No. 24A886

In the Supreme Court of the United States

DONALD J. TRUMP, *et al.*,

Applicants,

v.

STATE OF NEW JERSEY, *et al.*,

Respondents

RESPONSE IN OPPOSITION TO THE APPLICATION FOR A STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Donald J. Trump, President of the United States; U.S. Department of State; Marco Rubio, Secretary of State; U.S. Department of Homeland Security; U.S. Department of Health and Human Services; Robert F. Kennedy, Secretary of Health and Human Services; Kristi Noem, Secretary of Homeland Security; U.S. Social Security Administration; Leland Dudek, Acting Commissioner of Social Security; and the United States of America.

Respondents (plaintiffs-appellees below) are the State of New Jersey; Commonwealth of Massachusetts; State of California; State of Colorado; State of Connecticut; District of Columbia; State of Delaware; State of Hawaii; State of Maine; State of Maryland; State of Minnesota; State of Nevada; State of New Mexico; State of New York; State of North Carolina; State of Rhode Island; State of Vermont; State of Wisconsin; Attorney General Dana Nessel, on behalf of the People of Michigan; and City and County of San Francisco. The following individuals were plaintiffs in a case that the district court decided alongside the States' case: O. Doe; Brazilian Worker Center, Inc.; and La Colaborativa.

RELATED PROCEEDINGS

United States District Court (W.D. Wash.):

State of Washington v. Trump, No. 25-cv-127 (Feb. 6, 2025)

Franco Aleman v. Trump, No. 25-cv-163 (Jan. 27, 2025)

United States Court of Appeals (9th Cir.):

State of Washington v. Trump, No. 25-807 (Feb. 19, 2025)

State of Washington v. Trump, No. 25-674 (pending)

United States District Court (D. Md.):

CASA, Inc. v. Trump, No. 25-cv-201 (Feb. 18, 2025)

United States Court of Appeals (4th Cir.):

CASA, Inc. v. Trump, No. 25-1153 (Feb. 28, 2025)

United States District Court (D. Mass.):

State of New Jersey v. Trump, No. 25-cv-10139 (Feb. 6, 2025)

United States Court of Appeals (1st Cir.):

State of New Jersey v. Trump, No. 25-1158 (pending)

State of New Jersey v. Trump, No. 25-1170 (Mar. 11, 2025)

State of New Jersey v. Trump, No. 25-1200 (pending)

United States Supreme Court:

Trump v. State of Washington, No. 24A884 (pending)

Trump v. CASA, Inc., No. 24A885 (pending)

INTRODUCTION

For over 100 years, this Court, Congress, and the Executive Branch have all agreed that the Constitution guarantees citizenship to children born in this country, including those born to undocumented or non-permanent immigrants—a consistent body of precedent and practice that went unchallenged until January 20, 2025. In awarding preliminary relief below, the district court did no more than maintain that century-old status quo pending resolution of this dispute on the merits. Every district court to consider a challenge to the Executive Order upending birthright citizenship has granted preliminary relief, not merely because the Executive Order so flagrantly violates multiple decisions of this Court, but because of the imminent, irreparable, and profound harms that it imposes on States and individuals. And every circuit to assess applicants' demands for emergency relief has likewise denied them. All three circuits to review these applications have consistently held not only that applicants' arguments are unlikely to succeed, but also that federal agencies suffer no harm from maintaining this longstanding status quo while these appeals are resolved.

Applicants now bring a remarkable request to this Court: to allow them to strip thousands of American-born children of their citizenship, in every State or at least in 28 States, while these challenges proceed—even if doing so would contravene settled nationwide precedent. But emergency relief is not available just because applicants disagree—however fervently—with the decisions below. After all, rushed requests for emergency relief require this Court to address weighty issues "on a short fuse without benefit of full briefing and oral argument," before the full adversarial process can be completed below. *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring).

This Court has therefore placed careful limits on the availability of emergency relief, including requiring that applicants for emergency relief demonstrate that impending irreparable harms require emergency action; that the equities favor the stay; that the application raises certworthy questions; and that applicants will likely prevail on the merits. Applicants must satisfy each consideration, or there is no basis for emergency action in this Court. The instant application satisfies none.

Indeed, this application offers a uniquely poor candidate for emergency relief. For one, applicants seek to implement a policy that is directly (and for these purposes, undisputedly) foreclosed by binding decisions of this Court. See *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). The district courts below held that the Order violated "settled and binding Supreme Court precedent," App. 82a; App. 11a, 35a, 372a, and applicants do not challenge that conclusion here. That is fatal: emergency relief may be appropriate in some cases to limit the geographic scope of relief that was ordered by a district court, but not where this Court already settled the precise constitutional question for the entire Nation. Worse, applicants have failed to substantiate the sort of significant and irreparable harm necessary to justify emergency relief, let alone to contravene nationwide precedent. The decisions below do nothing more than protect a status quo that dates back to English common law and that has existed throughout American history, except for the aberration of *Dred Scott*. Continuing that status quo until these cases are resolved imposes no harm on the Executive Branch. By contrast, stripping hundreds of thousands of American-born children of their citizenship would inflict tremendous and irreparable harms on the States and the public.

Nor are applicants likely to persuade this Court to grant certiorari and reverse on the standing and scope-of-relief questions they actually present. On standing, the application does not challenge the States' Article III injury, and for good reason: the Order inflicts significant pocketbook harms, from the loss of multiple federal funding streams to the imposition of enormous operational costs. Applicants instead contend that the States are barred from filing suit *despite* suffering such pocketbook injuries—but applicants' prudential third-party standing theories are neither certworthy nor meritorious. On the propriety of nationwide relief, applicants are largely attacking a strawman. Applicants protest, repeatedly, that nationwide relief cannot be ordered to benefit nonparties to the case. But this Court can leave that question for another day, because the district court below did not rest its remedial analysis on protecting nonparties; it relied instead on the extensive record evidence showing that such relief was necessary to protect the plaintiff States from irreparable harm. That factbound decision is correct and uncertworthy, and applicants' patchwork of alternatives would be unworkable or would fail to remedy fully the States' harms.

Applicants ultimately dedicate much of their application to complaining about other nationwide injunctions, involving other parties, other federal policies, and other facts. But each emergency application must be evaluated on its own merit. In this case, the States obtained preliminary relief only to preserve a century-old status quo, endorsed by multiple decisions of this Court, based on the substantiated harms they would suffer should this Order be implemented anywhere. Maintenance of that status quo does not harm applicants. Emergency relief is unwarranted.

STATEMENT

A. Legal Background.

The Fourteenth Amendment guarantees that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." U.S. Const. amend. XIV, § 1.

The Citizenship Clause built upon centuries of history. Prior to adoption of the Fourteenth Amendment, the Constitution referenced U.S. citizenship, see, *e.g.*, U.S. Const. art. I, §§ 2-3; *id.* art. IV, § 2, including the concept of citizenship by birth, see *id.* art. II, § 1, but left its precise scope to the common law. See, *e.g.*, *Slaughter-House Cases*, 83 U.S. 36, 72 (1872); Michael Ramsey, *Originalism & Birthright Citizenship*, 109 Geo. L.J. 405, 410-15 (2020). With respect to acquisition of citizenship at birth, the prevailing view in the early nineteenth century was that the United States had embraced "the English idea of subjectship by birth within the nation's territory (*jus soli*)," Ramsey, 109 Geo. L.J., at 413, meaning that "[n]atural-born subjects are such as are born within the dominions of the crown of England," Resp. App. 187a. See*, e.g.*, *Wong Kim Ark*, 169 U.S., at 654-64 (detailing common law *jus soli* rule and surveying U.S. decisions holding birth within U.S. sovereign territory conveys U.S. citizenship); James C. Ho, *Defining "American:" Birthright Citizenship & Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 369 n.15 (2006) (agreeing *jus soli* was "embraced in early American jurisprudence," and citing, *inter alia*, *Inglis v. Trs. of the Sailor's Snug Harbor*, 28 U.S. 99, 164 (1830) (Story, J.), for Justice Story's view that "[n]othing is better settled at the common law").

