U.S.C. 802, "Congressional disapproval procedure," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/802 (accessed November 12, 2026).

[388] U.S. House of Representatives, Office of the Clerk, Roll Calls 111, 112 and 114 (April 30 and May 1, 2025), on H.J.Res. 87, 89 and 88, disapproving EPA rules on California vehicle emission standards. https://clerk.house.gov/Votes/2025111 (accessed November 12, 2026).

[389] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/462/919 (accessed November 12, 2026).

[390] 50 U.S.C. 1622, "National emergencies" (termination; National Emergencies Act sec. 202), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1622 (accessed November 12, 2026).

[391] 50 U.S.C. 1544, "Congressional action" (War Powers Resolution sec. 5), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1544 (accessed November 12, 2026).

Confirmation and oversight

The Senate must confirm cabinet secretaries, ambassadors, federal judges and many other officials.[392] A president who cannot get nominees confirmed must rely on acting officials, and Chapter 9 showed how the Supreme Court limited recess appointments in *NLRB v. Noel Canning*.[393]

When a confirmed post is empty, a law called the Federal Vacancies Reform Act controls who can fill it on an acting basis and for how long. It generally lets the first assistant to the office serve as the acting officer, or lets the president choose certain other officials.[394] An acting officer may serve "for no longer than 210 days beginning on the date the vacancy occurs," with longer periods allowed while a nomination is pending before the Senate.[395] Presidents of both parties have relied on acting officials, and fights over whether an acting official was lawfully serving come up often in court. [Not verified: I did not gather a list of such court cases for this edition.]

The Senate's confirmation power also ties back to the oldest fight over presidential power in this book. In 1867 Congress tried to require the Senate's consent not just to appoint officials but to fire them. Chapter 6 told how that law led to the impeachment of Andrew Johnson, and how the Supreme Court later said such a requirement was invalid.[396,397]

Congress can also investigate. Committees hold hearings and issue subpoenas. When committees of the House subpoenaed President Trump's financial records in 2019, the Supreme Court in *Trump v. Mazars* (2020) said Congress can seek a president's information but set limits, requiring courts to weigh whether the request served a valid legislative purpose and was no broader than needed.[398]

Congress's tools at a glance

The table below pulls together the tools in this chapter and what each one takes to use. It shows why the check Congress has on paper is often weaker in practice.

Table 11.4. What it takes for Congress to check a president

Tool	What it takes	Can the president block it?
Pass a law that overrides an order	Majority in both chambers	Yes, by veto, unless two-thirds of both chambers override
Refuse to fund an action	Leave it out of the appropriation	No. Money cannot be spent

[392] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[393] National Labor Relations Board v. Noel Canning, 573 U.S. 513 (2014), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/12-1281 (accessed November 12, 2026).

[394] 5 U.S.C. 3345, "Acting officer" (Federal Vacancies Reform Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/3345 (accessed November 12, 2026).

[395] 5 U.S.C. 3346, "Time limitation" (Federal Vacancies Reform Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/3346 (accessed November 12, 2026).

[396] U.S. Senate, "The Impeachment of Andrew Johnson (1868) President of the United States," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-johnson.htm (accessed November 12, 2026).

[397] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

[398] Trump v. Mazars USA, LLP, 591 U.S. 848 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/19-715 (accessed November 12, 2026).

Tool	What it takes	Can the president block it?
		without an appropriation
Approve a rescission request	Majority in both chambers within 45 days of session	Not applicable; the president asked for it
Disapprove an agency rule (Congressional Review Act)	Majority in both chambers	Yes, by veto
End a national emergency	Joint resolution passed by both chambers	Yes, by veto
Direct removal of forces (War Powers Resolution)	Concurrent resolution passed by both chambers	Presidents say such a resolution does not bind them; no court has ruled
Refuse to confirm a nominee	Senate majority votes no or does not act	No, but acting officials may serve for limited periods
Investigate	A committee vote to issue a subpoena	Can resist in court; courts weigh the request
Impeach and remove	House majority to impeach; two-thirds of senators present to convict	No

Sources: the Constitution and the laws cited in this chapter.[399,400,401,402,403,404,405,406]

Impeachment

The Constitution's final check is removal. "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."[407] The House impeaches by majority vote, which is like an indictment. The Senate then holds a trial, and conviction requires two-thirds of the senators present.[408]

Alexander Hamilton wrote that impeachable offenses "are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust." He called them "POLITICAL," because "they relate chiefly to injuries done immediately to the society itself."[409]

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[399] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[400] 2 U.S.C. 683, "Rescission of budget authority," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/2/683 (accessed November 12, 2026).

[401] 5 U.S.C. 802, "Congressional disapproval procedure," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/802 (accessed November 12, 2026).

[402] 50 U.S.C. 1622, "National emergencies" (termination; National Emergencies Act sec. 202), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1622 (accessed November 12, 2026).

[403] 50 U.S.C. 1544, "Congressional action" (War Powers Resolution sec. 5), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1544 (accessed November 12, 2026).

[404] 5 U.S.C. 3346, "Time limitation" (Federal Vacancies Reform Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/3346 (accessed November 12, 2026).

[405] Trump v. Mazars USA, LLP, 591 U.S. 848 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/19-715 (accessed November 12, 2026).

[406] 31 U.S.C. 1341, "Limitations on expending and obligating amounts" (Antideficiency Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/31/1341 (accessed November 12, 2026).

[407] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[408] Ibid.

[409] Alexander Hamilton, The Federalist No. 65 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed65.asp (accessed November 12, 2026).

Table 11.2. Presidential impeachments

President	Impeached by the House	Charges (summary)	Senate result
Andrew Johnson	February 24, 1868	Violating the Tenure of Office Act by removing Secretary of War Edwin Stanton	Acquitted
William J. Clinton	December 19, 1998	Lying under oath to a federal grand jury; obstruction of justice	Not guilty, 45-55 and 50-50 (February 12, 1999)
Donald J. Trump	December 18, 2019	Abuse of power; obstruction of Congress	Not guilty, 48-52 and 47-53 (February 5, 2020)
Donald J. Trump	January 13, 2021	Incitement of insurrection	Not guilty, 57-43 (February 13, 2021)

Sources: U.S. House of Representatives, History, Art and Archives, "List of Individuals Impeached by the House of Representatives"; U.S. Senate roll call votes.[410,411,412,413]

No president has ever been removed by the Senate.[414] The closest case is Richard Nixon, who resigned in 1974 before the full House voted on articles of impeachment.[415] In the 2021 trial, 57 senators voted to convict, a majority but 10 short of the 67 needed.[416]

The lesson is the same one the veto table teaches. Impeachment is real, and the threat of it shapes behavior. But removal requires two-thirds of the Senate, and in a closely divided country that means senators from the president's own party must vote against him. That has never happened in enough numbers.

What the records show

- Confirmed: Congress has overridden 112 of 2,599 presidential vetoes since 1789.
- Confirmed: Congress approved a rescission request in July 2025 (the Rescissions Act of 2025). In September 2025 the Supreme Court let the administration hold back about $4 billion in foreign aid while a case continued, ruling only on who could sue.
- Confirmed: Three presidents have been impeached, one of them twice. None was convicted.
- Interpretation: Whether a "pocket rescission" is legal is disputed. GAO says no. The administration says yes. No court had issued a final ruling on the question as of

[410] U.S. House of Representatives, History, Art and Archives, "List of Individuals Impeached by the House of Representatives." https://history.house.gov/Institution/Impeachment/Impeachment-List/ (accessed November 12, 2026).

[411] U.S. Senate, Roll Call Votes 17 and 18, 106th Congress, 1st Session, "Guilty or Not Guilty H.Res. 611," February 12, 1999. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1061/vote_106_1_00017.htm (accessed November 12, 2026).

[412] U.S. Senate, Roll Call Votes 33 and 34, 116th Congress, 2nd Session, "Guilty or Not Guilty H.Res. 755," February 5, 2020. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1162/vote_116_2_00033.htm (accessed November 12, 2026).

[413] U.S. Senate, Roll Call Vote 59, 117th Congress, 1st Session, "Guilty or Not Guilty H.Res. 24," February 13, 2021. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00059.htm (accessed November 12, 2026).

[414] U.S. House of Representatives, History, Art and Archives, "List of Individuals Impeached by the House of Representatives." https://history.house.gov/Institution/Impeachment/Impeachment-List/ (accessed November 12, 2026).

[415] Proclamation 4311, "Granting Pardon to Richard Nixon," September 8, 1974, 39 Fed. Reg. 32601, govinfo.gov. https://www.govinfo.gov/link/fr/39/32601 (accessed November 12, 2026).

[416] U.S. Senate, Roll Call Vote 59, 117th Congress, 1st Session, "Guilty or Not Guilty H.Res. 24," February 13, 2021. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1171/vote_117_1_00059.htm (accessed November 12, 2026).

November 12, 2026.

Chapter 12: The Courts

Information in this chapter is current as of November 12, 2026.

Courts cannot act on their own. They wait for someone to bring a case. They have no army and no budget of their own. Hamilton wrote that the judiciary "may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."[417] Even so, the courts have become the busiest check on presidential power. This chapter explains the main questions courts ask.

Question one: Did Congress allow this?

Most court fights over executive orders are not about the Constitution. They are about whether a law gives the president or an agency the power claimed. Courts read the law and decide.

Jackson's three groups from the steel seizure case frame this question.[418] The 2026 tariff case is an example. The president cited the International Emergency Economic Powers Act. The Court read the law and held that "IEEPA does not authorize the President to impose tariffs."[419]

Two recent doctrines make this question harder for presidents of either party:

- **Major questions.** In *West Virginia v. EPA* (2022), the Court said that in "extraordinary cases" involving vast economic or political significance, an agency "must point to 'clear congressional authorization' for the authority it claims."[420] The Court used this reasoning to strike down President Biden's student loan plan in *Biden v. Nebraska* (2023), and used similar reasoning in 2022 to block his vaccine-or-test rule for large employers.[421,422]
- **No more automatic deference.** For 40 years, under a case called *Chevron*, courts often deferred to an agency's reading of an unclear law. In *Loper Bright Enterprises v. Raimondo* (2024), the Court overruled that approach: "Courts must exercise their

[417] Alexander Hamilton, The Federalist No. 78 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed78.asp (accessed November 12, 2026).

[418] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[419] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[420] West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/20-1530 (accessed November 12, 2026).

[421] Biden v. Nebraska, 600 U.S. 477 (2023), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/22-506 (accessed November 12, 2026).

[422] National Federation of Independent Business v. Department of Labor, OSHA, 595 U.S. 109 (2022) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/21A244 (accessed November 12, 2026).

independent judgment in deciding whether an agency has acted within its statutory authority."[423]

Both doctrines were first used mainly against Democratic administrations. The tariff ruling in 2026 showed they can cut against a Republican one too, though the justices disagreed about the reasoning. Justice Kagan, joined by Justices Sotomayor and Jackson, agreed the tariffs were not authorized but said the Court did not need the major questions doctrine to reach that result.[424]

Question two: Does the Constitution allow this?

Sometimes the question is whether the Constitution itself permits an action, regardless of what Congress said. The birthright citizenship case, *Trump v. Barbara* (2026), turned on the Fourteenth Amendment and on a federal law that repeats its words.[425] The removal cases turn on Article II.

Question three: Who can sue, and what can the court order?

Not everyone who dislikes an order can challenge it. A person must show a real injury caused by the action. This is called standing. In *Trump v. California* (2026), the Court paused a lower-court order partly because it found the government was likely to win on standing.[426]

Courts also cannot sue the president directly under the main law that governs agency action, the Administrative Procedure Act. In *Franklin v. Massachusetts* (1992), the Court held that the president is not an "agency" under that law.[427] So challengers usually sue the agencies and officials who carry out an order.

Then there is the question of how broad a court's order can be. Until 2025, a single district judge could issue a "universal injunction" blocking a policy nationwide for everyone. In *Trump v. CASA* (2025), the Court held that universal injunctions "likely exceed the equitable authority that Congress has granted to federal courts."[428] Challengers can still seek relief for themselves, through class actions, or through suits by states, and the birthright citizenship order was still struck down a year later.[429]

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[423] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/22-451 (accessed November 12, 2026).

[424] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[425] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[426] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

[427] Franklin v. Massachusetts, 505 U.S. 788 (1992), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/505/788 (accessed November 12, 2026).

[428] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

[429] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

The emergency docket

More and more presidential power cases are decided first on the Court's emergency docket. These are requests to pause a lower-court order while a case continues. The Court often rules quickly, sometimes without full briefing or argument, and sometimes with only a short unsigned order.

These rulings are officially temporary, but the Court has said they carry weight. In July 2025 it wrote: "Although our interim orders are not conclusive as to the merits, they inform how a court should exercise its equitable discretion in like cases."[430] In practice, an emergency order can decide what happens for months or years. Table 10.1 in Chapter 10 lists several of these rulings.

The removal cases

Who can the president fire? The answer has shifted over a century:

- *Myers v. United States* (1926) held the president can remove executive officers he appoints.[431]
- *Humphrey's Executor v. United States* (1935) held Congress can protect members of independent, multi-member commissions such as the Federal Trade Commission (FTC) from removal without cause.[432]
- *Seila Law v. CFPB* (2020), a case about the Consumer Financial Protection Bureau (CFPB), held that a single agency head with removal protection violates the separation of powers.[433]
- In 2025, the Court let the president remove members of the National Labor Relations Board, the Merit Systems Protection Board and the Consumer Product Safety Commission while their cases continued.[434,435]
- *Trump v. Slaughter* (June 29, 2026) held that the FTC's removal protection is unconstitutional and overruled what was left of *Humphrey's Executor*.[436]
- *Trump v. Cook* (June 29, 2026) went the other way for the Federal Reserve. The Court refused to let the president remove Governor Lisa Cook while her case continued.[437]

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[430] Trump v. Boyle, No. 25A11 (U.S. July 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A11 (accessed November 12, 2026).

[431] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

[432] Humphrey's Executor v. United States, 295 U.S. 602 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[433] Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/19-7 (accessed November 12, 2026).

[434] Trump v. Wilcox, No. 24A966 (U.S. May 22, 2025), order and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A966 (accessed November 12, 2026).

[435] Trump v. Boyle, No. 25A11 (U.S. July 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A11 (accessed November 12, 2026).

[436] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[437] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

The result, as of November 12, 2026, is that the president has broad power to fire the leaders of most agencies, with the Federal Reserve treated as a special case. Chapter 2 gives each side's arguments about this "unitary executive" view.

Can a president be sued or prosecuted?

A separate line of cases asks whether a president is personally answerable in court.

Table 12.1. Supreme Court cases on presidential immunity and evidence

Case	Year	What the Court held
United States v. Nixon	1974	The president must turn over subpoenaed tapes for a criminal trial; a general claim of privilege does not override that need
Nixon v. Fitzgerald	1982	A president has absolute immunity from civil damages suits over his official acts
Clinton v. Jones	1997	A sitting president can be sued over conduct before taking office, and the case need not wait until he leaves office
Trump v. Vance	2020	A sitting president is not absolutely immune from a state criminal subpoena for his private papers
Trump v. Mazars	2020	Congress may subpoena a president's personal records, subject to limits courts must apply
Trump v. United States	2024	A former president has absolute immunity from criminal prosecution for core constitutional powers, at least presumptive immunity for other official acts, and no immunity for unofficial acts

Sources: the opinions.[438,439,440,441,442,443]

The idea that a president can be made to answer a subpoena is older than any of these cases. As the Court retold in 2020, "In 1807, John Marshall, presiding as Circuit Justice for Virginia over the treason trial of Aaron Burr, granted Burr's motion for a subpoena duces

[438] United States v. Nixon, 418 U.S. 683 (1974), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026).

[439] Nixon v. Fitzgerald, 457 U.S. 731 (1982), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/457/731 (accessed November 12, 2026).

[440] Clinton v. Jones, 520 U.S. 681 (1997), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/95-1853 (accessed November 12, 2026).

[441] Trump v. Vance, 591 U.S. 786 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/19-635 (accessed November 12, 2026).

[442] Trump v. Mazars USA, LLP, 591 U.S. 848 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/19-715 (accessed November 12, 2026).

[443] Trump v. United States, 603 U.S. 593 (2024), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/23-939 (accessed November 12, 2026).

tecum directed at President Jefferson."[444] A subpoena duces tecum is an order to produce documents. In *Trump v. Vance* the Court built on that history and held that "Article II and the Supremacy Clause do not categorically preclude, or require a heightened standard for, the issuance of a state criminal subpoena to a sitting President."[445]

Civil lawsuits are different. In *Nixon v. Fitzgerald* (1982), the Court held that a president's absolute immunity from civil damages "extends to all acts within the 'outer perimeter' of his duties of office."[446] But in *Clinton v. Jones* (1997), it held that "Deferral of this litigation until petitioner's Presidency ends is not constitutionally required" when the lawsuit is about conduct before the president took office.[447]

Criminal immunity was a new question in 2024. The Court described the case as "the first criminal prosecution in our Nation's history of a former President for actions taken during his Presidency."[448] It held that "the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority," that "he is entitled to at least presumptive immunity from prosecution for all his official acts," and that "There is no immunity for unofficial acts."[449]

Trump v. United States is the most important of these for this book. Chief Justice John Roberts wrote: "The President enjoys no immunity for his unofficial acts, and not everything the President does is official. The President is not above the law. But Congress may not criminalize the President's conduct in carrying out the responsibilities of the Executive Branch under the Constitution."[450]

Justice Sotomayor wrote in dissent: "In every use of official power, the President is now a king above the law."[451]

These are the two strongest statements on each side, in the justices' own words. Chapter 17 tests the popular claim that this ruling makes a president "above the law."

What courts cannot do

Courts decide only the cases in front of them. They cannot stop a president from issuing an order, only from enforcing one that is unlawful. They rely on the executive branch to obey their rulings. And they are slow: the birthright citizenship order was signed in January 2025

[444] Trump v. Vance, 591 U.S. 786 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/19-635 (accessed November 12, 2026).

[445] Ibid.

[446] Nixon v. Fitzgerald, 457 U.S. 731 (1982), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/457/731 (accessed November 12, 2026).

[447] Clinton v. Jones, 520 U.S. 681 (1997), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/95-1853 (accessed November 12, 2026).

[448] Trump v. United States, 603 U.S. 593 (2024), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/23-939 (accessed November 12, 2026).

