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A PRESIDENT'S BEST FRIEND:
U.S. PRESIDENTS AND THEIR RELATIONSHIP WITH *INS V. CHADHA* (1983)

By

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BA, University of New Hampshire, 2021

THESIS

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ABSTRACT

A PRESIDENT’S BEST FRIEND:
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University of New Hampshire, May 2022

The legislative veto – a device by which Congress approves or disapproves executive action on a particular matter – has been one of Congress’s favorite tools for keeping the executive branch, and all of its departments and agencies wielding increased regulatory and policymaking power, in check. Since 1983, when the Supreme Court ruled in *INS v. Chadha* that the legislative veto was unconstitutional, presidents have been warding off attempts by Congress to include the device in its legislation, relying principally on their signing statements to voice their objections. In doing so, presidents invoke *Chadha* extensively, with no other Court case comparable in terms of the sheer number of mentions in constitutional signing statements. Neither the presence of divided government nor each president’s relations with Congress are correlated with mentions of *Chadha*. Rather, this phenomenon is an institutionalized practice characterized by increasing returns and path dependency. As is their inherent desire, successive presidents have been intent on protecting the constitutional powers of the presidency.

CHAPTER I

THE PRESIDENT'S FAVORITE CASE:

INTRODUCTION

Upon overstaying his student visa, Jagdish Rai Chadha applied for a suspension of deportation to remain in the United States. An immigration judge within the executive branch, acting through the discretion of the U.S. Attorney General, suspended the deportation. In response, the U.S. House of Representatives passed a resolution vetoing the suspension, effectively paving the way for Chadha's deportation. In effect, one house of Congress overturned the actions of the executive branch without following the constitutionally-prescribed lawmaking process. With respect to the Constitution's separation of powers and Presentment Clause, was this constitutional? Not according to the U.S. Supreme Court in *INS v. Chadha* (1983).

The Supreme Court found the mechanism described above – the legislative veto – to be unconstitutional in 1983, but the story of the legislative veto and *Chadha* did not end there. In fact, one could argue that it was only just beginning. The following is an examination of the relationship between the president of the United States and the landmark Court case that ruled on the legislative veto. Although deemed unconstitutional, the U.S. Congress continued to include legislative veto devices, like the one described in *Chadha*, in legislation, and presidents continued to resist these devices, fighting the battle with signing statements. These statements coincidentally gained importance during the post-*Chadha* period as documents through which presidents increasingly voiced constitutional objections to legislation they signed into law. Thus,

expressing disagreement with legislative vetoes post-*Chadha* found a natural home within presidential signing statements.

This research seeks to answer the following question: *To what extent do recent presidents rely upon INS v. Chadha (1983) as a constitutional defense against the Congress, and why?* Through document and content analysis of 602 constitutional veto messages and signing statements issued by Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump, we first find that recent U.S. presidents have employed *Chadha* extensively in their constitutional signing statements. In fact, they have done so more than every other Supreme Court case mentioned *combined*. In explaining this phenomenon, we find little-to-no correlation between periods of divided versus unified government and mentions of *Chadha* or between each president's relations with Congress and mentions of *Chadha*. It appears the best explanation for each successive president's continued use of *Chadha* to combat Congress's inclusion of legislative vetoes in its legislation is that this is an institutionalized practice defined by increasing returns, and, more fundamentally, path dependency, in protecting the constitutional powers of the presidency, an inherent desire of each president.

Unlike high-profile Supreme Court cases that deal with citizens' constitutional rights and liberties, *Chadha* is a separation-of-powers case with little stardom. However, not only did this case deal directly with an immigrant's future in the United States but *Chadha* has remained in the political and legal spotlight throughout the nearly four decades since it was decided. Through this research we gain insight into how presidents interpret the Constitution, how they employ the signing statement as a unilateral tool of both legislative and executive power

(affecting how legislation passed by the people's representatives is ultimately enforced), and how they wield a Supreme Court case that remains at the center of a constitutional struggle.

CHAPTER II

LEGISLATIVE VETOES AND SIGNING STATEMENTS:
TWO RECENT DEVELOPMENTS AND THEIR RELATION TO *INS V. CHADHA* (1983)

In terms of what it established about the separation of powers and the mechanics of the U.S. Constitution, *INS v. Chadha* (1983) is a landmark U.S. Supreme Court case. But has its value been put to good use by the actors most affected by it? In answering the research question at hand – *To what extent do recent presidents rely upon INS v. Chadha (1983) as a constitutional defense against the Congress, and why?* – existing scholarly arguments and explanations need to be addressed. In short, they are as follows: *Chadha* as a critical juncture case; the role of actor preferences; the increase in legislative vetoes; protecting the constitutional presidency; and the presence of divided versus unified government. But first, *Chadha* is best understood within appropriate context.

At issue in *INS v. Chadha* was the legislative veto. The legislative veto's history dates back to the Hoover administration. President Herbert Hoover wanted to make the federal government more efficient and Congress granted him the power to reorganize the executive branch to do so (Ellis 2009, 59). However, in granting this power, Congress also enacted a provision granting the Senate or the House the power to cancel the president's actions by a simple majority vote (Ellis 2009, 59). This became the first of many legislative vetoes. Since this first legislative veto provision enacted in 1932, there have been over 300 legislative vetoes included in approximately 200 statutes, implying that Congress considers the veto an important tool for holding the executive branch accountable (Goldsmith 1984, 749). The legislative veto

originated as a tool to check the increasing authority delegated to the executive branch since the 1930s by requiring agencies to submit their proposed actions to either a congressional committee or subcommittee, one house of Congress, or both houses of Congress for approval (Fellows 1984, 1244-45). If disapproved, the agency could not follow through, and this disapproval typically came in the form of a resolution (Fellows 1984, 1245). Use of the legislative veto increased in the decades leading up to 1983 (Fellows 1984, 1255). Unsurprisingly, every presidential administration since Hoover's has viewed the legislative veto unfavorably, expressing concerns about its constitutionality in veto messages and signing statements, eventually leading to it being challenged in court (Ellis 2009, 59-60).

On June 23, 1983, the United States Supreme Court released its decision about the constitutionality of the legislative veto. At issue was section 244I(2) of the Immigration and Nationality Act of 1952 (Burger et al. 1983, 919). This legislative veto provision "authorize[d] either House of Congress, by resolution, to invalidate the decision of the Executive Branch, pursuant to authority delegated by Congress to the Attorney General, to allow a particular deportable alien to remain in the United States" (Burger et al. 1983, 919). Jagdish Rai Chadha, from Kenya, overstayed his student visa in the United States (Burger et al. 1983, 919). After Chadha applied for suspension of deportation and a hearing, an immigration judge within the executive branch ordered the suspension, acting in the Attorney General's discretion pursuant to section 244(a)(1) of the Act (Burger et al. 1983, 919). The House of Representatives then passed a resolution in accordance with section 244(c)(2) of the Act vetoing the suspension and ordering Chadha's deportation (Burger et al. 1983, 919). Chadha filed a petition for review of the House's deportation order with the Court of Appeals, arguing that section 244(c)(2) was unconstitutional (Burger et al. 1983, 919). The Court of Appeals agreed and this decision was appealed to the

U.S. Supreme Court (Burger et al. 1983, 919). In a majority opinion written by Chief Justice Warren E. Burger, the Supreme Court ruled 7-2 that section 244(c)(2), and all other legislative veto provisions, are unconstitutional, as they violate the Constitution's separation of powers and the Presentment Clause of Article I, Section 7 (Burger et al. 1983, 959).

In terms of Supreme Court jurisprudence and constitutional law, the legislative veto was no more. The opinion in *Chadha* was absolute; the legislative veto was ruled completely unconstitutional in all its possible forms, and *Chadha* struck down all legislative veto provisions ever enacted and preemptively struck down all future legislative vetoes (Elliot 1983, 127). It was the vast scope of Chief Justice Burger's opinion that made the Court's decision somewhat surprising (Elliot 1983, 126-27). In allowing the rise of the modern administrative state, the Supreme Court had attempted to strike a balance between constitutional rules and practical accommodations in separation of powers cases (Elliot 1983, 126). However, the Court diverged from this course in *Chadha*. Richard I. Goldsmith (1984) argues that the Court made a purposeful and likely difficult choice, as *Chadha* was a sweeping decision resting on Article I rather than Article II rationale, striking down about 300 legislative veto provisions (757). Some argue that the *Chadha* decision, in going far beyond the specific statute at issue, disregarded the practical value of the legislative veto, misread current relations between the executive and legislative branches, and set impracticable standards for the two branches to follow given the reality of the administrative state (Fisher 1993, 292). Likewise, although he agrees that the specific legislative veto at issue in *Chadha* was unconstitutional, E. Donald Elliot (1983) argues that the scope of the Court's decision was too extensive and that the Court instead should have "reinterpret[ed] the Constitution to create a harmonious new whole" that respects the Constitution, the existence of the modern administrative state and its delegated authority, and the

value of the legislative veto (176). Similarly, in his dissenting opinion in the case, Justice Byron R. White warned that the Court should not have denied Congress its best device for holding the executive branch accountable after decades of delegating significant authority to the executive branch (Milkis and Nelson 2019, 475).

When the Supreme Court issues a ruling, it is the job of the other two branches of government to implement that decision. Yet, the existence of the modern administrative state, Congress's desire to exert influence over administrative lawmaking, the effectiveness of the legislative veto, and the scope of the *Chadha* opinion all made *INS v. Chadha* difficult to implement. Many scholars actually cite *Chadha* as a decision that was not completely implemented, some even going so far as to say it was ignored (Wheeler 2006, 1186; 2008, 83). On the surface, the Court's decision was clear: the legislative veto is unconstitutional (Wheeler 2006, 1220). In other respects, however, the *Chadha* decision was unclear. For example, the severability of a legislative veto provision from the rest of a statute was an issue that frequently confronted lower courts with minimal clarity from the Supreme Court (Wheeler 2006, 1220). Additionally, Congress faced a housekeeping problem in the aftermath of *Chadha*: The scope of the Court's decision made it impossible for Congress to revisit and revise every legislative veto provision ever enacted, which is likely why many have never been touched (Wheeler 2006, 1220). The severability and housekeeping issues made implementing *Chadha* difficult for lower courts, Congress, and the executive branch (Wheeler 2006, 1221). Darren A. Wheeler (2006) ultimately argues that "A narrower decision that did not appear to invalidate all legislative vetoes and a more detailed discussion of the severability issue generally would have made the Court's intentions clearer and facilitated the implementation of its *Chadha* opinion" (1221). Furthermore, from the 1930s to the 1980s, the legislative veto was one of Congress's most effective weapons

for checking executive branch action, especially with respect to authority delegated to the executive by the legislative branch (Bottenfield 2008, 1125). Therefore, once it was prohibited by the Supreme Court, Congress faced a challenge: How could it exercise any control over executive action (Bottenfield 2008, 1163)?

The answer: The legislative veto would never fully disappear. Although it was invalidated by the Supreme Court in 1983, the legislative veto, in one form or another, has remained a congressional tool. In the aftermath of the Court's decision, Congress continued to veto administrative actions and dragged its feet removing the veto provisions of many enacted statutes (Fellows 1984, 1255). Still, the case forced Congress and the courts to consider alternatives to the legislative veto, and one of the most common of these has been the "report-and-wait" provision, which requires an executive department or agency to report proposed actions to Congress before enacting them (Wheeler 2006, 1214). Other transformations of Congress's veto power include adding limitation riders to appropriations, exerting influence through investigations, and using its oversight powers to hold hearings, all of which have generated similar results to the pure legislative veto, such as diminishing administrative resources, morale, and popular support (Acs 2019, 527). As a result, Congress's veto power over administrative policymaking has been significant in the years since the legislative veto was ruled unconstitutional (Acs 2019, 527). Overall, "Congress began to rely on the use of other statutory and nonstatutory controls to influence agency behavior" (Bottenfield 2008, 1164). However, although general agreement exists about its unconstitutionality, the legislative veto was such an effective congressional device that it makes sense why "in some contexts [Congress] has been successful in continuing to enact the vetoes" post-*Chadha* (Bottenfield 2008, 1164). If the success of *Chadha* is based on Congress's subsequent use of the legislative veto, then the

decision has not been as much of a victory for the presidency as was anticipated (Milkis and Nelson 2019, 475). In the years since *Chadha* was decided, Congress has continued to pass laws with legislative vetoes, typically requiring approval of the House and Senate appropriations committees for executive action (Milkis and Nelson 2019, 475). In fact, more legislative vetoes have been passed after *Chadha* than before (Milkis and Nelson 2019, 475-76).