After this Court infamously declared that citizenship was unavailable to the descendants of slaves, see *Dred Scott v. Sandford*, 60 U.S. 393, 404-05 (1857), the post-Civil War Nation adopted the Fourteenth Amendment's Citizenship Clause "to establish a clear and comprehensive definition of citizenship" that would remove this question from changing political winds, *Slaughter-House Cases*, 83 U.S., at 73, and return the Nation to the birthright-citizenship doctrine that had long prevailed at common law. See*, e.g.*, Resp. App. 191a (Sen. Howard introducing Citizenship Clause proposal and explaining that it "is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is … a citizen of the United States"); Resp. App. 191a-192a (Sen. Cowan opposing provision explicitly because it would enshrine birthright citizenship). See generally Ho, 9 Green Bag 2d, at 370 (canvassing Citizenship Clause debates and concluding that "[t]his understanding was universally adopted by other Senators," including by its legislative opponents); *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 1995 WL 1767990, at *1, 5 (1995) ("OLC Op.") (agreeing that "the text and legislative history of the [C]itizenship [C]lause … place the right to citizenship based on birth within the jurisdiction of the United States beyond question").

This Court settled the meaning of the Citizenship Clause over a century ago and has consistently reaffirmed its interpretation in the years since. In *United States v. Wong Kim Ark*, this Court confronted the question of when a child born within the United States was nevertheless not "subject to the jurisdiction thereof"—the Clause's

only exception. 169 U.S. 649. In its 53-page opinion, the Court thoroughly examined both English and American common law, the Fourteenth Amendment's ratification history, and subsequent practice, and concluded that with few exceptions, every child born within the United States, "irrespective of parentage," was born "subject to the jurisdiction" of this country and thus a natural born citizen. *Id.*, at 689-90. *Wong Kim Ark* held that the only groups excluded from this constitutional guarantee were the "children born of alien enemies in hostile occupation," over whom U.S. laws could not be enforced; the "children of diplomatic representatives of a foreign state," who enjoy immunity from U.S. laws; and the "children of members of the Indian tribes owing direct allegiance to their several tribes." *Id.*, at 682-85, 693.[1]

Congress subsequently codified the language of the Citizenship Clause in 1940, see Nationality Act of 1940, ch. 876, § 201, 54 Stat. 1137, 1138, baking into the U.S. Code the "established meaning" from *Wong Kim Ark*'s already "longstanding judicial interpretation." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018); see Resp. App. 279a (congresspersons agreeing those "who happen to have been born here" to "alien parents" and who departed the country "in early infancy" were citizens by virtue of the Constitution). That statutory guarantee remains the law today. See

[1] The Court explained that the first two categories were "recognized [as] exceptions" "from the time of the first settlement of the English colonies in America," *id.*, at 682, and that the Citizenship Clause built upon that tradition with "the single additional exception of children" of the Tribes, *id.*, at 682, 693. Since *Wong Kim Ark*, Congress has extended citizenship to the children born to Native American parents, see Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253, and the hostile-occupation exception has lain dormant since the last military occupation by a foreign power in the War of 1812. Only the exception for the children of foreign ministers—who retain immunity from U.S. law, see 22 U.S.C. §§ 254a–254e—remains in full practical force today.

8 U.S.C. § 1401(a) (providing that "a person born in the United States, and subject to the jurisdiction thereof" is a "citizen[] of the United States at birth").

Consistent with *Wong Kim Ark*'s resounding affirmation of "the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents," 169 U.S., at 688, and Congress's codification of this principle, this Court has repeatedly recognized that persons born here are citizens regardless of the lawfulness or length of their parents' presence in the United States. See, *e.g.*, *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (petitioners' child was "of course[] an American citizen by birth" even though parents had been admitted on a temporary basis and overstayed); *INS v. Errico*, 385 U.S. 214, 215-16 (1966) (noting petitioners, who had entered the United States with visas fraudulently obtained, gave birth to children the Court recognized as "United States citizens[] at birth"); *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (child of undocumented parent "was a citizen of this country" by virtue of being "born in the United States"); *Hamdi v. Rumsfeld*, 542 U.S. 507, 510 (2004) (finding detainee entitled to due process as a citizen despite amicus arguing that he was not a citizen because his parents were on temporary visas at the time of his birth); see also *Plyer v. Doe*, 457 U.S. 202, 211 n.10 (1982) (undocumented immigrants are subject to U.S. jurisdiction).

Executive understanding and practice have long been in accord. See Resp. App. 323a (counsel for Department of Justice conceding that "at least back to World War II, if not earlier," the Executive Branch recognized the citizenship of U.S.-born children, even if their parents are undocumented or have temporary legal status).

Federal agencies have therefore long accepted proof of birth in the United States as proof of citizenship. The Social Security Administration (SSA), for example, has done so since 1979—when the agency first promulgated rules for proving identity, age, and citizenship or immigration status for the purpose of assigning Social Security numbers (SSNs). 44 Fed. Reg. 10369, 10371 (Feb. 20, 1979); 20 C.F.R. § 422.107(d); 20 C.F.R. § 422.103(c)(2). And the Department of Justice's Office of Legal Counsel opined that a proposal to deny citizenship "to children born in the United States to parents who are not citizens or permanent resident aliens" was "unquestionably unconstitutional." OLC Op., 1995 WL 1767990, at *2.

B. Factual Background.

1. Hours after his second Inauguration on January 20, 2025, President Donald J. Trump issued an Executive Order instructing federal agencies to imminently stop recognizing some children born on U.S. soil as citizens, based only on their parents' immigration status. See *Protecting the Meaning & Value of Am. Citizenship*, Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025) ("Order"). Section 1 of the Order declares that birthright citizenship does not extend to children who are born to (i) a mother who is unlawfully present or who is lawfully present on a temporary basis, and (ii) a father who is neither a citizen nor lawful permanent resident.

Although Section 1 calls into question the citizenship of every individual born in the United States under such circumstances, the Order does not itself direct any immediate action as to anyone born before February 19, 2025. However, as to children born after February 19, 2025, Section 2 of the Order directed that federal agencies could no longer "issue documents recognizing United States citizenship, or accept

documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship." Order § 2(a). Section 3 then directs various federal officials to each "ensure that the regulations and policies of their respective departments and agencies are consistent with this order." Order § 3(a). Section 3 also instructs all executive departments and agencies to issue public guidance regarding the implementation of the order to their respective operations and activities within 30 days (February 19, 2025). Order § 3(b).

2. If the Order takes effect, respondents—17 States, the District of Columbia, and the City and County of San Francisco (for convenience, "the States")—will suffer immediate financial injuries, operational disruptions, and sovereign harms.

Begin with the immediate and significant financial injuries. The States receive substantial federal funding to provide health, education, and foster care services to children, but only if those children are U.S. citizens or have a qualifying immigration status. See*, e.g.*, 8 U.S.C. §§ 1611(a), (c)(1)(B), 1612(b)(3)(C); 42 U.S.C. § 1396b; 42 C.F.R. § 435.406. This includes federal funding for the provision of health insurance to qualifying children pursuant to Medicaid and/or the Children's Health Insurance Program (CHIP); early intervention and special education services to infants, toddlers, and students with disabilities under the Individuals with Disabilities in Education Act (IDEA); and foster care, adoption, and guardianship assistance under Title IV-E. See*, e.g.*, Resp. App. 35a, 40a-41a, 48a-51a, 58a-59a, 63a-66a, 73a, 100a-101a, 110a-112a, 157a-161a, 173a-176a, 178a; 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1). The plaintiff States generally provide such services without regard to citizenship or

immigration status, but receive federal funding only for services provided to children who are U.S. citizens or have a qualifying immigration status. The Order thus would directly deny the States millions of dollars in critical federal funding.

