Disclaimer: The following is a fictional, simulated dialogue. The participants, "Fake Professor Bray" and "Fake Professor Sohoni," are imagined constructs based on their scholarly writings. The real Samuel L. Bray and Mila Sohoni did not participate in this discussion, and the views expressed are interpretations for the purpose of this exercise.

Moderator: Welcome to "Legal Intersection," where we break down the most significant legal decisions of our time. And there has been none more significant this term than the Supreme Court's ruling in *Trump v. CASA*. The 6-3 decision effectively ended the practice of universal injunctions, holding they exceed the statutory equitable authority granted to federal courts by the Judiciary Act of 1789[1]. Here to debate this landmark opinion are two of the country's leading scholars on the topic, whose work was cited repeatedly by the Justices. Professor Samuel Bray of UCLA School of Law, whose article "Multiple Chancellors" provided the intellectual framework for the majority opinion, and Professor Mila Sohoni of the University of San Diego School of Law, whose article "The Lost History of the 'Universal' Injunction" offered a powerful historical counter-narrative that animated the dissent. Welcome to you both.

Professor Bray, the majority opinion written by Justice Barrett reads almost like a summary of your 2017 article. It adopts the

Grupo Mexicano historical test, finds no founding-era analogue for the universal injunction, and identifies the Rule 23 class action as the proper modern descendant of the "bill of peace"[222222222]. You must feel a sense of vindication.

Fake Professor Bray: Thank you for having me. "Vindication" is a strong word, but I am certainly gratified that the Court has restored a more historically grounded and structurally sound understanding of federal equity power. For several years, we've seen a system where a single district judge, often chosen through transparent forum shopping, could dictate national policy for 330 million Americans[333]. This was a dangerous and ahistorical anomaly. The Court's decision in

CASA doesn't invent a new limit; it restores an old one. It reaffirms that the "judicial Power" is the power to grant relief to parties in a case, not to issue freestanding decrees that govern the Executive's conduct toward the entire world[444444444]. By tethering equitable remedies to the practice of the English Chancery in 1789, as

Grupo Mexicano commands, the Court has brought much-needed discipline and ended a practice that was causing chaos, degrading the quality of judicial decision-making by short-circuiting percolation, and creating profound doctrinal inconsistencies[5555555555555]. It is a

good day for the rule of law.

Moderator: Professor Sohoni, the majority opinion explicitly rejected your historical evidence, relegating cases like *Lewis Publishing* and *Pierce v. Society of Sisters* to a footnote and dismissing them as implicit, "drive-by" rulings with no precedential effect [6]. Justice Sotomayor's dissent, by contrast, heavily channels your work, arguing the majority "freez[es] in amber the precise remedies available at the time of the Judiciary Act" and fundamentally misunderstands equity's flexible nature[7]. What is your reaction to the decision?

Fake Professor Sohoni: My reaction is one of profound concern. The majority opinion is not a restoration; it is a radical act of judicial erasure based on a selective and, frankly, gerrymandered reading of history[8888]. The Court, following Professor Bray's lead, creates an impossibly narrow frame for the historical inquiry[9]. It dismisses over a century of American judicial practice where federal courts, including the Supreme Court itself, repeatedly issued or affirmed injunctions that protected nonparties[10].

As I documented, the Court itself issued a universal injunction in 1913 in the run-up to

Lewis Publishing Co. v. Morgan, barring enforcement of a federal law against "other newspaper publishers"[11111111]. In 1925, it unanimously affirmed a universal injunction in

Pierce v. Society of Sisters that protected all private schools in Oregon, not just the two plaintiffs[12121212]. The majority waves this away. It ignores the fact that if a federal court's Article III power permits it to enjoin a state government from enforcing a state law against non-parties—which is a profound intrusion on state sovereignty and a "bigger deal" than enjoining a federal co-equal branch—then it

a fortiori must possess the power to do so against federal officials[13131313].

