

No.

In the Supreme Court of the United States

APPLE INC., PETITIONER

v.

EPIC GAMES, INC., RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A federal court may provide injunctive relief only to the named plaintiff, unless a class has been certified or broader relief is necessary to redress that plaintiff's injury. In this single-plaintiff lawsuit, the Ninth Circuit affirmed a universal injunction that affects millions of nonparties without any findings or evidence that such relief is necessary to redress the individual plaintiff's alleged injury. The question presented is:

Whether, in the absence of class certification, a federal court is precluded from entering an injunction that extends to nonparties without a specific finding that such relief is necessary—as to *all* nonparties—to redress any injury to the individual plaintiff.

PARTIES TO THE PROCEEDINGS

Pursuant to this Court's Rule 14(1)(b)(i), petitioner states that the caption of the case contains the names of all parties to the proceeding in the court whose judgment is sought to be reviewed.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rules 14(1)(b)(ii) and 29.6, petitioner states that it has no parent company and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

Pursuant this Court's Rule 14(1)(b)(iii), petitioner identifies the following related proceedings and the date of final judgment or disposition in each:

United States District Court (N.D. Cal.):

Epic Games, Inc. v. Apple Inc., No. 20-CV-5640 (Sept. 12, 2021)

Cameron v. Apple Inc., No. 19-CV-3074 (June 10, 2022, amended July 15, 2022)

Pepper v. Apple Inc., No. 11-CV-06714 (no final disposition)

United States Court of Appeals (9th Cir.):

Epic Games, Inc. v. Apple Inc., Nos. 21-16506, 21-16695 (Apr. 24, 2023)

Supreme Court of the United States:

Epic Games, Inc. v. Apple Inc., No. 23A78 (Aug. 9, 2023)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–88a) is published at 67 F.4th 946. The order denying the petitions for rehearing (Pet. App. 412a–413a) is unpublished. The order staying the injunction pending issuance of the mandate (Pet. App. 418a–419a) is unpublished; a subsequent order staying the mandate pending this Court’s resolution of the petition for a writ of certiorari (Pet. App. 420a–429a) is published at 73 F.4th 785. The findings of fact and conclusions of law of the district court (Pet. App. 89a–405a) are published at 559 F. Supp. 3d 898. The district court’s judgment (Pet. App. 414a–415a) and permanent injunction (Pet. App. 416a–417a) are unpublished. The district court’s ruling on the motion to stay pending appeal (Pet. App. 406a–411a) is unpublished, but available at 2021 WL 5205487 (N.D. Cal.).

JURISDICTION

The Ninth Circuit’s judgment was entered on April 24, 2023. Timely petitions for rehearing were denied on June 30, 2023. Pet. App. 412a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND RULE INVOLVED

Article III, § 2, cl. 1 provides in relevant part that “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [or] the Laws of the United States” and “to Controversies . . . between Citizens of different States.”

The Fifth Amendment provides in relevant part that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law.”

Federal Rule of Civil Procedure 23(b)(2) provides in relevant part that “[a] class action may be maintained if Rule 23(a) is satisfied and if . . . 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.”

INTRODUCTION

A federal court may provide injunctive relief only to the named plaintiff, unless either (a) a class has been certified or (b) the court makes a specific finding that extending relief to nonparties is necessary to redress any injury to that plaintiff. These requirements are imposed by Article III and the Due Process Clause, and have repeatedly been recognized by this Court. *Gill v. Whitford*, 138 S. Ct. 1916, 1933-34 (2018); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Of late, however, lower federal courts have been abjuring these limita-

tions by issuing so-called nationwide (or universal) injunctions, even where no class has been certified and without concluding that relief as to all affected nonparties is necessary to redress the individual plaintiff's injury. This case is a particularly egregious example.

In this single-plaintiff case, the district court *sua sponte* issued a universal injunction prohibiting petitioner Apple Inc. from enforcing one of its contractual guidelines against *all* developers of apps on the App Store's United States storefront—of which there are millions—not just against respondent Epic Games, Inc. The Ninth Circuit affirmed on the ground that extending injunctive relief to *some* nonparties—approximately 100 other app developers—was necessary to redress Epic's alleged injury. Neither court ever found, or even considered, whether relief as to *all* affected nonparties was necessary or appropriate.

The breathtakingly broad injunction defies this Court's admonition that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*." *Califano*, 442 U.S. at 702 (emphasis added). An individual plaintiff must prove that affording relief to nonparties is necessary to redress its own injury "in the same way as any other matter on which the plaintiff bears the burden of proof." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Epic failed to do so here, and the resulting injunction offends core constitutional principles, including Article III and due process.

