No. 24A885

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Applicants,

v.

STATE OF WASHINGTON, ET AL.,

Respondents.

STATES OF WASHINGTON, ARIZONA, ILLINOIS, AND OREGON'S RESPONSE TO THE APPLICATION FOR PARTIAL STAY OF THE INJUNCTION

NICHOLAS W. BROWN
Attorney General of Washington

NOAH G. PURCELL
Solicitor General
Counsel of Record
MARSHA CHIEN
CRISTINA SEPE
TERA HEINTZ
Deputy Solicitors General
1125 Washington Street SE
Olympia, WA 98504-0100
noah.purcell@atg.wa.gov
360-753-6200

COLLEEN MELODY
Civil Rights Division Chief
LANE POLOZOLA
DANIEL J. JEON
ALYSON DIMMITT GNAM
Assistant Attorneys General
800 Fifth Avenue Suite 2000
Seattle, WA 98104-3188
lane.polozola@atg.wa.gov
206-464-7744

Counsel for State of Washington

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INTRODUCTION

Being directed to follow the law as it has been universally understood for over 125 years is not an emergency warranting the extraordinary remedy of a stay. This Court should deny the federal government's request.

Many aspects of constitutional interpretation are hotly debated, but not the merits question in this case. For over a century, it has been the settled view of this Court, Congress, the Executive Branch, and legal scholars that the Fourteenth Amendment's Citizenship Clause guarantees citizenship to babies born in the United States regardless of their parents' citizenship, "allegiance," "domicile," immigration status, or nationality.

President Trump, however, seeks to unilaterally upend this longstanding consensus by executive order. Unsurprisingly, every court to evaluate the Citizen Stripping Order has found it unconstitutional. And the stay application does not even bother asking this Court to review those correct conclusions.

The stay application instead focuses entirely on the scope of relief granted by the lower courts. But that myopic request fails this Court's rules for granting a stay.

Most obviously, the federal government can show no harm from simply being ordered to continue following the law as it has long been understood. Preserving the status quo while this litigation rapidly proceeds cannot plausibly be an irreparable injury, and this Court can deny the stay on this ground alone.

That is not the application's only fatal flaw. The federal government also fails to show that this Court is likely to grant certiorari and reverse. For one thing, there is no disagreement in the lower courts: four district courts independently enjoined the Order, and all three circuit courts that the government has asked to stay the

nationwide scope of the injunctions have refused. There is also no basis to find that they abused their discretion, because nationwide relief was clearly appropriate given the unrebutted record of specific harms to the Plaintiff States, and the costs and confusion that a patchwork rule of citizenship would impose on them. The government argues that, while this litigation proceeds, the citizenship of newborns should turn on whether their parents are named plaintiffs in these cases, belong to one of the plaintiff organizations, or possibly live in one of the Plaintiff States. That unworkable rule would leave tens of thousands of infants born on U.S. soil undocumented, subject to removal or detention, and many stateless, even though they have done nothing wrong. And it is especially unjustified when the federal government is so clearly wrong on the merits.

At bottom, the federal government's claim is simply that the lower courts erred in the scope of relief granted on the facts here. But this Court does not use its limited time to review alleged fact-bound errors for abuses of discretion, and certainly should not do so here, where there is no error. If this Court steps in when the applicant is so plainly wrong on the law, there will be no end to stay applications and claims of emergency, undermining the proper role and stature of this Court. This Court should deny the applications.

STATEMENT OF THE CASE

A. Birthright Citizenship Is Enshrined in Our Constitution

The Citizenship Clause of the Fourteenth Amendment emerged out of one of our Nation's darkest chapters and embodies one of its most solemn promises. In response to the Civil War and the infamous holding in *Dred Scott v. Sandford*, 60 U.S. 393, 403 (1857), which denied citizenship to an entire class of persons based

on their identity as "descendants of . . . slaves," Congress passed and the States ratified the Fourteenth Amendment. The Fourteenth Amendment's Citizenship Clause provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside." U.S. Cont. amend. XIV, § 1. This grant of citizenship contains no exceptions based on the citizenship, "allegiance," "domicile," immigration status, or nationality of one's parents. Rather, its only requirements are that an individual be born "in the United States" and "subject to the jurisdiction thereof." *Id.*

More than 125 years ago, this Court interpreted the Citizenship Clause as ensuring that virtually every child born on United States soil is a citizen at birth. *See United States v. Wong Kim Ark*, 169 U.S. 649, 704 (1898). As this Court explained, the Citizenship Clause stood for "the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents[.]" *Id.* at 688. In reaching this conclusion, this Court reasoned that the Fourteenth Amendment "in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States." *Id.* at 693. Applying this understanding, this Court held that a child born in San Francisco to Chinese nationals, who could not themselves become citizens, was an American citizen. *Id.* at 704.

Since then, this Court has repeatedly confirmed that individuals born in this country are citizens subject to its jurisdiction regardless of their parents' immigration status or country of origin. *See*, *e.g.*, *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (recognizing that child of two undocumented immigrants "was a citizen of this country" by virtue of being "born in the United States"); *Perkins v. Elg*, 307 U.S. 325,

329 (1939) ("[A] child born here of alien parentage becomes a citizen of the United States[.]").[1] Indeed, during World War II, the Ninth Circuit affirmed a district court's rejection of an attempt to strike from voter rolls 2,600 people of Japanese descent who were born in the United States. *Regan v. King*, 49 F. Supp. 222, 223 (N.D. Cal. 1942), *aff'd*, 134 F.2d 413 (9th Cir. 1943), *cert. denied*, 319 U.S. 753 (1943). While the United States was at the time at war with Japan, the district court explained, it was "unnecessary to discuss the arguments of counsel" challenging those individuals' citizenship because it was "settled" that a child born "within the United States" is a U.S. citizen. *Id.*

[1] *Accord United States ex rel. Hintopoules v. Shaughnessy*, 353 U.S. 72, 73 (1957) (recognizing that a child born to parents who overstayed temporary lawful stays was "of course, an American citizen by birth."); *see also id.* at 79 (Douglas, J., dissenting) ("The citizen is a five-year-old boy who was born here and who, therefore, is entitled to all the rights, privileges, and immunities which the Fourteenth Amendment bestows on every citizen."); *Vance v. Terrazas*, 444 U.S. 252, 255 (1980) ("Appellee . . . was born in this country, the son of a Mexican citizen. He thus acquired at birth both United States and Mexican citizenship."); *INS v. Errico*, 385 U.S. 214, 215 (1966) (explaining that children born in United States to parents who procured entry to country by fraudulent means "acquired United States citizenship at birth"); *Nishikawa v. Dulles*, 356 U.S. 129, 131 (1958) ("Petitioner was born in Artesia, California, in 1916. By reason of that fact, he was a citizen of the United States, and because of the citizenship of his parents, he was also considered by Japan to be a citizen of that country."); *Kawakita v. United States*, 343 U.S. 717, 720 (1952) (noting that petitioner was born in the United States to Japanese citizen parents and "was thus a citizen of the United States by birth"); *Hirabayashi v. United States*, 320 U.S. 81, 96-97 (1943) (noting that tens of thousands of "persons of Japanese descent" living on Pacific coast "are citizens because [they were] born in the United States[,]" even though "under many circumstances" they also were citizens of Japan "by Japanese law"); *Morrison v. California*, 291 U.S. 82, 85 (1934) ("A person of Japanese race is a citizen of the United States if he was born within the United States."); *Weedin v. Chin Bow*, 274 U.S. 657, 670 (1927) (discussing *Wong Kim Ark* and noting that a child born in the United States "was nevertheless, under the language of the Fourteenth Amendment, a citizen of the United States by virtue of the jus soli embodied in the amendment"); *Ah How v. United States*, 193 U.S. 65, 65 (1904) (stating petitioner offered evidence that he was born in the United States "and therefore was a citizen").

B. President Trump Issues the Citizenship Stripping Order

Within hours of taking office, President Trump issued an Executive Order entitled "Protecting the Meaning and Value of American Citizenship" on January 20, 2025. Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 20, 2025) (Citizenship Stripping Order or Order); Resp. App. 6a-9a. The Citizenship Stripping Order seeks to impose a modern version of *Dred Scott* in direct conflict with the plain text of the Fourteenth Amendment, century-old Supreme Court precedent, and the Immigration and Nationality Act (INA), which faithfully tracks the Citizenship Clause's language, 8 U.S.C. § 1401(a).

