Trump v. CASA, Inc.

A New Era for Federal Injunctive Relief

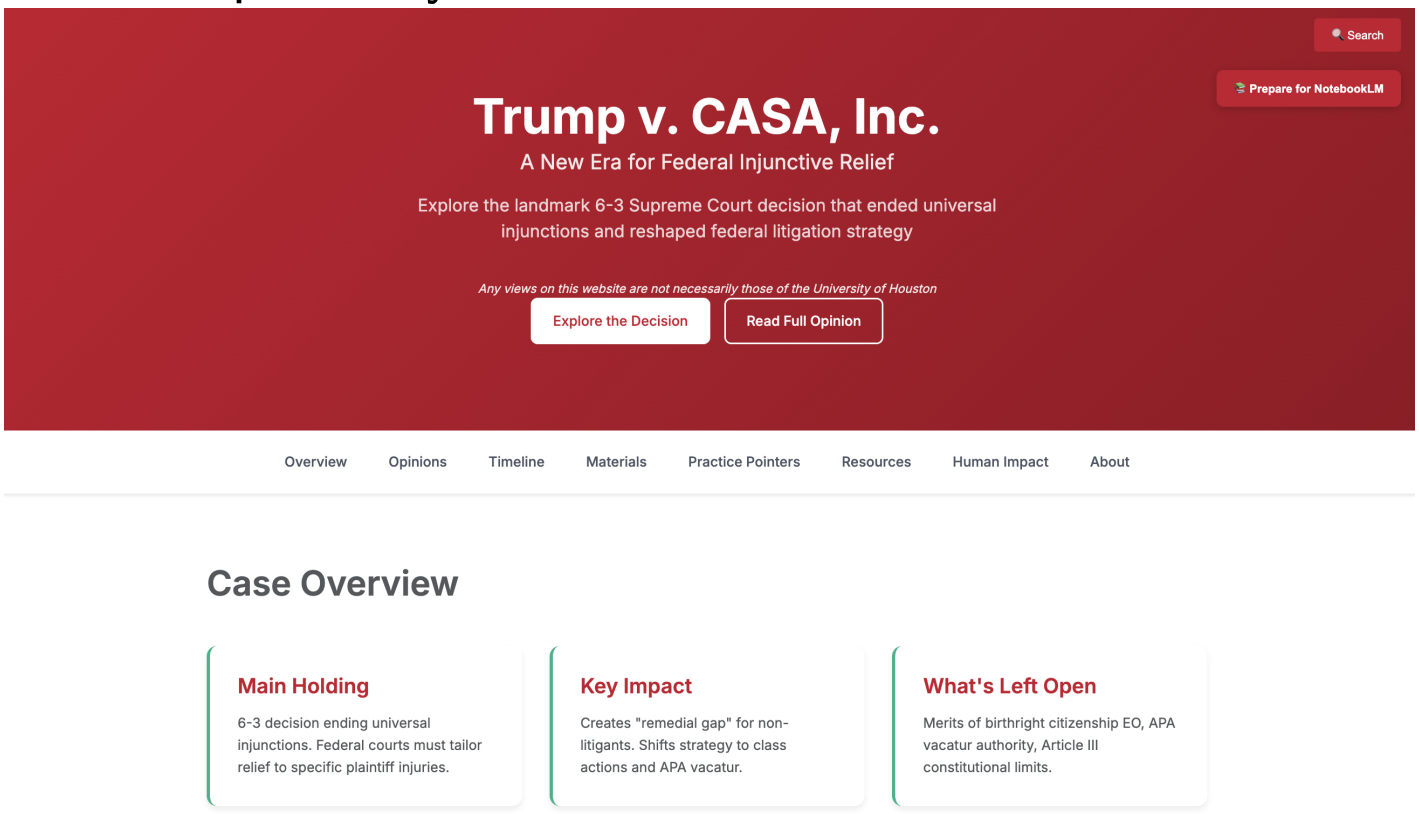
Seth J. Chandler, with help from AI

August 6, 2025

This presentation does not necessarily reflect the views of the University of Houston

Announcing a Virtual Museum for Trump v. CASA

- https://sethchandler.github.io/Trump-v-CASA/
- A rich exploratory environment to learn about this case



Main Holding: The End of the Universal Injunction

- 6-3 decision: Universal injunctions exceed federal court's statutory equitable authority
- Ends practice of single district court halting policy nationwide
- Relief must be tailored to specific injury of plaintiffs
- Court adopts term "universal injunction" (personal scope) over "nationwide" (geographic)
- Creates a "remedial gap" or "zone of lawlessness" for non-litigants

What the Majority Did NOT Address

- Merits of the Birthright Citizenship EO
- Constitutional question of Article III limits on relief
- Most importantly: The power of APA Vacatur
  - Footnote 10: "Nothing we say today resolves" the APA question
  - Leaves open pathway for vacating agency rules under 5 U.S.C. § 706