The federal Enumeration at Birth (EAB) program—which provides States with funding to assist families in applying for SSNs when a child is born—illustrates the immediate financial losses the Order would impose directly on the States. Because children covered by the Order would no longer be eligible at birth to receive SSNs, the States will lose tens of thousands of dollars that they would otherwise receive—an immediate loss of money, per child, from the moment of their birth. See, *e.g.*, Resp. App. 55a-56a, 74a-75a, 90a-91a, 136a, 184a.

Further, because a child's birth in this country would no longer be sufficient to prove American citizenship if the Order takes effect, the Order would force the States to incur significant administrative costs to overhaul eligibility determination systems for federally funded programs like Medicaid, CHIP, Title IV-E, TANF, SNAP, and the EAB program. See Resp. App. 42a-43a, 56a-57a, 67a-68a, 73a-74a, 82a-84a, 89a-91a, 101a, 113a-114a, 129a-130a, 136a-137a, 161a-163a, 176a; 42 U.S.C. § 1396a(a)(5) (requiring States who participate in Medicaid to make eligibility determinations); 42 U.S.C. § 671(a)(27) (requiring States who accept Title IV-E funds to have "procedures for verifying the citizenship" of foster children). As part of that overhaul, the States would have to develop new systems to incorporate information about the immigration status of a child's parents to determine their eligibility for federally funded programs; identify and determine the kinds of evidence that would now be sufficient to prove a

child's citizenship; design and implement new systems for processing applications and tracking citizenship status; train staff, partner organizations, and healthcare providers on new systems and procedures; and revise existing guidance and manuals regarding child eligibility. Resp. App. 42a-43a, 56a-57a, 67a-68a, 73a-74a, 82a-84a, 91a, 100a-101a, 113a-114a, 129a-130a, 136a-137a, 161a-163a, 176a.

The Order would also impact the States' sovereign functions by reducing the pool of residents eligible to participate in their civic functions, as U.S. citizenship is commonly required for juror service and for voting. See N.J. Stat. Ann. § 2B:20-1(c); Mass. Gen. Laws Ann. ch. 234A, § 4; Cal. Civ. Proc. Code § 203; N.J. Const. art. 2, § 1, cl. 3; N.J. Const. art. 5, § 1, cl. 2; Mass. Const. Amend. art. 3; Cal. Const. art 2, § 2; Cal. Const. art. 5, § 2; N.Y. Const. art. 4, § 2.

C. Procedural Background.

1. The day after it was issued, the States challenged the Order as violating the Fourteenth Amendment and the INA and sought preliminary relief. The district court heard the States' challenge alongside *Doe v. Trump*, a separate action brought by an expectant mother and two organizations. See No. 25-cv-10135 (D. Mass.).

After briefing and oral argument, the district court granted preliminary relief. The court "easily" found that the States had standing to challenge this policy, because the Order would cause States to suffer "direct financial harms" and "administrative upheaval"—"precisely the same sort of direct financial impacts" that this Court found sufficient in *Biden v. Nebraska,* 143 S. Ct. 2355 (2023), and *Department of Commerce v. New York*, 588 U.S. 752 (2019). App. 82a, 83a, 84a n.7. The court added that the States likely also had Article III standing based on independent sovereign injuries,

emphasizing that "state laws commonly define civic obligations such as jury service using eligibility criteria that include U.S. citizenship." App. 84a n.7; App. 85a.

The court next found that the plaintiffs were "nearly certain to prevail" on their constitutional and statutory claims, because the Order violated "settled and binding Supreme Court precedent." App. 82a, 88a. The district court examined multiple on-point precedents and concluded in particular that "*Wong Kim Ark* leaves no room for the defendants' proposed reading of the Citizenship Clause." App. 90a. The district court further held that the equities "tip decisively toward the plaintiffs," who will face irreparable harms through the loss of federal funds and new costs to overhaul existing birth registration systems, while the Federal Government would suffer no material harm because the injunctions would simply "maintain a status quo that has been in place for well over a century." App. 101a.

In determining the scope of that relief, the district court tailored its injunction to the harms established by the record evidence that the parties had compiled. See App. 102a (holding that "injunctive relief should be tailored to the parties before it"). Although the court believed that it could remedy the injuries of the *Doe* plaintiffs (an expectant mother and two organizations who identified members in Massachusetts alone) without nationwide relief, App.102a, it found that a nationwide injunction was "necessary to prevent [the States] from suffering irreparable harm." App. 103a. The court canvassed the record evidence establishing that the States would lose federal funding and incur operational costs to update their eligibility verification systems so long as the Order took effect anywhere in the country. App. 99a, 103a. And because

"the record establishes that the harms these plaintiffs face arise not only from births within their borders, but also when children born elsewhere return or move to one of the plaintiff jurisdictions," App. 78a, the court preserved the status quo nationwide. The court then denied applicants' motion for a stay. App. 108a-110a.

2. The First Circuit denied applicants' motion for a stay pending appeal. App. 111a-142a. Its opinion began by explaining that applicants' standing objections were likely to fail because the States' lawsuit was predicated on the loss of federal funds traceable to the Order. App. 121a-127a. The First Circuit explained that this sort of direct pocketbook injury was indistinguishable from the standing theories this Court had recently endorsed in *Nebraska* and *New York*. App. 125a-127a. Moreover, because the Order "directly operat[es]" against the States by instructing federal departments and agencies to refuse to accept state and local documents recognizing individuals as citizens by birth, the States were not barred from bringing their claims by prudential third-party standing principles. App. 130a-131a.

The First Circuit also rejected applicants' arguments for narrowing the scope of relief. See App. 137a-142a. While applicants had resisted a nationwide injunction before the district court, they raised on appeal new alternative remedies they believed the court should have adopted instead. App. 139a-140a. The First Circuit "declin[ed] to consider arguments raised for the first time in this court in support of stay pending appeal." App. 140a. But the First Circuit did confirm that "the plain terms" of the injunction did not "enjoin internal operations that are preparatory operations that cannot impose any harm on" the States. App. 142a.

ARGUMENT

Because an emergency stay from this Court is an "intrusion into the ordinary processes of administration and judicial review," it is "not a matter of right," but "an exercise of judicial discretion" "dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 427, 433-34 (2009) (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672-73 (1926)). To justify extraordinary relief from this Court, an applicant must make "a strong showing that he is likely to succeed on the merits" and demonstrate that the equitable factors—irreparable harm, balance of the equities, and the public interest—favor relief. *Id.*, at 426; *Ohio v. EPA*, 603 U.S. 279, 291 (2024). This application fails for two independent reasons: applicants have not justified this demand for emergency action, and applicants are unlikely to succeed in obtaining certiorari and reversal on the specific questions they present.

I. THIS APPLICATION OFFERS A PARTICULARLY POOR CANDIDATE FOR EMERGENCY RELIEF.

Even before considering applicants' likelihood of success on their standing and scope-of-relief arguments, see *infra* at 23-39, two fundamental defects foreclose their demand for emergency relief: the emergency docket is no place to seek permission to contravene multiple precedents of this Court, and applicants will not suffer the sort of irreparable injuries needed to justify their extraordinary demand.