Section 1 of the Order declares that U.S. citizenship "does not automatically extend to persons born in the United States" if, at the time of birth, the child's father is not a U.S. citizen or lawful permanent resident and their mother's presence in the United States is (1) unlawful or (2) lawful but temporary. 90 Fed. Reg. at 8449. Section 2 states it is the "policy of the United States" that no federal department or agency shall issue documents recognizing such persons as U.S. citizens or accept documents issued by State governments recognizing such persons as U.S. citizens. *Id.* Section 3 directs the Secretary of State, Attorney General, Secretary of Homeland Security, and Commissioner of Social Security to "take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order" and mandates that officials cannot "act, or forbear from acting, in any manner inconsistent with this order." *Id.* at 8449-50. The Order also directs that "[t]he heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities." *Id.* at 8450.

C. This Lawsuit, the District Court's Preliminary Injunction, and the Ninth Circuit's Stay Denial

The day after President Trump signed the Executive Order, Washington, Arizona, Illinois, and Oregon (the Plaintiff States) filed a motion for temporary restraining order, supported by extensive declarations detailing harms to the Plaintiff States, their public programs and fiscs, and their residents. *State of Washington v. Donald Trump,* No. 2:25-cv-00127-JCC (W.D. Wash. Jan. 21, 2025), ECF Nos. 1, 10, 12-27. The district court granted the TRO. Appl. App. 1a-4a. Soon thereafter, a putative class of expectant mothers filed suit. The district court consolidated the two cases, Resp. App. 230a-32a, and the Plaintiff States and Individual Plaintiffs filed a consolidated complaint, Resp. App. 347a-465a, and moved for a preliminary injunction, Resp. App. 1a-229a, 233a-58a.

On February 6, 2025, the district court preliminarily enjoined the federal government from enforcing or implementing the Citizenship Stripping Order because "[c]itizenship by birth is an unequivocal Constitutional right" that "[t]he President cannot change, limit, or qualify . . . via an executive order." Appl. App. 17a. Because the Citizenship Stripping Order likely violates the Fourteenth Amendment, the district court concluded, it also likely violates the INA. Appl. App. 10a. In addition to the Plaintiff States' likely success on the merits, the district court further held that the balance of the equities and public interest "strongly weigh in favor of entering a preliminary injunction" because of the constitutional violations at stake, the lack of any federal government interest in enforcing an unconstitutional order that is beyond its authority, and because the "rule of law is secured by a strong public interest that the laws 'enacted by their representatives are not imperiled by executive fiat.'" Appl. App. 15a (citing *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779

(9th Cir. 2018)). Finally, the district court held that while "[i]t is axiomatic that injunctive relief must be narrowly tailored[,]" a nationwide injunction was necessary under the facts and circumstances to provide complete relief to the Plaintiff States and because "a geographically limited injunction would be ineffective" and "unworkable." Appl. App. 16a. As the district court recognized, "[t]he recordkeeping and administrative burden from such an arrangement" mandated such relief and the federal government pointed to no prejudice from the nationwide scope of an injunction. Appl. App. 17a.

The federal government appealed and sought a partial stay before the Ninth Circuit on an emergency basis. *State of Washington v. Donald Trump,* No. 25-807 (9th Cir. Feb. 12, 2025), ECF No. 21-1. On February 19, 2025, the emergency motions panel denied the partial stay because the federal government failed to make a strong showing of likelihood to succeed on the merits. Appl. App. 18a-24a. In a concurring opinion, Judge Forrest explained that denial of the federal government's request was warranted because "[g]ranting relief on an emergency basis is the exception, not the rule," and the federal government failed to show irreparable harm or an emergency need to upend the longstanding status quo. Appl. App. 20a. Judge Forrest also observed the request should be denied for prudential reasons, recognizing that a motions panel is "not well-suited to give full and considered attention to merits issues" and "quick decision-making risks eroding public confidence." Appl. App. 22a-23a.

The appeal is proceeding expeditiously before the Ninth Circuit. It will be fully briefed on April 25, 2025, and is scheduled for argument on June 4, 2025.

D. Every District Court to Consider the Citizenship Stripping Order Enjoined It, and Every Circuit to Consider the Federal Government's Request for a Stay Denied It

Every court to consider the question has broadly enjoined the Citizenship Stripping Order's implementation and enforcement. *See Doe v. Trump*, Civil Nos. 25-10135, 25-10139, 2025 WL 485070, at *14-16 (D. Mass. Feb. 13, 2025) (issuing nationwide injunction in cases brought by state plaintiffs and private plaintiffs), *appeal filed*, No. 25-1170 (1st Cir.); *CASA, Inc. v. Trump*, Civil No. DLB-25-201, 2025 WL 408636, at *16-17 (D. Md. Feb. 2, 2025) (issuing nationwide injunction in case brought by organizational plaintiffs with nationwide membership), *appeal filed*, No. 25-1153 (4th Cir.); *N.H. Indonesian Cmty. Support v. Trump*, No. 25-cv-38, 2025 WL 457609, at *6 (D.N.H. Feb. 11, 2025) (enjoining enforcement "in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court").

The federal government sought to partially stay the injunctions based on standing and scope of relief, as it did in this case. Every district and circuit court to consider the federal government's arguments rejected them and maintained the nationwide injunctions. *See New Jersey v. Trump*, No. 25-1170, 2025 WL 759612, at *3, *5 n.8 (1st Cir. Mar. 11, 2025) ("[W]e conclude that the Government has not made [a] 'strong showing' to undermine the Plaintiff-States' . . . standing" under Article III or "third-party standing principles," or that a nationwide injunction was improper); *CASA, Inc. v. Trump*, No. 25-1153, 2025 WL 654902, at *1 (4th Cir. Feb. 28, 2025) ("We join the Ninth Circuit in finding that the government has not made a 'strong showing' that it is 'likely to succeed on the merits' of its argument against universal injunctions."); *New Jersey v. Trump*, Civil No. 25-10139, 2025 WL 617583, at *1 (D. Mass. Feb. 26, 2025) (denying motion to partially stay

nationwide injunction and explaining "this was not a close case"); *CASA, Inc. v. Trump*, Civil No. DLB-25-0201, 2025 WL 545840, at *2 (D. Md. Feb. 18, 2025) ("The defendants have not made a strong showing that they are likely to succeed on their claim that the Court erred by granting a nationwide injunction that enjoins the enforcement and the implementation of the Executive Order.").

Nearly a month after the Ninth Circuit denied its motion for a partial stay, the federal government filed this application for a partial stay on March 13, 2025.

ARGUMENT

"A stay is an 'intrusion into the ordinary processes of administration and judicial review,' . . . and accordingly 'is not a matter of right, even if irreparable injury might otherwise result to the appellant[.]" *Nken v. Holder*, 556 U.S. 418, 427 (2009) (citations omitted). While a stay application is "'rarely granted,'" *see Heckler v. Redbud Hosp. Dist.*, 473 U.S. 1308, 1312 (1985) (Rehnquist, J., in chambers) (citation omitted), the federal government has "an especially heavy burden" here "[b]ecause this matter is pending before the Court of Appeals, and because the Court of Appeals denied [the federal government's] motion for a stay," *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). The Court does "not disturb, 'except upon the weightiest considerations, interim determinations of the Court of Appeals in matters pending before it.'" *Certain Named & Unnamed Non-citizen Children & their Parents v. Texas*, 448 U.S. 1327, 1330 (1980) (Powell, J., in chambers) (quoting *O'Rourke v. Levine*, 80 S. Ct. 623, 624 (1960) (Harlan, J., in chambers)). The Court's "[r]espect for the assessment of the Court of Appeals is especially warranted when"—as here—"th[e] court is proceeding to

adjudication on the merits with due expedition." *Doe v. Gonzales*, 546 U.S. 1301, 1308 (2005) (Ginsburg, J., in chambers).

To obtain a stay pending appeal from this Court, the federal government must show (1) "'a reasonable probability' that this Court will grant certiorari" on the question presented in the stay application, (2) a "'fair prospect' that the Court will reverse the decision below, and (3) a 'likelihood that irreparable harm will result from the denial of a stay.'" *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301 (2014) (Roberts, C.J. in chambers) (cleaned up); *see also Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (setting out standard for a stay). Additionally, it is necessary "to 'balance the equities'—to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers) (citation omitted).