Members of this Court have expressed serious concerns about the increasingly prevalent practice of issuing overbroad injunctions. *See, e.g., United States v. Texas*, 143 S. Ct. 1964, 1980 (2023) (Gorsuch, J., concurring); *Trump v. Hawaii*, 138 S. Ct. 2392, 2425 (2018)

(Thomas, J., concurring). Some other courts of appeals have recognized the threat that the recent trend toward nationwide injunctions poses to constitutional interests if not properly circumscribed. The Ninth Circuit decision in this case points in exactly the opposite direction, providing a blueprint for universal injunctive relief without class certification or any findings that the relief is narrowly tailored. Accordingly, this case presents the ideal opportunity for this Court to confirm that the Constitution requires federal courts to adjudicate the rights of only the parties before them and to limit injunctive decrees to the actual litigants or nonparties specifically found (not assumed) to be necessary.

STATEMENT

1. Apple’s iOS App Store is a two-sided transaction platform that connects app developers with iPhone and iPad users through simultaneous transactions. Pet. App. 351a–352a. Consumers can download a wide variety of apps on the App Store, most of which are free. Pet. App. 91a. Additionally, some apps allow users to purchase digital goods and services within the app. Pet. App. 139a–140a. Developers pay a commission to Apple on paid downloads of apps and on in-app purchases of digital goods and services. Pet. App. 11a.

At the time of trial, there were over 30 million registered developers of native iOS apps. Pet. App. 10a. These third-party developers are responsible for the vast majority of the approximately two million apps available through the U.S. storefront of the App Store. *See Apple Inc. v. Pepper*, 139 S. Ct. 1514, 1519 (2019). Developers who use Apple’s proprietary software and technology to develop iOS apps must enter into a license agreement that contains a number of requirements, two of which Epic challenged in this lawsuit: First, iOS apps

must be distributed through Apple’s curated App Store; and second, iOS apps that offer digital goods and services for purchase within the app must use Apple’s IAP system for making those in-app purchases. *See* Pet. App. 13a.

In addition, Apple’s guidelines for app developers provide that “[a]pps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than [IAP].” Pet. App. 13a–14a. This is referred to as the “anti-steering” provision, because it prevents developers from “steering” consumers within apps on the App Store to alternative purchase mechanisms elsewhere. It is undisputed that virtually all digital transaction platforms enforce similar anti-steering (or anti-circumvention) rules. C.A. Dkt. No. 94, at 4-SER-982–1029. This Court has recognized that such rules can be procompetitive. *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2289 (2018).

2. Epic is a developer of computer games and (through its nonparty subsidiaries) other apps. Pet. App. 95a–96a. Epic’s most popular game is *Fortnite*, which allows players to compete against one another in a virtual “battle royale.” Pet. App. 99a–100a. Prior to this litigation, an iOS version of *Fortnite* was available on the App Store; Epic also distributed *Fortnite* on console game stores (including PlayStation and Xbox), Android mobile app stores (including the Google Play Store and Samsung Galaxy Store), and PC software stores (including Steam and the Epic Games Store). Pet. App. 102a–103a. Epic also operates the Epic Games Store, through which developers may distribute apps on Mac and Windows personal computers but not on other platforms.

Epic has long been disgruntled with Apple’s distribution and IAP requirements. Pet. App. 118a–119a. Epic wants to distribute apps and sell in-app content directly to iOS users without going through the App Store. Additionally, Epic wants to offer its own in-app purchasing mechanism as an alternative to IAP. Pet. App. 126a–127a. What Epic really wants is to use the App Store platform to access more than a billion iOS consumers without paying Apple a commission. Pet. App. 118a.

3.a. In 2019, a putative class of iOS app developers filed suit against Apple alleging that the distribution and IAP requirements are anticompetitive and in violation of federal and state antitrust laws. *See Cameron v. Apple Inc.*, No. 19-CV-3074 (N.D. Cal.). In June 2022, the district court approved a settlement between Apple and a certified class of most U.S. developers. *See Order, Cameron*, No. 19-CV-3074 (June 10, 2022), Dkt. No. 491. Among other things, the settlement required Apple to clarify how developers may communicate with users *outside* of their apps regarding alternative purchase mechanisms. *See Stipulation of Settlement* § 5.1.3, *Cameron*, No. 19-CV-3074 (Aug. 26, 2021), Dkt. No. 396-1 Ex. A. The developer class settlement did not, however, require Apple to remove or modify the anti-steering provision at issue here, which addresses *in-app* advertisements.

Epic filed this lawsuit in August 2020, alleging that the distribution and IAP requirements were unlawful under federal and state antitrust laws, as well as California’s Unfair Competition Law (the “UCL”). Pet. App. 15a–16a, 129a. Epic did not separately challenge the anti-steering provision, but instead identified it as one way in which Apple enforces the IAP requirement. D.C. Dkt. No. 1 ¶¶ 129–34, 184–291. Epic effectively opted

out of the then-pending developer class action, and did not allege or seek to certify a class; nor did Epic seek to join any other developers (including its own subsidiaries) as plaintiffs.

b. The district court held a bench trial in the spring of 2021. Pet. App. 92a n.2, 112a. During the trial, Epic’s CEO confirmed that Epic sought relief only for itself and would be content with a special exemption from the App Store rules applicable only to it. Pet. App. 126a–127a. Epic did not present any evidence regarding the effect of the anti-steering provision on its business (or that of its subsidiaries, or any developers with apps on the Epic Games Store). In its proposed injunctions submitted both before and after trial, Epic did not mention the anti-steering provision at all. See D.C. Dkt. No. 276-1; D.C. Dkt. No. 777. Apple objected, under Article III and due process, to the entry of any injunctive relief extending beyond Epic to nonparties. See D.C. Dkt. No. 779 ¶¶ 711–22 (“Epic’s proposed equitable relief is overbroad in that it extends beyond Epic, and purports to bind Apple with respect to all developers”).