A. This Court Should Not Grant Emergency Relief To Allow A Party To Contravene Its Binding Precedents.

As this case comes to the emergency docket, applicants make an unprecedented request: to implement a policy across the country, at least in 28 States, that is directly foreclosed by multiple Supreme Court precedents. As the district court found below,

Wong Kim Ark "examined the Citizenship Clause, adopt[ed] the interpretation the plaintiffs advance[,] and reject[ed] the interpretation expressed in the EO." App. 76a; *Wong Kim Ark*, 169 U.S., at 693 (canvassing English common law and early American history; "affirm[ing] the ancient and fundamental rule of citizenship by birth within the territory"; and agreeing that this rule applies to children born to the "citizen or subject of another country, while domiciled here"). In the years since, "[t]he rule and reasoning from that decision were reiterated and applied in later decisions." App. 76a; App. 92a-93a (citing cases). Those decisions were "adopted by Congress as a matter of federal statutory law in 1940, and followed consistently by the Executive Branch for the past 100 years, at least." App. 76a-77a; see 8 U.S.C. §1401(a). That precedent "leaves no room for the defendants' proposed reading of the Citizenship Clause." App. 90a. In short, "this was not a close case" on the merits. App. 109a.

That applicants are now seeking to violate multiple binding precedents of this Court—a point their application remarkably does not contest or even acknowledge—dooms their emergency filing. This Court has repeatedly made clear, consistent with traditional equitable factors that govern stays, that applicants are not entitled to an emergency stay unless they are likely to prevail at the end of the suit. See, *e.g.*, *Ohio*, 603 U.S., at 291; *Nken*, 556 U.S., at 434; *Labrador v. Poe*, 144 S. Ct. 921, 931 (2024) (Kavanaugh, J., concurring) (explaining "the Court throughout its history has relied on likelihood of success on the merits as an essential factor in determining when to grant emergency relief"). Yet applicants do not even attempt to show that the Order is likely consistent with precedent—even as every court to review the Order held that

it plainly violates this Court's decisions. See App. 11a, 51a-52a, 69a, 86a, 124a, Resp. App. 375a. Strikingly, applicants do not challenge any of those conclusions here. The application therefore demands a right to implement the Order across the country, or at least in 28 States, without even trying to show it coheres with precedents that have already settled this precise constitutional question for the entire Nation.

Applicants' response is unpersuasive. Citing *Poe*, they contend (at 25) that they can seek emergency relief on the *scope* of a preliminary injunction without separately challenging the underlying *merits* holding that the Order is likely unconstitutional. See 144 S. Ct., at 925 (Gorsuch, J., concurring) (explaining emergency relief may be warranted when "remedial principles," no less than "liability principles," are at issue). As a general matter, there may well be cases where a party can obtain relief from an injunction's scope even if the underlying policy is ultimately held unlawful. But *this* is not an appropriate case for that sort of a scope-only request. The application seeks to implement the Order in at least 28 States not merely where analysis of "the merits factor can pose difficulty," *Poe*, 144 S. Ct., at 928 (Kavanaugh, J., concurring), or even where the applicants "face an uphill battle on the merits," *Ohio*, 603 U.S., at 300, 311, 323 (Barrett, J., dissenting) (finding this a sufficient basis to reject relief), but where applicants offer no theory of the merits—even though the Order patently (and, on this posture, undisputedly) violates precedents that bind the entire Nation.

There are additional reasons why the emergency docket is no place to demand permission to violate this Court's own binding precedents. An emergency stay is "an exercise of judicial discretion" that remains "dependent upon the circumstances of the

particular case." *Nken*, 556 U.S., at 433; see also *Poe*, 144 S. Ct., at 933 (Kavanaugh, J., concurring) (given delicate nature and stakes involved in emergency applications, "the Court should use as many tools as feasible and appropriate to make the most informed and best decision"). One consideration in assessing such applications is thus the inquiry into "where the public interest lies." *Ohio*, 603 U.S., at 291. But it is never in the public interest for any applicant, let alone the Executive Branch, to implement policies directly contrary to this Court's decisions—without even trying to show that this Court's decisions and the Executive's actions can cohere. Indeed, the States know of no case, and applicants have identified none, in which this Court granted relief to allow such an undisputed conflict with its precedents. Taking that step here would contravene the principles of caution and prudence that traditionally guide emergency requests. And it would transform this Court's emergency docket into a vehicle for seeking rushed overruling of long-settled precedent.

Applicants might hope that this Court will ultimately "revisit th[e] long-settled rule of law" established by *Wong Kim Ark* and the century-plus of precedent and practice on which this Court, Congress, and the Executive Branch have relied since. App 904a. But they offer no reason to believe that this remote possibility will come to pass. That is an inauspicious start for an application that seeks leave to implement this Order in at least 28 states. Until this Court formally overrules *Wong Kim Ark* and its progeny, that precedent binds the Nation—the *entire* Nation.

B. The Equitable Factors Militate Against Emergency Relief.

Even assuming there could be a case in which an applicant's harms or equities were so overwhelming as to justify emergency relief despite a clear violation of this

Court's decisions, this case would not be it. To the contrary, the traditional equitable factors—irreparable harm, the balance of equities, and the public interest, see *Ohio*, 603 U.S., at 291; *Winter*, 555 U.S., at 20, 22—all sharply disfavor relief.

To start, the decisions below do nothing more than maintain the longstanding status quo while appeals proceed. See, *e.g.*, *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (recognizing "purpose" of preliminary relief is "to preserve the relative positions of the parties until a trial on the merits can be held"). To be sure, members of this Court have acknowledged that it can be difficult to decide what constitutes a pre-injunction status quo. See *Poe***,** 144 S. Ct. at 9303 (Kavanaugh, J., concurring). But it is not hard in this case. The provenance of the birthright citizenship rule dates back to the common law of *jus soli*, was "embraced in early American jurisprudence," and has been the law of the land at every other period of this country's history. *Ho*, 9 Green Bag 2d, 369; see *supra* at 4-8.[2] That is reflected not only in court decisions but in Executive practice by federal agencies and by the Department of Justice alike. See *supra* at 7-8. That practice proceeded, uninterrupted, until January 20, 2025—that is, until the challenged Order. A doctrine that dates back to the English common law, or at least to 1898, is clearly the "status quo."

Applicants are not suffering any irreparable harm from a judicial decision that merely allows this centuries-old status quo to remain in place for months while these appeals proceed expeditiously. Briefing is underway in each case and will be complete

[2] The sole aberration merely proves the point. *Dred Scott* notoriously excluded the descendants of enslaved African Americans from this tradition, a travesty that the Fourteenth Amendment corrected by broadly extending the *jus soli* principle.

before summer, with argument scheduled as early as June 4 in the Ninth Circuit. The sole question is whether applicants will suffer such irreparable and significant harms during that period to justify short-circuiting the ordinary course of these appeals. But applicants' own litigation conduct belies any need for emergency relief: in contrast to its hurried approach to emergency applications in other recent lawsuits, the Federal Government waited three weeks after the Ninth Circuit denied its motion for a stay pending appeal before seeking relief from this Court. See*, e.g.*, *Del. State Sportsmen's Alliance v. Del. Dep't of Safety & Homeland Security*, 108 F.4th 194, 206 (CA3 2024) (Bibas, J.) (noting that an applicant's "delay suggests that it felt little need to move quickly" and undermines its claim of irreparable injury, following the "classic maxim of equity … that it 'assists the diligent, not the tardy'" (citation omitted)).