While these developments with the legislative veto were taking place post-*Chadha*, a simultaneous development occurred at the other end of Pennsylvania Avenue with respect to signing statements and their growing importance. A presidential signing statement is a document issued by the president when signing a bill into law (Bavis n.d.). Constitutional signing statements are signing statements in which the president makes constitutional objections to portions of a bill that he or she is signing. Over the course of the latter half of the modern presidency – Presidents Ronald Reagan to Joe Biden – the use of the signing statement has been the subject of extensive debate. The Reagan presidency marks the beginning of presidents increasingly using signing statements to make constitutional objections to legislation passed by Congress (Garvey 2012, 1). This practice accelerated under George W. Bush, and consequently the debate over the proper function of the signing statement reached its peak during his administration (Cooper 2005; Bradley and Posner 2006; Berry 2009; Garvey 2012).

Signing statements give presidents the last word on legislation, something they have taken increasing advantage of, and these statements have become useful ways for presidents to express their opinions about the meaning and constitutionality of legislation (Bradley and Posner 2006, 364; Kelley and Marshall 2010, 183). For example, President George W. Bush made more constitutional objections in his signing statements than his predecessors, but these objections were similar to those raised by the men who came before him (Bradley and Posner 2006, 312).

Some argue that, instead of issuing a signing statement expressing constitutional objections to certain portions of a bill, the president should veto the bill (Cass and Strauss 2007, 21). But by raising constitutional objections to legislative provisions in signing statements, the president avoids having to veto an entire bill because one small provision raises constitutional concerns. Many scholars support this use of the signing statement instead of the veto. Many argue that presidents are not required to enforce every provision of every bill they sign into law because the oath of office and/or the Take Care Clause of Article II of the Constitution do not oblige them to enforce unconstitutional provisions (Cass and Strauss 2007, 22; Chambers, Jr. 2016, 1189 and 1200). This further stems from the idea that constitutional interpretation is not just the responsibility of the Supreme Court. Rather presidents are obligated at times to interpret the Constitution (Chambers, Jr. 2016, 1185). This is especially true for parts of the Constitution that directly affect them the most, such as Article II and interpretations of executive power (Scacchi 2021, 17). In this way, presidents have discretion over the interpretation of their constitutional powers and the functions of the executive branch, and the signing statement has been an effective vehicle for this (Scacchi 2021, 17).

Much of the controversy surrounding signing statements, however, concerns their scope. “The administration of George W. Bush has quietly, systematically, and effectively developed the presidential signing statement to regularly revise legislation and pursue its goal of building the unified executive,” to the extent that the signing statement essentially acted as a line-item veto in which the president canceled statutory provisions that he did not like (Cooper 2005, 520 and 531). The issue here is that the line-item veto was ruled unconstitutional by the Supreme Court in *Clinton. V. City of New York* (1998). Furthermore, Bush’s use of signing statements to raise a wide range of constitutional objections to many legislative provisions made the use of the

veto unnecessary (Cooper 2005, 531). Bush and others have wielded signing statements as vehicles of unilateral action through which they furthered their own priorities and interests, redefined presidential authority, strengthened the presidency in relation to Congress, protected and increased executive power, transformed the separation of powers, and cultivated the unitary executive (Cooper 2005, 531-32; Kelley and Marshall 2008, 250, 264, and 265; 2010; Chambers, Jr. 2016, 1186-87). However, this view is not shared by all. Ian Ostrander and Joel Sievert (2013) argue that signing statements are better understood as dialogues between the president and Congress (76). Because they cannot alter the text of laws, do not largely affect how bureaucracies implement statutes, and often address general interbranch themes as part of an interbranch dialogue, signing statements are not equivalent to line-item vetoes and do not fit within the framework of unilateral presidential power (Ostrander and Sievert 2013, 58, 68, and 75).

How are legislative vetoes and signing statements related, and more so, what role does *INS v. Chadha* play for recent presidents? Several arguments must be considered. It is important to first note that *Chadha* is among a group of Supreme Court cases that directly affect the American presidency in terms of shaping the office and its powers (Ellis 2009, ix). Richard J. Ellis (2009) describes the 16 most important cases in this realm of constitutional law: *Myers v. United States* (1926), *Humphrey's Executor v. United States* (1935), *United States v. Nixon* (1974), *Nixon v. Fitzgerald* (1982), *Clinton v. Jones* (1997), *Immigration and Naturalization Service v. Chadha* (1983), *Clinton v. City of New York* (1998), *United States v. Curtiss-Wright Export Corp.* (1936), *The Prize Cases* (1863), *Ex parte Milligan* (1866), *Ex parte Quirin* (1942), *Korematsu v. United States* (1944), *Youngstown Sheet & Tube Co. v. Sawyer* (1952), *United States v. Reynolds* (1953), *Hamdan v. Rumsfeld* (2006), and *Boumediene v. Bush* (2008). These

16 cases cover many areas of interest, including the president's removal power, executive privilege, the line-item veto, foreign policy powers, wartime powers, and the legislative veto, all of which are areas of presidential power that have appeared in veto messages – documents issued by presidents explaining their reasoning for vetoing legislation – and signing statements (Ellis 2009; Scacchi 2021, 14).

In terms of mentioning Supreme Court cases in writing, signing statements that cite Court cases often include legal interpretations of bills and cases (Eshbaugh-Soha and Collins, Jr. 2015, 641-42). Matthew Eshbaugh-Soha and Paul M. Collins, Jr. (2015) find that presidents mention historic cases more often than recent cases, and the former consists predominantly of four Supreme Court cases: "*Brown v. Board of Education* (71 mentions), *Roe v. Wade* (67 mentions), *Engel v. Vitale* (31 mentions), and *INS v. Chadha* (1983) (62 mentions, all written)" (644-45). Additionally, presidents since Reagan have spoken and written about more Supreme Court cases than presidents from Eisenhower to Carter (Eshbaugh-Soha and Collins, Jr. 2015, 649). Thus, there are many Supreme Court cases that are fundamental to the American presidency, and evidence indicates that *INS v. Chadha* may be particularly important within this group.

Now to the arguments. First, *INS v. Chadha* assumes even greater importance when it is considered to be a 'critical juncture' case. Christopher B. Brough (2018) argues that, as a critical juncture, C*hadha* created a new jurisprudential regime with a new path to be followed by the Supreme Court and American political elites in subsequent separation of powers cases (6). As such, *Chadha* marked the beginning of the Supreme Court's renewed role in separation of powers cases, a development that can be characterized by path dependency and includes cases such as *Bowsher v. Synar* (1986) and *Clinton v. City of New York* (1998) (Brough 2018, 181). As Paul Pierson (2000) describes it, path dependency is a process "in which preceding steps in a

particular direction induce further movement in the same direction" (252). An increasing returns process is one way to understand path dependency, where "the probability of further steps along the same path increases with each move down that path" (Pierson 2000, 252). These are the processes identified by Brough (2018).

Second, many claim that the continuing existence and relevance of the legislative veto, in general, is due to actor preferences. As stated, Congress delegated a significant amount of authority to executive agencies with the understanding that it could exercise some control over administrative decision-making with the legislative veto (Fisher 2005, 1). This desire to review and check executive branch action remained strong after *Chadha* was decided (Fisher 2005, 1). Not only has Congress continued to add legislative veto provisions to bills post-*Chadha*, especially committee and subcommittee vetoes, but presidents keep signing these bills into law (Fisher 1993, 288; 2005, 6). On the surface, these presidents have continued to express their constitutional objections to these legislative veto provisions in their signing statements, writing that they, for example, "'will treat them as having no legal force or effect in this or any other legislation in which they appear'" (Fisher 1993, 288; Garvey 2012, 21). Yet, besides these presidential signing statements, the executive branch has essentially operated as though the legislative veto was never struck down (Wheeler 2008, 83). Executive agencies cannot risk these confrontations with the very committees that authorize and fund their operations, which is why they abide by legislative veto provisions post-*Chadha* and have failed to implement the ruling (Fisher 1993, 288; Wheeler 2008, 116-17). Agencies want to keep their discretionary power and independence, and Congress wants to check some of this power and does not want to be shut out of administrative policymaking; therefore, the legislative veto continues to play a role in some form (Fisher 1993, 292; Wheeler 2008, 116-17).

To members of Congress, the legislative veto is an invaluable oversight device with which they are not ready to part, and so they have not (Wheeler 2008, 117). This has actually served the interests and preferences of both the legislative and executive branches: Congress delegates discretionary authority to executive agencies if they allow review and control by the corresponding congressional committees, thus superseding any desire to implement the *Chadha* ruling fully and faithfully (Fisher 2005, 6; Wheeler 2008, 83). In sum, Congress has continued to include legislative vetoes in legislation because, although it expects the president to voice objections, executive agencies will often comply with such provisions for practical reasons (Garvey 2012, 22). The president's objections to such provisions in signing statements can be understood as both a response to an infringement on the executive branch and as an announcement of support for agencies that choose to reject such vetoes (Garvey 2012, 22).

Third, Michael J. Berry (2009) argues that the increased issuance of signing statements is due in part to Congress including an increasing number of legislative vetoes in its legislation (33). He finds that constitutional signing statements increased greatly under President George W. Bush (Berry 2009, 3). These statements often targeted legislative vetoes which, as mentioned, remained in use despite the ruling in *Chadha* (Berry 2009, 32). As Congress continues to pass legislative veto provisions, presidents will continue to use signing statements to lessen their effects on the executive branch (Berry 2009, 33). It can be reasonably inferred that, as a result, presidents likely mention *INS v. Chadha* in these signing statements to justify their constitutional views.

Fourth, many assert that presidents will always seek to protect the constitutional powers of the presidency and that this will be made clear in their signing statements (Cooper 2005, 531-32; Cass and Strauss 2007, 23; Berry 2009, 32; Kelley and Marshall 2010, 171; Garvey 2012, 22;

Chambers, Jr. 2016, 1186-87). Signing statements, in general, have become important tools for protecting and increasing presidential power (Kelley and Marshall 2008, 250). This is true for different presidents of different political parties opposing different Congresses. Ronald A. Cass and Peter L. Strauss (2007) use the following example to make the point about this particular use of the signing statement: If Congress passes a large, complex bill with a legislative veto provision, the president should sign the bill into law, while also expressing his or her choice not to follow the unconstitutional legislative veto provision (23). The president can support this position by citing *INS v. Chadha* in the corresponding signing statement.

Lastly, some point to the presence of divided versus unified government as being an important factor in the use of signing statements. For example, frequent use of the legislative veto began in the 1970s by a Democratic Congress to combat President Richard Nixon, a Republican (Ellis 2009, 59). In terms of mentioning Supreme Court cases, Eshbaugh-Soha and Collins, Jr. (2015) argue that presidents typically write about Court cases to direct their implementation under divided government (649). Furthermore, Christopher S. Kelley and Bryan W. Marshall (2008) find that presidents are more likely to use signing statements on legislation during periods of divided government – when gridlock hinders the president's influence in Congress (264). In the face of partisan gridlock with Congress, modern presidents wield signing statements as a device of presidential unilateralism – the president taking unilateral action to protect and advance executive prerogatives, power, and policy (Kelley and Marshall 2010, 171). However, several factors and conditions influence the particular *type* of signing statement issued – whether the president issues a constitutional or simply rhetorical statement (Kelley and Marshall 2010, 184). Political environment, policy context, ideological differences between the political branches, and electoral cycle all influence what type of signing statement the president

will rely on (Kelley and Marshall 2010, 184). In terms of ideological differences, Kelley and Marshall (2010) find "that constitutional [signing] statements are significantly more likely under unified as compared to divided government," likely because Congress will not be as confrontational (181 and 184). This directly challenges the argument that the president issues constitutional signing statements to avoid gridlock (Kelley and Marshall 2010, 184).