The district court issued its decision on September 10, 2021. Pet. App. 398a, 414a–415a. It ruled that all of Epic’s antitrust claims failed because, among other reasons, Epic had not proven that Apple is a monopolist or that the distribution and IAP requirements are anti-competitive under the antitrust laws. Pet. App. 397a. It also ruled that Epic had willfully breached its contract with Apple and that Epic had no cognizable legal defense. Pet. App. 386a–387a. And the court ruled that Apple was justified in removing *Fortnite* from the App Store and terminating Epic’s developer account. Pet. App. 396a.

Separately, however, the district court concluded that the anti-steering provision is “unfair” under the California UCL. Pet. App. 370a. The court found that because the anti-steering provision prevents developers from “communicating lower prices on other platforms,” it has “the effect of preventing substitution among platforms for transactions.” Pet. App. 241a, 370a.

On this basis, the district court *sua sponte* issued a universal injunction prohibiting Apple from enforcing the anti-steering provision against *all* developers of iOS apps on the United States storefront of the App Store. Pet. App. 376a; 416a–417a. At the time, Epic was not an iOS app developer because Apple had terminated Epic’s developer account, and thus was not among the developers covered by the injunction (and Epic, to this day, has no developer account with Apple). Nonetheless, the district court did not consider whether injunctive relief affecting nonparties was necessary to remedy any injury to Epic. In fact, the district court did not separately find that the anti-steering provision—as distinguished from the other challenged conduct—injured Epic in any way (and Epic had submitted no such evidence).

c. Both parties appealed, and the Ninth Circuit stayed the injunction pending resolution of the appeal. Pet. App. 3a–4a; 418a–419a. Apple argued that the injunction violated Article III, both because Epic lacked standing and because there was no basis to extend any injunction beyond Epic to nonparty developers. See C.A. Dkt. No. 93, at 102–04, 110 (“The Supreme Court has cautioned that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs before the Court.” (quotation marks omitted)). Apple also argued that “this is

not a class action, that any injunctive relief must be limited to Epic as a matter of . . . federal law” (*id.* at 36), and that by encompassing nonparties, the injunction “subverts Federal Rule of Civil Procedure 23(b)(2), which expressly addresses injunctive relief extending beyond the named plaintiff” (*id.* at 111).

In response, Epic argued for the first time that broad injunctive relief was warranted because it sought to make an alternative in-app payment mechanism available to other developers via the Epic Games Store. C.A. Dkt. No. 163, at 110–11. The trial evidence established that only approximately 100 developers distribute apps through the Epic Games Store. *See* D.C. Trial Tr. 1220:18–20 (“Q: How many developers distribute their apps on the Epic Games Store today? A: A little over a hundred.”). Yet, Epic pointed to no trial evidence supporting its theory that nationwide relief was warranted because of these 100 developers.

On April 24, 2023, the Ninth Circuit affirmed in all relevant respects. It offered just one paragraph of analysis regarding the universal scope of the injunction:

[T]he district court did not abuse its discretion when setting the scope of the injunctive relief because the scope is tied to Epic’s injuries. The district court found that *the anti-steering provision harmed Epic by (1) increasing the costs of Epics’ subsidiaries’ apps that are still on the App Store, and (2) preventing other apps’ users from becoming would-be Epic Games Store consumers.* Because Epic benefits in this second way from consumers of other developers’ apps making purchases through the Epic Games Store, an injunction limited to Epic’s subsidiaries would fail to address the full harm caused by the anti-steering provision.

Pet. App. 82a (emphasis added).

After denying the parties’ respective petitions for rehearing, the Ninth Circuit stayed the mandate (and consequently the injunction) pending the resolution of Apple’s petition for a writ of certiorari. Pet. App. 412a–Pet. App. 421a. Judge Smith concurred in the panel’s stay of the mandate but wrote separately to defend the breadth of the injunction. Pet. App. 421a–429a. Justice Kagan subsequently denied Epic’s “emergency” motion to vacate the stay. *See Epic Games, Inc. v. Apple Inc.*, No. 23A78 (Aug. 9, 2023).

