No. 24A885

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

WASHINGTON, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR A PARTIAL STAY

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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For the first 170 years of American jurisprudence, nationwide injunctions were virtually unknown. Their use remained sparing until this century, when they saw a dramatic upsurge in 2017, followed by an explosion in the last three months. These injunctions exceed the district courts' authority under Article III and gravely encroach on the President's executive power under Article II. This Court's intervention is urgently needed to restore the constitutional balance of separated powers.[1]

Our application noted 15 nationwide injunctions had been entered against the current Administration in February. In March, district courts added 13 more nationwide injunctions against the Administration. Those injunctions thwart the Executive Branch's crucial policies on matters ranging from border security, to international relations, to national security, to military readiness. They repeatedly disrupt the operations of the Executive Branch up to the Cabinet level.[2] In two months, a small

[1] The government is filing identical replies in Nos. 24A884, 24A885, and 24A886.

[2] See *National TPS Alliance* v. *Noem*, No. 25-cv-1766, 2025 WL 957677, at *46 (N.D. Cal. Mar. 31, 2025); *DVD* v. *DHS*, No. 25-cv-10676, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025); *Shilling* v. *United States*, No. 25-cv-241, 2025 WL 926866, at *27-*28 (W.D. Wash. Mar. 27, 2025); *Massachusetts Fair Housing Center* v. *HUD*,

subset of the federal district courts has doubled the number of such injunctions granted in the first three *years* of the last Administration.

This situation is intolerable. As explained in our application (at 15-28), these nationwide injunctions exceed the scope of the federal courts' equitable powers and disregard Article III's limitations on the power of the judicial branch. By allowing single, unelected federal judges to co-opt entire executive-branch policies at the drop of the hat, they create needless interbranch friction and perpetrate a truly lupine encroachment by the Judiciary on the President's Article II authority. *Morrison* v. *Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

Such injunctions are also unworkable. In case after case, they force the Executive Branch to play jurisdictional whack-a-mole in the same plaintiff-selected jurisdictions across the Nation. Indeed, even when the government immediately appeals and obtains a stay of such an injunction from a court of appeals, a district court on the other side of the country can issue a new injunction effectively undoing that appellate ruling in an instant—sometimes less than one hour later.[3]

Perhaps worst of all, these injunctions cannot avoid the regrettable appearance

No. 25-cv-30041, 2025 WL 841380, at *1 (D. Mass. Mar. 26, 2025); *Pacito* v. *Trump*, No. 25-cv-255, 2025 WL 893530, at *13-*14 (W.D. Wash. Mar. 24, 2025); *AFSCME* v. *SSA*, No. 25-cv-596, 2025 WL 868953, at *69-*71 (D. Md. Mar. 20, 2025); *Talbott* v. *United States*, No. 25-cv-240, 2025 WL 842332, at *27-*28 (D.D.C. Mar. 18, 2025), stayed, C.A. Order, No. 25-5087 (D.C. Cir. Mar. 27, 2025); *Does 1-26* v. *Musk*, No. 25-cv-462, 2025 WL 840574, at *32-*33 (D. Md. Mar. 18, 2025), stayed, 2025 WL 910413 (4th Cir. Mar. 25, 2025); *American Ass'n of Colleges for Teacher Education* v. *McMahon*, No. 25-cv-702, 2025 WL 833917, at *25 (D. Md. Mar. 17, 2025); *Maryland* v. *USDA*, No. 25-cv-748, 2025 WL 800216, at *27-*28 (D. Md. Mar. 13, 2025); *AIDS Vaccine Advocacy Coalition* v. *U.S. Department of State*, No. 25-cv-400, 2025 WL 752378, at *23 (D.D.C. Mar. 10, 2025); *Massachusetts* v. *NIH*, No. 25-cv-10338, 2025 WL 702163, at *1 (D. Mass. Mar. 5, 2025); *PFLAG, Inc.* v. *Trump*, No. 25-cv-337, 2025 WL 685124, at *30-*32 (D. Md. Mar. 4, 2025).

[3] See *Talbott*, 2025 WL 842332 (D.D.C.) (nationwide injunction blocking military policy concerning transgender servicemembers; administratively stayed by the D.C. Circuit); *Shilling*, 2025 WL 926866 (W.D. Wash.) (parallel nationwide injunction issued less than an hour after the D.C. Circuit's stay).

of politicization. It is extremely difficult to avoid the inference that the lower courts have been and are "selectively generous" in their issuance of nationwide injunctions. *California* v. *Texas*, 593 U.S. 659, 687 (2021) (Alito, J., dissenting). By repeatedly overstepping Article III's jurisdictional constraints and the bounds of traditional equitable practice, a small subset of federal district courts tars the entire Judiciary with the appearance of political activism.

