Nos. 24A884, 24A885, 24A886

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Applicants,
v.
CASA INC., *et al.*,
Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Applicants,
v.
STATE OF WASHINGTON, *et al.*,
Respondents.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,
Applicants,
v.
STATE OF NEW JERSEY, *et al.*,
Respondents.

On Applications for Partial Stays of the Injunctions Issued by the United States District Courts for the District of Maryland, the Western District of Washington, and the District of Massachusetts

BRIEF FOR PROFESSOR MILA SOHONI AS *AMICA CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICA CURIAE*[1]

Amica curiae Mila Sohoni is a Professor of Law and the John A. Wilson Distinguished Faculty Scholar at Stanford Law School, where she teaches federal courts and civil procedure.[2] She is the author of three articles that address the history and legality of universal remedies: *The Lost History of the "Universal" Injunction*, 133 Harv. L. Rev. 920 (2020); *The Past and Future of Universal Vacatur*, 133 Yale L. J. 2305 (2024); and *The Power to Vacate a Rule*, 88 Geo. Wash. L. Rev. 1121 (2020).

The Government's application for a stay raises the question whether a federal court may issue a universal injunction. *Amica*'s analysis of this topic may assist the Court if it reaches that question.

SUMMARY OF ARGUMENT

Given the Government's failure to demonstrate its entitlement to the extraordinary relief it seeks, this Court should deny the Government's applications without addressing whether federal courts have the authority to issue universal injunctions (also referred to here as "nationwide" injunctions). If, however, the Court chooses to engage with the question of remedial scope, it should recognize that the lower courts' injunctions were proper. The universal injunction is rooted firmly in the traditions of equity, and Article III standing doctrine poses no obstacle to the

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[1] No party or its counsel authored this brief in whole or in part. No person or entity other than *amica* and her counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] *Amica*'s institutional affiliation is noted for identification purposes only.

universal injunction. The Government's policy concerns about universal injunctions are both legally irrelevant and overstated. The Government's favored alternatives—limiting relief to named plaintiffs or certified classes—would create the same supposed problems while incentivizing duplicative litigation and allowing illegal government conduct to afflict those lacking the meaningful capacity to challenge it. And in this case, universal preliminary injunctive relief is warranted to maintain the status quo and to prevent grave, irreparable harm during the pendency of these actions.

ARGUMENT

I. UNIVERSAL INJUNCTIONS ARE CONSTITUTIONAL.

A. Universal Injunctions Are Consistent With The Traditions Of Equity.

1. The Government suggests that universal injunctions are unconstitutional because they do not comport with traditional principles of equity. *See* App. at 17-18.[3] But that argument is incoherent given the Government's view of what the traditions of equity allow. The Government accepts that a federal court may issue a *purely plaintiff-protective* injunction to shield named plaintiffs from threatened enforcement by a federal officer: it asks this Court to stay the injunctions below so that they protect just the named plaintiffs and identified members of the organizational plaintiffs. *Id.* at 39; 16. Yet the pedigree of the Government's preferred, purely plaintiff-protective

[3] The Government's stay applications are essentially identical across all three cases. For simplicity, all citations are to its filing in *Trump v. CASA, Inc.*, No. 24A884 ("App.").

injunction against the enforcement of a law extends back only to the early twentieth century. *See Ex parte Young*, 209 U.S. 123, 126 (1908); *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94 (1902); *see also* Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 Harv. L. Rev. 920, 1002-05 (2020).[4] As discussed below, the universal injunction has a history nearly as long. It is therefore no defect that the universal injunction's lineage does not stretch all the way back to 1789, for its history is just about as old as the *Young*-type injunctions that the Government concedes to be valid. *See Grupo Mexicano de Desarrollo, S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 324-27 (1999) (looking, in part, to twentieth century precedent to determine "the traditional powers of equity courts").

From at least 1913 onwards, federal courts, including this Court, repeatedly issued broad injunctions against federal officers. In 1913, pending decision in *Lewis Publishing Co. v. Morgan*, 229 U.S. 288 (1913), the plaintiffs asked this Court to enjoin enforcement of a new federal newspaper statute against the two plaintiff publications and against "other newspaper publishers" pending its decision in that case. The plaintiffs asserted that the federal government reneged on its prior "agree[ment] not to enforce the Act against the plaintiffs 'or other newspaper publishers throughout the country' pending the Court's decision." *See* Sohoni, *Lost*

[4] These are the canonical cites, but the Court in 1912 was *still* having to explain the basis of its injunctive powers against federal officers by analogy to cases involving personal liability of officers and injunctions against state officers. *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619-21 (1912).