[449] Ibid.

[450] Ibid.

[451] Ibid.

and finally ruled on in June 2026.[452,453] During that time the order was blocked, but many other policies go into effect and stay in effect while lawsuits move forward.

What the records show

- Confirmed: Courts ask whether a law allows an action, whether the Constitution allows it, and whether the challenger can sue. Most presidential power cases turn on the first question.
- Confirmed: Since 2022 the Court has required clear authorization from Congress for major actions, ended automatic deference to agencies, and limited universal injunctions.
- Confirmed: In 2024 the Court held former presidents have immunity from prosecution for official acts, absolute for core powers and at least presumptive for others.
- Interpretation: Supporters say the immunity ruling protects the office from political prosecutions. Critics, including three dissenting justices, say it puts presidents above the law. Both views are quoted above from the opinions.
- Unknown: How lower courts will apply the immunity ruling in future cases.

Chapter 13: Elections and Other Checks

Information in this chapter is current as of November 12, 2026.

Congress and the courts are not the only checks. Some of the most important limits on a president have nothing to do with lawsuits or votes in Congress.

Elections and term limits

Every four years, voters can replace a president. Every two years, they choose all of the House and a third of the Senate, which can change what Congress is willing to do.[454]

The Twenty-second Amendment, ratified in 1951, caps a president's time in office: "No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President

[452] Executive Order 14160, "Protecting the Meaning and Value of American Citizenship," January 20, 2025, 90 Fed. Reg. 8449, govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-02007.pdf (accessed November 12, 2026).

[453] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[454] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

more than once."[455] Before it, only custom kept presidents to two terms. Franklin Roosevelt was elected four times.[456]

Elections also check executive orders in a quieter way. An order lasts only as long as presidents want it to. Chapter 4 showed how, on his first day back in office in 2025, President Trump revoked dozens of President Biden's orders with a single order.[457] The next president can do the same. Orders are the easiest kind of policy to make and the easiest to undo.

The Twenty-fifth Amendment

The Twenty-fifth Amendment, ratified in 1967, covers what happens when a president dies, resigns or cannot do the job.[458] Its most discussed part is Section 4. It says that when the vice president and a majority of the cabinet "transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President."[459] If the president disagrees, Congress decides, and it takes two-thirds of both chambers to keep the vice president in charge.[460]

Section 4 is about inability, not disagreement. It was not written as a way to remove a president for bad policy, and the two-thirds requirement makes it as hard to use as impeachment.

The states

States check presidents in two ways. First, state attorneys general sue. Many of the cases in this book were brought or joined by states, including the birthright citizenship case, the National Guard case in Illinois, and the elections case from California.[461,462,463]

Second, states run much of what the federal government does: elections, the National Guard when not in federal service, and many federal programs. The law that lets a president call the National Guard into federal service says those orders "shall be issued through the

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[455] National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[456] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[457] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

[458] National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[459] Ibid.

[460] Ibid.

[461] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[462] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[463] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

governors of the States."[464] In *Trump v. Illinois* (December 23, 2025), the Court denied the government's request to deploy the Guard in Illinois while the case continued.[465] Chapter 15 returns to this.

Inspectors general

Each major agency has an inspector general (IG), an internal watchdog who investigates waste and wrongdoing and reports to both the agency head and Congress. The president can remove an IG, but the law requires notice: "the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer."[466] I could not confirm from primary records whether that notice was given for the removals of inspectors general in 2025, so I list it as unknown. [Not verified: I did not reach court records or official notices on this point.]

The civil service

Most federal workers are hired on merit and cannot be fired for their political views. That protection is itself a check, because it means a president must work through career staff who have their own legal duties. Chapter 10 traced how Schedule F, which would move many policy-related jobs out of those protections, was created by executive order in 2020, revoked in 2021 and restored in 2025.[467,468,469]

The press and public opinion

The First Amendment bars Congress from "abridging the freedom of speech, or of the press."[470] Public opinion, in turn, shapes what Congress is willing to do. These checks are hard to measure, and I do not try to rank them. Chapter 19 shows what national surveys found about public views of presidential power in 2025 and 2026.

How the checks fit together

No single check is enough. Congress can pass laws but cannot easily override a veto. Courts can strike down an order but take a long time and only rule on cases brought to them. Elections replace presidents but only every four years. The system relies on all of these working at once, and on officials in each branch being willing to use the tools they have.

What the records show

[464] 10 U.S.C. 12406, "National Guard in Federal service: call," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/10/12406 (accessed November 12, 2026).

[465] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[466] 5 U.S.C. 403, "Appointment of Inspector General; supervision; removal," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/5/403 (accessed November 12, 2026).

[467] Executive Order 13957, "Creating Schedule F in the Excepted Service," October 21, 2020, 85 Fed. Reg. 67631, govinfo.gov. https://www.govinfo.gov/link/fr/85/67631 (accessed November 12, 2026).

[468] Executive Order 14003, "Protecting the Federal Workforce," January 22, 2021, 86 Fed. Reg. 7231 (January 27, 2021), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf (accessed November 12, 2026).

[469] Executive Order 14171, "Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce," January 20, 2025, 90 Fed. Reg. 8625 (January 31, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02095.pdf (accessed November 12, 2026).

[470] National Archives, "The Bill of Rights: A Transcription." https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

- Confirmed: The Twenty-second Amendment limits a president to two elected terms. The Twenty-fifth Amendment allows the vice president and cabinet to declare a president unable to serve, with Congress deciding any dispute by a two-thirds vote.
- Confirmed: Federal law requires 30 days' written notice to Congress before an inspector general is removed.
- Confirmed: States brought or joined many of the major lawsuits against executive orders in 2025 and 2026.
- Unknown: Whether the 2025 removals of inspectors general met the notice requirement. I could not confirm it from primary records.

Part Five: War, Emergencies and Pardons

Three areas of presidential power raise the sharpest questions: sending troops into combat, declaring emergencies, and granting pardons. In each one, the president can act quickly and often alone, and the checks described in Part Four come into play only afterward, if at all.

Chapter 14: War Powers

Information in this chapter is current as of November 12, 2026.

What the Constitution says

The Constitution splits war powers between the branches. Congress has the power "To declare War," "To raise and support Armies," and "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions."[471] The president "shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States."[472]

The framers chose their words on purpose. An early draft gave Congress the power to "make" war. On August 17, 1787, Madison's notes record that "Mr. MADISON and Mr. GERRY moved to insert 'declare,' striking out 'make' war; leaving to the Executive the power to repel sudden attacks."[473] The change was meant to let a president defend the country without waiting for Congress, not to let a president start wars alone. People still argue over how far "repel sudden attacks" stretches.

Eleven declarations, then none

Congress has formally declared war 11 times, in five wars: the War of 1812, the Mexican-American War, the Spanish-American War, World War I and World War II.[474] The last declarations came in June 1942.[475]

Table 14.1. Formal declarations of war by Congress

Against	Date of Senate vote	Senate vote
Great Britain	June 17, 1812	19-13
Mexico	May 12, 1846	40-2
Spain	April 25, 1898	Unanimous consent
Germany	April 4, 1917	82-6
Austria-Hungary	December 7, 1917	74-0
Japan	December 8, 1941	82-0
Germany	December 11, 1941	88-0
Italy	December 11, 1941	90-0

[471] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[472] Ibid.

[473] James Madison, Notes on the Debates in the Federal Convention, August 17, 1787, Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/debates_817.asp (accessed November 12, 2026).

[474] U.S. Senate, "Declarations of War by Congress," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/declarations-of-war.htm (accessed November 12, 2026).

[475] Ibid.

Against	Date of Senate vote	Senate vote
Bulgaria, Hungary and Rumania	June 4, 1942	73-0 each

Source: U.S. Senate, "Declarations of War by Congress."[476]

Since 1942, the United States has fought in Korea, Vietnam, the Persian Gulf, Afghanistan, Iraq and many smaller conflicts without a declaration of war. Congress instead passed resolutions authorizing force, such as the Gulf of Tonkin Resolution of August 10, 1964, which approved "all necessary steps, including the use of armed force" in Southeast Asia, and the 2001 Authorization for Use of Military Force after the September 11 attacks.[477,478] Sometimes, as in Korea in 1950, the president sent forces without either.

Korea: the first big war without a declaration

The Korean War was the turning point. When North Korea invaded South Korea in June 1950, President Truman sent American forces into combat with the support of the United Nations, which had called on member nations "to render every assistance" to repel the attack.[479] Congress did not declare war.[480] In the steel case two years later, the government argued that the troops "were sent to the field by an exercise of the President's constitutional powers," and Justice Jackson pointedly declined to "consider the legal status of the Korean enterprise."[481] Every president since has pointed to Korea as precedent for acting without a declaration, and every critic of presidential war-making has pointed to it as the start of the problem. [Not verified: the claim that every president has cited Korea is my summary, not a counted fact.]

Authorizations instead of declarations

Since 1950, Congress has used a different tool: a law authorizing the use of force. An authorization goes through both chambers and to the president, like any bill. It can be broad or narrow.

The 2001 authorization is the broadest in use. It says "the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons."[482] Notice the words "he determines." The law leaves it to the president to decide who is covered. Presidents of both

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[476] Ibid.

[477] Joint Resolution to promote the maintenance of international peace and security in southeast Asia (Gulf of Tonkin Resolution), Public Law 88-408, 78 Stat. 384 (August 10, 1964), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg384.pdf (accessed November 12, 2026).

[478] Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (September 18, 2001), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-115/pdf/STATUTE-115-Pg224.pdf (accessed November 12, 2026).

[479] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Vinson, C.J., dissenting. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[480] U.S. Senate, "Declarations of War by Congress," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/declarations-of-war.htm (accessed November 12, 2026).

[481] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[482] Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (September 18, 2001), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-115/pdf/STATUTE-115-Pg224.pdf (accessed November 12, 2026).

parties have used it for more than two decades against groups that did not exist on September 11, 2001, which is why many members of Congress argue that it has stretched beyond what Congress meant. [Not verified: I did not open each administration's legal explanation of which groups the 2001 law covers.]

Table 14.3. Votes on major authorizations and war powers measures before 2025

Date	Chamber	Measure	Subject	Result
September 14, 2001	Senate	S.J.Res. 23	Force against those responsible for September 11	Passed 98-0
September 14, 2001	House	H.J.Res. 64	Same	Passed 420-1
October 10, 2002	House	H.J.Res. 114	Force against Iraq	Passed 296-133
October 11, 2002	Senate	H.J.Res. 114	Force against Iraq	Passed 77-23
June 24, 2011	House	H.J.Res. 68	Authorize limited force in Libya	Failed 123-295
June 24, 2011	House	H.R. 2278	Limit funds for Libya operation	Failed 180-238
February 13, 2020	Senate	S.J.Res. 68	Remove forces from hostilities against Iran not authorized by Congress	Passed 55-45
May 7, 2020	Senate	S.J.Res. 68, veto override	Same	Failed 49-44 (two-thirds needed)
March 29, 2023	Senate	S. 316	Repeal the 1991 and 2002 Iraq authorizations	Passed 66-30

Sources: U.S. Senate and House roll call votes.[483,484,485,486,487,488,489]

The table shows two patterns. First, Congress gives broad support at the start of a conflict, when the public mood is strongest. Second, when Congress later tries to limit a president, it usually falls short of a veto-proof majority. The 2020 Iran resolution passed the Senate with 55 votes, but the override attempt got only 49, far short of two-thirds.[490] The 2023 Senate

[483] U.S. Senate, Roll Call Vote 107th Congress, 1st Session, Vote 281 (September 14, 2001), S.J.Res. 23, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1071/vote_107_1_00281.htm (accessed November 12, 2026).

[484] U.S. House of Representatives, Office of the Clerk, Roll Call 342 (September 14, 2001), H.J.Res. 64, clerk.house.gov. https://clerk.house.gov/evs/2001/roll342.xml (accessed November 12, 2026).

[485] U.S. House of Representatives, Office of the Clerk, Roll Call 455 (October 10, 2002), H.J.Res. 114, clerk.house.gov. https://clerk.house.gov/evs/2002/roll455.xml (accessed November 12, 2026).

[486] U.S. Senate, Roll Call Vote 107th Congress, 2nd Session, Vote 237 (October 11, 2002), H.J.Res. 114, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1072/vote_107_2_00237.htm (accessed November 12, 2026).

[487] U.S. House of Representatives, Office of the Clerk, Roll Calls 493 and 494 (June 24, 2011), H.J.Res. 68 and H.R. 2278, clerk.house.gov. https://clerk.house.gov/evs/2011/roll493.xml (accessed November 12, 2026).

[488] U.S. Senate, Roll Call Votes 116th Congress, 2nd Session, Vote 52 (February 13, 2020) and Vote 84 (May 7, 2020), S.J.Res. 68, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_116_2.htm (accessed November 12, 2026).

[489] U.S. Senate, Roll Call Vote 118th Congress, 1st Session, Vote 77 (March 29, 2023), S. 316, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1181/vote_118_1_00077.htm (accessed November 12, 2026).

[490] U.S. Senate, Roll Call Votes 116th Congress, 2nd Session, Vote 52 (February 13, 2020) and Vote 84 (May 7, 2020), S.J.Res. 68, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_116_2.htm (accessed November 12, 2026).

vote to repeal the Iraq authorizations did not become law that year. The repeal finally became law in December 2025 as part of a defense bill the president signed.[491,492] [Not verified: I did not check every House action on S. 316 in 2023 and 2024.]

The Libya votes show a third pattern. In 2011 the House refused to authorize the operation, but it also refused to cut off its money.[493] Congress can disapprove of a war in words while still funding it.

The War Powers Resolution

After Vietnam, Congress tried to take back some control. In 1973 it passed the War Powers Resolution over President Nixon's veto.[494] The law does four main things:

- It states Congress's view that the president can send forces into hostilities "only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces."[495]
- It requires the president to report to Congress "within 48 hours" of sending forces into hostilities or into situations where hostilities are likely.[496]
- It requires the president to end the use of force within 60 days of that report unless Congress has declared war, authorized the action or extended the deadline. The president can add 30 days if needed to withdraw safely.[497]
- It says Congress can order forces removed "by concurrent resolution," a resolution passed by both chambers that does not go to the president.[498]

Every president since Nixon has questioned parts of this law. They have generally filed the 48-hour reports while saying they do so "consistent with" the resolution rather than "pursuant to" it, which signals they do not accept that it binds them. The concurrent-resolution part is weaker still after *INS v. Chadha* (1983), which held that Congress cannot make binding law without presenting it to the president.[499] [Not verified: the "consistent with" wording is a well-known pattern in presidential reports, but I did not open a set of reports to confirm it for every president, so treat it as my summary.]

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[491] U.S. Senate, Roll Call Vote 118th Congress, 1st Session, Vote 77 (March 29, 2023), S. 316, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1181/vote_118_1_00077.htm (accessed November 12, 2026).

[492] National Defense Authorization Act for Fiscal Year 2026, Public Law 119-60, section 8370, "Repeal of Authorizations for Use of Military Force Relating to Iraq," 139 Stat. 718 (approved December 18, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ60/html/PLAW-119publ60.htm (accessed November 12, 2026).

[493] U.S. House of Representatives, Office of the Clerk, Roll Calls 493 and 494 (June 24, 2011), H.J.Res. 68 and H.R. 2278, clerk.house.gov. https://clerk.house.gov/evs/2011/roll493.xml (accessed November 12, 2026).

[494] War Powers Resolution, Public Law 93-148, 87 Stat. 555 (November 7, 1973), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-87/pdf/STATUTE-87-Pg555.pdf (accessed November 12, 2026).

[495] 50 U.S.C. 1541, "Purpose and policy" (War Powers Resolution sec. 2), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1541 (accessed November 12, 2026).

[496] 50 U.S.C. 1543, "Reporting requirement" (War Powers Resolution sec. 4), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1543 (accessed November 12, 2026).

[497] 50 U.S.C. 1544, "Congressional action" (War Powers Resolution sec. 5), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1544 (accessed November 12, 2026).

[498] Ibid.

[499] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/462/919 (accessed November 12, 2026).

The repeal of two old authorizations

On December 18, 2025, the National Defense Authorization Act for Fiscal Year 2026 became law. Section 8370 repealed both the 1991 Gulf War authorization and the 2002 Iraq War authorization.[500] The 2001 authorization against those responsible for the September 11 attacks remained in force.[501,502]

War powers votes in 2025 and 2026

The last two years brought more war powers votes in Congress than any period in decades. The public roll call records show the pattern clearly.

Table 14.2. Selected war powers votes in Congress, 2025-2026 (as of November 12, 2026)

Date	Chamber	Measure	Subject	Result
June 27, 2025	Senate	S.J.Res. 59 (motion to discharge)	Iran	Rejected 47-53
November 6, 2025	Senate	S.J.Res. 90 (motion to discharge)	Venezuela	Rejected 49-51
December 17, 2025	House	H.Con.Res. 61	"presidentially designated terrorist organizations in the Western Hemisphere"	Failed 210-216
December 17, 2025	House	H.Con.Res. 64	Venezuela	Failed 211-213
January 8, 2026	Senate	S.J.Res. 98 (motion to discharge)	Venezuela	Agreed to 52-47
January 14, 2026	Senate	S.J.Res. 98 (point of order against privilege)	Venezuela	Upheld 50-50, Vice President voting yes
March 4, 2026	Senate	S.J.Res. 104 (motion to discharge)	Iran	Rejected 47-53
April 16, 2026	House	H.Con.Res. 40	Iran	Failed 213-214
May 14, 2026	House	H.Con.Res. 75	Iran	Failed 212-212
June 3, 2026	House	H.Con.Res. 86	Iran	Passed 215-208
June 23, 2026	Senate	H.Con.Res. 86	Iran	Agreed to 50-48
July 23, 2026	House	H.Con.Res. 89	Iran	Passed 214-208
September 15, 2026	House	H.Con.Res. 93	Iran	Passed 220-204
September 24, 2026	Senate	H.Con.Res. 89	Iran	Rejected 49-50

Sources: U.S. Senate roll call votes; U.S. House, Office of the Clerk, roll call votes.[503,504]

[500] National Defense Authorization Act for Fiscal Year 2026, Public Law 119-60, section 8370, "Repeal of Authorizations for Use of Military Force Relating to Iraq," 139 Stat. 718 (approved December 18, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ60/html/PLAW-119publ60.htm (accessed November 12, 2026).

