A DISTINCTIVE COURT: A GLIMPSE INTO THE HISTORY AND SIGNIFICANCE OF THE D.C. CIRCUIT

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INTRODUCTION

The U.S. Court of Appeals for the District of Columbia Circuit is quite unique. As Chief Justice Roberts once pointed out, "Things are different in the District of Columbia Circuit."[1] As a former state and federal trial judge of many years, I can truly attest to that statement.

In the D.C. Circuit, we pride ourselves on our collegiality. Justice Ruth Bader Ginsburg once described our court as a "model of collegiality and efficiency," thanking my colleague Judge Harry T. Edwards for steering our court—during his tenure as chief judge—on a "course of caring

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1. John G. Roberts, Jr., *What Makes the D.C. Circuit Different?: A Historical View*, 92 VA. L. REV. 375, 375 (2013).

collegiality."[2] Collegiality helps encourage earnest and frank deliberation in the challenging cases we consider.

Relative to other circuits, our docket is distinct. We hear a significant number of petitions to review agency actions and cases that address other regulatory matters.[3] Much of our work examines the nuts and bolts of government, like how the Federal Energy Regulatory Commission keeps the electricity running to our homes,[4] or how the U.S. Food and Drug Administration ensures our drugs are safe.[5]

And we are the federal court of appeals for our nation's capital. Our courthouse is located across the street from the National Mall. We see the Capitol from our windows, and the White House is straight down Pennsylvania Avenue. We are often called to address questions relating to the structure of our government, such as the separation of powers, the appointment and removal of federal employees and officers, and national security.[6] These cases require that we think carefully not only about the specific parties to a case but also about the impact a particular ruling may have on the country as a whole.

As you explore with me the work of the D.C. Circuit, I submit that what makes the D.C. Circuit particularly unique is its role in addressing questions of national significance. In the first half of this Essay, I will begin by describing the distinct origins, structure, and docket of the D.C. Circuit. From its early years, the D.C. Circuit has considered issues involving the federal government. With the growth of the administrative state in the twentieth century, the D.C. Circuit became more involved in reviewing regulations. Today, the D.C. Circuit's composition, jurisdiction, and docket reflect its role in examining issues of national importance, particularly around regulations. To resolve those questions, we often reflect on our nation's history and our court's responsibility for shaping the nation's future. In the second half, I will turn to history and change. Cases before the D.C. Circuit may require that we engage with history, either because the record under review includes a historical archive, or because we turn to history to shed light on a question of law. At times, we must also reflect on the historical significance of our cases. Our decisions, ultimately, will face the

2. Pamela Harris, Daphna Renan & Sri Srinivasan, *A Model of Collegiality: Judge Harry T. Edwards*, 105 JUDICATURE, no. 1, 2021, at 76.

3. *See* Eric M. Fraser, David K. Kessler, Matthew J.B. Lawrence & Stephen A. Calhoun, *The Jurisdiction of the D.C. Circuit*, 23 CORNELL J.L. & PUB. POL'Y 131, 148–52 (2013).

4. *See* Hecate Energy LLC v. Fed. Energy Regul. Comm'n, 126 F.4th 660 (D.C. Cir. 2025) (examining the temporary expedited process for processing requests to connect new electricity generators to the grid).

5. *See* Vanda Pharms., Inc. v. FDA, 123 F.4th 513 (D.C. Cir. 2024) (reviewing request for fast-track designation for investigational new drug product).

6. *See, e.g.*, Trump v. Mazars USA, LLP, 39 F.4th 774 (D.C. Cir. 2022) (examining a congressional committee's power to subpoena a president's financial records); Esparraguera v. Dep't of the Army, 101 F.4th 28 (D.C. Cir. 2024) (reviewing the procedure for demotion of a career Senior Executive Service employee); Khadr v. United States, 67 F.4th 413 (D.C. Cir. 2023) (reviewing proceedings against a former Guantanamo Bay detainee before the U.S. Court of Military Commission Review).

court of history. And because our cases involve weighty national issues, their impact may extend well into the future. Our court, however, has proved resilient to change, adapting to new challenges.

I. THE D.C. CIRCUIT'S ORIGINS AS A COURT FOR THE NATION

Even from its origins, the D.C. Circuit's structure and docket has been unique, reflecting its responsibility for resolving disputes specific to the District of Columbia and for addressing issues of nationwide importance. Soon after it established the District of Columbia, Congress recognized the need for a federal court for the nation's capital. The District of Columbia Organic Act of 1801[7] created the Circuit Court of the District of Columbia.[8] That court was to have broad jurisdiction over "all crimes and offences committed within [the District], and of all cases in law and equity between parties," and "all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants."[9] Over time, the circuit court's functions evolved in response to the needs of the district and the nation.