In sum, scholars argue that *Chadha* is a critical juncture case, that actor preferences play a key role in the continued use of legislative vetoes, that increasing legislative vetoes leads to increasing signing statements, that protecting the constitutional powers of the presidency is a central goal expressed by presidents in their signing statements, and that the presence of divided versus unified government influences the use of signing statements generally and the specific type of statement issued. Each of these arguments proposes a potential explanation for the phenomenon of interest in the research question: *To what extent do recent presidents rely upon INS v. Chadha (1983) as a constitutional defense against the Congress, and why?* This research builds upon these explanations. Given the relatively recent developments of the legislative veto and the presidential signing statement, coupled with the many Supreme Court cases that are paramount to the American presidency, it leads one to wonder whether or not *INS v. Chadha* stands out as a salient case in presidential decision-making and constitutional interpretation when a bill reaches the president's desk, and if so, why that is.

CHAPTER III

EXPLORING *CHADHA'S* ENDURING RELEVANCE

Hypotheses

I attempt to answer both parts of the research question and, in doing so, assess several of the preceding arguments. I create four hypotheses based on some of the fundamental arguments presented above as they relate to the research question, dividing them into the two component parts of the question. With respect to the first part of the research question – *To what extent have recent presidents relied upon INS v. Chadha (1983) as a constitutional defense against the Congress* – the most salient arguments are that *Chadha* is a critical juncture case and that increasing legislative vetoes leads to increasing signing statements. Based on these explanations, I propose the following hypothesis to be tested:

> *H_1: As a critical juncture case and given the increase in legislative veto provisions enacted by Congress post-Chadha, recent presidents rely upon INS v. Chadha (1983) more often than other Supreme Court cases in their constitutional veto messages and signing statements.*

As both vehicles through which the president interacts with Congress and clear documentary examples of the president's interpretations of the Constitution, constitutional veto messages *and* signing statements are the focus of this research. To answer the second part of the research question – namely *why* – the simple answer is that presidents invoke *Chadha* in their veto messages and signing statements because Congress has continued to pass legislation containing

unconstitutional legislative veto provisions. However, I seek to pull back the curtain on this phenomenon and explore what other political realities may be involved. The relevant arguments to consider include that protecting the constitutional powers of the presidency is a central goal expressed by presidents in their signing statements and that the presence of divided versus unified government influences the use of signing statements generally and the specific type issued. This latter argument implies that relations between the president and Congress could be of importance. From these explanations, I propose the following hypotheses to be tested:

> *H_2: Since the moment a president first cited the case, it has become common for successive presidents to issue constitutional veto messages and signing statements that cite INS v. Chadha (1983) in what is an institutionalized practice best characterized by increasing returns in protecting the constitutional powers of the presidency.*
>
> *H_3: Recent presidents issue constitutional veto messages and signing statements mentioning INS v. Chadha (1983) more often under periods of divided government than unified government.*
>
> *H_4: Recent presidents with negative relations with Congress issue constitutional veto messages and signing statements mentioning INS v. Chadha (1983) more often than recent presidents with positive relations with Congress.*

Methodology

When presidents are presented with legislation, they can either sign it, veto it, or do nothing with it (in which case it either passes without his signature or is subject to a "pocket veto") (U.S. Const. art. I, § 7). When presidents sign a bill into law, they often issue a

corresponding signing statement, explaining why they signed the legislation and whether they have objections to any of its provisions. When presidents veto a bill, they issue a corresponding veto message to outline their issues with the legislation. Many veto messages and signing statements contain constitutional objections to portions of legislation. These are known as *constitutional* veto messages and signing statements, and they constitute this study's unit of analysis. The reasoning for this is two-fold. First, the research question specifically asks how often presidents use *Chadha* as a "constitutional defense against the Congress." Therefore, I am interested in veto messages and signing statements that invoke the Constitution. Second, prior research sought to determine how often presidents expressed a constitutional interpretation in their veto messages and signing statements (Scacchi 2021). This resulted in a collection of only constitutional veto messages and signing statements, analysis of which led to this project. It is from there that I continue the research. Thus, this study's document field was naturally narrowed to a consistent and well-defined group of constitutional veto messages and signing statements.

To test all four hypotheses, I rely on document analysis and content analysis of 602 constitutional veto messages and signing statements to obtain quantitative data. This set of documents represents every constitutional veto message and signing statement issued by presidents since June 23, 1983, the day *INS v. Chadha* was decided. These presidents include Ronald Reagan, George H. W. Bush, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump. The current president, Joe Biden, is excluded for lack of content. The veto messages are accessed primarily through the United States Senate's (2021) website, and the signing statements (as well as some veto messages) are accessed through the University of California, Santa Barbara's American Presidency Project document archive (Woolley and Peters n.d.). Unlike the veto messages, the body of signing statements might not represent an exhaustive list, but other

scholars in the field have used the American Presidency Project for rigorous and reliable signing statement research (See Kevin Evans and Bryan Marshall (2016), "Presidential Signing Statements and Lawmaking Credit"). I conducted the process of narrowing the document field to only constitutional veto messages and signing statements, and there might be minimal human error with respect to the comprehensiveness of the 602 documents examined. However, this *N* is large enough for the findings to reveal something of significance.

The document analysis and content analysis entail examining rigorously each of the 61 constitutional veto messages and 541 constitutional signing statements and identifying and tracking the mentions of *INS v. Chadha* within them. According to Glenn Bowen (2009), "Document analysis involves skimming (superficial examination), reading (thorough examination), and interpretation" in order to collect data in the form of words, phrases, excerpts, or paragraphs (32). From here, "Content analysis is the process of organising information into categories related to the central questions of the research" (Bowen 2009, 32). I undertake these processes here. It is necessary to define what constitutes a mention of *Chadha*. An explicit mention occurs when a president cites the case directly, such as "…the Supreme Court's ruling in *INS v. Chadha*" (Bush 2002). Alternatively, an implicit mention of *Chadha* occurs when a president heavily implies invoking the Court case, to the point that the president all but directly mentions it. For example, President Clinton (1994) wrote in a signing statement, "The Supreme Court has ruled definitively that legislative vetoes are unconstitutional." This example represents a mention of *Chadha* for the purposes of this study, as do phrases and sentences like it, since it is clear Clinton is referring to *Chadha*. Both explicit and implicit mentions of *Chadha* count equally throughout the analyses.

Although tracking mentions of *Chadha* through document analysis and content analysis will adequately serve the purposes of this study as sufficient methods for testing the four hypotheses, two hypotheses also require data beyond mentions of *Chadha* in constitutional veto messages and signing statements. Testing H_1 requires identifying and tracking other mentions of U.S. Supreme Court cases within the set of constitutional veto messages and signing statements to compare with mentions of *Chadha*. Using the "Find" feature of Adobe Acrobat Reader DC, I search for specific key words in each of the 602 documents. This list of words includes "*Chadha*," "INS," "veto," "legislative," "v.," "vs.," "Supreme," "Court," "ruling," "case," "decision," "committee," and "approval." Although I conduct this examination thoroughly, there is always the potential for a slight margin of error. However, the comprehensive list of search terms makes it unlikely that mentions of *Chadha* or other Court cases are missed.

Additionally, testing H_4 requires a reliable measure of presidents' relations with Congress. When a president leaves office, C-SPAN (2021) issues its "Presidential Historians Survey," ranking every president according to scores given by historians and presidential scholars. In addition to their overall rankings, the presidents are given scores for specific categories, among these being "Relations With Congress" (C-SPAN 2021). These congressional relations scores were updated in early 2021 after Donald Trump left office, and they range from 15.2 for Andrew Johnson to 83.5 for George Washington (C-SPAN 2021). All six presidents of interest in this study have 2021 final scores listed for their relations with Congress (C-SPAN 2021). These scores are deemed reliable, as the survey's 142 participants are well-respected experts and professional observers of the presidency (C-SPAN 2021). The median congressional relations score is 52.6 (C-SPAN 2021). For the purposes of this study, negative congressional relations will encompass any score below the median, while positive congressional relations will

include any score above the median. Lastly, it is important to note that, in testing the second group of hypotheses (H_2, H_3, and H_4), I am searching for correlations between mentions of *Chadha* and particular political realities, as opposed to determining causation. Establishing causality would require employing far more extensive methodologies beyond what is possible with the scope and time constraint of this project.

Like all research designs, this one is imperfect and subject to limitations. An obvious limitation is the study's unit of analysis. By concerning myself with only constitutional veto messages and signing statements, a risk exists that data, specifically mentions of other Court cases, found in "regular" veto messages and signing statements are excluded from the study. However, this does not pose a grave methodological issue, as limiting the study's focus to only constitutional veto messages and signing statements is a consistent, natural, and well-defined way to group the documents of interest. Furthermore, the methodologies chosen do not allow for triangulation of different methods and different sets of data on the same phenomenon. The benefit of triangulation is its contribution toward enhancing a study's credibility. With this research relying upon document analysis and content analysis generating one set of data, triangulation is obviously not present. This is just the nature of the study; the particular question asked warrants particular methodologies to arrive at an answer. Although they are most often used as complementary research methods, Glenn Bowen (2009) acknowledges that document analysis and content analysis can be employed on their own for specific and specialized cases suited for such analyses (29). I would argue that this research represents one of those specialized cases. A scholarly model for using document analysis as the sole research method in political science can be found in "Presidential Signing Statements and Lawmaking Credit," where Kevin

Evans and Bryan Marshall (2016) examine signing statements to identify credit attributed to lawmakers (757).

CHAPTER IV

ONE CASE AND SIX PRESIDENTS:

DATA COLLECTION

The data are derived from 602 constitutional veto messages and signing statements (61 veto messages and 541 signing statements) issued from June 23, 1983, the day the Supreme Court decided *Chadha*, through the end of the Trump presidency. This includes 102 of Ronald Reagan's constitutional veto messages and signing statements[1], and all of George H. W. Bush's 151, Bill Clinton's 117, George W. Bush's 141, Barack Obama's 23, and Donald Trump's 68 (see Table 1).[2] These totals represent reliable and substantial data sources for the six presidents.

President	Constitutional Veto Messages	Constitutional Signing Statements	Total
Ronald Reagan (1981-1989)	20	82	102
George H. W. Bush (1989-1993)	18	133	151
Bill Clinton (1993-2001)	14	103	117
George W. Bush (2001-2009)	5	136	141
Barack Obama (2009-2017)	0	23	23
Donald Trump (2017-2021)	4	64	68
Total	61	541	**602**

Table 1: Breakdown of constitutional veto messages and signing statements examined

[1] The date *Chadha* was decided, June 23, 1983, came just over two years into Reagan's presidency. Thus, the constitutional veto messages and signing statements Reagan issued from January 20, 1981, to June 22, 1983, are not considered in this study.
[2] These totals of constitutional veto messages and signing statements issued per president are from Scacchi (2021), "Presidents and the U.S. Constitution: The Executive's Role in Interpreting the Supreme Law of the Land."