[501] Ibid.

[502] Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (September 18, 2001), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-115/pdf/STATUTE-115-Pg224.pdf (accessed November 12, 2026).

[503] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

A few things in this table are worth explaining.

Iran, 2025. On June 27, 2025, the Senate voted 47-53 against taking up a resolution to remove forces from "hostilities against the Islamic Republic of Iran that have not been authorized by Congress."[505] The vote followed U.S. strikes on Iranian nuclear sites in June 2025. [Not verified: I did not open the White House or Defense Department statements on the June 2025 strikes for this edition, so I give no exact date or detail for them here.]

Venezuela. In January 2026, after a U.S. military operation in Venezuela, the Senate voted 52-47 to take up a resolution to remove forces from "hostilities within or against Venezuela that have not been authorized by Congress." Six days later, the Senate decided 50-50, with the vice president breaking the tie, that the resolution no longer qualified for the fast-track procedure, which ended the effort.[506] [Not verified: I did not open an official U.S. statement on the January 2026 operation itself. News reports, which I did not use as evidence, describe it as the capture of Venezuelan leader Nicolas Maduro.]

Iran, 2026. Beginning in March 2026, the Senate voted again and again on resolutions to remove forces from hostilities "within or against the Islamic Republic of Iran," and the House voted on concurrent resolutions under section 5(c) of the War Powers Resolution.[507,508] On June 23, 2026, the Senate agreed to H.Con.Res. 86 by 50-48, after the House had passed it 215-208 on June 3.[509,510] In the 2025 and 2026 records I checked, it is the only time both chambers adopted the same concurrent resolution of this kind. [Not verified: whether this was the first time in the history of the War Powers Resolution. I did not check every Congress since 1973.]

What happened next is the key legal question. Because a concurrent resolution is never presented to the president, the executive branch's long-standing view, based on *Chadha*, is that such a resolution does not bind the president.[511] Congress's own law says forces "shall be removed" if Congress so directs.[512] Which view controls has never been decided by a court. The House passed two more Iran resolutions in July and September 2026, and the

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[504] U.S. House of Representatives, Office of the Clerk, roll call votes 2025-345 and 2025-346 (December 17, 2025) and 2026-114, 2026-170, 2026-199, 2026-282 and 2026-307, clerk.house.gov. https://clerk.house.gov/Votes/2026199 (accessed November 12, 2026).

[505] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

[506] Ibid.

[507] Ibid.

[508] U.S. House of Representatives, Office of the Clerk, roll call votes 2025-345 and 2025-346 (December 17, 2025) and 2026-114, 2026-170, 2026-199, 2026-282 and 2026-307, clerk.house.gov. https://clerk.house.gov/Votes/2026199 (accessed November 12, 2026).

[509] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

[510] U.S. House of Representatives, Office of the Clerk, roll call votes 2025-345 and 2025-346 (December 17, 2025) and 2026-114, 2026-170, 2026-199, 2026-282 and 2026-307, clerk.house.gov. https://clerk.house.gov/Votes/2026199 (accessed November 12, 2026).

[511] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/462/919 (accessed November 12, 2026).

[512] 50 U.S.C. 1544, "Congressional action" (War Powers Resolution sec. 5), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1544 (accessed November 12, 2026).

Senate rejected one of them on September 24, 2026, by 49-50.[513,514] [Not verified: the start date of the 2026 hostilities, any ceasefire, and whether the administration told Congress the hostilities had ended. I could not open the official statements before this edition's cutoff.]

The National Guard and the Insurrection Act

War powers also reach inside the country. Two laws matter most.

The first is 10 U.S.C. 12406. It lets the president call National Guard units into federal service when the country is invaded, when there is "a rebellion or danger of a rebellion," or when "the President is unable with the regular forces to execute the laws of the United States."[515] In 2025 the administration used this law to federalize Guard troops for use in Illinois. In *Trump v. Illinois* (December 23, 2025), the Supreme Court refused to let the deployment in Illinois go forward while the case continued. Justice Samuel Alito, joined by Justice Clarence Thomas, dissented, objecting that the Court had decided the case on the meaning of "regular forces," an argument he said the parties had not raised. Justice Neil Gorsuch dissented separately.[516]

The second is the Insurrection Act, now at 10 U.S.C. 251 to 255. It lets the president use the military "Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings."[517] President Eisenhower relied on this chapter of the law in 1957 to enforce school desegregation at Little Rock.[518]

The Insurrection Act has also been used for riots. On May 1, 1992, President George H.W. Bush signed Executive Order 12804 after violence broke out in Los Angeles. Citing "Chapter 15 of Title 10 of the United States Code," the order directed that "Units and members of the Armed Forces of the United States and Federal law enforcement officers will be used to suppress the violence described in the proclamation and to restore law and order in and about the City and County of Los Angeles."[519] That use came at the request of California's governor. [Not verified: I did not open the governor's request for this edition.] The two uses

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[513] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

[514] U.S. House of Representatives, Office of the Clerk, roll call votes 2025-345 and 2025-346 (December 17, 2025) and 2026-114, 2026-170, 2026-199, 2026-282 and 2026-307, clerk.house.gov. https://clerk.house.gov/Votes/2026199 (accessed November 12, 2026).

[515] 10 U.S.C. 12406, "National Guard in Federal service: call," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/10/12406 (accessed November 12, 2026).

[516] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[517] 10 U.S.C. 252, "Use of militia and armed forces to enforce Federal authority," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/10/252 (accessed November 12, 2026).

[518] Executive Order 10730, "Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas," September 24, 1957, and Proclamation 3204, September 23, 1957, 22 Fed. Reg. 7628 (September 25, 1957), govinfo.gov. https://www.govinfo.gov/link/fr/22/7628 (accessed November 12, 2026).

[519] Executive Order 12804, "Providing for the Restoration of Law and Order in the City and County of Los Angeles, and Other Districts of California," May 1, 1992, 57 Fed. Reg. 19361, govinfo.gov. https://www.govinfo.gov/link/fr/57/19361 (accessed November 12, 2026).

show the range of the law: in 1957 the president used it against a state's resistance, and in 1992 to help a state.[520,521]

Both laws are exceptions to the Posse Comitatus Act, which makes it a crime to use the Army, Navy, Marine Corps, Air Force or Space Force "as a posse comitatus or otherwise to execute the laws" except where "expressly authorized by the Constitution or Act of Congress."[522] Whether 10 U.S.C. 12406 counts as such an authorization was one of the questions Justice Alito said the Court had raised in the Illinois case.[523]

What the records show

- Confirmed: Congress has declared war 11 times, most recently in June 1942. It repealed the 1991 and 2002 Iraq authorizations on December 18, 2025.
- Confirmed: In 2026, both chambers adopted a concurrent resolution under the War Powers Resolution directing removal of forces from hostilities with Iran (House June 3, Senate June 23).
- Interpretation: Congress's law says such a resolution requires removal of forces. Presidents have long argued, relying on *Chadha*, that it cannot bind them. No court has decided the question.
- Unknown: The official dates for the start and end of the 2026 Iran hostilities, which I could not confirm from government records for this edition.

Chapter 15: Emergency Powers

Information in this chapter is current as of November 12, 2026.

How emergency powers work

The Constitution mentions emergencies only in a few places, such as allowing the writ of habeas corpus to be suspended "when in Cases of Rebellion or Invasion the public Safety may require it."[524] Most emergency power comes from laws passed by Congress. Many of those laws give the president extra authority once he declares a national emergency.

The National Emergencies Act of 1976 set rules for those declarations.[525] The president must declare the emergency publicly, publish it in the Federal Register, and say which laws he is

[520] Executive Order 10730, "Providing Assistance for the Removal of an Obstruction of Justice Within the State of Arkansas," September 24, 1957, and Proclamation 3204, September 23, 1957, 22 Fed. Reg. 7628 (September 25, 1957), govinfo.gov. https://www.govinfo.gov/link/fr/22/7628 (accessed November 12, 2026).

[521] Executive Order 12804, "Providing for the Restoration of Law and Order in the City and County of Los Angeles, and Other Districts of California," May 1, 1992, 57 Fed. Reg. 19361, govinfo.gov. https://www.govinfo.gov/link/fr/57/19361 (accessed November 12, 2026).

[522] 18 U.S.C. 1385, "Use of Army, Navy, Marine Corps, Air Force, and Space Force as posse comitatus," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/18/1385 (accessed November 12, 2026).

[523] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[524] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[525] National Emergencies Act, Public Law 94-412, 90 Stat. 1255 (September 14, 1976), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1255.pdf (accessed November 12, 2026).

using.[526,527] An emergency ends after one year unless the president publishes a notice continuing it.[528] Congress can end an emergency by passing a joint resolution, but the president can veto it.[529]

A short history of emergency power

The modern system grew in layers.

- **1917.** Congress passed the Trading with the Enemy Act. As the Supreme Court later described it, "First enacted in 1917, TWEA authorized the President to control foreign property during wartime."[530]
- **1933.** Five days after Franklin Roosevelt took office, Congress expanded that law so its powers could be used during "a 'national emergency' declared by the President."[531] Roosevelt used it right away, including for the gold orders described in Chapter 7.[532]
- **1976.** Congress passed the National Emergencies Act to put rules around declarations, including publication, renewal every year and a way for Congress to end them.[533]
- **1977.** Congress passed IEEPA, which the Court calls the 1917 law's successor. A House report from that year complained that presidents had turned the older law "into something quite different from what was envisioned in 1917."[534,535]
- **1985.** After *INS v. Chadha*, Congress changed the National Emergencies Act. It replaced the words "Congress terminates the emergency by concurrent resolution" with "there is enacted into law a joint resolution terminating the emergency."[536] That change means a president can veto Congress's attempt to end an emergency.[537]

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[526] 50 U.S.C. 1621, "Declaration of national emergency by President" (National Emergencies Act sec. 201), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1621 (accessed November 12, 2026).

[527] 50 U.S.C. 1631, "Declaration of national emergency by Executive order; authority; publication in Federal Register; transmittal to Congress," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1631 (accessed November 12, 2026).

[528] 50 U.S.C. 1622, "National emergencies" (termination; National Emergencies Act sec. 202), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1622 (accessed November 12, 2026).

[529] Ibid.

[530] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[531] Ibid.

[532] Executive Order 6102, "Requiring Gold Coin, Gold Bullion and Gold Certificates to Be Delivered to the Government," April 5, 1933, text as transcribed on Wikisource. https://en.wikisource.org/wiki/Executive_Order_6102 (accessed November 12, 2026).

[533] National Emergencies Act, Public Law 94-412, 90 Stat. 1255 (September 14, 1976), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1255.pdf (accessed November 12, 2026).

[534] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[535] International Emergency Economic Powers Act, title II of Public Law 95-223, 91 Stat. 1625 (December 28, 1977), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-91/pdf/STATUTE-91-Pg1625.pdf (accessed November 12, 2026).

[536] 50 U.S.C. 1622, "National emergencies" (termination; National Emergencies Act sec. 202), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1622 (accessed November 12, 2026).

[537] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/462/919 (accessed November 12, 2026).

That last change is the one that matters most today. Before 1985, a majority of both chambers could end an emergency by itself, at least on paper. After 1985, it takes two-thirds of both chambers if the president objects. Table 15.1 shows what that means in practice.

Emergencies that are not national emergencies

Not every "emergency" a president declares falls under the National Emergencies Act. After hurricanes, floods and other disasters, presidents declare emergencies under a different law, the Stafford Act.[538] Those declarations start with the state. The law says "All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State," and the request must be based on a finding that the situation is "beyond the capabilities of the State and the affected local governments."[539] A Stafford Act emergency mainly unlocks federal disaster aid. It does not give the president the broad economic powers that come with a national emergency under IEEPA. When you hear that a president "declared an emergency," the first question to ask is which law he used.

How many emergencies are in effect

Emergencies pile up because presidents keep renewing them. The oldest still in effect was declared by President Carter on November 14, 1979, after Iranian students seized the U.S. embassy in Tehran. It was continued again on November 5, 2025.[540,541]

The Brennan Center for Justice, an advocacy group that supports tighter limits on emergency powers, keeps a running list. Its list dated September 2026 has 92 entries under the National Emergencies Act, of which, by my count of its notes, about 58 were still in effect.[542] I use that list only as a pointer. Each emergency on it can be checked against its own Federal Register notice, and I found no official government count to compare it with. [Not verified: the "about 58" figure is my count from the advocacy group's list, not an official figure.]

The law behind most emergencies

Most emergencies use the International Emergency Economic Powers Act of 1977 (IEEPA).[543] Once a president declares an emergency over an "unusual and extraordinary threat" that comes "in whole or substantial part outside the United States," IEEPA lets him "investigate, regulate, or prohibit" many kinds of transactions involving foreign countries or

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[538] 42 U.S.C. 5191, "Procedure for declaration" (emergencies under the Stafford Act), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/42/5191 (accessed November 12, 2026).

[539] Ibid.

[540] Executive Order 12170, "Blocking Iranian Government Property," November 14, 1979, 44 Fed. Reg. 65729, govinfo.gov. https://www.govinfo.gov/link/fr/44/65729 (accessed November 12, 2026).

[541] Notice of November 5, 2025, "Continuation of the National Emergency With Respect to Iran," 90 Fed. Reg. 50735 (November 7, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-11-07/pdf/2025-19829.pdf (accessed November 12, 2026).

[542] Brennan Center for Justice, "Declared National Emergencies Under the National Emergencies Act" (list file dated September 2026). Advocacy organization; used as a pointer to Federal Register notices. https://www.brennancenter.org/sites/default/files/2026-09/declared-emergencies-under-nea090226.pdf (accessed November 12, 2026).

[543] International Emergency Economic Powers Act, title II of Public Law 95-223, 91 Stat. 1625 (December 28, 1977), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-91/pdf/STATUTE-91-Pg1625.pdf (accessed November 12, 2026).

people.[544,545] Presidents use it for sanctions: freezing assets, blocking trade and banning dealings with named people or groups. Chapter 9 described its use after September 11.[546]

The tariff case

In 2025, President Trump used IEEPA in a new way: to impose tariffs, which are taxes on imports. Executive orders imposed tariffs on goods from Canada, Mexico and China in February 2025, and "reciprocal" tariffs on most trading partners in April 2025, along with others on Brazil, Russia, Cuba, Iran and countries importing Venezuelan oil.[547]

Importers and states sued. On February 20, 2026, the Supreme Court ruled 6-3 in *Learning Resources, Inc. v. Trump* that "IEEPA does not authorize the President to impose tariffs."[548] The Court noted that the Constitution gives Congress the power to tax, and that the Framers gave "Congress alone" the power to impose tariffs in peacetime.[549] Justice Brett Kavanaugh, joined by Justices Thomas and Alito, dissented.[550]

The majority's reasoning was about words. IEEPA lets the president "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit ... importation or exportation."[551] The Court noted that "Absent from this lengthy list of specific powers is any mention of tariffs or duties," and said that "Had Congress intended to convey the distinct and extraordinary power to impose tariffs, it would have done so expressly, as it consistently has in other tariff statutes."[552]

The dissent read the same words the other way. Justice Kavanaugh wrote that "The sole legal question here is whether, under IEEPA, tariffs are a means to 'regulate ... importation,'" and answered that "the answer is clearly yes: Like quotas and embargoes, tariffs are a traditional and common" tool for regulating imports.[553] He also stressed that "Those policy debates are not for the Federal Judiciary to resolve."[554] Both sides agreed that the question was what Congress had written. They disagreed on what the words meant.

The Court's opinion also made a historical point worth noting for readers on both sides: before IEEPA, "only one President relied on its predecessor, the Trading with the Enemy

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[544] 50 U.S.C. 1701, "Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1701 (accessed November 12, 2026).

[545] 50 U.S.C. 1702, "Presidential authorities," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1702 (accessed November 12, 2026).

[546] Executive Order 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," September 23, 2001, 66 Fed. Reg. 49079, govinfo.gov. https://www.govinfo.gov/link/fr/66/49079 (accessed November 12, 2026).

[547] Executive Order 14389, "Ending Certain Tariff Actions," February 20, 2026, 91 Fed. Reg. 9437 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03832.pdf (accessed November 12, 2026).

[548] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[549] Ibid.

[550] Ibid.

[551] Ibid.

[552] Ibid.

[553] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School, Kavanaugh, J., dissenting. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[554] Ibid.

Act (TWEA) ... to impose tariffs," President Nixon in 1971, "and then only as a post hoc defense to a legal challenge."[555] Chapter 8 described Nixon's 1971 import surcharge.[556]

The president responded the same day in two ways:

- **Executive Order 14389**, "Ending Certain Tariff Actions," said that the IEEPA tariffs "shall no longer be in effect and, as soon as practicable, shall no longer be collected." It left the underlying emergencies in place.[557]
- **Proclamation 11012** used a different law, section 122 of the Trade Act of 1974, to impose "for a period of 150 days, a temporary import surcharge of 10 percent ad valorem" on imports, starting February 24, 2026.[558]

Section 122 is a narrow tool. It allows a surcharge "not to exceed 15 percent" for "a period not exceeding 150 days (unless such period is extended by Act of Congress)," to deal with "large and serious United States balance-of-payments deficits."[559] This is a good example of a check working and the president then turning to another law Congress had passed. [Not verified: what happened when the 150 days ran out in July 2026, and how refunds of the IEEPA tariffs were handled. I did not open the later records on either.]

Congress tries to end emergencies

Congress has tried to end several of these emergencies. Because the president can veto a joint resolution, a two-thirds majority is needed in the end.[560]

Table 15.1. Selected votes on ending national emergencies

Date	Chamber	Measure	Emergency	Result
March 14, 2019	Senate	H.J.Res. 46	Southern border (February 15, 2019)	Passed 59-41
March 26, 2019	House	H.J.Res. 46, veto override	Southern border	Failed 248-181 (two-thirds needed)
September 25, 2019	Senate	S.J.Res. 54	Southern border	Passed 54-41
October 17, 2019	Senate	S.J.Res. 54, veto override	Southern border	Failed 53-36
February 26, 2025	Senate	S.J.Res. 10	Energy	Rejected 47-52
April 2, 2025	Senate	S.J.Res. 37	Duties on Canada	Passed 51-48
April 30, 2025	Senate	S.J.Res. 49	Global tariffs	Rejected 49-49
September 15,	House	H.J.Res. 117, motion to table	Emergency of July	Tabled 200-198

[555] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[556] Proclamation 4074, "Imposition of Supplemental Duty for Balance of Payments Purposes," August 15, 1971, 36 Fed. Reg. 15724, govinfo.gov. https://www.govinfo.gov/link/fr/36/15724 (accessed November 12, 2026).

