Nos. 24A884, 24A885, 24A886

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL., *Applicants*,
v.
CASA, INC., ET AL., *Respondents*.

DONALD J. TRUMP, ET AL., *Applicants*,
v.
WASHINGTON, ET AL., *Respondents*.

DONALD J. TRUMP, ET AL., *Applicants*,
v.
NEW JERSEY, ET AL., *Respondents*.

ON APPLICATIONS FOR PARTIAL STAYS OF THE INJUNCTIONS ISSUED BY THE UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF MARYLAND, THE WESTERN DISTRICT OF WASHINGTON, AND THE DISTRICT OF MASSACHUSETTS

BRIEF OF *AMICUS CURIAE* STATE OF WEST VIRGINIA IN SUPPORT OF APPLICANTS

JAY ALAN SEKULOW
JORDAN A. SEKULOW
STUART J. ROTH
DONN S. PARSONS
WALTER M. WEBER
LIAM R. HARRELL

AMERICAN CENTER FOR LAW & JUSTICE
[redacted]

JOHN B. MCCUSKEY
Attorney General
MICHAEL WILLIAMS
Solicitor General
Counsel of Record

OFFICE OF THE
WEST VIRGINIA ATTORNEY GENERAL
[redacted]

Counsel for Amicus Curiae *State of West Virginia*

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*

In more than one case in the past few years, this Court has resisted efforts to fashion "unheralded," "transformative," and "newfound" governmental "power" from some "long-extant" source. *West Virginia* v. *EPA*, 597 U.S. 697, 724 (2022). Those cases have most often involved efforts by administrative agencies to stretch certain constrained powers given to them by Congress. See, *e.g.*, *NFIB* v. *OSHA*, 595 U.S. 109, 119 (2022). But the applications for stay now before the Court concern another spin on that same problem. Here—and in many other recent cases—federal courts have purported to discover transformative authority, buried within their traditional equity powers, to order broad relief against the executive on a nationwide, statewide, categorical, defendant-oriented, non-particularized, or "universal" basis. Such injunctions prohibit the government from applying a given law, regulation, or act to *anyone*, non-parties included. And here—just as in the agency-overreach cases—the Court should step in to resist these indiscriminate acts. Boundaries matter for courts just as they do for agencies.

Broad injunctions like those seen here invite all sorts of mischief. Initially, they offend the separation of powers, preventing the Executive from rapidly deploying or implementing vital policies. That offense alone is a serious problem, as the Union will only be preserved if it is directed by an "energetic" government, and especially an "energetic Executive." THE FEDERALIST NOS. 23, 78 (Alexander Hamilton). When the federal branches creep outside their established lanes, they also almost always do so at the expense of state power—especially when federal courts target these broad injunctions at the States themselves. See Bradford R. Clark, *Separation of Powers As A Safeguard of Federalism*,

79 TEX L. REV. 1321, 1324 (2001). But beyond that, universal injunctions ignore critical statutory, rule-based, and common-law-derived safeguards, like those built into class certification. See FED. R. CIV. P. 23. Such a disregard for process forgets that "courts of equity must be governed by rules and precedents no less than the courts of law." *Lonchar* v. *Thomas*, 517 U.S. 314, 323 (1996). And all these problems aside, sweeping injunctions of this kind further transform courts' traditional equity jurisdiction into something else altogether—something more akin a roving commission to direct the affairs of federal and state lawmakers and leaders. That, too, is wrong. "The remedial powers of an equity court must be adequate to the task, but they are not unlimited." *Sixty-Seventh Minnesota State Senate* v. *Beens*, 406 U.S. 187, 199 (1972).

The State of West Virginia urges the Court to hold that universal injunctions should not be on the table. If the Court is to leave any injunctive relief in place in these cases, the Court should tailor that relief to address the specific problems and parties before it—not whatever problems a lone district court might perceive across the board.

SUMMARY OF THE ARGUMENT

The last few decades have seen a sharp rise in the use of nationwide injunctions to hit the brakes on executive policy. Indeed, federal district court judges now hold one of the most consequential levers of power: the ability to stall a policy's implementation until litigation, often lasting years, winds its way through the courts. This condition cannot continue. For several reasons, the Court should grant the Government's applications.

First, federal courts must look to history to define their equitable powers, but universal injunctions have no historical analogues. Such injunctions were unknown in the

pre-Founding era English chancery courts. They were never issued in early American courts. And they were only sporadically used until relatively recently.

Second, injunctions like these pose constitutional problems. They disregard the limits of Article III power, which focuses on party-specific relief based on particularized claims. They also pose separation of powers problems by endowing the judiciary with sweeping supervisory authority premised on rushed, half-baked records over both the legislative and executive branches.

Third, universal injunctions aren't the way to provide broad relief—class actions, mass actions, and other forms of aggregate relief offer the better path. Those procedures have substantial historical precedent. They also bring with them safeguards and standards that prevent abuse. By offering universal injunctions, lower courts have incentivized litigants to work around those procedures and pursue serial litigation instead.