History, *supra*, at 945. The Court granted the injunction, thereby shielding *all* publications from the new law pending its decision in that case. *See J. of Com. & Com. Bull. v. Burleson*, 229 U.S. 600 (1913) (per curiam), https://perma.cc/4KDR-J4HA.

More injunctions protecting non-plaintiffs from enforcement of federal law issued in the following years. *See* Sohoni, *Lost History*, *supra*, at 946-54. In *Hill v. Wallace*, 259 U.S. 44, 48-49, 72 (1922), the Court barred enforcement of the Future Trading Act against not just the eight plaintiff members of the Chicago Board of Trade but also against any other, non-party member, too. In the run-up to its decision in *Board of Trade of Chicago v. Olsen*, 262 U.S. 1 (1923), the Court issued an order that barred the Grain Futures Act from being enforced against anyone within the jurisdiction of the local U.S. Attorney. *See Bd. of Trade of Chi. v. Clyne*, 260 U.S. 704 (1922) (mem.). Lower courts issued such injunctions as well. In *Wallace v. Thomas*, No. 152 in Equity (E.D. Tex. 1935), a federal district court preliminarily enjoined federal officers from all four districts in Texas from enforcing a federal law against "every cotton ginner in the State of Texas." *See* Sohoni, *Lost History*, *supra*, at 1001 n.530.

Federal courts similarly and repeatedly enjoined the enforcement of *state* laws with broad orders in the early to mid twentieth century. *See id.* at 958-70, 987-91. By their nature, such injunctions were statewide and not nationwide, but that makes no difference as a matter of Article III principle. On the Government's view, federal

courts are constitutionally forbidden from providing relief to non-parties. *See* App. 15. Like the cases targeting federal laws, the cases targeting state laws thus show that courts did not share that understanding, regularly issuing injunctions shielding non-parties.

Indeed, this Court repeatedly approved injunctions against state laws that protected non-parties. In *Pierce v. Society of Sisters*, 268 U.S. 510, 536 (1925), the Court affirmed a universal injunction against a state law that imposed criminal penalties on parents who sent their children to private schools. The two plaintiff schools sued just for themselves, alleging that the law was an unconstitutional interference with their property rights. But they sought, and won, an injunction that categorically restrained the state from enforcing the law. *See* Sohoni, *Lost History*, *supra*, at 960-61. This Court affirmed, expressly approving that injunction. *Pierce*, 268 U.S. at 530 ("Rights said to be guaranteed by the federal Constitution were specially set up, and appropriate prayers asked for their protection."); *id.* at 533 ("[t]he prayer is for an appropriate injunction").

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943), is similar. The Court affirmed an injunction that reached beyond the plaintiff class of Jehovah's Witnesses to also shield "any other children having religious scruples" from a state law requiring students to salute the American flag. Sohoni, *Lost History*, *supra*, at 990 (quoting decree). In another case, the Court called "unassailable" a decree that protected not just the plaintiffs but also those "acting in sympathy or in

concert with the plaintiffs or any of them" from enforcement of city ordinances that interfered with federal civil rights. *See Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 517 (1939) (opinion of Roberts, J.); *Hague v. Comm. for Indus. Org.*, 101 F.2d 774, 794-96 (3d Cir.), *decree modified*, 307 U.S. 496 (1939); *see also, e.g.*, *Hines v. Davidowitz*, 312 U.S. 52, 74 (1941) (affirming universal injunction of a Pennsylvania alien-registration statute); *Langer v. Grandin Farmers' Co-op. Elevator Co. of Grandin, N.D.*, 292 U.S. 605 (1934) (mem.) (affirming per curiam an injunction barring North Dakota governor from embargoing out-of-state sales of agricultural products); *Binford v. J.H. McLeaish & Co.*, 284 U.S. 598 (1932) (mem.) (affirming per curiam an injunction barring enforcement of a Texas law against all those similarly situated to certain plaintiff-intervenor cotton growers, farmers, merchants, handlers, and truck drivers); *Mitchell v. Penny Stores*, 284 U.S. 576 (1931) (affirming per curiam an injunction barring enforcement of a Mississippi chain-store tax against the plaintiff or any operators of more than five stores subject to the tax).