Here, the federal government comes nowhere close to meeting its "especially heavy burden" for a stay. As a threshold matter, there is no likelihood that irreparable harm will result absent a stay. The nationwide injunctions preserve the status quo that has existed for more than a century, and the federal government suffers no harm, much less irreparable harm, by continuing to follow long-settled law while the appeals proceed. Moreover, as they tacitly acknowledge when they elide the merits, there is no circuit split or conflict on any issue that would justify a grant of certiorari. Every single district court to have considered the Citizenship Stripping Order has determined it unconstitutional. Every circuit court to have considered the scope of relief has denied the exact stay the federal government seeks here. Even if this Court were to cast aside its normal certiorari standards and grant review, the federal government has not shown that the district court erred such that this Court

would likely reverse. In fact, a wall of authority—the Fourteenth Amendment's text and history, century-old Supreme Court precedent, Executive Branch official positions, and federal statute—make clear that the Citizenship Stripping Order is unlawful. Because the federal government suffers no injury from the nationwide injunctions, and because all of the equities weigh against a stay, the Court should deny the federal government's request and preserve the status quo.

A. The Federal Government Will Suffer No Harm—Let Alone Irreparable Harm—From the District Court's Injunction

The federal government alleges various harms from overbroad injunctions generally, Stay Appl. 15-20, 25-28, but offers no evidence whatsoever of irreparable harm from the specific injunctions at issue here. And with good reason. There is no plausible argument that the government will be irreparably harmed by continuing to respect a foundational constitutional right that has been established—and accepted by all branches of the federal government—for more than a century.

This Court can deny the stay on this ground alone. No irreparable harm flows from maintaining the longstanding status quo during the pendency of this appeal. *See Trump v. E. Bay Sanctuary Covenant*, 586 U.S. 1062 (2018) (denying stay application); Appl. App. 21a (Forrest, J., concurring) (finding no need for stay relief where "it appears that the exception to birthright citizenship urged by the Government has never been recognized by the judiciary, . . . and where executive-branch interpretations before the challenged executive order was issued were contrary" (citing *Wong Kim Ark*, 169 U.S. at 693, and then Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 340-47 (1995))); *see also* Appl. App. 120a (recognizing the Citizenship Stripping Order

"dramatically break[s] with the Executive Branch's longstanding legal position and . . . disrupt[s] longstanding governmental practices").

The point of a stay is to preserve the status quo pending litigation. *Nken*, 556 U.S. at 429. The status quo ante is the period "before the law went into effect[.]" *Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2496 (2021) (Roberts, C.J., dissenting); *see also Nken,* 556 U.S. at 429 (granting a stay that precluded the Executive branch from removing an immigrant pending judicial review because "it [did] so by returning to the status quo—the state of affairs before the removal order was entered."); *Nat'l Urb. League v. Ross*, 977 F.3d 698, 701 (9th Cir. 2020) (denying stay when "the status quo would be seriously disrupted by an immediate stay").

The federal government premises its irreparable harm claim on its inability to effectuate an Executive Order that contravenes over a century of constitutional text, precedent, and historical practice. But "[it] cannot be" that the "irreparable harm standard is satisfied by the fact of executive action alone." *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020); *see Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (premising the stay of judgment on institutional injury *and* "an ongoing and concrete harm to Maryland's law enforcement and public safety interests"). Instead, "[i]t is routine for both executive and legislative policies to be challenged in court, particularly where a new policy is a significant shift from prior understanding and practice." Appl. App. 20a (Forrest, J., concurring); *see also Texas v. United States*, 787 F.3d 733, 767-68 (5th Cir. 2015) (dismissing the federal government's "claims that the injunction offends separation of powers" because "it is the resolution of the case on the merits, not whether the injunction is stayed pending appeal, that will affect those principles"). The federal government does not get a free

pass on showing irreparable harm—one of the "most critical" factors of the analysis—whenever it seeks a stay. *See Trump v. Int'l Refugee Assistance Project* (*IRAP*), 582 U.S. 571, 584 (2017) (Thomas, J., concurring). This is particularly true where, as here, the Executive "arrogat[ed] to itself power belonging to another," *Biden v. Nebraska*, 600 U.S. 477, 503 (2023), by attempting to rewrite the Constitution's Citizenship Clause and the INA.

The federal government tries to assert harm by suggesting the injunctions "hold[] out a nationwide incentive for illegal immigration" and "impair the President's efforts to address the crisis at the Nation's southern border." Stay Appl. 36-37. That argument is baseless. The injunction does not prevent the President from executing any immigration laws. Instead, the injunction protects the citizenship rights of U.S.-born children who have never crossed any border. Regardless of whether one believes "the prospect of American citizenship" drives "illegal immigration," Stay Appl. 36-37, the Fourteenth Amendment and federal statute intentionally and explicitly placed birthright citizenship *beyond* the President's authority to condition or deny. *See Afroyim v. Rusk*, 387 U.S. 253, 263 (1967) (holding that it is "undeniable" that the Citizenship Clause's drafters "wanted to put citizenship beyond the power of any governmental unit to destroy"). So even if the federal government fears "birth tourism" (about which it offered no evidence to the district court), it is not the federal government's policies or beliefs that reign supreme over this land—it is the Constitution.

Finally, the federal government ostensibly demands emergency relief so that they may begin "internal, preparatory steps" to implement the Citizenship Stripping Order. Stay Appl. 32-33. But this Court has blessed similar injunctions. *See, e.g.*,

IRAP, 582 U.S. at 574 (enjoining the executive order's instruction to the Secretary of State to "implement whatever additional procedures are necessary" to carry out the unconstitutional executive order). If the President directed federal agencies to fire all female employees, and a federal court preliminarily enjoined that order, the federal government could not reasonably argue that it should be allowed to continue the work of identifying the employees it would fire if allowed to do so. The same is true here. The lack of irreparable harm is especially clear because the Citizenship Stripping Order only gave federal agencies thirty days to implement it, 90 Fed. Reg. at 8449-50, so even if this Court ultimately upheld the Order, it would take the Administration only a few weeks to engage in the "advance preparations" it says are so crucial. Taking a few weeks to change the law as it has existed for over 150 years is not irreparable harm.

B. There Is No Reasonable Probability that this Court Will Grant Certiorari or Fair Prospect of Reversal

The federal government's stay application never meaningfully defends the Citizenship Stripping Order on its merits. That is because it is flagrantly unconstitutional (and separately violates the INA). There is no split of authority on the Order's legality, no basis for granting certiorari, and certainly no fair prospect of reversal. The Administration focuses solely on the scope of relief the lower courts granted, but there, too, none of this Court's normal criteria for certiorari are met, and there is no fair prospect of reversal. Every court of appeals to consider the question has upheld the granting of nationwide relief under the circumstances here, and there is no split of authority about whether the Plaintiff States have standing to bring this case. Even if this Court ultimately grants certiorari on the merits of the Order, any issues about scope of relief and state standing will become irrelevant, because there

are other plaintiffs in these cases whose standing the government concedes and this Court's ruling on the merits will apply nationwide. In short, there is no basis for a stay under this Court's precedent.

1. The Citizenship Stripping Order contravenes constitutional text, history, and precedent, as well as the INA

The Fourteenth Amendment's plain text guarantees citizenship to all born in the United States and subject to the jurisdiction thereof. U.S. Const. amend. XIV, § 1. The Citizenship Clause is broad by design, bestowing citizenship on children born in the United States regardless of race, ethnicity, alienage, or the immigration status of one's parents. Binding precedent confirms that understanding, *see Wong Kim Ark*, 169 U.S. 649, and every branch of government has long recognized it, *see id.*; 8 U.S.C. § 1401; 19 Op. O.L.C. at 344 (U.S. Department of Justice Office of Legal Counsel explaining that "[t]he constitutional guarantee of citizenship to children born in the United States to alien parents has consistently been recognized by courts, including the Supreme Court, and Attorneys General for over a century[]").

