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Class Action Lawsuits and Classwide Injunctive Relief

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SUMMARY

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Class Action Lawsuits and Classwide Injunctive Relief

In *Trump v. CASA, Inc.*, the Supreme Court limited the ability of federal courts to issue nationwide (or universal) injunctions, which are court orders prohibiting the government from implementing a challenged law, regulation, or other policy against all persons and entities, including non-parties to the lawsuit. *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). Although *CASA* limited the availability of nationwide injunctions, the decision left open a number of potential avenues for litigants to obtain broad relief for persons or entities affected by allegedly unlawful government policies. Class action lawsuits are one such avenue, and class actions have attracted increased attention as a potential alternative to nationwide injunctions following *CASA*.

Whereas a nationwide injunction blocks the government from enforcing a law or policy against all persons and entities, a class action is a form of representative action that seeks relief for members of a defined class. Classwide injunctive relief is sometimes functionally equivalent to a nationwide injunction insofar as a class may be defined broadly to cover large numbers of affected individuals or entities who are not participating actively in the case. Class actions in federal court must satisfy certain procedural requirements.

Federal Rule of Civil Procedure 23 (Rule 23) governs class actions in federal courts. Rule 23's requirements help ensure that absent class members' interests are protected and that the lawsuit is the type of case for which class treatment would be beneficial. A lawsuit may not proceed on a class basis unless the court certifies the class upon determining that Rule 23's requirements are met. *Smith v. Bayer Corp.*, 564 U.S. 299, 313–15 (2011). The party seeking class certification bears the burden of demonstrating that the requirements are met, and the Supreme Court has held that courts must perform a "rigorous analysis" before deciding whether certification is warranted. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–52 (2011). Class certification decisions often involve evidentiary hearings and may require the court to address complex legal issues that overlap with the merits of the case.

To the extent class actions are viewed as an alternative to nationwide injunctions, some observers have expressed concern that class certification may not always be possible to achieve quickly, or at all, in some cases in which courts otherwise may have granted a nationwide injunction. *See, e.g.*, Suzette M. Malveaux, *Class Actions, Civil Rights, and the National Injunction*, 131 HARV. L. REV. F. 56, 58–60 (2017). In addition to the potential difficulty of satisfying Rule 23's requirements, obtaining class certification can also be expensive and time-consuming, and some courts and commentators have raised questions about the extent to which courts may expedite class certification or grant injunctive relief for putative class members without first certifying a class. *See, e.g.*, *L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 117 n.3 (D.D.C. 2025). In contrast, some legal scholars contend that obtaining certification for a class seeking injunctive relief against the government is generally not as difficult as other commentators have suggested. *See, e.g.*, David Marcus, *The Class Action After Trump v. CASA*, 72 UCLA L. REV. DISCOURSE 2, 8–9. The prospect of using class actions as a substitute for nationwide injunctions has also raised concerns that district courts may become too permissive in certifying class actions after *CASA*, and that loose enforcement of Rule 23's certification requirements could undermine the *CASA* ruling.

Plaintiffs have obtained broad, classwide injunctions in a number of class actions challenging government policies since the Supreme Court's *CASA* decision, but it remains to be seen how the Supreme Court may respond as more such cases work through the judicial system. The extent to which class actions may become a substitute for nationwide injunctions after *CASA* remains subject to ongoing debate.

Nationwide injunctions have received substantial attention from the 119th Congress, and some legal scholars have observed that nationwide class actions against the government may implicate similar policy concerns as nationwide injunctions in certain respects. *See, e.g.*, Michael T. Morley, *Disaggregating Nationwide Injunctions*, 71 ALA. L. REV. 1, 52–53 (2019); David Marcus, *The Class Action After Trump v. CASA*, 72 UCLA L. REV. DISCOURSE at 23. Congress has substantial constitutional authority to regulate federal court procedures, including the procedures that apply to class action lawsuits. *Hanna v. Plumer*, 380 U.S. 460, 472 (1965). In light of the increased focus on class actions as a potential substitute for nationwide injunctions, Congress may choose to monitor the use of the class action device in lawsuits seeking injunctive relief against the government, and evaluate whether such use aligns with Congress's preferences. If Congress wished, it could consider legislating to expand or limit the ability of plaintiffs to bring suits challenging government policies on a class action basis.

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In *Trump v. CASA, Inc.,*[1] the Supreme Court limited the ability of federal courts to issue nationwide (or universal) injunctions, which are court orders prohibiting the government from implementing a challenged law, regulation, or other policy against all relevant persons and entities, including non-parties to the lawsuit.[2] An injunction is a "court order commanding or preventing an action,"[3] and the Supreme Court has explained that the difference between a traditional injunction and a nationwide injunction is "not so much *where* it applies, but *whom* it protects."[4] While "[e]ven a traditional, parties-only injunction can apply beyond the jurisdiction of the issuing court," a nationwide injunction "prohibits the Government from enforcing [a] law against *anyone*, anywhere."[5]

Although *CASA* limited the availability of nationwide injunctions, the decision left open a number of potential avenues for litigants to obtain broad relief from a court to block enforcement of allegedly unlawful government policies against large numbers of affected persons or entities.[6] Class action lawsuits are one such legal mechanism, and class actions have attracted increased attention as a potential alternative to nationwide injunctions.[7]

Whereas a nationwide injunction blocks the government from enforcing a law or policy against *all* persons and entities, a class action is a form of representative action that seeks relief for members of a defined class who have all suffered the same injury.[8] The Supreme Court's majority opinion in *CASA* characterized nationwide injunctions as a "class-action workaround."[9] In the majority's view, by providing a "shortcut to relief that benefits parties and nonparties alike,

[1] Trump v. CASA, Inc., 606 U.S. 831 (2025).

[2] Although *nationwide injunction* appears to be the most common term for an injunction that blocks government action against anyone, courts and legal commentators also refer to these injunctions by other names, such as *universal injunctions*, which is the Supreme Court's preferred term. *See, e.g.*, *CASA*, 606 U.S. at 838 n.1 (observing that "the term 'universal' better captures how these injunctions work").

For an in-depth discussion of nationwide injunctions and the *CASA* decision, see CRS Report R46902, *Nationwide Injunctions: Law, History, and Proposals for Reform*, by Joanna R. Lampe (2021); and CRS Report R48600, *Trump v. CASA, Inc. and Nationwide Injunctions During the Second Trump Administration*, by Joanna R. Lampe (2025).

[3] *Injunction*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[4] *CASA*, 606 U.S. at 838 n.1.

[5] *Id.*

[6] For example, courts hearing challenges to government actions under the Administrative Procedure Act, ch. 324, 60 Stat. 237 (1946), sometimes universally stay a challenged action while a case is pending or vacate the agency action following litigation on the merits, which can have a universal effect. *See* Harmon v. Thornburgh, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) ("When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed."). In *CASA*, 606 U.S. at 847 n.10, the Supreme Court expressly declined to resolve "the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action."