Nor is that delay surprising, as the Federal Government's application and the record it developed below establish no immediate, substantial, or irreparable injuries from the injunctions. See App. 24a (Forrest, J., concurring) (finding applicants failed to show "emergency relief is truly necessary to prevent immediate irreparable harm"). Applicants baldly assert that immediate implementation of the Order is necessary to remove the promise of birthright citizenship as an "incentive for illegal immigration" or manage a "crisis at the Nation's southern border." Stay Appl. 36-37. But the record is devoid of any evidence suggesting that birthright citizenship drives unlawful entry at the border, much less that such entries would materially increase, absent a stay, during the short duration of applicants' appeals. Nor is there any evidence to support claims that birthright citizenship is linked to a crisis at the southern border. Even

more tellingly, the Order itself does not premise its partial termination of birthright citizenship on any link to unlawful entry at the southern border.[3] Indeed, the Order extends as well to children of *legal* immigrants with temporary visa statuses, belying the notion that the Order is needed to deter illegal immigration. The lack of record evidence that the injunction will lead to any imminent threat eviscerates applicants' claims of irreparable harm. And it distinguishes this case from others in which the Court stayed an injunction of federal regulations. Cf. *Garland v. VanDerStok*, 144 S. Ct. 44 (2023); *Wolf v. Innovation Law Lab*, 140 S. Ct. 1564 (2020).[4]

Absent evidence of any tangible harm from the status quo, applicants' general concern (at 35) about "preventing a branch of government from carrying out its work" rings hollow. The States of course recognize that where any government is enjoined 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); *Poe,* 144 S. Ct., at 930-31 (Kavanaugh, J., concurring) (noting overbroad injunctions can lead to "plainly constitutional and democratically enacted laws" being

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[3] Absent a policy justification for the Order, applicants resort to citing other executive orders, none of which are at issue here, that address the enforcement of immigration laws or direct management of the border. See Stay Appl. at 5. But on its face, the Order here does not pertain to either.

[4] Applicants vaguely suggest (at 10) that this aspect of the Order is necessary to limit "birth tourism" schemes, but the Federal Government can and has prosecuted such schemes based on existing federal laws. See, *e.g.*, https://tinyurl.com/5b3fzvem; see also 22 C.F.R. § 41.31(b)(2) (establishing presumption that anyone who will give birth during stay in United States is not entitled to nonimmigrant visa). Applicants also suggest (at 10) that birthright citizenship creates national security risks, but their sole illustration of this is a U.S.-born Taliban fighter whose citizenship status was irrelevant to the national security risk he posed.

"blocked for several years"); cf. *McHenry v. Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025) (staying injunction of Corporate Transparency Act). But this is the opposite: as the district court found below, and as applicants decided not to dispute here, the Order is *contrary* to the democratically enacted statute Congress adopted to enshrine birthright citizenship into the U.S. Code. 8 U.S.C. §1401(a). Nor is this a case in which applicants promulgated regulations to implement democratically enacted laws after notice-and-comment proceedings and development of an administrative record. E.g., *DHS v. New York*, 140 S. Ct. 599 (2020). Here, the President terminated centuries of policy and practice without process, within hours of Inauguration, based solely on his view that the Fourteenth Amendment's "privilege of United States citizenship does not automatically extend" to children of foreign nationals who are present unlawfully or temporarily, Order, § 1—a view rejected by this Court's cases. Absent evidence of any real-world injury beyond their abstract desire to enforce this Order, applicants cannot credibly claim irreparable harm from having to briefly pause that effort.

In stark contrast, the record conclusively shows that staying the injunctions would impose immense harms on the States and the public. Permitting the Order to take effect would dramatically alter the status quo and force the States to confront imminent administrative challenges and incur costs that they could never recover. States would immediately lose the federal funding available for providing services to covered children. See *supra* at 9-11 (discussing lost Medicaid, CHIP, IDEA, and Title IV-E funding). Those losses would begin at the moment of each covered child's birth, because the States would lose EAB funds. *Id.* Indeed, those losses would start

even sooner, because States would have to immediately alter eligibility verification systems for federal programs. See *supra* at 10-11. Applicants never even dispute this impact, but instead urge the Court to disregard it, insisting harms to the States from granting a stay are irrelevant since they "are not proper parties to this proceeding." Stay Appl. at 37. But that is a dodge: it improperly conflates the equities with the merits of applicants' state standing challenge. And the impact on the public interest is equally stark and unrebutted, as the Order would render thousands of children deportable on birth and at risk of statelessness. Applicants again dismiss the harms to American-born children as "not pertinent," *id.*, because they are not parties to this proceeding, but that argument would eliminate consideration of the public interest from the standard governing emergency relief. See *Ohio*, 603 U.S., at 291.

Finally, applicants get no further by arguing that the injunction prevents them from preparing to implement the Order should they ultimately prevail on the merits on appeal. That claim is simply wrong: the First Circuit confirmed that this injunction does not enjoin "internal operations" in preparation that do not harm the States, App. 142a, and the States have not objected to such internal steps. Applicants criticize the First Circuit for failing to also clarify that the Executive Branch may also issue public guidance pending appeal, but applicants never actually sought that relief below—belying its supposed urgency. Cf. Fed. R. App. P. 8 (request for stay must be presented to the district court first, to avoid sandbagging lower courts with new requests made on appeal). Even now, it is unclear the sort of guidance applicants seek to publish. To the degree applicants would issue any documents that require States and the public

to conform their conduct or to begin their own planning processes—thereby incurring the irreparable costs they filed suit to avoid—that obviously contravenes the decisions below, the Constitution, and 8 U.S.C. §1401(a). To the degree applicants merely wish to describe their proposed approach should 8 U.S.C. §1401(a) be rescinded and *Wong Kim Ark* be overturned, it is unclear why they believe the First Circuit barred them from doing so. It is certainly no basis to rush to this Court for emergency relief.

II. DEFENDANTS ARE UNLIKELY TO SUCCEED ON THE MERITS.

Even assuming this case could otherwise be a candidate for emergency relief, applicants would still have to show they are likely to prevail on the standing or scope-of-relief arguments they raise here. Applicants must therefore make two independent showings. First, applicants must show that this Court would grant certiorari on these questions. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *Rubin v. United States*, 524 U.S. 1301, 1302 (1998) (Rehnquist, C.J., in chambers); *Poe*, 144 S. Ct., at 928, 931 (Kavanaugh, J., concurring); *Does 1-3*, 142 S. Ct., at 18 (Barrett, J., concurring). "[O]therwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3*, 142 S. Ct., at 18 (Barrett, J., concurring); see also *Poe*, 144 S. Ct., at 928, 931 (Kavanaugh, J., concurring). Second, applicants must make a "strong showing that [they are] likely to succeed on the merits" of these arguments if this Court were in fact to grant them. *Nken*, 556 U.S., at 434; see also *Poe*, 144 S. Ct., at 928-29 (Kavanaugh, J., concurring). But this Court is not likely to grant certiorari or ultimately reverse on the third-party standing and scope-of-relief questions that this application presents.

A. Applicants Will Not Convince This Court To Grant Certiorari Or Ultimately Reverse On Their Third-Party-Standing Question.

1. As a threshold matter, the application does not develop any challenge to the States' Article III standing. See Stay Appl. at 28. That is unsurprising: as the district court and First Circuit both found, the Order will cause the States to suffer direct pocketbook injuries of the kind this Court recently credited in *Biden v. Nebraska*. See App. 121a-131a (First Circuit); App. 82a-86a (district court); *supra* at 9-11 (detailing evidence supporting these pocketbook injuries). The States will lose federal funding associated with a range of federal programs, and will incur costs overhauling systems to verify eligibility for federal programs. See *supra* at 9-11. Nor are such operational harms remotely "self-inflicted," *contra* Stay Appl. 24: federal laws require the States to properly ensure eligibility of children who receive federal benefits. *E.g.*, 42 U.S.C. §1396a(a)(5) (Medicaid); 42 U.S.C. §671 (Title IV-E funds). Against all this evidence, applicants make no serious effort to deny the States will suffer significant financial injuries from lost federal funding, that are traceable to this Order, and that are being redressed by the preliminary injunction preventing its implementation.

