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 FOR *AMICUS CURIAE* COMMON CAUSE IN SUPPORT OF RESPONDENTS

OMAR NORELDIN
COMMON CAUSE
805 15th Street, NW,
Suite 800
Washington, DC 20005

GREGORY L. DISKANT
Counsel of Record
ARON FISCHER
ISAAC J. WEINGRAM
IAN D. EPPLER
BENJAMIN T. SEYMOUR
ANTHONY J. WONG
PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
(212) 336-2000
gldiskant@pbwt.com

Attorneys for Amicus Curiae Common Cause

381005

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Constitutional Provisions, Statutes, and Rules

Other Authorities

TABLE OF AUTHORITIES
(continued)

Page(s)

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Common Cause is a nonpartisan, grassroots organization dedicated to fair elections, due process, and ensuring that government at all levels is more democratic, open, and responsive to the interests of the people. Founded by John Gardner in 1970 as a "citizens' lobby," Common Cause has over 1.5 million members nationwide and local organizations in 23 states. Common Cause has long supported efforts to protect democracy, including ensuring an independent judiciary that resolves controversies in an impartial manner.

Common Cause has a particularly acute interest in defining who qualifies as an American citizen and can therefore vote in our elections. This includes birthright citizenship, a fundamental part of our constitutional framework since the ratification of the Fourteenth Amendment to overrule the notorious *Dred Scott* decision.

Common Cause likewise has a strong interest in seeing that this Court upholds the preliminary injunctions in these cases. While universal injunctions are not always appropriate, they are necessary here to maintain the status quo. By contrast, the Executive Order issued by President Trump threatens to strip newborn Americans of their citizenship and their corresponding ability to participate fully in our democracy.

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[1] Pursuant to Sup. Ct. R. 37.6, *amicus curiae* Common Cause and its counsel represent that they have authored the entirety of this brief, and that no person other than the *amicus curiae* or their counsel has made a monetary contribution to the preparation or submission of this brief.

Finally, as part of its mission to protect democracy, Common Cause has a strong interest in ensuring that Americans—and immigrants—are able to rely on the federal courts to invalidate unlawful government action and that the courts, in turn, are empowered to issue injunctions broad enough to meet the problem at hand. The Government's argument in these cases would invite unnecessary, repetitive and piecemeal litigation to assure that the time-honored and well-understood right to birthright citizenship is accorded to all newborn American citizens.

SUMMARY OF THE ARGUMENT[2]

This is, perhaps, the worst time in our Nation's history for this Court to consider rolling back the powers of the federal courts. The current administration is issuing an unprecedented stream of executive orders, many plainly or probably illegal. It is attacking in vitriolic and extreme language the brave federal judges who have carefully considered challenges to those executive orders and in many cases enjoined them. And it is responding to court orders limiting executive actions with evasion or what appears to be outright contempt. Not since the immediate aftermath in the South to *Brown v. Board of Education*, 347 U.S. 483 (1954), has being a federal judge required such fortitude and courage.

The particular judicial power that the Government seeks to eliminate here is the courts' ability to issue universal injunctions. The Government claims that court

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

orders should always be limited to the parties to a particular lawsuit. Two recent decisions by this Court clearly demonstrate that this is error. The judicial power to do "Equity" includes the power to enter broad, so-called universal injunctions when necessary to protect nonparties from Government overreaching. In *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025) (per curiam), this Court unanimously ordered that immigrants subject to deportation under the Alien Enemies Act (AEA), 50 U.S.C. § 21, be afforded due process rights. At the same time, the Court held that the district court lacked jurisdiction over the underlying action, so there actually were no parties seeking injunctive relief properly before the Court. Even so, this Court's universal order applied to all future deportations and protected many unknown immigrants whose cases were yet to arise. Similarly, in *A.A.R.P. v. Trump*, 145 S. Ct. 1034 (2025), this Court issued an injunction protecting a putative, but uncertified, class of all detainees in the Northern District of Texas, even though only three plaintiffs were named in the complaint. *J.G.G.* and *A.A.R.P.* were both decided too recently to be addressed in the Respondents' briefs, but if the Government's argument were correct, both of those decisions of this Court were *ultra vires*.