Respondents present no plausible defense of that practice, either in general or as applied in these specific cases. The epidemic of universal injunctions is so difficult to defend that some respondents disclaim (N.J. Opp. 31) any argument that the nationwide injunction is an ordinary tool in the remedial toolbox. Indeed, just last year, all 22 States now seeking nationwide relief from the Birthright Citizenship Executive Order signed an amicus brief contending that "any preliminary relief should be narrowly tailored" to preclude enforcement of a challenged regulation against only the plaintiffs and not against other employers. New York et al. Amici Br. at 19 (capitalization omitted), *Tennessee* v. *EEOC*, 737 F. Supp. 3d 685 (E.D. Ark. 2024) (No. 24-cv-84). Those States may enjoy the luxury of political flexibility in the legal positions they take, but the federal courts do not.

Respondents insist that nationwide injunctions of the Citizenship Order are unsuitable vehicles for settling broader conflicts over the propriety of universal relief. But respondents' not-here, not-now objections would effectively insulate any nationwide injunction, anytime. Respondents object that the President's Executive Order breaks from the status quo. But major policy initiatives often effect major change, so that argument would impose no discipline on issuing nationwide injunctions. The notion that the government is not irreparably harmed by the status quo would allow nationwide injunctions whenever national initiatives seek to solve pressing national

problems—here, by eliminating the incentives for illegal immigration and the national-security risks created by the ability to leverage birth on U.S. soil into U.S. citizenship. See Appl. 10.

Respondents object (CASA Opp. 26; Wash. Opp. 36) that the Citizenship Order is a "categorical policy," but making categorical policy is the point of most federal rules. Respondents portray the Citizenship Order as uniquely warranting universal relief due to its putative unlawfulness and inconsistency with precedent. But that is the constant refrain of litigants challenging federal policies or rules, and here it ignores the government's compelling merits arguments and the Order's strong support under existing precedent. Respondents portray nationwide relief as essential here to avoid unworkable disparities from piecemeal injunctions. But it is a hallmark of equity practice that any properly tailored injunction necessarily distinguishes parties from bystanders.

Until this Court decides whether nationwide injunctions are permissible, a carefully selected subset of district courts will persist in granting them as a matter of course, relying on malleable eye-of-the-beholder criteria. For years, members of this Court have urged that "this Court must, at some point, confront" "this increasingly widespread practice." *DHS* v. *New York*, 140 S. Ct. 599, 600-601 (2020) (Gorsuch, J., concurring). That point is now.

A. The Government Is Likely To Succeed In Showing That The District Courts' Injunctions Were Overbroad

Respondents all focus heavily on the equities, but the most critical stay factor is "who is likely to prevail at the end of th[e] litigation." *Ohio* v. *EPA*, 603 U.S. 279, 292 (2024). The government is overwhelmingly likely to succeed in showing that the district courts' injunctions were overbroad.

1. Respondents fail to justify the injunctions' universal scope

a. Having secured nationwide relief, respondents offer only a limited defense of that nationwide scope. See CASA Opp. 22-32; Wash. Opp. 28-37; N.J. Opp. 34-39. To start, respondents fail to reconcile universal relief with Article III. They argue (CASA Opp. 25-26; Wash. Opp. 36-37) that, when the Executive issues a categorical policy, courts can enjoin enforcement of that policy categorically. But "[f]ederal courts do not exercise general legal oversight" of the Executive Branch, nor do they "possess a roving commission" to find and invalidate unlawful executive policies. *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). Courts instead resolve discrete cases by rendering "decree[s] upon the rights of the litigant[s]." *Rhode Island* v. *Massachusetts*, 12 Pet. 657, 718 (1838). Even if a court finds a categorical policy categorically unlawful, "a plaintiff's remedy must be 'limited to the inadequacy that produced his injury in fact.'" *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018) (brackets and citation omitted). Those are bedrock principles of Article III.