Fourth, universal injunctions threaten judicial legitimacy. They cast courts into the political thicket by inviting the broadest relief in the most contentious disputes. Such injunctions might lead the public to perceive courts as ordinary political actors—even though courts derive their authority from the soundness of their reasoning.

I. UNIVERSAL INJUNCTIONS ARE NOT GROUNDED IN EQUITY.

In issuing broad, universal injunctions that extend beyond the parties before them, district courts have overextended their own equity powers.[*] See, *e.g.*, *Trump* v. *Hawaii*, 585

[*] Injunctions resting on a court's equity powers present different considerations from remedies tied to judicial review under the Administrative Procedure Act and similar statutes. See Milan D. Smith, Jr., *Only Where Justified: Toward Limits and Explanatory Requirements for Nationwide Injunctions*, 95 NOTRE DAME L. REV. 2013, 2029 (2020); Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 VA. L. REV. 933, 1012-16 (2018).

U.S. 667, 721 (2018) (Thomas, J., concurring) (explaining how such equitable relief is "legally and historically dubious").

"The equitable powers of federal courts are limited by historical practice." *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021). And "the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789." *Grupo Mexicano De Desarrollo* v. *All. Bond Fund*, 527 U.S. 308, 318 (1999) (quoting ARMISTEAD DOBIE, HANDBOOK OF FEDERAL JURISDICTION AND PROCEDURE 660 (1928)). That English jurisdiction in turn brings with it "a background of several hundred years of history" from which American federal courts can draw guidance. *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944).

These centuries of English tradition cut against the sorts of injunctions seen here, as "[t]he English system of equity did not contemplate universal injunctions." *Hawaii*, 585 U.S. at 717 (Thomas, J., concurring); see also, *e.g.*, Nadin R. Linthorst, *Entering the Political Thicket with Nationwide Injunctions*, 125 PENN ST. L. REV. 67, 79–80 (2020); JOANNA R. LAMPE, CONGRESSIONAL RESEARCH SERVICE, NATIONWIDE INJUNCTIONS: LAW, HISTORY, AND PROPOSALS FOR REFORM 8 (Sept. 8, 2021) ("Commentators broadly agree that nationwide injunctions as currently understood did not exist in the pre-Founding English courts of equity."). That was in part because the Court of Chancery had no power to enjoin the King. *Id.* Yet it was also because the English courts applied a decidedly "party-centered understanding of injunctions." *Rodgers* v. *Bryant*, 942 F.3d 451, 461 (8th Cir. 2019) (Stras, J., concurring in part and dissenting in part) (collecting authorities). "At the

Founding, the English Chancellor would issue injunctions to protect the immediate parties, and, at times, equity would extend relief to a 'small and cohesive' group of persons who shared a common interest. But that was it." *CASA de Maryland, Inc.* v. *Trump*, 971 F.3d 220, 257–58 (4th Cir. 2020), vacated on grant of petition for rehearing en banc, 981 F.3d 311 (4th Cir. 2020) (internal citation omitted). The "small and cohesive" groups were awarded relief through' "bills of peace," but efforts to use those bills as a historical analogy for today's universal injunctions "gives analogy—and history—a bad name." *Arizona* v. *Biden*, 40 F.4th 375, 397 (6th Cir. 2022) (Sutton, J., concurring). That device was effectively a rudimentary class action, applying to an identifiably discrete group that would in turn be bound. In contrast, the universal injunctions of today dispense with class-actions guardrails (more on that below) and move far beyond a small group.

"In the United States, no nationwide injunctions were issued in the nineteenth century." Russell L. Weaver, *Nationwide Injunctions and the Administrative State*, 89 BROOK. L. REV. 853, 855 (2024). Instead, American courts of equity would consistently decline to award relief that went "beyond the case before" them. *Conway* v. *Taylor's Ex'r*, 66 U.S. 603, 632 (1861). For instance, Justice Bushrod Washington, in recognizing an equitable remedy for creditors in *Joy* v. *Wirtz*, noted that "it is necessary to distinguish between active and passive parties . . . that no decree can be made without their being before the court; and . . . that complete relief can be afforded to those who seek it, without affecting the rights of those who are omitted." 13 F. Cas. 1172, 1173 (1806). Likewise, Justice Shiras, in overturning an order enjoining the whole of South Carolina from enforcing a liquor importation ban, noted multiple problems with any theory of statewide relief. *Scott* v.