Unlike other federal courts at the time, the D.C. Circuit exercised general jurisdiction over claims arising in the District of Columbia.[10] Early in its history, the D.C. Circuit heard cases on matters that today would mostly be addressed by state courts. Should it be an offense at common law to "encourage a fierce and dangerous dog" to bite a cow?[11] In an action against a deputy postmaster for negligence, could the instructions of the postmaster general be given in evidence?[12] Is it assault and battery for carpenters building a house "to remove, gently, all persons who come into the building without authority" after they have been asked to leave?[13] In answering these questions, the D.C. Circuit worked to resolve the everyday questions of law that any local court had to manage.

Because of this general jurisdiction, the D.C. Circuit's docket also included cases on the most challenging issue of the time—slavery. One case asked, for instance, what was the status of an enslaved person who was brought to Washington by a member of Congress while he was attending Congress.[14] Another asked whether the City of Washington prohibits free Black persons from selling perfumes.[15] The D.C. Circuit was one of the first federal courts to find that free Black persons could serve as witnesses in all

7. Act of Feb. 27, 1801, ch. 15, 2 Stat. 103 (repealed 1863).
8. *Id.* at 105–06.
9. *Id.* at 106.
10. United States *ex rel.* Stokes v. Kendall, 5 D.C. (5 Cranch) 163, 174 (1837); *see also* Fraser et al., *supra* note 3, at 134–35.
11. United States v. McDuell, 5 D.C. (5 Cranch) 391, 391 (1838).
12. Dunlop v. Munroe, 1 D.C. (1 Cranch) 536, 538 (1809).
13. United States v. Bartle, 1 D.C. (1 Cranch) 236, 236 (1805).
14. Maria v. White, 3 D.C. (3 Cranch) 663, 663–64 (1829).
15. Carey v. Corp. of Washington, 5 D.C. (5 Cranch) 13, 13–14 (1836).

cases, holding that "color alone does not disqualify a witness."[16] Although these cases stemmed from the court's local jurisdiction, they had symbolic nationwide impact as decisions by the court for the nation's capital.

Beyond local matters, the D.C. Circuit had a notable role in national affairs, particularly around the structure and power of the federal government. For over one hundred years, the D.C. Circuit was the only federal court with the power to issue a writ of mandamus against a federal official.[17] In *United States ex rel. Stokes v. Kendall*,[18] the D.C. Circuit held that it could instruct the postmaster general to perform a ministerial task commanded by an act of Congress.[19] The case also queried the scope of presidential power over officers—a question that would repeatedly come before the court in the future.[20] Moreover, because of its unique power to issue mandamus against federal officers, plaintiffs often brought challenges to ministerial decisions by federal officers before the D.C. Circuit.[21]

During the Civil War, the distinct role of the D.C. Circuit in adjudicating issues of nationwide importance again became evident. Then, the main question was the scope of the writ of habeas corpus. The court was asked to determine whether a writ of habeas corpus could issue against the army, ordering the release of child soldiers who had enlisted without parental consent.[22] Judge William M. Merrick granted the release of two enlisted minors.[23] In resolving these disputes, the D.C. Circuit foreshadowed its future part in resolving issues of national security and military affairs, particularly at times of war.

With the rise of the administrative state, the D.C. Circuit took on a prominent role in reviewing agency decisions. In 1933, considering a challenge by D.C. judges to their employment protections, the U.S. Supreme Court recognized that the D.C. Circuit tended to hear more cases "affecting the operations of the general government and its various departments."[24] Nonetheless, during the first half of the twentieth century, it seemed like the U.S. Courts of Appeals for the Second or Ninth Circuits, with geographic jurisdiction over the hubs of commerce and industry, might have a more prominent hand in shaping administrative law.[25] When the Administrative

16. United States v. Mullany, 1 D.C. (1 Cranch) 517, 521 (1808).
17. United States *ex rel.* Work v. Boutwell, 10 D.C. (3 MacArth.) 172, 172 (1879).
18. 5 D.C. (5 Cranch) 163 (1837).
19. *Id.* at 163.
20. *Id.* at 256–76.
21. *E.g.*, Butterworth v. United States, 112 U.S. 50, 51 (1884); United States v. Schurz, 102 U.S. 378, 379 (1880); Seymour v. United States *ex rel.* South Carolina, 2 App. D.C. 240, 242 (1894); United States *ex rel.* Bigelow v. Thacher, 9 D.C. (2 MacArth.) 24, 24 (1875); Hull v. Comm'r of Patents, 9 D.C. (2 MacArth.) 90, 90 (1875).
22. United States *ex rel.* Murphy v. Porter, 27 F. Cas. 599, 601 (C.C.D.C. 1861) (No. 16074A).
23. *See id.*
24. O'Donoghue v. United States, 289 U.S. 516, 535 (1933).
25. *See, e.g.,* Hearst Pub., Inc. v. NLRB, 136 F.2d 608 (9th Cir. 1943), *rev'd*, 322 U.S. 111 (1944); NLRB v. Universal Camera Corp., 179 F.2d 749 (2d Cir. 1950), *rev'd*, 340 U.S. 474 (1951).

