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.

STATE OF WASHINGTON, ET AL.,

Respondents.

DONALD J. TRUMP, ET AL.,

Applicants,

v.

STATE OF NEW JERSEY, ET AL.,

Respondents.

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

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BRIEF *AMICUS CURIAE* FOR G. ANTAEUS B. EDELSOHN IN SUPPORT OF RESPONDENTS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

G. Antaeus B. Edelsohn respectfully submits this brief in support of Respondents.[1] Mr. Edelsohn is a licensed attorney in California, Vermont, and the District of Columbia. As an officer of the court in multiple U.S. jurisdictions, Mr. Edelsohn has a keen interest in the rule of law, and national continuity of judicial interpretation to fundamental questions of Constitutional rights.

SUMMARY OF ARGUMENT

In contrast to what the government claims, universal or nationwide injunctions can be appropriate in cases which affect fundamental rights guaranteed by the Constitution. The instant case is one such example.

The government seeks to use this application for stay to skirt the central issue of constitutionality of Executive Order 14160, ordering the federal agencies to no longer recognize birthright citizenship. It does so by phrasing its appeal in terms of restricting the scope of injunctions. In its petition though, the government not only fails to realize that the underlying constitutionality issue is directly tied to the injunctions, but the government's own arguments instead end up implicating broader issues of equal protection, judicial economy, and needless waste of time and resources which would result from a ruling in its favor.

[1] In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* or his counsel made a monetary contribution to its preparation or submission.

While the government decries what it views as a burgeoning trend by district courts to use universal injunctions to styme the Executive Branch, it mistakenly argues the higher frequency of courts granting broad injunctive relief to be an abuse of power. Instead the proper method of analysis should look not at the numerical count of universal injunctions issued, but should instead look at the issues raised in the cases where such injunctions were imposed. After all each case must be evaluated on its own merits, and where a case presents a facial challenge on a binary question of a fundamental constitutional right to courts, a universal injunction can be appropriate. This is even more true if a set of geographically limited injunctions would create a haphazard patchwork of injunctions, as such a result would violate fundamental rights to equal protection under the law.

The government's attempt to highlight instances where this Court has limited or revoked universal orders or injunctions of district courts in the past, is flawed in two critical ways: first, the government conveniently ignores the many instances where nationwide injunctions were upheld; and second, the very fact this Court has overturned some injunctions is not evidence of the ills of nationwide injunctions, but is rather evidence of the proper functioning of the Judicial Branch, and the appellate process. As courts of original jurisdiction for the majority of federal cases, it is proper for district courts to have authority to issue universal injunctions, despite what the government's application asserts.

On the substantive matter of the government's application for stay, any limit on the scope of the injunction in this case would not advance the interests of justice,

but would create unnecessary multitude of problems for US Courts, the several states, and the federal government. Not only would the government's proposal for relief encourage a flurry of litigation across the country, adding an unnecessary and duplicative burden to the judicial system, but it would create a situation where a patchwork of injunctions applies. This would not only increase the complexity of states having to try to evaluate the citizenship status of every single one of their own residents, but it would create unfathomable complexity for all states dealing with persons engaging in interstate travel. The patchwork of injunction protections would also upset the equality of states by creating a two-tier hierarchy according to the federal protections afforded by where one was born. This would incentivize fraud or other criminality and would only create additional administrative and legal challenges for the federal government.

Ultimately, the government's arguments and positions are fundamentally flawed, and the Court should reject its petition.

ARGUMENT

I. Universal or nationwide injunctions can be appropriate in cases which affect fundamental rights guaranteed by the Constitution, like the instant case.

While the matter presently on appeal to the Court concerns the scope of preliminary injunctions issued by three district court judges, the underlying issue cannot be put aside. Executive Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025) (hereinafter EO 14160), proposes to fundamentally change the way this nation

regards the Constitution and the grant of citizenship, by transitioning from a framework of *jus soli* to *jus sanguinis*. While the substantive question of this proposal is not currently before the Court, the preliminary injunctions issued by the district courts still affect fundamental constitutional rights; rights inhibited by the government's appeal.