REASONS FOR GRANTING THE PETITION

First, the Ninth Circuit’s decision conflicts with this Court’s precedent directing that unless there is a properly certified class, injunctive relief must be no more burdensome to the defendant than necessary to remedy the injury to the named plaintiff. *Califano*, 442 U.S. at 702. The Ninth Circuit found that broad injunctive relief was justified because Epic could be indirectly injured through application of the anti-steering provision to (1) one of Epic’s handful of subsidiaries, and (2) about 100 developers that distribute apps on Epic Games Stores. Yet the injunction goes far beyond that limited and discrete set of developers, reaching *all* developers who are licensed to make iOS apps for the App Store’s U.S. storefront. This Court’s review is needed to clarify that a federal court cannot enter nationwide injunctive relief in a single-plaintiff action without specifically finding that such relief is needed as to *all* affected nonparties.

Second, the decision in this case is emblematic of an increasing trend toward so-called nationwide (or universal) injunctions in the lower courts. In contrast to the Ninth Circuit, other courts of appeals have imposed

stringent requirements for issuing nationwide relief, which help protect against overbroad nationwide injunctions. Members of this Court, the Department of Justice, and numerous commentators have raised alarms about the recent trend toward such relief. There are constitutional, practical, and prudential concerns with providing injunctive relief to nonparties without certifying a class or making specific findings that such relief is necessary to redress the individual plaintiff's alleged injury. This Court's guidance is urgently needed, and this case presents an ideal vehicle for addressing those concerns in the context of civil, non-governmental litigation.

I. The Injunction is Unconstitutionally Overbroad

A federal court may issue injunctive relief that goes beyond the individual plaintiff only if either (a) a class is certified or (b) the court finds that broader relief is necessary to redress the plaintiff's injury. There was no putative or certified class in this litigation. And the lower courts found at most that relief as to approximately 100 nonparties was necessary to remedy Epic's alleged injury. Yet the injunction extends to millions of developers worldwide who have no affiliation with Epic or this litigation. This unconstitutional exercise of power cannot be sustained under this Court's settled precedent.

A. The Constitution Constrains the Scope of Injunctive Relief

This Court has squarely held that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano*, 442 U.S. at 702; *see also Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (similar).

“[G]ranting a remedy beyond what [is] necessary to provide relief to [the plaintiffs is] improper.” *Lewis v. Casey*, 518 U.S. 343, 360 (1996); *see also Gill*, 138 S. Ct. at 1933 (vacating statewide injunction because “[t]he Court’s constitutionally prescribed role is to vindicate the individual rights of the people appearing before it”). A federal court should thus “take care to ensure that nationwide relief is indeed appropriate in the case before it.” *Califano*, 442 U.S. at 702. There are two principal rationales for this rule.

First, this Court has long recognized that Article III courts possess only the power “to render a judgment or decree upon the rights of the litigant parties.” *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1838). That longstanding rule forms the basis for the principle that any remedy “must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.” *Lewis*, 518 U.S. at 357. Thus, any part of an injunction that does not redress a constitutionally cognizable injury of the plaintiff violates Article III. *See id.* at 358. The plaintiff must prove the elements of standing, including redressability, “in the same way as any other matter on which the plaintiff bears the burden of proof” (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)), and broad injunctive relief can be upheld only if there is an adequate “finding” in the district court that such relief is needed (*Lewis*, 518 U.S. at 360).

Second, due process restrains the extent to which nonparties’ rights may be adjudicated. On the claimant side, “[i]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in litigation in which he is not designated as a party or to which he has not been made a party by service of process.” *Hansberry v. Lee*, 311

U.S. 32, 40 (1940). That is because “[a] person who was not a party to a suit generally has not had a ‘full and fair opportunity to litigate’ the claims and issues settled in that suit.” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). On the defense side, nationwide adjudication of rights in a single-plaintiff action threatens to prejudice defendants, because while they will be bound nationwide if they lose, they will have no res judicata rights against future litigants if they win. See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 805 (1985).

There is, of course, one way in which a claimant may obtain relief for absent individuals or entities: a properly certified class action. The “Rule 23 class-action device was designed to allow an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.” *Califano*, 442 U.S. at 700–01; see also *Hansberry*, 311 U.S. at 41 (similar). Most relevant here, Rule 23(b)(2) provides for injunctive relief extending beyond the named plaintiff where the demanding requirements of Rule 23(a)—including commonality and typicality—are met. See Fed. R. Civ. P. 23(a)(3). A putative Rule 23(b)(2) class must also show that “the party opposing the class has acted or refused to act on grounds that apply generally to the class.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360–61 (2011) (quoting Fed. R. Civ. P. 23(b)(2)). Specifically, the named plaintiff must show that all persons who would benefit from an injunction would be entitled to the same relief that the class representative seeks. *Id.* at 361–62; cf. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021).