The federal government seeks to distort the term "subject to the jurisdiction" beyond all recognizable bounds. But as a matter of text, history, and precedent, the group of U.S.-born individuals *not* subject to the jurisdiction of the United States is both extraordinarily small and well defined. As this Court held in *Wong Kim Ark*, that phrase reflects a narrow and historically grounded exception for groups recognized as exempt from the United States' jurisdiction as a matter of fact, comity, or practice. In particular, it excludes U.S.-born children who are born to diplomats covered by diplomatic immunity and members of foreign armies at war against the

United States.[2] *Wong Kim Ark*, 169 U.S. at 704. It has never been understood to exclude U.S.-born children based on their parents' citizenship, immigration status, "allegiance," or "domicile," and indeed, the federal government does not point to a single binding case that accepts its strained theory.

In pronouncing its authoritative interpretation of the Fourteenth Amendment in *Wong Kim Ark*, 169 U.S. at 704, this Court exhaustively canvassed the Fourteenth Amendment's text, history, and relevant law and authorities from before and after its passage—including many of the sources applicants now cite. A central tenet of this Court's holding was that the "real object" of including the phrase "'subject to the jurisdiction thereof'" was "to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases . . . recognized [as] exceptions to the fundamental rule of citizenship by birth within the country." *Wong Kim Ark*, 169 U.S. at 682. Those classes are "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state[.]" *Id.* The exceptions did *not* extend to all aliens merely present within the United States. "'When private individuals of one nation spread themselves through another as business or caprice may direct," this Court recognized, "it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country.'" *Id.* at 685-86 (quoting *Schooner Exch. v. McFaddon &*

[2] The original understanding of the Fourteenth Amendment was that children born to certain Native American tribal members were not subject to the United States' jurisdiction at birth. Such children have long been granted U.S. citizenship at birth pursuant to federal statute. *See* 8 U.S.C. § 1401(b).

Others, 11 U.S. (7 Cranch) 116, 144 (1812)). In other words, contrary to the federal government's suggestion that the phrase refers only to those whose parents have "primary allegiance" or sufficiently permanent "domicile," *Wong Kim Ark* held that virtually everyone born within the United States is born *subject to its jurisdiction* and becomes a citizen the moment they are born.

The Executive Branch, too, has long endorsed this understanding of the Citizenship Clause. When the U.S. Department of Justice's Office of Legal Counsel (OLC) was asked in 1995 to assess the constitutionality of a bill that would deny citizenship to children unless a parent was a citizen or permanent resident alien—like the Citizenship Stripping Order—OLC concluded that the "legislation is unquestionably unconstitutional." 19 Op. O.L.C. at 341. As OLC recognized, "Congress and the States adopted the Fourteenth Amendment in order to place the right to citizenship based on birth within the jurisdiction of the United States beyond question." *Id.* at 340. Because "the fundamental legal principle governing citizenship has been that birth within the territorial limits of the Unites States confers United States citizenship," the OLC explained that the phrase "subject to the jurisdiction thereof" served a well-understood and narrow purpose: it "was meant to reflect the existing common law exception for discrete sets of persons who were deemed subject to a foreign sovereign and immune from U.S. laws," such as "foreign diplomats." *Id.* at 340, 342. OLC concluded that "[a]part from these extremely limited exceptions, there can be no question that children born in the United States of aliens are subject to the full jurisdiction of the United States."[3] *Id.* at 342. In fact, the Executive Branch

[3] The Department of Justice has recognized in numerous cases that children born in the United States to undocumented or noncitizen individuals are U.S. citizens. *See*, *e.g.*, Brief for Respondent, *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72 (1957) (No. 205), 1957 WL 87025, at *7, *11 (acknowledging

has built daily government functions around the Citizenship Clause's established meaning. For example, for the issuance of U.S. passports, the U.S. Department of State's Foreign Affairs Manual states: "[a]ll children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S. citizenship at birth even if their parents were in the United States illegally at the time of birth[.]" Resp. App. 29a. The State Department's Application for a U.S. Passport thus confirms that for "Applicants Born in the United States," a U.S. birth certificate alone is sufficient to prove one's citizenship. Resp. App. 39a.

Notwithstanding this backdrop, the federal government now suggests that the Courts, Congress, and the Executive Branch have been laboring under an unknowing misapprehension about the true nature of the Fourteenth Amendment all along. Stay Appl. 6-10. The federal government largely repackages the dissent in *Wong Kim Ark* and argues that the Citizenship Clause refers to "political jurisdiction," not regulatory jurisdiction, so only children born in the United States with "primary allegiance" to the United States receive citizenship. Stay Appl. 7. But that argument fails out of the gate. *Wong Kim Ark* held that a person born in the United States to Chinese nationals was a citizen at birth even though he and his parents were "subjects of the Emperor of China." 169 U.S. at 652. This alone is sufficient to reject any atextual "allegiance" requirement. And as a practical matter, the federal government's argument is inconsistent and absurd. Under the federal government's

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that child born to parents who overstayed visas "was born in the United States and is a citizen of the United States"); Brief for Petitioner, *INS v. Errico*, 385 U.S. 214 (1966) (No. 54), 1966 WL 100686, at *5 (child born in the United States "acquired United States citizenship at birth" even though Italian parents were "excludable" at the time they entered country); *see also* Brief for Petitioner, *INS v. Rios-Pineda*, 471 U.S. 444 (1985) (No. 83-2032), 1985 WL 669850, at *24 (referring to the "citizen child" of undocumented parents).

"allegiance" test, no child born to dual citizens, noncitizens, or lawfully present immigrants would be a citizen at birth. That is not and has never been the law, and even the Citizenship Stripping Order is inconsistent with that view.

Nor do the federal government's citations to *Elk v. Wilkins*, 112 U.S. 94, 102 (1884), and the Civil Rights Act of 1866 save its argument. *Elk* did not set a new "allegiance" rule. As the same justice who wrote *Elk* later explained in *Wong Kim Ark*, *Elk* "concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents . . . not in the diplomatic service of a foreign country." *Wong Kim Ark*, 169 U.S. at 682; *accord* Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L.J. 405, 419-20 (2020) (discussing *Elk*). And the Civil Rights Act of 1866 bestowed citizenship on the children of immigrants, regardless of their background. Garrett Epps, *The Citizenship Clause: A "Legislative History,"* 60 Am. Univ. L. Rev. 331, 349, 350-52 (2010). In fact, when one senator asked whether the original proposed language "would have the effect of naturalizing the children of Chinese and Gypsies born in this country[,]" Senator Lyman Trumbull, the Act's author, responded, "Undoubtedly." Cong. Globe, 39th Cong., 1st Sess. 498 (1866). This was true even though, at the time, Chinese immigrants could not become naturalized U.S. citizens and "Gypsies" were, if present, likely present unlawfully. *See* Epps, *supra*, pp. 350-52; Ramsey, *supra*, pp. 451-52 (discussing 1866 Act). And were there any question, this Court in *Wong Kim Ark* addressed the 1866 Act's language specifically and explained that "any possible doubt" regarding its scope "was removed" with passage of the Fourteenth Amendment. 169 U.S. at 688.

The federal government's attempt to read a requirement of "domicile" of one's parents into the Citizenship Clause fails for the same reasons. To start, the plain text does not refer to one's parents or domicile at all. While *Wong Kim Ark* observed the parents there were domiciled in the United States, this Court's analysis did not discuss domicile at length and certainly did not impose a parental domicile requirement for one to be subject to the United States' jurisdiction. *Id.* at 653. In fact, this Court concluded the opposite. This Court recognized that: "allegiance to the United States is direct and immediate, and, although but *local and temporary*, continuing only so long as he remains within our territory, is . . . 'strong enough to make a natural subject, for, if he hath [a child] here, that [child] is a natural-born subject'; and his child . . . '[i]f born in the country, is as much a citizen as the natural-born child of a citizen . . . .'" *Id.* at 693 (cleaned up). And this Court did not stop there. It explained further that "[i]t can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides[.]" *Id.* This aspect of *Wong Kim Ark*'s holding was consistent with the common law, which did not impose a parental domicile requirement for birthright citizenship. *See Lynch v. Clarke*, 1 Sand. Ch. 583, 638, 664 (N.Y. Ch. 1844) (concluding a child born in New York of alien parents during a "temporary sojourn" "without any settled intention of abandoning their native country, or of making the United States their permanent abode" was a natural-born citizen because "[i]t is enough that *he was born here*, whatever were the *status* of his parents").