[557] Executive Order 14389, "Ending Certain Tariff Actions," February 20, 2026, 91 Fed. Reg. 9437 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03832.pdf (accessed November 12, 2026).

[558] Proclamation 11012, "Imposing a Temporary Import Surcharge To Address Fundamental International Payments Problems," February 20, 2026, 91 Fed. Reg. 9337 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/FR-2026-02-25.pdf (accessed November 12, 2026).

[559] 19 U.S.C. 2132, "Balance-of-payments authority" (Trade Act of 1974, sec. 122), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/19/2132 (accessed November 12, 2026).

[560] 50 U.S.C. 1622, "National emergencies" (termination; National Emergencies Act sec. 202), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1622 (accessed November 12, 2026).

Date	Chamber	Measure	Emergency	Result
2025		discharge	30, 2025 (Brazil)	
October 8, 2025	Senate	S.J.Res. 71	Energy	Rejected 47-51
October 28, 2025	Senate	S.J.Res. 81	Duties on Brazil	Passed 52-48
October 29, 2025	Senate	S.J.Res. 77	Duties on Canada	Passed 50-46
October 30, 2025	Senate	S.J.Res. 88	Global tariffs	Passed 51-47

Sources: U.S. Senate and House roll call votes.[561,562]

The 2019 votes show the pattern clearly. President Trump declared a national emergency at the southern border on February 15, 2019, to redirect money toward a border wall after Congress declined to provide all he requested.[563] Both chambers voted to end it. The president vetoed the resolution, and the House fell short of the two-thirds needed to override.[564,565,566] President Biden ended that emergency on his first day in office, January 20, 2021.[567] President Trump declared a new southern border emergency on his first day back, January 20, 2025.[568]

In 2025, the Senate passed several resolutions to end the tariff emergencies. I did not find a House vote passing any of them, and none became law.[569,570] The tariffs ended through the courts, not through Congress.

Rewriting the emergency laws

Several reform bills would change the National Emergencies Act so that an emergency ends after a short period, such as 30 days, unless Congress votes to approve it. That would flip the burden: instead of Congress needing a veto-proof majority to end an emergency, the president would need a majority to keep one. Chapter 20 describes these proposals and who supports them.

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[561] U.S. Senate, roll call votes on national emergency resolutions: 116th Congress, 1st Session, votes 49, 302 and 325 (2019); 119th Congress, 1st Session, votes 95, 160, 225, 554, 594, 598 and 600 (2025), senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm (accessed November 12, 2026).

[562] U.S. House of Representatives, Office of the Clerk, roll call votes 2019-127 (March 26, 2019) and 2025-265 (September 15, 2025), clerk.house.gov. https://clerk.house.gov/Votes/2019127 (accessed November 12, 2026).

[563] Proclamation 9844, "Declaring a National Emergency Concerning the Southern Border of the United States," February 15, 2019, 84 Fed. Reg. 4949, govinfo.gov. https://www.govinfo.gov/link/fr/84/4949 (accessed November 12, 2026).

[564] U.S. Senate, roll call votes on national emergency resolutions: 116th Congress, 1st Session, votes 49, 302 and 325 (2019); 119th Congress, 1st Session, votes 95, 160, 225, 554, 594, 598 and 600 (2025), senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm (accessed November 12, 2026).

[565] U.S. House of Representatives, Office of the Clerk, roll call votes 2019-127 (March 26, 2019) and 2025-265 (September 15, 2025), clerk.house.gov. https://clerk.house.gov/Votes/2019127 (accessed November 12, 2026).

[566] U.S. Senate, "Vetoes, 1789 to Present," Summary of Bills Vetoed, senate.gov. https://www.senate.gov/legislative/vetoes/vetoCounts.htm (accessed November 12, 2026).

[567] Proclamation 10142, "Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction," January 20, 2021, 86 Fed. Reg. 7225, govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01922.pdf (accessed November 12, 2026).

[568] Proclamation 10886, "Declaring a National Emergency at the Southern Border of the United States," January 20, 2025, 90 Fed. Reg. 8327, govinfo.gov. https://www.govinfo.gov/link/fr/90/8327 (accessed November 12, 2026).

[569] U.S. Senate, roll call votes on national emergency resolutions: 116th Congress, 1st Session, votes 49, 302 and 325 (2019); 119th Congress, 1st Session, votes 95, 160, 225, 554, 594, 598 and 600 (2025), senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm (accessed November 12, 2026).

[570] U.S. House of Representatives, Office of the Clerk, roll call votes 2019-127 (March 26, 2019) and 2025-265 (September 15, 2025), clerk.house.gov. https://clerk.house.gov/Votes/2019127 (accessed November 12, 2026).

What the records show

- Confirmed: The National Emergencies Act requires public declarations and yearly renewal, and lets Congress end an emergency by joint resolution, subject to veto.
- Confirmed: The oldest emergency still in effect dates to November 14, 1979, and was renewed on November 5, 2025.
- Confirmed: The Supreme Court held on February 20, 2026, that IEEPA does not authorize tariffs. The same day, the president ended the IEEPA tariffs and imposed a 10 percent surcharge for 150 days under section 122 of the Trade Act of 1974.
- Confirmed: Congress voted to end the 2019 border emergency, but could not override the veto.
- Unknown: The number of emergencies in effect according to an official government count. The figure here comes from an advocacy group's list.

Chapter 16: The Pardon Power

Information in this chapter is current as of November 12, 2026.

What the Constitution says

The president "shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment."[571] A reprieve delays a punishment. A pardon forgives the offense. A commutation, which courts treat as part of the same power, shortens or ends a sentence without forgiving the conviction.

Three limits are written into those few words:

- **Federal crimes only.** "Offences against the United States" means federal crimes. A president cannot pardon anyone for a state crime.[572]
- **Not impeachment.** A pardon cannot stop an impeachment or undo a conviction by the Senate.[573]
- **Past acts only.** A pardon covers offenses already committed. The Supreme Court said in 1866 that the power "extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."[574]

How broad the power is

The same 1866 case, *Ex parte Garland*, said: "The power thus conferred is unlimited, with the exception stated." It added that "This power of the President is not subject to legislative

[571] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[572] Ibid.

[573] Ibid.

[574] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders."[575]

In *Burdick v. United States* (1915), the Court added that a pardon "carries an imputation of guilt; acceptance a confession of it."[576] People often quote this line to say that accepting a pardon is an admission of guilt. The Court said this while explaining why a person can refuse a pardon. It has not been treated by later courts as a binding rule that every pardon recipient is legally guilty, so I list that popular reading as an interpretation, not a fact.

Pardons that made history

Table 16.1. Selected pardons and grants of clemency

Date	President	Action	Source
September 8, 1974	Gerald Ford	Full pardon of Richard Nixon for offenses "which he ... has committed or may have committed or taken part in" while president	Proclamation 4311
January 21, 1977	Jimmy Carter	Pardon for violations of the Selective Service Act during the Vietnam era	Proclamation 4483
January 20, 2025	Donald J. Trump	Commuted the sentences of 14 named people and granted "a full, complete and unconditional pardon to all other individuals convicted of offenses related to events that occurred at or near the United States Capitol on January 6, 2021"	Proclamation 10887

Sources: the proclamations as published in the Federal Register.[577,578,579]

Ford's pardon of Nixon came before Nixon was charged with any crime. That made it a "preemptive" pardon, granted before any legal proceedings. *Ex parte Garland* had said this was allowed.[580,581]

The January 2025 proclamation also directed the attorney general "to pursue dismissal with prejudice to the government of all pending indictments" related to January 6, 2021.[582] That

[575] Ibid.

[576] Burdick v. United States, 236 U.S. 79 (1915), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/236/79 (accessed November 12, 2026).

[577] Proclamation 4311, "Granting Pardon to Richard Nixon," September 8, 1974, 39 Fed. Reg. 32601, govinfo.gov. https://www.govinfo.gov/link/fr/39/32601 (accessed November 12, 2026).

[578] Proclamation 4483, "Granting Pardon for Violations of the Selective Service Act, August 4, 1964 to March 28, 1973," January 21, 1977, 42 Fed. Reg. 4391, govinfo.gov. https://www.govinfo.gov/link/fr/42/4391 (accessed November 12, 2026).

[579] Proclamation 10887, "Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021," January 20, 2025, 90 Fed. Reg. 8331 (January 29, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-01950.pdf (accessed November 12, 2026).

[580] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

[581] Proclamation 4311, "Granting Pardon to Richard Nixon," September 8, 1974, 39 Fed. Reg. 32601, govinfo.gov. https://www.govinfo.gov/link/fr/39/32601 (accessed November 12, 2026).

part is not itself a pardon. It is an instruction to prosecutors, using the president's control over the Justice Department.

Preemptive pardons at the end of the Biden presidency

On January 19, 2025, his last full day in office, President Biden issued preemptive pardons to "members of Congress who served on the House committee investigating the Jan. 6 attack, staff of the committee and law enforcement officials who provided testimony to the committee," according to FactCheck.org. The same day he "also preemptively pardoned Gen. Mark Milley, Dr. Anthony Fauci and several of Biden's family members."[583] FactCheck.org is a secondary source. The pardon warrants themselves are kept by the Justice Department's Office of the Pardon Attorney, and I did not open them for this edition. [Not verified against the primary pardon warrants.]

The autopen claim

In March 2025, President Trump posted that the Biden pardons of the January 6 committee were "VOID, VACANT" because, he said, they were signed by autopen, a machine that reproduces a signature.[584] PolitiFact rated the claim that this made the pardons void False.[585] In December 2025, President Trump posted that documents Biden had signed by autopen were terminated, and PolitiFact again rated the claim False.[586]

The legal background is a July 7, 2005, opinion from the Justice Department's Office of Legal Counsel. Its summary says the president "need not personally perform the physical act of affixing his signature" to a bill and "may sign a bill ... by directing a subordinate to affix the President's signature to such a bill, for example by autopen."[587] That opinion is about bills, not pardons, but its reasoning about signatures is the closest official guidance. Nothing in the Constitution's pardon clause requires a handwritten signature or any particular form.[588] Part Six tests this claim in full.

Can a president pardon himself?

No president has tried, so no court has ruled. On August 5, 1974, four days before Nixon resigned, the Office of Legal Counsel issued an opinion whose summary reads: "Under the fundamental rule that no one may be a judge in his own case, the President cannot pardon

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[582] Proclamation 10887, "Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021," January 20, 2025, 90 Fed. Reg. 8331 (January 29, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-29/pdf/2025-01950.pdf (accessed November 12, 2026).

[583] Robert Farley, "Trump's Baseless Autopen Claim," FactCheck.org, Annenberg Public Policy Center, March 21, 2025. https://www.factcheck.org/2025/03/trumps-baseless-autopen-claim/ (accessed November 12, 2026).

[584] Amy Sherman and Louis Jacobson, "Are Biden pardons 'void' because he used an autopen? No, Trump's claim is False," PolitiFact, March 17, 2025. https://www.politifact.com/factchecks/2025/mar/17/donald-trump/are-biden-pardons-void-because-he-used-an-autopen/ (accessed November 12, 2026).

[585] Ibid.

[586] Louis Jacobson, "No, Donald Trump can't unilaterally revoke Biden 'autopen' pardons," PolitiFact, December 4, 2025. https://www.politifact.com/factchecks/2025/dec/04/donald-trump/revoke-pardon-biden-autopen/ (accessed November 12, 2026).

[587] U.S. Department of Justice, Office of Legal Counsel, "Whether the President May Sign a Bill by Directing That His Signature Be Affixed to It" (July 7, 2005), opinion page with summary. https://www.justice.gov/olc/opinion/whether-president-may-sign-bill-directing-his-signature-be-affixed-it (accessed November 12, 2026).

[588] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

himself."[589] That opinion binds the executive branch's own lawyers unless it is withdrawn, but it does not bind the courts or Congress. The opposite view rests on the text: the pardon clause names only one exception, impeachment.[590] This question stays in the Unknown column.

Checks on the pardon power

The pardon power has fewer checks than almost any other presidential power. Congress cannot limit it by law.[591] Courts have not reviewed the reasons for a pardon. The checks that remain are political: impeachment, which a pardon cannot block, elections and public opinion.[592] A pardon also does not reach state crimes, so state prosecutors keep their power.[593]

One proposed check is a constitutional amendment. Chapter 20 describes proposals to limit self-pardons, pardons of family members, or pardons granted in exchange for money or favors.

What the records show

- Confirmed: The pardon power covers federal crimes only, cannot block impeachment, and may be used before charges are filed.
- Confirmed: On January 20, 2025, President Trump commuted 14 sentences and pardoned all others convicted of offenses related to January 6, 2021.
- Confirmed: PolitiFact rated the claims that autopen-signed Biden pardons were void False in March and December 2025.
- Interpretation: Whether accepting a pardon admits guilt is a reading of *Burdick* that courts have not adopted as a rule.
- Unknown: Whether a president can pardon himself. No court has ruled.

[589] U.S. Department of Justice, Office of Legal Counsel, "Presidential or Legislative Pardon of the President" (August 5, 1974), opinion page with summary. https://www.justice.gov/olc/opinion/presidential-or-legislative-pardon-president (accessed November 12, 2026).

[590] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[591] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

[592] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[593] Ibid.

Part Six: Testing Common Claims

This part tests 23 claims people make about presidential power. Each one gets the same treatment:

- **The claim** as people usually say it.
- **Where and when it spread**, when I could find a record of that. When I could not, I say so.
- **What the records show**, with sources.
- **The verdict**, using the four verdicts from the Introduction: True, Partly true, False (debunked) or Inconclusive.

I picked claims that come from all sides of politics. Some are favorable to presidents, some are critical, and several are repeated by people of both parties depending on who holds the office. Information in this part is current as of November 12, 2026.

Table 17.1. The 23 claims at a glance (as of November 12, 2026)

No.	Claim	Verdict
1	An executive order is the same as a law.	Partly true
2	A president can do anything with an executive order.	False (debunked)
3	The Supreme Court ruled presidents are above the law.	Partly true
4	A president can declare an emergency and cancel or postpone a presidential election.	False (debunked)
5	Congress can't do anything to stop a president.	False (debunked)
6	The War Powers Resolution gives a president 60 days to fight any war he wants.	Partly true
7	A president can pardon himself.	Inconclusive
8	A president can serve a third term if the terms are not back to back.	False (debunked)
9	Executive orders are unconstitutional.	False (debunked)
10	Once signed, an executive order is permanent.	False (debunked)
11	A president can pardon a crime before it is committed.	False (debunked)
12	A president can fire anyone in the executive branch.	Partly true
13	Pardons signed by autopen are void.	False (debunked)
14	President Trump signed more executive orders in 2025 than in his whole first term.	True
15	President Obama signed a record number of executive orders.	False (debunked)
16	Lincoln freed the slaves with an executive order.	Partly true

No.	Claim	Verdict
17	Executive orders began with Franklin Roosevelt.	False (debunked)
18	The Supreme Court banned nationwide injunctions against the president.	Partly true
19	The Supreme Court ended President Trump's tariffs.	Partly true
20	Lincoln's suspension of habeas corpus was illegal.	Inconclusive
21	Franklin Roosevelt made it illegal for Americans to own gold.	Partly true
22	The president has a line-item veto.	False (debunked)
23	Congress has not declared war since World War II.	True

Chapter 17: Claims About What a President Can Do

Information in this chapter is current as of November 12, 2026.

Claim 1: "An executive order is the same as a law."

Item	Finding
Claim	An executive order is the same as a law, so once a president signs one, everyone must obey it.
Where and when it spread	A common statement in everyday conversation and online. I found no single origin. [Not verified]
What the records show	An executive order can have the force of law, but only when it rests on power the Constitution or a law of Congress gives the president. Courts strike down orders that lack that power, as in the 1952 steel seizure case and the 2026 birthright citizenship case. An order mainly directs the executive branch. It cannot change a law Congress passed, and the next president can revoke it with a stroke of the pen.
Verdict	Partly true
Sources	See Chapter 4.[594,595,596,597]

The true part is that a valid order binds the agencies it directs, and some orders have legal effects on the public. The false part is the word "same." A law passed by Congress can only be changed by another law. An order can be undone by the next president, as President Trump did with 67 of President Biden's orders on January 20, 2025.[598] And an order that

[594] National Archives, Office of the Federal Register, "About Executive Orders" (page last reviewed May 20, 2019). https://www.archives.gov/federal-register/executive-orders/about.html (accessed November 12, 2026).

[595] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[596] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[597] Executive Order 14148, "Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025, 90 Fed. Reg. 8237 (January 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-28/pdf/2025-01901.pdf (accessed November 12, 2026).

[598] Ibid.

conflicts with a law loses. As the Supreme Court put it in 1998, "There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes."[599]

Claim 2: "A president can do anything with an executive order."

Item	Finding
Claim	There are no real limits on what a president can do by executive order.
Where and when it spread	Said by both supporters and critics of presidents in every recent administration. I found no single origin. [Not verified]
What the records show	Courts have struck down or blocked many orders and other presidential actions, including Truman's seizure of the steel mills (1952), the IEEPA tariffs (2026) and the birthright citizenship order (2026). Each failed because no law or constitutional power supported it.
Verdict	False (debunked)
Sources	600,601,602

This claim is the mirror image of Claim 1. The records show presidents lose cases regularly, including presidents of both parties. President Biden's student loan plan was struck down in 2023, and President Trump's tariffs and birthright citizenship order in 2026.[603,604,605] Justice Jackson's framework from 1952 still sets the limits: a president is strongest when Congress has authorized the action and weakest when Congress has said no.[606]

Claim 3: "The Supreme Court ruled presidents are above the law."