Donald, 165 U.S. 107 (1897). First, it was conjectural that the putative plaintiffs were similar enough to justify formally joining them. But more important here the decree "enjoin[ed] persons not parties to the suit." *Id.* at 117. Enjoining those not party to the suit offended not only the traditional limitations on courts of equity, but also the very basis of the court's jurisdiction in the first place. *Id.* at 115-17. Instead, the plaintiff had to rely on the fact that "officers, though not named in this suit, will, when advised that certain provisions of the act in question have been pronounced unconstitutional by the court to which the Constitution of the United States refers such questions, voluntarily refrain from enforcing such provisions." *Id.* at 117. So over and over, early American courts recognized that they could only "render a judgment or decree upon the rights of the litigant parties." *Rhode Island* v. *Massachusetts*, 37 U.S. 657, 718 (1838).

Although scholars have debated whether a federal court first issued a nationwide injunction in 1963 or 1913, compare Samuel Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 428 (2017), with Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 HARV. L. REV. 920, 924-25 (2020), it's plain enough that such injunctions were exceptionally rare until more recent years. *Labrador* v. *Poe*, 144 S. Ct. 921, 926 (2024) (Gorsuch, J., concurring). The lone examples of purportedly universal injunctions hardly considered the nature of the *remedy* rather than the substantive claim. See generally, *e.g.*, *W. Va. Bd. of Educ.* v. *Barnette*, 319 U.S. 624 (1943). So even universal injunctions' most ardent supports are unable to find any court in the early American years expressly *rejecting* the traditional party-centric conception of equitable power.

This broad distaste for universal relief held true even through the more activist era of the New Deal, when many injunctions were imposed on specific officers in favor of named plaintiffs. Landmark cases like *Adkins* v. *Children's Hospital*, *Panama Refining Co.* v. *Ryan*, and *Youngstown Sheet & Tube Co.* v. *Sawyer* all involved injunctive relief aimed at specific actions towards the plaintiffs formally involved in the suit. See Bray, *supra*, at 433-35 (discussing *Adkins*, 261 U.S. 525 (1923); *Panama Refin.*, 293 U.S. 338 (1935); and *Youngstown*, 343 U.S. 579 (1952)). Lower court judges might have been less tempted to employ an extraordinary universal remedy in part because constitutional review was speedier for much of the twentieth century. See Michael T. Morley, *Disaggregating Nationwide Injunctions*, 71 ALA. L. REV. 1, 30 (2019) ("In 1937, Congress had enacted a statute requiring plaintiffs seeking injunctions against federal laws on the grounds they were unconstitutional to pursue their claims before a three-judge panel of a federal district court, with direct appeal as of right to the U.S. Supreme Court."). But once Congress took away direct review in constitutional cases in 1976, Act of Aug. 12, 1976, Pub. L. No. 94-381, §§ 1-3, 90 Stat. 1119, 1119, lower courts seem to have eventually decided to take matters into their own hands (especially once politics became increasingly polarized).

So even as more and more of scholars, judges, and members of this Court have come to question injunctions like these, litigants like West Virginia have still seen a "recent exponential increase in district court remedies that purport to bind parties not before the court." *Health Freedom Def. Fund, Inc.* v. *Biden*, 572 F. Supp. 3d 1257, 1266 n.4 (M.D. Fla. 2021). A 2024 study, for instance, found that cases granting universal injunctions "remained low until the tail end of the Obama Administration," when the figures exploded. See

ZACHARY CLOPTON, ET AL., NATIONWIDE INJUNCTIONS AND FEDERAL REGULATORY PROGRAMS 11-15 (June 4, 2024) (report to the Admin. Conf. of the U.S.). Yet few of these decisions meaningfully considered whether the remedy could be squared with equity's English roots. If they had, perhaps many fewer of these broad injunctions—like those now before the Court—would have been issued.

In short, history cannot sustain these kinds of injunctions. And because they cannot be found "within the traditional scope of equity as historically evolved in the English Court of Chancery," *Guar. Tr. Co. of N.Y.* v. *York*, 326 U.S. 99, 105 (1945), they cannot continue to be used today.

II. COURTS LACK ARTICLE III JURISDICTION TO ISSUE UNIVERSAL INJUNCTIONS AND OFFEND THE SEPARATION OF POWERS IN DOING SO.

"[T]he lack of historical precedent" can often be "the most telling indication of [a] severe constitutional problem." *Free Enter. Fund* v. *PCAOB*, 561 U.S. 477, 505 (2010). And indeed, at least two "severe constitutional problems" can be immediately spotted in universal injunctions. For one, they exceed courts' Article III powers. For another, they upset the separation of powers by seizing both legislative and executive powers. Either is a good enough reason to reject their use.

A. Take the Article III problem first. Although the third branch of government retains the "judicial power of the United States," U.S. CONST. art. III § 1, that power is defined and limited to "cases" and "controversies," *id.* And out of respect for that limit, "remedies … ordinarily operate with respect to specific parties." *California* v. *Texas*, 593 U.S. 659, 672 (2021). Put differently, "judicial power exists only to redress or otherwise to

protect against injury to the complaining party, even though the court's judgment may benefit others collaterally." *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975); see also *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 353 (2006) (explaining a remedy "must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established"); *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979) ("[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.").