Procedure Act[26] (APA) was enacted in 1946, Congress did not assign the D.C. Circuit any unique responsibilities. The APA did not, for example, choose the approach taken by other countries to centralize appeals of administrative law questions in a single specialized court.[27] But around the 1940s, the D.C. Circuit's future role in shaping administrative law started to become evident. The Supreme Court's decision in *Securities & Exchange Commission v. Chenery Corp.*,[28] finding that courts will limit their review of agency actions "to a judgment upon the validity of the grounds upon which the [agency] itself based its action,"[29] began as a D.C. Circuit review of an action by the U.S. Securities and Exchange Commission.[30]

As the administrative state expanded during the second half of the twentieth century, the D.C. Circuit was given greater responsibility for reviewing agency actions. When Congress adopted statutes creating new regulatory frameworks, particularly in environmental law, it often tasked the D.C. Circuit with reviewing agency rulemaking. The Clean Air Act,[31] for example, provides that challenges to certain regulations must be brought before the D.C. Circuit.[32] The D.C. Circuit, thus, began to hear cases that facially had nationwide implications: How should the U.S. Environmental Protection Agency define the nationwide air quality standards for ozone or particulate matter?[33] These cases required that we think more robustly about administrative law principles.

Indeed, during the latter half of the twentieth century, some of the most prominent decisions in administrative law came from the D.C. Circuit. Decisions by the D.C. Circuit, for example, were important to the development of standards for reviewing the reasonableness of agency decision-making,[34] particularly after the Supreme Court's decision in *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*[35] This new charge, however, built on the D.C. Circuit's earlier role in

26. 5 U.S.C. §§ 551–559.

27. *See generally* Andrew Hammond, *The D.C. Circuit as a Conseil D'État*, 61 HARV. J. ON LEG. 81 (2024) (comparing the D.C. Circuit with the Conseil d'État, France's specialized administrative law court).

28. 318 U.S. 80 (1943).

29. *Id.* at 88.

30. Chenery Corp. v. Sec. & Exch. Comm'n, 128 F.2d 303 (D.C. Cir. 1942), *vacated*, 318 U.S. 80 (1943).

31. 42 U.S.C §§ 7401–7675.

32. *Id.* § 7607(b)(1).

33. Am. Trucking Ass'ns v. EPA, 175 F.3d 1027, 1033 (D.C. Cir. 1999), *aff'd in part, rev'd in part*, Whitman v. Am. Trucking Ass'ns, 531 U.S. 457 (2001).

34. *See, e.g.,* Greater Bos. Television Corp. v. FCC, 444 F.2d 841, 855 (D.C. Cir. 1970); Ethyl Corp. v. EPA, 541 F.2d 1, 68–69 (D.C. Cir. 1976) (Leventhal, J., concurring); *see also* Hammond, *supra* note 27, 114–15.

35. 463 U.S. 29 (1983); *see, e.g.*, Pub. Citizen v. Steed, 733 F.2d 93, 94, 105 (D.C. Cir. 1984) (applying the Supreme Court's *State Farm* doctrine to hold that suspension of tire tread requirements by the National Highway Traffic and Safety Administration (NHTSA) was arbitrary and capricious because the suspension contravened NHTSA's obligations under federal law); Brae Corp. v. United States, 740 F.2d 1023, 1039, 1042–43 (D.C. Cir. 1984) (applying the Supreme Court's *State Farm* doctrine to find that the Interstate Commerce Commission did not act arbitrarily and capriciously in ruling that some railroads did not have

resolving disputes of nationwide significance, including matters related to the federal government.

II. BUILDING A NATIONAL COURT: THE COMPOSITION, JURISDICTION, AND DOCKET OF THE D.C. CIRCUIT TODAY

By the turn of the twenty-first century, the D.C. Circuit's distinctiveness as a national court was evident. Today, three features show the D.C. Circuit's structure as a court for the nation: its composition, its jurisdiction, and its docket.