2. The federal courts' consistent use of sweeping injunctions in the early twentieth century was in keeping with the traditions of equity. The practice carried forward the old representative suit practice, derived from the old English bill of peace and continued on in the Federal Equity Rules, of shielding those "similarly situated"

to the plaintiffs.[5] *See* 1 John Norton Pomeroy, A Treatise on Equity Jurisprudence § 246, at 397 (4th ed. 1918) (describing chancery's bills of peace); *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 582 (2017) (per curiam) (maintaining nationwide injunctions barring enforcement of an executive order against "parties similarly situated to Doe, Dr. Elshikh, and Hawaii"); *Wirtz v. Baldor Elec. Co.*, 337 F.2d 518, 533 (D.C. Cir. 1963) (per curiam) (ordering issuance of a nationwide injunction in suit brought by the plaintiffs "on behalf of themselves and all other United States manufacturers of electric motors and generators similarly situated"). Such injunctions are securely founded in "the inherent jurisdiction of equity to interfere for the prevention of a multiplicity of suits." Pomeroy, *supra*, § 260, at 450-51.

Some have contended that the relief given in representative suits differs from the modern-day nationwide injunction because a judgment in an equity representative action was binding on represented non-parties in subsequent suits. Not so. Judgments in representative suits bound absentees in "joint" or "common" interest cases where members of the class shared a common claim, but according to James William Moore, the drafter of Rule 23, decrees were not binding on absentees

[5] *See* Federal Equity Rule 48 (1842) (authorizing federal courts to "proceed in the suit" involving "very numerous" interested parties without "making all of them parties," as long as the court had "sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants"); Federal Equity Rule 38 (1913) (allowing a party to "sue or defend for the whole" when "the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court").

in "several" interest cases involving similar but independent claims or defenses. *See* James Wm. Moore & Marcus Cohn, *Federal Class Actions—Jurisdiction and Effect of Judgment*, 32 Ill. L. Rev. 555, 561 (1938); James Wm. Moore & Marcus Cohn, *Federal Class Actions*, 32 Ill. L. Rev. 307, 314-16, 319-20, 319 n.97 (1937); *see also Wabash R.R. Co. v. Adelbert Coll. of W. Rsrv. Univ.*, 208 U.S. 38, 58-59 (1908) (judgment in Federal Equity Rule 48 case brought by bondholders was not binding on absentee bondholders "who were not parties"). In representative suits of the "several" interest type, absentees would benefit from any broad injunctive relief but would not be bound by the judgment. *See* Moore & Cohn articles, *supra*; Mark C. Weber, *Preclusion and Procedural Due Process in Rule 23(b)(2) Class Actions*, 21 U. Mich. J.L. Reform 347, 348 (1988). The long history of this type of representative suit refutes the notion that preclusive effect upon absentees down the road was traditionally thought to be necessary for a court to afford injunctive relief to absentees in cases such as the present case (and many other universal injunction cases) that involve "several" rights rather than joint or common rights. *See* Sohoni, *Lost History*, *supra*, at 963-64.

Consequently, the Government is plainly wrong to suggest (at App. 19, 38) that relief can only extend beyond the plaintiff if a class is certified under Rule 23. Certainly that Rule, which was amended to provide for class certification only in 1966, does not purport to (and could not) define the constitutional limits of courts' remedial powers in non-class cases. Indeed, the 1966 amendments to the Federal Rules left Rule 65—which does *not* limit preliminary or final injunctive relief only to

the plaintiffs—untouched. Moreover, as discussed, courts issued universal injunctions *before* and *after* 1966.[6] Indeed, courts have frequently said that class certification is an unnecessary "formality" in suits seeking injunctive relief against federal officers, because a "court can properly assume that an agency of the government would not persist in taking actions which violate . . . rights." *McDonald v. McLucas*, 371 F. Supp. 831, 833-34 (S.D.N.Y.), *aff'd*, 419 U.S. 987 (1974); *id.* at 837 (issuing nationwide injunction against the implementation of two provisions of a federal law without certifying a class). The Government itself may seek relief for groups of individuals without satisfying Rule 23's strictures. *See Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 320 (1980).

The universal injunction against the enforcement of federal or state law is not new. What is new is the contention that such universal relief may only be obtained through a certified Rule 23 class action suit—even though class certification was a device invented in the 1960s to enable the efficient exercise of Article III judicial power, not to curb its scope.

3. Finally, like the power to issue a purely plaintiff-protective injunction, the judicial power to issue a universal injunction does not depend on express

[6] The infrequency of nationwide injunctions during the New Deal period had nothing to do with courts' lack of authority to issue them and everything to do with venue rules, defects in the cases of plaintiffs who sought broad injunctions, or other unrelated doctrines. *See, e.g.*, *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 128 (1940) (reversing broad injunction because plaintiffs lacked standing); *Massachusetts v. Mellon*, 262 U.S. 447 (1923) (affirming dismissal on standing grounds); *Miller v. Standard Nut Margarine Co. of Fla.*, 284 U.S. 498, 509 (1932) (requiring suits seeking to enjoin "an exaction in the guise of a tax" to be maintained against "the collector," *i.e.*, the *local* federal officer).