Universal relief also contradicts traditional equity practice. Respondents cite (CASA Opp. 27; Wash. Opp. 32-33) *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624 (1943), and *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), but neither raised or resolved any objection to the scope of district court injunctions. "Questions which merely lurk in the record" "are not to be considered as having been * * * decided." *Webster* v. *Fall*, 266 U.S. 507, 511 (1925). Regardless, *Barnette* involved a class action, and class members become parties only after a rigorous certification process, which is wholly absent here. *Devlin* v. *Scardelletti*, 536 U.S. 1, 6-11 (2002); see Wash. Opp. 32. Respondents' reliance (CASA Opp. 30-31) on "bills of peace," the precursors of class actions, likewise provides no help. They "applied to small, cohesive groups," were "representative in nature," and bound "members of the group to the

judgment." *Arizona* v. *Biden*, 40 F.4th 375, 397 (6th Cir. 2022) (Sutton, C.J., concurring). "The domesticated animal known as a bill of peace looks nothing like the dragon of nationwide injunctions." *Ibid.*

Respondents similarly err in arguing that courts have been issuing universal injunctions "for well over a century." CASA Opp. 27 (citation omitted). Federal courts' equity powers depend not on recent novelties but on the principles of equity "at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789." *Grupo Mexicano de Desarrollo S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) (citation omitted). Universal injunctions against federal defendants were nonexistent "for the first century and a half of the United States," "seem to have been rejected as unthinkable as late as" the 1920s, and were "conspicuously absent as late as" the 1950s. Samuel L. Bray, *Multiple Chancellors*, 131 Harv. L. Rev. 417, 428 (2017). Although courts began to grant such injunctions in the 1960s and 1970s, such orders remained rare "[e]ven as late as" the Obama Administration. *Labrador* v. *Poe*, 144 S. Ct. 921, 926 (2024) (Gorsuch, J., concurring).

Respondents seek to justify (CASA Opp. 25-26; Wash. Opp. 15-21; N.J. Opp. 14-17) nationwide relief by portraying the Citizenship Order as unlawful per se. But they overlook the government's compelling merits arguments, see pp. 15-17, *infra*, while mischaracterizing the Citizenship Order as a citizenship-stripping measure instead of a limitation on when federal agencies will issue documents as proof of citizenship. Regardless, as the government has explained (Appl. 18), the Court has twice held that, even when a restriction violates the Constitution—as the Order here does not—a court should enjoin the enforcement of that restriction only against "the parties before the Court," not the world. *United States* v. *NTEU*, 513 U.S. 454, 477 (1995); see *Scott* v. *Donald*, 165 U.S. 107, 117 (1897). Respondents ignore those cases,

but they show this Court need not break new ground to hold that nationwide injunctions cannot be justified simply as measures to stop putatively illegal actions. Countless litigants challenging new governmental policies portray the policies as ultra vires and contrary to longstanding precedent. But plaintiffs cannot parlay their preliminary confidence on the merits to nationwide injunctions on demand, not least because the scope of relief presents distinct legal questions from liability.

Respondents sidestep other arguments against universal injunctions. They do not explain why plaintiffs would bother surmounting class-certification hurdles when universal injunctions confer all the same benefits with none of the burdens. See Appl. 19. They ignore that universal injunctions can provide relief to bystanders who do not want it—such as the 21 States that have filed amicus briefs supporting the Citizenship Order. See *ibid.*; Tennessee Amicus Br. 2-3; Iowa et al. Amicus Br. 5. And they do not dispute that universal injunctions operate asymmetrically, requiring the government to run the table in litigation against everyone before it can begin enforcing a challenged policy against anyone. See Appl. 20.

b. Respondents fall back to arguing that nationwide relief is appropriate "in the unique circumstances of this case." CASA Opp. 27; see Wash. Opp. 31; N.J. Opp. 34-39). But their supposedly case-specific justifications would invite universal relief in almost every case.

Respondents contend (CASA Opp. 22-25; Wash. Opp. 28-37; N.J. Opp. 34-39) that courts must enter nationwide injunctions to ensure that the state and organizational respondents receive complete relief. That is no limit at all, and wrong to boot. First, the States lack standing to seek any relief, see pp. 11-14, *infra*, and the organizations may seek relief only for members named in the complaint, see Appl. 22. Second, a court could provide relief to the 22 States that have challenged the Citizenship