To evaluate the first hypothesis, I mine this data source for mentions of Supreme Court cases, including mentions of *Chadha*. There are 138 mentions of Supreme Court cases across all 602 documents. These 138 mentions are spread across 27 different cases, ranging from *Marbury v. Madison* (1803) to *Zivotofsky v. Kerry* (2015) (see Figure 1). With 87 mentions, *INS v.*

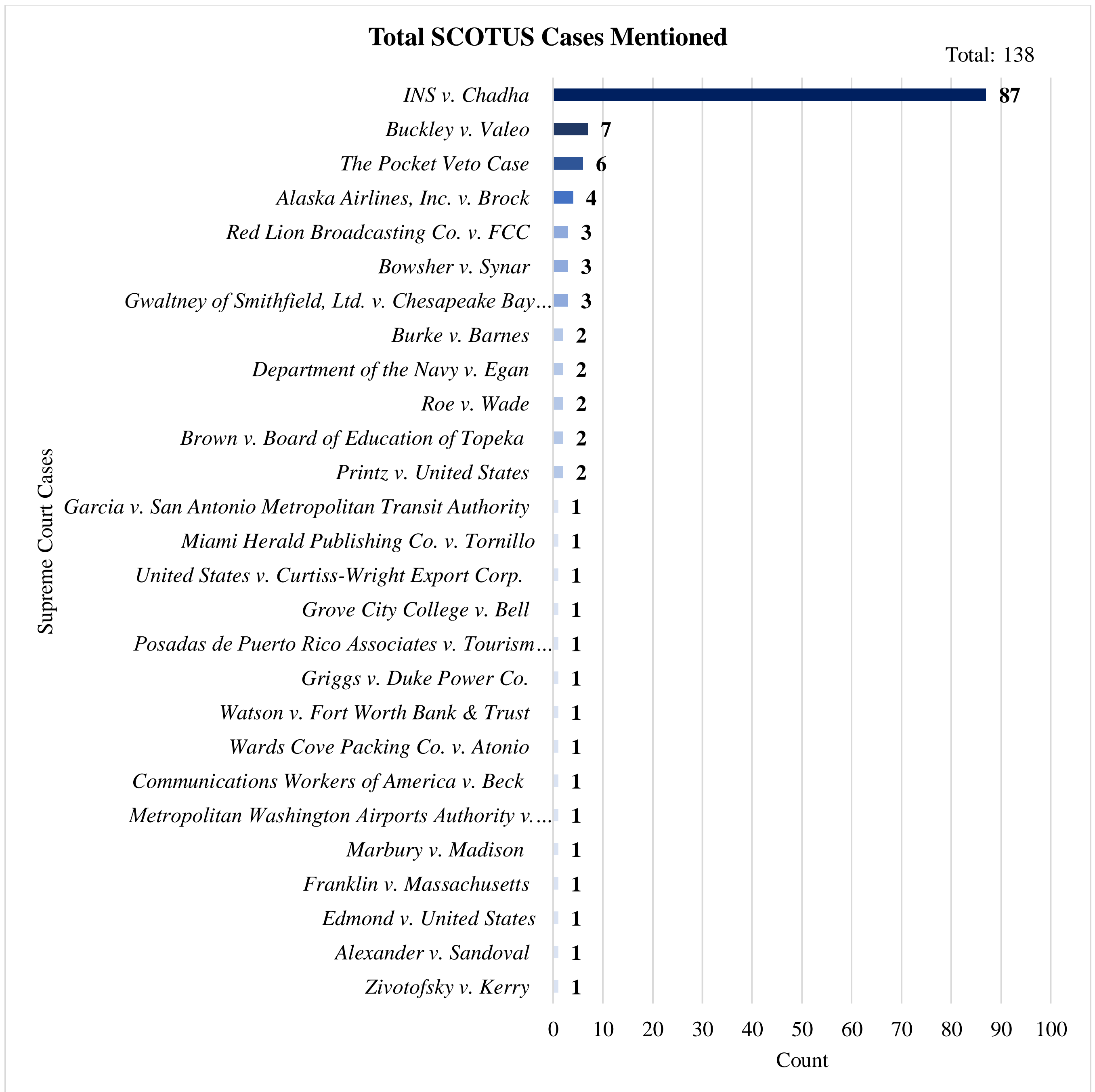

Figure 1: Breakdown of Supreme Court cases cited, June 23, 1983-January 20, 2021

Chadha is the most frequently mentioned case, while *Buckley v. Valeo* (1975) and *The Pocket Veto Case* (1929) are the second- and third-most frequently mentioned cases, with 7 and 6 mentions, respectively. The 87 mentions of *Chadha* are divided amongst each president as follows: 19 mentions from Reagan, 14 from Bush, 13 from Clinton, 39 from Bush, 0 from Obama, and 2 from Trump (see Table 2). Mentions of *Chadha* account for 63.0% of all Supreme Court cases mentioned by the six presidents in their constitutional veto messages and signing statements, comprising 51.4% of Reagan's, 46.7% of Bush's, 68.4% of Clinton's, 81.3% of Bush's, 0% of Obama's, and 50% of Trump's total Court case mentions (see Figure 2).

President	Total *Chadha* Mentions	Total SCOTUS Case Mentions	Percentage of *Chadha* Mentions
Ronald Reagan	19	37	51.4%
George H. W. Bush	14	30	46.7%
Bill Clinton	13	19	68.4%
George W. Bush	39	48	81.3%
Barack Obama	0	0	0.0%
Donald Trump	2	4	50.0%
Total	**87**	**138**	**63.0%**

Table 2: Number of *Chadha* and Supreme Court case mentions by each president

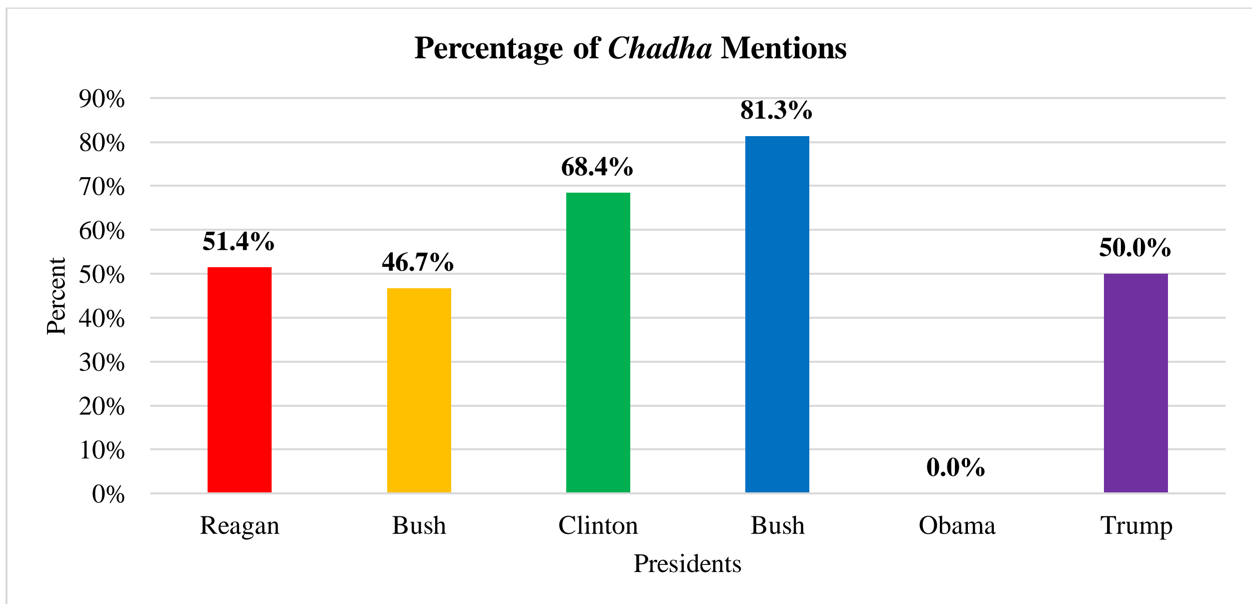

Figure 2: *Chadha* mentions as a percent of total case mentions, Reagan-Trump

Beginning with the second hypothesis, it is important to consider the frequency at which these presidents issue constitutional veto messages and signing statements that mention *Chadha*. In addition to the data collected above, this requires collecting the sums and corresponding percentages of constitutional veto messages and signing statements that mention *Chadha* from each president. Seventy-five documents of the 602 examined, or 12.5%, mention *Chadha*. Of these 75, all are signing statements except one (a veto message issued by George H. W. Bush), and 12 of the documents were issued by Reagan, 14 by Bush, 13 by Clinton, 34 by Bush, 0 by Obama, and 2 by Trump, with their corresponding percentages below (see Figure 3).

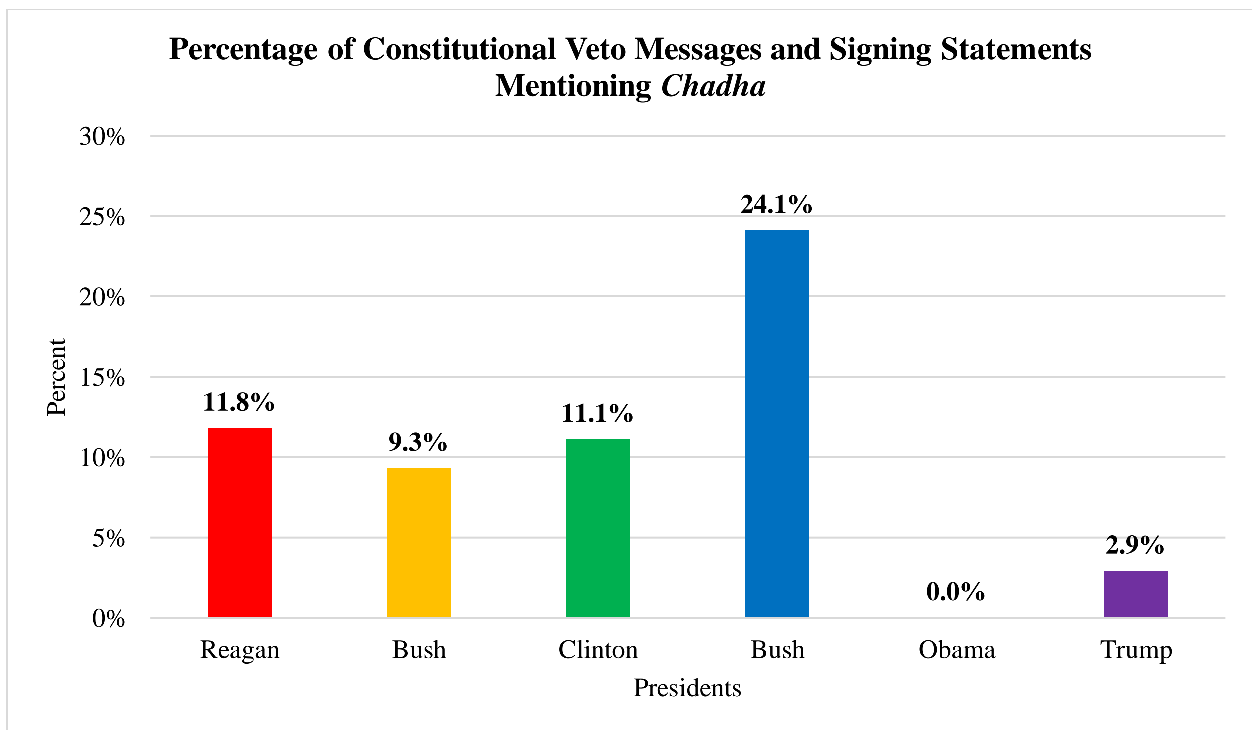

Figure 3: Percent of each president's documents that cite *Chadha*, Reagan-Trump

The third hypothesis requires calculating the rate at which constitutional veto messages and signing statements mentioning *Chadha* are issued during each Congress and cataloguing whether the corresponding government during those two years is divided or unified. Divided government exists when one of the three political bodies – the House of Representatives, Senate,

or presidency – is controlled by a different political party than the other two. Unified government occurs when the House, Senate, and presidency are each controlled by the same political party. From 1983 to 2021, there are 14 instances of divided government compared to seven instances of unified government.[3] Forty-four documents citing *Chadha* are issued under divided government and 31 are issued under unified government, representing 58.7% and 41.3% of all 75 documents from Reagan to Trump, respectively (see Figure 4).