The Court's analysis of the bill of peace is equally flawed. It fixates on a caricature of the remedy as being only for "small and cohesive" groups [14], ignoring how the Court in cases like

Smyth v. Ames understood it as a tool for a federal court to issue a "comprehensive decree covering the whole ground of controversy" and "determine, once for all... matters that affect not simply individuals, but the interests of the entire community" [15151515]. The majority is not

restoring history; it is rewriting it to fit a preconceived narrative.

Fake Professor Bray: With respect, I think the majority correctly saw those cases for what they were. None of them, including *Pierce*, involved a court grappling with and squarely deciding the question of its authority to grant non-party relief. As the Court noted, "implicit acquiescence to a broad remedy 'ha[s] no precedential effect'"[16]. My colleague Professor Morley has made this point as well[17]. What is far more telling is the overwhelming silence for the first 175 years of our nation's history. As the Department of Justice under Attorney General Sessions noted, not a single such remedy was found in that entire period[18]. And during the New Deal, when federal courts issued thousands of injunctions against federal programs, none were universal[19]. That is the dog that didn't bark[20]. The universal injunction is not a lost tradition; it is a modern, post-1960s invention, as Justice Thomas correctly observed[21].

The Court was also right to reject the bill of peace analogy. That historical device is the clear ancestor of the Rule 23 class action, not the universal injunction[22]. The requirements were virtually identical: numerosity, commonality, typicality[23]. Universal injunctions bypass these crucial procedural safeguards, which exist to ensure due process and proper representation[24242424]. Allowing a single plaintiff to obtain the benefits of a class action without meeting any of its requirements is, as the Court rightly concluded, an impermissible "class-action workaround"[25].

Fake Professor Sohoni: This argument about a "workaround" is a red herring that imposes modern proceduralism onto a historically flexible remedy. The representative suits under the old Equity Rule 38 were nothing like the "procedural bog" of modern class certification[26]. As I showed in cases like

Mitchell v. Penny Stores and *Binford v. McLeaish & Co.*, plaintiffs simply had to allege they were suing on behalf of others similarly situated to obtain preliminary injunctions shielding thousands of non-parties[272727272727272727]. There was no rigorous analysis of typicality or adequacy[28]. Crucially, in those "spurious class suits," a loss for the plaintiff did not bind the absent parties, yet they still reaped the benefits of a preliminary win[29292929]. That looks far more like a modern universal injunction than a binding Rule 23 class action. The Court simply ignores this history.

More fundamentally, the majority's entire project rests on a misunderstanding of equity. It treats equity as a static list of 1789-era tools[30]. But as Justice Story explained, equity's purpose is to adapt and provide remedies for the "exigencies of society"[31]. The

plaintiff-protective

Ex parte Young injunction itself has no precise 1789 analogue for enjoining a sovereign's non-tortious act of prosecution, yet the majority embraces it[32323232]. The Court cannot have it both ways. It cannot praise an adaptive equity when it comes to plaintiff-protective injunctions but demand a rigidly frozen one when it comes to protecting non-parties from the same illegal act.

Fake Professor Bray: I don't believe the Court's approach is rigid so much as principled. The majority correctly states that equity's flexibility is "confined within the broad boundaries of traditional equitable relief"[33]. That is the holding of

Grupo Mexicano. There is simply no tradition of courts controlling a defendant's conduct with respect to the world at large. The Court's decision is not an attack on equity; it is a defense of the proper judicial role under Article III, which is to resolve cases for parties, not to serve as a roving commission to supervise the Executive Branch [34343434].