Order without extending the injunction to the other 28 States, and to the two organizational respondents without addressing millions of other aliens who belong to neither organization. Third, a court may grant preliminary relief only if "irreparable injury is *likely*"; "a possibility of irreparable harm" does not suffice. *Winter* v. *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). Respondents assert (N.J. Opp. 35) that a geographically limited injunction could cause irreparable harm because children covered by the Citizenship Order "may" move from one State to another, but they fail to show a *likelihood* that children will be born to covered aliens in another State, move to the plaintiff States, then apply for social services in those States, all before final judgment. Fourth, respondents' arguments prove too much. On the States' theory, States could recite that "residents can and do move across state lines" and nationwide injunctions would flow almost automatically. N.J. Opp. 36; see *Arizona*, 40 F.4th at 397 (Sutton, C.J., concurring). On the organizations' theory, an organization could always decline to identify its members and then argue that, because "the government 'would have no way to know'" who its members are, "only a universal injunction can fully protect" them. CASA Opp. 24 (citation omitted).

Respondents argue (CASA Opp. 2; Wash. Opp. 2) that the interest in "uniformity" and in avoiding "a patchwork rule" justifies nationwide relief. But Article III promotes uniformity by establishing "one Supreme Court" to resolve conflicts among the lower courts, U.S. Const. Art. III, § 1—not by creating a race among district courts to issue the first universal injunction. That system ensures that "the whole country" is not "tied down" by "the indiscreet action of one court." *Mast, Foos & Co.* v. *Stover Manufacturing Co.*, 177 U.S. 485, 488 (1900). Respondents' contrary approach "lacks a limiting principle and would make nationwide injunctions the rule rather than the exception with respect to all actions of federal agencies." *Arizona*, 40

F.4th at 397 (Sutton, C.J., concurring). As a spate of recent orders shows, a plaintiff in almost any case could invoke "uniformity" and a universal injunction would result.[4]

The interest in preserving the status quo likewise does not justify leaving the district courts' universal injunctions in effect. Contra CASA Opp. 16; Wash. Opp. 11-12; N.J. Opp. 18-21. A "blanket rule of 'preserving the status quo'" "would lead to very troubling results." *Poe*, 144 S. Ct. at 931 (Kavanaugh, J., concurring). The whole point of a new statute or executive action is usually to change the status quo. Respondents' change-is-bad theory would allow a single district court to halt any new statute or executive action, potentially for years, by concluding (rightly or wrongly) that the change it effectuates is likely unlawful. Recent district court decisions thus routinely cite preserving the status quo as grounds for universally blocking President Trump's policy initiatives.[5]

Nor can respondents justify nationwide relief as necessary to protect "similarly situated individuals" (CASA Opp. 26) or to avoid "duplicative, piece-meal litigation" (Wash. Opp. 35). "Congress has already created an avenue by which a group of litigants that share a common interest can obtain an injunction protecting the entire group—a class-action pursuant to Federal Rule of Civil Procedure 23(b)(2)." *CASA de Maryland, Inc.* v. *Trump*, 971 F.3d 220, 259 (4th Cir.) (Wilkinson, J.), reh'g en banc

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[4] See, *e.g.*, *National TPS Alliance*, 2025 WL 957677, at *46 ("uniformity" justifies nationwide relief from immigration policy); *Shilling*, 2025 WL 926866, at *28 ("uniformity" justifies nationwide relief from military policy); *Maryland*, 2025 WL 800216, at *24 ("national consistency" justifies nationwide relief from federal personnel policy) (citation omitted); *Massachusetts*, 2025 WL 70163, at *33 (concerns about "a patchwork of injunctions" justify nationwide relief from funding policy).

[5] See, *e.g.*, *Talbott*, 2025 WL 842332, at *38 (new military policy on transgender servicemembers); *Does 1-26*, 2025 WL 840574, at *31 (new policies on foreign aid); *PFLAG*, 2025 WL 685124, at *30 (new policy concerning use of federal funds to promote gender ideology); *Pacito* v. *Trump*, No. 25-cv-255, 2025 WL 655075, at *9 (W.D. Wash. Feb. 28, 2025) (new policy concerning refugee program), stayed, C.A. Doc. 28, No. 25-1313 (9th Cir. Mar. 25, 2025).

granted, 981 F.3d 311 (2020). Properly certified class actions differ critically from universal injunctions; among other things, a court must follow rigorous procedures and satisfy strict criteria before certifying a class. See *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338 (2011); Appl. at 25-31, *Trump* v. *J.G.G.*, No. 24A931 (filed Mar. 28, 2025). On respondents' view, universal injunctions would swiftly supplant class-action procedures, rendering them needless and obsolete.