For additional background on vacatur under the Administrative Procedure Act, see CRS Legal Sidebar LSB11357, *"Set Aside" and Vacatur Under the Administrative Procedure Act*, by Benjamin M. Barczewski (2025). For discussion of other potential avenues for obtaining universal judicial relief after *CASA*, see CRS Legal Sidebar LSB11331, *Trump v. CASA, Inc.: Supreme Court Limits Nationwide Injunctions*, by Joanna R. Lampe (2025).

[7] *See, e.g.*, David Lat, *Class Actions Might Be The Surprise Fix For Problems With Universal Injunctions*, ORIGINAL JURISDICTION (May 21, 2025), https://davidlat.substack.com/p/class-actions-might-partially-fix-universal-or-nationwide-injunctions-birthright-citizenship-arguments-casa-aarp-v-trump [https://perma.cc/A7YH-6EHK]; Brian Fitzpatrick, *The Perils of Using Class Actions as a Replacement for Universal Injunctions*, SCOTUSBLOG (Aug. 12, 2025), https://www.scotusblog.com/2025/08/the-perils-of-using-class-actions-as-a-replacement-for-universal-injunctions/ [https://perma.cc/E6N8-6XJP].

[8] *See* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 348–49 (2011).

[9] *CASA*, 606 U.S. at 850 (citing *CASA*, 606 U.S. at 900–03 (Sotomayor, J., dissenting)).

[nationwide] injunctions circumvent Rule 23's procedural protections and allow 'courts to create *de facto* class actions at will.'"[10]

Classwide injunctive relief is sometimes functionally equivalent to a nationwide injunction[11] insofar as it may block the government from implementing a challenged policy with respect to a broad group of persons or entities who are not participating actively in the case.[12] For a lawsuit to proceed as a class action in federal court, however, the lawsuit must satisfy the requirements of Federal Rule of Civil Procedure 23 (Rule 23).[13] While plaintiffs have obtained certification of broad, nationwide classes since the *CASA* decision in some cases in which the courts had previously issued a nationwide injunction,[14] obtaining class certification under Rule 23 can be difficult and time-consuming. The extent to which class actions will become a substitute for nationwide injunctions following the *CASA* decision remains subject to ongoing debate.[15] Additionally, nationwide injunctions have received substantial attention from the 119th Congress,[16] and some legal scholars have observed that nationwide class actions against the government may implicate similar policy concerns as nationwide injunctions in certain respects.[17]

This report provides an overview of the class action mechanism and Rule 23's certification requirements, examines legal questions concerning the availability of classwide injunctive relief, and discusses ongoing debates over the extent to which class actions are a substitute for nationwide injunctions. This report concludes with considerations for Congress.

Background on Class Actions

A class action lawsuit is a form of representative action that aggregates the legal claims of numerous individuals or entities into a single proceeding. The general rule in American litigation is that lawsuits are brought on behalf of the named parties, but the class action mechanism is an exception that permits one or more named plaintiffs to sue a defendant on their own behalf and as representatives of a larger group of persons who have allegedly suffered the same injury.[18]

Whereas plaintiffs in ordinary multi-plaintiff lawsuits each participate in the litigation, in class actions the unnamed class members—also called *absent class members*—typically do not actively participate in the litigation and may not even be aware of their potential claims when the lawsuit is filed.[19] Although the unnamed members of a class are not formal "parties" to the litigation in

[10] *Id.* (quoting Smith v. Bayer Corp., 564 U.S. 299, 315 (2011)).

[11] *See CASA*, 606 U.S. at 873 (Kavanaugh, J. concurring) (describing "a preliminary injunction to a putative nationwide class under Rule 23(b)(2)" as "the functional equivalent of a universal injunction").

[12] Califano v. Yamasaki, 442 U.S. 682 (1979).

[13] FED. R. CIV. P. 23; Smith v. Bayer Corp., 564 U.S. 299, 315 (2011).

[14] *See* CASA, Inc. v. Trump, 793 F. Supp. 3d 703, 728–29 (D. Md. 2025); Pacito v. Trump, 796 F. Supp. 3d 692 (W.D. Wash. 2025).

[15] *See, e.g.*, Suzette M. Malveaux, *Class Actions, Civil Rights, and the National Injunction*, 131 HARV. L. REV. F. 56, 58 (2017); Amanda Frost, *In Defense of Nationwide Injunctions*, 93 N.Y.U. L. REV. 1065, 1095–97 (2018); David Marcus, *The Class Action After Trump v. CASA*, 72 UCLA L. REV. DISCOURSE 2, 23 (2025); Fitzpatrick, *supra* note 7.

[16] *See infra* note 116.

[17] *See infra* note 117.

[18] Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 155 (1982). While plaintiff classes are most common, federal courts also may certify classes of defendants. Defendant class actions are rare and raise different considerations than plaintiff class actions. *See* Bell v. Brockett, 922 F.3d 502, 504 (4th Cir. 2019). The discussion in this report is limited to plaintiff class actions.

[19] Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 810 (1985) ("[A]n absent class-action plaintiff is not required to do (continued...)

the sense of participating in and directing the litigation,[20] they "are considered parties to the litigation in many important respects,"[21] and are generally bound by a final judgment resolving their legal claims in the case.[22]

The Supreme Court has observed that a primary purpose of class actions is to improve the "efficiency and economy of litigation."[23] When many persons have allegedly suffered the same injury from a defendant's conduct, aggregating the claims into a single class action lawsuit may allow courts and parties to avoid the time and expense of litigating large numbers of duplicative individual lawsuits.[24] Also, by enabling class representatives to litigate numerous other parties' claims in a single proceeding, class actions can serve to vindicate rights and deter wrongdoing, such as where injured class members may lack the means to hire their own attorneys, or the costs of litigating may not justify bringing a claim on an individual basis.[25]

Courts have also recognized that class actions may be subject to abuse. For instance, because unnamed class members generally are not directly involved in the litigation, class actions can create a risk that the class representatives or class attorneys might place their own interests ahead of those of absent class members in litigating the case.[26] Additionally, aggregating numerous claims into a single proceeding can create intense pressure on a defendant to settle even unmeritorious legal claims.[27]

While the class action mechanism has roots in early English law, the modern class action in the United States was created in Rule 23,[28] which governs class actions in federal courts.[29] The

anything . . . [and] may sit back and allow the litigation to run its course, content in knowing that there are safeguards provided for his protection.").

[20] *See, e.g.*, Williams v. Gen. Elec. Cap. Auto Lease, Inc., 159 F.3d 266, 269 (7th Cir. 1998).

[21] United States v. Sanchez-Gomez, 584 U.S. 381, 387 (2018). *See also, e.g.*, Devlin v. Scardelletti, 536 U.S. 1, 9–10 (2002) (explaining that unnamed class members "may be parties for some purposes and not for others," and that "[t]he label 'party' does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context").

[22] Cooper v. Fed. Rsrv. Bank of Richmond, 467 U.S. 867, 874 (1984) ("There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation."); Hansberry v. Lee, 311 U.S. 32, 41 (1940).

[23] Am. Pipe & Const. Co. v. Utah, 414 U.S. 538, 553 (1974); Crown, Cork & Seal Co. v. Parker, 462 U.S. 345, 349 (1983).