When these jurisdictional concepts are applied appropriately, "injunctive relief can[not] directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs." *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 931 (1975); see also Howard M. Wasserman, *"Nationwide" Injunctions Are Really "Universal" Injunctions and They Are Never Appropriate*, 22 LEWIS & CLARK L. REV. 335, 360 (2018) (explaining how Article III "precludes relief going beyond preventing harm to the plaintiff by attempting to prevent harm to people not before the court, at least where unnecessary to prevent harm to the plaintiff"). "But when a court goes further than that, ordering the government to take (or not take) some action with respect to those who are strangers to the suit, it is hard to see how the court could still be acting in the judicial role of resolving cases and controversies." *Dep't of Homeland Sec.* v. *New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in grant of stay). So the "universal injunction has significantly stretched the traditional equitable powers of Article III courts." *Indus. Energy Consumers of Am.* v. *FERC*, 125 F.4th 1156, 1168 (D.C. Cir. 2025) (Henderson J., concurring).

The applications now before the Court show what can happen when the jurisdictional limits are ignored. The courts below have precluded the President from applying his understanding of birthright citizenship to *anyone*, parties and non-parties alike. Those who have no quibble with the President's view—or who, for whatever reason, would choose not to pursue action against it—will still be covered by the injunctions issued here. *United States* v. *Texas*, 599 U.S. 670, 703 (2023) (Gorsuch, J., concurring in the judgment) (noting how universal remedies "can also sweep up nonparties who may not wish to receive the benefit of the court's decision"). That includes the roughly two dozen States who have expressly supported the President's order. And even people or entities who may never see any consequence from this particular executive order will be sheltered by the district courts' orders. Do those persons present "controversies" of any sort? No. At best, the courts' actions as to these non-parties become advisory opinions on which laws of Congress, rules of agencies, or orders of the President will be followed and how. But "federal courts do not issue advisory opinions about the law"—full stop. *FDA* v. *All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024).

B. Respect—or disrespect—for Article III's limits ties directly to the second problem presented by universal injunctions: a separation-of-powers violation. "The case or controversy requirement is fundamental to the judiciary's proper role in our system of government." *Murthy* v. *Missouri*, 603 U.S. 43, 56 (2024) (cleaned up); see also *DaimlerChrysler*, 547 U.S. at 341. That's not to say that separation-of-powers considerations play only a supporting role behind jurisdictional hurdles, though. They don't. "[T]he doctrine of separation of powers" can render a case non-justiciable even if a court

otherwise would have jurisdiction to hear it. *Powell* v. *McCormack*, 395 U.S. 486, 512 (1969). And "[p]roceedings not of a justiciable character are outside the contemplation of the constitutional grant." *Massachusetts* v. *Mellon*, 262 U.S. 447, 480 (1923).

Separation of powers should keep courts out of the universal-injunction business. "Shortcuts in furthering preferred policies, even urgent policies, rarely end well, and they always undermine, sometimes permanently, American vertical and horizontal separation of powers, the true mettle of the U.S. Constitution, the true long-term guardian of liberty." *In re MCP No. 165, Occupational Safety & Health Admin., Interim Final Rule: COVID-19 Vaccination & Testing*, 20 F.4th 264, 269 (6th Cir. 2021) (Sutton, C.J., dissenting from the denial of initial hearing en banc). So too here. "Universal injunctions … intrude on powers reserved for the elected branches." *Texas*, 599 U.S. at 694 (Gorsuch, J. concurring in the judgment). If such injunctions are permissible, then every executive order, every law passed by Congress, and every action by the federal government becomes subject to complete and indefinite delay by any federal judge's order. Yet these powers are nowhere to be found in Article III, as a federal court "sit[s] as a court of law, not a council of revision"; its "powers of judicial review are judicial, not legislative [or executive] in nature." *Williams* v. *United States*, 401 U.S. 667, 697 (1971) (opinion of Harlan, J.); see also *Broadrick* v. *Oklahoma*, 413 U.S. 601, 610–11 (1973) ("[O]ur constitutional system courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws."); Paul J. Larkin, Jr. & GianCarlo Canaparo, *One Ring to Rule Them All: Individual Judgments, Nationwide Injunctions, and Universal Handcuffs*, 96 NOTRE DAME L. REV. REFLECTION

55, 62 (2020) (explaining how the Framers considered and rejected a "Council of Revision" model from New York).

"Essentially, by issuing nationwide injunctions, certain federal judges are making the judiciary the superior branch of government." Linthorst, *supra*, at 88 (explaining how a nationwide injunction undermined legislative and executive efforts to address the Deferred Action for Childhood Arrivals policy). And this seizure of the reins isn't harmless error. Rather, universal injunctions "frustrated some of the most significant executive policies of both the Obama and Trump Administrations," Joseph D. Kmak, *Abusing the Judicial Power: A Geographic Approach to Address Nationwide Injunctions and State Standing*, 70 EMORY L.J. 1325, 1327 (2021), and almost certainly did the same under Biden. If the Court does not step in, then the process of passing any new law could become passage by two houses of Congress, a signature from the President, and sign-off by one or more federal district court judges.