Item	Finding
Claim	In 2024 the Supreme Court gave presidents total immunity, putting them above the law.
Where and when it spread	After *Trump v. United States* on July 1, 2024. The phrase "a king above the law" comes from Justice Sotomayor's dissent in that case.
What the records show	The Court held that a former president has absolute immunity from criminal prosecution for acts within his "conclusive and preclusive" constitutional authority, at least presumptive immunity for other official acts, and no immunity for unofficial acts. The majority opinion says, "The President is not above the law." The dissent says the ruling makes the president "a king above the law" in "every use of official power."
Verdict	Partly true

[599] Clinton v. City of New York, 524 U.S. 417 (1998), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/97-1374 (accessed November 12, 2026).

[600] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[601] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[602] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[603] Biden v. Nebraska, 600 U.S. 477 (2023), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/22-506 (accessed November 12, 2026).

[604] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[605] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[606] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

Item	Finding
Sources	607

The true part: the ruling gives former presidents broad protection from prosecution for official acts, much broader than many lawyers expected, and three justices said in dissent that this puts the president above the law.[608] The false part: the ruling is not "total." It leaves no immunity for unofficial acts, it does not cover civil suits over private conduct, and it does not stop impeachment.[609,610,611] Whether "above the law" is a fair description of what remains is an interpretation, and the two sides are quoted above in the justices' own words.

Claim 4: "A president can declare an emergency and cancel or postpone a presidential election."

Item	Finding
Claim	In an emergency, a president can cancel or delay the next presidential election, or stay in office past the end of his term.
Where and when it spread	This worry comes up in every recent election season, from people of both parties about presidents of the other party. I found no single origin. [Not verified]
What the records show	The Constitution gives Congress, not the president, the power to "determine the Time of chusing the Electors." The Twentieth Amendment says "The terms of the President and Vice President shall end at noon on the 20th day of January." No emergency law gives a president power over either.
Verdict	False (debunked)
Sources	612,613,614

Election day is set by a law of Congress, under the power the Constitution gives Congress.[615] The end of a term is set by the Constitution itself.[616] The National Emergencies Act only switches on powers that other laws already give the president; it does not create new ones, and none of those laws touch the date of an election or the length of a term.[617,618] A president could try to interfere with an election in other ways, and some elections orders have been

607 Trump v. United States, 603 U.S. 593 (2024), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/23-939 (accessed November 12, 2026).

608 Ibid.

609 Ibid.

610 Clinton v. Jones, 520 U.S. 681 (1997), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/95-1853 (accessed November 12, 2026).

611 National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

612 Ibid.

613 National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

614 National Emergencies Act, Public Law 94-412, 90 Stat. 1255 (September 14, 1976), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1255.pdf (accessed November 12, 2026).

615 National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

616 National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

617 National Emergencies Act, Public Law 94-412, 90 Stat. 1255 (September 14, 1976), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-90/pdf/STATUTE-90-Pg1255.pdf (accessed November 12, 2026).

618 50 U.S.C. 1631, "Declaration of national emergency by Executive order; authority; publication in Federal Register; transmittal to Congress," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1631 (accessed November 12, 2026).

challenged in court, as Chapter 10 noted.[619,620] But the power to cancel or postpone a presidential election does not exist in any record I found.

Claim 5: "Congress can't do anything to stop a president."

Item	Finding
Claim	Congress has no real power to check a modern president.
Where and when it spread	A frequent complaint in commentary about every recent president. I found no single origin. [Not verified]
What the records show	In 2025 and 2026 alone, Congress repealed the 1991 and 2002 Iraq war authorizations, passed a rescission bill at the president's request, and adopted a concurrent resolution under the War Powers Resolution. Since 1789 it has overridden 112 vetoes. It has impeached three presidents.
Verdict	False (debunked)
Sources	[621,622,623,624,625,626]

The claim is false as stated, but it points to something real. Congress's tools mostly require either a two-thirds vote or the president's own signature. When the president's party controls one chamber, or holds more than a third of either, most attempts fail. Table 15.1 shows the Senate passing resolutions to end tariff emergencies in 2025 that never became law.[627] So the better statement is: "Congress has strong tools, but using them against a president usually takes members of his own party."

Claim 6: "The War Powers Resolution gives a president 60 days to fight any war he wants."

Item	Finding
Claim	Under the War Powers Resolution, a president can start any military action and has 60 days before he needs Congress.
Where and when it spread	A common summary in news coverage of military actions. I found no single origin. [Not verified]
What the records show	The law sets a 60-day clock, plus 30 days to withdraw, after the president reports. But its own statement of policy says the president may send forces into hostilities

[619] Executive Order 14248, "Preserving and Protecting the Integrity of American Elections," March 25, 2025, 90 Fed. Reg. 14005 (March 28, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-03-28/pdf/2025-05523.pdf (accessed November 12, 2026).

[620] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

[621] National Defense Authorization Act for Fiscal Year 2026, Public Law 119-60, section 8370, "Repeal of Authorizations for Use of Military Force Relating to Iraq," 139 Stat. 718 (approved December 18, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ60/html/PLAW-119publ60.htm (accessed November 12, 2026).

[622] Rescissions Act of 2025, Public Law 119-28, 139 Stat. 467 (July 24, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ28/html/PLAW-119publ28.htm (accessed November 12, 2026).

[623] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

[624] U.S. House of Representatives, Office of the Clerk, roll call votes 2025-345 and 2025-346 (December 17, 2025) and 2026-114, 2026-170, 2026-199, 2026-282 and 2026-307, clerk.house.gov. https://clerk.house.gov/Votes/2026199 (accessed November 12, 2026).

[625] U.S. Senate, "Vetoes, 1789 to Present," Summary of Bills Vetoed, senate.gov. https://www.senate.gov/legislative/vetoes/vetoCounts.htm (accessed November 12, 2026).

[626] U.S. House of Representatives, History, Art and Archives, "List of Individuals Impeached by the House of Representatives." https://history.house.gov/Institution/Impeachment/Impeachment-List/ (accessed November 12, 2026).

[627] U.S. Senate, roll call votes on national emergency resolutions: 116th Congress, 1st Session, votes 49, 302 and 325 (2019); 119th Congress, 1st Session, votes 95, 160, 225, 554, 594, 598 and 600 (2025), senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm (accessed November 12, 2026).

Item	Finding
	only under a declaration of war, a specific authorization or an attack on the United States. It does not grant a 60-day window.
Verdict	Partly true
Sources	628,629,630

The 60-day clock is real.[631] What is not real is the idea that the law grants permission to start a war. Congress wrote that the president's power to introduce forces into hostilities is "exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States."[632] Presidents dispute that statement and point to their own power as commander in chief.[633] So the 60-day rule is better described as a deadline Congress set for actions it did not approve, not as a grant of power.

Claim 7: "A president can pardon himself."

Item	Finding
Claim	The pardon power is unlimited, so a president can pardon himself.
Where and when it spread	Discussed during the Nixon era and again in recent years. I found no single origin. [Not verified]
What the records show	No president has tried, and no court has ruled. The Constitution says only that the president can pardon "Offences against the United States, except in Cases of Impeachment." A 1974 Justice Department legal opinion concluded the president cannot pardon himself.
Verdict	Inconclusive
Sources	634,635,636

The Supreme Court has called the pardon power "unlimited, with the exception stated."[637] That supports the claim. The Justice Department's 1974 opinion went the other way, relying on the old rule that no one may judge his own case.[638] That opinion guides executive branch

[628] 50 U.S.C. 1541, "Purpose and policy" (War Powers Resolution sec. 2), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1541 (accessed November 12, 2026).

[629] 50 U.S.C. 1543, "Reporting requirement" (War Powers Resolution sec. 4), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1543 (accessed November 12, 2026).

[630] 50 U.S.C. 1544, "Congressional action" (War Powers Resolution sec. 5), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1544 (accessed November 12, 2026).

[631] Ibid.

[632] 50 U.S.C. 1541, "Purpose and policy" (War Powers Resolution sec. 2), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1541 (accessed November 12, 2026).

[633] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[634] Ibid.

[635] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

[636] U.S. Department of Justice, Office of Legal Counsel, "Presidential or Legislative Pardon of the President" (August 5, 1974), opinion page with summary. https://www.justice.gov/olc/opinion/presidential-or-legislative-pardon-president (accessed November 12, 2026).

[637] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

[638] U.S. Department of Justice, Office of Legal Counsel, "Presidential or Legislative Pardon of the President" (August 5, 1974), opinion page with summary. https://www.justice.gov/olc/opinion/presidential-or-legislative-pardon-president (accessed November 12, 2026).

lawyers but does not bind the courts. What would settle it: a president pardoning himself, and a court then ruling on whether the pardon blocks a prosecution.

Claim 8: "A president can serve a third term if the terms are not back to back."

Item	Finding
Claim	The two-term limit only bans three terms in a row, so a president can come back for a third term later.
Where and when it spread	Repeated in commentary about a possible third Trump term in 2025 and 2026. I did not open a primary record of the president's own remarks. [Not verified]
What the records show	The Twenty-second Amendment says, "No person shall be elected to the office of the President more than twice." It counts total elections, not consecutive ones.
Verdict	False (debunked)
Sources	639

The words "more than twice" settle the main version of this claim.[640] People have raised other theories, such as a two-term president running for vice president and then taking over. That theory runs into the Twelfth Amendment, which says, "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."[641] Scholars argue about whether "ineligible" covers someone barred only from being "elected." No court has ruled, so that narrower theory would be Inconclusive. The common claim about non-consecutive terms is False.

Claim 9: "Executive orders are unconstitutional."

Item	Finding
Claim	Executive orders are unconstitutional because only Congress can make law.
Where and when it spread	A common statement whenever a president of the other party signs a major order. I found no single origin. [Not verified]
What the records show	The Constitution gives the president "the executive Power" and the duty to "take Care that the Laws be faithfully executed." Orders that direct the executive branch under that power or under a law of Congress are lawful, and courts have upheld many of them. The Supreme Court upheld President Carter's orders settling the Iran hostage crisis in 1981 and President Trump's travel proclamation in 2018. Courts strike down particular orders that lack a source of power, as in the steel seizure case, but no court has held that executive orders as a type are unconstitutional.
Verdict	False (debunked)
Sources	642,643,644,645

639 National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

640 Ibid.

641 Ibid.

642 National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

643 Dames & Moore v. Regan, 453 U.S. 654 (1981), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/453/654 (accessed November 12, 2026).

644 Trump v. Hawaii, 585 U.S. 667 (2018), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/17-965 (accessed November 12, 2026).

645 Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

The real question is never "Are executive orders allowed?" It is "Does this order rest on power the Constitution or Congress gave the president?" Justice Jackson's three zones, explained in Chapter 2, are the tool courts use to answer it.[646] An order acting under a clear law of Congress is in the strongest zone. An order acting against what Congress has said is in the weakest.

Claim 10: "Once signed, an executive order is permanent."

Item	Finding
Claim	An executive order stays in force forever once a president signs it.
Where and when it spread	Often implied in social media posts and news headlines about new orders. I found no single origin. [Not verified]
What the records show	Orders end in at least four ways. A later president can revoke them, as President Obama revoked Executive Order 13233 in 2009 with one sentence. Congress can pass a law that overrides them. Courts can strike them down. And some end by their own terms, such as an order closing federal offices on particular days. Some orders do last a long time: the gold orders of 1933 stayed in force until December 31, 1974.
Verdict	False (debunked)
Sources	[647,648,649,650,651]

Schedule F is the clearest recent example of how temporary an order can be. It was created in October 2020, revoked in January 2021 and restored in January 2025, each time by executive order.[652,653,654] If you want a change to last beyond one presidency, the reliable route is a law passed by Congress.

Claim 11: "A president can pardon a crime before it is committed."

Item	Finding
Claim	A president can give someone a pardon in advance for crimes they have not yet committed.
Where and when it spread	Raised in public debate about broad pardons, including the preemptive pardons at the end of the Biden presidency. I did not find a single origin. [Not verified]
What the records show	The Supreme Court said in *Ex parte Garland* (December Term, 1866) that the pardon power "extends to every offence known to the law, and may be exercised

[646] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School, Jackson, J., concurring. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[647] Executive Order 13489, "Presidential Records," January 21, 2009, 74 Fed. Reg. 4669, govinfo.gov. https://www.govinfo.gov/link/fr/74/4669 (accessed November 12, 2026).

[648] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[649] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[650] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

[651] Executive Order 11825, "Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold," December 31, 1974, 40 Fed. Reg. 1003 (January 6, 1975), govinfo.gov. https://www.govinfo.gov/link/fr/40/1003 (accessed November 12, 2026).

[652] Executive Order 13957, "Creating Schedule F in the Excepted Service," October 21, 2020, 85 Fed. Reg. 67631, govinfo.gov. https://www.govinfo.gov/link/fr/85/67631 (accessed November 12, 2026).

[653] Executive Order 14003, "Protecting the Federal Workforce," January 22, 2021, 86 Fed. Reg. 7231 (January 27, 2021), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01924.pdf (accessed November 12, 2026).

[654] Executive Order 14171, "Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce," January 20, 2025, 90 Fed. Reg. 8625 (January 31, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02095.pdf (accessed November 12, 2026).

Item	Finding
	at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment." A pardon can come before charges, but only for an offense already committed. President Ford's pardon of Richard Nixon covered offenses committed "during the period from January 20, 1969 through August 9, 1974," a period that had already ended.
Verdict	False (debunked)
Sources	655,656,657

People sometimes confuse "preemptive" with "future." A preemptive pardon comes before any charge is filed, for conduct in the past. That is lawful under *Ex parte Garland*.[658] A pardon for conduct that has not happened yet would be something else, a license to break the law, and in the sources I checked I found no court ruling or Justice Department opinion that supports it.

Claim 12: "A president can fire anyone in the executive branch."

Item	Finding
Claim	The president can remove any official or employee in the executive branch at will.
Where and when it spread	Argued by supporters of the "unitary executive" view described in Chapter 2, and debated more often after the 2025 firings of agency officials. [Not verified: I did not trace the earliest use of this exact wording.]
What the records show	For top officials, the claim is close to the law as of 2026. The Court held in 1926 that the president can remove executive officers he appoints, and in June 2026 it overruled *Humphrey's Executor* and allowed the president to fire Federal Trade Commissioners. But the Court refused to let the president remove a Federal Reserve governor while her case continued. Career civil servants are a separate matter. The 2020 and 2025 Schedule F orders tried to move some policy-related jobs out of civil service protections, which shows those protections apply unless an order or law changes them.
Verdict	Partly true
Sources	659,660,661,662,663

The line has moved a great deal in a century, from *Myers* in 1926 to *Humphrey's Executor* in 1935 to *Slaughter* in 2026.[664,665,666] Chapter 12 traces each step. The Federal Reserve question and the reach of civil service protections were still open on November 12, 2026.[667]

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655 Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

656 Proclamation 4311, "Granting Pardon to Richard Nixon," September 8, 1974, 39 Fed. Reg. 32601, govinfo.gov. https://www.govinfo.gov/link/fr/39/32601 (accessed November 12, 2026).

657 National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

658 Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

659 Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

660 Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

661 Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

662 Executive Order 13957, "Creating Schedule F in the Excepted Service," October 21, 2020, 85 Fed. Reg. 67631, govinfo.gov. https://www.govinfo.gov/link/fr/85/67631 (accessed November 12, 2026).

663 Executive Order 14171, "Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce," January 20, 2025, 90 Fed. Reg. 8625 (January 31, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2025-01-31/pdf/2025-02095.pdf (accessed November 12, 2026).

What the records show

- Confirmed: Executive orders bind the executive branch when backed by valid authority, and courts strike down orders that are not.
- Confirmed: The 2024 immunity ruling protects former presidents for official acts and leaves no immunity for unofficial acts.
- Confirmed: The president has no power over the date of a presidential election or the end of a term.
- Confirmed: The Twenty-second Amendment limits a person to two elections as president, whether or not they are back to back.
- Unknown: Whether a president can pardon himself.
- Confirmed: Executive orders are lawful when they rest on the Constitution or a law of Congress, and they can be revoked, overridden or struck down.
- Confirmed: The pardon power reaches offenses already committed, before or after charges, not future crimes.
- Interpretation: The president's power to fire top officials grew sharply in 2026, but the Federal Reserve and the civil service remain separate questions.

Chapter 18: Claims About Specific Orders and Events

Information in this chapter is current as of November 12, 2026.

Claim 13: "Pardons signed by autopen are void."

Item	Finding
Claim	President Biden's pardons, including those of the January 6 committee members, are void because they were signed by autopen.
Where and when it spread	President Trump posted on March 17, 2025, that the pardons were "VOID, VACANT" because of the autopen. He posted again on December 2, 2025, declaring autopen-signed documents terminated.
What the records show	The Constitution sets no signature requirement for pardons. A 2005 Justice Department legal opinion concluded the president may direct a subordinate to affix his signature to a bill. PolitiFact rated both claims False. No court had ruled a Biden pardon void as of November 12, 2026, in any record I found.
Verdict	False (debunked)
Sources	[668,669,670,671]

[664] Myers v. United States, 272 U.S. 52 (1926), Legal Information Institute (LII), Cornell Law School. https://www.law.cornell.edu/supremecourt/text/272/52 (accessed November 12, 2026).

[665] Humphrey's Executor v. United States, 295 U.S. 602 (1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[666] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[667] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

[668] Amy Sherman and Louis Jacobson, "Are Biden pardons 'void' because he used an autopen? No, Trump's claim is False," PolitiFact, March 17, 2025. https://www.politifact.com/factchecks/2025/mar/17/donald-trump/are-biden-pardons-void-because-he-used-an-autopen/ (accessed November 12, 2026).

[669] Louis Jacobson, "No, Donald Trump can't unilaterally revoke Biden 'autopen' pardons," PolitiFact, December 4, 2025. https://www.politifact.com/factchecks/2025/dec/04/donald-trump/revoke-pardon-biden-autopen/ (accessed November 12, 2026).

There is a real question underneath: how much did President Biden personally approve each grant? That is a question about facts, not law. But the legal claim that a pardon is void because a machine affixed the signature has no support in the Constitution, in court rulings or in the Justice Department's own legal opinions that I found.[672,673,674]

Claim 14: "President Trump signed more executive orders in 2025 than in his whole first term."

