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APA Relief May Blunt Justices' Universal Injunction Ruling

By **Dan Wolff, Sharmi Das and Anuj Vohra** (July 23, 2025, 5:04 PM EDT)


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The U.S. Supreme Court's June 27 holding in Trump v. CASA Inc. that universal injunctions — through which a single district court judge enjoins agency action as to one and all, not just the plaintiff — likely exceed federal courts' equitable powers inspired an immediate volley of reactions.

Relying on the history of injunctive relief spanning back to the English crown, the court, in a 6-3 majority opinion written by Justice Amy Coney Barrett, concluded that, generally, courts may only award injunctive relief to the successful plaintiff. If others also want relief from the same action, they must seek their own legal recourse.

Commentators quickly pronounced that the ruling would result in the executive having more power and less accountability.[1] However, those early reactions strike us as premature. There is much that lurks in what the court did not decide that may temper the practical effect of the CASA holding.

At the outset, the Supreme Court's decision in CASA is relatively unsurprising. The increasing volume of universal injunctions has attracted the attention of all three branches of government across administrations, and solicitors general hailing from both sides of the aisle have decried the ill effects of an epidemic of nationwide injunctions.

Even still, the court's decision leaves open plenty of routes to universal injunctive relief or its equivalent. It left intact, for example, the preliminary injunctions issued to plaintiff states on behalf of all citizens of those states. It also acknowledged that, in some instances, there "may be other injuries for which it is all but impossible for courts to craft relief that is complete and benefits only the named plaintiffs," anointing what we could call incidental universal injunctions.

And, significantly, the court observed that class actions under Federal Rule of Civil Procedure 23(b)(2) could effectuate broad relief equivalent to that of a universal injunction. Indeed, interpreting that as an invitation, the CASA plaintiffs filed an amended complaint and motion for class certification within hours of the court's decision.

A similar class action, Barbara v. Trump, was also filed on June 27 in the U.S. District Court for the District of New Hampshire, which preliminarily certified the class and granted a preliminary injunction just days later.[2]

So, as with Mark Twain, it seems that early reports of the universal injunction's death are greatly exaggerated.

The remedy-in-waiting that seems to hold the most promise for neutralizing the CASA opinion arises from the Administrative Procedure Act. The APA authorizes federal courts to set aside agency action found to be unlawful or arbitrary and capricious.[3]

The APA also allows a reviewing court to stay the effect of the challenged agency action pending judicial review.[4] In considering a stay request, the court is guided by the same four-factor test that guides its consideration of a preliminary injunction.[5]

Given that the APA already provides a statutory avenue for universal preliminary relief, it is questionable whether a preliminary injunction, much less a universal injunction, is ever necessary in agency litigation.[6] As Justice Brett Kavanaugh noted in his concurrence, plaintiffs may still "ask a court to preliminarily 'set aside' a new agency rule."[7]

To be sure, the APA is not available to challenge presidential action directly.[8] But that should almost never matter because a presidential action — e.g., an executive order — is executed by agency officials, and their actions in implementing the presidential command are very much subject to challenge under the APA when they result in legal consequences for the challenging parties.[9]

The birthright citizenship issue underlying the CASA case, for example, will itself only be implemented by agencies in this manner, as the court noted.[10]

It should surprise nobody, therefore, that we've already seen some glimmers of a "meh" judicial reaction to CASA in APA cases.

For instance, on July 2, U.S. District Judge Randolph Moss of the U.S. District Court for the District of Columbia held in Refugee and Immigrant Center for Education and Legal Services v. Kristi Noem that courts "need not engage in such gymnastics because the language of the APA, the controlling D.C. Circuit precedent, and decades of Supreme Court and D.C. Circuit practice leave little doubt that, if unlawful, the guidance must be 'set aside' — that is, cancelled, annulled, or revoked."[11]

And U.S. District Judge John D. Bates, also of the District of Columbia, made this point in a July 3 memorandum opinion in Doctors for America v. Office of Personnel Management: As "this is a case involving APA vacatur, not a universal or national injunction, the Supreme Court's recent decision in [CASA] does not apply."[12]

These recent decisions apply the APA as traditionally understood, where prevailing plaintiffs are generally entitled to vacatur of the agency action they challenge. Vacatur invalidates the agency action — for example, a final rule — not just as to the plaintiff, but as to all, causing the rule to lose binding force altogether.[13]

Similarly, the APA's stay provision allows the reviewing court to stay the agency action as to all pending full review of the merits.[14]

This long-standing majority view that "set aside" equals vacatur is largely a function of case precedent from the U.S. Court of Appeals for the D.C. Circuit.