The D.C. Circuit's current composition reflects its nationwide importance. There is a long-standing tradition of judges from outside the District of Columbia being appointed to the D.C. Circuit, including Judges J. Skelly Wright from Louisiana, David L. Bazelon from Illinois, Ruth Bader Ginsburg from New York, and Warren E. Burger and George E. MacKinnon from Minnesota.[36] I hail from South Carolina, as does my colleague Judge Karen LeCraft Henderson.[37] Another of my colleagues, Judge Justin R. Walker, calls Kentucky home.[38] Living outside the beltway, we can offer a different perspective on the potential impact of our decisions. That perspective is complemented by the insights of the many judges in our court who have served in the federal government. Among my current active colleagues, Chief Judge Sri Srinivasan and Judges Patricia A. Millet, Cornelia T.L. Pillard, Gregory G. Katsas, Florence Y. Pan, and Bradley N. Garcia all served in the U.S. Department of Justice, whereas Judge Neomi Rao served as the administrator of the Office of Information and Regulatory Affairs.[39]

The D.C. Circuit's jurisdiction is also distinct. Unlike other federal courts of appeals, our geographic jurisdiction is limited to a single district court. Nonetheless, Congress has extended the D.C. Circuit's jurisdiction over a variety of regulatory matters. Over 130 statutory provisions specifically grant the D.C. Circuit jurisdiction.[40] Slightly under half of all statutes providing for judicial review of rulemaking give the D.C. Circuit exclusive review jurisdiction.[41] As a result, we often hear cases arising directly from an administrative agency's order or regulation. Although we are an appellate court, when we hear petitions to review regulatory matters, we may be the

monopoly power in transporting commodities and could thus be exempt from certain transport rate regulations).

36. Carl Tobias, *The D.C. Circuit as a National Court*, 48 U. MIA. L. REV. 159, 159 (1993).

37. *See Karen LeCraft Henderson,* U.S. CT. OF APPEALS FOR THE D.C. CIR., https://www.cadc.uscourts.gov/content/karen-lecraft-henderson [https://perma.cc/SNQ9-QFGY] (last visited Apr. 2, 2025).

38. *See Justin R. Walker*, U.S. CT. OF APPEALS FOR THE D.C. CIR., https://www.cadc.uscourts.gov/content/justin-r-walker [https://perma.cc/HDC2-EVFV] (last visited Apr. 2, 2025).

39. Hammond, *supra* note 27, at 109–10.

40. Fraser et al., *supra* note 3, at 143.

41. *Id.* at 150–51.

first Article III court to consider a party's claims. And when we review certain agency actions, our decisions may have nationwide implications. Moreover, even where a statute does not give the D.C. Circuit exclusive jurisdiction, litigants often choose to bring claims relating to administrative matters before the D.C. Circuit.[42]

Our docket also reflects the D.C. Circuit's unique functions. Relative to other sibling circuits, our criminal docket is limited. Since 1970, Congress devolved responsibility for purely local matters, including most issues in criminal law, to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.[43] Of course, we continue to hear cases in federal criminal law.[44] In 2024, around 17 percent of our docket included criminal cases.[45] Comparatively, however, our docket leans more heavily toward administrative law.[46] In 2024, approximately 35 percent of the cases we heard were challenges to agency actions, and about 23 percent were civil cases in which the United States was a party.[47]

Although our cases may have nationwide implications, we remain an appellate court. There is only one truly national court: the Supreme Court of the United States. Our decisions are subject to review by the Supreme Court. Reflecting the significance of our cases, the Supreme Court does seem to grant a relatively greater number of certiorari petitions for decisions coming from the D.C. Circuit. During the October Term 2023, the Supreme Court granted certiorari on more D.C. Circuit cases (five) than every other circuit except the larger Second Circuit (seven cases), U.S. Court of Appeals for the Fifth Circuit (nine cases), and Ninth Circuit (eleven cases).[48] Some of the Supreme Court's most notable decisions in administrative law reviewed cases decided by the D.C. Circuit. In *Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council, Inc.*,[49] for example, the Supreme Court clarified the proper procedures that could be demanded from

42. Hammond, *supra* note 27, at 108.

43. MATTHEW D. TROUT & BARRY J. MCMILLION, CONG RSCH. SERV., IF12531, THE DISTRICT OF COLUMBIA COURTS: A BRIEF INTRODUCTION 1–2 (2023).

44. *See, e.g.,* United States v. Brown, 125 F.4th 1186 (D.C. Cir. 2025).

45. U.S. CTS., CASELOAD STATISTICS DATA TABLES, TABLE B-1: U.S. COURTS OF APPEALS—CASES FILED, TERMINATED, AND PENDING, BY NATURE OF PROCEEDING—DURING THE 12-MONTH PERIOD ENDING DECEMBER 31, 2024, https://www.uscourts.gov/data-news/data-tables/2024/12/31/statistical-tables-federal-judiciary/b-1 [https://perma.cc/AD42-7NB2] (last visited Apr. 2, 2025).

