

NATIONWIDE INJUNCTIONS

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One of the most dramatic exercises of a court's equitable authority is the nationwide injunction. Although this phenomenon has become more prominent in recent years, it is a routine fixture of the jurisprudence of federal courts. Despite the frequency with which these cases arise, there has been no systematic scholarly or judicial analysis of when courts issue nationwide injunctions and little discussion of when they should issue such relief.

This Article presents the first comprehensive account of when nationwide injunctions issue. Earlier attempts to answer this question have focused exclusively on challenges to federal regulatory action and have concluded that the domain is one of unconstrained judicial discretion. By contrast, this Article considers not only cases involving the federal government but also those exclusively between private parties. The conclusion from this expanded focus is that courts determining the geographic scope of injunctions in disputes between private parties are largely guided by a single principle: The injunction should be no broader than "necessary to provide complete relief to the plaintiffs." While the "complete relief" idea has echoes throughout equitable jurisprudence, it proves particularly robust at organizing the conditions under which nationwide injunctions issue. The Article then examines the body of cases involving the federal government to test the explanatory power of the complete relief principle. Although there is more variation, here too complete relief provides a useful tool for categorizing seemingly disparate cases under a common classification scheme. The Article concludes by arguing not only that the complete relief principle is descriptively useful for focusing debates about nationwide injunctions but also that Federal Rule of Civil Procedure 65 should be amended to codify the principle as a formal limit on the appropriate geographic scope of an injunction.

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INTRODUCTION

When the Fifth Circuit upheld a nationwide injunction issued by a Texas district court prohibiting the implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents program (DAPA),¹ the United States argued in its petition for a writ of certiorari that the geographic breadth of the injunction was “unprecedented” and violated “established limits on the judicial power.”² In the

1. *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015), *aff’d per curiam* mem. by an equally divided Court, 136 S. Ct. 2271 (2016).

2. Petition for Writ of Certiorari at 11, *United States v. Texas*, 136 S. Ct. 906 (2016) (No. 15-674), 2015 WL 7308179.

wake of that decision, both courts³ and commentators⁴ have remarked on the scope of the injunction. Yet in the months following the DAPA decision, district courts across Texas issued a series of nationwide injunctions prohibiting the implementation of regulations addressing a wide range of issues including union organizing,⁵ overtime pay,⁶ transgender bathrooms,⁷ and healthcare discrimination.⁸ It might be tempting to group these injunctions as *sui generis* under the heading “Don’t Mess with Texas,”⁹ but the reality is that nationwide injunctions are far from “unprecedented”—they are a regular feature of the equitable jurisprudence of federal courts.

3. *Vidal v. Baran* was a suit challenging the application of the DAPA injunction against residents of New York. Complaint at 1–2, *Vidal v. Baran*, No. 1:16-cv-04756 (E.D.N.Y. filed Aug. 25, 2016), 2016 WL 4524062 (“Plaintiff Martin Jonathan Batalla Vidal is not and has never been a party to the *Texas v. United States* suit. . . . [T]he District Court in *Texas v. United States* lacked jurisdiction or authority to enter[] an injunction reaching to New York.”). After the Trump Administration rescinded DACA, the plaintiffs amended their complaint to challenge that executive action rather than the Texas district court’s nationwide injunction. Second Amended Complaint at 1–3, 22, *Vidal v. Duke*, No. 1:16-cv-04756 (NGG) (JO) (E.D.N.Y. filed Sept. 19, 2017) (providing the most current procedural history of the case at the time this Article went to print). During a pre-motion conference on the original, direct challenge to the DAPA injunction, the district judge presiding over the case expressed skepticism about whether a judge in one jurisdiction could “issue a nationwide injunction if someone comes to him with a claim that affects the rights of people in [another jurisdiction] who have not been before the court.” Daniel Denvir, *New Hope for Undocumented Immigrants: DAPA Might Not Be Dead—A Bold Legal Strategy Could Protect Millions from Deportation*, Salon (Oct. 13, 2016), <http://www.salon.com/2016/10/13/new-hope-for-undocumented-immigrants-dapa-might-not-be-dead-a-bold-legal-strategy-could-protect-millions-from-deportation> [<http://perma.cc/Y4HU-27FD>].

4. See, e.g., Linda Greenhouse, *When Smart Supreme Court Justices Play Dumb*, N.Y. Times (Apr. 28, 2016), <http://www.nytimes.com/2016/04/28/opinion/when-smart-supreme-court-justices-play-dumb.html> (on file with the *Columbia Law Review*) (describing the “unusually broad” injunction).

5. *Nat’l Fed’n of Indep. Bus. v. Perez*, No. 5:16-cv-00066, 2016 WL 3766121, at *46 (N.D. Tex. June 27, 2016) (prohibiting enforcement of a Department of Labor regulation requiring law firms to disclose any work they do for employers on union organization efforts).

6. *Nevada v. U.S. Dep’t of Labor*, 218 F. Supp. 3d 520, 534 (E.D. Tex. 2016) (prohibiting the Department of Labor from implementing a regulation that would raise the minimum salary level for employees exempt from certain overtime rules).

7. *Texas v. United States*, 201 F. Supp. 3d 810, 815–16 (N.D. Tex. 2016) (enjoining enforcement of a Department of Education “Dear Colleague” letter that would have allowed individuals to use “intimate facilities” that matched their gender identity rather than biological sex).

8. *Franciscan All., Inc. v. Burwell*, 227 F. Supp. 3d 660, 669–70, 695 (N.D. Tex. 2016) (enjoining enforcement of a regulation that interprets the Affordable Care Act’s prohibition on sex discrimination to also prohibit discrimination on the basis of “gender identity” and “termination of pregnancy”).

9. See generally Tim McClure & Roy Spence, *Don’t Mess with Texas: The Story Behind the Legend 3* (2006) (describing the origins of this phrase).

Both before¹⁰ and after¹¹ the DAPA litigation, courts have routinely confronted the question of whether to issue a nationwide injunction. Despite how frequently the issue arises, there has been little systematic treatment in judicial opinions or the academic literature of how to evaluate the appropriate geographic scope of an injunction. There is no comprehensive descriptive account of how common these injunctions are or under what conditions they typically issue. Likewise, there has been little effort to develop a prescriptive account of what principles should guide the decision of geographic scope.

What makes this gap in our legal topography particularly surprising is that the limit of injunctive authority has been a central concern of American jurisprudence since the Founding era.¹² Indeed, some of the earliest debates of the Republic involved Publius and the Federal Farmer clashing over the appropriate scope of equitable relief.¹³ And, fifty years ago, Justice Fortas may have offered the most vivid account of the stakes when he warned:

[A]rming each of the federal district judges in this Nation with power to enjoin enforcement of regulations and actions under the federal law designed to protect the people of this Nation . . . is a general hunting license; and I respectfully submit, a license for mischief because it authorizes aggression which is richly

10. See, e.g., *Florida ex rel. Bondi v. U.S. Dep't of Health & Human Servs.*, 780 F. Supp. 2d 1256, 1305 (N.D. Fla.) (considering whether to issue a nationwide injunction prohibiting enforcement of the Patient Protection and Affordable Care Act), *aff'd in part, rev'd in part sub nom. Florida ex rel. Attorney Gen. v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235 (11th Cir. 2011), *aff'd in part, rev'd in part sub nom. Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012); *Virginia ex rel. Cuccinelli v. Sebelius*, 728 F. Supp. 2d 768, 790 (E.D. Va. 2010) (same), *vacated*, 656 F.3d 253 (4th Cir. 2011); *Log Cabin Republicans v. United States*, 716 F. Supp. 2d 884, 888 (C.D. Cal. 2010) (considering whether to issue a nationwide injunction prohibiting enforcement of the "Don't Ask, Don't Tell" Act), *vacated*, 658 F.3d 1162 (9th Cir. 2011).

11. See *supra* notes 5–8 and accompanying text; see also *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017).

12. Although elements of the debate over injunctive authority date back to the Founding, and even English equity practice, Professor Samuel Bray argues in an insightful forthcoming article that at least one subset of nationwide injunctions—those prohibiting the enforcement of a federal statute, regulation, or order against all individuals in non-class action cases—emerged only in the latter half of the twentieth century. See Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 *Harv. L. Rev.* (forthcoming 2017) [hereinafter Bray, *Multiple Chancellors*] (manuscript at 32–38), <http://ssrn.com/abstract=2864175> (on file with the *Columbia Law Review*).

13. Compare *The Federalist* No. 83, at 568–69 (Alexander Hamilton) (Jacob E. Cooke ed., 1961) (“[G]reat advantages result from the separation of the equity from the law jurisdiction; and . . . the causes which belong to the former would be improperly committed to juries.”), with *Letters from the Federal Farmer to the Republican*, Letter XV (Jan. 18, 1788), reprinted in 2 *The Complete Anti-Federalist* 315, 322–23 (Herbert J. Storing ed., 1981) (advocating for a broader civil jury right and suggesting that equity jurisdiction allows judges to decide cases based on “discretionary power” rather than “the spirit and true meaning of the constitution”).

rewarded by delay in the subjection of private interests to programs which Congress believes to be required in the public interest.¹⁴

Accordingly, scholars have debated the limits of equitable power from numerous perspectives. They have examined the appropriate temporal limits of an injunction,¹⁵ what makes an injunction adequately specific,¹⁶ and how broadly to construe the remedial aims of injunctions.¹⁷ The question of geographic breadth, however, is far less studied.

In recent years, some works have begun to address the geographic dimension of injunctions.¹⁸ Focusing almost exclusively on public law cases

14. *Gardner v. Toilet Goods Ass'n*, 387 U.S. 167, 183 (1967) (Fortas, J., dissenting). My thanks to Noah Rosenblum for directing me to this dissent.

15. See, e.g., Liaquat Ali Khan, *Temporality of Law*, 40 *McGeorge L. Rev.* 55, 86–87 (2009); Note and Comment, *Are All Permanent Injunctions Temporary?*, 23 *Mich. L. Rev.* 382, 382–85 (1925); *Developments in the Law—Injunctions*, 78 *Harv. L. Rev.* 994, 1055–61 (1965).

16. Samuel L. Bray, *The System of Equitable Remedies*, 63 *UCLA L. Rev.* 530, 579–80 (2016); *Developments in the Law—Injunctions*, supra note 15, at 1064–67.

17. See Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 *Harv. L. Rev.* 1281, 1292–96 (1976) (noting the “increasing importance of equitable relief” and the challenges that judges face in balancing various interests of parties and nonparties); Alfred M. Mamlet, *Reconsideration of Separation of Powers and the Bargaining Game: Limiting the Policy Discretion of Judges and Plaintiffs in Institutional Suits*, 33 *Emory L.J.* 685, 685–86 (1984) (arguing courts in public law litigation improperly exercise legislative and executive discretion by going beyond the traditional judicial role of enjoining the unconstitutional practice and affirmatively prescribing governmental policy); Robert F. Nagel, *Separation of Powers and the Scope of Federal Equitable Remedies*, 30 *Stan. L. Rev.* 661, 664 (1978) (arguing that separation of powers principles limit the ability of courts to order structural and prophylactic relief against state officials); Tracy A. Thomas, *The Prophylactic Remedy: Normative Principles and Definitional Parameters of Broad Injunctive Relief*, 52 *Buff. L. Rev.* 301, 370–84 (2004) (arguing in favor of broad prophylactic remedies); see also Owen M. Fiss, *The Civil Rights Injunction 7–8* (1978) (distinguishing between preventative, reparative, and structural injunctions).

18. See Bray, *Multiple Chancellors*, supra note 12 (manuscript at 46–55) (addressing the historical emergence of the “national injunction” and advocating for a rule that the courts can issue only “plaintiff-protective” injunctions); Michael T. Morley, *De Facto Class Actions? Plaintiff- and Defendant-Oriented Injunctions in Voting Rights, Election Law, and Other Constitutional Cases*, 39 *Harv. J.L. & Pub. Pol’y* 487, 550–53 (2016) [hereinafter Morley, *De Facto Class Actions?*] (analyzing whether injunctions should focus on the plaintiffs or defendants in election law cases); Michael T. Morley, *Nationwide Injunctions, Rule 23(b)(2), and the Remedial Powers of the Lower Courts*, 97 *B.U. L. Rev.* 615, 653–56 (2017) [hereinafter Morley, *Nationwide Injunctions, Rule 23(b)(2)*] (arguing for a presumption against certifying nationwide class actions in statutory or constitutional challenges); Michelle R. Slack, *Separation of Powers and Second Opinions: Protecting the Government’s Role in Developing the Law by Limiting Nationwide Class Actions Against the Federal Government*, 31 *Rev. Litig.* 943, 987–95 (2012) (arguing for a presumption against certifying class actions when the defendant is the federal government); Daniel J. Walker, Note, *Administrative Injunctions: Assessing the Propriety of Non-Class Collective Relief*, 90 *Cornell L. Rev.* 1119, 1145–51 (2005) (identifying nine factors courts should consider when issuing an injunction against a federal agency).

in which the federal government is a party,¹⁹ these works have made the first attempts to study the diverse approaches judges adopt when deciding the geographic scope of injunctions. The standard account that emerges from these efforts is that courts determine the geographic scope of an injunction in an ad hoc manner, relying on an undisciplined mix of procedural and substantive considerations.²⁰ In response to this perceived disuniformity, scholars have suggested various ways to limit the reach of injunctive relief, such as applying multifactor balancing tests,²¹ adopting a presumption against certifying classes when the government is a defendant,²² adopting a presumption against certifying nationwide classes in constitutional and statutory challenges,²³ applying equal protection and severability analysis when deciding the breadth of relief,²⁴ and adopting a bright-line rule that limits injunctions only to the plaintiffs.²⁵ What these scholars have failed to recognize, however, is that the case law on nationwide injunctions already supplies a robust principle guiding the geographic scope of injunctive relief. But to see the signal in the noise, one must look beyond cases dealing only with public law.