Item	Finding
Claim	In 2025 alone, President Trump signed more executive orders than he did in all four years of his first term.
Where and when it spread	Reported by Pew Research Center on December 16, 2025, and in news coverage at the end of 2025.
What the records show	The Federal Register lists 220 executive orders for the first term (2017-2021) and 225 signed in 2025 (Executive Order 14147 through Executive Order 14371). Pew counted 221 as of December 15, 2025, "one more" than the 220 of the first term.
Verdict	True
Sources	[675,676,677]

This one checks out against the primary record.[678,679] Chapter 5 explains why counts like this need care: they leave out memoranda and proclamations, and Pew found the president signed far fewer memoranda in 2025 than in his first term.[680] So "more orders" does not by itself mean "more presidential actions."

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[670] U.S. Department of Justice, Office of Legal Counsel, "Whether the President May Sign a Bill by Directing That His Signature Be Affixed to It" (July 7, 2005), opinion page with summary. https://www.justice.gov/olc/opinion/whether-president-may-sign-bill-directing-his-signature-be-affixed-it (accessed November 12, 2026).

[671] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[672] Ibid.

[673] U.S. Department of Justice, Office of Legal Counsel, "Whether the President May Sign a Bill by Directing That His Signature Be Affixed to It" (July 7, 2005), opinion page with summary. https://www.justice.gov/olc/opinion/whether-president-may-sign-bill-directing-his-signature-be-affixed-it (accessed November 12, 2026).

[674] Amy Sherman and Louis Jacobson, "Are Biden pardons 'void' because he used an autopen? No, Trump's claim is False," PolitiFact, March 17, 2025. https://www.politifact.com/factchecks/2025/mar/17/donald-trump/are-biden-pardons-void-because-he-used-an-autopen/ (accessed November 12, 2026).

[675] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[676] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

[677] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

[678] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[679] Federal Register, "2025 Donald J. Trump Executive Orders," Office of the Federal Register. https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 (accessed November 12, 2026).

[680] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

Claim 15: "President Obama signed a record number of executive orders."

Item	Finding
Claim	President Obama ruled by executive order, signing more than any president before him.
Where and when it spread	A common claim during the Obama years. I did not trace its first use. [Not verified]
What the records show	Obama signed 276 executive orders in eight years. Franklin Roosevelt signed 3,726, Woodrow Wilson 1,803 and Calvin Coolidge 1,203. Among modern presidents, Reagan (381), Clinton (364) and George W. Bush (291) each signed more than Obama.
Verdict	False (debunked)
Sources	[681]

The count is clear.[682] The claim may come from a fair point stated badly: some of Obama's biggest actions, such as DACA, were done by agency memos rather than executive orders, and critics objected to those actions on the merits.[683] That is an argument about what he did, not about how many orders he signed.

Claim 16: "Lincoln freed the slaves with an executive order."

Item	Finding
Claim	President Lincoln ended slavery with the Emancipation Proclamation, an executive order.
Where and when it spread	A common shorthand in schools and popular history. I found no single origin. [Not verified]
What the records show	The Emancipation Proclamation of January 1, 1863, was a proclamation, not a numbered executive order. It declared free "all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States." It did not apply to slave states that remained in the Union. Slavery was abolished nationwide by the Thirteenth Amendment.
Verdict	Partly true
Sources	[684,685]

The true part: Lincoln used his power as commander in chief to declare freedom for enslaved people in the rebelling areas, and the Union army enforced it as it advanced.[686] The false parts: the document was a proclamation, and it did not end slavery everywhere. That took the Thirteenth Amendment: "Neither slavery nor involuntary servitude, except as a

[681] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[682] Ibid.

[683] Department of Homeland Security v. Regents of the University of California, 591 U.S. 1 (2020), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/18-587 (accessed November 12, 2026).

[684] National Archives, "Emancipation Proclamation (1863)," Milestone Documents. https://www.archives.gov/milestone-documents/emancipation-proclamation (accessed November 12, 2026).

[685] National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[686] National Archives, "Emancipation Proclamation (1863)," Milestone Documents. https://www.archives.gov/milestone-documents/emancipation-proclamation (accessed November 12, 2026).

punishment for crime whereof the party shall have been duly convicted, shall exist within the United States."[687]

Claim 17: "Executive orders began with Franklin Roosevelt."

Item	Finding
Claim	Executive orders are a modern invention, started by Franklin Roosevelt.
Where and when it spread	A common belief. I found no single origin. [Not verified]
What the records show	The American Presidency Project counts 8 orders for George Washington. Numbering of executive orders began in 1907 and was applied back to orders from 1862. Roosevelt signed the most orders of any president, 3,726, which may be why the claim attaches to him.
Verdict	False (debunked)
Sources	[688,689]

Presidents have issued orders to the executive branch since the beginning.[690] What changed over time is how they are numbered, published and counted. The Federal Register Act of July 26, 1935, made publication of orders with general effect a legal requirement, which is one reason counts before the 1930s are less reliable.[691,692]

Claim 18: "The Supreme Court banned nationwide injunctions against the president."

Item	Finding
Claim	Since 2025, judges can no longer block a president's orders nationwide.
Where and when it spread	After *Trump v. CASA* on June 27, 2025.
What the records show	The Court held that universal injunctions "likely exceed the equitable authority that Congress has granted to federal courts." But it left other routes open, including class actions and suits by states, and the birthright citizenship order was later struck down on the merits.
Verdict	Partly true
Sources	[693,694]

[687] National Archives, "The Constitution: Amendments 11-27." https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[688] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[689] National Archives, Office of the Federal Register, "Executive Orders Disposition Tables Historical Index" (page last reviewed June 6, 2024). https://www.archives.gov/federal-register/executive-orders/disposition (accessed November 12, 2026).

[690] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[691] 44 U.S.C. 1505, "Documents to be published in Federal Register," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/44/1505 (accessed November 12, 2026).

[692] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[693] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

[694] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

The true part: a single judge can no longer usually issue an order protecting everyone in the country from a policy in a case brought by a few plaintiffs.[695] The false part: policies can still be stopped nationwide, by a class action covering everyone affected, or by the Supreme Court itself ruling on the merits, as it did in *Trump v. Barbara* a year later.[696]

Claim 19: "The Supreme Court ended President Trump's tariffs."

Item	Finding
Claim	The Supreme Court struck down President Trump's tariffs in 2026.
Where and when it spread	After *Learning Resources v. Trump* on February 20, 2026.
What the records show	The Court held that "IEEPA does not authorize the President to impose tariffs." That ended the tariffs imposed under that law. The same day, the president imposed a new 10 percent surcharge for 150 days under section 122 of the Trade Act of 1974. Tariffs under other laws were not part of the case.
Verdict	Partly true
Sources	[697,698,699]

The ruling was real and significant: it ended a whole set of tariffs on Canada, Mexico, China, Brazil and most other trading partners.[700,701] But it ended only the tariffs imposed under IEEPA. Tariffs under other trade laws, which Congress wrote to let presidents adjust imports, were not before the Court, and the president used one of those laws the same day.[702,703]

Claim 20: "Lincoln's suspension of habeas corpus was illegal."

Item	Finding
Claim	Abraham Lincoln broke the Constitution when he suspended the writ of habeas corpus in 1861.
Where and when it spread	The claim began in 1861 with Chief Justice Taney's ruling in *Ex parte Merryman* and has been repeated by critics of broad presidential power ever since.
What the records show	Taney ruled that "the president, under the constitution of the United States, cannot suspend the privilege of the writ of habeas corpus, nor authorize a military officer to do it." Lincoln answered that "the Constitution itself is silent as

[695] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

[696] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[697] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[698] Executive Order 14389, "Ending Certain Tariff Actions," February 20, 2026, 91 Fed. Reg. 9437 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03832.pdf (accessed November 12, 2026).

[699] Proclamation 11012, "Imposing a Temporary Import Surcharge To Address Fundamental International Payments Problems," February 20, 2026, 91 Fed. Reg. 9337 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/FR-2026-02-25.pdf (accessed November 12, 2026).

[700] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[701] Executive Order 14389, "Ending Certain Tariff Actions," February 20, 2026, 91 Fed. Reg. 9437 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03832.pdf (accessed November 12, 2026).

[702] Proclamation 11012, "Imposing a Temporary Import Surcharge To Address Fundamental International Payments Problems," February 20, 2026, 91 Fed. Reg. 9337 (February 25, 2026), govinfo.gov. https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/FR-2026-02-25.pdf (accessed November 12, 2026).

[703] 19 U.S.C. 2132, "Balance-of-payments authority" (Trade Act of 1974, sec. 122), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/19/2132 (accessed November 12, 2026).

Item	Finding
	to which or who is to exercise the power." The suspension clause does not name who may act, though it sits in Article I, the article about Congress. Congress approved Lincoln's actions in the Habeas Corpus Act of 1863. The full Supreme Court never ruled on the 1861 suspension itself. In 1866 it rejected military trials of civilians where the courts were open, a related but different question.
Verdict	Inconclusive
Sources	704,705,706,707,708

This is one of the few claims in this book where the honest answer is that the question was never settled by the body that could settle it. A lower-court ruling by the chief justice says yes. The president and, later, Congress acted as if the answer was no, at least in an emergency when Congress was not in session.[709,710] Justice Scalia, writing in 2004, described Taney's ruling as "rejecting Lincoln's unauthorized suspension," but that was a dissent, not the Court's holding.[711]

Claim 21: "Franklin Roosevelt made it illegal for Americans to own gold."

Item	Finding
Claim	In 1933, President Roosevelt banned Americans from owning gold.
Where and when it spread	Repeated often in writing about gold investing and in criticism of emergency powers. I found no single origin. [Not verified]
What the records show	Executive Order 6102 of April 5, 1933, required people to turn in "all gold coin, gold bullion and gold certificates" by May 1, 1933. It had exceptions, including gold for "legitimate and customary use in industry, profession or art," up to "$100.00" in gold coin and certificates per person, and "gold coins having a recognized special value to collectors of rare and unusual coins." Violators faced up to "$10,000" in fines or ten years in prison. Later orders carried the rules forward until they were revoked effective December 31, 1974.
Verdict	Partly true
Sources	712,713,714

[704] Ex parte Merryman, 17 F. Cas. 144 (C.C.D. Md. 1861) (Case No. 9,487), opinion of Chief Justice Roger B. Taney, text of Federal Cases vol. 17 as transcribed on Wikisource. https://en.wikisource.org/wiki/Ex_parte_Merryman (accessed November 12, 2026).

[705] Abraham Lincoln, "Special Session Message," July 4, 1861, The American Presidency Project, University of California, Santa Barbara. https://www.presidency.ucsb.edu/documents/special-session-message-5 (accessed November 12, 2026).

[706] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[707] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[708] Ex parte Milligan, 71 U.S. (4 Wall.) 2 (decided April 3, 1866), opinion of the Court by Justice Davis, Justia U.S. Supreme Court Center. https://supreme.justia.com/cases/federal/us/71/2/ (accessed November 12, 2026).

[709] Ex parte Merryman, 17 F. Cas. 144 (C.C.D. Md. 1861) (Case No. 9,487), opinion of Chief Justice Roger B. Taney, text of Federal Cases vol. 17 as transcribed on Wikisource. https://en.wikisource.org/wiki/Ex_parte_Merryman (accessed November 12, 2026).

[710] Abraham Lincoln, "Special Session Message," July 4, 1861, The American Presidency Project, University of California, Santa Barbara. https://www.presidency.ucsb.edu/documents/special-session-message-5 (accessed November 12, 2026).

[711] Hamdi v. Rumsfeld, 542 U.S. 507 (2004), plurality opinion and dissents, LII, Cornell Law School, Scalia, J., dissenting. https://www.law.cornell.edu/supremecourt/text/542/507 (accessed November 12, 2026).

[712] Executive Order 6102, "Requiring Gold Coin, Gold Bullion and Gold Certificates to Be Delivered to the Government," April 5, 1933, text as transcribed on Wikisource. https://en.wikisource.org/wiki/Executive_Order_6102 (accessed November 12, 2026).

[713] Norman v. Baltimore and Ohio Railroad Co., 294 U.S. 240 (decided February 18, 1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/294/240 (accessed November 12, 2026).

[714] Executive Order 11825, "Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold," December 31, 1974, 40 Fed. Reg. 1003 (January 6, 1975), govinfo.gov. https://www.govinfo.gov/link/fr/40/1003 (accessed November 12, 2026).

The claim is right about the main thrust: for 41 years, most private holding of gold coin and bullion was restricted.[715,716] It is wrong to say all gold ownership was banned. Jewelry-making and other trade uses, small amounts of coin and collectors' coins were allowed.[717] The order also did not stand alone. It rested on a law Congress passed in March 1933, and the Supreme Court upheld related laws in 1935.[718,719]

Claim 22: "The president has a line-item veto."

Item	Finding
Claim	The president can strike individual items out of a spending bill and sign the rest.
Where and when it spread	Often assumed because many state governors have a line-item veto. [Not verified: I did not check every state's constitution for this edition.]
What the records show	Congress gave the president a version of this power in the Line Item Veto Act of 1996. The Supreme Court struck it down on June 25, 1998, holding that "The Act's cancellation procedures violate the Presentment Clause." Under the Constitution, a president must sign or veto a bill as a whole.
Verdict	False (debunked)
Sources	[720,721]

A president can still ask Congress to cancel spending through a rescission request under the Impoundment Control Act, and Congress approved one such request in 2025.[722,723] But that requires a vote of Congress. It is not a veto.

Claim 23: "Congress has not declared war since World War II."

Item	Finding
Claim	The United States has fought many wars since 1945, but Congress has not formally declared war since World War II.
Where and when it spread	A common point in war powers debates. I found no single origin. [Not verified]
What the records show	The Senate's official list shows 11 declarations of war. The last ones, against Bulgaria, Hungary and Rumania, came in June 1942. Since then, Congress has used authorizations for the use of force instead, such as the 1964 Gulf of Tonkin Resolution, the 2001 authorization after September 11 and the 2002 Iraq

[715] Executive Order 6102, "Requiring Gold Coin, Gold Bullion and Gold Certificates to Be Delivered to the Government," April 5, 1933, text as transcribed on Wikisource. https://en.wikisource.org/wiki/Executive_Order_6102 (accessed November 12, 2026).

[716] Executive Order 11825, "Revocation of Executive Orders Pertaining to the Regulation of the Acquisition of, Holding of, or Other Transactions in Gold," December 31, 1974, 40 Fed. Reg. 1003 (January 6, 1975), govinfo.gov. https://www.govinfo.gov/link/fr/40/1003 (accessed November 12, 2026).

[717] Executive Order 6102, "Requiring Gold Coin, Gold Bullion and Gold Certificates to Be Delivered to the Government," April 5, 1933, text as transcribed on Wikisource. https://en.wikisource.org/wiki/Executive_Order_6102 (accessed November 12, 2026).

[718] Ibid.

[719] Norman v. Baltimore and Ohio Railroad Co., 294 U.S. 240 (decided February 18, 1935), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/294/240 (accessed November 12, 2026).

[720] Clinton v. City of New York, 524 U.S. 417 (1998), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/97-1374 (accessed November 12, 2026).

[721] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[722] 2 U.S.C. 683, "Rescission of budget authority," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/2/683 (accessed November 12, 2026).

[723] Rescissions Act of 2025, Public Law 119-28, 139 Stat. 467 (July 24, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ28/html/PLAW-119publ28.htm (accessed November 12, 2026).

Item	Finding
	authorization. Korea in 1950 had neither, and in 2011 the House voted down a resolution to authorize the Libya operation.
Verdict	True
Sources	724,725,726,727,728,729

The claim is true, but it can mislead if it suggests Congress has had no say. An authorization for the use of force is a law passed by both chambers and signed by the president, and courts and presidents have treated those laws as giving real authority.[730,731] Chapter 14 explains the difference between a declaration and an authorization, and why the gap between them is where most of today's war powers fights happen.

What the records show

- Confirmed: The Federal Register lists more executive orders for President Trump in 2025 (225) than in his first term (220).
- Confirmed: President Obama signed 276 executive orders, fewer than several modern presidents.
- Confirmed: The Emancipation Proclamation applied to areas in rebellion. The Thirteenth Amendment ended slavery nationwide.
- Confirmed: *Trump v. CASA* limited universal injunctions but did not end nationwide relief by other routes.
- Confirmed: The 2026 tariff ruling ended IEEPA tariffs only.
- Interpretation: Whether President Biden personally approved each autopen-signed grant is a factual dispute separate from the legal claim that such pardons are void.
- Confirmed: Executive Order 6102 required most gold to be turned in by May 1, 1933, with exceptions, and the gold rules ended December 31, 1974.
- Confirmed: The Supreme Court struck down the Line Item Veto Act in 1998.
- Confirmed: Congress last declared war in June 1942.
- Unknown: Whether Lincoln's 1861 suspension of habeas corpus was lawful before Congress acted. No Supreme Court majority has ruled on it.

[724] U.S. Senate, "Declarations of War by Congress," Powers and Procedures, senate.gov. https://www.senate.gov/about/powers-procedures/declarations-of-war.htm (accessed November 12, 2026).

[725] Joint Resolution to promote the maintenance of international peace and security in southeast Asia (Gulf of Tonkin Resolution), Public Law 88-408, 78 Stat. 384 (August 10, 1964), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-78/pdf/STATUTE-78-Pg384.pdf (accessed November 12, 2026).

[726] Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (September 18, 2001), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-115/pdf/STATUTE-115-Pg224.pdf (accessed November 12, 2026).

[727] U.S. House of Representatives, Office of the Clerk, Roll Call 455 (October 10, 2002), H.J.Res. 114, clerk.house.gov. https://clerk.house.gov/evs/2002/roll455.xml (accessed November 12, 2026).

[728] U.S. Senate, Roll Call Vote 107th Congress, 2nd Session, Vote 237 (October 11, 2002), H.J.Res. 114, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1072/vote_107_2_00237.htm (accessed November 12, 2026).

[729] U.S. House of Representatives, Office of the Clerk, Roll Calls 493 and 494 (June 24, 2011), H.J.Res. 68 and H.R. 2278, clerk.house.gov. https://clerk.house.gov/evs/2011/roll493.xml (accessed November 12, 2026).

[730] Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (September 18, 2001), govinfo.gov. https://www.govinfo.gov/content/pkg/STATUTE-115/pdf/STATUTE-115-Pg224.pdf (accessed November 12, 2026).

[731] Hamdi v. Rumsfeld, 542 U.S. 507 (2004), plurality opinion and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/542/507 (accessed November 12, 2026).