46. *Id.* I derived the figure for the percentage of challenges to agency actions from the "Administrative Agency Appeals" variable in Table B-1. *Id.* The Administrative Office of the U.S. Courts defines this variable as including "[a]ll petitions to review administrative agency decisions and applications for enforcement." U.S. CTS., FEDERAL COURT MANAGEMENT STATISTICS, DECEMBER 2024, EXPLANATION OF JUDICIAL CASELOAD PROFILES: COURTS OF APPEALS, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-court-management-statistics/federal-court-management-statistics-december-2024 [https://perma.cc/Z9LH-KWJJ] (last visited Apr. 2, 2025).

47. U.S. CTS., *supra* note 45.

48. *October Term 2023*, SCOTUSBLOG, https://www.scotusblog.com/case-files/terms/ot2023/ [https://perma.cc/FV6N-23WF] (last visited Apr. 2, 2025).

49. 435 U.S. 519 (1978).

federal agencies conducting rulemaking, instructing us to claw back earlier requirements.[50]

Although our docket leans heavily toward issues in administrative law, we are neither a specialty court nor the only court that deals with regulatory affairs. Significant D.C. Circuit cases have addressed issues outside of administrative law, including in criminal procedure.[51] Our role is different than that of the U.S. Court of Appeals for the Federal Circuit, which has jurisdiction over specific subject areas, including international trade, government contracts, patents, trademarks, and veterans' benefits.[52] A few statutes grant us exclusive jurisdiction over certain regulatory matters, but other sibling circuits can also hear most cases that raise questions in administrative law. Some of the Supreme Court's most notable administrative law cases in the October Term 2023 came from outside the D.C. Circuit.[53]

In emphasizing the role of the D.C. Circuit as a *national* court, I do not mean to minimize the significance of our cases reviewing issues specific to the District of Columbia. Protecting the constitutional rights of D.C. residents is one of our most important jobs. In the aftermath of the Supreme Court's decision in *Bolling v. Sharpe*,[54] the D.C. Circuit was responsible for supervising desegregation of the district's public schools.[55] The D.C. Circuit also banned enforcement of racially restrictive covenants in the district.[56] And as Judge Henry White Edgerton noted, dissenting in the last D.C. Circuit case affirming the constitutionality of segregation, even in ruling on local matters our court must keep in mind that we are deciding cases for "the cosmopolitan capital of a nation that professes democracy."[57]

III. A NATIONAL COURT BEYOND ADMINISTRATIVE LAW

So far, I have focused primarily on the court's regulatory docket as evincing the nationwide importance of our rulings. But some of the court's most notable decisions with national implications address nonregulatory issues like freedom of information, national security, and presidential power.

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50. *See id.*

51. *See, e.g.*, United States v. Maynard, 615 F.3d 544, 549 (D.C. Cir. 2010) (addressing the constitutionality of prolonged GPS surveillance).

52. *Court Jurisdiction*, U.S. CT. OF APPEALS FOR THE FED. CIR., https://www.cafc.uscourts.gov/home/the-court/about-the-court/court-jurisdiction/ [https://perma.cc/9AXR-EMT9] (last visited Apr. 2, 2025).

53. *See, e.g.*, Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n of Am., 144 S. Ct. 1474 (2024) (on cert from the Fifth Circuit); Sec. & Exch. Comm'n v. Jarkesy, 144 S. Ct. 2117 (2024) (same); Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys., 144 S. Ct. 2440 (2024) (on cert from the U.S. Court of Appeals for the Eighth Circuit).

54. 347 U.S. 497 (1954).

55. *See* Smuck v. Hobson, 408 F.2d 175, 176–77 (D.C. Cir. 1969); Kelsey v. Weinberger, 498 F.2d 701, 703 (D.C. Cir. 1974).

56. Mayers v. Ridley, 465 F.2d 630, 630–31 (D.C. Cir. 1972).

57. Carr v. Corning, 182 F.2d 14, 33 (D.C. Cir. 1950) (Edgerton, J., dissenting).

The D.C. Circuit has significantly shaped the law around freedom of information. The Freedom of Information Act[58] (FOIA) does not assign the D.C. Circuit exclusive jurisdiction over challenges to an agency's response to a request for information.[59] Nonetheless, because many federal agencies are located in the capital, FOIA cases are commonly filed in the U.S. District Court for the District of Columbia and reviewed by the D.C. Circuit. D.C. Circuit decisions have defined the scope of FOIA: for example, discerning whether certain entities within the White House are "agencies" under the statute.[60] A D.C. Circuit case first required an agency to produce a *Vaughn* index,[61] a detailed affidavit that lists every document that has been released with redactions, identifies the redactions, and offers a justification for each redaction.[62]