In this fraught time for our Nation, it is essential that the courts retain in their armamentarium of judicial tools the power to issue universal injunctions to prevent Government overreach and irreparable injury to innocents.

ARGUMENT

I. Recent Decisions by This Court Confirm That Federal Courts Have Equitable Power to Grant Universal Relief in Appropriate Cases

Article III of the U.S. Constitution vests both this "supreme Court, and . . . such inferior Courts as the Congress may . . . ordain and establish" with "[t]he judicial Power of the United States." U.S. Const. art. III, § 1. The judicial power of the federal courts, both this Court and the "inferior" courts, extends to cases "in Law and Equity." U.S. Const. art. III, § 2. "The essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by unlawful action." *Freeman v. Pitts*, 503 U.S. 467, 487 (1992). The Constitution makes no distinction between the Equity powers of this Court and those of the inferior federal courts.

We agree with the Respondents, *amica*, and scholars who ably demonstrate that the judiciary's equitable powers permit federal courts—all federal courts—to grant relief to nonparties, when warranted under the circumstances. *See* CASA Opp. 27–32; Wash. Opp. 32–33; Sohoni Amica Br. 2–18; Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 Harv. L. Rev. 920 (2020); Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. Rev. 1065 (2019). Here, we wish to emphasize that *this Court* itself has repeatedly exercised that authority in appropriate cases, including very recently.

A. This Court Issued Universal Orders Binding on Nonparties in the Last Month

Just three weeks ago, this Court provided universal relief to all detainees subject to removal orders under the AEA. In *Trump v. J.G.G.*, the District Court for the District of Columbia issued temporary restraining orders (TROs) in favor of a provisionally certified class of noncitizens subject to an executive order calling for the removal of suspected members of a Venezuelan gang. 145 S. Ct. at 1005. The TROs prohibited the Government from removing those individuals under the AEA. *Id.* In an emergency application to this Court, the Government sought vacatur of the TROs. *Id.*

This Court granted the Government's application and held that the district court lacked jurisdiction over the detainees' claims, since those claims should have been brought through habeas petitions in the detainees' districts of confinement. *Id.*

That ruling meant that *no* parties seeking injunctive relief were properly before the Court. By the Government's argument here, this Court therefore could not grant injunctive relief to anyone at all. Yet, despite the district court's want of jurisdiction, this Court ordered in unequivocal language that the Government uphold the due process rights of *all* future detainees allegedly subject to removal under the AEA:

> AEA detainees *must* receive notice after the date of this order that they are subject to removal under the Act. The notice *must* be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs.

Id. at 1006 (emphasis added). The Court added, "today's order and *per curiam* confirm that the detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal. . . . *It is so ordered*." *Id.*

Justice Kavanaugh concurred to "stress[]" the Court's unanimity on that important ruling. *Id.* (Kavanaugh, J., concurring). And Justice Sotomayor—in a portion of her dissent joined by three other Justices—observed: "To the extent the Government removes even one individual without affording him notice and a meaningful opportunity to file and pursue habeas relief, it does so in direct contravention of an edict by the United States Supreme Court." *Id.* at 1012 (Sotomayor, J., dissenting). Notably, this Court's universal injunction in *J.G.G.* came *after* the Government filed this stay application in which it argued that exactly this form of relief was beyond the courts' Equity power.

If the unanimity of the Court's pronouncements in *J.G.G.* were not clear enough, Justice Alito subsequently emphasized the point that *J.G.G.* constituted a direct order to the executive branch. Dissenting from the Court's order in *A.A.R.P. v. Trump* just twelve days later, Justice Alito stated in no uncertain terms that, in any event, "[t]he Executive must proceed under the terms of our order in *Trump v. J.G.G.*" 145 S. Ct. at 1036 (Alito, J., dissenting).

This Court's unanimous decision to award universal relief to all future detainees, a decision prompted by the Government's insistence on its ability to use the AEA to deport alleged gang members with no notice or hearing at all, is a vivid and recent demonstration of the breadth of the judicial power of Equity to protect

parties not before the court from the misuse of executive power. No more is needed to demonstrate the error in the Government's stay application.