2. Instead, applicants contend the States are barred from seeking to redress their Article III injuries on prudential grounds because those injuries implicate the citizenship rights of third parties. In other words, applicants argue (at 28-32) that the Court will grant certiorari to address whether an additional prudential limitation, known as the third-party standing doctrine, limits the States' ability to redress these harms—and hold that it does. But they are unlikely to persuade this Court either to grant certiorari or to ultimately reverse on this prudential standing question.

a. For one, the third-party standing argument applicants feature here does not warrant review—and certainly not in this case. As this case comes to this Court, the question is whether the States lack ability to challenge a federal policy even though that policy imposes Article III financial injuries on them. Applicants do not contend that this prudential doctrine arises with frequency; indeed, they do not cite any other case in which any State's lawsuit was barred by this prudential third-party standing limitation despite suffering classic Article III pocketbook injuries. Nor do applicants identify any conflict on the third-party standing doctrine, let alone on its application to the States—or its application to this case. And the dispute as applicants present it is factbound: the third-party standing doctrine has established exceptions, and Chief Judge Barron explained that these claims fall well within them. See App. 127a-132a; *infra* at 28-29. This dispute is therefore nothing like *Haaland v. Brackeen*, 599 U.S. 255 (2023), or *Murthy v. Missouri*, 603 U.S. 43 (2024), in which this Court's recent Article III standing analyses turned on the fact that the challenged federal policies had no impact on those States' fiscs. See App. 131a-132a. As explained above, just the opposite is true here: this question asks whether a State could be barred from suing even when it does suffer redressable Article III pocketbook harms.

Nor do applicants get further arguing (at 31) that certiorari is proper because "States and their political subdivisions have inundated federal courts with politically charged suits challenging federal policies." Initially, that claim is misleading at best: the majority of lawsuits that States filed against U.S. agencies in the last two months involve those agencies' decisions to freeze, impose conditions on, or terminate funding

to the States—cases where federal agencies could not plausibly challenge the States' standing. See, *e.g.*, *U.S. Dep't of Educ. v. California*, No. 24A910 (requesting to vacate a TRO, without challenging States' standing to sue).[5] But more fundamentally, that attack on the States' alleged behavior in other cases has no bearing on certiorari here, because applicants do not suggest that third-party-standing disputes have arisen in *any* other lawsuit in the last two months involving executive actions. Instead, to the degree their unsupported concern requires resolution, this Court already emphasized that States must have Article III injuries when they sue federal agencies, rather than rest on *parens patriae* theories—a point the States and the courts all embraced below. App. 84a, 131a; *infra* at 29-30. There is thus no basis to believe this Court will review this one-off prudential standing challenge, to impose additional limits for other cases, even as the States have demonstrated direct pocketbook injuries here.

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[5] Indeed, of the suits against federal agencies in which New Jersey is now a plaintiff, *six* challenge the termination, freezing, or imposition of conditions on state funding. See *New York v. Trump*, No. 25-39 (D.R.I.) (broad freeze of States' access to funding that was already awarded); *Massachusetts v. Nat'l Institutes of Health*, No. 25-10338 (D. Mass.) (new formula limiting federal funds available for state university research costs); *California v. U.S. Dep't of Educ.*, No. 25-10548 (D. Mass.) (termination of U.S. education grants to States for training teachers); *Colorado v. U.S. Dep't of Health & Human Servs.*, No. 25-121 (D.R.I.) (termination of federal public health funding to States); *Massachusetts v. Kennedy* , No. 25-10814 (D. Mass.) (terminations and delays of NIH grants to States and their instrumentalities); *California v. Trump*, No. 25-10810 (D. Mass.) (new conditions on federal funding to States requiring election law changes). Far from lawsuits to vindicate "politically charged" goals, this is ordinary Article III litigation: States have reason to challenge unlawful freezes, conditions, or terminations of grants they already received and are expending. *See NFIB v. Sebelius*, 567 U.S. 519, 579-80 (2012); *Kentucky v. Biden*, 57 F.4th 545, 555-56 (CA6 2023). The high volume of litigation to date merely reflects the speed and scale at which federal agencies are limiting or terminating open grants in the middle of the Fiscal Year.

b. Even assuming this Court did grant certiorari to review application of the third-party doctrine to this case, it would discover that applicants are stretching this prudential doctrine well past its breaking point. Strikingly, applicants cannot cite a single case in which any court barred a State from challenging a policy that imposed direct Article III injuries on the public fisc. And for good reason: although applicants note that courts have, in rare circumstances, "declin[ed] to adjudicate" certain claims by private litigants based on "prudential, rather than constitutional" grounds, this Court has more recently cautioned that such prudential limits are in obvious "tension with … the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l v. Static Control Components*, 572 U.S. 118, 125-26 (2014) (cleaned up).

Applicants' belief that the States cannot raise constitutional challenges here in seeking to redress their own pocketbook injuries therefore runs headlong into this Court's post-*Lexmark* constitutional cases. Indeed, this Court has repeatedly allowed parties with Article III standing to litigate the constitutionality of an action that also, arguably more directly, implicated another party's interests. In *Seila Law v. CFPB*, this Court held that an "aggrieved" corporation could challenge agency action based on a violation of the *President's* removal authority, specifically rejecting the argument that this constitutional question could be litigated only through a contested removal between the President and the agency head. 591 U.S. 197, 212 (2020); see also *INS v. Chadha*, 462 U.S. 919, 935-36 (1983) (likewise rejecting "the contention that Chadha lacks standing because a consequence of his prevailing will advance the interests of

the Executive Branch in a separation of powers dispute with Congress, rather than simply Chadha's private interests"). So long as the agency action imposed Article III harms on a party, the party could argue that the action was unconstitutional—even if the constitutional right also protected the President, Congress, or here a birthright citizen. Applicants' prudential theory cannot cohere with this precedent.

Furthermore, even if pre-*Lexmark* prudential considerations remain relevant, the courts below correctly found that the States here fit easily within the third-party doctrine's well-established exceptions. Although applicants rely heavily on *Kowalski v. Tesmer* for the proposition that the third-party doctrine limits which parties could advance certain constitutional claims to protect their Article III interests, this Court made clear that this doctrine has exceptions. 543 U.S. 125, 129-30 (2004). Among other carveouts, a party with Article III injury *could* advance constitutional rights held by third parties if "enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights." *Id.*; *Carey v. Pop. Servs. Int'l*, 431 U.S. 678, 682-84 (1977) (seller had standing to litigate buyers' privacy rights); *Craig v. Boren*, 429 U.S. 190, 193-97 (1976) (same regarding buyers' equal protection rights). This Court found that result sensible because any party who faces enforcement of a restriction against them as an intermediary, and thus suffers Article III injury, has every "incentive to challenge" a restriction with "zeal and appropriate presentation"—and nothing about adjudicating that party's challenge would require a court "to decide abstract questions." *Kowalski*, 543 U.S., at 129.

As the First Circuit explained, that describes this case perfectly. By the terms of the Order, the States *are* the intermediaries against whom the Order's limitations on birthright citizenship are directly enforced: the Order "directly operat[es] as to the Plaintiff-States," App. 130a, by directing federal agencies not to "accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship," Order, § 2(a). That is the mechanism by which the Order fulfills its purpose of curtailing the citizenship rights of newborn children. Although applicants assert that the Order "does not require States to do or refrain from doing anything," Stay Appl. at 31, the refusal to recognize a State's submission as proof of citizenship is a "restriction" directly "enforced" against them, requiring them to incur significant administrative costs to revamp federal eligibility verification systems and denying them millions of dollars in federal reimbursements they would have received. That this further "has the indirect effect of preventing the individuals from obtaining federally funded services based on their U.S. citizenship," App. 131a, does not bar the claims. The States have every "incentive to challenge" the Order "with the necessary zeal and appropriate presentation," and there is nothing "abstract" about them doing so: the Order undisputedly will deny citizenship to hundreds of thousands of children in the first year alone and will impose the concomitant administrability and financial costs to States that applicants barely even dispute before this Court.