[24] *Falcon*, 457 U.S. at 155.

[25] Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 617 (1997).

[26] *See, e.g.*, Eubank v. Pella Corp., 753 F.3d 718, 720 (7th Cir. 2014).

[27] *See, e.g.*, Messner v. Northshore Univ. HealthSystem, 669 F.3d 802, 825 (7th Cir. 2012).

[28] Ortiz v. Fibreboard Corp., 527 U.S. 815, 832–33 (1999). For further background on the origins and development of the modern class action, see STEPHEN YEAZELL, FROM MEDIEVAL GROUP LITIGATION TO THE MODERN CLASS ACTION (1987); Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (i)*, 81 HARV. L. REV. 356 (1967).

[29] More specifically, Rule 23 governs class actions in federal district courts, which are the primary trial courts in the federal court system. *See* FED. R. CIV. P. 1 (specifying that, with certain exceptions, the Federal Rules of Civil Procedure "govern the procedure in all civil actions and proceedings in the United States district courts"); About U.S. District Courts, U.S. CTS., https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-district-courts [https://perma.cc/2TGP-GZ44] (last visited Mar. 30, 2026) (providing an overview of the role and structure of federal district courts). Two specialized federal trial courts—the U.S. Court of Federal Claims and the U.S. Court of International Trade—have their own class action rules modeled on Federal Rule of Civil Procedure 23. *See* CT. INT'L TRADE R. 23; FED. CL. R. 23.

Supreme Court first promulgated Rule 23 in 1937,[30] and major amendments in 1966 remade the rule into its modern form.[31]

Class Certification Under Rule 23

For a lawsuit to proceed as a class action under Rule 23, the plaintiff or plaintiffs seeking to represent the class must establish that the lawsuit satisfies certain requirements enumerated in Rule 23(a) and (b),[32] discussed below. These requirements help ensure that absent class members' interests are protected and that the lawsuit is the type of case for which class treatment would be beneficial.[33] The lawsuit may not proceed on a class basis unless the court certifies the class upon determining that the requirements are met.[34] The party seeking class certification bears the burden of "affirmatively demonstrating" that the requirements are met, and courts must perform a "rigorous analysis" before deciding whether certification is warranted.[35] Class certification decisions often involve evidentiary hearings[36] and may require the court to address complex legal issues that overlap with the merits of the case.[37]

A lawsuit that seeks to bring claims on behalf of a class that has not yet been certified is commonly referred to as a *putative* class action, and members of the uncertified class are *putative* class members.[38] If a court concludes that a putative class satisfies Rule 23's certification requirements, then it issues a certification order defining the class and appointing class counsel.[39]

Rule 23(a)

A class action must meet all four of the prerequisites listed in Rule 23(a), which are commonly known as *numerosity*, *commonality*, *typicality*, and *adequacy of representation*.[40]

- **Numerosity**. Under Rule 23(a)(1), the proposed class must be so large that it would be "impracticable" for all the class members to be joined to the proceeding.[41] There is not a strict numerical cutoff, but as a rule of thumb, courts

[30] As discussed below, the Rules Enabling Act (P.L. 100-702, tit. IV, 102 Stat. 4648 (1988) (codified as amended at 28 U.S.C. §§ 2071–2077)) authorizes the Supreme Court to create and amend federal procedural rules, such as Rule 23.

[31] Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613 (1997) ("Rule 23, governing federal-court class actions, stems from equity practice and gained its current shape in an innovative 1966 revision.").

[32] *Id.* at 613–14.

[33] Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011).

[34] FED. R. CIV. P. 23(c)(1); Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 75 (2013) ("[A] putative class acquires an independent legal status once it is certified under Rule 23."); Standard Fire Ins. Co. v. Knowles, 568 U.S. 588, 593 (2013) ("[A] plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified."); Smith v. Bayer Corp., 564 U.S. 299, 313–14 (2011) ("Neither a proposed class action nor a rejected class action may bind nonparties. What does have this effect is a class action approved under Rule 23.").

[35] *Wal-Mart*, 564 U.S. at 350–52.

[36] *See* ANN. MANUAL COMPLEX LIT. § 21.21 (4th ed.).

[37] *Wal-Mart*, 564 U.S. at 351–52.

[38] *See, e.g.*, China Agritech v. Resh, 584 U.S. 732 (2018) (discussing putative class actions and putative class members).

[39] FED. R. CIV. P. 23(c)(1).

[40] Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613 (1997).

[41] FED. R. CIV. P. 23(a)(1).

have observed that classes with more than forty members generally satisfy the numerosity requirement.[42]

- **Commonality**. Under Rule 23(a)(2), there must be "questions of law or fact common to the class."[43] Although the Supreme Court has held that even one "common question" is enough to satisfy this requirement,[44] the Court has interpreted the common-question requirement as more demanding than what a literal reading of the rule might suggest.[45]
  In *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court explained that it is not enough that the class members' claims "literally raise[] common questions," but instead the common question must be capable of generating a "common answer" that would resolve an issue central to the class members' claims in "one stroke."[46] Commonality thus requires that the class members have "suffered the same injury," and not "merely that they have all suffered a violation of the same provision of law."[47]
- **Typicality**. Under Rule 23(a)(3), the "claims or defenses of the representative parties" must be "typical of the claims or defenses of the class."[48] This essentially requires there to be sufficient similarity between the legal and factual bases of the representative plaintiffs' claims and the class members claims.[49] The Supreme Court has explained that the commonality and the typicality requirements "tend to merge" and that "[b]oth serve as guideposts" for determining whether a class action would be economical and whether the claims of the class representatives and absent class members are so interrelated that the interests of the absent class members will be adequately protected.[50]
- **Adequacy of Representation**. Rule 23(a)(4) requires that class representatives will "fairly and adequately protect the interests of the class."[51] The adequacy requirement considers potential conflicts of interest between class representatives

[42] *See, e.g.*, *In re* Nat'l Football League Players Concussion Inj. Litig., 821 F.3d 410, 426 (3d Cir. 2016), *as amended* (May 2, 2016).

[43] FED. R. CIV. P. 23(a)(2).

[44] Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 359 (2011).

[45] *Id*.

[46] *Id*. at 350.

[47] *Id*. In the lower court proceedings in *Wal-Mart*, a federal district court had certified a class of all female employees at Wal-Mart stores nationwide in a Title VII sex discrimination lawsuit, and on appeal the Supreme Court ruled that the class did not satisfy Rule 23(a)'s commonality requirement. *Id*. at 358. The Court reasoned that the Title VII discrimination claims depended on the reasons for particular employment decisions, but Wal-Mart gave its local managers significant discretion in making employment decisions, and plaintiffs had not established that the store managers across the nation exercised their discretion in a common way. *Id*. In the Court's view, because they failed to establish that the employees were subject to a uniform employment policy or practice across the stores nationwide, the plaintiffs were unable to show that all the employees' Title VII claims depended on the answers to common questions. *Id*.

[48] FED. R. CIV. P. 23(a)(3).