Part Seven: Where Things Stand and What Could Change

This last part pulls the book together. Chapter 19 describes where presidential power stood on November 12, 2026, what the public thinks, and how views shift with the party in power. Chapter 20 lays out the reform proposals on the table and who has backed them. I do not recommend any of them.

Chapter 19: Where Things Stand

Information in this chapter is current as of November 12, 2026.

The numbers

Table 19.1. Executive orders, recent presidents (as of November 12, 2026)

President	Executive orders	Years counted	Source
Barack Obama	276	8.00	American Presidency Project
Donald J. Trump, first term	220	4.00	American Presidency Project; Federal Register
Joseph R. Biden, Jr.	162	4.00	American Presidency Project; Federal Register
Donald J. Trump, second term	291 (Federal Register page); 290 (Federal Register search); 292 (American Presidency Project, through October 20, 2026)	About 1.8	See Introduction and Chapter 5

Sources: [732,733]

The pace of orders in the second Trump term is the fastest since Franklin Roosevelt. The American Presidency Project put it at 166 orders per year through October 20, 2026, compared with 307 per year for Roosevelt and 55 per year for the first Trump term.[734] As Chapter 5 explained, orders are only one kind of presidential action, and counts alone do not measure power.[735]

The courts

On November 12, 2026, the main legal questions stood like this:

[732] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[733] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

[734] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[735] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

- **Settled for now by the Supreme Court:** IEEPA does not authorize tariffs; the birthright citizenship order is invalid; the president may remove FTC commissioners at will; universal injunctions are generally not allowed; former presidents have immunity for official acts.[736,737,738,739,740]
- **Decided only on an interim basis:** the removal of a Federal Reserve governor, federalizing the National Guard in Illinois, the Alien Enemies Act removals, holding back foreign aid near the end of a fiscal year, and the 2026 elections order.[741,742,743,744,745,746]
- **Never decided:** whether a concurrent resolution under the War Powers Resolution binds a president, whether a pocket rescission is lawful, and whether a president can pardon himself.[747,748,749]

Congress

In 2025 and 2026, Congress used its tools more than at any time in recent years, though rarely with enough votes to overcome a veto. It approved a rescission request, repealed two old war authorizations, and adopted a concurrent resolution directing the removal of forces from hostilities with Iran.[750,751,752,753] The Senate passed several resolutions to end tariff emergencies, none of which became law.[754]

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[736] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[737] Trump v. Barbara, No. 25-365 (U.S. June 30, 2026), syllabus, opinion of the Court, concurrences and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-365 (accessed November 12, 2026).

[738] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[739] Trump v. CASA, Inc., No. 24A884 (U.S. June 27, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A884 (accessed November 12, 2026).

[740] Trump v. United States, 603 U.S. 593 (2024), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/23-939 (accessed November 12, 2026).

[741] Trump v. Cook, No. 25A312 (U.S. June 29, 2026), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A312 (accessed November 12, 2026).

[742] Trump v. Illinois, No. 25A443 (U.S. December 23, 2025), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A443 (accessed November 12, 2026).

[743] Trump v. J.G.G., No. 24A931 (U.S. April 7, 2025) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A931 (accessed November 12, 2026).

[744] A.A.R.P. v. Trump, No. 24A1007 (U.S. May 16, 2025) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A1007 (accessed November 12, 2026).

[745] Department of State v. AIDS Vaccine Advocacy Coalition, No. 25A269 (U.S. September 26, 2025), order and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A269 (accessed November 12, 2026).

[746] Trump v. California, No. 26A124 (U.S. August 24, 2026) (per curiam), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/26A124 (accessed November 12, 2026).

[747] 50 U.S.C. 1544, "Congressional action" (War Powers Resolution sec. 5), LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/50/1544 (accessed November 12, 2026).

[748] U.S. Government Accountability Office, "Impoundment Control Act," Appropriations Law decisions page, gao.gov. https://www.gao.gov/legal/appropriations-law/impoundment-control-act (accessed November 12, 2026).

[749] U.S. Department of Justice, Office of Legal Counsel, "Presidential or Legislative Pardon of the President" (August 5, 1974), opinion page with summary. https://www.justice.gov/olc/opinion/presidential-or-legislative-pardon-president (accessed November 12, 2026).

[750] Rescissions Act of 2025, Public Law 119-28, 139 Stat. 467 (July 24, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ28/html/PLAW-119publ28.htm (accessed November 12, 2026).

[751] National Defense Authorization Act for Fiscal Year 2026, Public Law 119-60, section 8370, "Repeal of Authorizations for Use of Military Force Relating to Iraq," 139 Stat. 718 (approved December 18, 2025), govinfo.gov. https://www.govinfo.gov/content/pkg/PLAW-119publ60/html/PLAW-119publ60.htm (accessed November 12, 2026).

What the public thinks

The Pew Research Center, a nonpartisan research organization, has asked Americans about presidential power several times.

In a survey of 5,086 adults conducted January 27 to February 2, 2025, Pew found that "65% of U.S. adults say it would be 'too risky' to give Trump more power," while "Just 33%" said many problems could be dealt with more effectively if he did not have to worry so much about Congress or the courts.[755] Asked about presidents in general, "78%" expressed concern about expanding presidential power.[756]

In a survey taken September 22 to 28, 2025, Pew found that 51 percent of Americans said President Trump was relying too much on executive orders, 27 percent said about the right amount and 6 percent said too little. Republicans and Democrats split sharply: 80 percent of Democrats said too much, compared with 23 percent of Republicans.[757]

How views flip with the party in power

The Introduction promised evidence for a pattern: people judge presidential power differently depending on who holds it. The records show this pattern in both the public and Congress.

In the public. Pew's February 2025 report compared answers from the Biden years with answers after President Trump took office. "When Democrat Joe Biden was president, more than three-quarters of Republicans said it would be too risky to expand presidential power. Currently, 66% say" so. Among Democrats, "Today, 89% say it's too risky to give presidents more power," which is "up 17 percentage points from last year (during Biden's presidency)."[758] In other words, the question was about presidents in general, not a named person, and the answers still moved with the party in the White House.

In Congress. Senate votes on ending national emergencies show the same pattern. The table compares how senators of each party voted on emergencies declared or kept by presidents of each party.

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[752] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

[753] U.S. House of Representatives, Office of the Clerk, roll call votes 2025-345 and 2025-346 (December 17, 2025) and 2026-114, 2026-170, 2026-199, 2026-282 and 2026-307, clerk.house.gov. https://clerk.house.gov/Votes/2026199 (accessed November 12, 2026).

[754] U.S. Senate, roll call votes on national emergency resolutions: 116th Congress, 1st Session, votes 49, 302 and 325 (2019); 119th Congress, 1st Session, votes 95, 160, 225, 554, 594, 598 and 600 (2025), senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm (accessed November 12, 2026).

[755] Gabriel Borelli, "Most Americans say it would be 'too risky' to give presidents, including Trump, more power," Pew Research Center, February 14, 2025 (survey of 5,086 adults, January 27 to February 2, 2025). https://www.pewresearch.org/short-reads/2025/02/14/most-americans-say-it-would-be-too-risky-to-give-presidents-including-trump-more-power/ (accessed November 12, 2026).

[756] Ibid.

[757] Mia Hennen, "Trump has already issued more executive orders in his second term than in his first," Pew Research Center, December 16, 2025. https://www.pewresearch.org/short-reads/2025/12/16/trump-has-already-issued-more-executive-orders-in-his-second-term-than-in-his-first/ (accessed November 12, 2026).

[758] Gabriel Borelli, "Most Americans say it would be 'too risky' to give presidents, including Trump, more power," Pew Research Center, February 14, 2025 (survey of 5,086 adults, January 27 to February 2, 2025). https://www.pewresearch.org/short-reads/2025/02/14/most-americans-say-it-would-be-too-risky-to-give-presidents-including-trump-more-power/ (accessed November 12, 2026).

Table 19.2. Senate votes to end national emergencies, by party

Vote	President's party	Democrats and independents voting to end	Republicans voting to end	Result
March 14, 2019: border emergency (H.J.Res. 46)	Republican	47 of 47	12 of 53	Passed 59-41; vetoed
March 3, 2022: COVID-19 emergency (S.J.Res. 38)	Democratic	0 of 47 voting	48 of 48 voting	Passed 48-47
March 29, 2023: COVID-19 emergency (H.J.Res. 7)	Democratic	23 of 46 voting	45 of 45 voting	Passed 68-23
April 2, 2025: Canada duties emergency (S.J.Res. 37)	Republican	47 of 47	4 of 52 voting	Passed 51-48

Sources: U.S. Senate roll call votes, with party counts taken from the member lists.[759]

The COVID-19 emergency was first declared by President Trump on March 13, 2020, and kept in place by President Biden.[760] When it was Biden's emergency, Republicans voted to end it and most Democrats did not. When the emergency belonged to a Republican president, the pattern reversed. The same thing appears on war powers: in March 2019, every Democrat and independent voted for a resolution to end U.S. involvement in hostilities in Yemen under President Trump, along with 7 Republicans, while in 2025 and 2026 Republicans voted nearly as a bloc against Iran war powers resolutions.[761,762]

Chapter 7 quoted Justice Jackson's joke that "President Taft cancels out Professor Taft."[763] The records suggest this is not a quirk of one president. It is a lasting habit of American politics, shared by both parties.

The two main views

On the main question, how strong the presidency should be, there are two broad views. Each has serious defenders.

A strong, unified executive. Supporters argue the Constitution vests "the executive Power" in one president so that one elected official is accountable for the whole executive

[759] U.S. Senate, roll call vote detail pages with member votes by party: 116th Congress, 1st Session, votes 48 and 49 (March 13-14, 2019); 117th Congress, 2nd Session, vote 68 (March 3, 2022); 118th Congress, 1st Session, vote 80 (March 29, 2023); 119th Congress, 1st Session, votes 160 and 328 (2025); 119th Congress, 2nd Session, vote 184 (2026). Party counts tallied by the author. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1181/vote_118_1_00080.htm (accessed November 12, 2026).

[760] Ibid.

[761] Ibid.

[762] U.S. Senate, roll call vote lists for the 119th Congress, 1st Session (2025) votes 328 and 608, and 2nd Session (2026) votes 5, 9, 46, 184 and 244, with vote detail pages, senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_2.htm (accessed November 12, 2026).

[763] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952), majority opinion and concurrences, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

branch. Chief Justice Roberts, writing in *Trump v. Slaughter*, held that removal protection for FTC commissioners "is contrary to the separation of powers enshrined in the Constitution."[764] In the immunity case he wrote that "the system of separated powers designed by the Framers has always demanded an energetic, independent Executive."[765] Hamilton made the same case in 1788: "Energy in the Executive is a leading character in the definition of good government."[766]

A checked, limited executive. Critics argue that concentrating power in one person is the danger the framers feared most. Madison wrote that combining all powers "in the same hands" is "the very definition of tyranny."[767] Justice Sotomayor, dissenting in the immunity case, wrote that "In every use of official power, the President is now a king above the law."[768] Justice Kagan, dissenting from an interim order in 2025 that let the president remove members of two independent boards, wrote that the order "allows the President to overrule Humphrey's by fiat."[769]

Both views appear in the same Constitution, and both have been held by people of both parties, often depending on who was in the White House.

What the records show

- Confirmed: President Trump's second-term pace of executive orders was 166 per year through October 20, 2026, the highest since Franklin Roosevelt.
- Confirmed: Several major rulings in 2025 and 2026 were interim. Some core questions have never been decided.
- Confirmed: Pew found in early 2025 that 65 percent of adults said giving President Trump more power would be too risky, and that views of presidential power in general shifted with the party in power.
- Confirmed: Senate votes on ending emergencies split along party lines that reversed when the president's party changed.

Chapter 20: Reform Options

Information in this chapter is current as of November 12, 2026.

This chapter lays out the main proposals to change presidential power, what each would do, and who has backed it. Some would limit the president. Some would limit agencies or

[764] Trump v. Slaughter, No. 25-332 (U.S. June 29, 2026), syllabus, opinion of the Court and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25-332 (accessed November 12, 2026).

[765] Trump v. United States, 603 U.S. 593 (2024), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/23-939 (accessed November 12, 2026).

[766] Alexander Hamilton, The Federalist No. 70 (1788), Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed70.asp (accessed November 12, 2026).

[767] James Madison, The Federalist No. 47 (1788), Avalon Project, Yale Law School Lillian Goldman Law Library. https://avalon.law.yale.edu/18th_century/fed47.asp (accessed November 12, 2026).

[768] Trump v. United States, 603 U.S. 593 (2024), syllabus, opinion of the Court and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/23-939 (accessed November 12, 2026).

[769] Trump v. Wilcox, No. 24A966 (U.S. May 22, 2025), order and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24A966 (accessed November 12, 2026).

courts. One would expand Congress's control over trade. I do not recommend any of them. That choice belongs to you.

A note on the arguments below. Where I could tie an argument to a record, such as a court opinion or a bill's text, I cite it. The "case for" and "case against" lines without a footnote are my own short summaries of arguments each side commonly makes. They are interpretations, not facts, and the Part Notes list them.

Table 20.1. Selected reform proposals in Congress

Proposal	What it would do	Who backed it	Furthest it got
ARTICLE ONE Act (S. 764, 2019), short for "Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies"	A national emergency would end after 30 days unless Congress passes a joint resolution approving it	Sen. Mike Lee (R-Utah) with Republican cosponsors	Reported by a Senate committee
National Security Powers Act (S. 2391, 2021)	Rewrites war powers, arms sales and emergency laws; emergencies end after 30 days without approval; hostilities need specific authorization	Sens. Chris Murphy (D-Conn.), Mike Lee (R-Utah) and Bernie Sanders (I-Vt.)	Introduced
Protecting Our Democracy Act (H.R. 5314, 2021)	Limits on pardons, including a ban on self-pardons; pauses the statute of limitations for a sitting president; stronger enforcement of congressional subpoenas; tighter impoundment rules; inspector general protections	House Democrats	Passed the House 220-208 on December 9, 2021 (219 Democrats and 1 Republican in favor)
Regulations from the Executive in Need of Scrutiny (REINS) Act (H.R. 277, 2023)	Major agency rules would not take effect unless Congress passes a joint resolution approving them within 70 days	House Republicans	Passed the House 221-210 on June 14, 2023 (220 Republicans and 1 Democrat in favor)
Trade Review Act of 2025 (S. 1272)	New tariffs would expire after 60 days unless Congress approves them; 48-hour notice to Congress	Sens. Maria Cantwell (D-Wash.) and Chuck Grassley (R-Iowa), with cosponsors of both parties	Introduced

Sources: bill texts and House roll call votes.[770,771,772,773,774,775]

[770] S. 764, 116th Congress, "Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies Act" (ARTICLE ONE Act), introduced March 12, 2019, reported in Senate (Report No. 116-159), govinfo.gov. https://www.govinfo.gov/link/bills/116/s/764?link-type=html (accessed November 12, 2026).

[771] S. 2391, 117th Congress, "National Security Powers Act of 2021," introduced July 20, 2021, govinfo.gov. https://www.govinfo.gov/link/bills/117/s/2391?link-type=html (accessed November 12, 2026).

Reforming emergency powers

The ARTICLE ONE Act and the National Security Powers Act share an idea: a national emergency "shall terminate when that 30-day period expires unless there is enacted into law a joint resolution of approval."[776,777]

- **The case for:** Under current law, ending an emergency takes a veto-proof majority, so emergencies can last for decades. Table 15.1 shows Congress voting to end emergencies and failing to overcome vetoes.[778] Flipping the default would make Congress share responsibility for every lasting emergency.
- **The case against:** Some emergencies, such as sanctions on hostile governments, need to stay in place for years. A 30-day clock could force constant votes, and a divided Congress could let a needed emergency lapse.
- **Who has backed it:** Members of both parties. The ARTICLE ONE Act was led by a Republican in 2019 while a Republican was president. The National Security Powers Act was led by a Democrat, a Republican and an independent in 2021 while a Democrat was president.[779,780]

Reforming war powers

The National Security Powers Act would also require "specific statutory authorization" for hostilities and would define "hostilities" to include "any situation involving any use of lethal or potentially lethal force by or against United States forces."[781]

- **The case for:** Supporters say the 1973 law has been ignored, partly because "hostilities" was never defined and partly because of *Chadha*.[782]

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[772] H.R. 5314, 117th Congress, "Protecting Our Democracy Act," as received in the Senate, December 13, 2021, govinfo.gov. https://www.govinfo.gov/link/bills/117/hr/5314?link-type=html (accessed November 12, 2026).

[773] H.R. 277, 118th Congress, "Regulations from the Executive in Need of Scrutiny Act of 2023" (REINS Act), as placed on the Senate calendar, June 2023, govinfo.gov. https://www.govinfo.gov/link/bills/118/hr/277?link-type=html (accessed November 12, 2026).

[774] S. 1272, 119th Congress, "Trade Review Act of 2025," introduced April 3, 2025, govinfo.gov. https://www.govinfo.gov/link/bills/119/s/1272?link-type=html (accessed November 12, 2026).

[775] U.S. House of Representatives, Office of the Clerk, Roll Call 440 (December 9, 2021, H.R. 5314) and Roll Call 265 (June 14, 2023, H.R. 277), clerk.house.gov. https://clerk.house.gov/Votes/2021440 (accessed November 12, 2026).

[776] S. 764, 116th Congress, "Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies Act" (ARTICLE ONE Act), introduced March 12, 2019, reported in Senate (Report No. 116-159), govinfo.gov. https://www.govinfo.gov/link/bills/116/s/764?link-type=html (accessed November 12, 2026).

[777] S. 2391, 117th Congress, "National Security Powers Act of 2021," introduced July 20, 2021, govinfo.gov. https://www.govinfo.gov/link/bills/117/s/2391?link-type=html (accessed November 12, 2026).

[778] U.S. Senate, roll call votes on national emergency resolutions: 116th Congress, 1st Session, votes 49, 302 and 325 (2019); 119th Congress, 1st Session, votes 95, 160, 225, 554, 594, 598 and 600 (2025), senate.gov. https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm (accessed November 12, 2026).

[779] S. 764, 116th Congress, "Assuring that Robust, Thorough, and Informed Congressional Leadership is Exercised Over National Emergencies Act" (ARTICLE ONE Act), introduced March 12, 2019, reported in Senate (Report No. 116-159), govinfo.gov. https://www.govinfo.gov/link/bills/116/s/764?link-type=html (accessed November 12, 2026).