FOIA cases have also asked that we balance the interests of public information and transparency with the need for secrecy around intelligence operations.[63] In *Wolf v. CIA*,[64] we had to determine whether an agency can refuse to confirm or deny the existence of certain records related to intelligence matters.[65] And in *Morley v. CIA*,[66] where a journalist sought records pertaining to a deceased Central Intelligence Agency (CIA) officer as part of an investigation into the assassination of President John F. Kennedy, we were asked to assess whether the CIA had properly responded to a request for records.[67]

In one of the D.C. Circuit's most notable decisions, *United States v. Washington Post Co.*,[68] we helped define the scope of protections afforded by the First Amendment.[69] The Washington Post had come into possession of the "Pentagon Papers," a cache of documents relating to U.S. policy in Vietnam.[70] The Government sought to enjoin publication of these papers, claiming it would "prejudice the conduct of the Nation's military efforts and diplomatic relations."[71] Sitting en banc, we found that the Government failed to establish that publication would gravely prejudice the interests of the United States.[72] The Supreme Court affirmed our decision, underscoring the importance of close scrutiny of prior governmental restraints on speech.[73]

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58. 5 U.S.C. § 552 (2018).
59. *Id.* § 552(a)(4)(B).
60. *See, e.g.*, Jud. Watch, Inc. v. U.S. Secret Serv., 726 F.3d 208, 211 (D.C. Cir. 2013).
61. Vaughn v. Rosen, 484 F.2d 820, 826–28 (D.C. Cir. 1973).
62. Hall & Assocs. v. EPA, 956 F.3d 621, 627 n.2 (D.C. Cir. 2020).
63. *See, e.g.,* Nat'l Sec. Couns. v. CIA, 969 F.3d 406 (D.C. Cir. 2020); Wilbur v. CIA, 355 F.3d 675 (D.C. Cir. 2004).
64. 473 F.3d 370 (D.C. Cir. 2007).
65. *Id.* at 372.
66. 508 F.3d 1108 (D.C. Cir. 2007).
67. *Id.* at 1113.
68. 446 F.2d 1322 (D.C. Cir. 1971).
69. *See id.*
70. *Id.* at 1323.
71. *Id.*
72. United States v. Washington Post Co., 446 F.2d 1327, 1328 (D.C. Cir.), *aff'd sub nom.* N.Y. Times Co. v. United States, 403 U.S. 713 (1971).
73. N.Y. Times Co. v. United States, 403 U.S. 713, 713 (1971).

We also frequently hear cases involving matters of national security. In the aftermath of 9/11, the D.C. Circuit reviewed petitions for habeas corpus brought by noncitizens detained as enemy combatants in Guantanamo Bay.[74] Two years ago, we went en banc to weigh a claim raised by a Guantanamo Bay detainee that his due process rights were violated by a district court reviewing the appellant's petition for habeas corpus.[75] More recently, in *TikTok Inc. v. Garland*,[76] we were asked to determine whether Congress could permissibly require that "[a] popular social-media platform, subject to the control of a foreign adversary nation . . . be divested because of national security risks."[77] Under the Protecting Americans from Foreign Adversary Controlled Applications Act,[78] (the "Act") it is unlawful for any entity to provide certain services to distribute, maintain, or update a foreign adversary controlled application in the United States.[79] The Act designated any application that is operated, directly or indirectly, by TikTok as a foreign adversary controlled application.[80] TikTok challenged the constitutionality of the statute. We heard this case because Congress specifically granted the D.C. Circuit exclusive jurisdiction to review claims under the Act.[81]

Cases that ask us to determine the scope of presidential power are particularly consequential. Such cases may involve a challenge to the validity of an executive order. Consider, for example, *Youngstown Sheet & Tube Co. v. Sawyer*,[82] one of the seminal Supreme Court cases on presidential power. In 1951, a dispute arose between steel companies and their employees over terms and conditions to be included in their new collective bargaining agreements.[83] Frustrated with limited progress in the relevant negotiations, in 1952, the United Steelworkers called for a general strike.[84] In the midst of the Korean War, and concerned that a work stoppage would jeopardize national defense, President Harry S. Truman issued Executive Order 10340, instructing the secretary of commerce to take possession of most steel mills and keep them running.[85] Steel companies sought relief before the District Court for the District of Columbia, which granted an injunction that we later reversed fearing the implications of a work stoppage

74. Boumediene v. Bush, 476 F.3d 981 (D.C. Cir. 2007), *rev'd and remanded*, 553 U.S. 723 (2008); Hamdan v. Rumsfeld, 415 F.3d 33 (D.C. Cir. 2005), *rev'd and remanded*, 548 U.S. 557 (2006); Al Odah v. United States, 321 F.3d 1134 (D.C. Cir. 2003), *rev'd and remanded sub nom.* Rasul v. Bush, 542 U.S. 466 (2004).