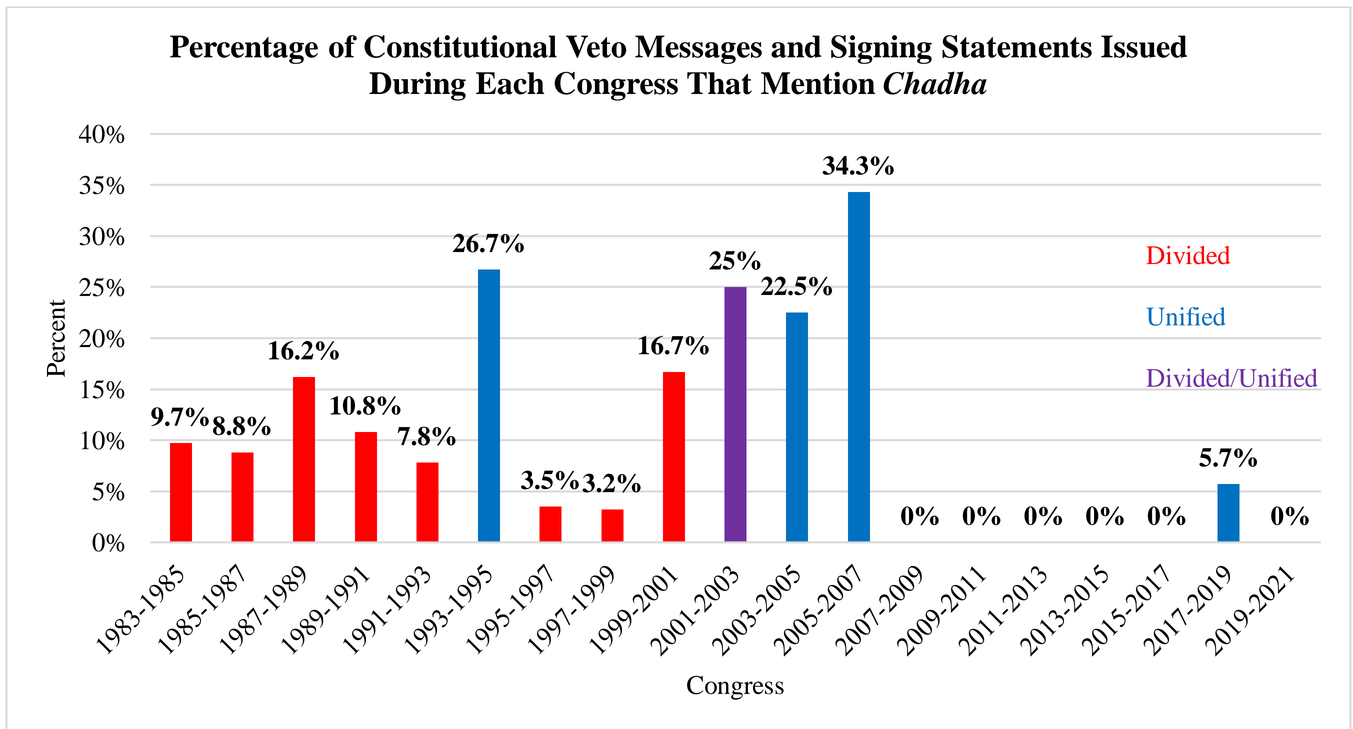

Figure 4: Percent of documents issued during each Congress that cite *Chadha*, 1983-2021

Lastly, I collect each president's congressional relations score, as determined by C-SPAN's (2021) "Presidential Historians Survey," for the fourth hypothesis. With a median score of 52.6, three presidents (Reagan, Bush, and Bush) have positive relations with Congress (scores above the median) and three presidents (Clinton, Obama, and Trump) have negative relations

[3] For the 107th Congress (2001-2003), there was unified government from January 20, 2001, to June 6, 2001, divided government from June 6, 2001, to November 12, 2002, and unified government again from November 12, 2002, to January 3, 2003.

with Congress (scores below the median) (see Table 3 and Figure 5). Figure 5 contains the same data as Figure 3 above, but the presidents are color-coded to reflect their positive or negative relations with Congress. This particular split is well-suited for this research not only because there is an even three presidents with positive congressional relations and three with negative relations but also because each group of three includes two presidents who served two terms and one president who served one term.

President	**Relations With Congress Scores**	**Positive or Negative?**	**Total *Chadha* Mentions**
Ronald Reagan	68.4	Positive	19
George H. W. Bush	55.1	Positive	14
Bill Clinton	52.2	Negative	13
George W. Bush	54.1	Positive	39
Barack Obama	46.9	Negative	0
Donald Trump	28.6	Negative	2
Total			**87**

Table 3: Presidents' congressional relations scores and *Chadha* mentions

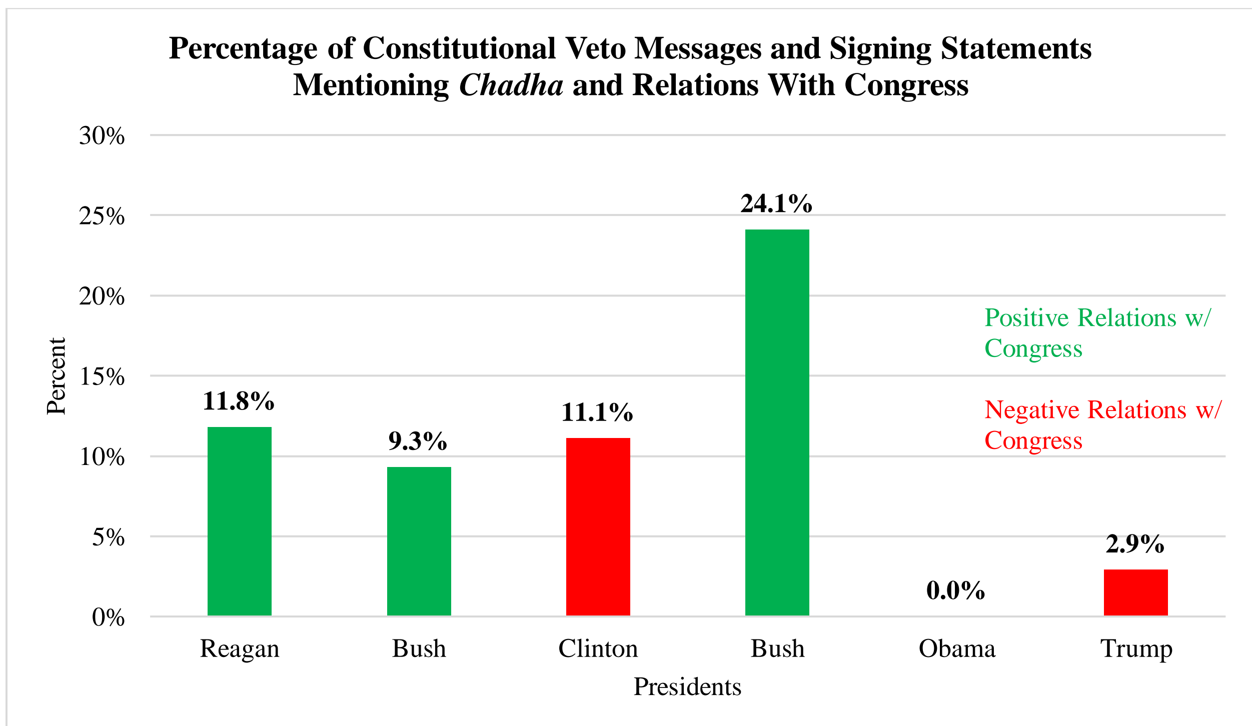

Figure 5: Percent of documents mentioning *Chadha* and congressional relations, Reagan-Trump

CHAPTER V

ASSESSING THE RELATIONSHIP: ANALYZING THE USE OF *CHADHA*

Hypothesis #1

Assessing the first hypothesis – *As a critical juncture case and given the increase in legislative veto provisions enacted by Congress post-Chadha, recent presidents rely upon INS v. Chadha (1983) more often than other Supreme Court cases in their constitutional veto messages and signing statements* – requires a direct comparison of all the Supreme Court cases mentioned throughout the presidential documents under consideration. Based upon the data, this hypothesis as a whole is supported. It is important to note that *Chadha* is only mentioned once throughout the 61 constitutional veto messages examined, while the remaining 86 mentions come from constitutional signing statements. Nevertheless, the results as a whole are overwhelming. *Chadha* is mentioned 87 times throughout the 602 presidential documents examined, while no other Court case has at least 10 mentions. The additional 26 Supreme Court cases are mentioned 51 times *combined* throughout these constitutional veto messages and signing statements. This represents a 1.7 to 1 ratio: For every single mention of another Supreme Court case, *Chadha* is mentioned nearly two times in constitutional veto messages and signing statements.

Furthermore, *INS v. Chadha* accounts for nearly two-thirds (63.0%) of all mentions of Supreme Court cases throughout the 602 documents. For four of the six presidents – Reagan, Clinton, Bush, and Trump – *Chadha* represents 50% or more of their total Supreme Court case

mentions. For the two exceptions, *Chadha* accounts for nearly half (46.7%) of George H. W. Bush's total Court case mentions, and Obama does not mention any Court cases in his constitutional veto messages and signing statements. Overall, *Chadha* represents a significant portion of these presidents' total Court case mentions. It is by far the primary Supreme Court case mentioned by the executive when signing legislation into law, with no other case coming close to its sum of mentions; eighty mentions separate *Chadha* from these presidents' second "favorite" case. *Chadha* is mentioned 36 more times than all other cited cases *combined*. It can confidently be said that these recent presidents under consideration rely upon *INS v. Chadha* (1983) more often than other Supreme Court cases in their constitutional signing statements.

Given that the difference between *Chadha* mentions and mentions of other Court cases is stark, *INS v. Chadha* is demonstrably the president's "favorite" case. That being said, it is important to acknowledge *Chadha*'s versatility that sets it apart from many other cases mentioned by presidents. The legislative veto is a general legislative device that can be included in many types of legislation, with no relation to the particular policies or topics of the bills to which they are added. Similarly, *Chadha*, having ruled on the generic legislative veto as opposed to a certain policy topic, can be mentioned with respect to a diverse range of bills that include legislative veto provisions but have no relationship in terms of policy. Several Court cases mentioned are topic-specific, meaning they can only be included in veto messages and signing statements about bills that share the same topic as the Court case. For example, *Roe v. Wade* (1973) is only mentioned in veto messages and signing statements about abortion-related bills. This restriction does not apply to *Chadha*, as it can be cited for a variety of bills with different topics that include legislative vetoes. However, this fails to account for the significant difference in sums described above. *Buckley v. Valeo* and the *Pocket Veto Case*, the second- and third-most

mentioned Court cases, are not topic-specific in that they are both mentioned in veto messages and signing statements regarding bills of a variety of policy topics.

Hypothesis #2

We now turn to the relationship between these *Chadha* mentions and relevant variables in order to determine what, if anything, can help explain the above phenomenon. Rather than analyzing the sum of mentions, the final three hypotheses can be tested by examining how often constitutional veto messages and signing statements referencing *Chadha* are issued. Fundamentally, we are interested in the frequency of documents citing *Chadha* from each president. This way we ensure that the true frequency of *Chadha* mentions is not inflated by documents that cite *Chadha* more than once.

Starting with the second hypothesis – *Since the moment a president first cited the case, it has become common for successive presidents to issue constitutional veto messages and signing statements that cite INS v. Chadha (1983) in what is an institutionalized practice best characterized by increasing returns in protecting the constitutional powers of the presidency* – in total, 12.5% (75) of the 602 constitutional veto messages and signing statements examined contain at least one mention of *Chadha*. As indicated above, all but one are signing statements, suggesting again that the observed phenomenon occurs primarily with signing statements. Of Reagan's 102 constitutional veto messages and signing statements examined, 11.8% contain at least one mention of *Chadha*. This is followed by 9.3% of Bush's documents, 11.1% of Clinton's, 24.1% of Bush's, 0% of Obama's, and 2.9% of Trump's. A relatively steady percent of documents mentioning *Chadha* are issued from Reagan to Clinton, followed by a sharp

increase during George W. Bush's presidency, and ending with a steep decline during the Obama and Trump presidencies. Of the 511 constitutional veto messages and signing statements issued from Reagan to George W. Bush, 14.3% (73) mention *Chadha*.