Congressional authorization. "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity," not the invention of statutory law. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).[7] As demonstrated by the cases discussed above—from *Lewis* to *Pierce* to *Barnette* to *Int'l Refugee Assistance Project*—this Court has affirmed or itself granted many injunctions that protect non-parties without there being any express or specific statutory authorization for such relief. *See also Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 n.2 (2010) (rejecting contention that a statutory authorization was necessary for federal courts to enjoin unlawful official action). The question thus is whether Congress has prohibited this remedy. *See Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) ("Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."). Yet despite decades of federal courts issuing injunctions that protect non-parties, Congress has not legislated to restrict them generally—though it clearly knows how to do so if it wishes. *See* 8 U.S.C. § 1252(f)(1).

[7] Justice Scalia added that such suits "reflect[] a long history of judicial review of illegal executive action, tracing back to England." *Armstrong*, 575 U.S. at 327. But the "long history" cited by Justice Scalia was a re-telling of the English history of the common law writs of certiorari, mandamus, prohibition, and quo warranto. *See* James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of* Ex parte *Young*, 72 Stan. L. Rev. 1269, 1356-57 (2020). As explained *supra*, pp. 2-3, the use of the injunction—an equitable remedy—to halt enforcement of an unconstitutional law is of much more recent vintage.

B. Article III Standing Doctrine Does Not Bar The Universal Injunction.

1. Nothing in Article III or standing doctrine prohibits a court from issuing an injunction that benefits non-parties. *Contra* App. 17. Standing regulates who is entitled to seek judicial relief, not who can benefit from a resulting injunction. To take the *CASA, Inc.*, case as an example, the individual respondents have standing to complain about the Birthright Citizenship Order, which threatens to cause them and their unborn children concrete and imminent injury; an injunction against the enforcement of that order by the defendants would redress that injury. *See Murthy v. Missouri*, 603 U.S. 43, 61 (2024) ("[F]or every defendant, there must be at least one plaintiff with standing to seek an injunction."). That the *effect* of the injunction is to restrain its enforcement universally does not create a *standing* problem. Such a decree is just like an injunction against future violations of the law—"the simplest use of the injunction." Douglas Laycock, *Modern American Remedies* 275 (5th ed. 2019).

Non-mutual collateral estoppel under, *e.g.*, *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), is similar. Plaintiff A does not have "standing" to obtain relief for plaintiff B, but plaintiff B gets the benefit of plaintiff A's victory just as with an injunction like the ones here.[8] There is no standing problem with a court granting

[8] *United States v. Mendoza*, 464 U.S. 154 (1984), shielded the federal government from non-mutual issue preclusion, but as a matter of policy, not Article III standing. A standing holding in *Mendoza* would have knocked out non-mutual issue preclusion across the board, not just in suits against the federal government. For more on *Mendoza*'s (ir)relevance, *see infra*, pp. 20-21.

judgment for the plaintiff even though the judgment's effect helps non-plaintiffs. Other blackletter staples similarly prove that "standing is required to get into federal court, but it does not govern the scope of the remedy a court may issue." Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. Rev. 1065, 1083 (2019) (illustrating with, *inter alia*, the capable-of-repetition-yet-evading-review-doctrine, prophylactic injunctions, and "next friend," third-party, and associational standing).

Further, the Government acknowledges that in a class action, a court may issue class-wide relief—including "class-wide preliminary relief." App. 38. That demonstrates that whatever complaint there may be about universal injunctions, it is not a complaint about Article III *standing*. In a class action, standing is assessed solely with respect to the named plaintiff. It is well established that the fact "[t]hat a suit may be a class action . . . adds nothing to the question of standing." *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 40 n.20 (1976)). Thus, the standing analysis as to a certified class is identical to the standing analysis for a non-representative plaintiff, so *standing* is not what makes the difference between broader and narrower relief. Instead, the "question"—which is prudential rather than constitutional—is simply whether the evidence shows that the problem being addressed is "widespread enough to justify systemwide relief." *Id.* at 359. If nationwide relief may constitutionally be given to a single plaintiff suing for a nationwide class, it follows that standing poses no constitutional obstacle to nationwide injunctive relief.