This horizontal separation-of-powers problem harms States like West Virginia. Separating the powers of our federal government preserves the "integrity, dignity, and residual sovereignty of the States." *Bond* v. *United States,* 564 U.S. 211, 221 (2011). Balancing powers among the branches helps "ensure that States function as political entities in their own right." *Id.* On the other hand, "[p]ermitting the federal government to avoid these constraints would allow it to exercise more power than the Constitution contemplates, at the expense of state authority." Clark, *supra,* at 1324. Indeed, the Framers chose the "structure of the Federal Government" as the "*principal* means" "to ensure the role of the States." *Garcia* v. *San Antonio Metro. Transit Auth.,* 469 U.S. 528, 550 (1985)

(emphasis added); see also *Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. 519, 707 (2012) (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting) (calling "federalism and separation of powers" two of the "most important" "structural protections" in our Constitution).

Universal injunctions don't just create horizontal separation-of-powers problems for West Virginia—they also present *vertical* separation-of-powers concerns. If federal district court judges are empowered to issue broad relief in favor of non-parties as to the federal government, then they can do the same as to the States. Indeed, they already are, as this Court well knows. See, *e.g.*, *L.W. ex rel. Williams* v. *Skrmetti*, 679 F. Supp. 3d 668, 716-18 (M.D. Tenn. 2023), rev'd 83 F.4th 460, 489-91 (6th Cir. 2023), cert. granted sub nom. *United States* v. *Skrmetti*, 144 S. Ct. 2679 (2024); *Henry* v. *Abernathy*, 711 F. Supp. 3d 1300, 1312 (M.D. Ala. 2024), rev'd 2025 WL 1177671 (11th Cir. Apr. 23, 2025). But such statewide injunctions undermine principles of federalism by subordinating an entire state policy apparatus to the discretion of one federal district court judge. And "[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). States can hardly serve as laboratories of democracy if a single judge can be expected to halt the experiment at the outset.

Separation of powers concerns—horizontal and vertical alike—are particularly pronounced when universal injunctions are issued on a shortened time frame just after a law, rule, or order is adopted. Nationwide injunctions force judges into "rushed, high-stakes, low-information decisions." *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring). Rapid-fire injunctions inevitably require emergency applications that then yield decisions

with "barebones briefing, no argument, and scarce time for reflection." *Dep't of Educ.* v. *California*, 145 S. Ct. 966 (2025) (Kagan, J., dissenting). Indeed, as these injunctions are quite often preliminary, they are almost as often made based on quickly *conceived* notions of a law's constitutionality, not a substantial judicial record (let alone guidance or the like from the executive). See *City of Chicago* v. *Barr*, 961 F.3d 882, 937 (7th Cir. 2020) (Manion, J., concurring) (explaining how universal injunctions "hinder the issues' development, prevent divergent legal views and opinions from coming to the fore, and force all future litigants in this country to accept the determination of *one* district judge who was presented with *one* [law] and who took arguments from one set of parties"). In contrast, ending universal injunctions would allow "federal courts to become a little truer to the historic limits of their office; promote more carefully reasoned judicial decisions attuned to the facts, parties, and claims at hand; allow for the gradual accretion of thoughtful precedent at the circuit level; and reduce the pressure on governments to seek interlocutory relief in this Court." *Labrador*, 144 S. Ct. at 927–28 (Gorsuch, J., concurring in the grant of stay). Each of these steps would help check overreach.

Department of Education provides a good example of how universal injunction proceedings unfortunately play out at the expense of the separation of powers. There, the plaintiffs moved for the injunction (styled as a temporary restraining order) the same day they filed their complaint; the Massachusetts District Court gave them one less than a week later. *Id.* In less than a month, this Court then stayed that order, noting that none of the plaintiffs contested their unwillingness to repay any federal funds later found to be properly withheld, and the District Court had declined to impose bond. *Id.* So a mad, up-and-down

scramble impaired the Executive from implementing a priority policy wholesale based on the district court's necessarily half-formed conception of the situation. A little more targeted relief, on the other hand, would have obviated the need for the entire adventure. And *Department of Education* is no outlier. See, *e.g.*, *District Court Reform: Nationwide Injunctions*, 137 Harv. L. Rev. 1701, 1707-08 (2024) (describing how a nationwide injunction in a challenge to the contractor vaccine mandate affected review in other courts).

