SUPREME COURT OF THE UNITED STATES

No. 23A763

RAUL LABRADOR, ATTORNEY GENERAL OF IDAHO
v. PAM POE, BY AND THROUGH HER PARENTS AND NEXT FRIENDS, PENNY AND PETER POE, ET AL.

ON APPLICATION FOR STAY

[April 15, 2024]

JUSTICE JACKSON, with whom JUSTICE SOTOMAYOR joins, dissenting from grant of stay.

When a party asks this Court to "sideste[p] the ordinary judicial process" and intervene at an atypical juncture, our default should be "restraint." *Barr* v. *East Bay Sanctuary Covenant*, 588 U. S. ___, ___ (2019) (SOTOMAYOR, J., dissenting from grant of stay) (slip op., at 5). We do not have to address every high-profile case percolating in lower courts, and there are usually many good reasons not to do so. Few applicants can meet our threshold requirement of "an exceptional need for immediate relief," by showing that they will suffer not just substantial harm but an "irreversible injury . . . occurring during the appeals process that cannot be later redressed." *Louisiana* v. *American Rivers*, 596 U. S. ___, ___ (2022) (KAGAN, J., dissenting) (slip op., at 2). Even when an applicant establishes that highly unusual line-jumping justification, we still must weigh the serious dangers of making consequential decisions "on a short fuse without benefit of full briefing and oral argument." *Does 1–3* v. *Mills*, 595 U. S. ___, ___ (2021) (BARRETT, J., concurring in denial of application for injunctive relief) (slip op., at 1). Without adequate caution, our decisions risk being not only "unreasoned," but unreasonable. *Whole Woman's Health* v. *Jackson*, 594 U. S. ___, ___ (2021) (KAGAN, J., dissenting from denial of application for injunctive relief) (slip op., at

1–2).

This case presents numerous reasons for exercising restraint. As explained in Part I below, the State of Idaho's emergency application asks us to override the decisions of two lower courts based on an issue not clearly implicated and under circumstances where the State does not contest that its law should remain enjoined as likely unconstitutional, at least as applied to the plaintiffs. As described in Part II, even if today's application actually involved a "universal injunction," the emergency docket would not be the place to address the open and challenging questions that that issue raises. I respectfully dissent.

I

Three interdependent reasons counsel against our intervention. First of all, the applicant seeks displacement of the decisions of both "the District Court and . . . a unanimous panel of the Court of Appeals." *Beame* v. *Friends of the Earth*, 434 U. S. 1310, 1312 (1977) (Marshall, J., in chambers). A Federal District Court determined that a never-before-in-effect Idaho law is likely unconstitutional, and that court issued a preliminary injunction that temporarily blocks the law's enforcement while it considers the merits of the challengers' legal claims. Wishing to enforce the challenged law during the course of the litigation, the State asked for a stay pending appeal. But both the District Court and the Ninth Circuit denied that request. Our respect for lower court judges—no less committed to fulfilling their constitutional duties than we are and much more familiar with the particulars of the case—normally requires an applicant seeking an emergency stay from this Court after two prior denials to carry "an especially heavy burden." See *Edwards* v. *Hope Medical Group for Women*, 512 U. S.

1301, 1302 (1994) (Scalia, J., in chambers) (internal quotation marks omitted).[1]

Second, the State has not come close to carrying its heavy burden in this case. No party disputes that, assuming all of the other stay factors were met, Idaho needs to show "a reasonable probability that this Court will grant certiorari" in order to obtain an emergency stay. *Maryland* v. *King*, 567 U. S. 1301, 1302 (2012) (ROBERTS, C. J., in chambers) (internal quotation marks omitted); see also Emergency Application for Stay 29–32; Response in Opposition 19–24; Reply Brief 14–15.[2] Idaho maintains that this case is certworthy because it raises the question of whether a district court can issue an injunction that grants relief directed to all potentially impacted nonparties—a so-called "universal injunction." The only problem: That's not what the District Court did here. Far from attempting to grant relief to parties not before it, the District Court expressly stated that,