But there is another recent example from this Court. The Court's order in *A.A.R.P.* also provided equitable relief that, by the Government's argument, exceeds the judicial power by providing relief to parties not before the Court. In the wake of *J.G.G.*, a putative class sought habeas relief on behalf of all detainees in the Northern District of Texas subject to removal as suspected gang members under the same executive order. After the district court denied their request for a TRO, the Government informed numerous detainees that they would be immediately removed under the AEA. *See* Appl. for Emergency Injunction 1–2, *A.A.R.P. v. Trump*, No. 24A1007 (Apr. 18, 2025).

This was an emergency. By the time the application for injunctive relief reached this Court, detainees were already on buses headed to the airport. And so, in a classic example of the appropriate use of judicial power to award relief in a dire and exigent setting, the Court issued a class-wide order at 1 A.M. on April 18, 2025: "The Government is directed not to remove any member of the putative class of detainees from the United States until further order of this Court." 145 S. Ct. at 1034.

But the three named detainees who were parties before the Court represented only a *putative* class, a point made by Justice Alito in dissent. *Id.* at 1036 (Alito, J., dissenting) (observing "the Court provided class-wide relief, [but] the District Court never certified a class"). Until a class is certified, members of a putative class are not

parties to the proceeding. *See Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011). And the Government argues here that uniform relief to a class is inappropriate unless the class has been certified. Gov. Br. 38. The *A.A.R.P.* putative class was not certified, not even provisionally. This Court nevertheless recognized the propriety and necessity of providing emergency relief to nonparties facing immediate and illegal removal. The 7-2 *A.A.R.P.* decision is another good example of the appropriate use of the Equity power to protect against irreparable injury in extreme circumstances.

B. This Court and the Lower Courts Have Repeatedly Sustained Universal Injunctions Against Administrations from Both Parties

J.G.G. and *A.A.R.P.* are very recent examples, but they are not outliers. This Court has repeatedly denied stay applications and permitted lower courts' universal injunctions to restrain the policies of Democratic and Republican presidents alike.[3] It has affirmed such injunctions on the merits and, as in *J.G.G.* and *A.A.R.P*, issued such injunctions on its own. The *amica* brief of Mila Sohoni provides a collection of such cases spanning more than a century of this Court's history.[4]

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[3] *See, e.g., Biden v. Nebraska*, 600 U.S. 477, 507 (2023); *Nat'l Fed'n of Indep. Bus. v. Occupational Safety & Health Admin.*, 595 U.S. 109, 120 (2022) (per curiam); *United States v. Texas*, 143 S. Ct. 51 (2022); *Biden v. Texas*, 142 S. Ct. 926 (2021); *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758 (2021) (per curiam); *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 583 U.S. 1162 (2018); *Trump v. E. Bay Sanctuary Covenant*, 586 U.S. 1062 (2018).

[4] *See, e.g.*, *Lewis Publ'g Co. v. Morgan*, 229 U.S. 288 (1913) (statute enjoined against other newspaper publishers); *Bd. of Trade of Chi. v. Olsen*, 262 U.S. 1 (1923) (barring enforcement of statute against anyone within jurisdiction of U.S. Attorney); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925) (affirming injunction restraining enforcement of state law); *Hague v. Comm. for Indus. Org.*, 307 U.S. 496 (1939) (affirming injunction protecting those acting in sympathy or in concert with the plaintiffs); *W.V. State Bd.*

(*footnote continued …*)

There is no split of authority on the question whether universal injunctions are within the courts' Equity power. While there are some nuances in the circuits about when such injunctions are appropriate, eleven of the thirteen circuits have had occasion to reach the issue and *all* have concluded that the courts' Equity power permits universal relief in appropriate cases.[5]

Ignoring this precedent, the Government insists that court orders can apply only to the parties before the court and that otherwise, a judicial decision and order are simply precedent. Gov. Br. 18–19. Just precedent when issued by a court of appeals; just precedent when issued by this Court. Thus, the Government grudgingly acknowledges that this Court can proclaim the law "throughout the Nation," but contends that even this Court's orders declaring a statute unconstitutional and unenforceable are not universally binding orders on the Government subject to the Court's contempt power. *Id.* at 19. They simply constitute "controlling precedent"

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of Educ. v. Barnette, 319 U.S. 624 (1943) (affirming injunction protecting any other children having religious scruples); *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 582 (2017) (per curiam) (issuing stay prohibiting enforcement of an executive order against "parties similarly situated"); *see also* Sohoni Amica Br. 2–18.