The story played out similarly in the cases below. The day after the President's inauguration, the plaintiffs filed three complaints *and* motions for preliminary injunctions. By February 5, barely two weeks after signing, courts had enjoined the Executive Order across the United States. Three months later, no trials have happened, nor have any courts issued any final orders. The applications before this Court represent the same artificial sense of urgency coupled with threadbare records. Far from percolating through various circuits, these cases have sprinted towards the Supreme Court. So the Court has been deprived of full consideration by lower courts, a full discussion of the Executive's views, and a full development of the factual record. See Beth A. Williams, *Discussion on Nationwide Injunctions: Introductory Remarks*, 24 TEX. REV. L. & POL. 315, 320–21 (2020) ("When a single district judge enters a nationwide injunction, he or she prevents every other district judge in the country, and every circuit judge outside his or her own circuit, from issuing a ruling with any practical effect."); Smith, *supra*, at 2032 (similarly explaining how nationwide injunctions undermine percolation in the lower courts). And to what end? If any *individual* plaintiff were facing identifiable harm from a constitutional violation, then that specific plaintiff could have been addressed. Cf. *Trump* v. *J. G. G.*, No. 24A931, 2025 WL

1024097, at *2 (U.S. Apr. 7, 2025) (vacating broad injunctions and directing claimants to individualized habeas proceedings). But the lower courts decided that simply wasn't enough.

* * *

In short, when courts grant universal injunctions, they exceed their constitutional authority and offend the separation of powers. The Court should repudiate universal injunctions.

III. AGGREGATE LITIGATION CAN MORE APPROPRIATELY SERVE THE SUPPOSED FUNCTIONS OF UNIVERSAL INJUNCTIONS.

Some suggest that universal injunctions are necessary to provide complete relief to all affected parties, create uniformity, and ensure administrability. Kmak, *supra*, at 1358-59. But they're mistaken: ordinary tools of aggregate litigation, including mass joinder and class actions, provide the same benefits with far fewer problems.

A. Unlike universal injunctions, standard mass actions have a meaningful historical pedigree. See *Richardson* v. *Ariz. Fuels Corp.*, 614 P.2d 636, 640 (Utah 1980) ("[C]lass actions have historical antecedents in rules of equity that go back several centuries in English jurisprudence."). In fact, "aggregate litigation" has been a feature of the common law nearly as long as there has been a common law. See Stephen C. Yeazell, *The Past and Future of Defendant and Settlement Classes in Collective Litigation*, 39 ARIZ. L. REV. 687, 690 (1997) (describing *Master Martin Rector of Barkway* v. *Parishioners of Nuthampstead*, 95 Seld. Society 8 (No. 210) (1981, decision rendered ~1199), a case from more than eight-hundred years ago in which defendants were grouped together in a suit by a single rector). Likewise, while the historical "bill of peace" may not be an appropriate

analogue to the universal injunction, it is an appropriate analogue to the modern class action. See *CASA de Maryland*, 971 F.3d at 259 (citing Bray, *supra*, at 426); see also *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 832 (1999).

Perhaps the first time a court recognized a class action (as it's understood today) came in a case in which a government actor imposed an arguably illegal policy. That case, *Discart* v. *Otes*, involved the unpopular decision of the royally appointed Sir Otes Grandison to change how taxes were paid in the Channel Islands. Raymond B. Marcin, *Searching for the Origin of the Class Action*, 23 CATH. UNIV. L. REV. 515, 521 (1974). King Richard II's Commissioners, dispatched to hear the case, decided that "a single complainant should argue the case for all, and that the determination of the King's Council in that one case would govern the judgment in all similar complaints." *Discart*, 30 Seld. Society 37 (No. 158, P.C. 1309) (1914). But note the sequence of events: the court effectively certified a class *before* deciding whether relief should follow. And *Discart* was the seed that grew into to American class actions. "*Discart* and the case law that followed was adopted by American courts from English law and eventually was codified as a rule in 1842 when the U.S. Supreme Court promulgated Federal Equity Rule 48, which was interpreted by courts as providing for class suits." *In re Protected Vehicles, Inc.*, 392 B.R. 633, 640–41 (Bankr. D.S.C. 2008).

Many years later, around the same time as the nationwide injunction grew in popularity, this Court updated Rule 23 of the Federal Rules of Civil Procedure to include a separate class action structure for declaratory and injunctive judgments. FED. R. CIV. P. 23(b)(2). "The rule drafters envisioned the paradigmatic 23(b)(2) case as a civil rights class

action," one "empower[ing] plaintiffs seeking injunctive remedies for constitutional violations." Brandon L. Garrett, *Aggregation in Criminal Law*, 95 CAL. L. REV. 383, 392 (2007). So from Anglo-French roots to today's modern Rule 23, the law has adapted to the balancing of interests and needs of aggregate litigation; fashioning universal injunctions on the fly should thus be unnecessary. Instead, though, "the current procedural choices are fundamentally misaligned; plaintiffs seeking systemwide relief are generally incentivized to choose a less risky, cheaper, and more autonomous universal injunction suit over a class action suit." Szymon S. Barnas, *Can and Should Universal Injunctions Be Saved?*, 72 VAND. L. REV. 1675, 1699 (2019).