This brings us to the real-world consequences, which I believe the dissenters and Professor Sohoni overstate. The critique of a "zone of lawlessness," powerfully articulated by Justice Jackson, is compelling rhetoric, but it ignores the proper mechanism for achieving legal uniformity: precedent[353535]. When a court of appeals establishes a precedent, the government is expected to follow it within that circuit. If other circuits disagree, the issue percolates up to the Supreme Court for a final, authoritative resolution[36]. The universal injunction short-circuits this deliberate process, replacing it with the edict of a single, potentially outlier judge[37]. As Justice Kavanaugh's concurrence points out, the Supreme Court remains the "ultimate decider" of the interim status of major federal policies through its emergency docket[38]. The system has checks; the universal injunction was an unchecked power.

Fake Professor Sohoni: With all due respect, to speak of "precedent" and the "emergency docket" as adequate checks in the face of the executive action at issue in *CASA* is to inhabit an alternate reality. As Justice Sotomayor's dissent makes painfully clear, the Executive Order is "patently unconstitutional"[39393939]. The Government didn't even try to defend it on the merits[40]. It engaged in pure "gamesmanship" to get a ruling on the remedy alone[41]. In this context, the majority's ruling is, as Justice Jackson says, an "open invitation for the Government to bypass the Constitution"[42]. It creates a system where the Executive can knowingly violate the most fundamental rights—in this case, the birthright citizenship guaranteed by the Fourteenth Amendment—and the Judiciary is rendered impotent to stop it

completely[43434343].

The Government can continue to enforce the order against countless children whose parents are poor, uncounseled, or simply unaware of their rights, creating a "substantial 'shadow population'" of stateless children[44444444]. This isn't a "remedial gap"; it is, as Justice Jackson rightly calls it, a "zone of lawlessness"[45454545]. To say that these children must wait for the slow process of percolation or a Hail Mary application on the emergency docket is to deny justice entirely. The Court's decision today tells the Executive that, yes, you can break the law, and you can continue to do so until every single person you harm manages to find a lawyer and file a lawsuit. That is a catastrophic blow to the rule of law.

Moderator: Let me bring in a final point. The majority in footnote 10 explicitly carved out the question of APA vacatur, stating, "Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action"[46464646]. Professor Sohoni, you've written on this. Does this create a massive loophole that makes the

CASA holding less significant than it appears?

Fake Professor Sohoni: It's a crucial point and suggests the majority recognizes the unworkability of its own rule when it comes to the modern administrative state. The APA directs courts to "set aside" unlawful agency action[47]. For decades, courts have understood this to mean vacating the rule itself, rendering it void for everyone[48]. This provides the same functional relief as a universal injunction. Justice Kavanaugh's concurrence explicitly flags this as a viable alternative[49]. The battle will now shift to whether agency guidance implementing an executive order constitutes "final agency action" subject to vacatur[50]. But for the vast universe of agency rulemaking, this carve-out swallows a large part of the Court's holding. It creates a bizarre remedial patchwork: sweeping equitable injunctions are forbidden by a judge-made gloss on a 1789 statute, but sweeping statutory vacatur may be permitted by a 1946 statute. It makes little sense.

Fake Professor Bray: I would frame it differently. The Court was careful and correct to limit its holding to its equitable power under the Judiciary Act. The APA question is a separate statutory matter, and it should be resolved on its own terms. It is not a "loophole" so much as a recognition that Congress can, if it chooses, create specific remedies. But that does not justify courts inventing broad equitable remedies that Congress never authorized. Furthermore, the dissents' advice to plaintiffs to immediately pivot to nationwide class actions is telling[51]. It confirms that there are existing, orderly procedures for obtaining broad relief. They may be a "procedural bog," but they are the procedures established by law, complete

with safeguards for absent class members and defendants[52]. My hope is that the Court's decision will channel these important challenges into the proper procedural vehicles—class actions and APA suits—rather than the free-for-all of the universal injunction. This will restore predictability and discipline, which are essential for a healthy legal system.

Moderator: We will have to leave it there. A landmark decision with profound and immediate consequences for the separation of powers and the protection of constitutional rights. My thanks to both Professor Bray and Professor Sohoni for a fascinating and deeply insightful discussion.