[5] *See New Jersey v. Trump*, 131 F.4th 27, 43 (1st Cir. 2025); *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 88 (2d Cir. 2020); *Pennsylvania v. President of the United States*, 930 F.3d 543, 575–76 (3d Cir. 2019), *rev'd on other grounds sub nom. Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020); *HIAS, Inc. v. Trump*, 985 F.3d 309, 326–27 (4th Cir. 2021); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015); *Washington v. Reno*, 35 F.3d 1093, 1103–04 (6th Cir. 1994); *City of Chicago v. Barr*, 961 F.3d 882, 916 (7th Cir. 2020); *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022); *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 986 (9th Cir. 2020); *State of Florida v. Dep't of Health & Hum. Servs.*, 19 F.4th 1271, 1281–82 (11th Cir. 2021); *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409–10 (D.C. Cir. 1998).

and, pursuant to *stare decisis*, the Government could no longer enforce the unconstitutional statute in court. *Id.* at 18–19.

Everything is wrong with this argument. A controlling precedent does not constitute a court order that demands compliance. Instead, *stare decisis* "deals only with law, as the facts of each successive case must be determined by the evidence adduced at trial." *Preminger v. Sec'y of Veterans Affs.*, 517 F.3d 1299, 1309 (Fed. Cir. 2008) (citation omitted). Although a controlling precedent is "binding in *future cases*," *Gately v. Commonwealth of Massachusetts*, 2 F.3d 1221, 1226 (1st Cir. 1993) (emphasis added), a court must apply the precedent to each new set of facts before the legal rule can become a direct command, punishable by contempt of court. This is what the three district courts did in this case. They applied this Court's binding precedent on the meaning of birthright citizenship, found the Executive Order to be unconstitutional, and *ordered* the Government not to enforce it against anyone.

But by the Government's view, that was just round one of a potentially unending cycle of litigation because the injunctions could protect only 18 named plaintiffs. To protect all newborns, each newborn, through his or her parent or guardian, would have to initiate a new litigation, even though the constitutional defect had already been adjudicated. In effect, the Government's theory denies that it has any obligation to comply with any injunction in this case on pain of contempt—even a final order of this Court—except with respect to 18 persons. It would shift the burden of enforcement onto the thousands not before the Court, whose only hope of a

universal remedy would be class certification that the Government would surely oppose.

The Government's impoverished view of this Court's remedial authority cannot be reconciled with *J.G.G.* and *A.A.R.P.* A court order under the judiciary's Equity power, whether from this Court or an inferior court, applies to those within its scope.[6] In some cases, that will be just the parties before the court. In others, it will be members of a putative class. In still others, like this case, the relief will be uniform because the challenged government action calls for uniform relief, and Equity permits that result.

II. The Universal Injunctions in These Cases Should Not Be Stayed

On this motion to stay the preliminary injunctions pending appeal, the question is whether the Government has "b[orne] the burden of showing that the circumstances justify" this Court's "intrusion into the ordinary processes of administration and judicial review" through an exercise of "judicial discretion" to grant a stay. *Nken v. Holder*, 556 U.S. 418, 427, 434 (2009) (citations omitted). In assessing whether the Government has met this heavy burden, this Court should be

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[6] The Government implies, but does not say, that this Court may have greater remedial authority derived from its position atop the federal judiciary. This makes no sense. This Court sits to review lower court orders, not to expand them. If the district courts are limited to injunctions protecting only those before them, as the Government argues, it is nonsensical to suggest that this Court, and only this Court, can *expand* the injunction on appeal. To the contrary, this Court's remedial authority is part of the "judicial Power" to preside over cases in "in Law and Equity" under Article III. U.S. Const. art. III, §§ 1–2; *see* Owen W. Gallogly, *Equity's Constitutional Source*, 132 Yale L.J. 1213, 1277 (2023). The Constitution vests that same power in every federal court. *See Texas*, 809 F.3d at 188.

guided by the "same sound principles" that have historically guided both it and the other federal courts: it should assess "(1) whether the [Government] is likely to succeed on the merits, (2) whether [the Government] will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies." *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 291 (2024) (cleaned up). The Government cannot meet this standard, and this Court should deny the requested stay.