2. The Government's Article III standing arguments have far-reaching repercussions that it fails to acknowledge—including for administrative law.[9] The APA and numerous other review statutes (such as the Hobbs Act) authorize universal remedies by empowering courts to preclude enforcement of invalid regulations against *anyone*, not just the plaintiff. *See, e.g.*, 5 U.S.C. § 706 (APA providing that a "reviewing court shall . . . hold unlawful and *set aside* agency action, findings and conclusions" that are arbitrary and capricious or otherwise invalid) (emphasis added).[10] If universal remedies violated Article III standing requirements as the Government contends (at App. 17), then that would cut off Congress's authority to create universal remedies through the APA and similar laws. Either Congress can constitutionally authorize courts to set aside and vacate regulations universally (in which case the Government's Article III standing objection fails), or Article III standing doctrine categorically bars such relief (in which case the APA and cognate remedial schemes would be unconstitutional). The obvious conclusion is that principles of Article III standing pose no barrier to universal remedies.

Consistent with that conclusion, a long line of this Court's cases has detected no Article III standing problem with applying the APA to set aside and vacate rules

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[9] Respondents' briefs address the disruptive implications of the 's arguments concerning organizational and state standing.

[10] "[A]gency action" includes "the whole or a part of an agency rule." 5 U.S.C. § 551(13); *see* 5 U.S.C. § 701(b)(2). The APA also authorizes courts to "issue all necessary and appropriate process" to "postpone the effective date" of a rule or to "preserve status or rights" pending judicial review. 5 U.S.C. § 705.

universally.[11] For example, in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 131 (2000), the Court affirmed the Fourth Circuit's invalidation of the FDA's regulations governing tobacco. *See Brown & Williamson Tobacco Corp. v. FDA*, 153 F.3d 155, 176 (4th Cir. 1998). The Court nowhere limited its grant of relief only to the plaintiffs, nor did it hint at a standing problem with broader relief. Earlier, in *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988), the Court affirmed the D.C. Circuit's decision invalidating a retroactive rule. The Court did not cabin relief to the *seven* plaintiff hospitals that had filed suit, but directed its holding and remedy to the illegal rule. *Id.* at 216 ("The 1984 reinstatement of the 1981 cost-limit rule is invalid."). Earlier still, in *Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 44-47 (1983), the agency issued an order rescinding its passive-restraint rule, and the Court held that the agency's rescission was unlawful. Plainly, that decision benefitted plaintiff insurance companies and non-plaintiff insurance companies alike (not to mention non-plaintiff drivers and non-plaintiff passengers).

In *FCC v. Midwest Video Corp.*, 440 U.S. 689, 708 n.18 (1979), examining the FCC's public access cable rules, the Court "affirm[ed] the lower court's determination to set aside the amalgam of rules without intimating any view regarding whether a

[11] Lower courts have understood their powers to set aside regulations in the same way. *See, e.g.*, *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998); *Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987).

particular element thereof might appropriately be revitalized in a different context." Again, the effect of the decision below, which this Court affirmed, was to invalidate the rules as to all subject to them; standing doctrine did not preclude that relief. And in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 154 (1967)—in which a district court below had issued a universal injunction and a universal vacatur[12]—the Court explained that a benefit of pre-enforcement review under the APA is that such review may counterintuitively "speed enforcement" because if the agency "loses, it can more quickly revise its regulation." What the Court thus contemplated was the complete invalidation and consequent revision of a regulation under the APA, rather than relief tailored to the particular plaintiffs that it had held to have "sufficient standing."

Other instances of this Court approving the universal vacatur of agency regulations abound; none indicate any concern that Article III standing bars universal relief. *See, e.g.*, *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 766 (2021) (ordering that district court's universal vacatur of CDC eviction moratorium should go into effect); *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 486 (2001) (finding the EPA's "implementation policy to be unlawful," and leaving it to the EPA to "develop a reasonable interpretation" of the relevant statutory provisions); *Bd. of Governors of Fed. Rsrv. Sys. v. Dimension Fin. Corp.*, 474 U.S. 361, 365 (1986) ("[T]he Court of Appeals invalidated the amended regulations. . . . We

[12] *See* Mila Sohoni, *The Past and Future of Universal Vacatur*, 133 Yale L. J. 2305, 2366-67 (2024) (quoting decree).

affirm."). Similarly, this Court has stayed agency rules universally, expressing no concern about Article III standing. *See, e.g.*, *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 120 (2022); *West Virginia v. EPA*, 577 U.S. 1126, 1126 (2016) (mem.).