The Birthright Citizenship Executive Order (EO 14160)

- Claimed legal basis: a reinterpretation of "subject to the jurisdiction thereof"
- Denied citizenship to U.S.-born children in two categories:
  - Mother was unlawfully present (and father not citizen/LPR)
  - Mother had lawful temporary status (e.g., student/tourist visa) (and father not citizen/LPR)
- Many believe it contradicts precedent of *U.S. v. Wong Kim Ark (1898)*(interpreting sentence 1 of 14th amendment, section 1)
- Claims support in *Elk v. Wilkins* (1884), failure of *Wong Kim Ark* to explicitly address EO scenario
- Implementation would require subsequent regulations ("agency action") by federal agencies

Justice Barrett's Opinion: A Strict Historical Test

- Decision based on statutory authority, not Article III
- Source of equity power: Judiciary Act of 1789
- Relies on *Grupo Mexicano* precedent
  - Equity powers limited to those used in 1789 England (critics say should be pinned to 1875 FQ jurisdiction)
  - Modern remedy must have historical "analogue"
  - "Bruenization" of equitable powers (as with establishment clause, confrontation clause, substantive due process, 4th amendment)
  - Implicit: Equity powers frozen, not adaptive

Justice Barrett's Opinion: Applying the Test

- Finds no founding-era analogue to universal injunction
- Rejects "bill of peace" as proper analogue
  - Argues bill of peace was for "small and cohesive" groups
- Universal injunction seen as "class-action workaround"
- Sidesteps procedural safeguards of FRCP 23
- Policy arguments are "beside the point" under historical test

Justice Kavanaugh's Concurrence: SCOTUS as "Ultimate Decider"

- Focus on the "interim before the interim"
- Warns against "patchwork scheme" of federal law
- SCOTUS must provide national uniformity via emergency docket
- "Deciding those applications...is a critical part of our job."
- Explicitly endorses class actions and APA "set aside" as alternatives

Justice Thomas's Concurrence: Article III as the Border Guard against "evasion"

- Agrees with Barrett on statutory interpretation but views Article III as providing constraints too
- Warns against using "complete relief" doctrine as a substantive loophole.
- Defines complete relief as a discretionary ceiling, not a plaintiff's mandate.
- Establishes high bar for "indivisible" remedies benefiting non-parties.
  - plaintiff-specific relief must be "all but impossible"
- Joins Alito in seeing complete relief work around as a "loophole" improperly piercing Article III constraints on judicial power against executive action

Justices Alito's Twin Concurrence: Policing Two More "Loopholes"

- Fear the holding could become a "pyrrhic victory"
- Warns against distorting "complete relief" principle
- Loophole 1: State third-party standing
  - Calls for "rigorous and evenhanded enforcement" of standing
- Loophole 2: Lax class certification
  - Warns against Rule 23 standards becoming a "mere pleading standard"

Justice Sotomayor's Dissent: Equity and Patent Unlawfulness

- Begins by framing the EO as "patently unconstitutional"
- Accuses government of "gamesmanship" by not defending merits
- Argues for flexible, adaptable view of equity history
  - "Bill of peace" and taxpayer suits are valid analogues
- Criticizes majority for "freezing in amber" 1789 remedies

The word "respectfully" is missing

Justice Sotomayor's Dissent: Rebutting the Majority

- Majority's historical test misunderstands equity's nature to evolve
- Cites *Pierce* and *Barnette* as granting universal relief in effect
- Argues even under majority's standard, complete relief was met
  - Cites district court findings on indivisible harm to states
  - Cites harm to nationwide membership of organizational plaintiffs

Justice Jackson's Dissent: A "Zone of Lawlessness"

- Ruling is an "open invitation for the Government to bypass the Constitution"
- Creates a "two-track system" of constitutional rights
  - Law binds government only as to those who sue
- An abdication of judiciary's role as a check on power
- Makes a "mockery" of duty to uphold Constitution

Justice Jackson's Dissent: Rejecting Formalism

- Disproportionately harms the "poor, the uneducated, and the unpopular"
- Criticizes majority's focus on "mind-numbingly technical query"
- Ignores real-world consequences for constitutional governance
- Rejects embrace of historical limitations from "impotent English tribunals"

Justice Barrett forcefully rejects as untethered to any doctrine and advocating an imperial judiciary

Recent Rulings Post-CASA Decision

Case	Date	Plaintiffs	Relief Sought	Holding	Key
Washington v. Trump (9th Cir.)	July 23, 2025	States (WA, AZ, IL, OR)	Affirmance of universal injunction	Universal injunction affirmed for state plaintiffs.	"Impossible to otherwise avoid" administrative and financial harm to states"
New Jersey v. Trump (D. Mass.)	July 25, 2025	States (NJ, CA, et al.)	Reaffirmation of universal injunction	Universal injunction upheld as necessary for complete relief.	"Patchwork" injunction unworkable due to cross-border flows.