A. The Government Is Unlikely to Succeed on the Merits

This Court has explained that the "resolution of . . . stay requests ultimately turns on the merits and the question who is likely to prevail at the end of this litigation." *Ohio*, 603 U.S. 279 at 292 (citation omitted). But even though likelihood of success on the merits is the "essential factor in determining when to grant emergency relief," *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring), the Government's papers are evasive about the exact questions on which it contends it is likely to succeed and that it wants this Court to consider.

In its stay application, the Government asserted that it was only seeking a stay on the remedial issue of universal injunctions, not on merits issues. Gov. Br. 1 (describing the application as a "modest request" to stay the universal injunctions while "the parties litigate weighty merits questions"). It asserted the challenged injunctions were too broad, not only because they were universal in nature, but also because they included all citizens in the plaintiff States and all members of a plaintiff organization. *Id.* at 1–4. But by acknowledging that it was *not* seeking a stay of the

district courts' merits rulings and injunctions "as to the individual plaintiffs and the identified members of the organizational plaintiffs," the Government effectively conceded that—at least for purposes of this stay application—it was assuming and not disputing that the Executive Order is itself unconstitutional and its only complaint here is about the scope of relief. *Id.* at 4. This Court should treat that as a concession for purposes of considering this stay motion.

In reply, the Government repeats this position, touting as a virtue that "the merits are not now before this Court" making this case a "clean vehicle[] to review the remedial question." Reply 11. But perhaps realizing that its implicit concession was a mistake, it also offers a full-throated defense of the Executive Order on its merits, arguing that it "reflects the original meaning, historical understanding, and proper scope of the Citizenship Clause." *Id.* at 16.

The Government cannot have it both ways and its shape-shifting argument is, by itself, a reason to deny the stay applications.[7] In any event, the Government is unlikely to succeed, whether its application is understood as one addressed to the remedy or to the merits.

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[7] "A stay is not a matter of right . . . . [I]t is instead an exercise of judicial discretion" that turns on both likelihood of success on the merits and other factors. *Nken*, 556 U.S. at 433 (cleaned up). Similarly, this Court's exercise of its certiorari power is "discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review." *Ross v. Moffitt*, 417 U.S. 600, 617 (1974). When petitioners on this Court's certiorari docket change their arguments over the course of briefing in the way the Government did here, this Court denies certiorari or dismisses the writ as improvidently granted. *See, e.g.*, *Visa v. Osborn*, 580 U.S. 993 (2016).

On the remedy, as set forth above, the Government is wrong when it argues that the district courts lack power to enter universal injunctions. It is also wrong when it asserts that the district court injunctions granting relief to the state plaintiffs should be stayed because the state plaintiffs lack Article III standing. Wash. Opp. 22–26; N.J. Opp. 24. And to the extent the Government argues (without explanation) that the members of plaintiff organizations CASA and ASAP are not entitled to relief unless they are named in the complaint, its argument ignores well developed law on organizational standing. CASA Opp. 32–35.

On the merits, to the extent that the Government argues in its reply that this Court should find that it is likely to succeed on the underlying question whether the Executive Order is constitutional, the Government's untimely argument is egregiously wrong, contradicts binding precedent of this Court, and is inconsistent with the understanding of the Citizenship Clause that has prevailed across all three branches of government for over a century. *See, e.g.*, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898); 8 U.S.C. § 1401; *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340 (1995).