These percentages do not tell the whole story. Twelve of Reagan's examined documents mention *Chadha* compared to 90 that do not, which is a ratio of 7.5 to 1: For every constitutional veto message or signing statement that mentions *Chadha*, 7.5 do not. For Bush, 14 mention *Chadha* and 137 do not, for a ratio of 9.8 to 1, and for Clinton, 13 mention *Chadha* and 104 do not, for a ratio of 8 to 1. For Bush, 34 mention *Chadha* and 107 do not, for a ratio of 3.1 to 1, while for Trump, 2 mention *Chadha* and 66 do not, for a ratio of 33 to 1 (all 23 of Obama's examined documents do not mention *Chadha*). The smaller the ratio, the more frequent the given president issued constitutional veto messages and signing statements with a reference to *Chadha*; the larger the ratio, the more infrequent this occurred. The ratio experiences a slight increase from Reagan to Bush, then experiences a decline during the Clinton and Bush presidencies, only to increase again through the Trump presidency, as shown in Figure 6.

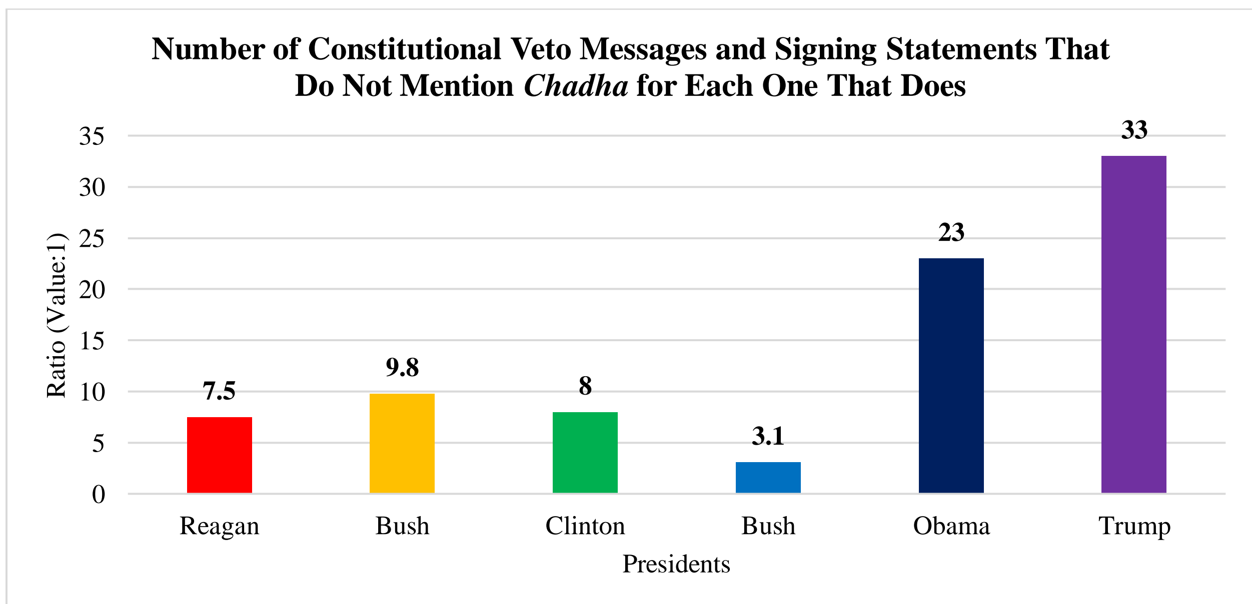

Figure 6: Ratio of documents that do not mention *Chadha* to each one that does, Reagan-Trump

Between the percent of each president's constitutional veto messages and signing statements that mention *Chadha* and the ratio of each president's documents that do not mention *Chadha* to those that do, a clear increase in frequency is not observed. It is not evident that each successive president issues documents mentioning *Chadha* more often than their predecessors. Notwithstanding, what *is* evident is that this practice is common from Reagan to George W. Bush. The percent of constitutional signing statements mentioning *Chadha* does not significantly fluctuate from Reagan to Clinton but rather remains relatively steady, followed by an increase in frequency during the George W. Bush administration, suggesting that some form of institutionalization has taken place across the four administrations. To refer to Paul Pierson (2000) again, "In an increasing returns process, the probability of further steps along the same path increases with each move down that path" (252). This is one conceptualization of path dependency, the process "in which preceding steps in a particular direction induce further movement in the same direction" (Pierson 2000, 252). These processes are observed here.

When President Reagan first cited *Chadha* as justification for his disapproval of a legislative veto provision in the post-*Chadha* era, not only did he increase the likelihood that he would cite the case again in similar future circumstances, which he did, but he also increased the likelihood that his successor would cite *Chadha* in defense of the same position, and so on and so forth. The first step taken down this path set the precedent and the boundaries for future presidents to continue down that same path and act similarly. The fact that the presidency alternates between a Republican and a Democrat from George H. W. Bush to Trump, each predecessor with very different policy preferences and political ideologies than their successor, lends further support to this hypothesis, as the institutionalized process of increasing returns, or path dependency, to protect the constitutional powers of the presidency is one reason why such

different administrations would engage in the same practice. These findings represent evidence of the institutionalization of this practice within the Executive Office of the President of the United States and the executive branch from Reagan to George W. Bush through the processes of increasing returns and path dependency, supporting the second hypothesis.

All that being said, only two signing statements mentioning *Chadha* are issued over the entire 12 years of both the Obama and Trump administrations. This represents an uncharacteristically quiet period compared to the other four administrations considered. Although President Trump cites the case in two of his signing statements, this decline is likely the result of Obama and Trump not being faced with as many legislative veto provisions as their predecessors. However, even if that is true, Obama (two) and Trump (six) identify eight total legislative veto provisions in legislation *without* citing *Chadha*. It is unclear why both presidents neglect to mention *Chadha* in these eight instances. This does not mean, however, that the practice of citing *Chadha* was never institutionalized during the previous four administrations, but it does suggest that either the process of path dependency has been broken or these two administrations represent a fluke in the path that will eventually correct itself.

Hypothesis #3

To test the relationship between divided versus unified government and *Chadha* mentions as set forth in the third hypothesis – *Recent presidents issue constitutional veto messages and signing statements mentioning INS v. Chadha (1983) more often under periods of divided government than unified government* – we first find that 44 constitutional veto messages and signing statements mentioning *Chadha* are issued under divided government and 31 are issued

under unified government from 1983 to 2021. Alternatively, 58.7% of all *Chadha* documents are issued under divided government compared to 41.3% issued under unified government. However, this disparity could be due to the fact that, from 1983 to 2021, there are twice as many periods of divided government (14) as unified government (seven). Thus, much greater opportunity exists for presidents to issue these documents citing *Chadha* under divided government. To address this, we determine the average number of documents mentioning *Chadha* issued in a period of divided government and unified government. On average, during a single period of divided government, the president issues 3.1 documents referencing *Chadha*. Conversely, 4.4 documents citing *Chadha*, on average, are issued during a single period of unified government. Furthermore, three of the four highest percentages of documents mentioning *Chadha* are issued under periods of unified government (1993-1995, 2003-2005, and 2005-2007). During a single period of divided government, *Chadha* is mentioned 3.7 times in constitutional veto messages and signing statements, as opposed to being mentioned an average of 5 times during a single period of unified government. Not only is the third hypothesis not supported by these findings but the opposite hypothesis, that recent presidents issue documents mentioning *Chadha* more often under periods of unified government than divided government, appears to be supported. Furthermore, the third hypothesis is most clearly unsupported by the fact that the highest percentage of documents mentioning *Chadha* issued during one Congress (34.3%) corresponds to the 109th Congress (2005-2007), a period of unified government with a Republican president, Senate, and House.

Hypothesis #4

The fourth hypothesis – *Recent presidents with negative relations with Congress issue constitutional veto messages and signing statements mentioning INS v. Chadha (1983) more often than recent presidents with positive relations with Congress* – goes one step beyond party control of the legislative and executive branches to consider the actual relations between the two. This hypothesis is largely unsupported by the data, with two exceptions. Based on C-SPAN's (2021) expert congressional relations scores, the two presidents with the highest rates of constitutional veto messages and signing statements mentioning *Chadha* – Reagan and George W. Bush – each have positive relations with Congress. Conversely, the two presidents with the lowest rates of constitutional veto messages and signing statements mentioning *Chadha* – Obama and Trump – each have negative relations with Congress. These results are the direct opposite of those predicted by the hypothesis. However, the third president with negative relations with Congress – Bill Clinton – issued a slightly higher percentage of *Chadha* documents than George H. W. Bush, the third president with positive congressional relations. This is the only result in line with the hypothesis. But to paint an even clearer picture, 15.2% of the constitutional veto messages and signing statements issued by the presidents with positive congressional relations mention *Chadha* compared to 7.2% of the documents issued by those with negative relations with Congress. Of the 75 documents that mention *Chadha*, 80% are issued by presidents with positive relations with Congress, while just 20% are issued by presidents with negative congressional relations. Furthermore, presidents with positive relations with Congress each mention *Chadha*, on average, 24 times compared to an average of 5 mentions from those with negative congressional relations. These differentials cannot be explained by the presidents with

positive congressional relations having served more time in the White House than the presidents with negative relations, as the former served a combined 17.5 years (as the study begins during the Reagan administration) compared to the latter's 20 years in office.

Explanations

Two hypotheses are supported and two are unsupported. No apparent relationship exists between the presence of divided government and presidents mentioning *INS v. Chadha* in their constitutional veto messages and signing statements. Nor is there a relationship between presidents' relations with Congress and mentions of *Chadha*. But *Chadha* is relied upon much more often than any other Supreme Court case, and this appears to be best explained by the institutionalization of this practice due to the processes of increasing returns and path dependency.

It is crucial to acknowledge that the president himself, typically, does not write the signing statements that are issued by his administration. Presidents have entire legal teams responsible for putting into words the executive's thoughts about legislation that reaches his desk. As White House Chief of Staff (1989-1991) under George H. W. Bush, John H. Sununu (personal communication, March 10, 2022) "left the signing statements to the legal troublemakers." Sununu (personal communication, March 10, 2022) recalled that "Signing statements are principally (virtually wholly) in the hands of the lawyers. That would include the President's legal counsel and extend to the DOJ." Specifically, the Office of Legal Counsel in the Department of Justice plays a crucial role in this process. According to Alberto R. Gonzales

(personal communication, April 18, 2022), former White House Counsel (2001-2005) and United States Attorney General (2005-2007) under President George W. Bush,

> Signing statements are customarily signed off by the Office of Legal Counsel at the Justice Department, although not all originate there. With respect to routine matters, or minor legislation that includes provisions which the Executive Branch wishes to clarify how these will be enforced, then it would not be unusual for these signing statements to originate at the White House, but again would have to be approved by the DOJ. As Counsel to the President I only weighed in on signing statements a few times.

These are the people and the institutions responsible for determining what to include in veto messages and signing statements.

The institutional factors that guide this drafting process incorporated *Chadha* immediately after the case was decided. According to Theodore B. Olson (personal communication, April 17, 2022), who served as United States Assistant Attorney General for the Office of Legal Counsel (1981-1984) under President Reagan and Solicitor General of the United States (2001-2004) under President George W. Bush, "After *Chadha* came down, OLC started sending draft[s], which became regularized, over to [the] WH for inclusion in signing statements whenever legislative veto popped up in [a] bill." The regularization that Olson (personal communication, April 17, 2022) describes is the precursor to the full institutionalization of this practice. This process resembles a machine – the people change, but the mechanics of the machine do not as they are passed down from one administration to the next. It becomes regular practice in one administration, as Olson (personal communication, April 17, 2022) recounts, and then it is replicated by successive administrations to the point where the composition of a president's legal team makes little difference because the process is in place. As a result, it essentially becomes automatic for the president and the administration to object to any

provision resembling a legislative veto and to mention *Chadha* in signing statements in accordance with institutional, Department of Justice precedent.