This Article adopts a broader lens and attempts to analyze the geographic scope of injunctions across both the private and public law contexts.²⁶ Assessing the full range of cases dealing with the geographic scope of injunctions, the Article concludes that the use of nationwide injunctions is neither inconsistent nor unprincipled. Rather, the central insight of the Article is that the geographic scope of an injunction often

19. This Article adopts the shorthand of referring to cases between private parties as “private law cases” and cases between a private party and the federal government as “public law cases.” These terms are admittedly overinclusive for the categories of cases examined in this Article, and the terms are not meant to invoke the broader implications of the public law–private law distinction. See generally Randy E. Barnett, Foreword: Four Senses of the Public Law–Private Law Distinction, 9 Harv. J.L. & Pub. Pol’y 267 (1986) (describing various conceptions of the distinction, each “aris[ing] from a different aspect of *legal regulation*”); L. Harold Levinson, The Public Law/Private Law Distinction in the Courts, 57 Geo. Wash. L. Rev. 1579 (1989) (identifying characteristic features of public law litigation).

20. See, e.g., Walker, *supra* note 18, at 1145–50.

21. See *id.*

22. See Slack, *supra* note 18, at 987–90.

23. See Morley, Nationwide Injunctions, Rule 23(b)(2), *supra* note 18, at 653–56.

24. See Morley, De Facto Class Actions?, *supra* note 18, at 553–56.

25. See Bray, Multiple Chancellors, *supra* note 12 (manuscript at 51–55).

26. The goal of this Article is to identify cases that represent ideal types from a broad cross-section of the injunctions case law. In order to develop this account, this Article examines a universe of approximately 200 cases in which the geographic scope of the injunction was at issue. I identified these cases through the Westlaw headnote system, as well as by searching for any cases that referred to the terms “nationwide” and “injunction” within the same paragraph. From these cases, I also catalogued all related references. Despite this effort, I cannot claim to have identified every relevant case, and I do not claim to have done any rigorous empirical analysis of this set of cases. In future projects, I hope to code these cases and conduct more empirical investigations of the trends I identify in this Article.

is,²⁷ and always should be,²⁸ limited to only what is “necessary to provide complete relief to the plaintiffs.”²⁹ After identifying the principle of “complete relief” in the private law cases, this Article returns to the public law context to test its explanatory power. Applying the lens of the complete relief principle and the common archetypes it yields in the private law context, the public law cases can also be organized around a set of shared terms and categories. There are, of course, deviations, but the Article draws on these cases to build a normative argument for why the complete relief principle is the correct rule for adjudicating the geographic scope of injunctive relief.

The Article proceeds in four parts. Part I briefly recounts two foundational maxims of equity that help illuminate why the complete relief principle is the appropriate starting point for an inquiry into the geographic scope of injunctions. Part II examines the range of private law cases in which nationwide injunctions are at issue and develops a novel classification scheme for understanding the conditions under which courts issue such injunctions. The central insight of this Part is that, in the private law context, courts determine the geographic scope of injunctions with a focus on what is required to provide complete relief to the plaintiffs. The application of this principle results in three prototypical categories of injunctions, which the Article refers to as nationwide class action injunctions, nationwide harm injunctions, and incidental nationwide injunctions. Part II also identifies a limiting principle to granting nationwide injunctions based in preserving comity between differing state law regimes.

Part III analyzes how the nationwide injunction jurisprudence shifts when the federal government is the defendant. This Part begins by examining the bright-line rule in favor of issuing nationwide injunctions applied by some courts in cases arising under the Administrative Procedure Act (APA), which would displace the complete relief principle. After arguing that automatic nationwide injunctions are neither required by the APA nor well advised, the remainder of this Part considers how the classifications identified in Part II help contextualize the conditions under which courts in the public law context issue nationwide injunctions. Part III also identifies an analogous limiting principle for nationwide injunctions in the public law context based in the principle of judicial comity. Part IV argues that much of the confusion over the appropriate geographic scope of an injunction could be eliminated if courts focused solely on applying the complete relief principle. To that end, this Part proposes amending Rule 65 of the Federal Rules of Civil Procedure to enshrine the complete relief principle. This Part also considers challenges to the complete relief principle.

27. See *infra* Parts II–III.

28. See *infra* Part IV.

29. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); see also *infra* Part I (describing this broader principle).

I. TWO GUIDING PRINCIPLES FOR NATIONWIDE INJUNCTIONS

A district court judge deciding whether or not to issue a nationwide injunction will find that the usual sources for understanding the contours of injunctive relief—the Federal Rules of Civil Procedure and accompanying Supreme Court precedent—provide little instruction on the question of geographic breadth. While Rule 65 outlines the basic requirements of injunctive relief, it does not specify what considerations should inform geographic scope beyond demanding that the injunction “describe in reasonable detail . . . the act or acts restrained or required”³⁰ and identify the “[p]ersons [b]ound.”³¹ Similarly, while the Supreme Court’s twin standards on preliminary³² and permanent³³ injunctions dictate whether to issue an injunction, these factors are not consulted when the question of geographic breadth arises. Perpetuating the dearth of guidance, judges often set forth the geographic bounds of an injunction as a matter of course without any particular justification.³⁴

If a judge does make reference to a deeper principle when deciding the question of geographic scope, it is often to axioms similar to the maxims of equity that have informed injunctive relief for centuries.³⁵ Federal

30. Fed. R. Civ. P. 65(d)(1)(C).

31. Fed. R. Civ. P. 65(d)(2).

32. The standard for preliminary injunctions is as follows:

A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

33. The standard for permanent injunctions is as follows:

[A] plaintiff seeking a permanent injunction . . . must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

34. See, e.g., *Kootenai Tribe of Idaho v. Veneman*, No. CV01-10-N-EJL, 2001 WL 1141275, at *2 (D. Idaho May 10, 2001), rev’d, 313 F.3d 1094 (9th Cir. 2002); *Meinhold v. U.S. Dep’t of Def.*, 808 F. Supp. 1455, 1458 (C.D. Cal. 1993), rev’d in part, 34 F.3d 1469 (9th Cir. 1994). Although both of these nationwide injunctions were ultimately reversed by the Ninth Circuit—*Kootenai* on likelihood of success and *Meinhold* on the ground that the injunction was overbroad—the district court decisions illustrate how a court might issue a broad injunction without any express evaluation of geographic scope.

35. A vestige of the Court of Chancery in England, these pithy aphorisms—“he who comes into equity must come with clean hands” or “equity delights in doing justice and not just by halves”—historically provided the constraints on injunctive authority. See Howard W. Brill, *The Maxims of Equity*, 1993 Ark. L. Notes 29, 29–34; see also C. T. McCormick, *Extraterritorial Service in Modern Equity Suits*, 1 Tex. L. Rev. 322, 322 (1923); Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. Pa. L. Rev. 909, 920 (1987) (discussing early American equity

courts reference two principles in particular: (1) “the District Court in exercising its equity powers may command persons properly before it to cease or perform acts outside its territorial jurisdiction,”³⁶ and (2) “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”³⁷ As the remainder of this Part explains, the first principle establishes the authority of a court to issue nationwide injunctions, while the second principle instructs that such injunctions are not appropriate in all cases. Although these principles seem to provide conflicting accounts of how readily courts should issue nationwide injunctions, this Article contends that judges have integrated the two concepts to develop a consistent and defensible approach across a wide array of cases.

The first principle provides that, at least as a formal matter of judicial power, there is no geographic limit to a court’s injunctive authority.³⁸ This rule derives from a central and oft-cited rule of equitable relief: “[E]quity acts *in personam*.”³⁹ As a demonstrative example, take the case of *Leman v. Krentler-Arnold Hinge Last Co.*⁴⁰ In that action, the Massachusetts district court initially enjoined the defendant, Krentler-Arnold Hinge Last Company, from producing shoe lasts with hinges because it had violated a patent owned by the plaintiff’s estate.⁴¹ While abiding by the mandate in Massachusetts, the defendant, a Michigan corporation, continued to produce allegedly infringing products in other states.⁴² The patent owner brought another suit in Massachusetts to demand nationwide compliance.⁴³

practice).

36. *Steele v. Bulova Watch Co.*, 344 U.S. 280, 289 (1952) (citing *New Jersey v. City of New York*, 283 U.S. 473 (1931); *Massie v. Watts*, 10 U.S. (6 Cranch) 148 (1810); *The Salton Sea Cases*, 172 F. 792 (9th Cir. 1909)).

37. *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); see also *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 418–20 (1977).

38. 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2945 (3d ed. 2013) (“Although there is no doubt that if the court has personal jurisdiction over the parties, it has the power to order each of them to act in any fashion or in any place, various considerations may induce it to refrain from exercising this power in certain contexts.”).

39. *Hart v. Sansom*, 110 U.S. 151, 155 (1884); see also *New Jersey v. City of New York*, 283 U.S. at 482 (collecting cases); *The Salton Sea Cases*, 172 F. at 815; Henry L. McClintock, *Handbook of the Principles of Equity* § 36 (2d ed. 1948); 4 John N. Pomeroy & Spencer W. Symons, *A Treatise on Equity Jurisprudence* § 1318 (5th ed. 1941); Joseph H. Beale, *The Jurisdiction of Courts over Foreigners*, 26 *Harv. L. Rev.* 283, 292 (1913); Israel S. Gomborov, *Extra-Territorial Jurisdiction in Equity*, 7 *Temp. L.Q.* 468, 468 (1933); Note, *The Extra-Territorial Force of a Decree by a Court of Equity*, 23 *Harv. L. Rev.* 390, 391–92 (1918).

40. 284 U.S. 448 (1932).

41. *Krentler-Arnold Hinge Last Co. v. Belcher*, 300 F. 834, 839 (D. Mass. 1924), *aff’d* as modified, 13 F.2d 796 (1st Cir. 1926).

42. *Leman*, 284 U.S. at 450.

43. *Id.* at 450–51, 454 (explaining that the plaintiff had filed a petition for contempt of the district court’s injunction and that the defendant could not “successfully defy the injunction, by absenting itself from the district”). The First Circuit affirmed the district

Although the defendant contended that the district court lacked jurisdiction to issue relief,⁴⁴ the Supreme Court disagreed, reasoning that once the district court properly established jurisdiction over the defendant, it could issue a binding decree “not simply within the District of Massachusetts, but throughout the United States.”⁴⁵

With the liberalization of personal jurisdiction law ushered in by *International Shoe Co. v. Washington*⁴⁶ and the emergence of long-arm statutes,⁴⁷ the resolution of the jurisdictional issue has become simpler, but the notion that a court’s equitable power extends beyond its territorial jurisdiction continues to supply an important background principle for understanding injunctive authority. If an individual defendant is found to have a duty to act or refrain from acting in a certain way, and the court has jurisdiction over that defendant, that duty need not be geographically limited.⁴⁸ Moving from the realm of private to public harm, one question that arises from this principle is, if a particular statute is found unlawful or against the Constitution in one state, why must citizens elsewhere continue to be burdened as a consequence of territoriality?⁴⁹

Whereas the first maxim identified in this Part speaks to the full scope of a court’s injunctive authority, the second speaks to the protections a defendant can invoke against a geographically overbroad injunction. The call for injunctive restraint is most fully articulated in *Califano v. Yamasaki*.⁵⁰ At issue in that case was whether the Secretary of the Department of Health, Education, and Welfare could recoup overpayments to beneficiaries under the Social Security Act by withholding future payments without an opportunity for a hearing.⁵¹ The Court concluded that the relevant statutory scheme required hearings and affirmed the lower court’s injunction

court’s determination that it had jurisdiction over the subsequent contempt proceeding, though it vacated the award of lost-profit damages. *Krentler-Arnold Hinge Last Co. v. Leman*, 50 F.2d 699, 702–07 (1st Cir.), *aff’d on reh’g*, 50 F.2d 707 (1st Cir. 1931), *rev’d in part*, 284 U.S. 448.

44. *Leman*, 284 U.S. at 450–51.

45. *Id.* at 451. The Court cited numerous cases to support the proposition that the trial court had continuing jurisdiction to enforce its injunction. See *id.* at 451–53.

46. 326 U.S. 310 (1945).

47. Brill, *supra* note 35, at 30.

48. As James Barr Ames explained when describing the moral quality of equitable relief: “Equity lays the stress upon the duty of the defendant, and decrees that he do or refrain from doing a certain thing because he ought to act or forbear. It is because of this emphasis upon the defendant’s duty that equity is so much more ethical than law.” James Barr Ames, *Law and Morals*, 22 *Harv. L. Rev.* 97, 106 (1908).

49. See *Wyoming v. U.S. Dep’t of Agric.*, No. 07-CV-017-B, 2009 WL 10670655, at *2 (D. Wyo. June 15, 2009) (reasoning that it would be “illogical” to limit an injunction against the enforcement of an environmental regulation to Wyoming given that “[t]he Rule was enacted and enforced on a nationwide basis” and “was not tailored to address the forests of each state as separate entities”).

50. 442 U.S. 682 (1979).

51. *Id.* at 684.

requiring the Secretary to comply with certain procedures.⁵² In reaching that result, the Court reaffirmed a baseline rule “that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”⁵³ At the same time, the Court cautioned against issuing nationwide relief when it did not comport with the “extent of the violation established.”⁵⁴ This is because a geographically overbroad injunction not only runs afoul of traditional equity principles but also “forecloses reasoned consideration of the same issues by other federal courts,”⁵⁵ which “often will be preferable . . . in order to gain the benefit of adjudication by different courts in different factual contexts.”⁵⁶

52. *Id.* at 705–06.

53. *Id.* at 702.

54. *Id.* While not directly derived from a historical maxim of equity, the idea that an injunction should be no more burdensome than necessary to provide full relief to the plaintiffs is a reiteration of an equally well-established principle that “the nature of the violation determines the scope of the remedy.” See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971). As the remainder of this Article discusses, the precise contours of the “nature of the violation” are something of a double-edged sword. Courts are obliged to remedy the full scope of the violation established while cautioned against imposing remedies that go beyond the scope of such violations.

55. *Yamasaki*, 442 U.S. at 701–02.

56. *Id.* at 702. While not squarely addressing injunctions, the Supreme Court has emphasized the importance of allowing issues to percolate in different federal courts in at least one other instance. In *United States v. Mendoza*, the Court held that the federal government should not be subject to nonmutual offensive collateral estoppel. 464 U.S. 154, 158 (1984). In reaching this conclusion, the Court relied in part on the unique nature of the United States as a litigant and in part on the idea that adopting such an estoppel rule would “substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue” and “deprive [the] Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before [the] Court grants certiorari.” *Id.* at 159–60.