Applicants' complaints about *parens patriae* claims are thus wholly inapposite. The bar on *parens patriae* claims does not preclude States from filing suit where they assert their *own* Article III pocketbook injuries. See *Kentucky v. Biden*, 23 F.4th 585,

594, 596 (CA6 2022) (States have standing if they "assert[] some injury to their *own* interests separate and apart from their citizens' interests" notwithstanding bar on *parens patriae* standing). Rather, as this Court has explained, this doctrine bars State actions against the Federal Government brought solely "to protect [the State's] citizens" in the absence of Article III harms. *Massachusetts v. Mellon*, 262 U.S. 447, 485 (1923). That has nothing to do with this case: the States are suing to redress their own pecuniary and sovereign injuries, not to redress injuries residents suffer. That fact distinguishes this case from those cited by applicants, in which the States' claims were barred because they did not allege their own injuries. See *Haaland*, 599 U.S., at 294-96 (Texas lacked standing because State was "not injured by the placement preferences" it challenged); *Murthy*, 603 U.S., at 75-76 (Missouri lacked standing since State was not injured by content moderation activities it challenged); *Mellon*, 262 U.S., at 479-80, 482 (Massachusetts lacked standing where federal law imposed no "burden" on Commonwealth). But the Article III injuries are evident here.

B. Applicants Will Not Convince This Court To Grant Certiorari Or Ultimately Reverse On Their Scope-Of-Relief Question.

1. Applicants fare no better in addressing the question of universal relief—to which they dedicate most of their attention. Initially, applicants misunderstand the certworthiness of this factbound question because they misunderstand the dispute in this case. Applicants seek to paint the parties' dispute as whether nationwide relief is available as a matter of course or not at all. Stay Appl. 15-20. And they go to great lengths to suggest that this Court must decide whether district courts have Article III authority to craft geographic relief to benefit nonparties. Stay Appl. 25-28. But

applicants are attacking a strawman. The States never argued below that nationwide relief is always appropriate, nor requested it here to benefit nonparties to the action. Instead, the States argued that nationwide relief "*can* be appropriate," based on the specific facts, "if a more limited injunction would fail to remedy the irreparable harm." Resp. App. 24a (emphasis added). That is all the district court found—that on these specific facts, broader relief was necessary. See App. 102a-103a.

That factbound conclusion will not warrant review. The courts below reasoned that nationwide relief was needed to remedy the States' harms because children often move across state lines or are born outside their parents' home states. See App. 103a (citing "a pregnant woman living in the northeastern part of [Massachusetts] giv[ing] birth across the border in a nearby New Hampshire hospital"); Resp. App 24a-26a. The States thus explained, and the courts below agreed as a factual matter, that any patchwork injunction would both be unworkable and fail to remedy the States' harms: once covered children born in Pennsylvania move to New Jersey, for example, New Jersey would still lose federal funding that otherwise would be available, see *supra* at 9-11, and still incur tremendous operational costs eligibility-verification systems, see *supra* at 10-11.[6] The dispositive question in this application is thus not whether universal injunctions would always or never be appropriate—but whether that relief is appropriate in *this* case because of the particular injuries and administrability

[6] Applicants call it "speculative" that covered children will inevitably travel across state lines—or that federal agencies would "treat [children subject to the Executive Order] as aliens." Stay Appl. 22-23. That only highlights the uncertworthiness of this case, as this Court's review is not warranted for such factual disputes. In any event, applicants did not dispute either of those points below, see Resp. App. 268a, and for good reason: neither is seriously contestable. See *infra* at 35-36.

challenges established by this record. The district court's answer to that question, which preserved a 127-year-old status quo to avoid profound harms the States would otherwise suffer, does not warrant plenary review.

This case also presents an especially poor vehicle to consider broader questions about the propriety of nationwide injunctions. For one, as explained above, *Wong Kim Ark* and its progeny already set a nationwide rule that federal agencies are supposed to follow in this field—and no one disputes that those directly on point Supreme Court decisions will themselves necessarily have nationwide effect. See *supra* at 14-17. For another, predicate forfeiture questions would complicate this Court's review. As the First Circuit specifically identified below, applicants' arguments on the scope of relief have continued to evolve in this case. See App. 137a-140a. In initially opposing this request, applicants "made only the broad argument ... that the District Court lacked the authority to enjoin [their] conduct toward any nonparties"—an argument that, as laid out above, was nonresponsive to the State's argument that relief was necessary to remedy *their* harms. See App. 137a; Resp. App. 250a-251a. Then, in seeking a stay from the district court, applicants shifted to arguing that the district court *could* have afforded the States "complete relief" with "an order that provided relief only within [the plaintiffs'] borders." App. 138a (quoting Resp. App. 364a). Later, before the First Circuit, applicants tried another alternative, claiming "the preliminary injunction is overbroad because 'complete relief' could have been provided by a preliminary injunction that 'required the federal defendants to treat the children covered by the

Executive Order as eligible for the services the [Plaintiff-States] administer'" once they move into their States. *Id.* (quoting C.A. Mot. 18).

In short, applicants' current argument—that the injunction should apply only to "individuals who are born or reside in [the plaintiff] States," Stay Appl. 4—is not one they "consistently lodged" below. App. 138a. That means applicants "deprive[d] the district court of the opportunity to consider" their objection in the first instance. App. 139a-140a (quoting *Philip Morris, Inc. v. Harshbarger*, 159 F.3d 670, 680 (CA1 1998)). And they never had to provide information or evidence regarding how their proposed alternative injunction would actually be administrable in practice—where covered children are not citizens, but *may* still be treated as citizens for some benefits purposes, depending on what State they are in. So even if the Court wished to grant review in some case addressing the propriety of universal injunctions, the shifting sands of this case make it an inappropriate vehicle to do so.

Applicants again come up empty in arguing that certiorari is warranted in this case given their view that "[u]niversal injunctions have reached epidemic proportions since the start of the current Administration" in other cases. Stay Appl. 3. This claim is, as before, misleading: the application overlooks that the States have explicitly and repeatedly declined to seek nationwide relief in a number of other recent challenges to executive actions because the nature of their injuries did not require it. See*, e.g.*, *U.S. Dep't of Educ. v. California*, No. 24A910 (States only requested and received a TRO, involving termination of teacher training grants, in the eight plaintiff States); *Massachusetts v. NIH*, __ F.Supp.3d ____, 2025 WL 702163, *33 (D. Mass. Mar. 5,

2025) (noting the "Plaintiff States seek preliminary injunctive relief for the 22 named Plaintiff States").[7] That applicants are frustrated by the scope of relief awarded in other cases, filed by other parties, involving other injuries and other administrability arguments, does not support granting certiorari in this case. In short, this case offers a poor vehicle to consider applicants' broadside against universal injunctions.

2. Nor would applicants be likely to succeed even if this Court granted review of their scope-of-relief question, as the district court did not abuse its discretion in finding that a nationwide preliminary remedy was necessary and appropriate in this extraordinary case. Cf. *Starbucks*, 602 U.S., at 347 (emphasizing district courts have authority to "mould [their] decree to the necessities of the particular case") (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944); *McLane Co. v. EEOC*, 581 U.S. 72, 82 (2017) (citing abuse-of-discretion standard). Indeed, it is hard to imagine a case better suited to a nationwide preliminary order than this one. As noted above, the injunction merely preserves a centuries-old status quo that has bound this entire country since its earliest days, and is dictated by precedents of this Court that already govern this question nationwide. See *supra* at 14-17. An injunction narrower in scope would lead to extraordinary results, where a child's *American citizenship* would vary depending on what State the child was born in—and possibly even what State the child's family moves into. And most fundamentally, as the court below explained in selecting this

[7] Take New Jersey again as an example. Of the lawsuits in which New Jersey is now participating against federal agencies, the States declined to request a nationwide preliminary injunction in a majority. They have not sought a nationwide preliminary injunction in any of the cases in footnote 5, which describes the challenges to federal actions that unlawfully freeze, impose conditions on, or terminate their funding.

particular remedy, any narrower injunction would simply fail to remedy the States' substantiated irreparable harms. See App. 103a.