[49] *See, e.g.*, Small v. Allianz Life Ins. Co. of N. Am., 122 F.4th 1182, 1201–02 (9th Cir. 2024); Angell v. GEICO Advantage Ins. Co., 67 F.4th 727, 736 (5th Cir. 2023); *In re* Schering Plough Corp. ERISA Litig., 589 F.3d 585, 597 (3d Cir. 2009).

[50] *Wal-Mart*, 564 U.S. at 350 n.5 (2011) (quoting Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 157–158, n.13 (1982). The Supreme Court has observed that the commonality and the typicality requirements therefore also tend to merge with the adequacy of representation requirement. *Id*.

[51] FED. R. CIV. P. 23(a)(4).

> or class counsel and absent class members, and whether the class counsel and class representatives will competently litigate the claims on behalf of the class.[52]

Rule 23(b)

In addition to satisfying all four of the Rule 23(a) prerequisites, a class must also fall into one of the types of class actions permitted under Rule 23(b). While Rule 23(b) permits multiple types of class actions,[53] this report focuses on class actions brought under Rule 23(b)(2), which permits class actions seeking injunctive relief. Rule 23(b)(2) specifically authorizes class actions where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."[54]

The Supreme Court has explained that Rule 23(b)(2) permits class actions when a single injunction would provide relief to all the class members, but not when the lawsuit primarily seeks individualized relief for class members.[55] Rule 23(b)(2) therefore does not authorize a class "when each individual class member would be entitled to a different injunction . . . against the defendant."[56] A "prime example[]" of a class action under Rule 23(b)(2) is a civil rights lawsuit seeking a court order to stop a defendant from engaging in class-based discrimination.[57]

In contrast to class actions seeking money damages, in which class members have the right to notice of class certification and may choose to opt out of the class,[58] injunctive relief classes under Rule 23(b)(2) are considered "mandatory" classes in that class members do not have the right to notice of class certification or to exclude themselves from the class.[59]

Classwide Injunctions

Whereas a nationwide injunction blocks the government from enforcing a law or policy against all persons and entities, a class action seeks relief for members of a defined class. A class may be defined broadly and may include class members located across the country,[60] and courts have ordered broad, classwide injunctive relief against the federal government in class action lawsuits both before and after the *CASA* decision.[61]

In 1979, for example, the Supreme Court upheld a district court's decision to certify a nationwide class under Rule 23(b)(2) in *Califano v. Yamasaki,* a lawsuit challenging the legality of certain procedures a federal agency had implemented for recouping the overpayment of social security

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[52] Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625–26, 26 n.20 (1997).

[53] Class actions seeking money damages are the most common type of class action and are generally brought under a different category, Rule 23(b)(3), which imposes additional requirements. Rule 23(b)(1) permits class actions in certain circumstances where it would be "impossible or unworkable" to litigate a claim individually, *Wal-Mart*, 564 U.S. at 361, and is a less common type of class action.

[54] FED. R. CIV. P. 23(b)(2).

[55] *Wal-Mart*, 564 U.S. at 338.

[56] *Id.* at 360–61.

[57] *Id.* at 361.

[58] FED. R. CIV. P. 23(c)(2).

[59] *Wal-Mart*, 564 U.S. at 361–62.

[60] Califano v. Yamasaki, 442 U.S. 682 (1979).

[61] *See, e.g., Califano*, 442 U.S. 682; Barbara v. Trump, 790 F. Supp. 3d 80, 90 (D.N.H. 2025), *cert. granted before judgment sub nom.*, Trump v. Barbara, 146 S. Ct. 879 (2025).

benefits.[62] The district court had certified a class that included, subject to limited exceptions,[63] all individuals nationwide who were eligible for old age and survivor Social Security benefits and whose benefits were being subjected to the recoupment procedures.[64]

The Supreme Court explained that "[n]othing in Rule 23 . . . limits the geographical scope of a class action that is brought in conformity with that Rule."[65] The Court also reasoned that awarding injunctive relief to the nationwide class was consistent with equity jurisprudence principles because "the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class."[66]

While the *Califano* Court concluded that "certifying a nationwide class is committed in the first instance to the discretion of the district court,"[67] the Court also cautioned that nationwide classes may have "detrimental effects" in some cases.[68] For example, granting injunctive relief to a nationwide class may foreclose consideration of the issues by multiple different courts.[69] According to the Court, "[i]t often will be preferable to allow several courts to pass on a given class claim in order to gain the benefit of adjudication by different courts in different factual contexts."[70] The Court also observed that nationwide class actions can sometimes increase pressure on the Court's docket.[71] Accordingly, the Court emphasized that district courts considering whether to certify a nationwide class should "take care to ensure that nationwide relief is indeed appropriate in the case before it, and that certification of such a class would not improperly interfere with the litigation of similar issues in other judicial districts."[72]

Since the Court's 2025 *CASA* decision, plaintiffs have obtained certification of broad, nationwide classes in some cases in which district courts had previously granted nationwide injunctions,

[62] *Califano*, 442 U.S. 682.

[63] In certifying the class, the district court "excluded from the class residents of Hawaii and the Eastern District of Pennsylvania, where suits raising similar issues were known to have been brought." *Id*. at 679. The district court also "excluded all persons who had participated as plaintiffs or members of a plaintiff class in litigation against the Secretary on similar issues, if a decision on the merits previously had been rendered." *Id*.

[64] *Id*. at 689.

[65] *Id*. at 702. The Supreme Court held that the district court "did not abuse its discretion in certifying a nationwide class," but also held that the class definition was overbroad in a different respect. *Id*. The Court explained that the jurisdictional statute under which the plaintiffs had sued provided for judicial review of a "final decision of the Secretary" and that "no 'final decision" concerning the right to a prerecoupment hearing" would be made for persons who did not file a request for reconsideration or waiver. *Id*. at 704. The Court therefore held that the class definition should have excluded "persons who had not filed requests for reconsideration or waiver in the past and would not do so in the future." *Id*.

[66] *Id*.

[67] *Id*. at 703.

[68] *Id*. at 702.

[69] *Id*.

[70] *Id*.

[71] *Id*.

[72] *Id*. Legal scholars debate under what circumstances it is appropriate for courts to certify nationwide classes in cases against the government. *See, e.g.*, Michael T. Morley, *Nationwide Injunctions, Rule 23(b)(2), and the Remedial Powers of the Lower Courts*, 97 B.U. L. REV. 615, 625 (2017) (arguing that "[c]ourts should presumptively avoid certifying nationwide classes under Rule 23(b)(2) when plaintiffs challenge the constitutionality or proper interpretation of a federal legal provision," and that such nationwide classes are "inconsistent with the structure of the federal judicial system"); Marcus, *supra* note 15, at 31–32 (arguing that "[d]istrict courts should balance a host of factors . . . as they consider a class's geographic scope" and that "there is no doctrinal basis" for the argument that nationwide class actions challenging federal policy are inconsistent with the structure of the federal judicial system).

including in the *CASA* case itself.[73] For example, the Supreme Court's *CASA* ruling addressed nationwide injunctions[74] that had blocked enforcement of Executive Order No. 14160, *Protecting the Meaning and Value of American Citizenship* (the Birthright Citizenship E.O.).[75] The Court held that those nationwide injunctions were invalid to the extent they went beyond what was necessary to provide complete relief to the plaintiffs.[76] Some of the plaintiffs in the underlying *CASA* litigation subsequently sought certification of a class composed of all children nationwide who are subject to the Birthright Citizenship E.O., and the parents of such children.[77] The plaintiffs also asked the district court to issue a classwide preliminary injunction enjoining enforcement of the E.O. against the class members.