B. History aside, class actions don't present the same Article III concerns seen with universal injunctions. "Injunctive relief at the conclusion of a class action is a different matter entirely. No non-parties are impacted." *Ramirez* v. *U.S. Immigr. & Customs Enf't*, 568 F. Supp. 3d 10, 27 n.7 (D.D.C. 2021). Members of a certified class have actual skin in the game, as they are bound by failed class claims just as they are winning ones. See *United States* v. *Sanchez-Gomez*, 584 U.S. 381, 387 (2018) ("[C]lass members may be bound by the judgment and are considered parties to the litigation in many important respects." (cleaned up)). On the other hand, with universal injunctions, plaintiff after plaintiff may take a shot at universal relief without binding all the other plaintiffs who might follow them. In other words, with injunctions, "the government must halt enforcement of its objectives and policies even if it bats .999 in court." *Ramos* v. *Wolf*, 975 F.3d 872, 903 (9th Cir. 2020) (Nelson, J., concurring), vacated on grant of rehearing en banc 59 F.4th 1010 (9th Cir. 2023); but cf. *United States* v. *Mendoza*, 464 U.S. 154, 162 (1984) ("[N]onmutual offensive

collateral estoppel simply does not apply against the government."). Not so for class actions, precisely because class actions remain party centric. So while class actions don't provide a workaround for Article III problems in every case, *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 431 (2021), they at least help here.

Class actions better serve prudential considerations, too. To secure class certification, named plaintiffs must meet rigorous standards through established procedures with "safeguards." *Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591, 621 (1997). Class certification's notice requirements also ensure that only those who want to participate will. Universal injunctions "avoid the ordinary hurdles of class action certification, which would otherwise serve as a barrier to such expansive relief." *Indus. Energy Consumers of Am.*, 125 F.4th at 1169 (Henderson, J., concurring); see also *Doe #1* v. *Trump*, 944 F.3d 1222, 1228–29 (9th Cir. 2019) (Bress, J. dissenting) (describing how a universal injunction "short-circuits the procedures for class certification"). At the same time, class actions often work at a slightly more deliberative pace, allowing parties to "spend their time methodically developing arguments and evidence." *Labrador*, 144 S. Ct. at 927 (Gorsuch, J., concurring) (cleaned up). "In universal-injunction practice, none of that" methodical work "is necessary." *Id.*; *E. Bay Sanctuary Covenant* v. *Barr*, 934 F.3d 1026, 1030 (9th Cir. 2019) ("National injunctions interfere with good decisionmaking by the federal judiciary." (quoting Bray, *supra*, at 461)). So while Rule 23(b)(2) class actions are themselves imperfect instruments sometimes, they are at least a better option than universal injunctions. See Michael T. Morley, *De Facto Class Actions? Plaintiff- and Defendant-Oriented*

Injunctions in Voting Rights, Election Law, and Other Constitutional Cases, 39 HARV. J.L. & PUB. POL'Y 487, 540-44 (2016).

The Rule 23 burdens aren't insurmountable. Parties have obtained class certification before knocking down a federal policy in many cases before. See, *e.g.*, *U.S. Navy Seals 1–26* v. *Austin*, 594 F. Supp. 3d 767, 776 (N.D. Tex. 2022) (enjoining the Navy's COVID-19 vaccine mandate post-certification). And class certification has become daily fare in federal courts, so district-court judges are well-equipped to deal with the issue even in contentious cases like these. Indeed, Respondents in one of the cases implicated here—*Trump* v. *Washington*—asked the district court to certify a Rule 23(b)(2) class. See Mot. to Certify Class, *Washington* v. *Trump*, (W.D. Wash. Jan. 27, 2025) (2:25-cv-00127), ECF No. 58. Their class was relatively modest, encompassing certain pregnant women and children in Washington State. See Proposed Order for Motion for Other Relief at 2, *Washington* v. *Trump*, (W.D. Wash. Jan. 27, 2025) (2:25-cv-00127), ECF No. 58. Yet the district court jumped ahead and ordered nationwide relief before certifying even that narrower class. See Minute Order at 1-2, *Washington* v. *Trump*, (W.D. Wash. Feb. 07, 2025) (2:25-cv-00127), ECF No. 118. It is impossible to understand how a judge can be insufficiently briefed to certify a limited class of plaintiffs yet have the ability to bind the defendants' conduct as to the whole world.

If a plaintiff wants to pursue broad relief, then he or she should be ready to take on the issue of class certification, especially on such high-stakes matters as these.

IV. UNIVERSAL INJUNCTIONS THREATEN JUDICIAL LEGITIMACY.

Lastly, greenlighting universal injunctions invites a crisis of judicial legitimacy. The Government's applications present an opportunity to stem the tide.