75. Al-Hela v. Biden, 66 F.4th 217, 219–20 (D.C. Cir. 2023) (en banc).

76. 122 F.4th 930, 948 (D.C. Cir. 2024), *aff'd*, 145 S. Ct. 57 (2025).

77. *Id.*

78. Pub. L. No. 118-50, 138 Stat. 955 (2024) (codified as amended in scattered titles and sections of the U.S. Code).

79. 15 U.S.C. § 9901(a)(1)(A) (2024).

80. *Id.* § 9901(g)(3).

81. *Id.* § 9901(b).

82. 343 U.S. 579 (1952).

83. *Id.* at 571–72.

84. *Id.*

85. *Id.*

for national security.[86] In resolving *Youngstown*, D.C. courts were asked to balance the need for swift executive action to address an impending crisis with the responsibility to preserve the separation of powers. We have also been asked to clarify the relationship between the president, Congress, and the judiciary. In *Nixon v. Siricia*,[87] for example, we had to determine whether a president could decline to respond to a grand jury subpoena to produce certain records.[88] The D.C. Circuit upheld an order by the district court instructing President Richard M. Nixon to turn over tape recordings of certain White House meetings and phone conversations between President Nixon and his advisors.[89] These cases illustrate the D.C. Circuit's critical role in preserving the separation of powers and the rule of law.

IV. A COURT IN HISTORY

Perhaps an overlooked aspect of our court and its docket is how frequently we engage with history. Given the D.C. Circuit's focus on regulations, I have not been surprised by how much time I spend going through toxicology studies. I am more intrigued, however, by how often I think about cases from a historical perspective. As we are bound by precedent, for example, we discern how our court has previously ruled on relevant cases. At times, reviewing the record for a case may require that we revisit a historical archive. And in other situations, history may shed light on a question of law, like the meaning of a constitutional provision. Most challenging, however, are those times when I find myself reflecting on the role of our court in our nation's history, and the impact our decisions have on the nation's future.

Take, for example, *Simon v. Republic of Hungary*,[90] a recent case examining claims by Holocaust survivors against Hungary. At its core, the case asked whether Holocaust survivors and their descendants could invoke the Foreign Sovereign Immunities Act's[91] exception to sovereign immunity for expropriations as a means to pierce through Hungary's sovereign immunity and bring claims against that foreign state.[92] I was struck by the cross-generational significance of the case. The *Simon* litigation has been ongoing for more than a decade.[93] Many of the would-be plaintiffs have died since the atrocities of the Holocaust. The atrocities took place now over half a century ago, and yet generations later, we continue to reckon with that past. As my colleague Judge Pillard and I reflected at the end of the majority opinion, in adjudicating cases for past harms: "We are also checked by the

86. Youngstown Sheet & Tube Co. v. Sawyer, 103 F. Supp. 569 (D.D.C.), *aff'd*, 343 U.S. 579 (1952); Sawyer v. U.S. Steel Co., 197 F.2d 582 (D.C. Cir. 1952).

87. 487 F.2d 700 (D.C. Cir. 1973).

88. *Id.* at 704.

89. *Id.*

90. 77 F.4th 1077 (D.C. Cir. 2023), *rev'd*, No. 23-867, 2025 WL 567336 (U.S. Feb. 21, 2025).

91. Pub. L. No. 94-583, 90 Stat. 2891 (1976) (codified as amended in scattered sections of 28 U.S.C.).

92. *Simon*, 77 F.4th at 1088.

93. *Id.* at 1091.

reality that even the best remedies a court can provide for past harms are, by their nature, profoundly inadequate."[94]

Or consider *Citizens for Constitutional Integrity v. Census Bureau*.[95] Section 2 of the Fourteenth Amendment[96] specifies that seats in the House of Representatives "shall be apportioned among the several States according to their respective numbers . . . ." The Fourteenth Amendment's Reduction Clause also provides that the "basis of representation" for the apportionment of representatives to any state "shall be reduced" proportionally "when the right to vote at any election . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged . . . ."[97] A voting rights organization brought action against the U.S. Census Bureau alleging that it had failed to consider whether the Reduction Clause required a variation to the allotment of congressional seats, otherwise provided by the most recent census.[98] We concluded that plaintiffs had not established standing to bring their claims.[99] In a mindful concurrence, however, my colleague Judge Robert L. Wilkins highlighted the historical significance of the plaintiffs' claims. The Fourteenth Amendment was adopted in 1868. Since then, as Judge Wilkins notes, "[W]hile several other amendments to the Constitution have been robustly enforced, members of Congress and agency officials have undertaken . . . few actions to implement the Amendment's Reduction Clause . . . ."[100] Of course, we can only resolve injuries in fact, but in reviewing cases, we can be struck by the enduring challenges our nation and our courts continue to face.