Since *Mendoza*, the Supreme Court has only once had occasion to consider the appropriate scope of a nationwide injunction. In *Trump v. International Refugee Assistance Project*, the district court issued a nationwide injunction against a provision of an executive order that suspended for ninety days the entry of nationals from six countries. 857 F.3d 554, 565, 573, 579 (4th Cir. 2017). The Supreme Court granted certiorari and, while the case was pending, narrowed the scope of injunction to cover only parties “similarly situated” to the named plaintiffs, meaning those with “a credible claim of a bona fide relationship with a person or entity in the United States.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2083, 2087 (2017). Justice Thomas wrote separately to express his view that, although the Court might have appropriately “left the injunction[] in place only as to respondents themselves,” it should not have kept it in place “with regard to an unidentified, unnamed group of foreign nationals abroad.” *Id.* at 2090 (Thomas, J., concurring in part and dissenting in part). In reaching this result, Justice Thomas explained that “[n]o class has been certified,” and that the Court’s modified injunction ran afoul of the principle stated in *Yamasaki* that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Id.* (emphasis added) (citing *Yamasaki*, 442 U.S. at 702). One might interpret this dissent as the Court implicitly resolving that the complete relief principle was inapposite, but that likely overreads the Court’s resolution of an issue that was not squarely presented. That said, it is worth recognizing that the prudential reasons in favor of narrower injunctions are mitigated when the Supreme Court is crafting the injunction. As this Article went to print, the Court vacated the judgment in

On their face, these two rules seem to suggest outcomes that are in some tension. To borrow from the statutory interpretation context, these two principles provide a thrust and parry on the question of geographic scope.⁵⁷ As a practical matter, a court issuing a broad injunction might rely heavily on the first principle,⁵⁸ while a court that chooses to limit the geographic scope of its injunction is more likely to invoke the second principle.⁵⁹ One parsimonious reading of these principles might be that the first is a statement of the sum total of a court's authority and the second a prudential limit on the exercise of that authority, but such a reading does not readily appear in the case law. On the contrary, what emerges from the public law domain, which scholars have focused on to date, is the impression that judges pick and choose between these principles in a results-oriented manner.⁶⁰ By shifting focus to the private law cases, however, a more consistent and precise account of when courts issue nationwide injunctions emerges. In the next Part, the Article offers the first descriptive account of how judges decide whether or not to issue nationwide injunctions in the private law context. Part II's account of private law cases demonstrates how courts have in fact integrated the two principles identified in this Part into a more consistent framework. Specifically, courts begin with the premise that they have the power to issue nationwide injunctions but then tailor their injunctions to provide complete relief to the parties—no less and no more.

International Refugee Assistance Project and remanded with instruction to dismiss the case as moot in light of the promulgation of a revised executive order. *Trump v. Int'l Refugee Assistance*, No. 16-1436, 2017 WL 4518553, at *1 (U.S. Oct. 10, 2017). Thus, we still lack recent guidance from the Supreme Court on how courts should evaluate the current spate of nationwide injunctions.

57. Cf. Karl N. Llewellyn, Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed, 3 Vand. L. Rev. 395, 401–06 (1950) (deploying this analogy to illustrate that “there are two opposing canons [of statutory interpretation] on almost every point”).

58. See *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (“[The judicial] power is not limited to the district wherein the court sits but extends across the country. It is not beyond the power of a court, in appropriate circumstances, to issue a nationwide injunction.”), *aff'd per curiam mem. by an equally divided Court*, 136 S. Ct. 2271 (2016); see also *id.* at 188 n.211 (collecting supporting cases for this proposition).

59. See, e.g., *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 393 (4th Cir. 2001) (“[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief. . . .” (quoting *Yamasaki*, 442 U.S. at 702)), overruled on other grounds by *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012); *Hospice of N.M., LLC v. Sebelius*, 691 F. Supp. 2d 1275, 1294 (D.N.M. 2010), *aff'd*, 435 F. App'x 749 (10th Cir. 2011); *Carhart v. Ashcroft*, 331 F. Supp. 2d 805, 1047 (D. Neb. 2004), *aff'd sub nom. Carhart v. Gonzales*, 413 F.3d 791 (8th Cir. 2005), *rev'd*, 550 U.S. 124 (2007).

60. See *infra* section III.C; see also *supra* notes 18–20 and accompanying text.

II. NATIONWIDE INJUNCTIONS IN PRIVATE LAW CASES

James Barr Ames once remarked that “the principle ‘Equity acts upon the person’ is, and always has been, the key to the mastery of equity.”⁶¹ Although Ames made this observation while addressing a doctrine of property rights,⁶² it provides a useful starting point for understanding the geographic scope of injunctions. As Ames recognized, one feature of the injunction is its effect on the defendant.⁶³ When an injunction issues, it coerces a particular defendant to act in accordance with the mandate of a court.⁶⁴ But this Article’s survey of private law cases addressing the appropriate geographic scope of an injunction reveals a competing concern. Courts faced with a request for a nationwide injunction rarely mention the defendant and instead focus their attention on plaintiffs and the nature of their claims. Inverting Ames and the traditional conception of equity, the touchstone of the nationwide injunction in the private law context is not the refrain that “equity acts upon the person” but rather an inquiry about the persons seeking equity: Who is seeking injunctive relief, and what would affording them complete relief require?

Bearing in mind the focus on plaintiffs, this Part offers the first classification scheme for describing the range of private law cases that address whether to issue a nationwide injunction. The framework it suggests is oriented around the different types of plaintiffs that appear before federal courts and the types of claims that they might raise in seeking a nationwide injunction. In developing this taxonomy, the Article has two primary aims. The first is to provide a comprehensive account of the contexts in which courts adjudicating a dispute between two private parties issue nationwide injunctions. The second is to draw attention to the fact that the common thread running through this entire body of case law is a focus on fashioning relief that is “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”⁶⁵

The first category this Part identifies is nationwide class action cases. It begins here in part because the delineation between a nationwide class and some more geographically limited group of individual plaintiffs is the most readily apparent divide in the nationwide injunction case law. Indeed, one of the only Supreme Court cases to address a nationwide injunction was a suit brought by a nationwide class of plaintiffs.⁶⁶ In this discussion, the Article offers a descriptive account of when a court might resolve a nationwide class action by issuing a nationwide injunction. The

61. James Barr Ames, *The Origin of Uses*, in *Lectures on Legal History and Miscellaneous Legal Essays* 233, 233 (1913).

62. *Id.*

63. James Barr Ames, *The Origin of Uses and Trusts*, 21 *Harv. L. Rev.* 261, 261–62 (1908).

64. *Id.* at 261.

65. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

66. See *id.* at 682.

Article also notes that, in private law cases, courts are particularly willing to issue nationwide relief not because of the form of these actions but because their substance often addresses harms that are nationwide in scope.

From here, this Part turns to a set of cases it calls the nationwide harm cases. These suits are non-class action cases in which individuals or groups of plaintiffs allege a harm that is nationwide in scope, and courts remedy that harm with a nationwide injunction. The goal of this section is to illustrate the ways in which courts operationalize the concept of affording complete relief to the plaintiffs. While federal question cases conform to a standard pattern, this Part also identifies a limiting factor in diversity cases that affects courts' willingness to issue nationwide relief. Specifically, it notes that courts are generally unwilling to issue nationwide injunctions, even to remedy a nationwide injury, when the plaintiff's claim is grounded in a particular state law cause of action.

Finally, this Part addresses one last category of cases, which it calls the incidental nationwide injunction cases. These are cases in which a plaintiff claims an injury that is not nationwide in scope, but a court nonetheless concludes that only a nationwide injunction would afford complete relief. In the private law context, these cases arise in a limited set of circumstances, but they illustrate an essential concept for understanding nationwide injunctions in the public law context.

A. *Nationwide Class Actions as a Measure of Injunctive Scope*

The most straightforward case for issuing a nationwide injunction may be a class action lawsuit brought by a nationwide class of plaintiffs. The nationwide class action is particularly amenable to resolution by nationwide injunction because it typically presents a natural alignment between the harm plaintiffs allege (a broad, geographically unbounded harm) and the relief they request (an injunction that applies across jurisdictions). But, as this section suggests, the two are not necessarily coterminous. In particular, a nationwide harm can exist in the absence of a nationwide class and may still require nationwide relief to remedy the harm. Likewise, it is possible in the rare case that the presence of a nationwide class may not reflect a nationwide harm.⁶⁷

As noted above, one of the only Supreme Court cases to address whether a court could issue a nationwide injunction did so in the context of a nationwide class action. In *Califano v. Yamasaki*, the Court considered whether a nationwide class of plaintiffs challenging a regulatory scheme under the Social Security Act was entitled to a nationwide injunction.⁶⁸ The Court analyzed this issue in two steps. First, it considered whether a

67. Admittedly, this latter category is likely to be limited, as it would be unusual to find a properly certified nationwide class of plaintiffs that did not share a common nationwide injury. Indeed, one might argue that any such class must have been improperly certified in the first instance.

68. 442 U.S. at 697–703.

nationwide class could be certified under section 205(g) of the Social Security Act.⁶⁹ After concluding that such “a nationwide class [is not] inconsistent with principles of equity jurisprudence,” the Court then considered whether a nationwide class could ever obtain a nationwide injunction.⁷⁰ The concern the government presented was that if one district court issued nationwide relief, even to a nationwide class of plaintiffs, it “foreclose[d] reasoned consideration of the same issues by other federal courts and artificially increase[d] the pressure on the docket of [the Supreme] Court.”⁷¹ The Court rejected this argument and concluded that a nationwide injunction was permissible. It explained that “[i]f a class action is otherwise proper . . . the fact that the class is nationwide in scope does not necessarily mean that the relief afforded the plaintiffs will be more burdensome than necessary to redress the complaining parties.”⁷²

Given that the analysis in *Yamasaki* centered on the class action, there is a mistaken impulse on the part of some litigants and courts to emphasize the presence or absence of a nationwide class in determining the appropriateness of a nationwide injunction.⁷³ But the *Yamasaki* Court itself warned against such a bright-line rule, emphasizing that “the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.”⁷⁴ Instead, this Article suggests that the key to understanding these cases is focusing on the scope of the particular harm plaintiffs allege, whether they are individual litigants or a class.

By and large, courts adjudicating requests for nationwide injunctions between two private parties recognize the distinction between requiring a nationwide harm and requiring a nationwide class, and they craft remedies accordingly. A pair of cases under the Americans with Disabilities Act (ADA) illustrates the comparison.⁷⁵ In *Colorado Cross-Disability Coalition v. Abercrombie & Fitch Co.*, several individual plaintiffs and an advocacy organization brought suit against a clothing company for failing to make the entrances to their retail stores accessible.⁷⁶ The district court found that plaintiffs were entitled to summary judgment on the accessibility of particular entrances and issued a nationwide injunction requiring the

69. *Id.* at 700–01.

70. *Id.* at 702.

71. *Id.* at 701–02.

72. *Id.* at 702.

73. See *infra* section III.B.

74. *Yamasaki*, 442 U.S. at 702.

75. Compare *Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1212–13 (10th Cir. 2014) (approving a nationwide injunction after a properly certified class was able to demonstrate nationwide injury), with *Scherr v. Marriott Int’l, Inc.*, 703 F.3d 1069, 1075 (7th Cir. 2013) (denying a nationwide injunction after an individual plaintiff was not able to establish nationwide injury).

76. 765 F.3d at 1208–10.

retailer to upgrade all elevated entry doors within four years.⁷⁷ On appeal, the retailer challenged the injunction on the grounds that the class representative did not allege that she personally intended to visit the more than 230 stores enjoined—and thus was ineligible for nationwide relief.⁷⁸ The Tenth Circuit rejected this argument and held that, so long as the class representative was properly certified and the class as a whole alleged a nationwide injury, the class was entitled to nationwide relief.⁷⁹

In its discussion of the nationwide injunction issue in *Colorado Cross-Disability Coalition*, the court of appeals distinguished a Seventh Circuit case also concerning the ADA in which no nationwide class was certified and no nationwide injunction was issued.⁸⁰ In *Scherr v. Marriott International, Inc.*, an individual plaintiff brought suit under the ADA contending that the defendant's spring-loaded hotel doors rendered its facilities inadequately accessible.⁸¹ While the court found that the plaintiff had standing to seek injunctive relief at the one hotel she planned to visit, it declined to issue a requested nationwide injunction against fifty-six other hotels using the same design.⁸² A simplistic reading of these cases might suggest that nationwide injunctions can issue after a nationwide class is certified and that they cannot issue if there is no nationwide class—but neither court adopted this reasoning. Rather, both courts focused specifically on the scope of the plaintiff's claimed injury. In *Colorado Cross-Disability Coalition*, the Tenth Circuit noted that an individual plaintiff may potentially be entitled to a nationwide injunction, but only against conduct that injures the plaintiff.⁸³ Likewise, the *Scherr* case did not focus on the absence of a certified class but instead on the plaintiff's failure to show that she intended to visit the other hotels.⁸⁴

77. See *Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, No. 09-cv-02757-WYD-KMT, 2013 WL 6050011, at *1 (D. Colo. Nov. 15, 2013), vacated, 765 F.3d 1205.

78. *Colo. Cross-Disability Coal.*, 765 F.3d at 1212.

79. *Id.* at 1216–17. The court did, however, ultimately disagree with the lower court about whether the retailer's actions failed to comply with the requirements of the ADA. *Id.* at 1224–25.

80. *Id.* at 1212–13 (distinguishing *Scherr*, 703 F.3d at 1075).

81. 703 F.3d at 1071–73. The plaintiff's suit arose under Title III of the ADA, *id.*, which requires owners of public accommodations to “take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals,” see 42 U.S.C. §§ 12182(a), 12182(b)(2)(A)(ii) (2012).

82. *Scherr*, 703 F.3d at 1073. The court ultimately concluded that the one hotel against which Scherr had standing to seek relief was in compliance with the applicable ADA regulations, thus rejecting her claim on the merits. *Id.* at 1078.