The district court certified a Rule 23(b)(2) injunctive-relief class and defined the class as all children nationwide whose parents met the criteria listed in the Birthright Citizenship E.O. for withholding citizenship.[78] The court also granted a classwide preliminary injunction prohibiting the government from enforcing the Birthright Citizenship E.O. against the class members. The district court did not include parents of the children in the class, because it determined that the parents' claims did not satisfy Rule 23(a)'s commonality requirement.[79] According to the court, while the children's claims satisfied commonality due to the nature of the common injury they faced in the form of being denied U.S. citizenship under the Birthright Citizenship E.O., the parents' claims would vary depending on their individual circumstances, such as whether they were seeking government benefits for their children based on their children's citizenship.[80]

[73] *See* CASA, Inc. v. Trump, 793 F. Supp. 3d 703 (D. Md. 2025); Pacito v. Trump, 796 F. Supp. 3d 692 (W.D. Wash. 2025).

[74] *Trump v. CASA* was a consolidated appeal addressing three cases in which district courts had issued injunctions blocking enforcement of the Birthright Citizenship E.O. *See* Trump v. CASA, Inc., 606 U.S. 831, 838 (discussing the procedural background).

[75] Exec. Order No. 14160, 90 Fed. Reg. 8449 (2025). Section 2 of the Birthright Citizenship E.O. declares that "it is the policy of the United States that no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship," of persons born in the United States to specified categories of alien parents thirty days or more after the date of the E.O. *Id*.

For further background on the Birthright Citizenship E.O. and related litigation, see CRS Legal Sidebar LSB11414, *Birthright Citizenship: Litigation Status Update*, by Hannah Solomon-Strauss and Juria L. Jones (2026); CRS Legal Sidebar LSB11331, *Trump v. CASA, Inc.: Supreme Court Limits Nationwide Injunctions*, by Joanna R. Lampe (2025).

[76] *CASA*, 606 U.S. at 861.

[77] CASA, Inc. v. Trump, 793 F. Supp. 3d 703 (D. Md. 2025).

[78] *Id*.

[79] *Id*. at 728–29.

[80] *Id*. at 720–21. The district court's classwide injunction in *CASA* remains in place as of the date of this report. The government appealed the district court's classwide preliminary injunction order (but not the class certification order) to the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit), *see* Government's Notice to Appeal, CASA, Inc. v. Trump, 793 F. Supp. 3d 703 (D. Md. 2025) (No. 8:25-CV-00201), Dkt. No. 141, and the district court stayed its proceedings pending the Fourth Circuit's disposition of the appeal, *see* Order Granting Motion to Stay, CASA, Inc. v. Trump, 793 F. Supp. 3d 703 (D. Md. 2025) (No. 8:25-CV-00201), Dkt. No. 146. The government subsequently sought Supreme Court review in two separate cases involving challenges to the Birthright Citizenship E.O. *See* Barbara v. Trump, No. 25-1861 (1st Cir. Sept. 29, 2025), *cert granted before judgment sub nom.*, Trump v. Barbara, 146 S. Ct. 879 (2025), and Washington v. Trump, No. 25-807 (9th Cir. July 23, 2025), *petition for cert. filed sub nom*., Trump v. Washington, No. 25-364 (U.S. Sept. 26, 2025). The Fourth Circuit in turn placed the appeal in *CASA* in abeyance pending the Supreme Court's disposition of those cases, *see* Order Granting Motion for Abeyance, CASA, Inc. v. Trump, No. 25-2188 (4th Cir. Dec. 9, 2025).

Preliminary Injunctive Relief in Class Actions

A court may issue a permanent injunction after it has decided a case on the merits. Plaintiffs also may seek injunctive relief earlier in the case in the form of a temporary restraining order (TRO)[81] or preliminary injunction[82] to protect against an immediate threat of irreparable harm and preserve the status quo. Questions over the extent to which courts may grant injunctive relief in the early stages of a class action have generated significant debate following the *CASA* decision.

As discussed above, before a court grants class certification, it must conduct a "rigorous analysis" to ensure the class satisfies Rule 23.[83] This process can be time-consuming and potentially may require the court to resolve evidentiary disputes and complex legal questions. When faced with requests for a TRO or preliminary injunction in the class action context, courts sometimes decide class certification on an expedited basis—in some cases on the same day the lawsuit is filed[84]—and then "provisionally" certify the class for purposes of issuing the TRO or preliminary injunctive relief to the class members.[85]

Although characterizing class certification as "provisional" may imply that a court has not conducted a full Rule 23 analysis, some courts that have provisionally certified a class for purposes of issuing a preliminary injunction have asserted that they applied the same "rigorous analysis" of the Rule 23 requirements as in other class certification contexts.[86] A class action treatise explains that courts characterizing class certification as "provisional" generally do not

[81] A TRO is a "court order preserving the status quo until a litigant's application for a preliminary or permanent injunction can be heard," and TROs "may sometimes be granted without notifying the opposing party in advance." *Temporary Restraining Order*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[82] A preliminary injunction is a "temporary injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case," and is issued "only after the defendant receives notice and an opportunity to be heard." *Injunction*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[83] *See supra* "Class Certification Under Rule 23."

[84] In *J.G.G. v. Trump*, a group of Venezuelan nationals filed a putative class action lawsuit in the U.S. District Court for the District of Columbia seeking to enjoin the Trump Administration from deporting them and a class of other Venezuelan nationals under the Alien Enemies Act (ch. 58, 1 Stat. 570 (1798)). *See* Complaint, J.G.G. v. Trump, No. 25-CV-00766 (D.D.C. Mar. 15, 2025). The same day that the plaintiffs filed the lawsuit, the district court held a class certification hearing and provisionally certified a class defined as "All noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation entitled 'Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua' and its implementation." *See* Order Granting Motion to Certify, J.G.G. v. Trump, No. 25-CV-00766, (D.D.C. Mar. 15, 2025). The Court also granted a TRO prohibiting the government from deporting members of the class for fourteen days. *Id.*

The Supreme Court subsequently overturned the restraining order on the basis that the specific legal claims the plaintiffs had asserted could only be brought in the judicial district in which the plaintiffs were being detained, and that the federal district court in Washington, DC, therefore lacked jurisdiction over the claims. Trump v. J.G.G., 604 U.S. 670 (2025). For more information on this litigation, see CRS Legal Sidebar LSB11295, *J.G.G. v. Trump: Supreme Court's Initial Review of Actions Taken Under the Alien Enemy Act*, by Jennifer K. Elsea (2025).