c. Respondents separately deny (Wash. Opp. 14-15; N.J. Opp. 30-34) that the government's objections to the scope of the district courts' injunctions warrant this Court's review. See *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring) (identifying certworthiness as a stay factor). But individual Justices have repeatedly recognized that "this Court is dutybound to adjudicate" lower courts' authority to issue universal injunctions. *Trump* v. *Hawaii*, 585 U.S. 667, 721 (2018) (Thomas, J., concurring); see, *e.g.*, *DHS*, 140 S. Ct. at 601 (Gorsuch, J., concurring); *Griffin* v. *HM Florida-ORL, LLC*, 144 S. Ct. 1, 2 (2023) (statement of Kavanaugh, J.). The need for this Court's intervention has become urgent as universal injunctions have reached tsunami levels. In February and March, district courts have issued 28 universal injunctions or restraining orders against the current Administration. See p. 1 n.2, *supra*. That some of those universal orders have been stayed, see CASA Opp. 19, just illustrates the broader problem. Appellate courts and this Court must "lea[p] from one emergency stay application to the next," "based on expedited briefing and little opportunity for the adversarial testing of evidence," so that "the routine issuance of universal injunctions" "sow[s] chaos for litigants, the governments, courts, and all those affected by [court] decisions." *DHS*, 140 S. Ct. at 600 (Gorsuch, J., concurring).

Nor is review less warranted because the lower courts have issued multiple universal injunctions against the Citizenship Order. Contra Wash. Opp. 10. Not-

withstanding plaintiffs' demonstrated proclivity for selecting the same hospitable forums, the lower courts have repeatedly disagreed about the appropriate scope of relief. For example, while the *CASA* district court granted nationwide relief to five individuals and two organizations, see Appl. App. 56a, the *New Jersey* district court denied such relief to an individual and two organizations, granting it only to States, see *id.* at 102a. A district court in another case has similarly denied nationwide relief to organizations that challenged the Order. See *New Hampshire Indonesian Community Support* v. *Trump*, No. 25-cv-38, 2025 WL 457609, at *6 (D.N.H. Feb. 11, 2025). And in *CASA* itself, Judge Niemeyer dissented from the Fourth Circuit's denial of a partial stay. See Appl. App. 71a-74a.

Contrary to respondents' contention (CASA Opp. 19; Wash. Opp. 39-40; N.J. Opp. 32-33), these cases are appropriate vehicles precisely *because* the merits are not now before this Court, presenting clean vehicles to review the remedial question. Compare *Hawaii*, 585 U.S. at 711 (merits decision made it "unnecessary to consider the propriety of the nationwide scope of the injunction"). Multiple lower courts have issued opinions addressing that remedial issue, and the cases do not involve the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, which raises distinct questions about whether courts may vacate agency action universally. See Appl. 20 n.2.

2. The state respondents fail to establish standing

These cases present particularly good vehicles because the respondent States' lack of third-party standing to assert individuals' rights under the Citizenship Clause makes the universal injunctions here particularly inappropriate. Appl. 28-32. The States have no right to any relief at all, much less nationwide relief.

Respondents maintain (N.J. Opp. 27-28) that third parties routinely vindicate first-party rights. Not so. This Court has long recognized that a party generally

"must assert his own legal rights" and may not invoke the rights of "third parties." *Kowalski* v. *Tesmer*, 543 U.S. 125, 129 (2004) (citation omitted); see, *e.g.*, *Tyler* v. *Judges of Court of Registration*, 179 U.S. 405, 407 (1900). Although this Court has questioned whether that doctrine ranks as prudential or constitutional, see *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 127 n.3 (2014), the Court has often reaffirmed that "litigants typically lack standing to assert the constitutional rights of third parties," *United States* v. *Hansen*, 599 U.S. 762, 769 (2023); see, *e.g.*, *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 393 n.5 (2024); *Murthy* v. *Missouri*, 603 U.S. 43, 76 (2024).