In deciding particularly significant cases, I have also found myself reflecting on the future implications of our rulings. As my colleague from the U.S. Court of Appeals for the First Circuit Chief Judge David J. Barron has noted, "[J]udges at all levels of the judicial system are quite aware that if the stakes of a case are high enough, history may come to judge their decision harshly."[101] This is inevitably true in any dispute that involves the powers of the president. Though our decisions primarily impact parties specific to the case, they also shape the presidency as an institution, long into the future. Although actions challenging the scope of President Nixon's official immunity may have most directly affected President Nixon, we continue to turn to them, along with other historical decisions like *Marbury v. Madison*,[102] for clarifying presidential immunity today.[103] And our decisions today will no doubt also have an impact tomorrow.

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94. *Id.* at 1124.
95. 115 F.4th 618 (D.C. Cir. 2024).
96. U.S. CONST. AMEND. XIV, § 2.
97. *Id.*
98. *Citizens for Const. Integrity*, 115 F.4th at 621.
99. *Id.*
100. *Id.* at 630 (Wilkins, J., concurring).
101. David Barron, *The Court of History*, 98 N.Y.U. L. REV. 683, 685 (2023).
102. 5 U.S. (1 Cranch) 137 (1803).
103. *See, e.g.,* United States v. Trump, 91 F.4th 1173, 1183 (D.C. Cir.), *vacated and remanded*, 603 U.S. 593 (2024).

Thinking about the past and reflecting on the future requires that we embrace one of the greatest virtues of judicial temperament: humility. We may look to the past and reflect on the future, knowing there are some questions we cannot and should not answer, and striving to answer as best as we can the significant questions that we must resolve. I, for one, take comfort in the endurance of our institutions. Even as the times and circumstances have changed, our court has remained, and will remain, steadfast in protecting the rule of law.

V. A COURT FOR THE FUTURE

In a speech eight years into her term on the D.C. Circuit, Chief Judge Patricia Wald reflected that "the most prominent impression" she had so far was "change."[104] Judge Wald noted that, at the time, "[w]e in the D.C. Circuit are passing through a period of change: from one generation of judges to another; from one way of processing cases to another; to an as yet undetermined degree, from one body of precedent to another."[105] Judge Wald could have been saying those same words today. A majority of the active judges in our court have been appointed in the last ten years. The pandemic brought about changes to how we run oral argument. And recent cases have brought emerging questions to administrative law doctrine.

I would probably be remiss to conclude without noting the Supreme Court's recent ruling in *Loper Bright Enterprises v. Raimondo*.[106] Under the doctrine from *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[107] courts had long deferred to an agency's interpretation of ambiguous statutes, as long as the interpretation was not arbitrary and capricious.[108] *Loper Bright* overruled *Chevron*, finding that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[109] Instead, the Supreme Court instructed us to apply traditional tools of statutory interpretation to discern what Congress said in a given statutory provision. Applying this framework, inevitably, will raise new issues.

Nonetheless, I think it important to stress the capacity of the courts, particularly the D.C. Circuit, to adapt to change. Even in the midst of change, our institutions remain steadfast in our commitment to justice and the rule of law. Judge Wald concluded her speech by citing a prior speech by her predecessor, Judge E. Barrett Prettyman, for whom our main building is named. In the spirit of stare decisis, I will also turn to his remarks: "No matter how violent our intellectual and philosophical differences, all my brethren have a vigorous, aggressive, almost a belligerent ambition that the

104. Patricia M. Wald, *The D.C. Circuit: Here and Now*, 55 GEO. WASH. L. REV. 718, 718 (1987).
105. *Id.* at 728.
106. 144 S. Ct. 2244 (2024).
107. 467 U.S. 837 (1984), *overruled by* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).
108. *Id.*
109. *Loper Bright*, 144 S. Ct. at 2262.

judicial work of our court be the best—indeed far and away the best—of any appellate court in the country."[110] This, I submit to you, is what makes the D.C. Circuit so special: a court for the nation, seeking to ensure that we do the best by our nation, cognizant of our past, and ready for the challenges of the future.

110. E. Barrett Prettyman, *Duties of a Circuit Chief Judge*, 46 A.B.A. J. 633, 634 (1960).