83. *Colo. Cross-Disability Coal.*, 765 F.3d at 1212–13 (“We have no doubt that if Ms. Farrar were seeking a nationwide injunction in her own right, then she would lack standing to challenge accessibility barriers at stores she never intends to visit.”).

84. See *Scherr*, 703 F.3d at 1073–75.

In cases between private parties, courts key their analysis to the scope of injury and typically issue nationwide relief only when plaintiffs demonstrate an adequately broad nationwide injury.⁸⁵ Likewise, when there is a nationwide class certified but no nationwide injury, courts are careful to limit the scope of relief. In *Short v. Fulton Redevelopment Co.*, for instance, residents of a New York housing project, which was receiving federal mortgage insurance under the National Housing Act, brought suit alleging that their landlords were not providing eviction hearings sufficient to satisfy due process.⁸⁶ The court found that plaintiffs were entitled to a permanent injunction but declined to issue nationwide relief.⁸⁷ In reaching this conclusion, the court explained that the theory of injury in the case was limited to a harm that arose from a particular confluence of federal and New York housing law.⁸⁸ Thus, even though there was a certified class, and some 164,000 housing units nationwide were subject to the hearing requirement at issue, the court limited its injunction to New York.⁸⁹ As *Short* illustrates, even if nationwide classes typically provide compelling circumstances for issuing nationwide injunctions, the key question remains not the form of the action but the scope of harm.

B. *Nationwide Harm Cases and Affording “Complete Relief”*

As both *Yamasaki* and the private law nationwide class action cases suggest, the key to deciding whether to issue a nationwide injunction is determining whether it is required to afford “complete relief to the plaintiffs.”⁹⁰ This singular focus is reinforced in a wide range of non-class action cases between private parties. In this section, the Article details how courts

85. See, e.g., *McLendon v. Cont’l Can Co.*, 908 F.2d 1171, 1182–83 (3d Cir. 1990) (noting the impropriety of overbroad “obey the law” injunctions but upholding a nationwide injunction against specific conduct that threatened harm through a “nationwide structure”).

86. 390 F. Supp. 517, 518–19 (S.D.N.Y.), *aff’d* on reconsideration, 398 F. Supp. 1234 (S.D.N.Y. 1975).

87. *Short*, 398 F. Supp. at 1235–36.

88. See *id.* at 1236. Whether a nationwide injunction can remedy a cause of action that relies on state law will be discussed in greater detail in section II.B.2. For now, it serves simply to illustrate that courts will not immediately understand a nationwide class to require nationwide relief.

89. *Id.* In fact, the order in *Short* went a step further and questioned whether the class should even be considered nationwide in the first instance. *Id.*; see also *supra* note 67 and accompanying text. The *Short* court’s unusual remark was a result of the fact that it had certified the initial class pursuant to a stipulation between the parties. See *Short*, 398 F. Supp. at 1236. Plaintiffs took the position that certain language in the stipulation meant that the court had certified a nationwide class, while defendants took the position that the “stipulation did not make any reference to the size of the class involved.” *Id.* Ultimately, the court resolved the issue not by formally reassessing the appropriate size of the class but instead by narrowing the scope of the injunction and noting that “[t]o the extent that this opinion more precisely defines the size of the class,” the original stipulation was accordingly amended. *Id.*

90. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

resolve requests for nationwide injunctions in the absence of a certified nationwide class. The focus of this section is a set of cases referred to by the shorthand “nationwide harm cases”: non-class action suits in which individuals or groups of plaintiffs allege a harm that is suffered nationwide and courts remedy that harm with a nationwide injunction. The section begins by illustrating how the complete relief principle applies in the mine-run federal question cases that come before federal courts. From there, it describes a limiting principle grounded in comity concerns that emerges in diversity jurisdiction cases.

1. *Applying Complete Relief in Federal Question Cases.* — The question whether a nationwide injunction is appropriate against a private party most often arises in intellectual property litigation.⁹¹ These cases present a useful case study not just because of the frequency with which they occur but also because they neatly illustrate how courts operationalize the idea of crafting relief that is “no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”⁹² In intellectual property cases, courts are often presented with readily discernible geographic inputs such as where plaintiffs’ and defendants’ businesses are located, how broadly their products are known, and where the infractions take place. This information provides a more concrete sense of the geographic scope of any alleged harm; therefore, analyzing the outcomes of these cases provides a clear test of whether courts issue nationwide injunctions only in the face of nationwide injury.

A straightforward application of this framework arose in a case involving the use of the Hyatt trademark.⁹³ The nationwide chain Hyatt Hotels brought trademark infringement and dilution claims against a growing legal services firm called Hyatt Legal Services.⁹⁴ The court found that Hyatt Hotels would likely succeed on the merits of its trademark dilution claim and was thus entitled to a preliminary injunction.⁹⁵ Because Hyatt Hotels

91. This is likely a consequence of the fact that the governing statutes for patent, trademark, and copyright claims authorize courts to issue nationwide injunctions against infringing parties and the fact that so few other federal statutes give private rights of action against other private parties. See, e.g., *World Wrestling Entm’t, Inc. v. Thomas*, No. 12-21018-CIV, 2012 WL 12874190, at *9 (S.D. Fla. Apr. 11, 2012) (explaining that “traditional federal trademark jurisprudence . . . considers the geographic scope in which a trademark operates in commerce, and when the scope of operation is nationwide, then the plaintiff is entitled to nationwide protection by way of injunctive relief”). There are also examples of nationwide injunctions in the Employee Retirement Income Security Act (ERISA) and the civil Racketeer Influenced and Corrupt Organizations (RICO) case law. See, e.g., *Nat’l Org. for Women v. Scheidler*, 267 F.3d 687, 706–07 (7th Cir. 2001) (issuing a nationwide injunction in the RICO context), rev’d on other grounds, 537 U.S. 393 (2003); *McLendon v. Cont’l Can Co.*, 908 F.2d 1171, 1182 (3d Cir. 1990) (issuing a nationwide injunction in the ERISA context).

92. *Yamasaki*, 442 U.S. at 702.

93. *Hyatt Corp. v. Hyatt Legal Servs.*, 736 F.2d 1153 (7th Cir. 1984).

94. *Id.* at 1155–56.

95. *Id.* at 1157.

had federally registered its trademark before Hyatt Legal Services began operating, there was no question that the hotel company had the superior right to the mark.⁹⁶ The court then specifically considered the scope of the remedy. In this analysis, it noted that both Hyatt Hotels and Hyatt Legal Services operated nationwide and that a risk of dilution existed nationwide.⁹⁷ Given the breadth of the injury, the court remanded for the entry of a preliminary nationwide injunction ordering Hyatt Legal Services to pick a new name and prohibiting the company from advertising under its old mark.⁹⁸

The strongest case for issuing a nationwide injunction is one in which the owner and infringer both operate on a nationwide basis.⁹⁹ When the facts are less straightforward, courts first identify the geographic scope of a plaintiff's injury and then limit injunctive relief accordingly. Keeping to the intellectual property context, courts might consider whether a mark owner has a nationwide presence¹⁰⁰ or whether the potential infringer operates only on a narrow local basis.¹⁰¹ There is, however, one prominent exception to the general rule that courts issue nationwide injunctions to

96. See *id.* at 1156.

97. *Id.* at 1158.

98. See *id.* at 1159–60.

99. See *Exclaim Mktg., LLC v. DirecTV, LLC*, No. 5:11-CV-684-FL, 2015 WL 5725703, at *5 (E.D.N.C. Sept. 30, 2015) (noting that an injunction that was not nationwide would “deny DirecTV full relief”), *aff'd*, 674 F. App'x 250 (4th Cir. 2016); *Golden Door, Inc. v. Odisho*, 437 F. Supp. 956, 968 (N.D. Cal. 1977) (“Plaintiff’s market area, and hence the sphere of its reputation, are nationwide. Accordingly, it is entitled to nationwide protection against confusion and dilution. The scope of the injunction must therefore be nationwide.”), *aff'd*, 646 F.2d 347 (9th Cir. 1980), abrogated on other grounds by *Japan Telecom, Inc. v. Japan Telecom Am. Inc.*, 287 F.3d 866 (9th Cir. 2002). As businesses grow their online presence, the question of what constitutes a nationwide presence will undoubtedly become more complex. One discussion of this issue can be found in *Guthrie Healthcare System v. ContextMedia, Inc.*, 826 F.3d 27 (2d Cir. 2016). In *Guthrie*, a regional healthcare facility brought a trademark infringement action against a national health media company. *Id.* at 32–33. The district court found the defendant liable for infringement and enjoined it from using the mark in plaintiff’s service area. *Id.* at 32. The court of appeals concluded that the scope of the injunction was too narrow and remanded to the district court to reconsider the geographic issue. *Id.* at 50–51. In reaching this conclusion, the court emphasized the fact that plaintiff conducted substantial business over the Internet, including recruiting staff and students. *Id.* at 48–49. Echoing the other cases discussed in this section, the *Guthrie* decision also noted that “[e]very case turns on its particular facts, and in many instances it will be clear, for a variety of reasons, that an injunction of narrow geographic scope will grant the senior user *completely adequate protection*, and that an injunction going further would be not only unnecessary but unjust.” *Id.* at 49 (emphasis added). My thanks to Alex Peerman for directing me to this case.

100. See *Conan Props., Inc. v. Conans Pizza, Inc.*, 752 F.2d 145, 151–53 (5th Cir. 1985) (concluding that a nationwide injunction was appropriate against an infringer, despite the mark holder’s unreasonable delay in enforcing its rights against the infringer’s Texas location, in part because the infringer was planning a nationwide expansion).

101. Cf. *Allard Enters., Inc. v. Advanced Programming Res., Inc.*, 249 F.3d 564, 575–76 (6th Cir. 2001) (vacating a nationwide injunction against use of a trademark on the Internet, when evidence showed only that the mark holder had established priority in central Ohio).

remedy nationwide injuries. This exception arises in diversity jurisdiction cases and is the focus of the next section.

2. *Limiting Complete Relief in Diversity Cases.* — As with the federal question cases, courts faced with diversity cases will typically focus their analysis on the scope of the claimed injury.¹⁰² But in addition to analyzing whether a plaintiff suffers nationwide harm, courts take into account a limiting principle grounded in comity concerns. Specifically, courts often decline to issue a nationwide injunction when the alleged harm is premised on a specific state law cause of action that may not be recognized nationwide.¹⁰³

One area in which these cases arise is unfair competition law.¹⁰⁴ For instance, if a court concludes that a nationwide business practice violates a particular state's unfair competition law, it will then attempt to determine whether the practice would be found unlawful under other states' unfair competition regimes before issuing a nationwide injunction.¹⁰⁵ *United HealthCare Insurance Co. v. AdvancePCS* stands at one end of the spectrum, in which a court concludes that a particular state law cause of action has analogues in all other jurisdictions and thus can provide a valid basis for issuing a nationwide injunction.¹⁰⁶ In this case, the plaintiffs alleged that a prescription-drug discount company falsely suggested an affiliation with the American Association of Retired Persons (AARP) and then registered seniors for a prescription program without proper notification.¹⁰⁷ AARP brought suit against the company under the Minnesota Deceptive Trade Practices Act (MDTPA).¹⁰⁸ The district court concluded that that defendant's actions likely violated the MDTPA and issued a preliminary injunction to cease the complained-of deceptive practices and to disclose to the new administrator of the AARP program whatever information the defendant had collected on the defrauded seniors.¹⁰⁹ The defendant argued that it would be improper to issue a nationwide injunction on the basis of a Minnesota law, but the court rejected that claim.¹¹⁰ It began by noting the nationwide scope of the

102. See, e.g., *Metro Kane Imps., Ltd. v. Rowoco, Inc.*, 618 F. Supp. 273, 277 (S.D.N.Y. 1985) (enjoining a juicer distributor from importing its product anywhere in the United States because the product violated New York unfair competition law and the "mold statutes" of three states and because "continued infringement" would be "potentially devastating" to the plaintiff), *aff'd*, 800 F.2d 1128 (2d Cir. 1986).

103. Jeremy T. Marr, Note, *Constitutional Restraints on State Right of Publicity Laws*, 44 B.C. L. Rev. 863, 887–91 (2003).

104. See Paul Heald, Comment, *Unfair Competition and Federal Law: Constitutional Restraints on the Scope of State Law*, 54 U. Chi. L. Rev. 1411, 1416–17 (1987).

105. *Id.*

106. See No. CIV.01-2320, 2002 WL 432068, at *17–18 (D. Minn. Mar. 18, 2002), *aff'd*, 316 F.3d 737 (8th Cir. 2002).

107. See *id.* at *1.

108. *Id.* at *9.

109. *Id.* at *18–19.

110. *Id.* at *17.

deceptive practices and harm.¹¹¹ The court then explained that eleven states had adopted a version of the Uniform Deceptive Trade Practices Act like Minnesota's and "that every jurisdiction either has legislation that prohibits the use of deceptive tactics in business and/or prohibits the deception of consumers or affords protection at common law for interference with existing contractual relations."¹¹² Satisfied that an applicable cause of action existed across jurisdictions, the court issued a nationwide injunction.¹¹³

At the other end of the spectrum, there are instances in which a particular cause of action is not recognized in all fifty states, and courts decline to issue a nationwide injunction even when there is an injury suffered nationwide. The Federal Circuit recently decided such a case in the unfair competition context.¹¹⁴ In *Allergan, Inc. v. Athena Cosmetics, Inc.*, the maker of an eyelash-growth product sued a competitor for marketing a similar drug without the requisite safety approvals under California's Unfair Competition Law (UCL).¹¹⁵ The lower court found the claim meritorious and issued an injunction barring the competitor from manufacturing, marketing, or selling "eyelash growth product(s) . . . anywhere within the United States."¹¹⁶ The Federal Circuit agreed that the practices violated the UCL but held "that the district court abused its discretion by entering an injunction that regulates any and all out-of-state conduct."¹¹⁷ In coming to this conclusion, the Federal Circuit raised two main points. First, the text and legislative history of the California law did not suggest it was intended to have extraterritorial effect.¹¹⁸ Second, applying California law that was not uniformly accepted nationwide would run afoul of the Commerce Clause.¹¹⁹

In applying this limiting principle of state law comity, courts must confront what it means to conclude that a cause of action is cognizable in all jurisdictions. The simplest case is one in which every state has either accepted or rejected a particular cause of action. For example, every state has recognized some form of the right of publicity or protecting one's likeness, and courts will issue nationwide injunctions premised on invocations

111. *Id.* at *18 ("The diversion of claims . . . is occurring on a nationwide basis as the result of a discount program AdvancePCS is implementing nationwide. United manages the AARP Program—which extends nationwide—from Minnesota, and is threatened with irreparable harm to its management operations here in Minnesota due to AdvancePCS's conduct.").