When President Reagan became the first president to reference *Chadha* as justification for objecting to a legislative veto provision on July 17, 1984, he created a path. Reagan's (1984) administration wrote,

> Under the Supreme Court's decision in Immigration and Naturalization Service v. Chadha, 103 S. Ct. 2761 (1983), Congress, including committees of Congress, may not be given power which has 'the purpose and effect of altering the legal rights, duties and relations of persons, including... Executive Branch officials...,' through procedures which bypass the constitutional requirements for valid legislative action.

This is the template that his and each successive administration would follow. The processes of increasing returns and path dependency are related to institutionalization in that they explain *how* a certain practice becomes entrenched. Each time a president issues a signing statement expressing disapproval of a legislative veto provision by referencing *Chadha*, the probability that the same president and his successor will act in the same manner the next time they encounter a similar provision increases. Incentives exist to continue this practice. For one, by all indications, Reagan's first mention of *Chadha* did not evoke serious backlash from Congress. Secondly, as the Supreme Court's opinion makes clear, the case was decided in favor of the executive branch and, as Reagan used it, the case is fundamentally a defense of the constitutional powers of the presidency as the Supreme Court interpreted them under the separation of powers. As the head of the executive branch, no president would rationally want to discontinue this practice, especially when it served their predecessors well. This is further supported by the fact that each of the 10 presidents from Hoover to Reagan – five Democrats and five Republicans – disapproved of the legislative veto device for violating the separation of powers and infringing on the executive branch (Ellis 2009, 59-60). This same unanimity applies to invoking *Chadha*, as well. According

to a former high-level official in the United States Department of Justice who wishes to remain anonymous (personal communication, April 20, 2022), the practice of citing *Chadha* is not a political issue that varies from president to president. In fact, the practice is institutional in the sense that each administration agrees it is important to protect an institutional value of the executive branch by setting boundaries and not permitting Congress to infringe on executive power (Anonymous, personal communication, April 20, 2022). Citing *Chadha* in appropriate signing statements can only benefit the occupant of the White House.

Lastly, what makes path dependency such a strong, restrictive process is how difficult it is to deviate from the path once one president starts down it. This is principally because "the costs of exit – of switching to some previously plausible alternative – rise" (Pierson 2000, 252). In other words, predecessors' past actions influence and constrain their successors' actions "because the relative benefits of the current activity compared with other possible options increase over time" (Pierson 2000, 252). As each administration continues to cite *Chadha* in its signing statements, the benefits of doing so – the ability to stand up to Congress and defend the executive branch under the Constitution – increase and induce each administration to continue the practice in a self-reinforcing process and positive feedback loop (Pierson 2000, 252). With every mention of *Chadha*, the range of alternative options decreases and the path narrows until it becomes a fully institutionalized process that is triggered automatically when appropriate by the president's legal team.

CHAPTER VI

CONCLUSION

This research supports the claim that *INS v. Chadha* (1983) is one of the most important Supreme Court cases in American politics. What began as a dispute over the deportation of Jagdish Rai Chadha eventually became the case that brought down the legislative veto. With the rise and growing influence of signing statements, *Chadha* eventually found a new home in its journey as a focal point of legislative-executive relations. To answer the following question – *To what extent do recent presidents rely upon INS v. Chadha (1983) as a constitutional defense against the Congress, and why?* – we analyzed 602 constitutional veto messages and signing statements issued by Presidents Reagan, Bush, Clinton, Bush, Obama, and Trump. We tested four hypotheses. In the end, we found that not only is *Chadha* cited extensively from Reagan to George W. Bush, but it is mentioned more than every other cited Supreme Court case put together.

In attempting to explain this phenomenon, no apparent relationship exists between the presence of divided government and mentions of *Chadha* nor between presidents' negative relations with Congress and *Chadha* mentions. Neither was the presence of divided government correlated with an increasing frequency of *Chadha* mentions from the president, and those presidents with negative congressional relations did not mention *Chadha* more frequently than those with positive relations with Congress. Rather, the relatively consistent frequency at which presidents issue constitutional signing statements mentioning *Chadha* is a sign that this particular practice has been institutionalized by a process of increasing returns and path dependency. When

the Reagan administration first mentioned *Chadha* as part of its objection to a legislative veto provision in 1984, the practice was set in motion, providing both the Reagan administration and future administrations the template, justification, and benefits for continuing the practice. With each additional mention of *Chadha*, the practice became further entrenched, making it difficult and arguably irrational for any administration to discontinue the practice under appropriate circumstances. This conclusion is further supported by the fact that the president's legal team writes these statements, indicating that the very process of drafting these signing statements is a product of institutional factors.

As the two elected and fundamentally political branches, the legislative and executive branches are often at odds with one another. This is especially true in an era of hyper-partisanship and increased polarization. Beyond the media attention, partisan bickering, Twitter attacks, committee hearings, and impeachment threats, there are constant battles over the constitutional powers between the two branches behind the scenes. From Hoover to Carter, the legislative veto was Congress's favorite check against the executive, and from Reagan to Trump, *Chadha* has been the president's chief weapon against Congress. Decided nearly four decades ago, *INS v. Chadha* remains an important part of relations between the president and Congress and the constitutional struggle between the two. Although it may not be a particularly well-known case, its impact over the enforcement of certain provisions of laws and continued political relevance as the most cited case forty years after it was decided are what set *Chadha* apart from other cases. *Chadha* clearly remains significant in American politics.

Overall, the significant use of *Chadha* in constitutional signing statements is ultimately a lesson in how certain discretionary actions can become common practice very quickly. From Presidents Reagan to George W. Bush, constitutional signing statements mentioning *Chadha* are

issued at a steady frequency, a sign of institutionalization. Given the realities of the Obama and Trump administrations, it will be interesting to see how often *Chadha* is mentioned by President Biden and his successors. With the frequency of signing statements mentioning *Chadha* having dropped significantly during the Obama and Trump administrations, it is an open question whether or not President Biden and future administrations will have the opportunity to continue this practice when issuing their signing statements.

Future researchers may continue exploring this topic. There are several questions that need to be answered. First, a crucial component of the significance of presidents mentioning *Chadha* is whether the executive branch abides by the corresponding legislative vetoes as a result. How many legislative vetoes has the executive branch followed since 1983 despite the president invoking *Chadha* when objecting to them? Additionally, given the institutional nature of citing *Chadha*, how much institutional turnover has taken place in the Department of Justice, specifically the Office of Legal Counsel, in the nearly four decades since the Supreme Court decided *Chadha*? Answering these questions will further shed light on the importance of the discoveries made in this study. Besides institutionalization, divided versus unified government, and congressional relations, additional variables could likely have some relationship with *Chadha* mentions, if future researchers decide to test them. Given that this research focused on cataloguing the Supreme Court cases mentioned from the day *Chadha* was decided to the present, future researchers may consider investigating the Supreme Court cases mentioned in constitutional veto messages and signing statements before *Chadha* was decided to determine whether any cases compare to the sum and frequency of *Chadha* mentions. Examining the specific types of post-*Chadha* legislative veto provisions objected to is beyond the scope of this research but could yield compelling conclusions about how Congress has adjusted to the *Chadha*

decision and how presidents have remained stubborn in their opposition to any and all types of legislative vetoes. Lastly, the Obama and Trump administrations would represent fascinating case studies within this topic of legislative vetoes, signing statements, and *Chadha* if future researchers attempt a closer examination of the decline in *Chadha* mentions observed, why it occurred, and whether it is likely to persist.

BIBLIOGRAPHY

Acs, Alex. 2019. "Congress and Administrative Policymaking: Identifying Congressional Veto Power." *American Journal of Political Science* 63(3): 513-29.

Bavis, Barbara. n.d. "Research Guides: Compiling a Federal Legislative History: A Beginner's Guide: Presidential Signing Statements." *Library of Congress*. https://guides.loc.gov/legislative-history/presidential-communications/signing-statements (April 17, 2021).

Berry, Michael J. 2009. "Controversially Executing the Law: George W. Bush and the Constitutional Signing Statement." *Congress & the Presidency* 36(3): 1-45.

Bottenfield, Anthony M. 2008. "Congressional Creativity: The Post-*Chadha* Struggle for Agency Control in the Era of Presidential Signing Statements." *Penn State Law Review* 112(4): 1125-66.

Bowen, Glenn. 2009. "Document Analysis as a Qualitative Research Method." *Qualitative Research Journal* 9(2): 27-40.

Bradley, Curtis A., and Eric A. Posner. 2006. "Presidential Signing Statements and Executive Power." *Constitutional Commentary* 23(3): 307-64.

Brough, Christopher B. 2018. "From *Chadha* to *Clinton*: The Supreme Court in Legislative Process-Separation of Powers Cases." Dissertation. Northern Illinois University. http://commons.lib.niu.edu/bitstream/handle/10843/21286/Brough_niu_0162D_13207.pdf?sequence=1&isAllowed=y (October 11, 2021).

Burger, Chief Justice Warren E., Justice Lewis F. Powell, Jr., Justice Byron R. White, and Justice William Rehnquist. 1983. (United States Supreme Court) *Immigration and Naturalization Service v. Chadha et al.* 919-1016.

Bush, George W. 2002. "Statement on Signing Legislation on the Codification of Laws Related to Public Buildings, Property, and Works." *American Presidency Project*. https://www.presidency.ucsb.edu/documents/statement-signing-legislation-the-codification-laws-related-public-buildings-property-and (November 20, 2021).

Cass, Ronald A., and Peter L. Strauss. 2007. "The Presidential Signing Statements Controversy." *William and Mary Bill of Rights Journal* 16(1): 11-26.

Chambers, Jr., Henry L. 2016. “Presidential Constitutional Interpretation, Signing Statements, Executive Power and Zivotofsky.” *University of Colorado Law Review* 87: 1183-1229.

Clinton, William J. 1994. “Statement on Signing Transportation Legislation.” *American Presidency Project*. https://www.presidency.ucsb.edu/documents/statement-signing-transportation-legislation (November 20, 2021).

Cooper, Phillip J. 2005. “George W. Bush, Edgar Allan Poe, and the Use and Abuse of Presidential Signing Statements.” *Presidential Studies Quarterly* 35(3): 515-32.

C-SPAN. 2021. “Presidential Historians Survey 2021 | Historians Survey Results Category: Relations With Congress.” *C-SPAN.org*. https://www.c-span.org/presidentsurvey2021/?category=7 (November 20, 2021).

Elliott, E. Donald. 1983. “Ins v. Chadha: The Administrative Constitution, the Constitution, and the Legislative Veto.” *The Supreme Court Review* 1983: 125-76.

Ellis, Richard J. 2009. *Judging Executive Power: Sixteen Supreme Court Cases That Have Shaped the American Presidency*. Rowman & Littlefield.

Eshbaugh-Soha, Matthew, and Paul M. Collins, Jr. 2015. “Presidential Rhetoric and Supreme Court Decisions.” *Presidential Studies Quarterly* 45(4): 633-52.

Evans, Kevin, and Bryan Marshall. 2016. “Presidential Signing Statements and Lawmaking Credit.” *Political Science Quarterly* 131(4): 749-78.

Fellows, Jonathan B. 1984. “Congressional Oversight Through Legislative Veto After *INS v. Chadha*.” *Cornell Law Review* 69(6): 1244-66.

Fisher, Louis. 1993. “The Legislative Veto: Invalidated, It Survives.” *Law and Contemporary Problems* 56(4): 273-92.

Fisher, Louis. 2005. *Legislative Vetoes After Chadha*. Congressional Research Service: The Library of Congress. CRS Report for Congress. https://www.everycrsreport.com/reports/RS22132.html (October 11, 2021).

Garvey, Todd. 2012. *Presidential Signing Statements: Constitutional and Institutional Implications*. Congressional Research Service. CRS Report for Congress. https://sgp.fas.org/crs/natsec/RL33667.pdf (April 18, 2021).