B. The Decision Below Defies Established Limitations on the Scope of Injunctions

1. Consistent with these principles, this Court has been clear that a universal injunction, if ever appropriate, is a narrow exception to the ordinary rule that the injunctive relief ought to be strictly limited to the parties. The Court has instructed that federal courts “should take care to ensure that nationwide relief is indeed appropriate in the case” to redress the individual plaintiff’s injury (*Califano*, 442 U.S. at 702), and that there must be an adequate “finding” of the need for such relief by the trial court before such relief may be entered or sustained (*Lewis*, 518 U.S. at 360). For these reasons (and others), a separate evidentiary hearing is required if there are disputed factual issues regarding scope. See *United States v. Microsoft Corp.*, 253 F.3d 34, 49 (D.C. Cir. 2001). None of that happened in this case.

After the district court entered the UCL injunction (which Epic had not asked for), Apple pointed out that Epic never proved injury to itself from the anti-steering provision, and that even if it could prove past injury, Epic is no longer a licensed iOS developer, has no apps on the App Store, and thus is not even covered by the injunction. See *Lewis*, 518 U.S. at 357; *Lujan*, 504 U.S. at 561. Epic thus had—and has—no Article III standing to seek or enforce the UCL injunction. In response, the district court offered a post-judgment theory of injury based on Epic’s receipt of royalties from certain other developers. Pet. App. 408a. On appeal, Apple debunked the factual basis for that theory, and the Ninth Circuit did not rely on it. Pet. App. 81a–82a. Instead, the Ninth Circuit moved the goalposts yet again, broadly asserting—without citing any evidence or findings in the record—that Epic is indirectly injured by the anti-steering

provision’s application to (1) one of Epic’s subsidiaries with apps on the App Store and (2) other developers with apps on the Epic Games Store. Pet. App. 12a, 76a.

The courts’ shifting efforts to develop *post hoc* justifications for the scope of the relief do not evince the “care” this Court has demanded when courts consider issuing nationwide relief. Neither the district court’s nor the Ninth Circuit’s attempts to justify Epic’s standing or the scope of the injunction are supported by the record, but even if they were, they do not support the universal injunction ordered here. Epic has identified just one subsidiary that currently distributes apps on the App Store, and that subsidiary distributes only one app that could be affected by the anti-steering provision. See D.C. Dkt. No. 825-8. Moreover, the trial evidence established that only about 100 developers offer apps on the Epic Games Store. See D.C. Trial Tr. 1220:18–20.

Even under the Ninth Circuit’s rationale, the injunction could constitutionally run to, at most, Epic’s subsidiary and the ~100 developers that offer apps through the Epic Games Store. Yet the injunction extends to *millions* of app developers worldwide who are not affiliated with Epic and do not distribute their apps through the Epic Games Store. The record reveals no connection whatsoever between Epic and those millions of nonparties, and certainly no finding that relief as to each (or even most) of those nonparties is necessary to redress Epic’s alleged injury.

This overbreadth is the product of the Ninth Circuit’s legally erroneous assertion that the injunction need only be “tied to Epic’s injuries.” Pet. App. 82a. Whether an injunction is “tied to” a plaintiff’s injuries is not the standard for assessing the scope of an injunction. See *Califano*, 442 U.S. at 702. Indeed, the Ninth Circuit’s

substitute limitation is no limitation at all—any time a defendant implements a generally applicable policy, an order enjoining that policy as to all affected nonparties is at least in some way “tied” to the underlying injury. *See* Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 467 (2017) (criticizing this circular justification for nationwide injunctions). Article III requires federal courts to decide concrete disputes between identified litigants, and does not permit decrees that extend further without specific findings in extraordinary cases that such relief is necessary to provide redress to the individual plaintiff.

Rather than consider whether the scope of the injunction was precisely tailored to Epic’s alleged injury, the Ninth Circuit advanced a new theory of harm that purported to show a need for relief to *some* number of nonparties. But that novel approach does not justify giving *universal* effect to the injunction. The result is a nationwide injunction that does not satisfy the exacting requirements of Article III and due process.

2. As noted, there is a proper forum to vindicate the interests of nonparties: A properly certified Rule 23 class action. And here, other iOS app developers *did* pursue a class action against Apple and *did* obtain relief on behalf of a certified class of U.S. app developers, including a nationwide injunction. *See* Order, *Cameron*, No. 19-CV-3074 (June 10, 2022), Dkt. No. 491. That settlement required Apple to modify one of its policies regarding developer-consumer communications, but did not require Apple to remove or modify the anti-steering provision at issue here. *See* Stipulation of Settlement § 5.1.3, *Cameron*, No. 19-CV-3074 (Aug. 26, 2021), Dkt.

No. 396-1 Ex. A. Epic, meanwhile, sought special dispensation for itself—and *only* itself—by filing its own action and electing to go it alone.