Judicial authority "ultimately rests on sustained public confidence in its moral sanction." *Baker* v. *Carr*, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting). As far back as de Tocqueville, it was understood that courts hold only "a power of opinion" that drops away if the public "scorn[s]" its pronouncements. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 142 (Harvey C. Mansfield & Delba Winthrop eds. & trans., Univ. of Chi. Press 2000) (1835). And if the public begins to sense that courts have moved beyond a "properly judicial role," then that scorn will no doubt begin to build. *Town of Chester* v. *Laroe Ests., Inc.*, 581 U.S. 433, 438 (2017). That's why "it is important for the public to perceive that [courts'] decisions are based on principle." *Dobbs* v. *Jackson Women's Health Org.*, 597 U.S. 215, 290-91 (2022). If Americans come to think that courts are base political actors seeking to "bring about the permanent resolution of a rancorous national controversy simply by dictating a settlement," then the courts' rulings will carry no more weight than the op-ed pages of the local newspaper. *Id.* at 292.

Universal injunctions have "several unfortunate consequences" for this judicial legitimacy by "encourag[ing] forum shopping" and "increas[ing] entanglement of the judiciary in the political domain." Ronald A. Cass, *Nationwide Injunctions' Governance Problems: Forum Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 GEO. MASON L. REV. 29, 42 (2019).

The forum-shopping problem is easy enough to understand. These injunctions "encourage gamesmanship, motivating plaintiffs to seek out the friendliest forum and rush

to litigate important legal questions in a preliminary posture." *Georgia* v. *President of the U.S.*, 46 F.4th 1283, 1305 (11th Cir. 2022). When a challenge involves presidential action, for instance, a group of plaintiffs might pile into a district dominated by appointees of the opposite party in the hope that party favoritism will win out. Just compare the State Plaintiffs in the cases here to the districts in which they were filed. To be sure, "[j]udges are not political operatives," *Boe* v. *Marshall*, No. 2:22-CV-184, 2025 WL 602564, at *88 (M.D. Ala. Feb. 25, 2025), so these politically oriented tactics may get a litigant nowhere. But the detrimental perception that party affiliation is the critical factors can stick among the public—and even among some judges. See, *e.g.*, *Mayor & City Council of Baltimore* v. *Azar*, 392 F. Supp. 3d 602, 620 n.12 (D. Md. 2019) ("It is clear that most of the nationwide injunctions issued against the federal government in the past two years have come from United States District Courts in states less favorably inclined politically to the current administration.").

The entanglement issue presents a slightly more subtle but perhaps more substantial problem. By no coincidence, these national injunction cases have involved some of the most contentious issues of the day. See *Labrador*, 144 S. Ct. at 927 (Gorsuch, J., concurring) ("A rising number of universal injunctions virtually guarantees that a rising number of 'high-profile' cases will find their way to this Court."). Yet "the more issues of law are inescapably entangled in political controversies, especially those that touch the passions of the day, the more the Court"—and every court, really—"is under duty to dispose of a controversy within the narrowest confines that intellectual integrity permits." *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U.S. 123, 149–50 (1951) (Frankfurter,

J., concurring). Likewise, courts should not be racing into conflicts with their co-equals. "[R]epeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if [courts] do not exercise self-restraint in the utilization of our power to negative the actions of the other branches." *Valley Forge Christian Coll.* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982) (cleaned up). And a perception of politicalization only worsens when changing administrations create a whipsaw effect in judicial outcomes. Howard M. Wasserman, *Congress and Universal Injunctions*, 2021 CARDOZO L. REV. DE NOVO 187, 189–90 (2021) (describing how the "political valence" of such injunctions has shifted between presidents). But universal injunctions reflect neither the pragmatic conservatism counseled by Justice Frankfurter in *Joint Anti-Fascist* nor the reasonable conciliation described by then-Justice Rehnquist in *Valley Forge*. Instead, in expressing openness to universal injunctions, lower courts have pushed themselves into the political realm, acting as "council[s] of revision" rather than "court[s] of law." *Williams*, 401 U.S. at 697.

When things work as they should, "the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them … It may truly be said to have neither FORCE nor WILL, but merely judgment." THE FEDERALIST NO. 78 (Alexander Hamilton). Unfortunately, little about nationwide injunctions breeds sound judgment (and thus legitimacy). The Court should therefore dispense with them once and for all.

CONCLUSION

The Court should grant the Government's applications for partial stays.

Respectfully submitted.

JAY ALAN SEKULOW
JORDAN A. SEKULOW
STUART J. ROTH
DONN S. PARSONS
WALTER M. WEBER
LIAM R. HARRELL

AMERICAN CENTER FOR
LAW & JUSTICE
[redacted]

JOHN B. MCCUSKEY
Attorney General
MICHAEL WILLIAMS
Solicitor General
Counsel of Record

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
[redacted]

Counsel for Amicus Curiae *State of West Virginia*