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[1] The concurrence seems perplexed by the idea that lower court decisions about interim relief deserve our respect. See *ante*, at 6–7 (opinion of GORSUCH, J.) (hereinafter concurrence). In its telling, that "upside-down" suggestion leaves this Court either powerless to correct mistakes or hopelessly inconsistent when we do. *Ante,* at 6. But to say that a party bears an especially heavy burden is not to say that burden can never be carried. See *Little* v. *Reclaim Idaho*, 591 U. S. ___, ___ (2020) (ROBERTS, C. J., joined by, *inter alios*, GORSUCH, J., concurring in grant of stay) (slip op., at 5) ("No one has overlooked that the State bears an 'especially heavy burden' in justifying a stay pending its appeal to the Ninth Circuit[,] . . . [b]ut in my view that burden has been met"). Even when two lower courts deny relief, an applicant can still prevail in this Court under our traditional emergency stay factors. The heavier burden, though, has long served as a sobering reminder that, after two prior levels of review, interim relief has consistently been deemed unwarranted.

[2] While the concurrence appears to attribute the certworthiness consideration to this dissent, see *ante,* at 7–8, it is standard practice for this Court to assess certworthiness when evaluating an emergency application. See, *e.g.*, *Does 1–3* v. *Mills*, 595 U. S. ___, ___ (2021) (BARRETT, J., concurring in denial of application for injunctive relief) (slip op., at 1); *Little*, 591 U. S., at ___ (slip op., at 2); *Hollingsworth* v. *Perry*, 558 U. S. 183, 190 (2010) (*per curiam*).

"[i]n the absence of class certification, injunctive relief generally should be limited to the named plaintiffs." ___ F. Supp. 3d ___, ___ (Idaho 2023), App. A to Application for Stay 52. Then, ultimately, the District Court settled on issuing a statewide preliminary injunction for a party-centered, fact-specific reason: because it found that doing so was necessary to protect the particular plaintiffs before the court, including two minors proceeding under pseudonyms, against action by the State it deemed likely unconstitutional. *Id.*, at 53. Any error by the District Court as to the necessity of the preliminary relief it has chosen raises, at best, a factbound question, not a certworthy issue.[3]

Third, and finally, Idaho seeks emergency relief without contesting that its law should be preliminarily enjoined as likely unconstitutional, at least as applied to the plaintiffs before the District Court. See *ante*, at 2–3 (opinion of GORSUCH, J.). The State takes this litigating position while defending a statute that regulates access to gender-affirming medical care for transgender children. That is a serious and consequential matter, which, indeed, raises the profile of this case and the stakes of our intervention, for the law at issue here will have a significant practical impact on everyone it affects. The constitutional questions around this law are significant as well because statutes like this one raise new and complex issues. Unlike in myriad other emergency cases, however, the State is not seeking interim

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[3]The concurrence all but ignores this key aspect of the District Court's decision. See *ante*, at 1–3. But even the most ardent critics of "universal injunctions" acknowledge that, in providing relief to the parties before a court, an injunction may incidentally benefit nonparties. See, *e.g.*, *United States* v. *Texas*, 599 U. S. 670, 693 (2023) (GORSUCH, J., concurring in judgment); *Trump* v. *Hawaii*, 585 U. S. 667, 717 (2018) (THOMAS, J., concurring). We might ultimately disagree in this case about whether the District Court's determination about the necessary scope of relief to protect the plaintiffs qualifies as an abuse of discretion. See *ante*, at 8, n. 2. But any such debate would not transform the State's case-specific, fact-intensive request for error correction into a certworthy issue.

relief based on any errors by the lower courts with respect to consequential merits questions. Contra, *ante,* at 8–9.

Instead, in a troubling bid for this Court's early intervention, the State asks us to wade into the middle of ongoing lower court proceedings to weigh in on a single query concerning only one aspect of a preliminary determination by the District Court: whether the temporary relief that the District Court has afforded pending its review of the merits sweeps too broadly. In my view, we should resist being conscripted into service when our involvement amounts to micromanaging the lower courts' exercise of their discretionary authority in the midst of active litigation. This Court is not compelled to rise and respond every time an applicant rushes to us with an alleged emergency, and it is especially important for us to refrain from doing so in novel, highly charged, and unsettled circumstances. Here, where the State does not even seek relief from the District Court's determination that the law is likely unconstitutional as to at least some of the individuals it will impact, caution is especially warranted.