The lower courts here gave Epic the nationwide relief the *Cameron* class was unable to obtain in the parallel litigation, undermining the role and importance of Rule 23 in protecting litigants’ and nonparties’ due process rights. None of the absent developers had the opportunity to participate in, object to, or opt out of the relief that Epic obtained, yet the injunction applies to them. *See Taylor*, 553 U.S. at 892. Whereas large developers like Epic might have the resources to provide or access alternatives, small developers (which is to say, most developers) may well prefer that the anti-steering provision remain in place to reduce transaction friction on the App Store, thereby improving the platform’s quality generally and attracting more users. *See Am. Express*, 138 S. Ct. at 2289 (sustaining similar anti-circumvention rules as procompetitive for these reasons). The injunction thus unlawfully adjudicates the rights of nonparties. *See Hansberry*, 311 U.S. at 42–43; *see also* Zayn Siddique, *Nationwide Injunctions*, 117 Colum. L. Rev. 2095, 2125 (2017) (“[R]emedying . . . harm with an overbroad injunction can cause serious harm to nonparties who had no opportunity to argue for more limited relief”).

Conversely, had Apple prevailed against Epic with respect to the anti-steering provision (as it did on every other claim), that judgment may not have had res judicata effect as to any of the other millions of developers, who could file successive lawsuits seeking the nationwide relief obtained here until one court finally agreed. *See Phillips Petroleum*, 472 U.S. at 805. This asymmetry emphasizes the need for careful consideration

and scrutiny of nationwide injunctive relief, which the Ninth Circuit did not exercise here.

3. Judge Smith’s unusual opinion concurring in the order staying the mandate highlights how far the panel opinion (which he authored) departs from this Court’s precedent and constitutional principles. See Pet. App. 421a–429a. In attempting to further defend the scope of the injunction, Judge Smith opined that “in an anti-trust suit brought by a competitor, injunctive relief will almost by definition have incidental benefits to nonparties—since antitrust laws protects competition, not individual market participants.” Pet. App. 427a. Judge Smith went on to say that “injunctions with incidental benefits for nonparties are the *inevitable result* when a competitor-plaintiff makes the difficult showing that it is entitled to injunctive relief.” *Id.* (emphasis added).

Far from justifying the panel decision, these statements illustrate why this Court’s review is warranted.

In the first passage, Judge Smith asserts that the constitutional constraints on the scope of injunctive relief must bend to the policy goals of the antitrust laws. Pet. App. 422a–425a. That view is incompatible with the Court’s direction that injunctions must be no broader than that necessary to provide relief “to the plaintiffs” (*Califano*, 442 U.S. at 702), and the fact-specific (rather than policy-based) nature of that inquiry. Moreover, the legislature cannot expand the federal courts’ Article III jurisdiction on policy grounds (see *TransUnion*, 141 S. Ct. at 2205), and in any event, “it would exceed Article III’s limitations if, at the behest of Congress and in the absence of any showing of concrete injury, [courts] were to entertain citizen suits to vindicate the public’s nonconcrete interest in the proper administration of the laws” (*Summers v. Earth Island*

Inst., 555 U.S. 488, 497 (2009) (alteration and quotation marks omitted)).

No *state* policy can justify the expansion of relief rendered by a *federal* court. Article III standing is a question of federal law, and “no matter its reasons, the fact that a State thinks a private party should have standing to seek relief for a generalized grievance cannot override” the limitations of Article III. *Hollingsworth v. Perry*, 570 U.S. 693, 715 (2013). Thus, States cannot vest private plaintiffs with more expansive standing to seek public injunctive relief than that afforded by Article III. *Ibid.*; see also *Birdsong v. Apple Inc.*, 590 F.3d 955, 959–60 (9th Cir. 2009) (UCL plaintiffs must have Article III standing). California’s UCL does not swallow the Constitution.

In the second passage, Judge Smith goes even further, announcing that nationwide injunctions are “inevitable” in antitrust lawsuits. Pet. App. 425a–429a. But the role of a federal court in adjudicating an antitrust case (particularly, as here, a civil case brought by a single private litigant) is not to generally balance the competitive landscape—it is “to render a judgment or decree upon the rights of the litigant parties.” *Rhode Island*, 37 U.S. at 718. Adversarial litigation between two private parties is not the forum to make public policy determinations about what competitive conditions are most desirable. This Court has been clear that courts should not “construe a statute to displace courts’ traditional equitable authority absent the clearest command.” *Holland v. Florida*, 560 U.S. 631, 646 (2010) (quotations omitted). Unsurprisingly, many antitrust actions are pursued on a class basis; this one was not.

Moreover, Apple *prevailed* on all the antitrust claims in this case; the injunction here was entered under California’s Unfair Competition Law. The liability ruling is wrong as a matter of California law, because “the determination that the conduct is not an unreasonable restraint of trade” under the antitrust laws “necessarily implies that the conduct is not ‘unfair’ toward consumers” under the UCL. *Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 375 (2001). While the Ninth Circuit’s error in refusing to apply that principle (Pet. App. 78a–79a) is not within the Question Presented, it provides further reason to rigorously enforce the constitutional constraints on injunctive relief in federal court.