Legal challenges to law or policy come in two forms: as-applied, or facial. An as-applied challenge is based on the idea the underlying policy, law, rule, etc. is legal, but was improperly applied or enforced against the disputing party. *See*, *e.g.*, *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 289 (1921) ("A statute may be invalid as applied to one state of facts and yet valid as applied to another."); *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886) ("Though the law itself be fair on its face, and impartial in appearance, if applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances," this is a "denial of equal justice and is within the prohibition of the Constitution." (cleaned up)). In contrast, a facial challenge asserts a law, rule, or the underlying structure or an executive action is illegal against anyone, and there is no basis for its enforcement under any circumstances: "A facial challenge is an attack on a statute itself as opposed to a particular application." *City of Los Angeles v. Patel*, 576 US 409, 415 (2015). If a district court believes an injunction to be warranted in a matter involving a facial challenge to an executive order, then a nationwide injunction is appropriate.

The Court should take special note, the government's emergency applications are not challenging the district court's ability to issue any injunction, but instead are challenging to whom the scope of the injunctions should extend. However this argument actually shows the government is giving away the game, as there is no coherence or logic to a situation which would see distinct and diametrically opposite outcomes for two similarly situated individuals whose only difference is on which side of a river, county line, or mile-marker they were born. If a district court finds sufficient grounds for a preliminary injunction of the policy itself, then logic dictates that injunction must be against the entirety of that policy.

Interestingly, the case on which the President's Executive Order turns, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), dealt with an as-applied challenge to the Chinese Exclusion Acts, including the Chinese Exclusion Act, Pub. L. No. 47-126, 22 Stat. 58 (1882), the Scott Act, Pub. L. No. 50-1064, 25 Stat. 504 (1888), and the Geary Act, Pub. L. No. 52-60, 27 Stat. 25 (1892). In that case, Mr. Wong was challenging only the application of those laws against him, as he asserted his U.S. citizenship, and since the immigration laws were inapplicable against U.S. citizens, they were incorrectly applied to him. The matter presently before the Court is completely inapposite, as where Mr. Wong's claim involved only his single person, EO 14160 implicates every person who might be born in the US to non-citizen/non-resident parents. Accordingly, a universal injunction is appropriate.

1. **Where a facial challenge presents a binary question of a fundamental constitutional right to courts, and any ruling which would create a haphazard patchwork of injunctions would violate people's rights to equal protection under the law, a universal injunction is appropriate.**

Any facial challenge is predicated upon a plaintiff's argument that "no set of circumstances exists under which the [challenged action] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). This calls into question the very premise of the challenged action and necessitates an inquiry into the action's constitutionality at the broadest level. In the context here, this effectively creates a binary decision for any reviewing court to decide; either birth within the territory of the United States entitles one to an automatic grant of citizenship, regardless of the status of one's parents (with limited exceptions for "children born of alien enemies in hostile occupation and children of diplomatic representatives of a foreign State," *Wong Kim Ark*, 169 U.S. at 682), or it does not. There can be no partial or half measures.

In the instant matter, the Respondents' causes of action assert facial challenges to EO 14160. *See e.g.*, Complaint at 35–37, *CASA, Inc. v. Trump*, No. 25-cv-201 (D. Md. Jan. 21, 2025), EFC No. 1. The government's emergency applications for stay effectively seek to have the Court convert the Plaintiff-Respondents' causes of action from facial challenges to as-applied challenges. *See* Applications for Partial Stay-Defendant, *Trump v. CASA, Inc.*, No. 24A884; *Trump v. Washington*, No. 24A885; *Trump v. New Jersey*, No. 24A886, at 39 (Mar. 13, 2025) [hereinafter *Applications for Stay*] (requesting limitation of the stays except as to the named

parties or at most the named states). In practical effect though, the request for a limiting the injunctions is really asking the Court to sanction a legal and logical impossibility, by awarding Constitutional protections capriciously and inequitably.