At bottom, none of the federal government's arguments can overcome this Court's decision in *Wong Kim Ark*. While the federal government raises a specter of "birth tourism," Stay Appl. 10, such policy arguments cannot override the

Constitution. As the Executive Branch recognized long before January 20, 2025, by enshrining the right to birthright citizenship in the Constitution, "the amendment's purpose was to remove the right of citizenship by birth from transitory political pressures." 19 Op. O.L.C. at 347. The federal government's "allegiance" tests, parental domicile requirements, and the Citizenship Stripping Order itself are essentially proposals for a constitutional amendment. They are without support in existing text, history, or precedent. The individuals the Order targets are "subject to the jurisdiction" of the United States just like virtually every other person present in the United States who is not a diplomat, and they cannot be deprived of their citizenship by Executive Order.

2. The Plaintiff States have standing to protect their pecuniary and sovereign interests

Nor is the federal government likely to prevail on its argument that only individuals should be permitted to bring Citizenship Clause and INA claims. The federal government argues that the Plaintiff States do not have parens patriae standing "to litigate the rights of their residents." Stay Appl. 29. But, as the Plaintiff States have repeatedly explained, the Plaintiff States are not asserting parens patriae or "third-party standing." Stay Appl. 30. Rather the Plaintiff States have introduced a mountain of unrebutted evidence that establishes standing based on their own direct legally protected pecuniary and sovereign interests. *See Nebraska*, 600 U.S. at 489; *Dep't of Com. v. New York*, 588 U.S. 752, 766 (2019). This is not a close question, and multiple independent grounds support the Plaintiff States' standing.

The Plaintiff States have standing to protect their pecuniary interests because the Order will directly cause the Plaintiff States to lose funding and require

substantial changes to existing public programs such as Medicaid, the Children's Health Insurance Program (CHIP), Title IV-E foster care, and the Social Security Administration's (SSA) Enumeration at Birth program. Resp. App. 62a-65a, 171a. The district court correctly ruled in the Plaintiff States' favor on this ground, Appl. App. 7a-8a, and the federal government offers no persuasive counterargument.

This Court's recent decision in *Biden v. Nebraska*, 600 U.S. 477, confirms standing here. *Nebraska* held that where the federal government's action reduces the number of individuals a state entity serves by cancelling student loans—causing the entity to lose fees it would otherwise receive—the loss is both sufficiently concrete to establish injury-in-fact and directly traceable to the federal government's action. *Id.* at 490-91. This decision is not unique. *See New York*, 588 U.S. at 767 (states had standing where inclusion of citizenship question on the census would cause states to "lose out on federal funds that are distributed on the basis of state population").

Although the federal government fails even to cite *Nebraska* and *New York*, ignoring the law does not overcome it. The standing analysis is open-and-shut in the Plaintiff States' favor. The unrebutted record here shows that thousands of babies born each year will be subject to the Citizenship Stripping Order, including more than 150,000 nationally and more than 1,100 per month in the Plaintiff States alone. Resp. App. 50a-52a. Denied citizenship, they will immediately become ineligible for federally backed healthcare coverage and social services programs the Plaintiff States administer pursuant to federal law, including Medicaid, CHIP, and Title IV-E foster care programs. Appl. App. 8a-9a; *see* Resp. App. 62a-65a; 69a, 71a-73a; 146a-52a. As a direct result, the Plaintiff States *will* lose contracted reimbursements under each program for administering services that they would otherwise receive. Appl.

App. 8a-9a; *see* Resp. App. 62a-65a (estimating likely loss to Washington of nearly $7 million per year if approximately 4,000 children become ineligible for Medicaid/CHIP); Resp. App. 161a-64a (detailing Oregon's millions of lost Title IV-E dollars if children made ineligible); Resp. App. 150a-51a (estimating Arizona's expected loss of more than $320 million in healthcare funding over the first 18 years of life for the first cohort subject to the Order).

Moreover, federal law requires the Plaintiff States to determine whether each resident served is eligible for federal benefits in the first place. Resp. App. 60a-62a, 73a-74a, 149a, 172a, 182a; *see*, *e.g.*, 42 U.S.C. § 1396b(v); 8 U.S.C. § 1611(a), (c)(1)(B); 42 C.F.R. § 435.406. The Order upends the current state systems that rely on birth certificates, place of birth, or SSNs to determine eligibility, and States would be forced to create new systems to determine the citizenship of *every* child they serve to avoid violating federal law, and to update policies, training, and guidance to operationalize these new systems. Appl. App. 7a-8a; *see, e.g.*, Resp. App. 63a, 65a, (necessary system changes for Washington's Healthcare Authority would require 7-8 FTEs and take two to three years); Resp. App. 149a (cost of implementing necessary changes to Arizona's Medicaid eligibility systems range from $2.3-4.4 million).

The Plaintiff States will also lose "administrative fees" they otherwise would receive under SSA's Enumeration at Birth program. *Nebraska*, 600 U.S. at 489-90. Pursuant to existing contracts with SSA, the Plaintiff States' vital statistics agencies collect newborn birth data, format it, and transmit it to SSA to facilitate the assignment of SSNs. Resp. App. 79a-81a. This is how nearly all SSNs are assigned today, Resp. App. 80a, and SSA pays the Plaintiff States approximately $4-5 for each SSN assigned, totaling hundreds of thousands of dollars per year, Resp.

App. 79a-81a, 144a, 157a-58a, 163a-64a. Under these existing agreements, the loss of revenue *will* begin immediately if SSA ceases issuing SSNs to children subject to the Citizenship Stripping Order. Resp. App. 81a-82a, 157a-58a, 163a-64a (Washington, Illinois, and Oregon each expect losses of between $7,230 to $38,129 per year due to decrease in the number of newborns assigned SSNs).

These losses constitute the exact type of direct financial loss—a reduction in "administrative fee[s]" and grant funds that the Plaintiff States "otherwise would have earned under [their] contract[s]" with SSA and Medicaid, CHIP, and Title IV-E programs—that confers standing. *Nebraska*, 600 U.S. at 489-90; *see New York*, 588 U.S. at 767; *see also Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 576-77 (2012) (Medicaid funding is "much in the nature of a contract." (cleaned up)); *United States v. Texas* (*Texas I*), 599 U.S. 670, 688 (2023) (Gorsuch, J., concurring) (noting agreement that "even one dollar's worth of harm" is sufficient to confer standing). Insofar as the federal government suggests that the Plaintiff States could simply withdraw from major federal-state programs, their argument misses the point—those programs exist today and it is undisputed that the Plaintiff States *will* lose federal funds. That is enough under *Nebraska*.

The Plaintiff States also have standing to vindicate their sovereign interests. The Citizenship Clause directly governs states by granting both national citizenship to those born in the United States, as well as citizenship in "the State wherein they reside." U.S. Cont. amend. XIV, § 1. States unquestionably have a sovereign interest in defending a constitutional provision that directly regulates state citizenship. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561-62 (1992) (for those regulated by a law, there "is ordinarily little question that the action or inaction has caused [it] injury, and that

a judgment preventing or requiring the action will redress it"). The Plaintiff States enacted their own constitutions after passage of the Fourteenth Amendment, granting rights based on state citizenship. *See, e.g.*, Wash. Const. art. I, § 12 (prohibiting unequal privileges or immunities to "any citizen" or "class of citizens"); *id.*, § 24 (recognizing right of "individual citizen" to bear arms in self-defense); Ariz. Const. art. II, § 13; *id.,* § 26; Or. Const. art. I, § 20; Ill. Const. art. I, § 24; *id.*, § 22. The Plaintiff States' constitutions and many of their laws also rely on the settled meaning of "United States citizen." These include laws requiring citizenship to vote in state elections, serve on state juries, hold local offices, and serve as police or corrections officers. *See, e.g.*, Wash. Const. art. VI, § 1 (right to vote in state elections); Ariz. Const. art. VII, § 2 (same); Or. Const. art. II, § 2 (same); Ill. Const. art III, § 1 (same); Wash. Rev. Code § 2.36.070 (juror qualifications); Ariz. Rev. Stat. § 21-201(1) (same); Or. Rev. Stat. Ann. § 10.030(2) (same); 705 Ill. Comp. Stat. 305/2(a) (same); Ariz. Const. art. V, § 2 (eligibility to hold certain state offices); Ill. Const. art. V, § 3 (same); Or. Rev. Stat. Ann. §§ 181A.490, .520, .530 (qualifications for police, corrections, and probation officers); *see also* Appl. App. 84a (explaining states "have general sovereign interests in which persons are U.S. citizens," citing similar laws).