Recent Rulings Post-CASA Decision (2)

Case	Date	Plaintiffs	Relief Sought	Holding	Key
CASA, Inc. v. Trump (D. Md.)	July 16, 2025	Individuals & Associations	Motion for class certification and class-wide PI.	Indicative ruling to grant class-wide PI upon remand.	Adopts procedural path suggested by SCOTUS
Barbara v. Trump (D.N.H.)	July 10, 2025	Individuals	Motion for class certification and class-wide PI.	Provisional nation-wide class certified; class-wide PI granted.	Follows the "blueprint of the Supreme Court to use class certification"

USCIS implementation (July 25, 2025)

- Unlawfully present piggybacks on INA 212(a)(9)(B)(ii)
- Very broad definition of temporarily present
  - Deferred Action recipients
  - People with CAT relief
  - TPS holders
  - Not included: asylees, refugees, LPRs, US nationals
- Affects even 'obvious' US citizens
- Bring your passport to the delivery room!
- Many states complaining of burden
- Likely to create stateless children

Post-CASA Strategy: APA Vacatur as Universal Relief

- The Pivot to APA Vacatur
  - Statutory remedy via APA §706: "set aside" agency action
  - Voids the rule itself, providing inherently nationwide relief
- The New Battleground
  - Key Hurdle: Is agency guidance "final agency action"?
  - *Bennett v. Spear (1997)* Test:
    - "Consummation" of agency's process
    - Determines rights or creates "legal consequences"
- Does difficulty of implementing EOs without agency guidance render Trump v. CASA a sheep in wolf's clothing?

What Could Congress Do?

- Goal: Restore broad relief while preventing "judge shopping"
- Option 1: Three-Judge Courts
  - For any case seeking to enjoin federal policy
  - Brings more judicial moderation
  - Allows direct appeal to the Supreme Court
- Option 2: Statutorily authorize or limit universal injunctions
  - e.g., Judicial Relief Clarification Act

Practice Pointers (1): Pivot to Class Actions

- Primary vehicle for broad relief post-*CASA*
- Endorsed by the Court as modern "bill of peace"
- Be prepared for a "drawn-out procedural bog"
- Must satisfy rigorous requirements of FRCP 23
- Expect government to contest certification vigorously

Practice Pointers (2): The "Complete Relief" Battleground

- For state and large organizational plaintiffs
- Argue that plaintiff's injury is "indivisible"
- Requires detailed, fact-intensive evidentiary showing
  - e.g., prove administrative chaos, cross-border harm
- Expect high skepticism from some judges (per Thomas concurrence)

Availability of Preliminary Relief for Putative Classes

- A key unresolved and controversial question
- Can a court enjoin enforcement for a class before it is certified?
- Sotomayor's dissent advises plaintiffs to request it
- Precedent exists (e.g., *A.A.R.P. v. Trump*)
- Opponents argue it's a distinction without a difference from a universal injunction

The Virtual Law Museum

- https://sethchandler.github.io/Trump-v-CASA/
- Explore the galleries in a human-AI portent of future legal education
  - Collaboration motivated by this CLE between me and generative AI
  - Claude Code and Gemini are lead actors
  - Tasked to build a rich museum based on primary documents and analysis
  - Plays well with NotebookM
- Inaugural exhibit features *Trump v. CASA, Inc.* and the end of universal injunctions.
- Useful for CLE
- A blueprint for future virtual law museums
- Read more about it here and subscribe to http://legaled.ai: https://legaled.ai/building-a-virtual-law-museum-trump-v-casa/

Things I did not get to

But you can ask me about them in Q & A if you are curious

Implications for *Wong Kim Ark*

- *CASA* did NOT rule on the merits of the EO
- The precedent of *Wong Kim Ark* remains legally untouched
- I do not share the conventional view that the full reaffirmation of WKA is a slam dunk in this Supreme Court
  - Case did contain broad language
  - But case did *not* involve parents unlawfully present
  - Elk v. Wilkins (1884) dealing with reservation American Indians is a challenge to WKA
    - How can you say that reservation Indians do not have sufficient allegiance to the US to be "subject to the jurisdiction thereof" but people here unlawfully or on a tourist visa do?
    - Of course, many people think Elk v. Wilkins was/is a racist outrage
  - Still if I were betting, I would bet on WKA prevailing
- However, the case signals the issue is not settled politically
- The government's "remedy-first" strategy avoided a merits ruling

Practice Pointers (3): What Can State Courts Do?

- Federal equitable limits in *CASA* do not bind state courts applying state law
- States may permit courts to issue injunctions that bind state officials against all people in state even without class action
- However, other significant hurdles exist for enjoining federal policy:
  - The Supremacy Clause
  - Federal officer removal statutes (28 U.S.C. § 1442)
- Result: Challenges to federal policy are almost always litigated in federal court
- The primary role for states remains as powerful *plaintiffs* in the federal system