In arguing to limit the scope of the injunctions to just the limited named/identified parties or even states, the government introduces a significant equal protection issue. Regarding the rights of illegal immigrants, the Court has held "illegal aliens . . . may claim the benefit of the Fourteenth Amendment's guarantee of equal protection." *Plyler v. Doe*, 457 U.S. 202, 215 (1982). While the specific verbiage of "equal protection" is found in the Fourteenth Amendment, which applies to the states, the Court nonetheless has held the equal protection guarantee to extend backward to the Fifth Amendment. *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Until EO 14160 announced the drastic shift in how the administration was going to interpret the citizenship clause, all persons born within the United States to parents who were illegal aliens, asylum seekers, or who had limited or temporary visas, have been granted automatic American citizenship. This means they are entitled to more constitutional rights and privileges than their parents. Any change in this framework to that specified in EO 14160 would, at most, put any future children born into the same category of protection as their parents; a category which the Court has said is entitled to the shelter of the Equal Protection Clause of the Constitution. *Plyler*, 457 U.S. at 215. The government's stay request therefore poses a serious problem for how a partial stay of an order which affects one of the most fundamental aspects of one's international status, citizenship, would accord with the

equal protection guarantees. The Court has explained "[t]he Equal Protection Clause directs that 'all persons similarly circumstanced shall be treated alike.'" *Id.* at 216 (quoting *F. S. Royster Guano Co. v. Virginia*, 253 U. S. 412, 415 (1920)). This means all children who are born to parents which fall into the categories of persons the EO would exclude from automatic citizenship at birth, should be treated alike. The government's requested stay would make that impossible.

To illustrate with a hypothetical scenario, imagine an extended family of non-citizen, illegal aliens traveling from southern New Jersey to their residence in western Pennsylvania, in two vehicles a mile or so apart, and where both cars have a pregnant woman as a passenger. Next imagine that while about to cross from Camden to Philadelphia, both women go into sudden labor and seek to get to the nearest hospital: the first car is already on the Benjamin Franklin Bridge and can only go to a hospital in Philadelphia, while the second one can make it to Cooper University Hospital in Camden, whereupon both women give birth at their respective hospitals. Logic, and the Court's explanation in *Plyler*, would lead one to conclude that both children should be treated alike, both receiving citizenship, as they clearly have virtually identical circumstances. Under the government's proposals for stay relief, however, the baby born in Camden, NJ, would be a citizen, while the one born in Philadelphia, PA, would not.

This Court has remarked on numerous occasions against deciding cases based on interpretations which would lead to "absurd results." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892). *See also*, *United States v. Granderson*,

511 U.S. 39, 47 n.5 (1994) (rejecting an interpretation of a criminal statute which would result in an "absurd result"). This would clearly be a perverse outcome with absurd results, one which the Court should not allow.

2. **It is proper for district courts to have authority to issue universal injunctions, where appropriate, as they are courts of original jurisdiction for controversies brought by states, organizations/entities, or individuals, against the federal government.**

In the seminal case defining the scope and powers of the separate branches of the American government, Chief Justice John Marshall explained "[i]t is emphatically the province and duty of the Judicial Department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). This axiom is rooted in Section 2 of Article III of the Constitution, which states "[t]he Judicial Power shall extend to all Cases in Law and Equity, arising under this constitution, the Laws of the United States . . . or which shall be made under their Authority." In describing the importance of this power of review, the Chief Justice expounded on the fundamental problems posed by a law which directly contravened the Constitution, since any act which would require government officials to "close their eyes on the Constitution . . . would subvert the very foundation of all written Constitutions." *Marbury*, 5 U.S. at 178. While Chief Justice Marshall was addressing the issue of unconstitutional statutes, his warning that unchecked authority granted to Congress would "be giving to the Legislature a practical and real omnipotence" which the Constitution expressly "prescrib[es]," is equally applicable to the Executive Branch. *Id.* "The distinction

between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed." *Id.* at 176.

This Court has acknowledged the generous scope of lower courts' equitable powers to issue broad injunctions, *see Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam), and affirmed this position multiple times when reviewing cases which arose due to actions of the prior administration, including: a nationwide injunction to continue carrying out the Migrant Protection Protocols issued under the first Trump Administration, *Biden v. Texas,* 142 S. Ct. 926 (mem.) (2021); a nationwide injunction to reverse a 100-day pause on deportation of illegal immigrants, *United States v. Texas*, 143 S. Ct. 51 (mem.) (2022); and a nationwide injunction against implementation of a sweeping student loan debt-forgiveness plan. *Biden v. Nebraska*, 143 S. Ct. 477 (mem.) (2022).