112. *Id.*

113. *Id.*

114. See *Allergan, Inc. v. Athena Cosmetics, Inc.*, 738 F.3d 1350, 1358 (Fed. Cir. 2013).

115. *Id.* at 1350; see also Cal. Bus. & Prof. Code § 17200 (2017).

116. *Allergan, Inc. v. Athena Cosmetics, Inc.*, No. SACV 07-1316, 2013 WL 12142655, at *9 (C.D. Cal. Mar. 6, 2013).

117. *Allergan*, 738 F.3d at 1358.

118. *Id.* at 1358–59.

119. *Id.* at 1359.

of this right.¹²⁰ The choice is more complicated when some states recognize a cause of action and others have yet to opine on the issue. In *Herman Miller, Inc. v. Palazzetti Imports & Exports, Inc.*, the Sixth Circuit confronted such a case when it was asked to resolve an action involving the postmortem right of publicity.¹²¹ The district court issued a nationwide injunction based on a Michigan common law rule protecting the right of publicity after death.¹²² The court of appeals found that while several states recognized such a right, many had not ruled on the matter, and at least New York, where the defendant was incorporated, did not recognize the right.¹²³ As such, the court held that a nationwide injunction was improper and that the ruling should extend only to states that have either recognized the right or remained agnostic.¹²⁴ A court could take an even more conservative approach and extend the injunction only to jurisdictions that have affirmatively adopted a particular cause of action.

In one sense, a state law comity limit hinders the goal of securing complete relief for a plaintiff who suffers a nationwide harm. As one scholar notes, declining to issue a nationwide injunction “might force a plaintiff to bring suits in all fifty states in an attempt to vindicate his common law rights in all jurisdictions.”¹²⁵ At the same time, enjoining a defendant from acting in a manner allowed by law in a particular jurisdiction creates a basic fairness concern. While there are justifications for issuing a nationwide injunction on the basis of a state law cause of action functionally recognized in all jurisdictions, or recognized in some jurisdictions but not rejected in any, it is difficult to argue that a court can enjoin a defendant when a state has expressly rejected a particular cause of action.

Though this interstate comity limit does somewhat constrain the relief available to plaintiffs, it is not fundamentally in tension with the complete relief principle. The touchstone of complete relief is properly defining the geographic scope of an injury and then remedying that precise harm. To the extent that an alleged harm is not recognized in a particular state, one can argue that there has been no injury suffered, in a legal sense, in that jurisdiction.¹²⁶ Thus, a nationwide injunction would be overbroad because

120. See *Bosley v. Wildwett.com*, 310 F. Supp. 2d 914, 935 (N.D. Ohio 2004) (issuing a nationwide injunction against a website distributing secretly recorded footage of a news reporter). Note that the injunction did not extend to Puerto Rico, which has not recognized a right of publicity. *Id.*

121. 270 F.3d 298, 307 (6th Cir. 2001).

122. *Id.*

123. *Id.* at 326–27.

124. *Id.* at 327.

125. Heald, *supra* note 104, at 1428.

126. Indeed, an analogous idea can be found in standing cases distinguishing “de facto” injury that may cause harm but not be actionable from a “legally protected interest” that provides a valid basis for suit. See, e.g., *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (“[B]ecause Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important. Thus, we said in *Lujan* that Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de*

there is no nationwide injury. Instead, a court should limit its relief to the jurisdictions where the plaintiff has suffered a cognizable harm. Although no court has squarely advocated this position, it is consistent with the logic underlying the other private law cases.

C. *Incidental Nationwide Injunctions*

When there is an individual plaintiff or a nationwide class alleging a harm that occurs on a national level, it is apparent how ordering a nationwide injunction affords complete relief to the plaintiff. But there are also situations in which, despite the lack of an alleged nationwide harm, a court must still issue a nationwide injunction in order to provide complete relief. This Article refers to such orders as “incidental nationwide injunctions.” The basic fact pattern arises when one party sues another for a specific unlawful act, but the defendant’s actions are the result of a policy or practice.¹²⁷ In order to remedy the plaintiff’s specific injury, the court may decide that it has to enjoin the offending policy—even if that will result in consequences that extend beyond the geographic area where the plaintiff was injured.¹²⁸ These cases typically arise in the labor context and implicate statutes such as the Equal Pay Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act.¹²⁹

To more clearly illustrate the conditions under which the incidental nationwide injunction emerges, consider a case brought against the J.M. Fields grocery chain.¹³⁰ This case involved allegations that a grocery store was paying certain female supervisors less than male supervisors, in violation of the Equal Pay Act.¹³¹ The district court found that there was evidence of discriminatory compensation at three of the more than sixty stores but issued an injunction against all of the stores.¹³² The court of appeals affirmed on the grounds that “the violations in the instant case occurred in the context of close centralized supervision over wage scales and pay policies in the individual stores” and thus “a chain-wide injunction was appropriate to restrain what had apparently been a company policy regarding hiring and setting of wage scales.”¹³³ When such an injunction

facto injuries that were previously inadequate in law.” (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 578 (1992)).

127. See *infra* notes 130–143 and accompanying text.

128. See *infra* notes 130–143 and accompanying text.

129. See *infra* notes 130–143 and accompanying text.

130. *Brennan v. J.M. Fields, Inc.*, 488 F.2d 443 (5th Cir. 1973).

131. *Id.* at 445.

132. *Id.* at 446.

133. *Id.* at 449.

issues, the benefit to those other than the named plaintiffs is sometimes described as “accidental”¹³⁴ or “incidental”¹³⁵ to the central purpose.

The primary concern of courts in these cases is whether the plaintiffs are complaining of a policy or practice, or of isolated acts.¹³⁶ In *J.M. Fields*, for instance, the issue was not solely the fact that a particular employee was paid less than another but the existence of a company-wide policy that resulted in disparate pay.¹³⁷ If the unlawful act is a result of a policy or practice, the justification for a more expansive injunction is that plaintiffs may suffer again if the practice is not enjoined.¹³⁸ For a nationwide injunction to be issued in these circumstances, there must still be actual evidence of a nationwide or pervasive problem. One textbook injunctions case that demonstrates this limitation is *Hodgson v. Corning Glass Works*.¹³⁹ In a similar fact pattern to the *J.M. Fields* case, a glass company was found to be paying female inspectors less than male inspectors at three factories.¹⁴⁰ In this case, however, the court held that “absent a showing of a policy of discrimination which extends beyond the plants at issue . . . there is no basis for a nationwide injunction.”¹⁴¹ The court further noted that “there [was] no showing here of the ‘proclivity for unlawful conduct’ or ‘record of continuing and persistent violations’” and thus limited the nationwide injunction to the three noncompliant facilities.¹⁴² This focus on the pervasiveness of the violation is a constant in the case law.¹⁴³

134. *Meyer v. Brown & Root Constr. Co.*, 661 F.2d 369, 374 (5th Cir. 1981) (“[T]here are many cases where injunctive relief designed to assist a party will accidentally assist persons not before the court.”).

135. *Gregory v. Litton Sys., Inc.*, 472 F.2d 631, 633–34 (9th Cir. 1972) (“Obviously, in many situations contemplated by Title VII, injunctive relief will be necessary to give a plaintiff or a group of plaintiffs the relief to which they are entitled. Such relief, of course, may incidentally benefit many persons not before the court.”).

136. See, e.g., *Marshall v. Goodyear Tire & Rubber Co.*, 554 F.2d 730, 733 (5th Cir. 1977) (“Equal Pay Act, [Fair Labor Standards Act], and [Age Discrimination in Employment Act] cases all establish that a nationwide or companywide injunction is appropriate only when the facts indicate a company policy or practice in violation of the statute.”).

137. *J.M. Fields*, 488 F.2d at 449.

138. See, e.g., *Prof'l Ass'n of Coll. Educators, TSTA/NEA v. El Paso Cty. Cmty. Coll. Dist.*, 730 F.2d 258, 273–74 (5th Cir. 1984) (“An injunction, however, is not necessarily made overbroad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled.”).

139. 474 F.2d 226, 236–37 (2d Cir. 1973) (Friendly, C.J.), *aff'd* on other grounds *sub nom. Corning Glass Works v. Brennan*, 417 U.S. 188 (1974).

140. *Id.* at 229–30.

141. *Id.* at 236.

142. *Id.* at 237 (quoting *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949)).

143. See, e.g., *Marshall v. J.C. Penney Co.*, 464 F. Supp. 1166, 1195 (N.D. Ohio 1979) (narrowing an injunction after the court found no proof of a systematic policy), amended by No. C73-530, 1979 WL 179 (N.D. Ohio Mar. 26, 1979); *Usery v. Sears, Roebuck & Co.*, 421 F. Supp. 411, 414–15 & n.2 (N.D. Iowa 1976) (reasoning that proof of an equal-pay violation at one store out of approximately nine hundred would not justify a nationwide injunction).

When there is evidence of a pervasive policy, the only other limitation courts apply is that the named plaintiff must actually have standing to request nationwide relief. Unlike the cases described in the previous sections, the inquiry here does not consider whether the plaintiff actually suffered nationwide harm but rather whether the remedy is of the sort that would benefit the plaintiff. An example in which the plaintiff lacked standing is *Gregory v. Litton Systems, Inc.*¹⁴⁴ The defendant, Litton Systems, had a policy of asking about prior-arrest information, which the court found resulted in discriminatory effects.¹⁴⁵ The plaintiff, however, admitted that he had no intention of reapplying for a job at Litton Systems and wanted only monetary relief.¹⁴⁶ While amicus briefs filed in this case urged nationwide relief ordering the company to modify its business practices, the court of appeals vacated the nationwide injunction on the grounds that the plaintiff himself could not benefit from the injunction.¹⁴⁷

Although the incidental nationwide injunction arises only under a limited set of conditions, this Article addresses it both in the interest of thoroughness and because an analogous category of cases appears in the public law nationwide injunction cases.¹⁴⁸ Ultimately, the goal of this Part was twofold. First, it aimed to develop a set of terms that enable scholars to categorize and analyze nationwide injunctions. It began with the Supreme Court's teaching that injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs."¹⁴⁹ From there, it developed a taxonomy that focused on different types of plaintiffs seeking nationwide injunctions and how courts analyze what complete relief requires in those situations. Second, this Part sought to highlight the consistency with which courts analyze nationwide injunctions in the private law context. Across a diverse array of litigation areas, courts have been processing requests for nationwide relief on a regular basis using a specific and well-defined set of tools. In the next Part, the Article discusses the public law context. Relying on the archetypes developed in the private law cases, Part III examines the explanatory power of the complete relief principle in the public law context and offers a similar organizational scheme for these cases. At the same time, Part III notes clear departures from the complete relief principle and develops a normative argument in support of applying this principle across cases.

144. 472 F.2d 631, 633–34 (9th Cir. 1972).

145. *Id.* at 632.

146. *Id.* at 634.

147. *Id.*

148. See *infra* section III.C.2.

149. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); see also *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994); *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 418–20 (1977).

III. NATIONWIDE INJUNCTIONS IN PUBLIC LAW CASES

In Part II, this Article developed a basic framework for understanding how courts determine whether a case between two private parties merits a nationwide injunction. An examination of the private law cases suggests that judges are, either overtly or implicitly, defining the geographic scope of injunctions in accordance with what is required to afford complete relief to a meritorious plaintiff. Though this standard manifests itself in three primary archetypes—injunctions remedying harms asserted by certain nationwide class actions, injunctions addressing a nationwide harm, or nationwide injunctions incidental to providing an individual complete relief—courts in the private law context apply it with remarkable consistency. This account begins to encounter obstacles when the federal government becomes a party to the litigation. Cases that appear alike reach contradictory results, and judges offer limited or conflicting explanations for why they did or did not issue a nationwide injunction in any particular case.

In this Part, the Article develops an analogous framework for understanding nationwide injunctions in the public law context. The basic form of these cases involves a private plaintiff seeking injunctive relief against the federal government for promulgating an unlawful regulation or acting inconsistently with a particular statutory or regulatory scheme. Because so many of these cases arise under the APA, this Part begins by examining a bright-line rule in favor of broad injunctive authority that appears in some administrative law cases. The Article argues that this approach is neither a necessary nor a prudent extension of the general complete relief principle. This Part then turns to the remaining body of public law cases and analyzes whether the archetypes identified in the private law context can also be applied to understand the public law context. Part III concludes that, although the classifications fit less neatly, they still provide a useful scheme for organizing this area of law as well as a shared vocabulary for evaluating the propriety of different types of nationwide injunctions. Finally, this Part identifies a limiting principle grounded in judicial comity concerns—analogue to the state law comity limit—that provides prudential limits on a court's injunctive authority.

A. *Nationwide Injunctions Under the Administrative Procedure Act*

This Article advances the proposition that judges should, and often do, rely on a uniform principle to decide the geographic scope of injunctions, whether or not the government is a party to the litigation. One line of public law cases, however, argues for a more permissive approach toward issuing nationwide injunctions when challenges to government actions arise under the APA. The basic rationale of these cases is that when a regulatory action is found unlawful, the appropriate response should be vacatur and a nationwide injunction rather than merely proscribing its

application against individual plaintiffs.¹⁵⁰ As the remainder of this section shows, such a rule cannot be justified on precedential or prudential grounds.