[85] *See, e.g.*, CASA, Inc. v. Trump, 793 F. Supp. 3d 703, 728–29 (D. Md. 2025).

[86] *E.g.*, Barbara v. Trump, 790 F. Supp. 3d 80, 90 (D.N.H. 2025) (granting provisional class certification and explaining that "'[p]rovisional' certification does not lower the bar with respect to the Rule 23(a) and (b) standards; the court must conduct a rigorous inquiry and satisfy itself that the putative class meets those requirements") (quoting Gomes v. Acting Sec., U.S. Dep't of Homeland Sec., No. 20-CV-453-LM, 2020 WL 2113642, at *2 (D.N.H. May 4, 2020)), *cert. granted before judgment sub nom.*, Trump v. Barbara, 146 S. Ct. 879 (2025); Escobar Molina v. U.S. Dep't of Homeland Sec., 811 F. Supp. 3d 1 (D.D.C. 2025) ("'Provisional certification does not lessen the rigor of Rule 23,' but the court proceeds with the understanding that '[a]n order that grants . . . class certification may be altered or amended before final judgment.'") (alterations in original) (citation omitted) (first quoting L.G.M.L. v. Noem, 800 F. Supp. 3d 100, 117 (D.D.C. 2025); then quoting FED. R. CIV. P. 23(c)(1)(C)).

mean that they have conducted a less-rigorous certification analysis, but instead use the "provisional" designation to signal that the certification order may be of limited duration.[87]

Some legal scholars have expressed concern that courts may use expedited class certification as a shortcut around Rule 23's requirements.[88] For example, one scholar has stated that provisional class certification "appears to be a quick-and-dirty assessment of whether [the court] thinks the class certification criteria are met so that it can enter a preliminary injunction on behalf of the class."[89] Relatedly, Justice Alito emphasized in his concurrence in *CASA* that district courts should not view *CASA* "as an invitation to certify nationwide classes without scrupulous adherence to the rigors of Rule 23."[90] In his view, nationwide injunctions "will return from the grave under the guise of 'nationwide class relief'" if district courts "award relief to broadly defined classes" without adhering to the rule's procedural protections.[91]

In addition to expediting class certification for purposes of issuing injunctive relief, courts have in some cases granted temporary injunctive relief to *putative* class members without first certifying a class.[92] In one prominent example, *A.A.R.P. v Trump*, the Supreme Court temporarily enjoined the government from deporting a putative class of Venezuelan nationals that the government alleged were members of the organization Tren de Aragua.[93] In doing so, the Court's per curium opinion explained that the putative class members "are at imminent risk of being classified as alien enemies and removed from the United States," and that the Court "may properly issue temporary injunctive relief to the putative class in order to preserve [the Court's] jurisdiction."[94] The Court further explained that, because "courts may issue temporary relief to a putative class," the Court did "not need to decide whether a class should be certified as to the detainees' due process claims in order to temporarily enjoin the Government from removing putative class members."[95] In a dissenting opinion, Justice Alito argued that it was improper to grant injunctive relief to putative class members without the plaintiffs first showing "that the standard requirements for class certification could likely be met."[96]

Some legal scholars contend that longstanding legal precedent establishes a court's authority to grant injunctive relief to putative class members in order to preserve the status quo until the court is able to rule on class certification.[97] Others have asserted that granting injunctive relief to

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[87] 2 RUBENSTEIN, NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 4:30 (6th ed.) ("The reason these courts typically label the result of their certification analysis 'provisional' has nothing to do with the rigor that went into entering the order.").

[88] *See, e.g.*, Elias Neibart, *The Rise of the All-Writs-Act-Putative-Class-Injunction?*, 77 BAYLOR. L. REV. 681 (2025); Fitzpatrick, *supra* note 7.

[89] Fitzpatrick, *supra* note 7.

[90] Trump v. CASA, Inc., 606 U.S. 831, 868 (2025) (Alito, J., concurring).

[91] *Id.*

[92] *See, e.g.*, A.A.R.P. v. Trump, 605 U.S. 91 (2025); Am. Council of Learned Soc'ys v. McDonald, 792 F. Supp. 3d 448 (S.D.N.Y. 2025), *appeal filed*, No. 25-1905 (2d Cir. Aug. 8, 2025).

[93] *A.A.R.P.*, 605 U.S. 91.

[94] *Id.* at 97.

[95] *Id.* at 98 (citing 2 RUBENSTEIN, *supra* note 87, § 4:30).

[96] *Id.* at 106 (Alito, J. dissenting).

[97] *See, e.g.*, Marcus, *supra* note 15, at 23 ("Well-established doctrine permits courts to protect [putative class members], before class certification, with the equivalent of universal preliminary injunctions."); Mila Sohoni, *Guest Post: Mila Sohoni on Trump v. CASA*, DIVIDED ARGUMENT: BLOG (May 17, 2025), https://blog.dividedargument.com/p/guest-post-mila-sohoni-on-trump-v [https://perma.cc/GZ9Z-JPJV] ("[C]ourts granted broad-gauged injunctive relief in representative suits under the older Federal Equity Rules and under the original 1938 version of Rule 23. In these older cases, 'plaintiffs did not have to do anything more than allege in their bills of complaint that they were suing on behalf (continued...)

putative class members prior to class certification is in tension with the Court's *CASA* decision, which the Court issued the month after ruling in *A.A.R.P.*[98] While the Supreme Court determined that injunctive relief prior to class certification was necessary to protect the Court's jurisdiction in *A.A.R.P.*, where the putative class members faced imminent deportation to a foreign country, it is unclear whether the Supreme Court would find such relief appropriate in other contexts.[99]

Accordingly, in light of uncertainty over the extent to which courts may grant injunctive relief to putative class members, some courts have chosen to conduct class certification proceedings on an expedited basis rather than issuing relief to putative class members.[100] Additionally, since the *A.A.R.P.* decision, at least one federal appellate court has stayed a district court's grant of preliminary injunctive relief to putative class members where the appellate court determined that the plaintiffs would not be able to satisfy Rule 23's class certification requirements.[101]

Class Actions as an Alternative to Nationwide Injunctions

To the extent class actions are viewed as an alternative to nationwide injunctions, some observers have expressed concern that class certification may not always be possible to achieve quickly, or at all, in some cases in which courts otherwise may have granted a nationwide injunction.[102] One common contention is that federal courts generally have interpreted class certification requirements more strictly since the early 2010s,[103] such as in the *Wal-Mart* case.[104] In addition to

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of many other persons, on a question of common interest to all of them, in order to obtain preliminary injunctions shielding all those absent parties from the law's enforcement.'") (quoting Mila Sohoni, *The Lost History of the "Universal" Injunction*, 133 HARV. L. REV. 920, 975 (2020)).