That final point is dispositive: the court below did not err, much less abuse its discretion, in reaching the factual conclusion that nationwide preliminary relief was necessary to prevent the States from suffering irreparable harm in this case. As laid out above, the States filed suit to redress the significant pocketbook injuries caused by both foregone federal funding and extensive administrative and operational costs associated with updating eligibility systems that federal law requires they maintain. See *supra* at 9-11, 24 (detailing Article III harms). But as undisputed record evidence confirms, covered children born in other States may reside, or move into, the Plaintiff States' jurisdictions. Absent nationwide relief, States would still lose federal dollars for providing these services, and still incur substantial costs to update and implement eligibility verification systems. See Resp. App. 40aa-43a (undisputed declaration from N.J. Commissioner of Human Services); *id.*, at 73aa-75a (same for Massachusetts). A patchwork scheme of birthright citizenship would, in reality, only *increase* the States' administrative costs and operational burdens, because they would need to track and verify not only the immigration status of a child's parents, but also the birth state of every child to whom they provided federally funded services—as well as to develop, maintain, and train staff on different eligibility verification systems for different sets of children depending on the state of birth. See *supra* at 10-11.

Although applicants seek to dismiss these irreparable harms as a "speculative chain of events," Stay Appl. 23, these points are not seriously contestable. It is obvious

and substantiated by the Federal Government's own data that residents can and do move across state lines—and frequently. See U.S. Census Bureau, "About 8.2 Million People Moved Between States in 2022" (Nov. 21, 2023), https://tinyurl.com/y7ktyneu (noting the "share of state-to-state movers" covers over 12% of the U.S. population). And that does not even account for families who give birth in a different jurisdiction from where they live, such as families in southern New Jersey who give birth in Philadelphia, or ones in the District of Columbia who give birth in Virginia. Under the cramped injunction applicants seek, the inevitability and scale of state-to-state migration would guarantee the States still lose of significant federal funding, and it would require them to incur the full scope of administrative burdens to comply with U.S. laws that require eligibility verification. See *supra* at 9-11.

Applicants principally respond, again, with a strawman. Applicants premise their challenge to the geographic scope of this injunction on the various asserted evils of granting judicial relief to nonparties. Stay Appl. at 15-21. But this Court can leave the spirited debate over whether injunctions can be appropriate to benefit nonparties for a future challenge, because the district court did not issue an injunction to protect nonparties. Instead, it adhered to the principles applicants say must govern the scope of relief: acknowledging that universal injunctions could "raise[] meaningful concerns about the appropriate scope of a single district judge's equitable powers," the court *accepted* the arguments that "injunctive relief should be tailored to the parties before it." App. 101a-102a (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)); compare

Stay Appl. at 17-18 (quoting same portion of *Califano*).[8] As the district court found, however, a nationwide injunction was still warranted to protect these parties in light of the above record evidence showing that a more limited order would be "inadequate" to address the "harms [the States] have established." App. 103a.

The record evidence distinguishes these cases from *Texas v. United States,* 126 F.4th 392 (CA5 2025), and *Arizona v. Biden*, 40 F.4th 375 (CA6 2022). See Stay Appl. 23. In those cases, the plaintiff States identified no harms for which a nationwide injunction was a necessary remedy. In *Texas*, the State's claimed injury was that the existence of DACA incentivized individuals to remain in Texas and thus increased the state monies Texas had to spend serving them. 126 F.4th, at 421 n. 49. The Fifth Circuit sensibly held those alleged harms were "fully redressable by a geographically limited injunction"—namely, court relief that terminated DACA in Texas, but which declined to extend that relief to other States. *Id*., at 421. After all, narrowing the relief might lead DACA recipients to *leave* Texas and thus reduce to its claimed injury of expending resources on residents. *Id.*, at 421 n. 49. And in *Arizona*, a court reversed a nationwide injunction because the plaintiff States failed to show how the challenged policy injured them at all. See 40 F.4th, at 383-84. Judge Sutton's concurring opinion rejected plaintiffs' unsubstantiated fear that DHS would release criminal noncitizens detained in their states upon crossing state lines because the record showed that DHS

[8] Indeed, the district court denied a nationwide injunction to the *Doe* plaintiffs, since those plaintiffs involved only residents or organizational members in Massachusetts alone. See Stay Appl. 102a. That is incompatible with applicants' accusation that the courts below improperly adopted a nationwide remedy to benefit nonparties.

could not do so. *Id.*, at 397-98. Here, far from being speculative or impossible, the routine movement of millions of people in and out of different States is undisputed—and it would impose, rather than mitigate, costs on the States.

Applicants' belated efforts to identify alternative forms of relief that mitigate the States' harms fare no better. Applicants assert that the court either could have (1) "direct[ed] the government not to apply the Citizenship Order" not only to children born in Plaintiff States but "even to persons who were born elsewhere but who later move to those States," and/or (2) "direct[ed] the federal government to treat covered children as eligible for purposes of federally funded welfare benefits." Stay Appl. 23. But as the First Circuit found below (at App. 138a-140a), applicants never raised such alternatives to the district court, and so the district court could not have abused its discretion by failing to adopt options never presented. See *Wilkins v. United States*, 598 U.S. 152, 158 (2023) (for "efficiency and fairness, our [adversarial] legal system … require[s] parties to raise arguments themselves and to do so at certain times")[9] (citation omitted). Largely because the alleged alternatives were not presented below, it is still entirely unclear how these alternatives would be designed or enforced—and applicants' two sentences on the subject in an emergency application offer no details. Under the former proposal, each covered child's *American citizenship* would turn on

[9] That a party may "make any argument in support of [a] claim" that it has asserted, Stay Appl. 25 (quoting *Yee v. City of Escondido*, 503 U.S. 519, 524 (1992)), is beside the point. As an initial matter, *Yee* was addressing arguments made by a plaintiff in support of a cause of action that it brought below. 503 U.S. at, 534. But even if that general concept were applicable to the application now before this Court, applicants are not making a new argument in support of their "claim" for a narrowed injunction; applicants never requested that narrowed injunction in the first place.

or off depending on the State in which she is then residing—such that a child born in Pennsylvania lacks U.S. citizenship until she moves to New Jersey. And under the latter proposal, a covered child would not be a citizen (taking them out of various state sovereign functions, see *supra* at 11), but would somehow qualify for programs for which their lack of citizenship renders them statutorily ineligible. Both of these unusual scenarios raise administrability questions, and certainly in this emergency posture, such considerations caution against this Court modifying the district court's injunction in a manner never proposed to, or considered by, the district court.

Finally, there is no basis to believe this Court will ultimately grant applicants' request to narrow the scope of this injunction to allow them to "tak[e] internal steps to implement" the Order. Stay Appl. 32. At a minimum, this issue is uncertworthy—it is a narrow and factbound dispute over whether one injunction that has restrained the implementation of an unconstitutional policy should allow federal actors to take certain preparatory steps nonetheless. But more fundamentally, there is no basis to reverse the decision below, because the First Circuit has already confirmed that the injunction does *not* enjoin "internal operations" that do not harm the litigants. App. 142a. Indeed, the States did not object to such internal steps before the First Circuit. Applicants are not likely to succeed on any aspect of their emergency challenge, including as to the scope-of-relief ordered below.[10]

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[10] Though applicants complain the First Circuit did not also grant them permission to "issue public guidance" pending appeal, they never sought that relief below. Nor do applicants explain why, if they are free to take such preparatory steps, they are injured by failing to also put out guidance to implement their unconstitutional Order. See *supra* at 17-23 (discussing the lack of irreparable harm). To the extent applicants

CONCLUSION

This Court should deny the stay application.

Respectfully submitted,

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wish to describe their proposed approach should *Wong Kim Ark* be overturned, it is unclear why they believe the First Circuit barred them from doing so. But insofar as applicants would issue guidance that requires States and the public to conform their conduct or begin planning—incurring the costs the States filed suit to avoid—that contravenes the Constitution and 8 U.S.C. § 1401(a).

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