In its emergency applications to this Court, the government waxed poetically about what it has characterized as an "epidemic" of district courts seeking to "govern the whole world" through universal injunctions. *Applications for Stay*, at 3. To that end, the government seems to be asking the Court to issue a ruling forbidding district courts from issuing any further such broad injunctions, *id.* at 4 ("[t]his Court should declare that enough is enough before district courts' burgeoning reliance on universal injunctions becomes further entrenched."). Even though it makes this rather lofty request, the government neglects to offer any explanation on how such a position would accord with federal law or this Court's own history of jurisprudence.

Surely the government is not insinuating the district courts lack jurisdiction over it. After all, federal statute provides the "district courts shall have original jurisdiction of any civil action against the United States, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department." 28 U.S.C. § 1346(a)(2) (cleaned up). Similarly, questions over venue for any given district court are also easily dismissed as federal statute also provides that in actions not concerning real property, and where the "defendant is an officer or employee of the United States, acting in his official capacity or under color of legal authority," a civil action "may be brought in any judicial district in which the plaintiff resides." 28 U.S.C. § 1391(e)(1) (cleaned up).

While the government's application for partial stay incorrectly asserts "[u]niversal injunctions transgress constitutional limits on courts' powers," *Applications for Stay* at 2, and declares "universal injunctions compromise the Executive Branch's ability to carry out its functions," *Id.* at 3, this line of argument is obviously disproven by the very text of the Constitution itself. The Constitution requires the President "take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 3. Imagine if a President were to order federal agents to confiscate every privately owned firearm in the nation which was not of the style and/or design of the black powder firearms extant during the founding of the nation. Such an order would obviously violate the Second, Fourth, and Fifth Amendments of the Constitution, and any federal court would be right to impose a nationwide injunction against the government from carrying out or planning to carry out such an order. While this

hypothetical might seem far-fetched, it nevertheless demonstrates the appropriateness for federal courts to have power of universal injunctions.

Given a necessity for some level of broad injunctive power, if the Court were to indulge the government's argument curtailing the injunctive powers of the district courts, the Court would be left with a quandary of how a universal injunction would be issued, when needed. Barring the particularly nuanced or precise instances specific to writ powers granted by the All Writs Act, 28 U.S.C. § 1651, the scope of authority of the circuit courts of appeal extends solely to appellate review: "It is the essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that case." *Marbury*, 5 U.S. at 175. It is hardly novel therefore to explain this means a party pursuing a cause of action against an Executive Branch policy cannot seek initial injunctive relief by petitioning such appellate bodies. Furthermore, in accordance with this Court's history of defining its original jurisdiction extremely narrowly, *see Cohens v. Virginia*, 19 U.S. 264 (1821), this Court describes itself as "a court of review, not of first view." *Ramirez v. Collier*, 595 U.S. __, 142 S. Ct. 1264, 1276 (2022) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). Against this background, the government's request would appear to lack any legal merit. This is not to say every exercise of discretion by a district court regarding a party's request for an injunction is appropriate, merely that each case is a separate and discreet matter, and any such exercise of discretion must be evaluated on its own merits and in the context of the issues being raised. The government is of course permitted to appeal adverse judgments and orders of the

district courts to the circuit courts, and from the circuit courts to the Supreme Court. While being forced to go through this process can be frustrating for a given administration, and could certainly styme the expeditious enactment of new policies or laws, this does not indicate any fault in the system; just the opposite in fact, as it shows the mechanisms of our tripartite system of government working as intended.