II

JUSTICE GORSUCH's concurrence demonstrates the perils of treating this application any other way. Conspicuously minimized in that opinion is the word that appears, bolded and capitalized, on the cover of the State's application: "**EMERGENCY**." The concurrence proceeds, instead, to treat the State's application as a run-of-the-mill motion for interim relief, just as any court might dispose of such a motion on its regular docket. See *ante*, at 3. From the standpoint of an interest in taming our emergency docket, that is folly.[4]

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[4]This is not to say that the traditional stay factors do not matter, or that this Court can only entertain an application that is labeled as an "emergency." See *ante,* at 9–10, n. 3. Rather, my point is that not every

What is more, in resolving this particular application, the concurrence reaches out to address an unsettled remedial issue that, by the concurrence's own assessment, is of profound significance for the functioning of our government. See *ante*, at 11. It appears, then, that if the concurrence is right that "universal injunctions . . . 'tend to force judges into making rushed, high-stakes, low-information decisions,'" the majority has taken the bait. *Ante*, at 12.

To be clear, though, the Court has not decided the propriety of "universal injunctions." Whether federal courts have the power to issue "universal injunctions" is "an important question that could warrant our review in the future," not a foregone conclusion dictated by our precedent. *Griffin* v. *HM Florida-ORL, LLC*, 601 U. S. ___, ___ (2023) (KAVANAUGH, J., statement respecting denial of application for stay) (slip op., at 3); see also, *e.g.*, *Department of Homeland Security* v. *New York*, 589 U. S. ___, ___ (2020) (GORSUCH, J., concurring in grant of stay) (slip op., at 5) (framing "underlying equitable and constitutional questions raised by . . . nationwide injunctions" as ones "we might at an appropriate juncture take up"). After today, that question remains.

Nor does history offer an easily discernible answer. As one leading scholar candidly admits, "traditional equity lacked the sharply defined rule" that the concurrence would claim the Court adopted today. S. Bray, Multiple Chancellors: Reforming the National Injunction, 131 Harv. L. Rev. 417, 421 (2017). And other leading scholars are actively debating what lessons can be gleaned from the historical record. See A. Frost, In Defense of Nationwide Injunctions, 93 N. Y. U. L. Rev. 1065, 1080–1090 (2018) (offering an account of "universal injunctions" consistent with Article III

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alleged error made by a lower court judge warrants this Court's immediate intervention and correction in real time, while the lower court's proceedings are pending.

and American courts' traditional equitable powers); see also M. Sohoni, The Lost History of the "Universal" Injunction, 133 Harv. L. Rev. 920, 1008 (2020) (expressing concern that, in debate over the limits of federal courts' equitable powers, "we risk allowing selectively crafted conceptions of historical tradition to run away with us").

Simply put, the questions raised by "universal injunctions" are contested and difficult. I would not attempt to take them on in this emergency posture, even in a case that actually raised the issue. We do not have full adversarial briefing, the benefits of oral argument, or even a final opinion from the Court of Appeals. To the extent we can draw any lesson from the lower courts at this point, it is that, "when faced with laws very much like Idaho's," determining the appropriate bounds of equitable relief and the propriety of "universal injunctions" is not straightforward. *Ante*, at 7 (citing *Brandt* v. *Rutledge*, 47 F. 4th 661, 672 (CA8 2022); *L. W.* v. *Skrmetti*, 83 F. 4th 460, 489–490 (CA6 2023)).

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All that said, I see some common ground. I agree that our emergency docket seems to have become increasingly unworkable. See *ante*, at 10. I share the concern that courts heed the limits of their power. See *ante,* at 12. And surely all could benefit from "more carefully reasoned judicial decisions attuned to the facts, parties, and claims at hand," not to mention "a more . . . deliberative judicial process." *Ante,* at 12–13. With respect, though, I worry that we may be too eager to find fault in everyone but ourselves.

This Court will almost certainly have a chance to consider the entirety of this case soon, whoever prevails below. In the meantime, it is far better for all concerned to let the lower courts proceed unfettered by our intervention. We can, and usually should, wait to provide our assessment in the ordinary course—when it is our turn to do so. Put differently, whenever this Court must determine whether to

exercise its discretionary power to intervene in pending cases on an emergency basis, I firmly believe we must proceed with both reason and restraint. Because the majority demonstrates neither today, I respectfully dissent.