[98] *See, e.g.*, Mila Sohoni, *supra* note 97 (observing that "many critics of nationwide injunctions have stated that a court may not give injunctive relief to absent parties unless a case is certified as a Rule 23(b)(2) class action"); Neibart, *supra* note 88, at 703 ("Increasingly, courts have been issuing preliminary relief to non-certified classes . . . . Yet there are reasons to question its validity."); Fitzpatrick, *supra* note 7; 2 RUBENSTEIN, *supra* note 87, § 4:30 ("[T]he Court's May 2025 *AARP* ruling authorizing injunctive relief to putative class members . . . is in some tension with the Court's June 2025 *CASA* ruling barring so-called 'universal injunctions.'").

[99] *See, e.g.*, L.G.M.L. v. Noem, 800 F. Supp. 3d 100, 117 n.3 (D.D.C. 2025) ("Given the Supreme Court's holding in *A.A.R.P. v. Trump*, it is unclear whether the Court must certify the putative class before providing preliminary relief."); 2 RUBENSTEIN, *supra* note 87, § 4:30 (observing that "the breadth of the *A.A.R.P.* holding is somewhat unclear"); Neibart, *supra* note 88, at 709 ("In a post-*CASA* world, if the Court were presented with its own arguments (made in *CASA*), it might question and seriously probe the validity of putative class relief.").

[100] *See, e.g.*, *L.G.M.L.*, 800 F. Supp. 3d at 117.

[101] *See* Tincher v. Noem, 164 F.4th 1097, 1099 (8th Cir. 2026) (stating that "the grant of relief to such a broad uncertified class is just a universal injunction by another name" and that "[e]ven if 'courts may issue temporary relief to a putative class,' this one has no chance of getting certified").

[102] *See, e.g.*, City of Chicago v. Barr, 961 F.3d 882, 917 (7th Cir. 2020) ("The class action mechanism is not an adequate substitute for a universal injunction in the proper case."); Malveaux, *supra* note 15 ("[The] suggestion that Rule 23(b)(2) provides a ready alternative to the national injunction is flawed.").

[103] *See, e.g.*, Malveaux, *supra* note 15, at 58; Steve Vladeck, *162. What Does the Birthright Citizenship Ruling Portend?*, ONE FIRST (June 27, 2025), https://www.stevevladeck.com/p/162-what-does-the-birthright-citizenship [https://perma.cc/R3EP-DWXV] ("Class actions are harder to bring . . . [due to] a series of rulings from the early 2010s that ratcheted up the requirements for certifying nationwide classes."); Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U.L. REV. 729 (2013) (stating that "in recent years courts have cut back sharply on plaintiffs' ability to bring class action lawsuits"). *But see* Marcus, *supra* note 15, at 8–9 (stating that the increased difficulty of certifying class actions has "almost exclusively entailed cases for monetary relief," and that the Supreme Court's "decisions cabining the class action have little bearing on cases brought against government defendants for injunctive or declaratory relief").

[104] *See* discussion on *Wal-Mart v. Dukes supra* "Class Certification Under Rule 23."

the potential difficulty of satisfying Rule 23's requirements, obtaining class certification can also be expensive and time-consuming,[105] and courts and commentators have raised questions over the extent to which courts may expedite class certification or grant injunctive relief for putative class members without first certifying a class.[106]

In Justice Sotomayor's dissenting opinion in the *CASA* case, for example, she stated that class actions are not a "perfect substitute" for nationwide injunctions.[107] While Justice Sotomayor emphasized that *CASA*'s limitation of nationwide injunctions left class actions "untouched" as an "important tool" for obtaining broad injunctive relief,[108] she identified a number of reasons that class actions may not always provide a substitute for nationwide injunctions. For example, she explained that a plaintiff seeking to challenge government action on behalf of an entire class will face "the higher cost of pursuing class relief," the "difficult and time consuming" process of demonstrating compliance with Rule 23(a)'s prerequisites, and an evidentiary standard requiring "hearings and sometimes significant amounts of evidence on the merits of the class before certifying the class."[109]

In contrast, some legal scholars contend that obtaining certification for a class seeking injunctive relief against the government is generally not as difficult as other commentators have suggested.[110] For instance, one scholar has asserted that class actions remain a "potent and viable substitute" for nationwide injunctions, and that "federal courts have overwhelmingly favored class certification" in cases challenging "uniform, across-the board policies whose legality can be determined for everyone at once."[111]

The prospect of using class actions as a substitute for nationwide injunctions has also raised concerns that district courts may become too permissive in certifying class actions that challenge government policies after *CASA*.[112] In Justice Alito's concurring opinion in *CASA*, for instance, he observed that "Rule 23 may permit the certification of nationwide classes in some discrete scenarios," but he cautioned that "[l]ax enforcement" of class certification standards could "create a potentially significant loophole" around *CASA*'s limitations on nationwide injunctions.[113]

Plaintiffs have obtained broad, classwide injunctions in a number of cases challenging government actions since the Supreme Court's *CASA* ruling.[114] It remains to be seen how the

[105] *See, e.g.*, Maureen Carroll, *Aggregation for Me, but Not for Thee: The Rise of Common Claims in Non-Class Litigation*, 36 CARDOZO L. REV. 2017, 2021–24 (2015) ("Notwithstanding the availability of Rule 23(b)(2), plaintiffs currently face a set of structural disincentives to class treatment that cause many of them to choose the individual form."); Frost, *supra* note 15, at 1095–97.

[106] *See supra* "Preliminary Injunctive Relief in Class Actions."

[107] Trump v. CASA, Inc., 606 U.S. 831, 919 (2025) (Sotomayor, J. dissenting).

[108] *Id.* ("[T]he majority leaves untouched one important tool to provide broad relief to individuals subject to lawless Government conduct: Rule 23(b)(2) class actions for injunctive relief.").

[109] *Id.*

[110] Fitzpatrick, *supra* note 7 ("Although some commentators have worried that it will be too difficult to certify class actions, the truth is that it is relatively easy to certify class actions that seek injunctive relief: the certification criteria are less numerous and less demanding than for class actions seeking money damages.").

[111] Marcus, *supra* note 15, at 23.

[112] *See, e.g.*, Fitzpatrick, *supra* note 7; Neibart, *supra* note 88.

[113] Trump v. CASA, Inc., 606 U.S. 831, 868 (2025) (Alito, J., concurring).

[114] *See, e.g.*, Barbara v. Trump, 790 F. Supp. 3d 80, 90 (D.N.H. 2025); CASA, Inc. v. Trump, 793 F. Supp. 3d 703 (D. Md. 2025); L.G.M.L. v. Noem, 800 F. Supp. 3d 100, 117 (D.D.C. 2025) (granting preliminary injunction and certifying class of "all unaccompanied alien children from Guatemala in (and who will be in) [Office of Refugee Resettlement] custody who have not received a final order of removal or the Attorney General's permission to voluntarily depart (continued...)