Respondents argue (Wash. Opp. 21-26; N.J. Opp. 28) that States may challenge the Citizenship Order because it inflicts pocketbook injuries or sovereign harms on them. But that argument conflates Article III standing, which focuses on whether the plaintiff has suffered an "injury in *fact*," *TransUnion*, 594 U.S. at 423 (emphasis added), with third-party standing, which focuses on whether the plaintiff is asserting "his own *legal* rights," *Kowalski*, 543 U.S. at 129 (emphasis added; citation omitted). "[E]ven when the plaintiff has alleged an [Article III] injury," "the plaintiff generally must assert his own legal rights." *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975). Thus, *Kowalski* held that attorneys lacked third-party standing to challenge a state statute limiting the appointment of counsel for indigent defendants. See 543 U.S. at 127. Though the statute inflicted pocketbook injury on the attorneys, see *id.* at 129 n.2, the attorneys nonetheless lacked "third-party standing to assert the [Sixth Amendment] rights" of criminal defendants, *id.* at 134. So too here, even if the Citizenship Order inflicts Article III injuries on States, the States lack third-party standing to

invoke the constitutional and statutory citizenship rights of individuals.[6]

Respondents suggest (Wash. Opp. 21-22, 27-28; N.J. Opp. 27-28) that this Court has previously entertained third-party suits that resemble this one, but none of their cited cases involved an individual-rights claim. See, *e.g.*, *Biden* v. *Nebraska*, 600 U.S. 477 (2023) (entertaining States' claim that a loan-forgiveness program exceeded the government's statutory authority); *Department of Commerce* v. *New York*, 588 U.S. 752 (2019) (entertaining States' claim that the inclusion of a question on the Census form was unlawful). These cases do involve individual rights, and this Court has long recognized that "it is no part of [a State's] duty or power to enforce [its residents'] rights in respect of their relations with the Federal Government." *Massachusetts* v. *Mellon*, 262 U.S. 447, 485-486 (1923). Thus, the Court has held that States may not assert their residents' due-process rights, see *South Carolina* v. *Katzenbach*, 383 U.S. 301, 323-324 (1966); equal-protection rights, see *Haaland* v. *Brackeen*, 599 U.S. 255, 294-295 (2023); or First Amendment rights, see *Murthy*, 603 U.S. at 75-76. Respondents identify no good reason to treat their residents' putative citizenship rights differently.

At bottom, the States are dressing up *parens patriae* suits—*i.e.*, cases in which States seek to vindicate the individual rights of their (putative) citizens. See, *e.g.*, Wash. Opp. 13 ("[T]he injunction protects the citizenship rights of U.S.-born children."); N.J. Opp. 29 (The Citizenship Order "curtail[s] the citizenship rights of new-

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[6] The exception in third-party-standing doctrine for cases in which the "enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties' rights," *Kowalski*, 543 U.S. at 130, does not apply here. Contra N.J. Opp. 28. The federal government does not (and could not) "enforce" the Citizenship Order "against" States. The Order merely tells federal agencies when to issue citizenship documents to individuals and when to accept such documents from individuals. It does not require States to act or to refrain from acting, and it does not subject them to any sanctions for noncompliance.

born children."). But "a State does not have standing as *parens patrie* to bring an action against the Federal Government." *Alfred L. Snapp & Son, Inc.* v. *Puerto Rico ex rel. Barez*, 458 U.S. 592, 610 n.16 (1982). Belying' respondents' contention (N.J. Opp. 25-26) that the issue does not warrant certiorari, this Court has repeatedly enforced that principle in recent years, pointedly rejecting "thinly veiled attempt[s] to circumvent the limits on *parens patriae* standing." *Brackeen*, 599 U.S. at 295 n.11; see *Murthy*, 603 U.S. at 76. So too here.

Indeed, upholding the States' ability to assert third-party rights in this context would merely replicate the problems of nationwide injunctions at the state level. It would bind parties not before the court (some of whom may object to being so bound), exceed traditional bounds of equity jurisdiction, bypass far more rigorous class-certification requirements, and hamstring the President's Article II authority over huge swaths of the country—in this case, more than half the Nation's population. This Court should not countenance this junior-varsity variant of universal relief.