The leading case adopting this rule is the D.C. Circuit's decision in *National Mining Ass'n v. U.S. Army Corps of Engineers*.¹⁵¹ The substantive issue before the court was whether certain mining activities were subject to a dredging restriction promulgated under the Clean Water Act.¹⁵² The district court found that the rule exceeded the agency's authority under the Act and issued a nationwide injunction ordering "that the . . . rule is declared invalid and set aside, and henceforth is not to be applied or enforced by the Corps of Engineers or the Environmental Protection Agency."¹⁵³ On appeal, the government challenged the nationwide scope of the relief, but the D.C. Circuit affirmed.¹⁵⁴ After reciting boilerplate language about how "district courts enjoy broad discretion in awarding injunctive relief,"¹⁵⁵ the court explained that "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."¹⁵⁶

The D.C. Circuit justified its view of the "ordinary result" by quoting at length from Justice Blackmun's dissent in *Lujan v. National Wildlife Federation*, which the court concluded was "apparently expressing the view of all nine Justices on this question"¹⁵⁷:

150. See, e.g., *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989).

151. 145 F.3d 1399 (D.C. Cir. 1998).

152. *Id.* at 1401.

153. *Am. Mining Cong. v. U.S. Army Corps of Eng'rs*, 951 F. Supp. 267, 278 (D.D.C. 1997), *aff'd sub nom. Nat'l Mining*, 145 F.3d 1399.

154. *Nat'l Mining*, 145 F.3d at 1410.

155. *Id.* at 1408.

156. *Id.* at 1409 (internal quotation marks omitted) (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989)).

157. *Id.* Although this discussion does not appear to be an express holding in *Lujan*, there is some basis for concluding that the Justices assumed that, under certain conditions, programmatic relief could be secured through APA challenges. First, Justice Blackmun's discussion of this issue is prefaced by the remark that "[he] agree[s] with much of the Court's discussion, at least in its general outline." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 913 (1990) (Blackmun, J., dissenting). Second, the majority opinion also notes in passing:

If there is in fact some specific order or regulation, applying some particular measure across the board to all individual classification terminations and withdrawal revocations, and if that order or regulation is final, and has become ripe for review in the manner we discuss subsequently in text, it can of course be challenged under the APA by a person adversely affected—and the entire "land withdrawal review program," insofar as the content of that particular action is concerned, would thereby be affected.

Id. at 890 n.2 (majority opinion). There is no elaboration of whether this is a necessary or preferred consequence.

In some cases the “agency action” will consist of a rule of broad applicability; and if the plaintiff prevails, the result is that the rule is invalidated, not simply that the court forbids its application to a particular individual. Under these circumstances a single plaintiff, so long as he is injured by the rule, may obtain “programmatically” relief that affects the rights of parties not before the court. On the other hand, if a generally lawful policy is applied in an illegal manner on a particular occasion, one who is injured is not thereby entitled to challenge other applications of the rule.¹⁵⁸

The reliance on this language from the *Lujan* dissent seems misplaced, however, given that it uses permissive rather than mandatory language to describe what “may” happen to an invalidated agency action and that it makes no claim about what the usual result is in challenges to agency action. Moreover, the suggestion that nationwide relief is the more common outcome is not borne out in the diverse array of agency action challenges that have resulted in something less than a nationwide injunction.¹⁵⁹ Indeed, the D.C. Circuit in *National Mining* itself had to distinguish a Third Circuit case that ordered individualized relief despite concluding that a “regulation . . . is inconsistent with the Social Security Act, and therefore, is invalid.”¹⁶⁰

The D.C. Circuit also presented a prudential argument concerning the efficient use of judicial resources. In the court’s view, if a rule was set aside without a nationwide injunction that barred enforcement, it was “likely merely to generate a flood of duplicative litigation.”¹⁶¹ The court emphasized that this is particularly a problem for federal courts in D.C. because they usually have jurisdiction to hear challenges to agency action.¹⁶² Thus, the same court would be forced to repeatedly rule on the exact same challenge for each new litigant. This argument appears overstated. As an initial matter, it is an open question just how many duplicative lawsuits would be filed in the same circuit. Given binding circuit precedent, litigants have little incentive to incur the costs of litigation to have a court perfunctorily inform them that circuit precedent forecloses their position. Moreover, had the court limited its analysis to statutory schemes that situate review

158. *Nat’l Mining*, 145 F.3d at 1409 (quoting *Lujan*, 497 U.S. at 913 (Blackmun, J., dissenting)).

159. See *infra* sections III.B–C.

160. *Baeder v. Heckler*, 768 F.2d 547, 553 (3d Cir. 1985). The *National Mining* court argued that *Baeder* involved a single plaintiff challenging an individualized determination while *National Mining* should be understood as a facial challenge, but that seems to be a distinction without a difference given that the Third Circuit expressly held that the relevant regulation was invalid and inconsistent with the statute and not merely that it was unlawfully applied in *Baeder*’s case. See *Nat’l Mining*, 145 F.3d at 1409.

161. *Nat’l Mining*, 145 F.3d at 1409.

162. *Id.* at 1409–10 (“[A]gency defeats in other circuits cannot produce as severe an effect, because . . . they need not fear a flood of relitigation since venue restrictions would exclude many would-be plaintiffs from access to the invalidating court.”).

exclusively in the D.C. courts,¹⁶³ there might have been a stronger case that a particular ruling by the D.C. Circuit should be the final word for an agency nationwide. Yet the court's rationale included no such limit and instead suggested that a nationwide injunction could be an appropriate remedy in any challenge to federal agency action merely because a litigant can usually sue the federal government in D.C.¹⁶⁴ In these circumstances, the D.C. Circuit's preferred rule would not only foreclose possible duplicative litigation in its own circuit but also preclude reasoned consideration by any other court.

Although *National Mining* is phrased in discretionary terms and does not require that courts issue an injunction in every successful agency challenge, a number of D.C. Circuit cases have followed its reasoning and issued nationwide injunctions in challenges to agency action.¹⁶⁵ Courts outside the D.C. Circuit have also adopted the rationale of *National Mining* even though they do not share the D.C. Circuit's exclusive jurisdiction over certain APA challenges.¹⁶⁶ Indeed, in one recent case, the Ninth Circuit has even suggested that the text of the APA compels nationwide injunctions.¹⁶⁷

163. See, e.g., 8 U.S.C. § 1226a(b)(3) (2012) (providing that appeals in habeas corpus proceedings for suspected terrorist aliens may be filed only in the D.C. Circuit). See generally Eric M. Fraser et al., *The Jurisdiction of the D.C. Circuit*, 23 *Cornell J.L. & Pub. Pol'y* 131, 154–55 (2013) (collecting statutes channeling administrative review to the D.C. Circuit).

164. See *Nat'l Mining*, 145 F.3d at 1409–10.

165. See, e.g., *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) (explaining that a court decision invalidating unlawful agency regulation should apply beyond just individual petitioners); *Planned Parenthood Fed'n of Am., Inc. v. Heckler*, 712 F.2d 650, 651 (D.C. Cir. 1983) (affirming an injunction prohibiting enforcement of regulations requiring parental notice for minors seeking contraception or family planning services); see also *Doe v. Rumsfeld*, 341 F. Supp. 2d 1, 17 (D.D.C. 2004) (enjoining enforcement of a regulation requiring service members to receive an anthrax vaccine).

166. See, e.g., *Dimension Fin. Corp. v. Bd. of Governors of the Fed. Reserve Sys.*, 744 F.2d 1402, 1411 (10th Cir. 1984) (enjoining the Board from enforcing or implementing invalid regulations), *aff'd*, 474 U.S. 361 (1986); *Heartwood, Inc. v. U.S. Forest Serv.*, 73 F. Supp. 2d 962, 980 (S.D. Ill. 1999) (concluding a Forest Service rule was unlawful and thus must be enjoined nationwide to prevent duplicative litigation), *aff'd*, 230 F.3d 947 (7th Cir. 2000). A variant of this rationale can be found in a recent Texas district court order preliminarily enjoining the implementation of a 2016 Department of Health and Human Services Rule regulating dialysis providers. See *Dialysis Patient Citizens v. Burwell*, No. 4:17-CV-16, 2017 WL 365271, at *1–2 (E.D. Tex. Jan. 25, 2017). The court justified the nationwide injunction with a single citation to the Fifth Circuit's DAPA decision, for the proposition that a nationwide injunction could issue when “partial implementation of [a federal rule] would ‘detract from the integrated scheme of regulation’ created by Congress.” *Id.* at *6 (alteration in original) (internal quotation marks omitted) (quoting *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015), *aff'd per curiam mem.* by an equally divided Court, 136 S. Ct. 2271 (2016)). Although the court does not expressly reason from the text of the APA, it invokes an analogous concern for maintaining uniform federal regulations. *Id.*

167. *Earth Island Inst. v. Ruthenbeck*, 490 F.3d 687, 699 (9th Cir. 2007) (quoting 5 U.S.C. § 706 (2006)) (citing *Nat. Res. Def. Council, Inc. v. EPA*, 966 F.2d 1292, 1304 (9th Cir. 1992) (vacating a Clean Water Act rule); *Asarco v. EPA*, 616 F.2d 1153, 1162 (9th Cir. 1980) (vacating a Clean Air Act rule)), *aff'd in part, rev'd in part sub nom. Summers v. Earth*

Weighing against the prudential interest in judicial efficiency, there are several countervailing concerns in favor of adopting a more limited view of when nationwide injunctions are appropriate. One reason, acknowledged in *National Mining* itself, is that requiring such a result comes “at the cost of somewhat diminishing the scope of the ‘nonacquiescence’ doctrine, under which the government may normally relitigate issues in multiple circuits.”¹⁶⁸ Although the D.C. Circuit does not say any more on this point, both the Supreme Court’s opinion in *United States v. Mendoza* and the related literature defending an agency’s prerogative to nonacquiesce explain how a rule favoring nationwide relief in administrative law cases “substantially thwart[s] the development of important questions of law by freezing the first final decision rendered on a particular legal issue” and “deprive[s] [the Supreme] Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before [the

Island Inst., 555 U.S. 488 (2009). The Ninth Circuit’s argument was an extension of the view that the “set aside agency action” language in section 706 of the APA requires courts to vacate all unlawful agency actions. For a defense of this position, see Brian S. Prestes, *Remanding Without Vacating Agency Action*, 32 *Seton Hall L. Rev.* 108, 110 (2001). Whatever the merits of this position, it is far from settled law. See Patricia M. Wald, *Judicial Review in Midpassage: The Uneasy Partnership Between Courts and Agencies Plays On*, 32 *Tulsa L.J.* 221, 236 (1996) (describing this as an “unsettled question”). The D.C. Circuit, for example, has expressly rejected this mandatory vacatur rule, see *ICORE, Inc. v. FCC*, 985 F.2d 1075, 1081–82 (D.C. Cir. 1993) (collecting cases), and instead applies a two-factor test for determining whether remanding without vacating is appropriate, see *Int’l Union, United Mine Workers of Am. v. Fed. Mine Safety & Health Admin.*, 920 F.2d 960, 967 (D.C. Cir. 1990) (holding that courts should consider “[t]he seriousness of the order’s deficiencies . . . and the disruptive consequences of an interim change” when deciding whether to remand without vacating). The Supreme Court granted certiorari in this case but did not rule on this specific issue because it resolved the case on standing grounds. *Summers*, 555 U.S. at 500–01 (“Since we have resolved this case on the ground of standing, we . . . do not reach the question whether, if respondents prevailed, a nationwide injunction would be appropriate.”).

168. *Nat’l Mining*, 145 F.3d at 1409 (citing *United States v. Mendoza*, 464 U.S. 154 (1984)). In *Mendoza*, a Filipino national brought a due process claim against the United States for failing to post a naturalization officer in the Philippines as required by the Immigration and Naturalization Act. *Mendoza*, 464 U.S. at 156–57. The district court and Ninth Circuit held that the government was collaterally estopped from defending against the claim because it had lost a prior case in which different plaintiffs raised the same issue, but the Supreme Court reversed. *Id.* at 157–58. The Court explained that “the Government is not in a position identical to that of a private litigant,” both because of the geographic breadth of Government litigation and also, most importantly, because of the nature of the issues the Government litigates.” *Id.* at 159 (citation omitted) (quoting *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam)).

Supreme] Court grants certiorari.”¹⁶⁹ Moreover, such a rule greatly exacerbates the incentive to race to the (“right”) courthouse.¹⁷⁰ If securing a favorable ruling guarantees that a nationwide governmental program comes to a halt, strategic plaintiffs have every incentive to select a favorable forum.¹⁷¹ And if the five nationwide injunctions that Texas district courts issued curtailing Obama-era regulations in the span of just over a year suggest anything, it is that this practice is only gaining steam.¹⁷²

Finally, a rule that favors issuing nationwide relief in challenges to agency action, rather than limiting the remedy under the complete relief principle, creates unique problems in the public law context. The nature of governmental regulations is such that nearly every rule some group of plaintiffs finds burdensome likely benefits some other group. For example, if a group of pharmacists feels that a regulation requiring them to dispense Plan B burdens their religious liberty, there are also patients who benefit from ready access to that medication.¹⁷³ A plaintiff may be correct that a particular agency action is unlawful or unduly burdensome, but remedying this harm with an overbroad injunction can cause serious harm to nonparties who had no opportunity to argue for more limited relief. Adopting a rule that injunctive relief should be limited to the extent required to provide complete relief to the plaintiffs presents a natural mechanism for minimizing the risk of harming nonparties.

Ultimately, the public law cases discussed in the remainder of this Part demonstrate that reading the APA to compel a nationwide injunction in

169. 464 U.S. at 160; Samuel Estreicher & Richard L. Revesz, *Nonacquiescence by Federal Administrative Agencies*, 98 Yale L.J. 679, 683 (1989) (arguing that nonacquiescence should be deployed only “as an interim measure . . . while federal law on the subject remains in flux”); Slack, *supra* note 18, at 966 (“[E]ven critics of administrative inter-circuit nonacquiescence accept its interim use in order to preserve uniform application of federal administrative law . . .”); Allan D. Vestal, *Relitigation by Federal Agencies: Conflict, Concurrence and Synthesis of Judicial Policies*, 55 N.C. L. Rev. 123, 123 (1977) (noting federal agencies’ “general policy” of nonacquiescence). Although the *National Mining* court invokes *Mendoza* when discussing the benefits of “nonacquiescence,” the case is not quite on point. Nonacquiescence refers to the “refusal of administrative agencies to conduct their internal proceedings consistently with adverse rulings of the courts of appeals.” Estreicher & Revesz, *supra*, at 681. As Professors Samuel Estreicher and Richard Revesz succinctly explain, “*Mendoza’s* rejection of nonmutual collateral estoppel against the government . . . does not compel any particular answer to the nonacquiescence controversy.” *Id.* at 685. That said, both concepts invoke a similar underlying interest in promoting “the process of national law development.” *Id.* at 686.