In 2022, during Supreme Court oral arguments in U.S. v. Texas, the government argued that "set aside" did not include the remedy of vacatur. Chief Justice John Roberts — a veteran of the D.C. Circuit — exclaimed, "Wow," and characterized the position as "fairly radical and inconsistent with" decades of D.C. Circuit precedent.[15]

All the same, the Supreme Court did not settle the question in that case.

Following CASA, we expect the Supreme Court to address the question in short order. As Professor John C. Harrison noted in a 2023 article, the "question of whether the APA calls for vacatur of unlawful rules is [now] central to the current debate over universal remedies against the government."

But the CASA majority made it clear it was not addressing that separate question: "Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action."[16]

So where are we headed?

It may come down to which of two Trump appointees and fellow D.C.-area high school alums, Justices Neil Gorsuch and Kavanaugh, will pull a majority.[17]

In one corner is Justice Gorsuch, a veteran of the U.S. Court of Appeals for the Tenth Circuit who heard the government's argument in U.S. v. Texas and went on to champion it,[18] questioning in his concurring opinion in that case whether "the APA empowers courts to vacate agency action."[19]

Justice Gorsuch doubted whether Congress, by enacting the APA, meant to "vest courts with a 'new and far-reaching' remedial power"[20] to vacate rules in their entirety. Given "the volume of litigation under the APA," Justice Gorsuch warned, "this Court will have to address them sooner or later."

In his estimation, it should matter that the word "vacatur" does not appear in the APA. Acknowledging the APA empowers courts to set aside rules, Justice Gorsuch takes a milder read of this pronouncement: This "might simply describe what a court usually does when it finds a ... statute unconstitutional .... Routinely, a court will disregard offensive provisions like these and proceed to decide the parties' dispute without respect to them."[21]

This follows how courts treat statutes, since courts possess "little more than the negative power to disregard an unconstitutional enactment" of a statute.[22]

In the other corner is Justice Kavanaugh, who is, like Justice Roberts, and Justices Clarence Thomas and Ketanji Brown Jackson, a D.C. Circuit veteran.

In a concurring opinion to the Supreme Court's 2024 decision in Corner Post Inc. v. Board of Governors, Justice Kavanaugh offered what amounted to a rebuttal to Justice Gorsuch, opining that the APA "directs courts to 'set aside' unlawful agency actions ... [meaning to] 'cancel, annul, or revoke.'"[23]

Justice Kavanaugh pointed to practical difficulties with a reading of the APA that ran counter to long-settled administrative law that "set aside" means vacatur.

Corner Post, for example, challenged a Federal Reserve Board rule limiting the fees banks may charge

merchants for debit card purchases. As a merchant, Corner Post was not regulated by the rule — to the contrary, in theory it stood to benefit from it — but it was allegedly harmed by it because the rule allowed banks to collect amounts in excess, Corner Post argued, of what the governing statute permitted.

Thus, if "set aside" means only what Justice Gorsuch contends, Corner Post could not get relief because, as to it, there was nothing to set aside.[24] That, Justice Kavanaugh said, is antithetical to the APA's promise of the basic presumption of judicial review for parties who have been "adversely affected or aggrieved" by federal agency action.[25]

Needless to say, there is much still to settle. For the time being, would-be plaintiffs are well-served to focus not just on the avenues for relief CASA seemingly foreclosed, but also those — e.g., injunctive relief for class actions and vacatur — that remain available.

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[1] Kate Shaw, 'A Culture of Disdain': The Supreme Court's Actions Speak Louder Than Its Words, N.Y. Times (July 1, 2025), https://www.nytimes.com/2025/07/01/opinion/supreme-court-trump.html.