Judge Smith’s concurrence insists that Apple’s objections to the injunction in this case are based on an “imagined record” (Pet. App. 429a), but it is telling that the Ninth Circuit’s ruling on the scope of the injunction is unsupported by any citation to the district court’s findings or the trial evidence. The record here shows *both* that Epic was seeking relief only for itself *and* that a properly certified class of almost all U.S. developers chose to settle without a prohibition against the anti-steering provision. Epic never asked for this injunction and never sought at trial to prove its standing or entitlement to it—it did not introduce evidence of actual injury to itself, let alone that its injury flows from the anti-steering provision’s application to millions of nonparties. Yet—absent intervention by this Court—Apple will have to comply with the nationwide injunction, to the detriment of consumers and the iOS ecosystem. *See* C.A. Dkt. No. 94, at 1-SER-208–1-SER-216.

* * *

The Ninth Circuit’s decision absolves Epic of its burden to affirmatively prove the need for universal relief to redress its alleged injury, justifying such relief based only on an unsupported finding that *some* injunctive effect beyond the individual plaintiff is warranted. That approach eviscerates the constitutional limitations on federal courts’ authority and, unless corrected by this Court, would render universal injunctions the default remedy in single-plaintiff cases challenging a generally applicable policy. The decision below will thus contribute to the plague of nationwide injunctions that raise a host of constitutional and prudential concerns regarding the authority of federal courts.

II. The Constitutionality of Overbroad Injunctions Is a Recurring Issue Warranting this Court’s Review

A federal court’s authority to issue nationwide injunctive relief and the need for stringent review of such relief present issues of national importance. Just last Term, Justice Gorsuch—joined by Justices Thomas and Barrett—observed that “a number of lower courts have asserted the authority to issue decrees that purport to define the rights and duties of sometimes millions of people who are not parties before them” and that these “[m]atters have not improved with time.” *United States v. Texas*, 143 S. Ct. 1964, 1980 (2023) (Gorsuch, J., concurring); *see also Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring) (nationwide injunctions “have little basis in traditional equitable practice”). Justice Thomas has likewise expressed “skeptic[ism] that district courts have the authority to enter universal injunctions.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2425 (2018) (Thomas, J., concurring).

1.a. A number of lower courts have correctly recognized that nationwide injunctions in single-plaintiff actions should be reserved for only the rarest of occasions, and have demanded rigorous and specific proof before allowing such injunctions. These courts recognize that the boundaries of Article III must be “zealously” protected. *Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001). The Ninth Circuit’s decision in this case conflicts with these decisions from other circuits by embracing an expansive view of when nationwide injunctive relief may be ordered and dispensing with the rigorous factual analysis that other courts require.

The Eleventh Circuit, for example, has properly recognized that nationwide injunctions should be “rare,” and that to issue one, the district court must first “wrestle with” whether a more limited injunction would be effective, or whether it is “necessary to extend relief to nonparties.” *Georgia v. President of the United States*, 46 F.4th 1283, 1304 (11th Cir. 2022). A district court cannot take a shortcut by simply “casting a wide net.” *Ibid.* Accordingly, the “[r]eviewing courts should . . . be skeptical of nationwide injunctions.” *Id.* at 1306. And if the nationwide relief is premised on “the need to protect nonparties,” then the injunction is overbroad—the proper avenue for such relief would be through a class action or new lawsuits brought by the nonparties. *Ibid.*

Observing that nationwide relief in a single-plaintiff action is “rarely justified,” the Sixth Circuit has vacated injunctions where the relief was broader than that needed to redress injury to the individual plaintiff. *See L. W. ex rel. Williams v. Skrmetti*, 73 F.4th 408 (6th Cir. 2023). Likewise, the First Circuit reversed a classwide injunction “where there [was] no such reason here for an injunction running to the benefit of nonparties.” *Brown*

v. *Trustees of Bos. Univ.*, 891 F.2d 337, 361 (1st Cir. 1989). And the Third Circuit has also recognized that trial courts must narrowly tailor injunctions to ensure they are no broader than necessary to remedy the plaintiff's injury. See *Free Speech Coal., Inc. v. Att'y Gen. United States*, 974 F.3d 408, 430 (3d Cir. 2020) (reversing injunction because it "afforded more relief than necessary" to the named plaintiffs); *Meyer v. CUNA Mut. Ins. Soc'y*, 648 F.3d 154, 169–71 (3d Cir. 2011) (collecting cases in which courts have "found injunctions to be overbroad where their relief amounted to class-wide relief and no class was certified").

b. Scholars have also zeroed in on this issue. Professor Ronald Cass, for example, has argued that the proliferation of nationwide injunctions "undermines rule of law values, threatens the operation of courts as impartial arbiters of disputes over legal rights, and erodes the Constitution's careful separation of functions among the branches of government." Ronald Cass, *Nationwide Injunctions' Governance Problems: Forum-Shopping, Politicizing Courts, and Eroding Constitutional Structure*, 27 Geo. Mason L. Rev. 29, 31 (2019). Professor Samuel Bray has explained that the nationwide injunction is only "a recent development," with no grounding in the history or tradition of courts of equity, but threatening pernicious consequences. Bray, *supra*, at 420, 425–28, 457–65. And he has highlighted the need for clarity from this Court, observing that "[j]udicial decisions on when an injunction should be issued are . . . a muddle of inconsistent generalizations," which have thus proven ineffectual at regulating and limiting the use of these potentially overbroad remedies. *Id.* at 465–66. Several

other scholars have criticized the use of nationwide injunctions, and called for clarity. *See id.* at 419 & n.6 (collecting scholarly criticisms).