B. The Irreparable Harm Factor Weighs in Favor of the Respondents

The Government will not be irreparably harmed if this Court denies a stay. The Government cursorily claims that the district courts' injunctions cause irreparable harm by "preventing a branch of government from carrying out its work" and "interfer[ing] with internal Executive Branch operations." Gov. Br. 35–36. This generalized argument, bereft of specifics, adds up to nothing more than the claim that

the Government is injured because it is enjoined from doing something it wants to do. That argument can be made in any case in which Government action is enjoined. A preliminary order maintaining the status quo while an unconstitutional policy is challenged in court is not an irreparable harm meriting this Court's intervention. Indeed, such constraint is a feature of judicial review under Constitutional government. *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) ("[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table.").

The closest the Government comes to articulating any tangible "damage" caused by the injunctions is its claim that it should not be precluded from developing internal policies and operations for use in the event (unlikely, in our view) that the Executive Order is sustained. But, like the First Circuit, we do not "read . . . the District Court's order to enjoin internal operations that are preparatory operations that cannot impose any harm" on those protected by the injunctions. *New Jersey v. Trump*, 131 F.4th 27, 44 (1st Cir. 2025) (cleaned up).

Meanwhile, granting the stay applications and narrowing the injunctions to just 18 people would injure the rights not only of immigrants who might bear children, but all Americans who have a child while the Executive Order is in place. If this Court were to grant the Government's requested stay, it would, overnight, replace the century-old easily applied rule of universal birthright citizenship with uncertainty that will only generate more litigation. Of course, those follow-on lawsuits would include class actions, and courts would be likely quickly to certify

broad classes that would, in essence, give rise to injunctive relief as capacious as the universal injunctions at issue in this case. While the Government appears to prefer class actions to universal injunctions, Gov. Br. 19, the similarity in the ultimate outcome across the two vehicles makes the Government's stay application something of an illusion.

Indeed, taking the Government's implicit concession for purposes of this application as an indication that it will eventually lose on the merits, the relief it seeks is not worth the candle. The law before the Executive Order, starting with the Fourteenth Amendment and *Wong Kim Ark*, was birthright citizenship; after this Court decides these cases on the merits, the Government's implicit concession means the law is assumed to be birthright citizenship again. And so the Government is in effect seeking a stay so that it can enforce its presumptively unconstitutional order in the interim. That is hardly injury to the Government, let alone irreparable injury.

By contrast, staying the nationwide injunctions and thrusting the well-defined universal citizenship framework into turmoil *would* cause irreparable harm to Respondents and to nonparties. If the nationwide injunctions are stayed, newborn children of immigrants not covered by the narrowed injunctions would be deprived of citizenship to which they are entitled by the Constitution and legal frameworks dating back over a century. Indeed, there is a risk that children born on U.S. soil would be processed as noncitizens without legal status in the United States, and then potentially removed or separated from their families. It is hard to imagine harm more irreparable.

Even narrowly considering the named Respondents here, the Government simply ignores the interests of CASA—an organization whose thousands of members are present in every state across the country—and how that organization would be burdened by helping its members navigate the tumult of a post-Executive Order reality. While the Government cites a solo concurrence from Justice Thomas questioning organizational standing, Gov Br. 22, that authority does not outweigh the Court's precedents permitting such standing.

Finally, narrowing the injunctions would unnecessarily burden many American citizens who have children during the period of the stay. Social security numbers are typically issued at birth through a process coordinated with state vital statistics agencies, which issue birth certificates.[8] A birth certificate showing a U.S. birth suffices. Now the parents would have to offer proof that *they themselves* are U.S. citizens, even though research shows that more than 9 percent of American citizens of voting age, or 21.3 million people, do not have proof of citizenship readily available.[9] U.S. citizens and immigrants alike would immediately face unnecessary burdens for which no adequate remedy is available.

C. The Public Interest Strongly Favors Enjoining Enforcement of the Executive Order

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[8] *What Is Enumeration at Birth and How Does It Work?*, Soc. Security Admin. (Dec. 30, 2022), https://www.ssa.gov/faqs/en/questions/KA-10041.html.

[9] Kevin Morris & Cora Henry, *Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available*, Brennan Ctr. for Just. (June 11, 2024), https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily.