By proclaiming that thousands of the Plaintiff States' residents are not "subject to the jurisdiction" of the United States, the Order purports to render thousands of the Plaintiff States' residents non-citizens of both the United States *and* the Plaintiff States. The federal government seems to assume that this would have no impact on anything other than these individuals' citizenship status, but it never explains why the impact would be so cabined, because every other example of groups historically considered not "subject to the jurisdiction" of the United States (diplomats, invading

armies, Indian tribes) enjoy some degree of immunity from state laws. *See, e.g.*, *Schooner Exch.*, 11 U.S. at 138, 147; *McGirt v. Oklahoma*, 591 U.S. 894, 928 (2020) ("The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation's history." (quoting *Rice v. Olson*, 324 U.S. 786, 789 (1945))); *see also Davis v. Packard*, 33 U.S. 312, 324 (1834). And any diminishment in States' authority to regulate their own residents would clearly harm States in their capacity as sovereigns. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982) (recognizing state standing to protect "exercise of sovereign power over individuals and entities within the relevant jurisdiction" and "power to create and enforce a legal code, both civil and criminal[.]"); *see also Maine v. Taylor*, 477 U.S. 131, 137 (1986). In light of these injuries, the Plaintiff States easily have sovereign standing here.

The federal government ignores this unrebutted evidence and instead attacks a strawman: parens patriae standing. But the Plaintiff States have explained over and over again that they do not assert parens patriae claims here. *See, e.g.,* Resp. App. 332a, 481a. None of the cases cited by the federal government support its effort to repackage the Plaintiff States' challenge as parens patriae claims. Rather, in each of the cases, this Court rejected standing by parties who failed to allege the types of direct and specific fiscal or sovereign injuries demonstrated by the Plaintiff States here. In *Haaland v. Brackeen*, 599 U.S. 255 (2023), for example, this Court held that Texas could not "assert equal protection claims on behalf of its citizens" as "parens patriae," but then *separately* considered whether Texas had "alleged costs" that were "fairly traceable" to the challenged statute. *Id.* at 294-95, 296. Although Texas failed to make that showing, the financial-harm analysis would have been irrelevant if

states never have standing to bring constitutional equal protection claims against the federal government, or if courts were always to construe such claims as parens patriae claims when brought. *Brackeen* confirms that the Plaintiff States' unique harms are an independent basis for standing.

Similarly, in *Murthy v. Missouri*, 603 U.S. 43, 75 (2024), the states did not assert any pocketbook injuries and instead claimed a novel sovereign interest in "hearing from their citizens on social media." This Court deemed such injury too speculative to establish injury-in-fact because the states had "not identified any specific speakers or topics that they have been unable to hear or follow." *Id.* And in applying the long-standing rule that standing is not dispensed in gross, this Court merely affirmed the settled rule that standing exists as long as, "for every defendant, there [is] at least one plaintiff with standing to seek an injunction." *Id.* Finally, in *Kowalski v. Tesmer*, 543 U.S. 125, 127 (2004), this Court rejected claims by two attorneys asserting third-party standing on behalf of their clients because they failed to establish any impediment to the clients bringing their own claims. But the attorneys had not even attempted to demonstrate standing in their own right. None of these cases show that the Plaintiff States cannot establish standing through their own direct and unrebutted sovereign and pecuniary harms.

The federal government nevertheless argues that only individuals should be permitted to bring Citizenship Clause claims. In doing so, they cite no authority for a rule that the Plaintiff States may not litigate constitutional claims that implicate individual rights. Stay Appl. 29. And for good reason—their position ignores a long history of state and local government challenges to Executive Branch actions that harm states, even when those cases *also* may impact individual rights. *See, e.g., Dep't*

of Homeland Sec. v. Regents of the Univ. of Calif., 591 U.S. 1, 13 (2020) (reaching merits of claim brought by "States" that rescission of immigration benefit for state residents "infringed the equal protection guarantee of the Fifth Amendment's Due Process Clause"); *South Dakota v. Dole*, 483 U.S. 203, 205-06 (1987) (reaching merits of South Dakota's claims "present[ing] questions of the meaning of the Twenty-first Amendment" and its effect on state law "permit[ting] persons 19 years of age or older to purchase beer"); *South Carolina v. Katzenbach*, 383 U.S. 301, 325-37 (1966) (analyzing South Carolina's claims under section 1 of the Fifteenth Amendment, which guarantees "[t]he right of citizens of the United States to vote").

Here, as every court to address the issue has concluded, the Citizenship Stripping Order impacts rights and interests that belong *exclusively* to the States: it defines who is a citizen of the States, implicating their criminal and civil jurisdiction over thousands of residents; upsets the rules for state-run elections and jury systems; depletes millions of dollars from mammoth programs that *only* states may operate pursuant to federal law; and changes the terms on which federal officials will "accept documents issued by State, local, or other governments." 90 Fed. Reg. at 8449. The Plaintiff States plainly have standing to enforce these unique and concrete state interests. *Nebraska*, 600 U.S. at 489; *New York*, 588 U.S. at 766; *see also Massachusetts v. EPA*, 549 U.S. 497, 519 (2007) (State's sovereign territorial interests confer "concrete" stake in outcome of challenge to federal environmental statute).

3. A nationwide injunction is necessary to provide complete relief

Recognizing that the Citizenship Stripping Order is impossible to defend on the merits, the federal government frames its application as an opportunity to address the permissibility of nationwide injunctions. They argue that nationwide

injunctions categorically "exceed 'the power of Article III courts'" and contradict public policy. Stay Appl. 16. But the absence of any conflict here, including as to the nationwide scope of relief, is reason enough for this Court to deny the federal government's emergency stay request.

This Court, like other appellate courts, reviews preliminary injunctions for abuse of discretion, including their scope or nationwide effect. *Ashcroft v. ACLU*, 542 U.S. 656, 664 (2004). "Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *IRAP*, 582 U.S. at 579. An injunction "should be no more burdensome to the defendant than to provide *complete relief* to the plaintiffs before the court." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (emphasis added). Equitable relief granted by a district court "is acceptable where it is 'necessary to give prevailing parties the relief to which they are entitled." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680 (9th Cir. 2021) (citation omitted).

As relevant here, "the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class." *Califano*, 442 U.S. at 702. When it is necessary to provide complete relief to the plaintiffs, appellate courts have "consistently recognize[d] the authority of district courts to enjoin unlawful policies on a universal basis." *E. Bay Sanctuary Covenant*, 993 F.3d at 681 (citation omitted); *see also Doe #1*, 957 F.3d at 1070 ("[A] more limited injunction . . . would 'needlessly complicate agency and individual action in response to the United States's changing immigration requirements[.]'" (citation omitted)); *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025) ("A nationwide injunction is no more burdensome on the federal officials than necessary and is more workable.");

Florida v. Dep't of Health & Hum. Servs., 19 F.4th 1271, 1282 (11th Cir. 2021) ("[U]niversal relief may be justified where the plaintiffs are dispersed throughout the United States, when immigration law is implicated, or when certain types of unconstitutionality are found."); *City of Chicago v. Barr*, 961 F.3d 882, 916-17 (7th Cir. 2020) ("[U]niversal injunctions can be necessary 'to provide complete relief to plaintiffs, to protect similarly-situated nonparties, and to avoid the chaos and confusion that comes from a patchwork of injunctions.'" (citation omitted)); *see also* Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 466 (2017) ("[W]hen a national injunction is needed for complete relief a court *should* award one, and when it is not needed for complete relief a court *should not* award one.").

This Court has allowed nationwide injunctions where necessary to provide complete relief. *See IRAP*, 582 U.S. at 579, 582 (allowing nationwide injunction against enforcement of the President's second travel ban); *see also Nebraska*, 600 U.S. at 507 (2023) (denying "as moot" the federal government's application to narrow a nationwide injunction pending appeal, in light of its conclusion that the plaintiff-states had standing to challenge the federal government's student loan debt forgiveness program and that the challenged action was unlawful); *Dep't of Educ. v. Career Colls. & Schs. of Tex.*, No. 24-413, 2025 WL 65914, at *1 (U.S. Jan. 10, 2025) (granting certiorari on the merits, but declining the federal government's request for review of whether the lower courts erred in entering preliminary relief on a universal basis). In *IRAP*, this Court affirmed the equitable power of district courts, in appropriate cases, to issue nationwide injunctions extending relief to those who are similarly situated to the litigants. 582 U.S. at 582. Such nationwide injunctions

are particularly warranted in circumstances where, as here, individuals moving between states will expose plaintiffs to irreparable harm. *See, e.g.*, *E. Bay Sanctuary Covenant*, 993 F.3d at 680-81 (affirming nationwide injunction where plaintiff organizations would lose clients under a more limited injunction); *HIAS, Inc. v. Trump*, 985 F.3d 309, 327 (4th Cir. 2021) (affirming nationwide injunction for organizations that "place[d] refugees throughout the country").