3. Respondents fail to justify the district courts' interference with the internal workings of the Executive Branch

Finally, the government is likely to prevail in showing that these universal injunctions improperly stymie internal Executive Branch functions by prohibiting executive agencies from formulating or issuing public guidance about how they would implement the Citizenship Order. Underscoring the clear problem with this piece of the orders, some respondents "have not objected" to allowing the Executive Branch to take "internal steps." N.J. Opp. 22.[7]

Other respondents argue (Wash. Opp. 13-14) that the Executive Branch is not

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[7] Respondents argue (CASA Opp. 35-36; N.J. Opp. 22-23) that the government did not preserve that contention below, but as the government has shown (Appl. 11-15), it has repeatedly raised that objection in all three of these cases.

entitled to start taking those steps because the policy that it seeks to implement would be unlawful. On the contrary, the Citizenship Order is lawful and restores the original public meaning of the Fourteenth Amendment. More fundamentally, while federal courts may properly enjoin the enforcement of unlawful policies against injured plaintiffs, they have no authority to interfere with the internal operations of the Executive Branch by telling executive agencies what policies they may or may not work on. Contrary to respondents' contention (Wash. Opp. 13-14), this Court did not approve a similar injunction in *Trump* v. *IRAP*, 582 U.S. 571 (2017) (per curiam); the Court instead emphasized that the court of appeals in that case had already "narrow[ed] the injunction so that it would not bar the Government from undertaking [certain] internal executive reviews," *id.* at 577.

B. The Other Stay Factors Favor Granting Relief

The equities, too, support narrowing the district courts' overbroad injunctions.

1. This Court may properly narrow the district courts' universal injunctions without considering the underlying merits

Respondents would have this Court deny the stay applications (CASA Opp. 17; Wash. Opp. 14; N.J. Opp. 16) because they focus on the scope of the district courts' universal remedies, not the merits of the Citizenship Order itself. But this Court has rejected similar arguments, most notably in *Poe*, where the Court granted a partial stay of a universal injunction, 144 S. Ct. at 921, after rejecting the dissenting Justices' objection that the movant had contested only the scope of the remedy and had not raised "merits questions," *id.* at 936 (Jackson, J., dissenting). That makes sense. The "scope of [an] injunction" is often "itself certworthy." *Id.* at 933 n.4 (Kavanaugh, J., concurring). Ensuring that lower courts comply with the "remedial principles" limiting judicial power is just as critical as merits review. *Id.* at 925 (Gorsuch, J., concurring).

In any event, respondents are wrong on the merits. The Citizenship Order reflects the original meaning, historical understanding, and proper scope of the Citizenship Clause, and likewise comports with the statute that parrots the Clause's language. See Appl. 6-10; Gov't C.A. Br. at 11-41, *Washington* v. *Trump*, No. 25-807 (9th Cir. filed Mar. 7, 2025); Kurt Lash, *Prima Facie Citizenship: Birth, Allegiance and the Fourteenth Amendment's Citizenship Clause* (2025)[8]; Samuel Estreicher & Rudra Reddy, *Birthright Citizenship Isn't as Broad as Courts Think*, Compact (Apr. 1, 2025).[9] As the government has shown, commentators agreed before the Fourteenth Amendment that children of temporarily present aliens or illegal aliens were not entitled to birthright citizenship; members of Congress expressed a similar understanding in debating the Amendment and a parallel statute; and the Executive Branch, courts, and scholars reiterated that understanding in the years immediately following the Amendment. See Appl. 7-9.

Respondents' contrary arguments lack merit. Respondents argue (CASA Opp. 1) that "birth on our soil," by itself, confers citizenship. But the text of the Citizenship Clause extends citizenship only to "persons born or naturalized in the United States, *and subject to the jurisdiction thereof*." U.S. Const., Amend. XIV, § 1 (emphasis added). Respondents' birth-only reading effectively erases the phrase "subject to the jurisdiction thereof." Respondents maintain (CASA Opp. 5-6; Wash. Opp. 15-16; N.J. Opp. 6 n.1) that "jurisdiction" means regulatory authority, but that interpretation cannot be right. For instance, this Court has held that tribal Indians do not satisfy the jurisdictional requirement, see *Elk* v. *Wilkins*, 112 U.S. 94,102 (1884), even

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[8] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5140319

[9] https://www.compactmag.com/article/birthright-citizenship-isnt-as-broad-as-courts-think/

though it is "too firmly and clearly established to admit of dispute, that the Indian tribes residing within the territorial limits of the United States are subject to [the United States'] authority," *United States* v. *Rogers*, 4 How. 567, 572 (1846).