In the present matter, the district courts were tasked with evaluating an executive order which fundamentally upends the established understanding of the Constitution vis-a-vis birthright citizenship. The order not only seemingly contravenes over 140 years of judicial interpretation and precedent, *see In re Look Tin Sing*, 21 F. 905 (C.C.D. Cal. 1884)—Associate Justice Stephen J. Field heard the *Look Tin Sing* case while riding circuit, and wrote that the words 'subject to the jurisdiction thereof' in the Fourteenth Amendment's Citizenship Clause only "except from citizenship children born in the United States of persons engaged in the diplomatic service of foreign governments," *id.* at 906, and those "born in the armies of a [foreign] state while . . . occupying" US territory. *Id.* at 908 n. 2—but also runs counter to federal statute, 8 U.S.C. § 1401(a), and the Department of Justice's legal opinion regarding birthright citizenship. *See* Legislation Denying Citizenship at Birth to Certain Children Born in the United States, 19 Op. O.L.C. 340 (1995). Accordingly, the district courts reasoned the orders and instructions in EO 14160 were in fact *ultra vires*, and issued their injunctions. Even if the Court were to subsequently find the executive order to not be unconstitutional, doubtful as that

seems, a universal injunction is still an acceptable action at this stage of litigation, and the lower rulings should be affirmed.

II. Any limit on the scope of the injunction in this case would create unnecessary multitude of problems for US Courts, the several states, and the federal government.

The government's request to limit the scope of the injunctions to only the limited named/identified parties, or even to the states which joined the suits, is not "modest," as it claims, *Applications for Stay*, at 1, but would cause drastic repercussions across all levels of government. While there exists no automatic right to a preliminary injunction, the Court has described the need to consider "the balance of equities and consideration of the public interest," taking into account the potential harms which a plaintiff would suffer absent the injunction. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 32 (2008) (dealing with an injunction against the U.S. NAVY from using certain sonar tools in training exercises due to concerns over the effect of the sonar systems on marine animals). Since the passage of the Fourteenth Amendment, over 150 years ago, the general concept of *jus soli* has been accepted by every federal administration and has been relied upon by all ranks of government, from small municipalities through to the federal level. The routine processing of birth certificates, regardless of parental status, is deeply embedded in the administrative workings of our nation, covering everything from federal assistance for state-run programs and child support enforcement, to securing a social security card, and a passport; and that is just in a child's very first years of life. In

Winter, the Court felt the government was able to sufficiently articulate concrete national security needs which tipped the balance of equities in favor of the government, over the concerns to the maritime wildlife. *Id.* at 26. In *Winter*, the Court needed only consider a single court's injunction, on an issue which did not affect any substantive constitutional rights of any persons residing in the U.S.; in contrast, a reduction in the scope of the injunctions in the present matter will reach far broader and will cause significantly more upset across the administrative and judicial systems throughout the nation. Maintaining the century-and-a-half status quo will avoid any such upset, until and unless the executive order is determined to be constitutional.

1. The government's request to limit the scope of the injunction to only a small number of parties or only the states where the instant cases are being litigated would encourage a flurry of litigation across the country, adding an unnecessary and duplicative burden to the judicial system.

The matter presently before the Court involves rulings from three separate circuit courts, regarding cases being brought in three separate district courts. If the Court was to grant the government's request to limit the scope of the present injunctions in any capacity, it would effectively be encouraging every potential litigant in the nation to file suits in every uncovered district against the government on the exact same issue which started the instant cases. This would result in a needless waste of time, money, and resources for the federal judiciary, likely clogging many already heavily burdened dockets, and serving no practical purpose.

Even in the early years of this nation, courts and lawmakers alike realized the inefficiencies of having multiple district courts simultaneously adjudicating the same question, and thus sought to address those issues through the judicial concept of consolidation. Act of July 22, 1813, §3, 3 Stat. 21 (1813) (later codified as Rev. Stat. § 921 and 28 U. S. C. § 734 (1934 ed.)). This concept is currently known as Rule 42(a)(2) of the Federal Rules of Civil Procedure. Building on this idea, and with the intent of ensuring greater judicial economy and efficiency across the nation, Congress established a Judicial Panel on Multidistrict Litigation, Pub. L. No. 90-296, 82 Stat. 109 (1968), to centralize the pretrial process of multiple cases which deal with the same questions of fact, in order to "to prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel and the judiciary." *About the Panel*, JUDICIAL PANEL ON MULTIDISTRICT LITIGATION, https://www.jpml.uscourts.gov /about-panel (last visited Apr. 25, 2025). Members of this Court have also had occasion to speak on judicial economy; in the 2015 Year-End Report, Chief Justice Roberts made a point to highlight changes in the Federal Rules of Civil Procedure which were focused on "controlling the expense and time demands of litigation," with the goal being "to achieve prompt and efficient resolutions of disputes." JOHN ROBERTS, 2015 YEAR-END REPORT ON THE FEDERAL JUDICIARY 6 (2015). While on the Tenth Circuit, Justice Gorsuch cautioned against allowing or encouraging "expending substantial resources fighting over a problem that could have been readily identified and cured up front." *United States v. Uscanga-Mora*, 562 F.3d 1289, 1294 (10th Cir. 2009) (Gorsuch, J.).

