

SCOTUS Curbs Universal Injunctions? So What Does That Mean for You?

by Alex Hontos, Chris DeLong, and Eric Weisenburger

The United States Supreme Court issued a decision that curtailed the practice of “universal” or “nationwide” injunctions and may have a significant impact for individuals and organizations that seek redress from the courts, particularly those who have benefited from some of the dozens of injunctions of Trump Administration policies. Affected clients should reassess their existing strategies in light of this important decision.

The Supreme Court held on June 27 in *Trump v. CASA, Inc.* that universal injunctions exceed the equitable authority vested in the federal courts by the Judiciary Act of 1789. The scope of a federal court’s injunction must be cabined to what is “necessary to provide complete relief to each plaintiff with standing to sue.” The effects of today’s decision will play out over the coming weeks, months, and years. But organizations and individuals should assess today how the decision will affect their legal rights, the scope of their potential remedies, and whether any action is necessary now to protect their interests. This is particularly important for organizations, institutions, and individuals who have been affected by the dozens of preliminary injunctions pausing the Trump Administration’s recent executive orders and other agency policy changes.

The majority opinion, written by Justice Barrett, explains that whether a court is empowered to issue a universal injunction depends on whether Congress has granted federal courts such authority. The Court reasons that universal injunctions are not the sort of equitable remedies traditionally accorded courts of equity when the Constitution was adopted and Congress enacted the Judiciary Act of 1789, which is still today the statutory authority by which federal courts order equitable relief. As a result, the Court holds that universal injunctions are beyond a federal court’s equitable powers. The Court suggests that the rule is that an individual or organization must be itself a party to a case to obtain the benefits of an injunction issued in that case against government conduct.

The Court then noted that its opinion did **not** resolve the specific question of whether a federal court may vacate unlawful agency action under the Administrative Procedure Act

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(“APA”)—an important caveat given that many of the existing injunctions to Trump Administration policies were issued in APA cases. Justice Kavanaugh, in a separate concurrence, also points to a plaintiff’s ability to ask a court to preliminarily set aside new agency action under the APA. District courts asked to analyze the scope of their previously entered injunctions might consider whether the APA, or cause of action arising under another statute with an express right to preliminary injunctive relief, permits the very kind of universal injunction the Supreme Court today holds the Judiciary Act of 1789 does not.

Organizations and individuals currently non-parties to litigations in which district courts have universally enjoined potentially harmful executive action can no longer count on those injunctions for protection of their rights and interests. Today’s decision calls for thorough reevaluation of their legal strategies. Each organization and individual must assess their own unique circumstances. In the immediate wake of the decision, four potential pathways warrant consideration:

1. Sue. The decision will likely increase the number of lawsuits filed as organizations and individuals decide that they need the protection of an injunction and cannot remain on the sidelines and obtain the benefits of an injunction if they were not a party to the case in which the injunction was issued. For those harmed by or opposed to government policies, this may be the best and most direct way to protect rights and interests. Organizations and individuals might also assess proceeding on behalf of a class or the organization’s or individual’s coverage by a putative class of affected parties.
2. Intervene. Where an existing litigation raises claims or defenses against an executive or agency action harming an organization or individual, and a court has enjoined that action, the organization or individual may consider intervention in such actions to seek protection under the injunction in place or a new injunction. Whether and where to intervene may implicate issues of jurisdiction, venue, standing, favorability of a given circuit’s case law, and judicial tendencies.
3. Do nothing where the agency agrees to forebear its conduct. Although today’s decision may—under certain circumstances—permit the government to continue enforcement against non-parties of a policy enjoined as to one or more plaintiffs, the practicalities of broad enforcement may mitigate harm to organizations and individuals that are currently non-parties. For administrative convenience, the government may refrain from enforcing such a policy at all during the pendency of the proceedings or after a permanent injunction. In short: universal injunctions, although opposed by the United States in the *CASA* case, do make it easier on the Federal government insofar as they avoid the agency from having to apply two sets of rules, one for those parties subject to an injunction and one for those who are not covered. So agencies may decide to implement, effectively, universal forbearance out of convenience. Or the government may focus enforcement efforts away from organizations or individuals. Relatedly, organizations or individuals should analyze whether they fall within the “complete relief” afforded a state or association that sought and received injunctive relief.
4. Do nothing and accept the change in policy or harm. Even where an organization or individual could litigate the legality of an executive or agency action and has a chance to prevail, there may be pragmatic reasons to forego assertion of such rights and accept a new status quo. Such sensitive decisions will require careful consideration on an action-by-action basis for each organization and individual, weighing the odds of success or failure against the costs of successful litigation.

In any event, individuals or organizations should determine whether the *CASA* decision affects their rights, and should consider the best path forward.