Respondents overread (CASA Opp. 8; Wash. Opp. 3; N.J. Opp. 2) *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898), where the question presented was limited to the citizenship status of "a child born in the United States" to parents who "are the subjects of the Emperor of China, *but have a permanent domicil and residence in the United States*." *Id.* at 653 (emphasis added). That case interpreted the Citizenship Clause to protect "children born, within the territory of the United States, of all * * * persons, of whatever race or color, *domiciled within the United States*." *Id.* at 693 (emphasis added). It ultimately held that "a child born in the United States, of parents * * * [who] are subjects of the Emperor of China, *but have a permanent domicil and residence in the United States*," is a citizen. *Id.* at 705 (emphasis added). The Court has since recognized that *Wong Kim Ark* addressed only the children of foreign parents who were "permanently domiciled in the United States." *Kwock Jan Fat* v. *White*, 253 U.S. 454, 457 (1920). The Department of Justice explained after *Wong Kim Ark* that "it has never been held, and it is very doubtful whether it will ever be held, that the mere act of birth of a child on American soil, to parents who are accidentally or temporarily in the United States, operates to invest such child with all the rights of American citizenship." Spanish Treaty Claims Comm'n, U.S. Dep't of Justice, *Final Report of William Wallace Brown, Assistant Attorney-General* 124 (1910).

2. The district courts' universal injunctions cause irreparable harm to the government

Respondents err in arguing (CASA Opp. 16-20; Wash. Opp. 11-14; N.J. Opp. 17-23) that the district court's universal injunctions do not inflict irreparable harm.

The injunctions irreparably injure our system of separated powers by forbidding the Executive Branch from effectuating a fundamental policy of the President. See *Doe #1* v. *Trump*, 957 F.3d 1050, 1084 (9th Cir. 2020) (Bress, J., dissenting). On top of that, the district courts prohibited executive agencies from formulating and issuing guidance about how they would implement the Citizenship Order, irreparably harming the Executive Branch by thwarting its internal workings. That the injunctions extend nationwide dramatically aggravates the irreparable injury. See *Poe*, 144 S. Ct. at 931 n.3 (Kavanaugh, J., concurring) ("The scope of the injunction may affect evaluation * * * of the harms to the government defendant.").

The district courts' injunctions also irreparably injure efforts to protect our borders. Respondents insist (CASA Opp. 20) that "this is not a case about immigration," but ignore the ways in which a policy of near-universal birthright citizenship rewards lawbreaking and creates powerful incentives for illegal migration. It is undeniable that birthright citizenship provides a compelling "pull factor" for both illegal entry and birth tourism. See Appl. 10. Respondents deride (Wash. Opp. 13) those concerns as "baseless," yet simultaneously complain (*id.* at 32), without any apparent awareness of the irony, that a geographically limited injunction would "encourag[e]" illegal aliens "to move to the Plaintiff States."

3. The balance of the equities supports granting relief

Respondents argue (CASA Opp. 24; Wash. Opp. 2; N.J. Opp. 3) that narrowing the district courts' injunctions would be "unworkable." But there is nothing unworkable about limiting the injunctions to the parties—the two individual respondents in *Washington* and the sixteen individual respondents or organizational members in *CASA*. Respondents suggest (CASA Opp. 24) that an injunction limited to the organizational respondents' members would be too difficult to administer. But courts have

issued similarly limited relief in other pending cases where membership organizations have challenged the Citizenship Order. See p. 11, *supra*. Respondents maintain (Wash. Opp. 2; N.J. Opp. 3) that state-by-state relief would not work, even as comparable remedies have worked elsewhere. See, *e.g.*, *Texas* v. *United States*, 126 F.4th 392, 420-421 (5th Cir. 2025) (enjoining the enforcement of the Deferred Action for Childhood Arrivals Program but limiting relief to Texas).

Respondents wrongly warn (Wash. Opp. 2, 39) that, if the Citizenship Order goes into effect, individuals will "be stripped of birthright citizenship," "subject to removal or detention," or rendered "stateless." The Citizenship Order provides only that the federal government will not issue citizenship documents, or recognize citizenship documents issued to, covered individuals, see Citizenship Order § 2(a). Moreover, respondents' speculation about what problems may arise from implementation rings hollow when respondents themselves obtained injunctions preventing the Executive Branch from formulating and issuing public guidance about how the Order would be implemented.

One group of respondents contends (CASA Opp. 38-39) that any stay should incorporate a 30-day delay. That request is superfluous. The Citizenship Order itself provided that its core provision would take effect after 30 days, see Citizenship Order § 2(b), and that agencies would use that 30-day period to develop and issue guidance "regarding this order's implementation," *id.* § 3(b). The *Washington* district court's immediate nationwide TRO blocked that process, depriving agencies of that 30-day period.

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The government's applications should be granted.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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