This long line of precedent is consistent with remedies granted under pre-APA statutory schemes that informed the crafting of the APA itself.[13] *See* Mila Sohoni, *The Power to Vacate a Rule*, 88 Geo. Wash. L. Rev. 1121, 1146-51 (2020). Litigants won sweeping remedies under these older statutes—and Article III standing posed no obstacle to that relief. For example, in *Chicago, Rock Island, and Pacific Railway Co. v. United States*, 284 U.S. 80 (1931), twelve railroads sued to enjoin and set aside a nationwide ICC directive concerning car-hiring fees. Finding that a part of the ICC's regulatory order failed to conform to the agency's findings, *id*. at 96, 100, the Court concluded that "the court below should have set aside" that portion of the order, *id*. at 100, thus directly speaking to the point that *the lower court* should have given universal relief as to this nationwide regulation. A few years on, in *United States v. Baltimore & Ohio Railroad Co.*, 293 U.S. 454 (1935), several railroads sued to enjoin an ICC directive requiring steam engine modifications. The three-judge court ordered that the ICC rule be "vacated, set aside, and annulled" and its enforcement

[13] *See, e.g.*, Urgent Deficiencies Act, Pub. L. No. 63-32, 38 Stat. 208, 219-20 (1913) (establishing "venue of any suit . . . brought to enforce, suspend, or set aside, in whole or in part, any order of the [ICC]" and authorizing three-judge courts to issue "interlocutory injunction[s] suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order of the [ICC]"); Communications Act of 1934, Pub. L. No. 73-416, § 402(a), 48 Stat. 1064, 1093 (applying Urgent Deficiencies Act provisions "relating to the enforcing or setting aside of the orders of the [ICC]" to "suits to enforce, enjoin, set aside, annul, or suspend any order of the [FCC] under this Act").

"perpetually enjoined," Transcript of Record at 223-24, and this Court affirmed, 293 U.S. at 463-65. Further, in *CBS v. United States*, two networks challenged the FCC's chain-broadcasting regulations. *NBC v. United States*, 316 U.S. 447 (1942); *CBS v. United States*, 316 U.S. 407 (1942). The three-judge court, while finding it lacked jurisdiction, stayed the regulations' enforcement entirely pending this Court's review.[14] The lower court's stay protected not just the two plaintiff networks; the stay *also* protected the third national network, Mutual, which was *not* a plaintiff, and hundreds of *non*-party stations that would otherwise have been adversely affected by enforcement of the new rules. This Court continued the stay when it reversed and remanded. *CBS*, 316 U.S. at 425; *NBC*, 316 U.S. at 449. The Court later again continued the stay pending its own decision. *See* Journal of the Supreme Court, October Term 1942, Friday, March 12, 1943, at 184. The result was that the chain-broadcasting regulations announced in 1941 did not go into effect as to *any* station or *any* network, plaintiff or non-plaintiff, until ten days after the Court approved their validity in 1943. None of these pre-APA cases treated Article III standing as a bar to sweeping interim or final remedies that shielded non-plaintiffs.[15]

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[14] *NBC v. United States*, 44 F. Supp. 688, 690-91, 696-97 (S.D.N.Y.), *rev'd sub nom. CBS v. United States*, 316 U.S. 407 (1942), *and rev'd*, 316 U.S. 447 (1942); Decree Granting Temporary Restraining Order, Transcript of Record at 482, *Columbia Broad. Sys. v. United States*, 316 U.S. 407 (1942).

[15] *Perkins*, 310 U.S. at 128, did not hold that Article III standing forbids remedies that protect non-plaintiffs. In that case, the lower court had granted a universal preliminary injunction that enjoined the Government from conditioning its procurement contracts on the payment of specified minimum wages. *See Lukens Steel Co. v. Perkins*, 107 F.2d 627, 643-44 (D.C. Cir. 1939) (per curiam). This Court reversed, because the plaintiffs lacked standing to seek relief *even for themselves*. *Perkins*, 310 U.S.

In the APA and elsewhere, Congress has empowered courts to review agency rules, to stay them wholesale, and to universally vacate them. To hold on Article III standing grounds that the scope of such remedies must be cabined to just the plaintiffs would truncate that power and "revolutionize long-settled administrative law—shutting the door on entire classes of everyday administrative law cases." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 827 (2024) (Kavanaugh, J., concurring).

II. THE GOVERNMENT'S POLICY CONCERNS ARE IRRELEVANT AND OVERSTATED.

1. The Government fervently complains that the issuance of universal injunctions "has reached a fever pitch in recent weeks." App. 28. That may be attributable to the pace and scope of the slew of executive orders and other decrees issued by the executive branch in recent weeks.[16] But even granting the point that lots of injunctions have issued, that raw number is irrelevant. Courts do not lose a power, or somehow run out of it, because that power needs to be exerted often. It is anyway senseless to assess the number of injunctions in a vacuum, without regard to

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at 128. In dictum, the Court did call into question the wisdom of the breadth of the court of appeals' injunction by suggesting that (had there been standing) it should have applied to all bidders in the plaintiffs' specific "locality" rather than to all localities. *Id.* at 123. The Court thus appeared ready to accept that injunctive relief that went beyond the plaintiffs could have been appropriate had the plaintiffs *had* standing. Moreover, *Perkins* is bracketed by decisions in which the Court affirmed injunctions that protected non-plaintiffs when those cases were brought by plaintiffs *with* standing. *See supra*, pp. 5-6 (*Hague*, *Davidowitz*, and *Barnette*).