Supreme Court may respond as more such cases work through the judicial system, and the extent to which class actions may prove to be a substitute for nationwide injunctions after *CASA* remains subject to ongoing debate.[115]

Considerations for Congress

Nationwide injunctions have been the subject of substantial attention from the 119th Congress.[116] On April 9, 2025, the House passed H.R. 1526, the No Rogue Rulings Act (NORRA) of 2025. The bill would limit the authority of federal district courts to issue injunctions. It would provide that federal district courts could generally only issue injunctive relief "to limit the actions of a party to the case . . . with respect to the party seeking injunctive relief from such district court and non-parties represented by such a party acting in a representative capacity pursuant to the Federal Rules of Civil Procedure." As an exception to that limitation, the bill would allow a three-judge district court to issue broader injunctive relief "[i]f a case is brought by two or more States located in different circuits challenging an action by the executive branch."

While the Supreme Court's *CASA* decision limited the ability of federal courts to issue nationwide injunctions, the decision did not change the law with respect to federal courts' ability to issue classwide injunctive relief. Given that a classwide injunction can be functionally equivalent to a nationwide injunction, some legal scholars have observed that nationwide class actions against the government may implicate similar policy concerns as nationwide injunctions in certain respects.[117] For instance, proponents of nationwide class actions have argued that such lawsuits provide a beneficial mechanism for protecting large groups against unlawful government actions, while avoiding the need for each affected individual or entity to actively obtain legal representation and participate in litigation.[118] Critics of nationwide class actions have argued that granting injunctive relief against the government with respect to a nationwide class may improperly expand the legal effect of lower court rulings and result in a number of negative consequences, such as preventing important legal issues from percolating across different courts.[119]

In light of the increased focus on class actions as a potential substitute for nationwide injunctions, Congress may choose to monitor the use of the class action device in lawsuits seeking injunctive relief against the government, and evaluate whether such use aligns with Congress's preferences. If Congress wished, it could consider legislating to expand or limit the ability of plaintiffs to

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under 8 U.S.C. § 1229c and applicable regulations."); Escobar Molina v. U.S. Dep't of Homeland Sec., 811 F. Supp. 3d 1, 27 (D.D.C. 2025) (granting preliminary injunction and certifying class of "[a]ll persons who, since August 11, 2025, have been or will be arrested in [the District of Columbia] for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses an escape risk.").

[115] *See, e.g.*, Marcus, *supra* note 15, at 23; Fitzpatrick, *supra* note 7.

[116] Some Members of the 119th Congress have introduced legislation that would regulate nationwide injunctions. *See, e.g.*, H.R. 1526, 119th Cong. (2025) (as passed by the House); S. 1206, 119th Cong. (2025) (as introduced). The House and Senate Judiciary committees also held hearings on nationwide injunctions in April 2025. *Judicial Overreach and Constitutional Limits on the Federal Courts: Hearing Before the H. Comm. on the Judiciary, Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet*, 119th Cong. (2025); *Rule by District Judges II: Exploring Legislative Solutions to the Bipartisan Problem of Universal Injunctions: Hearing Before the S. Comm. on the Judiciary*, 119th Cong. (2025).

[117] *See, e.g.*, Marcus, *supra* note 15, at 31; Fitzpatrick, *supra* note 7. For an in-depth discussion of legal and policy debates over nationwide injunctions, see CRS Report R46902, *Nationwide Injunctions: Law, History, and Proposals for Reform*, by Joanna R. Lampe (2021).

[118] *See* Marcus, *supra* note 15, at 4–7.

[119] *See* Morley, *supra* note 72, at 625.

bring suits challenging government policies on a class action basis. For example, a legal scholar has argued that Congress should enact legislation making it less difficult to obtain certification of nationwide classes in lawsuits challenging government policies.[120] Another legal scholar has proposed amending Rule 23 to impose geographic limitations on classes certified in such lawsuits.[121]

Congress has substantial constitutional authority to regulate federal court procedures, including the procedures that apply to class action lawsuits.[122] In the Rules Enabling Act, Congress authorized the Supreme Court to create and amend federal court procedural rules, such as Rule 23's class action procedures, and also imposed congressional oversight on the rulemaking process.[123] Congress also may enact legislation directly governing class actions,[124] and Congress has enacted legislation limiting or promoting use of the class action device in various contexts.[125]

Congress's ability to expand the use of class action lawsuits is subject to constitutional constraints. For example, Article III of the Constitution limits the jurisdiction of federal courts to resolving cases in which a plaintiff has *standing*—meaning a sufficient personal stake in the outcome of the litigation—and Congress may not expand federal courts' jurisdiction beyond Article III's limits.[126] Class actions also implicate the absent class members' constitutional due process rights,[127] and courts have observed that Rule 23's procedural safeguards are in part designed to protect those rights, such as by requiring that class representatives will adequately represent the absent class members' interests.[128]

[120] *See* Steve Vladeck, *Bonus 136: Nationwide Injunctions vs. Nationwide Class Actions*, ONE FIRST (Apr. 3, 2025), https://www.stevevladeck.com/p/bonus-136-nationwide-injunctions [https://perma.cc/JJM3-97N3].

[121] *See* Michael T. Morley, *Disaggregating Nationwide Injunctions*, 71 Ala. L. Rev. 1, 53 (2019).

[122] *See* Hanna v. Plumer, 380 U.S. 460, 472 (1965) ("[T]he constitutional provision for a federal court system (augmented by the Necessary and Proper Clause) carries with it congressional power to make rules governing the practice and pleading in those courts . . . ."). For further discussion of Congress's authority to make rules governing federal court procedures, see CRS In Focus IF11557, *Congress, the Judiciary, and Civil and Criminal Procedure*, by Joanna R. Lampe (2020); Lib. of Cong., *Inherent Powers Over Judicial Procedure*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S1-4-2/ALDE_00013521/ (last visited Mar. 30, 2026).

[123] 28 U.S.C. §§ 2071–2077. For further discussion of the Rules Enabling Act, see Lampe, *supra* note 122.

[124] *See, e.g.*, Class Action Fairness Act of 2005, P.L. 109-2, 119 Stat. 4.

[125] *See, e.g.*, 8 U.S.C. § 1252(e)(1)(B) (divesting federal courts of authority to certify a class under Rule 23 in certain cases challenging immigration-related removal orders issued under 8 U.S.C. § 1225(b)); Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, P.L. 117-90, § 2(a), 136 Stat. 26, 26 (2022) (permitting persons who allege a sexual harassment or sexual assault dispute to, among other things, invalidate agreements that waive their right to participate in a class action related to such disputes).

[126] *See* TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021) ("Article III confines the federal judicial power to the resolution of 'Cases' and 'Controversies.' For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case—in other words, standing.") (quoting Raines v. Byrd, 521 U.S. 811, 819 (1997)). To establish standing for purposes of Article III, "a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *Id.*

[127] *See* Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 812 (1985) ("[T]he Due Process Clause of course requires that the named plaintiff at all times adequately represent the interests of the absent class members.").

[128] *See, e.g.*, Berger v. Compaq Comput. Corp., 257 F.3d 475, 481 (5th Cir. 2001) (stating that Rule 23's adequacy requirement has "constitutional dimensions" and "implicates the due process rights of all members who will be bound by the judgment"); *In re* Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 796 (3d Cir. 1995) ("The Rule 23(a) class inquiries . . . constitute a multipart attempt to safeguard the due process rights of absentees.").

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