The government attempts to downplay the extent to which even a partial stay would have on additional filings from other potential plaintiffs by arguing that anyone who can make a claim could seek class certification under the Federal Rules. *Applications for Stay*, at 38. This seems a rather poor argument on two grounds: 1. It implicitly recognizes the fact that a lot of people will speedily seek injunctive relief from the order, essentially forcing other courts to rehash the very same issue which the district courts in this merged case are evaluating; and 2. Class certification is an option, not a requirement, and the people who would need to be included in the class would constantly change and grow as more women invariably become pregnant and would seek injunctive relief. This argument does nothing to counter the fact that the government's petition effectively encourages the very opposite of measured judicial economy, without benefitting either the potential plaintiffs or the government. For this reason, the government's applications should be denied.

2. A situation where a patchwork of injunctions applies would not only increase the complexity of states having to deal with their own residents, but would create unfathomable complexity for dealing with persons engaging in interstate travel.

On a practical level, the states which would lose the current injunctive protections stand the most to lose while the substantive issue of the cases awaits final resolution. This would come not only from the need to overhaul the existing systems of registering births and counting citizenship, which itself would incur significant labor, service, and other associated fees, but also the natural inefficiencies of how to

implement such a vast change when there is no history or institutional framework or knowledge of running such a system. Additionally, there are the broader societal costs which would fall on the individual residents of the states, both the ones the government would continue to view as citizens and those who would now be non-citizens. This is because every child who is born in an "uncovered" state would have to go through a citizenship registration process, which would include the time and monetary costs of filing and submitting paperwork to verify citizenship status. In addition to needing new procedures to administer systems for children born inside the borders of their state, these uncovered states would also need to develop systems to account for and manage children born in other states, including injunction-covered states, who subsequently move into that uncovered state.

In the event the executive order is ultimately determined to be unconstitutional, any systems implemented as a result of a stay limiting the scope of the initial injunctions would then be moot, and all the time, costs, and administrative efforts which would have gone into making them would have done little more than waste state resources. Given the positions of three circuit courts and the significant amount of legal authority which implies EO 14160 is unconstitutional, any comparison on the balance of equities strongly indicates the government's request will merely be an exercise in needless expense.

The patchwork approach would also have significant fiscal impacts for states protected by the injunctions. Expanding upon the New Jersey/Pennsylvania hypothetical referenced above, if families in Philadelphia knew that babies born in

Camden would get citizenship protections under a geographic injunction, but would be denied such protections if born in Philadelphia, this would incentivize an influx of pregnant mothers seeking to deliver on the eastern side of the Delaware River. This thought process would apply to every state-state border community across the nation. For areas with small cities or rural towns, the number of people crossing a border for obstetric reasons might not be much, but in large metropolitan areas, the effect could very well be quite catastrophic for the medical community. Medical providers in the "covered" areas would likely be asked to handle far more patients than they are equipped to manage. Even if women did not cross borders for the actual delivery, many people would still be incentivized to move to the covered states, as the government's appeal proposes limiting the injunction to "individuals who are born or reside in those States." *Applications for Stay*, at 39. For those close to the border with a state covered by a limited injunction, this might be a possibility; but for those further afield, such a patchwork policy smacks of an insouciant capriciousness which should offend our fundamental notions of justice and the "American ideal of fairness." *Bolling*, 347 U.S. at 499.