170. Thomas O. McGarity, *Multi-Party Forum Shopping for Appellate Review of Administrative Action*, 129 U. Pa. L. Rev. 302, 312–18 (1980) (describing the detrimental effects of race-to-the-courthouse incentives when an administrative action must be reviewed directly by the first appellate court to docket a petition for review).

171. *Bray*, *Multiple Chancellors*, *supra* note 12 (manuscript at 10–11) (noting the asymmetric nature of the incentive to forum shop when a plaintiff that loses can refile in a new venue but a federal defendant that loses is enjoined nationwide).

172. See *supra* notes 1, 5–8 and accompanying text.

173. For a discussion of this fact pattern, see *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009).

response to every possibly unlawful regulation is not only unwise but also unnecessary. Utilizing the framework developed in Part II, and focusing on the complete relief principle, the picture that emerges is of a court system that already has the right tools for deciding when nationwide injunctions are necessary and when they are overbroad.

B. *Nationwide Class Actions as a Prerequisite to Nationwide Injunctions*

As in the private law context, the cases in which a nationwide injunction against the government seems most appropriate are those in which a nationwide class of plaintiffs alleges some nationwide harm. As noted above, one of the few Supreme Court cases to address the geographic scope of injunctions, *Yamasaki*, involved a nationwide class of plaintiffs suing a federal agency to secure a change in certain procedures for recouping Social Security overpayments.¹⁷⁴ But *Yamasaki* also emphasized that what mattered was “the extent of the violation established, not . . . the geographical extent of the plaintiff class.”¹⁷⁵ Despite this warning, the vehicle of the class action has taken on an oversized importance in some public law cases, with courts occasionally refusing to issue a nationwide injunction in the absence of a nationwide class.¹⁷⁶

The tension is particularly acute in the Ninth Circuit, where panels have reached conflicting results about the importance of certifying a nationwide class before issuing a nationwide injunction. In *National Center for Immigrants Rights, Inc. v. INS*, a broad group of plaintiffs challenged an Immigration and Naturalization Service (INS) regulation eliminating certain individualized determinations in deportation proceedings.¹⁷⁷ The group of plaintiffs, which included several nonprofit organizations, a union group, and sixteen individual plaintiffs, argued that the regulation both was contrary to the statute and violated due process guarantees.¹⁷⁸

174. *Califano v. Yamasaki*, 442 U.S. 682, 684 (1979); see also *supra* notes 50–56, 68–74 and accompanying text.

175. *Yamasaki*, 442 U.S. at 702; see also *Colo. Cross-Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1212–13 (10th Cir. 2014); *Scherr v. Marriott Int’l, Inc.*, 703 F.3d 1069, 1075 (7th Cir. 2013).

176. See, e.g., *Brown v. Trs. of Bos. Univ.*, 891 F.2d 337, 361 (1st Cir. 1989) (holding an injunction overbroad and explaining that “[o]rdinarily, classwide relief . . . is appropriate only where there is a properly certified class”); *Everhart v. Bowen*, 853 F.2d 1532, 1539 (10th Cir. 1988) (“Absent a class certification, the district court should not have treated the suit as a class action by granting statewide injunctive relief, and accordingly should have tailored its injunction ‘to affect only those persons over [whom] it has power.’” (quoting *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983))), *rev’d on other grounds sub nom. Sullivan v. Everhart*, 494 U.S. 83 (1990); see also *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2090 (2017) (Thomas, J., concurring in part and dissenting in part) (suggesting that it is unreasonable to leave a preliminary nationwide injunction in place when “[n]o class has been certified, and neither party asks for the scope of relief” to extend to an “unidentified, unnamed group”).

177. 743 F.2d 1365, 1367 (9th Cir. 1984).

178. *Id.*

The district court found that the plaintiffs were likely to succeed on their claim and issued a preliminary injunction barring INS from enforcing the regulation anywhere in the country.¹⁷⁹ The court of appeals narrowed the injunction on the grounds that “in the absence of class certification, the preliminary injunction may properly cover only the named plaintiffs.”¹⁸⁰ The opinion offers no discussion of the actual geographic dispersion of the named plaintiffs or the geographic scope of their alleged harms.¹⁸¹ Later Ninth Circuit opinions have reiterated this position without any further elaboration.¹⁸²

At the same time, there are also Ninth Circuit cases expressly rejecting the idea that a nationwide class action is a prerequisite to obtaining a nationwide injunction.¹⁸³ In *Bresgal v. Brock*, a group of migrant forestry workers brought suit seeking declaratory judgment that certain protections of the Migrant and Seasonal Agricultural Worker Protection Act applied to them.¹⁸⁴ The district court agreed and issued a nationwide injunction requiring the government to modify the regulation and extend migrant workers certain protections.¹⁸⁵ On appeal, the government argued that nationwide relief was improper absent certification of a nationwide class.¹⁸⁶ The court expressly rejected this argument, holding that “an injunction is not necessarily made over-broad by extending benefit or protection to persons other than prevailing parties in the lawsuit—even if it is not a class action—if such breadth is necessary to give prevailing parties the relief to which they are entitled.”¹⁸⁷ In this particular case, the Ninth Circuit explained that affording complete relief to the plaintiff migrant workers required a nationwide injunction because the relevant regulations were

179. *Id.* at 1368.

180. *Id.* at 1371.

181. *Id.* (noting only that the district court did not “mak[e] any findings as to class membership”).

182. See, e.g., *Meinhold v. U.S. Dep’t of Def.*, 34 F.3d 1469, 1480 (9th Cir. 1994) (narrowing a nationwide injunction prohibiting the government from enforcing a regulation banning gays and lesbians from military service to an order reinstating the individual plaintiff). This confusion surrounding the necessity of a class action in the public law context may be only exacerbated by the Supreme Court’s recent decision in *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 163 (2010). In *Monsanto*, the Court considered an injunction against the Animal and Plant Health Inspection Service prohibiting deregulation of certain crops. *Id.* at 144. The Court vacated the injunction on the grounds that plaintiffs had failed to show irreparable injury from a very narrow deregulation program. *Id.* at 163. In a parenthetical to that determination, the Court also noted, “Respondents in this case do not represent a class.” *Id.* Although no court has relied on this statement yet, one can imagine how a court already inclined to believe a nationwide class is a prerequisite to a nationwide injunction may invoke the statement to justify that conclusion.

183. See, e.g., *Bresgal v. Brock*, 843 F.2d 1163, 1171–72 (9th Cir. 1987).

184. *Id.* at 1165.

185. *Id.* at 1168–69.

186. *Id.* at 1170.

187. *Id.* at 1170–71.

targeted at labor contractors.¹⁸⁸ If the injunction was territorially limited, the migratory plaintiffs might lose their protection as they traveled across borders for work.¹⁸⁹ In reaching this conclusion, the court expressly relied on *Yamasaki* and a number of private law cases concerning incidental nationwide injunctions.¹⁹⁰

The natural question this subset of cases raises is why courts addressing public law cases treat the presence of a nationwide class differently than courts addressing private law cases. Specifically, while the latter are able to analyze the presence of a nationwide class as just one indicator of the scope of an alleged harm, why does a subset of the former treat the nationwide class as a prerequisite to a nationwide injunction? Unfortunately, a close reading of these decisions does not clarify the issue because courts rarely provide a justification for adopting one or the other approach.¹⁹¹ While one could hypothesize about extant factors that might motivate the inconsistent approach in the public law context, it would be little more than speculation. The advantage of developing a set of terms and categories with which to analyze these cases, however, is that we can see how courts in the private law context have established a more consistent approach to analyzing nationwide class actions. Rather than treating a nationwide class as a prerequisite to nationwide relief, the private law cases show that a nationwide class is better understood as a measure of the alleged injury, which in turn structures the bounds of “complete relief.” Moreover, the typology that this Article offers can serve as a shared language for discussing the geographic scope of injunctions. The archetypal cases in each category provide a set of benchmarks that courts and commentators can use in discussions about whether a certain injunction is overbroad, inadequate, or appropriate. The remainder of this Part carries that task forward and examines how courts in the public law context engage with, and deviate from, the complete relief principle.

C. *A Reprisal of “Complete Relief”*

When courts are not applying bright-line rules that either require injunctions in APA challenges or deny injunctions in the absence of nationwide class certification, there remains a diverse set of injunction cases squarely engaging with the same guiding question as that in the private-party context: What does it mean to afford complete relief to the plaintiff? Drawing on the framework developed in the private law context,

188. *Id.* at 1171 (“Although individual migrant laborers are plaintiffs in this action, it is labor contractors who are most directly affected by the injunction against the Secretary.”).

189. *Id.*

190. *Id.*

191. See, for example, *supra* notes 176, 180, and 187 for courts adopting one or the other rule with limited discussion and no consideration of alternative approaches.

this section focuses on how courts operationalize the complete relief principle when a plaintiff alleges nationwide harm or requests nationwide relief incidental to its individual harm.

1. *Nationwide Injunctions as a Response to Nationwide Harm.* — As in the private law context, the simplest way to understand application of the complete relief principle is the issuance of a nationwide injunction to address a nationwide harm—albeit, in this context, one caused by governmental action. However, as with the class action cases, courts addressing public law issues are less consistent about applying this principle. In particular, courts in this domain have, on occasion, equated the perceived nationwide importance of an injury with an actual nationwide harm. This section begins, however, with an examination of two cases that faithfully apply the complete relief principle to craft injunctions that respond to the precise geographic scope of the harms at issue.

In *Richmond Tenants Organization v. Kemp*, a nationally dispersed group of plaintiffs—including a national tenant organization, two local tenant organizations, and four individuals in housing projects in Baltimore and Richmond—brought suit against the Secretary of Housing and Urban Development for unlawfully evicting tenants from public housing without notice or hearing under a recently enacted housing-forfeiture program.¹⁹² The district court found that relief was merited and granted a nationwide injunction against enforcing the eviction provisions of the program but denied class certification because the court found it unnecessary.¹⁹³ On appeal, the Secretary challenged the injunction as overbroad in the absence of a class, but the Fourth Circuit rejected that contention, holding that “[i]t is well established . . . that a federal district court has wide discretion to fashion appropriate injunctive relief in a particular case” and that this injunction “was appropriately tailored to prevent irreparable injury to plaintiffs.”¹⁹⁴

By contrast, when a plaintiff requesting nationwide relief fails to demonstrate a nationwide harm, courts also reasonably narrow the scope of the injunction. For example, in *Morris v. U.S. Army Corps of Engineers*, two individual plaintiffs challenged an Army Corps regulation that banned firearms on Army Corps land that also doubled as public recreational land.¹⁹⁵ The district court held that the regulation was inconsistent with the Second Amendment and enjoined its enforcement.¹⁹⁶ Even though the Army Corps controls recreational land nationwide and the regulation applied nationwide, the district court limited injunctive relief to Idaho on

192. 956 F.2d 1300, 1302 (4th Cir. 1992).

193. *Id.* at 1305.

194. *Id.* at 1308–09.

195. 60 F. Supp. 3d 1120, 1122 (D. Idaho 2014).

196. *Id.* at 1125.

the grounds that the plaintiffs had stated that they intended to use only Idaho campgrounds.¹⁹⁷

As with nationwide class actions, there are also examples of courts adjudicating public law disputes but failing to comply with the demands of the complete relief principle. In these situations, a court might find that a particular harm has been established only in a limited geographic area but nonetheless conclude that nationwide relief is merited. Although the rationale for extending the scope of the injunction is typically not well stated, one idea courts invoke in these cases is a general societal interest in enjoining the offending activity. A demonstrative case is *Decker v. O'Donnell*.¹⁹⁸ In *Decker*, three Wisconsin residents challenged a Department of Labor regulation, which allowed federal funds to be paid to teachers who teach at religious institutions, as a violation of the Establishment Clause.¹⁹⁹ The primary fact-finding in the case focused on the effect of the regulation in Milwaukee County.²⁰⁰ With limited explanation, the district court issued a nationwide injunction.²⁰¹ On appeal, the Seventh Circuit affirmed the injunction on the theory that the case had “evolved” into a facial challenge and that the court’s “analysis ha[d] relied primarily on the statute and regulation and ha[d] used the evidence on funding in Milwaukee County merely as illustration.”²⁰² In reaching this conclusion, the court made no effort to engage with the well-established norm that

197. *Id.*

198. 661 F.2d 598 (7th Cir. 1980).

199. *Id.* at 602.

200. *Id.* at 603.

201. *Id.* at 604 (“[T]he preliminary injunction should not be limited to Milwaukee County’s CETA programs because ‘the CETA program, to the extent that it funds employment positions in sectarian schools, is invalid on its face.’” (quoting *Decker v. U.S. Dep’t of Labor*, 485 F. Supp. 837, 844 (E.D. Wis. 1980), *aff’d sub nom. Decker*, 661 F.2d 598)).

202. *Id.* at 618.

facial challenges are disfavored²⁰³ or explain how this relief was required to afford complete relief to the particular plaintiffs bringing the action.²⁰⁴

While the sense that urgency demanded nationwide resolution lay just below the surface in *Decker*,²⁰⁵ there are also cases that expressly state that

203. The Supreme Court has succinctly summarized the reasons why facial challenges are disfavored in *Washington State Grange v. Washington State Republican Party*:

Facial challenges are disfavored for several reasons. Claims of facial invalidity often rest on speculation. As a consequence, they raise the risk of “premature interpretation of statutes on the basis of factually barebones records.” Facial challenges also run contrary to the fundamental principle of judicial restraint that courts should neither “anticipate a question of constitutional law in advance of the necessity of deciding it” nor “formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.” Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution. We must keep in mind that “[a] ruling of unconstitutionality frustrates the intent of the elected representatives of the people.”

552 U.S. 442, 450–51 (2008) (alteration in original) (internal citations omitted) (first quoting *Sabri v. United States*, 541 U.S. 600, 609 (2004); then quoting *Ashwander v. TVA*, 297 U.S. 288, 346–47 (1936) (Brandeis, J., concurring); and then quoting *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006)).