[2] Barbara v. Trump, No. 25-cv-00244-JL-AJ, 2025 WL 1904338 (D.N.H. July 10, 2025).

[3] 5 U.S.C. § 706.

[4] 5 U.S.C. § 705.

[5] See, e.g., Nken v. Holder, 556 U.S. 418, 426 (2009).

[6] See Frank Chang, The Administrative Procedure Act's Stay Provision: Bypassing Scylla Charybdis of Preliminary Injunctions, 85 G.W. L. Rev. 1529 (2017).

[7] Trump v. CASA Inc., No. 24A884, 2025 WL 1773631, at *19 (U.S. June 27, 2025) (Kavanaugh, J., concurring).

[8] See Franklin v. Massachusetts, 505 U.S. 788 (1992).

[9] See Bennett v. Spear, 520 U.S. 154 (1997).

[10] "The injunctions are also stayed to the extent that they prohibit executive agencies from developing and issuing public guidance about the Executive's plans to implement the Executive Order. Consistent with the Solicitor General's representation, § 2 of the Executive Order shall not take effect until 30 days after the date of this opinion." Trump v. CASA Inc., 2025 WL 1773631, at *15.

[11] Refugee & Immigrant Ctr. For Educ. & Legal Servs. v. Noem, No. CV 25-306 (RDM), 2025 WL 1825431, at *51 (D.D.C. July 2, 2025) (citing Corner Post Inc. v. Bd. of Governors of Fed. Rsrv. Sys., 603 U.S. 799, 830–31 (2024) (Kavanaugh, J., concurring).

[12] Doctors for Am. v. Off. Of Pers. Mgmt, No. CV 25-322 (JDB), 2025 WL 1836009, at *22 n.17 (D.D.C. July 3, 2025).

[13] See, e.g., Env't Def. v. Leavitt, 329 F. Supp. 2d 55, 64 (D.D.C. 2004) ("When a court vacates an agency's rules, the vacatur restores the status quo before the invalid rule took effect and the agency must 'initiate another rulemaking proceeding if it would seek to confront the problem anew.'" (quoting Indep. U.S. Tanker Owners Comm. v. Dole, 809 F.2d 847, 854 (D.C. Cir. 1987))).

[14] "[T]he scope of preliminary relief under Section 705 aligns with the scope of ultimate relief under Section 706, which is not party-restricted and allows a court to 'set aside' an unlawful agency action." Career Colls. & Sch. of Tex. v. U.S. Dep't of Educ., 98 F.4th 220, 255 (5th Cir. 2024), cert. granted in part sub nom., Dep't of Educ. v. Career Colls. & Sch. of Tex., 145 S. Ct. 1038 (2025).

[15] U.S. v. Texas, No. 22-58, Transcript of Oral Argument at 35–36.

[16] Trump v. CASA Inc., 2025 WL 1773631, at *8 n.10 (citing 5 U.S.C. §706(2) (authorizing courts to "hold unlawful and set aside agency action")).

[17] See Meghan Keneally, Inside the high school that produced Supreme Court nominee Brett Kavanaugh, Justice Neil Gorsuch and other famous alums, ABC News (Sept. 26, 2018) available at: https://abcnews.go.com/US/inside-high-school-produced-supreme-court-nominee-brett/story?id=58093123.

[18] U.S. v. Texas, No. 22-58, Transcript of Oral Argument at 47.

[19] U.S. v. Texas, 599 U.S. 670, 693 (2023) (Gorsuch, J., concurring).

[20] Id. at 695 (quoting Arizona v. Biden, 40 F.4th 375, 396 (6th Cir. 2022) (Sutton, C.J., concurring)).

[21] Id. at 697. (Gorsuch, J., concurring).

[22] Id. (quoting Massachusetts v. Mellon, 262 U.S. 447, 488 (1923)).

[23] Corner Post Inc. v. Bd. of Governors, 603 U.S. 799, 829 (2024) (Kavanaugh, J., concurring) (quoting Black's Law Dictionary 1612 (3d ed. 1933)).

[24] Id. at 827 (Kavanaugh, J., concurring).

[25] Id. at 826 (quoting Abbott Laboratories v. Gardner, 387 U.S. 136, 140 (1967)) (citation modified).