This case squarely fits within this precedent. As the district court recognized, a nationwide injunction is necessary to provide the Plaintiff States complete relief. Appl. App. 16a-17a. If Plaintiff State residents give birth in any non-party state, or if individuals from any non-party state move to any of the Plaintiff States, the Plaintiff States will suffer the exact irreparable injuries to their sovereign and pecuniary interests as if there were no injunction at all. Several of the Plaintiff States' major cities border non-plaintiff states, including Spokane, Washington, and Chicago, Illinois. It is hardly "speculative" to suggest confusion will proliferate if babies' citizenship turns on which hospital they are born in along these borders. The Plaintiff States provided ample evidence of their sovereign injuries if the Citizenship Clause is applied in patchwork fashion. *See supra* pp. 24-26. The Plaintiff States would also be required to overhaul their eligibility determinations for Medicaid, CHIP, and Title IV-E to comply with federal law—including verifying the citizenship or qualifying immigration status—of *every* child they serve. Resp. App. 60a-65a, 74a-75a, 148a, 155a, 157a, 172a-73a, 182a-84a. In short, relief here *cannot* be "structured" on a "narrower" or "tailored" basis. Stay Appl. 3, 18. The district court did not abuse its discretion. This record presents the precise evidence of "nationwide impact" that warrants nationwide relief under this Court's precedent. *IRAP*, 582 U.S. at 579.

The federal government's reliance on cases where the plaintiffs lacked standing is misplaced. *See, e.g.*, *Texas I*, 599 U.S. at 686 (states lacked standing to challenge the federal government's immigration enforcement priorities); *Arizona v. Biden*, 40 F.4th 375 (6th Cir. 2022) (same). Nor does the federal government's reliance on *Texas v. United States* (*Texas II*), 126 F.4th 392, 421 (5th Cir. 2025), fare any better. In *Texas II*, nine states sought to enjoin the federal government's final rule for Deferred Action for Childhood Arrivals (DACA). The Fifth Circuit granted the request, but limited the scope of its injunction to Texas only because "'Texas [wa]s the only state that ha[d] attempted to demonstrate standing.'" *Texas II,* 126 F.4th at 405 (citation omitted). And, as the Fifth Circuit observed, a narrowed injunction "only help[ed] further redress Texas's injury by providing an incentive for DACA recipients to move to other states[.]" *Id.* at 421 n.49. That's not true here. Not only have all Plaintiff States shown standing, a patchwork injunction as to the Citizenship Stripping Order does the opposite—it encourages people to move to the Plaintiff States, exacerbates Plaintiff States' sovereign injury, and makes Plaintiff States' eligibility determinations for Medicaid and foster care programs needlessly convoluted.

While the federal government suggests that nationwide injunctions are "'historically dubious'" and "'previously unknown,'" Stay Appl. 2, 17, in fact they are not new or particularly novel. *See, e.g.*, *Pierce v. Soc'y of Sisters of Holy Names of Jesus & Mary*, 268 U.S. 510 (1925) (affirming universal injunction that barred enforcement of state's compulsory public-schooling law in a suit brought by two schools suing for themselves alone), *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (affirming injunction in lawsuit brought on behalf of a class of Jehovah's

Witnesses that protected other children with religious scruples from having to salute the flag); *see also* Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 Harv. L. Rev. 920, 924-26 (2020).

The federal government also contends that nationwide injunctions have "reached epidemic proportions since the start of the current Administration." Stay Appl. 3. But that's not an argument about nationwide injunctions being improper. The number of recent injunctions simply reflects the massive disruption caused by the unprecedented nature and scope of the President's initial orders. *See* Federal Register, *2025 Donald J. Trump Executive Orders*, https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025. Moreover, the federal government omits that in many of the cases where states have sued, states have sought relief limited to the plaintiff states in appropriate cases. *See, e.g.*, *New York v. Trump*, No. 25-cv-39-JJM-PAS, 2025 WL 715621, at *16 (D.R.I. Mar. 6, 2025), *stay pending appeal denied*, No. 25-1236, 2025 WL 914788 (1st Cir. Mar. 26, 2025) (enjoining categorical freeze that would have withheld hundreds of billions of dollars of federal financial assistance to plaintiff states); *California v. U.S. Dep't of Educ.*, No. CV 25-10548-MJJ, 2025 WL 760825, at *5 (D. Mass. Mar. 10, 2025), *stay pending appeal denied*, No. 25-1244, 2025 WL 878431 (1st Cir. Mar. 21, 2025), *application for stay pending*, No. 24A910 (U.S. Mar. 26, 2025) (granting temporary restraining order for teacher training grant terminations in eight plaintiff states); *Massachusetts v. Nat'l Institutes of Health*, No. 25-CV-10338, 2025 WL 702163, at *33 (D. Mass. Mar. 5, 2025) (consolidating three cases and entering nationwide injunction against NIH indirect rate change where plaintiff states requested relief for the named plaintiff states); *Washington v. Trump*, No. 2:25-cv-00244-LK, 2025 WL 659057, at *28 (W.D.

Wash. Feb. 28, 2025) (enjoining the federal government from enforcing funding threats for the provision of gender-affirming care within the four plaintiff states).

Lacking other support, the federal government points to various concurrences in *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921 (2024), and argues that the authority of Article III courts to provide nationwide relief should be cabined. But *Labrador* is entirely unlike the situation here because nationwide relief is necessary to provide the Plaintiff States complete relief *on the claims they brought*. *Labrador* involved two individuals challenging a state law that restricted minors' access to gender-affirming care. *Id.* at 921. The district court enjoined the law in its entirety, including sections of the law that governed care that the plaintiffs did not seek to access. *Id.* This Court granted a partial stay pending appeal, allowing the injunction to take effect only "as to the provision to the plaintiffs of the treatments they sought below[.]" *Id.* There is no argument that the district court here enjoined sections of the Citizenship Stripping Order not at issue in the Plaintiff States' challenge. And while the concurrences expressed displeasure with the sheer volume of universal injunctions, they did not deem nationwide injunctions "impermissible" writ large or overrule the Court's prior precedent permitting them. Indeed, the justices who expressed reservations have also allowed nationwide injunctions to proceed while cases are on appeal or being heard by this Court. *See, e.g.*, *United States v. Texas*, 143 S. Ct. 51 (2022) (denying a stay of nationwide injunction of federal government's immigration priorities); *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2320 (2021) (voting to vacate stay of nationwide vacatur of the eviction moratorium).

To be sure, in recent years some members of this Court have raised concerns that "nationwide injunctions" "invite forum shopping"; pretermit meaningful

litigation in other suits; and allow a single plaintiff to derail nationwide policy. *See* Stay Appl. 15-20 (citing *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 601 (2020) (Gorsuch, J., concurring); *Trump v. Hawai'i*, 585 U.S. 667, 713 (2023) (Thomas, J., concurring)). But those general concerns miss the mark in the context of this case. No litigation has been stymied. The merits of the Citizenship Stripping Order are quickly percolating throughout the judiciary—four district courts from three different circuits have held the Order unlawful and three circuit courts have declined to stay the nationwide injunctions. None of the cases were initiated in single-judge districts, and judges appointed by presidents from both parties have consistently enjoined the Order. On the other hand, the federal government's rule barring broad injunctive relief would cause an explosion of duplicative, piece-meal litigation across the country and destroy uniformity in the application of the Fourteenth Amendment and conferral of U.S. citizenship. While the federal government half-heartedly suggests individuals "could" seek class certification, they only concede class-wide relief is available "if appropriate" and "so long as putative class members all have standing[.]" Stay Appl. 38. But class relief for individuals cannot vindicate the Plaintiff States' interest and in no way moots the Plaintiff State's need for nationwide injunctive relief to remedy the harms to the Plaintiff States' interests. Protecting constitutional rights cannot rest on whether a named plaintiff is able to find a lawyer and bear the high costs, difficulties, and delays of class certification disputes and protracted litigation.