[16] *See* Office of the Federal Register, *Executive Order Disposition Tables*, https://www.federalregister.gov/presidential-documents/executive-orders (last visited Apr. 3, 2025) (recording that President Trump issued 109 executive orders in the ten *weeks* after inauguration; by comparison, President Biden issued 162 in four *years*, and President Obama issued 277 in *eight*).

the baseline level of illegality in the executive branch. If illegality is rampant, a high number of universal injunctions may be fully warranted. In this case, for example, the issuance of multiple "overlapping" injunctions, App. 28, is a consequence not of lower-court overreach but of the patent unlawfulness of the Government's attempted redefinition of birthright citizenship.

2. Substantial negative effects would follow if the courts were denied the power to issue universal injunctions. If courts cannot halt illegal Government acts generally and are limited to providing relief only to plaintiffs who have the will and means to litigate to judgment, then many parties subject to illegal actions will not challenge them and the Government will be free to treat illegal pronouncements as the law. With the courts thus enfeebled, the Government may well feel free to act with less restraint. On the other hand, because the Government, like any party, acts in the shadow of the law, allowing universal injunctions gives the Government additional reason not to push the envelope of legality in taking actions. Moreover, if every party subject to an invalid law or regulation has to bring its own suit, litigation will needlessly mushroom. Just as it would be "wholly impractical—and a huge waste of resources—to expect and require every potentially affected party to bring pre-enforcement . . . challenges against every agency order that might possibly affect them in the future," *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 588 U.S. 1, 18 (2019) (Kavanaugh, J., concurring), it would be impractical to require a multiplicity of individual lawsuits seeking to obtain identical relief.

3. The Government lays many woes at the feet of universal injunctions, but it ignores that these problems would persist even if this Court were to pronounce that injunctions may only shield the plaintiffs unless a class is certified. For example, the Government says that a universal injunction "subvert[s] the Article III hierarchy of judicial review." App. 18. But the Government's preferred solution—for courts to certify nationwide classes and issue correspondingly broad injunctive relief—would equally result in a world in which "the orders of courts of first instance" are "imbu[ed]" with "nationwide effect," *id.* The same inconsistency undercuts the Government's complaint that a universal injunction "sweep[s] up nonparties who may not wish to receive the benefit of the court's decision." *Id.* (quoting *United States v. Texas*, 599 U.S. 670, 703 (2023) (Gorsuch, J., concurring in the judgment)). The exact same nonparties would be swept up if (as the Government prefers) the district court had instead certified a nationwide injunctive class action and ruled for the plaintiffs. Similarly, the Government's complaint about "asymmetric" effects (at App. 20) would remain if requests for broad relief were channeled into Rule 23 suits. For example, the Government faced exactly this "asymmetr[y]" in the cases underlying *Sullivan v. Zebley*, 493 U.S. 521 (1990), in which the Third Circuit granted relief to a nationwide class in a case involving regulations earlier deemed valid or enforceable by *four* other circuits. (This Court sided with the Third Circuit and affirmed.)

4. The Government's other policy arguments are also wrong. Universal injunctions do not "countermand the principle," App. 20, announced in *United States*

v. Mendoza, 464 U.S. at 154, a case of little relevance here. In that case this Court rejected on *policy* grounds the idea that nonmutual issue preclusion could be used against the federal Government. *Id.* at 161. But when a court issues a universal injunction, it does not *preclude* the Government (or any non-party, for that matter) from doing anything. Nor does the injunction forever bind subsequent administrations to the outcome of a single, untested lower-court opinion, which was a prime concern of this Court in *Mendoza*. *Id.* The court's decree only orders the defendant before it—the federal officer or agency—to refrain from violating the law. The Government may continue to relitigate the issue in parallel cases as they arise.