This is a fraught time for the relationship between the courts and the Executive Branch. The Government is aggressively issuing Executive Orders of dubious legality, evading or ignoring court orders and attacking the judiciary. This is no time for this Court to *limit* the few powers that the courts have to do Equity in our Nation. *See* The Federalist No. 78 (Alexander Hamilton) ("[T]he judiciary is beyond comparison the weakest of the three departments of power.").

This case presents a good example of Executive action of—at best—dubious legality. The Fourteenth Amendment "provides its own constitutional rule in language calculated completely to control the status of citizenship." *Afroyim v. Rusk*, 387 U.S. 253, 262 (1967). This grant of citizenship is not a "fleeting . . . good at the moment it is acquired but subject to destruction by the Government at any time." *Id.* Nor is it subject to the whims of the President. "If the President claims authority to act but in fact exercises mere 'individual will' and 'authority without law,'" the courts must be afforded the opportunity to say so. *Trump v. United States*, 603 U.S. 593, 608 (2024) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 655 (1952)). The universal injunctions issued by the courts below are necessary to ensure courts have the opportunity to adjudicate the issue without individuals being deprived of "a right conferring benefits of inestimable value upon those who possess it." *Fedorenko v. United States*, 449 U.S. 490, 522 (1981) (Blackmun, J., concurring in judgment).

Meanwhile, this Executive Order is of a piece with a flurry of executive orders and actions by which the President has sought to "accrete to a single Branch powers

more appropriately diffused among separate Branches." *Mistretta v. United States*, 488 U.S. 361, 382 (1989). Because of the aggressive nature of the executive orders, many legal challenges have resulted. Surely, some will succeed and others will fail. But in the interim, district courts are entitled to do their best to protect the interests of the parties and the public and to do so without attack and evasion from the Government.

As this Court is well aware, high-ranking members of the Government and its allies—from the President on down—have repeatedly attacked the judiciary. For instance, President Trump attacked the judge in the *J.G.G.* case, drawing a rebuke from the Chief Justice. On social media, the President complained that Judge Boasberg "didn't WIN the popular VOTE" and "should be IMPEACHED!!!"[10] (This was not the first, or the last, time that the President, or an ally, threatened impeachment proceedings against federal judges, and many judges have felt threatened and without protection.[11])

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[10] Donald J. Trump (@realDonaldTrump), Truth Social (Mar. 18, 2025, 9:05 am), https://truthsocial.com/@realDonaldTrump/posts/114183576937425149 (last visited Apr. 29, 2025).

[11] *See, e.g*, Mark Sherman, *2 Senior Judges, Appointed by Republicans, Speak out About Threats Against Federal Judiciary*, AP (Mar. 12, 2025), https://apnews.com/article/judges-security-threats-impeachment-e4f6a57da81e7037cb9ef8693f26e17a; Mattathias Schwartz & Emily Bazelon, *Judges Worry Trump Could Tell U.S. Marshals to Stop Protecting Them*, N.Y. Times (Apr. 25, 2025), https://www.nytimes.com/2025/04/25/us/politics/trump-judges-marshals-threats.html.

Shortly after the President's statement, the Chief Justice issued a statement widely understood to be a rebuke: "For more than two centuries, it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. . . . The normal appellate review process exists for that purpose."[12]

Attacks on the judiciary, particularly as "unelected," have also come from the Government's highest-ranking law enforcement officers, the Attorney General and the Solicitor General. *See, e.g.*, Exhibit 1 to April 8, 2025 Status Report, *Jenner & Block LLP v. U.S. Dep't of Justice*, No. 1:25-cv-00916 (JDB) (D.D.C. Apr. 8, 2025), ECF No. 21-1 (Attorney General Bondi claiming that "an unelected district court yet again invaded the policy-making and free speech prerogatives of the executive branch"); Reply Br. 2 (Solicitor General Sauer complaining about "allowing single, unelected federal judges to co-opt entire executive branch policies"). It is dangerous for our system and the separation of powers when Government officials do not recognize—and do not endorse—the fact that having judges appointed by the President, confirmed by the Senate, and serving for life is one of the most important virtues of our Constitution, not a flaw to be replaced by judicial elections.