3. Limiting the scope in the injunctions would create additional administrative and legal challenges for the federal government.

Another area of governmental inefficiency which the government's requested relief would effect, is the fact it would create significant problems for the federal government to not only try and manage such a patchwork of injunctions, but the fact

that government would also have to try and contend with newly incentivized areas of criminality and fraud in a system of its own making.

As noted, the government proposes one option to grant it relief by staying the injunctions "except as to individuals who are born or reside in [the] States," which are parties to the current cases. *Applications for Stay*, at 39. This creates two potential problems for the government: 1. People who cannot physically give birth in a "covered" state will be incentivized to commit fraud by filing for birth certificates in the states which do have such injunctive protections; and 2. Anyone who is born in a "non-covered" state, but then moves to a "covered" state, and then back to a "non-covered" state, could very well be ping-ponging back and forth in the federal system as to whether they have injunctive protection or not. To say that such a state of affairs would be an administrative nightmare, if not wholly unworkable, is an understatement.

In regard to the first issue, at present, there is no practical difference for someone if their birth certificate is issued by one state or another. This is likely because the Constitution requires "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. CONST. art. IV, § 1. While the law is still largely unsettled regarding how to treat revised birth certificates, or the scope of parental rights for such revised or amended birth certificates,[2] there does not seem to be any debate regarding a grant of credit to

[2] *See e.g.*, Anna Marie D'ginto, *The Birth Certificate Solution: Ensuring The Interstate Recognition Of Same-Sex Parentage*, 167 U. Pa. L. Rev. 975 (2019).

the recognition of the location and veracity of the birth listed on the birth certificate. A birth certificate from Kansas is not treated any differently from one from Maine when presented to a school district for student registration or to a Social Security Administration official when applying for a Social Security Number. Under the government's proposal of limited injunctive coverage, a two-tiered system of birth certificate value would instantly be created, and any non-citizen parent with concerns for the citizenship of their child would be incentivized to secure a higher tier birth certificate, which would incentivize unscrupulous or other actors to provide a market to accommodate it. In practical terms, people would likely file home-birth notifications of birth to a high tier state to secure a more valuable birth certificate. While the states are aware of the need to prevent foreigners born abroad from fraudulently filing for birth certificates, there has never been a need to police filings according to the specific state where a birth occurred. This would suddenly become an issue. Since states report vital statistics to the federal government as part of program administered by the National Center for Health Statistics, Health Services Research, Health Statistics, and Medical Libraries Act of 1974, Pub. L. No. 93-353, 88 Stat. 362) (1974), distortions in the data due to birth registration gamesmanship will frustrate part of the purpose and usefulness of the data collected.

The other issue concerns the potential for constant changes of status for a child who does not have the benefit of injunctive coverage due to their state of birth, but might have it due to their state of residence. Under the government's proposal for limiting the injunctions to "individuals who . . . reside in those [covered] States,"

Applications for Stay, at 39, it appears a child born in Philadelphia but taken to live in New Jersey would receive federal injunctive protection. What would happen though if that child were to then move to an uncovered state? This could very well see the child lose the injunctive protection, effectively meaning that the child would lose their citizenship without taking any steps to renounce, nor leaving the territory of the US. A situation like this would be patently unworkable and would be impossible to even begin to administratively manage at the federal level.

While this line of argument, trying to prognosticate all the permutations of the effects of a nationally inconsistent citizenship policy, necessarily strays into what Justice Kagan would likely term as the "squishier" areas of legal reasoning, the practical effects would be no less real. *E.g. cf.* Transcript of Oral Argument at 20–21, *Fuld v. PLO*, No. 24-20 (Apr. 1, 2025). The government's proposals not only lack legal support but would wreck havoc across the nation, with nary an iota of benefit to counter the ills. The Court should clearly rule against the government, as the balance of equities dictates.

* * *

CONCLUSION

For the foregoing reasons, the Courts of Appeals for the First, Fourth, and Ninth Circuits were correct to reject the government's requests for stays of the district courts' universal injunctions against Executive Order 14160. Accordingly, the judgments of the Appellate Courts should be affirmed.

Respectfully submitted,

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