In the end, whether injunctions are broad or narrow, the Government is always entitled to seek review in cases of national importance from this Court. To ultimately prevail, the Government does not have to run the table. Rather, it has to win once and for all in this Court, which has long been attentive to the Government's requests for review of unfavorable lower court decisions. In that same vein, concerns about forum shopping, *see* App. 20, and universal injunctions forcing the Government to seek emergency relief, *see id.*, are overblown. The former is an inevitable byproduct of *all* litigation in a multi-district system that broadly permits plaintiffs to lay venue and, again, arises in the class litigation the Government claims to prefer. The latter ignores that "even if district court injunctions are confined to the plaintiffs, there still will be emergency applications with nationally important effects that come to this Court and clear the certworthiness bar, thereby still requiring this Court to assess

the merits." *Labrador v. Poe*, 144 S. Ct. 921, 932 (2024) (Kavanaugh, J., concurring). It also seeks to blame lower court judges for the consequences of the Government's voluntary and strategic litigation policy choice to seek emergency relief across a panoply of cases, many of which have *not* involved universal injunctions. *See Wolf v. Cook Cnty., Ill.*, 140 S. Ct. 681 (mem.) (Sotomayor, J., dissenting). [17]

III. UNIVERSAL INJUNCTIONS ARE WARRANTED IN THIS CASE.

1. The Birthright Citizenship Order is a paradigmatic illustration of why the universal injunction is a legitimate and necessary remedy. This case is as clear-cut an example as there could be of a context in which piecemeal, plaintiff-by-plaintiff, adjudication would be chaotic and disastrous. Rather than a birth certificate simply attesting to the location of their birth in the United States, American-born babies who are *not* protected by plaintiff-specific orders would have to establish their entitlement to citizenship by demonstrating the immigration status of their parents. The harm that could be suffered by children who could not make this chain-of-title showing would be immediate and irreparable, as they would be vulnerable to deportation; many could be relegated to the legal limbo of statelessness. *See, e.g.*, App. 29a-30a.

2. While universal injunctions sensibly avert such harms by preserving the status quo concerning birthright citizenship that has existed for over a century, grave

[17] *See* Stephen I. Vladeck, *The Solicitor General and the Shadow Docket*, 133 Harv. L. Rev. 123, 124 (2019).

practical barriers would loom if challengers were forced into bringing individual or class suits. An undocumented pregnant woman cannot reasonably be expected to sue in her own name when that could cause her deportation. Nor is suing pseudonymously a meaningful option, when the Government maintains that it has the right to demand the true identities of individual Jane Doe plaintiffs "'on request if necessary to permit [it] to fully defend this case,'" *see* App. 29a, at n.1 (quoting Government's position). Likewise, asylees or holders of *valid* student or work visas may reasonably fear the retaliatory stripping of their legal status if they sue to assert their children's citizenship rights.

The Government suggests that "[a]ffected individuals could instead seek class certification." App. 38. But the Government is careful not to concede that class certification would be available in this context (and it has elsewhere protested when courts *do* certify classes).[18] And, in any event, recruiting named class representatives (and, potentially, named sub-class representatives) is challenging when serving in that position entails playing a high-profile role in a high-stakes lawsuit and assuming the risk that their identities will be exposed to the Government—which, in turn, may be "the first step in a chain of events that might well lead to their deportation." *Make*

[18] *See, e.g.*, Application to Vacate the Orders Issued by the United States District Court for the District of Columbia and Request for an Immediate Administrative Stay at 3, *Trump v. J.G.G.*, No. 24A931 (U.S. Mar. 2025) (objecting to the district court's "hurriedly certifying a putative class").

the Rd. N.Y. v. McAleenan, 405 F. Supp. 3d 1, 70 (D.D.C. 2019), *rev'd and remanded on other grounds sub nom. Make the Rd. N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020).

3. The announced limitations on the scope of the Birthright Citizenship Order, including its purportedly prospective nature, do not diminish the need for immediate nationwide relief. The Order's stated effective date is now well over a month ago, which means that myriad newborns' citizenship rights would already be in jeopardy were it not for the injunctions below. Just as importantly, the Court should not close its eyes to what may be coming next. The Order represents the Government's interpretation of the Citizenship Clause itself; that interpretation has no built-in prospectivity guardrail. *See* App. 6-10. In a court below, the Government "did not definitively rule out during the motion hearing" the possibility that it may "later reconsider the effective date contained in the EO and opt to apply their reading of the Citizenship Clause retroactively," *see* App. 99a n.21. Nothing but a stroke of the President's pen keeps the Government from tomorrow seeking to remedy what it (wrongly) regards as a decades-old error by applying retrospectively its new definition of citizenship. Native-born octogenarians who have lived, voted, and paid taxes in this country for decades could find their citizenship status in jeopardy. It would be foolhardy to eliminate the universal injunction in a world in which such possibilities remain on the table.

CONCLUSION

The Court should decline the Government's emergency requests for partial stays of the lower courts' orders.

Respectfully submitted,

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April 7, 2025