Goldsmith, Richard I. 1984. "*INS v. Chadha* and the Nondelegation Doctrine: A Speculation." *Syracuse Law Review* 35(2): 749-62.

Kelley, Christopher S., and Bryan W. Marshall. 2008. "The Last Word: Presidential Power and the Role of Signing Statements." *Presidential Studies Quarterly* 38(2): 248-67.

Kelley, Christopher S., and Bryan W. Marshall. 2010. "Going It Alone: The Politics of Signing Statements from Reagan to Bush II*." *Social Science Quarterly* 91(1): 168-87.

Milkis, Sidney M., and Michael Nelson. 2019. "*Immigration and Naturalization Service v. Chadha*." In *The American Presidency: Origins and Development, 1776-2018*, CQ Press, 474-76.

Ostrander, Ian, and Joel Sievert. 2013. "What's So Sinister about Presidential Signing Statements?" *Presidential Studies Quarterly* 43(1): 58-80.

Pierson, Paul. 2000. "Increasing Returns, Path Dependence, and the Study of Politics." *The American Political Science Review* 94(2): 251-67.

Reagan, Ronald. 1984. "Statement on Signing the Land Remote-Sensing Commercialization Act of 1984." https://www.presidency.ucsb.edu/documents/statement-signing-the-land-remote-sensing-commercialization-act-1984 (April 10, 2022).

Scacchi, Mitchell. 2021. "Presidents and the U.S. Constitution: The Executive's Role in Interpreting the Supreme Law of the Land." *University of New Hampshire*. 1-24. https://scholars.unh.edu/honors/550.

United States Senate. 2021. "Vetoes, 1789 to Present." *United States Senate: Vetoes, 1789 to Present*. https://www.senate.gov/legislative/vetoes/vetoCounts.htm (August 30, 2021).

U.S. Const. art. I, § 7.

Wheeler, Darren A. 2006. "Implementing *INS v. Chadha*: Communication Breakdown?" *Wayne Law Review* 52(3): 1185-1222.

Wheeler, Darren A. 2008. "Actor Preference and the Implementation of *INS v. Chadha*." *BYU Journal of Public Law* 23(1): 83-118.

Woolley, John, and Gerhard Peters. n.d. "Advanced Search (Case Sensitive)." *Documents Archive Search | American Presidency Project*. https://www.presidency.ucsb.edu/advanced-search (August 30, 2021).

APPENDIX

SCOTUS Case	Total Mentions per Case
INS v. Chadha (1983)	87
Buckley v. Valeo (1975)	7
The Pocket Veto Case (1929)	6
Alaska Airlines, Inc. v. Brock (1987)	4
Red Lion Broadcasting Co. v. FCC (1969)	3
Bowsher v. Synar (1986)	3
Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc. (1987)	3
Burke v. Barnes (1987)	2
Department of the Navy v. Egan (1988)	2
Roe v. Wade (1973)	2
Brown v. Board of Education of Topeka (1954)	2
Printz v. United States (1997)	2
Garcia v. San Antonio Metropolitan Transit Authority (1985)	1
Miami Herald Publishing Co. v. Tornillo (1974)	1
United States v. Curtiss-Wright Export Corp. (1936)	1
Grove City College v. Bell (1984)	1
Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico (1986)	1
Griggs v. Duke Power Co. (1971)	1
Watson v. Fort Worth Bank & Trust (1988)	1
Wards Cove Packing Co. v. Atonio (1989)	1
Communications Workers of America v. Beck (1988)	1
Metropolitan Washington Airports Authority v. Citizens for the Abatement of Aircraft Noise, Inc. (1991)	1
Marbury v. Madison (1803)	1
Franklin v. Massachusetts (1992)	1
Edmond v. United States (1997)	1
Alexander v. Sandoval (2001)	1
Zivotofsky v. Kerry (2015)	1
Total Mentions	**138**

Table 4: Breakdown of each Supreme Court case mentioned, Reagan-Trump

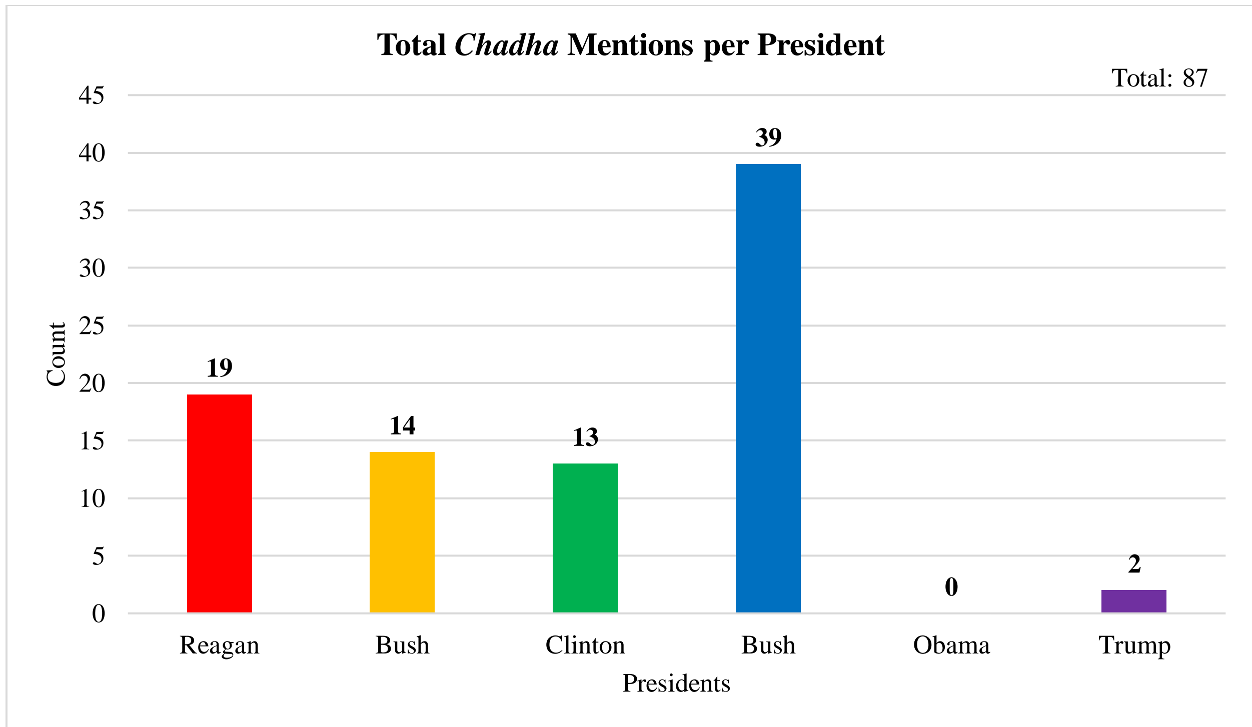

Figure 7: Total mentions of *Chadha* by each president, Reagan-Trump

President	Constitutional Veto Messages and Signing Statements Mentioning *Chadha*	Total Constitutional Veto Messages and Signing Statements Examined	Percentage of Constitutional Veto Messages and Signing Statements Mentioning *Chadha*
Ronald Reagan	12	102	11.8%
George H. W. Bush	14 (1 veto message)	151	9.3%
Bill Clinton	13	117	11.1%
George W. Bush	34	141	24.1%
Barack Obama	0	23	0.0%
Donald Trump	2	68	2.9%
Total	**75**	**602**	**12.5%**

Table 5: Number of constitutional veto messages and signing statements mentioning *Chadha*

Congress	Divided or Unified Government?	President	Total *Chadha* Mentions
1983-1985	Divided	Ronald Reagan (R)	8
1985-1987	Divided	Ronald Reagan (R)	5
1987-1989	Divided	Ronald Reagan (R)	6
1989-1991	Divided	George H. W. Bush (R)	8
1991-1993	Divided	George H. W. Bush (R)	6
1993-1995	Unified	Bill Clinton (D)	4
1995-1997	Divided	Bill Clinton (D)	1
1997-1999	Divided	Bill Clinton (D)	1
1999-2001	Divided	Bill Clinton (D)	7
2001-2003			
1/20/2001-6/6/2001	Unified	George W. Bush (R)	0
6/6/2001-11/12/2002	Divided	George W. Bush (R)	10
11/12/2002-1/3/2003	Unified	George W. Bush (R)	2
2003-2005	Unified	George W. Bush (R)	13
2005-2007	Unified	George W. Bush (R)	14
2007-2009	Divided	George W. Bush (R)	0
2009-2011	Unified	Barack Obama (D)	0
2011-2013	Divided	Barack Obama (D)	0
2013-2015	Divided	Barack Obama (D)	0
2015-2017	Divided	Barack Obama (D)	0
2017-2019	Unified	Donald Trump (R)	2
2019-2021	Divided	Donald Trump (R)	0
		Total Divided	**52 (59.8%)**
		Total Unified	**35 (40.2%)**
		Total	**87**

Table 6: Mentions of *Chadha* during each Congress

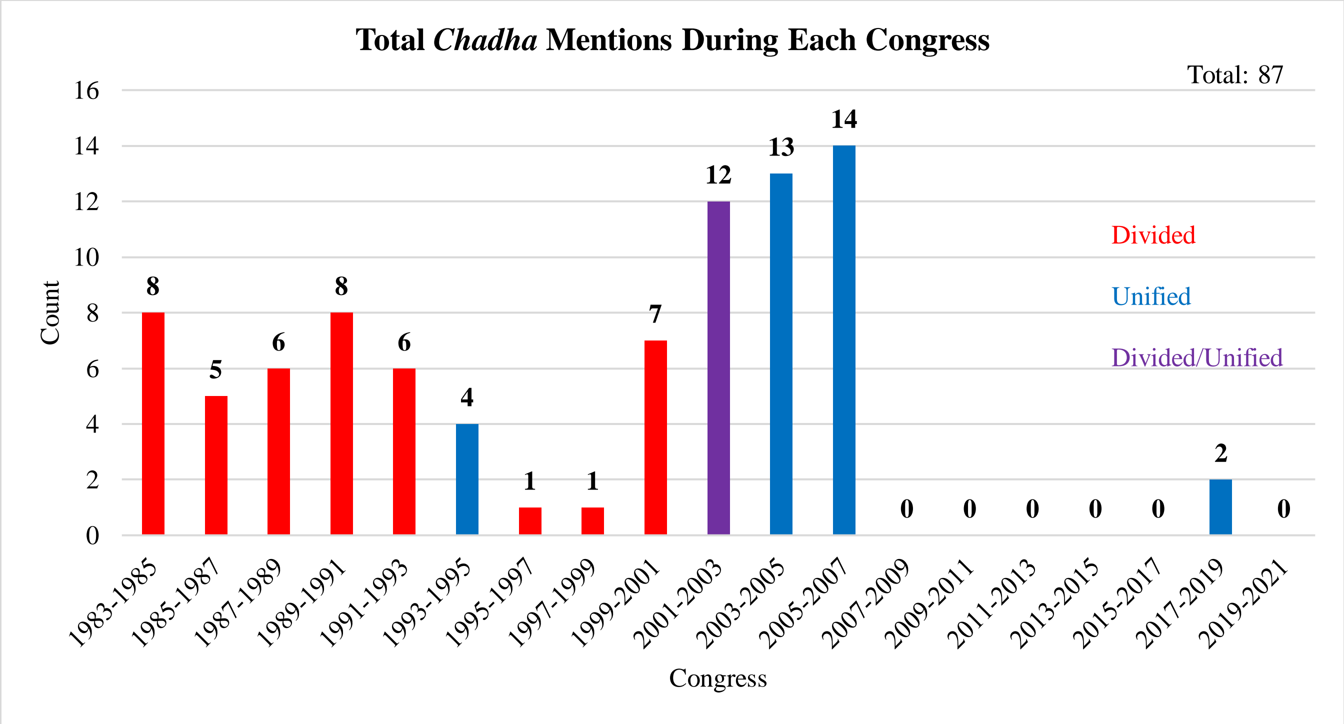

Figure 8: Mentions of *Chadha* during each Congress, 1983-2021