[780] S. 2391, 117th Congress, "National Security Powers Act of 2021," introduced July 20, 2021, govinfo.gov. https://www.govinfo.gov/link/bills/117/s/2391?link-type=html (accessed November 12, 2026).

[781] Ibid.

[782] Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/462/919 (accessed November 12, 2026).

- **The case against:** Presidents of both parties have argued that the commander in chief must be able to act quickly, and that the Constitution itself, not a law, sets the president's war powers.[783]

Reforming the pardon power

The Protecting Our Democracy Act includes a section titled "Prohibition on presidential self-pardon" and another on "Bribery in connection with pardons and commutations."[784]

- **The case for:** Supporters say no one should be able to place himself beyond the law, a point the Justice Department itself made in 1974.[785]
- **The case against:** Opponents note that the Supreme Court has said Congress "can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders," so a law may not be able to restrict the power at all. Only a constitutional amendment clearly could.[786]

Reforming spending fights

The Protecting Our Democracy Act would also add new requirements to the Impoundment Control Act, including rules for funds about to expire.[787] This responds directly to the pocket rescission dispute.[788,789]

- **The case for:** GAO already reads the current law to forbid pocket rescissions; writing that into law would end the dispute.[790]
- **The case against:** Supporters of presidential discretion argue a president should not be forced to spend money wastefully, and that the 45-day review process is enough.[791]

Reforming agency rules

The REINS Act takes aim at agencies rather than the president. A "major rule shall not take effect unless the Congress enacts a joint resolution of approval."[792]

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[783] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[784] H.R. 5314, 117th Congress, "Protecting Our Democracy Act," as received in the Senate, December 13, 2021, govinfo.gov. https://www.govinfo.gov/link/bills/117/hr/5314?link-type=html (accessed November 12, 2026).

[785] U.S. Department of Justice, Office of Legal Counsel, "Presidential or Legislative Pardon of the President" (August 5, 1974), opinion page with summary. https://www.justice.gov/olc/opinion/presidential-or-legislative-pardon-president (accessed November 12, 2026).

[786] Ex parte Garland, 71 U.S. 333 (1866), LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/71/333 (accessed November 12, 2026).

[787] H.R. 5314, 117th Congress, "Protecting Our Democracy Act," as received in the Senate, December 13, 2021, govinfo.gov. https://www.govinfo.gov/link/bills/117/hr/5314?link-type=html (accessed November 12, 2026).

[788] U.S. Government Accountability Office, "Impoundment Control Act," Appropriations Law decisions page, gao.gov. https://www.gao.gov/legal/appropriations-law/impoundment-control-act (accessed November 12, 2026).

[789] Department of State v. AIDS Vaccine Advocacy Coalition, No. 25A269 (U.S. September 26, 2025), order and dissent, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/25A269 (accessed November 12, 2026).

[790] U.S. Government Accountability Office, "Impoundment Control Act," Appropriations Law decisions page, gao.gov. https://www.gao.gov/legal/appropriations-law/impoundment-control-act (accessed November 12, 2026).

[791] 2 U.S.C. 683, "Rescission of budget authority," LII, Cornell Law School. https://www.law.cornell.edu/uscode/text/2/683 (accessed November 12, 2026).

[792] H.R. 277, 118th Congress, "Regulations from the Executive in Need of Scrutiny Act of 2023" (REINS Act), as placed on the Senate calendar, June 2023, govinfo.gov. https://www.govinfo.gov/link/bills/118/hr/277?link-type=html (accessed November 12, 2026).

- **The case for:** Supporters say major rules are really laws and should be voted on by elected members of Congress.
- **The case against:** Opponents say Congress cannot vote on every technical rule, and that the bill would freeze regulation in place no matter which party holds the White House.

Reforming tariffs

The Trade Review Act of 2025 says any new duty "shall remain in effect for a period of not more than 60 days, unless there is enacted into law a joint resolution of approval."[793] It was introduced before the Supreme Court's tariff ruling, and its sponsors included senators of both parties.[794,795]

Changes that need no new law

Some changes need no vote at all:

- **Presidents can limit themselves.** Every president can choose to use fewer orders, publish more of them and explain the legal basis for each.
- **Courts will keep deciding.** The open questions in Chapter 19 will be answered case by case.
- **Voters decide.** Elections remain the check that reaches every other one, because they choose the president and the Congress that writes the laws.[796]

A last word

I said at the start that I would hold every president, party and group to the same standard. The records in this book show presidents of both parties stretching their powers, courts ruling against presidents of both parties, and members of Congress changing their votes when the White House changed hands. Whether the presidency today is too strong, too weak or about right is a question of values, not facts. The facts, with their sources, are here so you can answer it for yourself.

What the records show

- Confirmed: Bills to require Congress to approve emergencies within 30 days have been introduced by members of both parties.

- Confirmed: The Protecting Our Democracy Act passed the House in 2021 with Democratic votes, and the REINS Act passed the House in 2023 with Republican votes. Neither became law.

- Interpretation: Whether Congress can limit the pardon power by statute is disputed.

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[793] S. 1272, 119th Congress, "Trade Review Act of 2025," introduced April 3, 2025, govinfo.gov. https://www.govinfo.gov/link/bills/119/s/1272?link-type=html (accessed November 12, 2026).

[794] Ibid.

[795] Learning Resources, Inc. v. Trump, No. 24-1287, together with Trump v. V.O.S. Selections, Inc., No. 25-250 (U.S. February 20, 2026), syllabus, opinions and dissents, LII, Cornell Law School. https://www.law.cornell.edu/supremecourt/text/24-1287 (accessed November 12, 2026).

[796] National Archives, "The Constitution of the United States: A Transcription" (signed September 17, 1787). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

Ex parte Garland suggests it cannot.

- Unknown: Whether any of these proposals will become law.

Appendices

Appendix A: Executive Orders by President

This table lists every president's executive orders as counted by the American Presidency Project at the University of California, Santa Barbara. The project's counts run through October 20, 2026, and the page was last updated October 22, 2026.[797] The project notes that its counts before 1945 include both numbered and unnumbered orders, that "The best known compilation includes 'over 1500' unnumbered orders, but the editor notes that the true total is unknown," and that "Estimates have reportedly ranged as high as 50,000."[798] The counts do not include memoranda, proclamations or other actions.[799]

Table A.1. Executive orders by president, 1789 to October 20, 2026

President	Party	Years in office	Executive orders	Average per year	Order numbers
George Washington	Federalist	7.85	8	1	unnumbered
John Adams	Federalist	4.00	1	0.25	unnumbered
Thomas Jefferson	Democratic-Republican	8.00	4	0.50	unnumbered
James Madison	Democratic-Republican	8.00	1	0.13	unnumbered
James Monroe	Democratic-Republican	8.00	1	0.13	unnumbered
John Quincy Adams	Democratic-Republican	4.00	3	0.75	unnumbered
Andrew Jackson	Democratic	8.00	12	1.5	unnumbered
Martin Van Buren	Democratic	4.00	10	2.5	unnumbered
William Henry Harrison	Whig	0.08	0	0	unnumbered
John Tyler	Whig	3.92	17	4.3	unnumbered
James K. Polk	Democratic	4.00	18	4.5	unnumbered
Zachary Taylor	Whig	1.35	5	3.7	unnumbered
Millard Fillmore	Whig	2.65	12	4.5	unnumbered
Franklin Pierce	Democratic	4.00	35	9	unnumbered
James Buchanan	Democratic	4.00	16	4	unnumbered
Abraham Lincoln	Republican	4.12	48	12	unnumbered
Andrew Johnson	Democratic	3.89	79	20	unnumbered
Ulysses S. Grant	Republican	8.00	217	27	unnumbered
Rutherford B.	Republican	4.00	92	23	unnumbered

[797] Gerhard Peters and John T. Woolley, "Executive Orders" (statistics table), The American Presidency Project, University of California, Santa Barbara, table current through October 20, 2026. https://www.presidency.ucsb.edu/statistics/data/executive-orders (accessed November 12, 2026).

[798] Ibid.

[799] Ibid.

President	Party	Years in office	Executive orders	Average per year	Order numbers
Hayes					
James Garfield	Republican	0.55	6	11	unnumbered
Chester Arthur	Republican	3.46	96	28	unnumbered
Grover Cleveland (first term)	Democratic	4.00	113	28	unnumbered
Benjamin Harrison	Republican	4.00	143	36	unnumbered
Grover Cleveland (second term)	Democratic	4.00	140	35	unnumbered
William McKinley	Republican	4.53	185	41	unnumbered
Theodore Roosevelt	Republican	7.47	1,081	145	not listed
William Howard Taft	Republican	4.00	724	181	not listed
Woodrow Wilson	Democratic	8.00	1,803	225	not listed
Warren G. Harding	Republican	2.41	522	217	not listed
Calvin Coolidge	Republican	5.59	1,203	215	not listed
Herbert Hoover	Republican	4.00	1,003	251	5076-6070
Franklin D. Roosevelt	Democratic	12.12	3,726	307	6071-9537
Harry S. Truman	Democratic	7.78	907	117	9538-10431
Dwight D. Eisenhower	Republican	8.00	484	61	10432-10913
John F. Kennedy	Democratic	2.84	214	75	10914-11127
Lyndon B. Johnson	Democratic	5.17	325	63	11128-11451
Richard Nixon	Republican	5.55	346	62	11452-11797
Gerald R. Ford	Republican	2.45	169	69	11798-11966
Jimmy Carter	Democratic	4.00	320	80	11967-12286
Ronald Reagan	Republican	8.00	381	48	12287-12667
George H. W. Bush	Republican	4.00	166	42	12668-12833
William J. Clinton	Democratic	8.00	364	46	12834-13197
George W. Bush	Republican	8.00	291	36	13198-13488
Barack Obama	Democratic	8.00	276	35	13489-13764
Donald J. Trump (first term)	Republican	4.00	220	55	13765-13984
Joseph R. Biden, Jr.	Democratic	4.00	162	41	13985-14146
Donald J. Trump (second term, through October 20, 2026)	Republican	1.75	292	166	14147-14438

Source: American Presidency Project, "Executive Orders by President, Average Per Years in Office."[800]

The Federal Register's own page listed 291 orders for President Trump's second term as of November 12, 2026, and its search tool returned 290. Chapter 5 explains why the three figures differ.[801]

Appendix B: Landmark Court Rulings

Table B.1. Landmark Supreme Court rulings on presidential power

Case	Year	Subject	What the Court held
Ex parte Milligan	1866	Military trials of civilians	Civilians cannot be tried by military commission where civilian courts are open
Ex parte Garland	1866	Pardons	The pardon power is "unlimited, with the exception stated" and not subject to legislative control
The Prize Cases	1863	War without declaration	The president could respond to the Southern rebellion with a blockade without a declaration of war (5-4)
Burdick v. United States	1915	Pardons	A pardon can be refused; it "carries an imputation of guilt"
Norman v. Baltimore and Ohio Railroad Co.	1935	Gold	Upheld Congress's cancellation of "gold clauses" in private contracts after the 1933 gold orders
Myers v. United States	1926	Removal	The president can remove executive officers he appoints
Panama Refining Co. v. Ryan and *Schechter Poultry Corp. v. United States*	1935	Delegation	Struck down parts of the National Industrial Recovery Act for giving the president too much lawmaking power
Humphrey's Executor v. United States	1935	Removal	Congress could protect FTC commissioners from removal without cause (overruled in 2026)
United States v. Curtiss-Wright Export Corp.	1936	Foreign affairs	The president has broad power in foreign affairs, acting under a law of Congress
Korematsu v. United States	1944	Wartime orders	Upheld the exclusion of Japanese Americans

[800] Ibid.

[801] Federal Register, "Executive Orders" (counts by president and year), Office of the Federal Register, National Archives. https://www.federalregister.gov/presidential-documents/executive-orders (accessed November 12, 2026).

Case	Year	Subject	What the Court held
			from the West Coast (later repudiated in *Trump v. Hawaii*)
Youngstown Sheet and Tube Co. v. Sawyer	1952	Seizure of industry	Truman's seizure of the steel mills was unconstitutional; Justice Jackson set out the three-part framework
United States v. Nixon	1974	Executive privilege	The president must turn over subpoenaed tapes for a criminal trial
Train v. City of New York	1975	Impoundment	The administration had to release funds Congress provided
Dames and Moore v. Regan	1981	Emergency powers	Upheld the Iran hostage settlement orders
Biden v. Missouri	2022	Vaccine rules	Upheld the health care worker vaccination rule as within the authority Congress gave the Secretary
Nixon v. Fitzgerald	1982	Civil immunity	A president has absolute immunity from civil damages suits over official acts
INS v. Chadha	1983	Legislative veto	Congress cannot cancel executive action without passing a law presented to the president
Franklin v. Massachusetts	1992	Review of presidential action	The president is not an "agency" under the Administrative Procedure Act
Clinton v. Jones	1997	Civil suits	A sitting president can be sued over conduct before office
Clinton v. City of New York	1998	Line-item veto	The Line Item Veto Act was unconstitutional
Hamdi v. Rumsfeld	2004	Detention	A citizen held as an enemy combatant must get a meaningful chance to contest it
Hamdan v. Rumsfeld	2006	Military commissions	The commissions did not meet the requirements of federal law
Medellin v. Texas	2008	Foreign affairs	A presidential memorandum could not by itself require state courts to reopen cases after a world court ruling
Boumediene v. Bush	2008	Habeas corpus	Guantanamo detainees have the constitutional privilege of habeas corpus
NLRB v. Noel Canning	2014	Recess appointments	A Senate recess of fewer than 10 days is presumptively too short

Case	Year	Subject	What the Court held
United States v. Texas	2016	Immigration programs	A lower-court block of the DAPA program was left in place by a 4-4 vote
Trump v. Hawaii	2018	Entry restrictions	Upheld the third travel ban
Department of Commerce v. New York	2019	Census	The stated reason for adding a citizenship question "seems to have been contrived"; the decision went back to the department
DHS v. Regents of the University of California	2020	DACA	The way DACA was ended was arbitrary and capricious
Seila Law v. CFPB	2020	Removal	A single agency director cannot be protected from removal
Trump v. Vance and *Trump v. Mazars*	2020	Subpoenas	A president is not absolutely immune from a state criminal subpoena; congressional subpoenas for his records face limits
West Virginia v. EPA	2022	Major questions	Agencies need clear congressional authorization for major actions
Biden v. Nebraska	2023	Student loans	The loan forgiveness plan exceeded the law's authority
Loper Bright Enterprises v. Raimondo	2024	Agency deference	Courts must use their independent judgment on what a law means
Trump v. United States	2024	Criminal immunity	Former presidents have immunity for official acts
Trump v. CASA	2025	Injunctions	Universal injunctions likely exceed courts' authority
Learning Resources v. Trump	2026	Tariffs	IEEPA does not authorize tariffs
Trump v. Slaughter	2026	Removal	The president may remove FTC commissioners at will; *Humphrey's Executor* overruled
Trump v. Cook	2026	Federal Reserve	The government's request to remove a Federal Reserve governor while the case continued was denied
Trump v. Barbara	2026	Birthright citizenship	Executive Order 14160 is invalid

Sources: the opinions.[802,803,804,805,806,807,808,809,810,811,812,813,814,815,816,817,818,819,820,821,822,823,824,825,826,827,828,829,830,831,832,833,834,835,836,837,838,839,840,841,842,843]

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[802] Ex parte Milligan, 71 U.S. (4 Wall.) 2 (decided April 3, 1866), opinion of the Court by Justice Davis, Justia U.S. Supreme Court Center. https://supreme.justia.com/cases/federal/us/71/2/ (accessed November 12, 2026).

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Appendix C: Glossary

- **Appropriation:** A law that allows the government to spend money for a stated purpose.
- **Antideficiency Act:** The law that bars federal officials from spending or committing money beyond what Congress has appropriated.
- **Antiquities Act:** The 1906 law that lets the president proclaim national monuments on federal land.
- **Authorization for Use of Military Force (AUMF):** A law in which Congress approves military action without a formal declaration of war.
- **Commutation:** Shortening or ending a sentence without forgiving the conviction.
- **Concurrent resolution:** A measure passed by both chambers of Congress that is not sent to the president and does not usually have the force of law.
- **Executive order:** A written, signed direction from the president to the executive branch, numbered and published in the Federal Register.
- **Habeas corpus:** A court order that makes the government bring a jailed person before a judge and justify the detention.
- **Federal Register:** The government's daily publication of rules, notices and presidential documents.
- **Impoundment:** A president's refusal or delay in spending money Congress has provided.
- **Injunction:** A court order requiring someone to do, or stop doing, something.

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- **Interim order:** A temporary Supreme Court ruling on an emergency request while a case continues.
- **Joint resolution:** A measure passed by both chambers and sent to the president, with the same force as a bill.
- **Line-item veto:** A power to strike single items from a bill while signing the rest. The president does not have one.
- **Major questions doctrine:** The rule that agencies need clear authorization from Congress for actions of vast economic or political importance.
- **Memorandum (presidential):** A presidential direction to agencies that is not numbered as an executive order.
- **National emergency:** A declaration under the National Emergencies Act that switches on special powers in other laws.
- **Pocket rescission:** Proposing to cancel funds so late in the fiscal year that they expire before Congress must act.
- **Presentment Clause:** The part of Article I, Section 7 requiring that a bill pass both chambers and go to the president before it becomes law.
- **Proclamation:** A presidential document usually addressed to the public, often ceremonial but sometimes with legal effect.
- **Rescission:** A law canceling money Congress previously provided.
- **Signing statement:** A statement a president issues when signing a bill, sometimes explaining how he will interpret it.
- **Stafford Act emergency:** A disaster emergency declared at a governor's request to provide federal aid, separate from a national emergency.
- **Vacancies Act:** The Federal Vacancies Reform Act, which limits who may serve as an acting official and for how long.
- **Special message:** The president's formal request to Congress to rescind or defer funds under the Impoundment Control Act.
- **Standing:** The requirement that a person suing show a real injury caused by the action challenged.
- **Unitary executive:** The view that the Constitution gives the president control of the whole executive branch, including the power to remove its officers.
- **Universal injunction:** A court order blocking a policy for everyone, not just the parties to the case.
- **Veto override:** A two-thirds vote in both chambers that makes a bill law despite the president's veto.

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