c. The United States Department of Justice has also raised concerns about federal courts issuing nationwide injunctions that are overbroad and unconstitutional, including in a recent application pending before this Court seeking to vacate such an injunction. *See* Application for Stay, *Murthy v. Missouri*, No. 23A243 (U.S. Sept. 14, 2023), at 34–36 (arguing that the Constitution and principles of equity require that any injunction be limited to the particular plaintiffs in the action). In light of the forthcoming petition in that case, the Court may wish to invite the Solicitor General to file a brief expressing the views of the United States on this one; at minimum, this petition should be held pending the outcome of the government’s similar challenge to the injunction in the *Murthy* case.

2. This case is an ideal vehicle to address the constitutional and prudential problems presented by overbroad injunctions in the federal courts.

As *Murthy* illustrates, many recent cases have involved nationwide injunctions against the federal government, where public policy and practical considerations might (or might not) sometimes weigh in favor of broader relief. *See* Alan M. Trammell, *Demystifying Nationwide Injunctions*, 98 Tex. L. Rev. 67, 77 (2019). Unlike private parties, the government is generally *required* to treat similarly situated individuals similarly. A private company such as Apple is not subject to the same considerations: Ordering Apple to provide relief only to Epic would not offend any applicable equal-treatment principles. Accordingly, nationwide injunctions

against private parties present even more serious issues than those against the government.

In addition to the Article III problems arising out of nationwide injunctions, there are numerous other reasons why the proliferation of such injunctions is cause for concern. For example, nationwide injunctions may “have a detrimental effect by foreclosing adjudication by a number of different courts and judges.” *Califano*, 442 U.S. at 702. Nationwide injunctions also encourage forum shopping by opportunistic plaintiffs who seek a favorable decision in a single forum that can be applied universally against the defendant. *See Cass, supra*, at 42. These problems, too, are magnified in the context of private (non-governmental) litigation.

Nationwide injunctions also subvert principles of federalism, particularly when—as here—a federal court issues relief affecting millions of entities around the world based solely on its interpretation of the law and policy of a single State. Even if Apple’s anti-steering provision is “unfair” under California law, the universal injunction transforms that statewide policy choice into a federal directive, even though Epic was unable to prove that Apple violated any federal law. Tellingly, California’s chief antitrust enforcer has already promised to use the UCL to “seek nationwide injunctions” on the basis of the ruling below, even against “conduct which may not clearly be illegal under federal antitrust laws.” Michael Acton, *Epic Games-Apple US Appeals Court Ruling Shows Power of California’s Competition Law, Blizzard Says*, MLex (May 10, 2023). Private plaintiffs are certain to do the same.

The fact that the injunction here is based on the district court’s interpretation of *state* law means that the scope of the injunction is cleanly presented for this

Court's resolution. By contrast, in a case arising under federal law, this Court's judgment on the merits binds all courts nationwide, and thus often renders moot the question of whether the relief should have nationwide effect. Here, however, the scope of the injunction has to be decided, because the question of liability is not before the Court.

This petition does not turn on any factual disputes. Although the Ninth Circuit's conclusions regarding harm to Epic's subsidiaries and other developers with apps on the Epic Games Store were both unfounded and incorrect, they may be accepted for purposes of this petition. Even if those findings could justify an injunction limited to Epic and the approximately 100 nonparties identified by the Ninth Circuit, they do not, and cannot, justify the injunction extending to millions of other developers that have no connection to Epic whatsoever.

Indeed, this is the rare case in which the factual record is pellucid as to disparity between the number of nonparties through which the named plaintiff is potentially affected by the enjoined conduct (~100) and the number of nonparties actually covered by the injunction (millions). The identity of those developers for whom relief is purportedly needed to redress Epic's injury is easily discernible, and there are thus no nuanced questions about how to carve out a narrower remedy. *Cf. Barr v. Am. Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2354–55 (2020). This case avoids the kinds of collateral issues that make resolution of this issue more difficult in other contexts.

* * *

To justify nationwide injunctive relief in a single-plaintiff action, a federal court must specifically find

that such relief is needed as to all affected nonparties. Neither of the courts below made such a finding (and there is no evidence on which such a finding could be made), and thus the universal injunction violates Article III, due process, and other constraints on federal court authority. This is an increasingly important issue in federal litigation that requires this Court's review, and this case presents the ideal opportunity for this Court to review and enforce the contours of those constraints.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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