Meanwhile, the Government's responses to court orders have ranged from evasion to outright defiance, even of orders from this Court. In *J.G.G.*, the district

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[12] Chris Megerian, Lindsey Whitehurst & Mark Sherman, *Roberts Rejects Trump's Call for Impeaching Judge who Ruled Against his Deportation Plans*, AP (Mar. 18, 2025), https://apnews.com/article/donald-trump-federal-judges-impeachment-29da1153a9f82106748098a6606fec39.

court concluded that the Government's actions in hustling alleged gang members to prison in El Salvador, even after the court ordered their plane to return to the United States, probably constituted contempt of court. *See* Memorandum Opinion 8–9, *J.G.G. v. Trump*, No. 25-766 (JEB), (D.D.C. Apr. 16, 2025), ECF No. 81 ("Probable Cause Finding of Contempt").

And *A.A.R.P.* was more of the same. With only a fig leaf of purported compliance with this Court's *J.G.G.* order, the Government allegedly placed supposed gang members on buses for transport to the airport in the middle of the night, necessitating this Court's 1 A.M. order to stop. *See* 145 S. Ct. at 1034.

This course of conduct is being repeated in habeas cases elsewhere. This past Friday, April 25, 2025, another district court observed that "Executive's unpredictable and inconsistent" compliance with this Court's order in *J.G.G.* required district-wide relief. Memorandum Opinion and Order 35–36, *Sanchez Puentes v. Garite*, No. EP-25-cv-00127-DB (W.D. Tex. Apr. 25, 2025), ECF No. 27. The President responded by challenging the fundamental premise of *J.G.G.*, asserting that "[i]t is not possible to have trials for millions and millions of people. We know who the Criminals are, and we must get them out of the U.S.A. — and FAST!"[13]

The Executive's conduct in *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025), has been—if anything—more shocking. It is beyond dispute that Abrego Garcia's removal

[13] Donald J. Trump (@realDonaldTrump), Truth Social (Apr. 26, 2025, 4:37 am), https://truthsocial.com/@realDonaldTrump/posts/114406186212473866 (last visited Apr. 29, 2025).

and detention in El Salvador is "illegal." *Id.* at 1018. This Court therefore affirmed the district court's order directing the Executive to "'facilitate' Abrego Garcia's release from custody in El Salvador." *Id.* The Executive has failed to do so, parsing the term "facilitate" to mean removing "any *domestic* barriers to Abrego Garcia's return" while "do[ing] essentially nothing" to comply with this Court's order. *Abrego Garcia v. Noem*, No. 25-1404, 2025 WL 1135112, at *1 (4th Cir. Apr. 17, 2025). As Judge Wilkinson wrote for the Fourth Circuit, "[i]f today the Executive claims the right to deport without due process and in disregard of court orders, what assurance will there be tomorrow that it will not deport American citizens and then disclaim responsibility to bring them home?" *Id.* at *2.

These episodes highlight the important public interest in universal injunctive relief—and compliance with court orders—especially in the current climate. Absent such relief, each individual is left to the whims of an Executive that narrowly construes orders to the point of absurdity and ignores this Court's controlling authority. "[T]he greatest security against [such] tyranny—the accumulation of excessive authority in a single Branch—lies not in a hermetic division among the Branches, but in a carefully crafted system of checked and balanced power within each Branch." *Mistretta*, 488 U.S. at 381.

Affirming that the judicial power encompasses universal preliminary relief is necessary to push back against this Executive power grab, which encroaches on the judiciary's authority "to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

CONCLUSION

This Court should deny the Government's application for a stay.

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Respectfully submitted,

Omar Noureldin
COMMON CAUSE
805 15th Street, NW, Suite 800
Washington, DC 20005

Gregory L. Diskant
Counsel of Record
Aron Fischer
Isaac J. Weingram
Ian D. Eppler
Benjamin T. Seymour
Anthony J. Wong
PATTERSON BELKNAP
WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
(212) 336-2000
gldiskant@pbwt.com

Attorneys for Amicus Curiae Common Cause