Finally, the federal government suggests in its stay application (and only in passing) that a narrowed injunction might have sufficed, claiming that the Plaintiff States could obtain sufficient relief if the federal government were simply ordered to treat noncitizens moving to the Plaintiff States as eligible for federally funded

medical and social programs. Stay Appl. 23. The district court did not abuse its discretion on this claim for the obvious reason that the federal government never raised it. *See* Resp. App. 315a-17a, 468a-71a. That alone is sufficient to defeat their argument, as "the district court is not obligated to undertake the task of chiseling from the government's across-the-board ban a different policy the government never identified, endorsed, or defended." *J.D. v. Azar*, 925 F.3d 1291, 1336 (D.C. Cir. 2019); *id.* at 1335 (explaining that while injunctions must be no broader than needed, that "does not require district courts enjoining unconstitutional government policies to fashion narrower, ostensibly permissible policies from whole cloth"). Even if considered, though, the federal government's belated proposal solves nothing with respect to the Plaintiff States' sovereign injuries, because even if individuals who "are born or reside" in the Plaintiff States would be citizens, Stay Appl. 4, the Plaintiff States would face the same logistical concerns regarding individuals born outside the Plaintiff States' border. And with respect to the healthcare and social service programs the Plaintiff States operate, the federal government's vague proposal would be entirely unworkable and "needlessly complicated." *Doe #1*, 957 F.3d at 1070. At a minimum, it would require the Plaintiff States to violate federal law, which requires the Plaintiff States to verify the citizenship of each person that they serve under Medicaid, CHIP, and Title IV-E. Resp. App. 60a-62a, 74a-75a, 149a,172a, 182a.

Simply put, the federal government issued a sweeping and categorical policy yet believes the only relief available should be narrow and geographically limited. That cannot be. Nationwide injunctions, when appropriate, are a necessary mechanism for courts to carry out their constitutional role. *See* Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. Rev. 1065, 1094-95, 1098-1101

(2018). The Citizenship Stripping Order shows precisely why nationwide relief is critical in an extraordinary case like this one. Restricting nationwide relief would be particularly inappropriate here, as it would defeat a central guarantee of the Fourteenth Amendment to create a uniform, national rule for citizenship. If any injunction warranted a nationwide scope, it is this one.

C. The Equities and Public Interest Heavily Weigh Against a Stay

This Court "balance[s] the equities and weigh[s] the relative harms" in "close cases[.]" *Hollingsworth*, 558 U.S. at 190. As explained above, this is not such a case, and this Court's analysis could end there. Nevertheless, consideration of the remaining equities and public interest also heavily weigh against the stay request.

The Plaintiff States presented extensive and unrebutted evidence of the operational chaos, immediate financial losses, and harms they and their residents face under the Citizenship Stripping Order. As explained, *supra* pp. 21-24, the Plaintiff States' harms flow directly from the unilateral reclassification of *thousands* of individuals as non-citizens. Below and here, the federal government does not rebut the overwhelming evidence that the Plaintiff States will have to expend significant resources to update and modify systems used to verify citizenship *now*. *Supra* p. 23. That loss is plainly irreparable. *Ledbetter v. Baldwin*, 479 U.S. 1309, 1310 (1986) (Powell, J., in chambers) (harm is irreparable when "[t]he State will bear the administrative costs of changing its system to comply" and is unlikely to recover those costs in litigation). And the stay application nowhere addresses the irreparable harm that results when money damages are unrecoverable against sovereign defendants like the federal government. *Cf. Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021) (per curiam) (CDC eviction moratorium put landlords

at risk of irreparable harm "by depriving them of rent payments with no guarantee of eventual recovery").

Beyond the State's direct economic losses and harms, granting the partial stay and allowing the Citizenship Stripping Order to take effect will deprive children in the Plaintiff States of a foundational constitutional right. Citizenship confers the "right to full and equal status in our national community, a right conferring benefits of inestimable value upon those who possess it." *Fedorenko v. United States*, 449 U.S. 490, 522 (1981) (Blackmun, J., concurring). It guarantees the opportunity to participate and belong in society—to live free from fear of deportation and to vote, serve on a jury, and travel. Resp. App.135a-37a; 104a-05a; 365a-68a. It offers the opportunity to achieve economic, health, and educational potential through the right to work legally and eligibility for social supports, such as federally backed healthcare benefits, cash and food assistance during vulnerable times or emergencies, and eligibility for federal student financial aid. Resp. App. 111a-12a, 114a; 91a-95a; 122a, 123a-24a. In short, citizenship "confers legal, political, and social membership in the United States, thus creating paths to mobility." Resp. App. 110a-11a.

Allowing the Citizenship Stripping Order to take effect means immediately denying citizenship rights and attendant benefits to at least 150,000 children born each year in the United States. Instead of the right to full participation and belonging in their home country—the United States—these children will be forced to live "in the shadow," under the constant risk of deportation while the appeals run their course. Resp. App. 116a; *see also* Resp. App. 134a, 136a-38a; 104a-05a. "[D]enying birthright citizenship to children born in the U.S. to undocumented parents will create a permanent underclass of people who are excluded from U.S. citizenship and

are thus not able to realize their full potential." Resp. App. 90a-91a. The federal government does not address any of the extensive harms that will follow if the Order takes effect.

Finally, there is a strong public interest in protecting the rule of law and not allowing the longstanding and universally accepted meaning of the Constitution's Citizenship Clause to be imperiled by executive fiat. If the federal government's requested relief is granted across the board, the Order would go into effect against virtually everyone who would be affected by it; only the named individual plaintiffs would be exempt. Thus, while appellate courts consider whether the Order is lawful at all, the stay would cause thousands of children born in the interim to be stripped of birthright citizenship constitutionally guaranteed to them, as confirmed by long-settled law and practice. The grave deprivation of rights at stake belies any interest in allowing the Order to take effect.

CONCLUSION

The Citizenship Stripping Order's attempt to unilaterally amend the Fourteenth Amendment warrants an injunction that preserves the guarantee of birthright citizenship as it has long existed: A uniform right that applies nationwide and is beyond the President's power to destroy. The federal government has failed to establish any of the criteria necessary to get the extraordinary relief they seek and have not come close to meeting their "especially heavy burden." These cases are proceeding on expedited schedules in three different courts of appeals—all of which have denied the federal government this very same intervention. The federal government has not shown irreparable harm or a reasonable probability the Court would grant certiorari and reverse the district court's order. This case is not a vehicle

to resolve the question of nationwide injunctions. And the public interest weighs heavily against granting a stay. The Application should be denied.

RESPECTFULLY SUBMITTED, April 4, 2025.

NICHOLAS W. BROWN
Attorney General of Washington

NOAH G. PURCELL
Solicitor General
Counsel of Record
MARSHA CHIEN
CRISTINA SEPE
TERA HEINTZ
Deputy Solicitors General
1125 Washington Street SE
Olympia, WA 98504-0100
Noah.Purcell@atg.wa.gov
360-753-6200
Counsel for State of Washington

COLLEEN MELODY
Civil Rights Division Chief
LANE POLOZOLA
DANIEL J. JEON
ALYSON DIMMITT GNAM
Assistant Attorneys General
800 Fifth Avenue Suite 2000
Seattle, WA 98104-3188
Lane.Polozola@atg.wa.gov
206-464-7744

KRIS MAYES
Attorney General of Arizona
JOSHUA D. BENDOR
Solicitor General
LUCI D. DAVIS
Senior Litigation Counsel
2005 N. Central Ave.
Phoenix, AZ 85004
602-542-3333
Joshua.Bendor@azag.gov
Counsel for State of Arizona

KWAME RAOUL
Attorney General of Illinois
JANE ELINOR NOTZ
Solicitor General
ALEX HEMMER
Deputy Solicitor General
115 South LaSalle St.
Chicago, IL 60603
312-814-5526
Jane.Notz@ilag.gov
Counsel for State of Illinois

DAN RAYFIELD
Attorney General of Oregon
BENJAMIN GUTMAN
Solicitor General
MICHAEL A. CASPER
Senior Assistant Attorney General
1162 Court St. NE
Salem, OR 97301
503-378-4402
Benjamin.Gutman@doj.oregon.gov
Counsel for State of Oregon