204. But see *Franciscan All., Inc. v. Burwell*, 227 F. Supp. 3d 660, 670, 695 (N.D. Tex. 2016) (justifying a nationwide injunction against enforcement of a regulation that applies the Affordable Care Act’s prohibition on sex discrimination to discrimination based on “gender identity” and “termination of pregnancy” because an organizational plaintiff’s membership “extends across the country and the Rule applies broadly to ‘almost all licensed physicians’” (first quoting 45 C.F.R. § 92.4 (2016); then quoting *Nondiscrimination in Health Programs and Activities*, 81 Fed. Reg. 31,376, 31,445 (May 18, 2016) (codified at 45 C.F.R. § 92))).

205. Although this section highlights *Decker* as a demonstrative example, variants of this approach are evident in more recent cases. Two particularly salient examples occurred in early 2017. In *Hawai’i v. Trump*, a district court enjoined the enforcement of the second iteration of an Executive Order. 245 F. Supp. 3d 1227, 1237–39 (D. Haw. 2017), *aff’d* in part, vacated in part, 859 F.3d 741 (9th Cir. 2017). The order had, among other things, restricted the entry of individuals from six Muslim-majority countries for a period of ninety days. See Exec. Order No. 13,780, 82 Fed. Reg. 13,209, 13,213 (Mar. 9, 2017). In justifying the scope of the injunction, the court stated that “[t]he requested nationwide relief is appropriate in light of the likelihood of success on Plaintiffs’ Establishment Clause claim.” *Hawai’i v. Trump*, 245 F. Supp. 3d at 1237. Although the court offered little elaboration, this reason seems to reduce to the idea that constitutional issues should be resolved on a nationwide basis.

A similar rationale appears in *County of Santa Clara v. Trump*, which involved a constitutional challenge to an Executive Order impeding the ability of “sanctuary jurisdictions” (jurisdictions that decline to follow federal law, particularly in the domain of immigration enforcement) to receive federal funds. Nos. 17–cv–00574–WHO, 17–cv–00485–WHO, 2017 WL 1459081, at *1 (N.D. Cal. Apr. 25, 2017); see also Exec. Order No. 13,768, 82 Fed. Reg. 8799, 8799, 8801 (Jan. 25, 2017). After concluding that the Order was unconstitutional, the court issued a nationwide injunction against the enforcement of the Order on the ground that “where a law is unconstitutional on its face, and not simply in its application to certain plaintiffs, a nationwide injunction is appropriate.” *County of Santa Clara v. Trump*, 2017 WL 1459081, at *29 (citing *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *Washington v.*

this factor counsels in favor of granting nationwide relief. In *Hedges v. Obama* (*Hedges II*), for example, a group of journalists brought suit challenging the constitutionality of section 1021(b) of the National Defense Authorization Act, which permitted indefinite detention of anyone found to have supported al-Qaeda and other designated terrorist groups.²⁰⁶ The journalists alleged that the Act violated the First Amendment, fearing that they might be subject to the law because of their reporting activities.²⁰⁷ The district court found that the provision was constitutionally infirm and preliminarily enjoined enforcement.²⁰⁸ The government interpreted the order to apply only to the named plaintiffs, and both parties sought clarification.²⁰⁹ In response, the district court issued another order explaining that, while injunctions should generally be narrowly tailored, “the injunction in this action is intentionally expansive because ‘persons whose expression is constitutionally protected [and not party to the instant litigation] may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression.’”²¹⁰ Instead of following the complete relief principle, this decision expressly invokes possible harms suffered by nonparties to justify a broader injunction. The Second Circuit stayed the order and ultimately vacated the injunction on standing grounds.²¹¹ As this result illustrates, though courts may be tempted to issue broader injunctions in cases alleging governmental harm, the complete relief principle remains the touchstone.

2. *Incidental Nationwide Injunctions as a Response to Individualized Harm.* — In the absence of an asserted nationwide injury, courts may still issue nationwide injunctive relief when the relief is incidental to affording complete relief to individual plaintiffs. An example of such relief in the statutory context arises in a case brought by inmates at a federal correctional facility in Kentucky.²¹² The case concerned a telephone system that monitored inmate conversations and limited inmates’ ability to make external calls to predesignated lists of contacts.²¹³ This monitoring system

Trump, 847 F.3d 1151, 1166–67 (9th Cir. 2017)). The court went on to explain that, because the injuries asserted by plaintiffs San Francisco and Santa Clara could apply to all other jurisdictions, it would issue a nationwide injunction. *Id.*; see also *City of Chicago v. Sessions*, No. 17 C 5720, 2017 WL 4081821, at *14 (N.D. Ill. Sept. 15, 2017) (“This injunction . . . is nationwide in scope, there being no reason to think that the legal issues present in this case are restricted to Chicago or that the statutory authority given to the Attorney General would differ in another jurisdiction.” (citing *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 605 (4th Cir. 2017))).

206. No. 12 Civ. 331 (KBF), 2012 WL 2044565, at *3 (S.D.N.Y. June 6, 2012).

207. *Hedges v. Obama* (*Hedges I*), No. 12 Civ. 331 (KBF), 2012 WL 1721124, at *1 (S.D.N.Y. May 16, 2012).

208. *Id.* at *19–24, *28.

209. *Hedges II*, 2012 WL 2044565, at *1.

210. *Id.* at *3 (quoting *New York v. Ferber*, 458 U.S. 747, 768 (1982)).

211. *Hedges v. Obama* (*Hedges III*), 724 F.3d 170, 188, 204–05 (2d Cir. 2013).

212. *Washington v. Reno*, 35 F.3d 1093, 1096 (6th Cir. 1994).

213. *Id.* at 1099–102.

was partially funded by proceeds from a nationwide commissary fund paid into by all prisoners.²¹⁴ While prisoners were not allowed to direct how the funds were used, the funds were statutorily held in a trust for the benefit of inmates and subject to a Department of Justice regulation limiting expenditures to “any purpose accruing to the benefit of the inmate body, as a whole, such as amusements, education, library, or general welfare work.”²¹⁵ In addition to direct challenges to the monitoring system, inmates argued that paying for the system with proceeds from the Commissary Fund violated this regulation.²¹⁶ The district court ruled in favor of the plaintiffs and enjoined any use of the fund to install telephone monitoring systems.²¹⁷ On appeal, the government argued that the injunction was overbroad and that relief should be limited to the single Kentucky facility where the plaintiffs were incarcerated.²¹⁸ The court of appeals rejected that contention, explaining that

[t]he named plaintiffs’ gains in obtaining an injunction prohibiting further invasions of the trust for the primary purpose of installing security equipment would be illusory indeed if the defendants were banned from funding security measures through the Commissary Fund at the Lexington facility only, but could finance those same measures at other institutions through invasions of Fund accounts.²¹⁹

While expressly acknowledging *Yamasaki*’s warning to extend relief no further than necessary to afford complete relief to the plaintiffs, the court concluded that a “nationwide injunction covering all federal correctional institutions is necessary in order to grant effective relief on [plaintiffs’] Commissary Fund claim.”²²⁰

Courts have reached similar results in the constitutional context as well. In *Bernstein v. U.S. Department of State*, for example, a mathematician brought a facial and as-applied challenge against enforcement of the Arms Export Control Act and the International Traffic in Arms Regulations on the ground that they imposed an unconstitutional limit on his research into cryptography systems.²²¹ In addition to seeking relief for himself, the plaintiff requested a nationwide injunction that “extends to students,

214. *Id.* at 1101.

215. *Id.* at 1096.

216. *Id.* at 1101.

217. *Id.* at 1097.

218. *Id.* at 1103.

219. *Id.* at 1104.

220. *Id.* at 1103.

221. 974 F. Supp. 1288, 1291 (N.D. Cal. 1997), *aff’d sub nom. Bernstein v. U.S. Dep’t of Justice*, 176 F.3d 1132 (9th Cir.), *reh’g granted, withdrawn*, 192 F.3d 1308 (9th Cir. 1999). The government relaxed the regulations before the en banc rehearing, and the case was dismissed. Docket Sheet, *Bernstein v. U.S. Dep’t of Justice*, No. 97-16686 (9th Cir. Apr. 11, 2000) (dismissing the appeal and remanding the case to district court); Docket Sheet, *Bernstein v. U.S. Dep’t of Justice*, No. 97-16686 (9th Cir. Jan. 26, 2000) (remanding the case to the original three-judge panel to consider the effect of revised regulations).

colleagues and others not before the court” to fully effectuate his free speech and association rights.²²² The district court, relying on *Bresgal*'s language about permitting broader injunctions to afford full relief to plaintiffs, enjoined the government from enforcing the rules against not only the plaintiff but anyone who wanted to “use, discuss or publish” his work.²²³

Just as some situations require incidental nationwide injunctions, courts will also limit the remedy when a broader order is unnecessary to afford complete relief to plaintiffs.²²⁴ In *Stormans, Inc. v. Selecky*, for example, a group of pharmacists who refused to dispense Plan B brought suit to enjoin the government from enforcing a Washington State rule that required pharmacists to dispense all FDA-approved drugs.²²⁵ The court of appeals narrowed the injunction to only the plaintiff pharmacists who opposed dispensing Plan B and noted that a broader injunction “erroneously treated the as-applied challenge brought in this case as a facial challenge. This flies in the face of the well-established principle that ‘[g]enerally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem.’”²²⁶ It concluded that, absent evidence that the regulation burdened every pharmacist or that plaintiffs would somehow continue to suffer if a more limited injunction were issued, a nationwide injunction was overbroad.²²⁷ The court also noted that a more limited injunction would “mitigate much of the potential harm that Intervenor, patients and their families, and the general public in the state of Washington would otherwise face under an injunction that allows any and all pharmacies and pharmacists to refuse to dispense Plan B for any reason.”²²⁸

222. *Bernstein*, 974 F. Supp. at 1309.

223. *Id.* at 1310. The *Bernstein* case also presents an interesting contrast to the *Hedges* case described above. See *Hedges II*, No. 12 Civ. 331 (KBF), 2012 WL 2044565, at *1, *3 (S.D.N.Y. June 6, 2012); *supra* notes 206–211 and accompanying text. Both cases concerned regulatory challenges that implicated serious First Amendment issues, and both district courts issued nationwide injunctions. See *Hedges II*, 2012 WL 2044565, at *1–2; *Bernstein*, 974 F. Supp. at 1303–08. However, in *Bernstein* the nationwide relief was a proper reflection of what was required to provide complete relief to the plaintiff, whereas in *Hedges* the injunction was animated by a concern for nonparties. While the former can be evaluated according to the specific evidence in the case, the latter turns on the views of the judge about the extent to which the case affects the interests of unrepresented nonparties.

224. See, e.g., *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009).

225. *Id.* at 1113, 1117.

226. *Id.* at 1140 (alteration in original) (quoting *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328 (2006)).

227. *Id.*

228. *Id.* at 1141. While the *Stormans* decision addresses the geographic implications of the district court's injunction, it is worth noting that the court narrowed the injunction in terms of the people it affected rather than limiting it to a particular geographic area. *Id.* at 1140–41. Other courts have more expressly limited the scope of an injunction solely on a geographic basis. See, e.g., *Kentuckians for Commonwealth, Inc. v. Rivenburgh*, 317 F.3d 425, 436 (4th Cir. 2003) (upholding in part *Kentuckians*'s challenge to the legality of

Viewed through the framework developed in Part II, it becomes apparent that this otherwise disparate assortment of cases is actually composed of instances in which courts issued incidental nationwide injunctions. These cases also serve as a useful reminder that just because an injury is suffered by a smaller group of people or can be narrowly defined does not mean that a more expansive remedy is not required to provide complete relief. But in contrast to the mandatory nationwide injunctions some courts issue under the APA,²²⁹ the incidental nationwide injunction cases demonstrate the ability of courts to be more precise in matching injury to relief. As this Article acknowledged in section III.A, nationwide relief may be the appropriate response to some unlawful regulations, but applying a more exacting analytic frame that focuses on precisely defining the injury alleged by a plaintiff and the necessary remedy—rather than invoking rough proxies such as whether an agency action is at issue or whether the question is of national importance—would ensure that defendants and nonparties are not unnecessarily burdened while still fully vindicating a plaintiff’s rights. Of course, as this Article acknowledges in Part IV, precisely defining the injury is not always an easy task,²³⁰ but it does provide an anchor for the analysis.

D. *The Limits of Judicial Comity on Injunctive Scope*

In the previous sections, this Part outlined four circumstances under which courts in the public law context issue nationwide injunctions. Three of these situations were reflections of archetypes drawn from the private law context. Although these archetypes are not always uniformly applied, they provide a basic language for understanding the principles that guide a court’s determination of the geographic scope of injunctive relief. As in the private law context, there is also a limiting principle that might lead courts to circumscribe what might otherwise be a nationwide injunction. In the private law context, this principle was animated by an impulse to

permits issued under section 404 of the Clean Water Act but vacating an injunction that initially applied to a five-state area on the ground that the injury plaintiffs alleged was geographically limited to a single site within Kentucky).

229. See *supra* notes 150–167 and accompanying text.

230. Courts may be called on, for instance, to determine whether there is any causal relationship between a defendant’s actions outside the geographic area that the plaintiff is concerned about and consequences to the plaintiff in the relevant geographic area. Courts may also have to undertake a probabilistic analysis of how likely it is that the defendant’s action in one location may have an effect on the plaintiff in another area. To draw on the example from *supra* note 228, does issuing a permit for a mining site in Ohio have consequences for a Kentucky resident driving on Kentucky roads and, if so, how likely are these consequences? Notably, the court of appeals in *Kentuckians* did not expressly hold that plaintiffs could never secure broader relief; it held only that injuries the plaintiffs alleged in that case were inadequate. See *Kentuckians*, 317 F.3d at 436 (“Because we conclude that the injunction issued by the district court was broader in scope than that ‘necessary to provide complete relief to the plaintiff’ and that the injunction did not carefully address only the circumstances of the case, we find it overbroad.”).

respect the diversity of state laws. Here, the principle is grounded in the idea of comity between fellow federal courts. Courts that invoke a judicial comity limit on injunctive scope often present arguments set forth in cases like *Mendoza* and *Yamasaki* about the value of having different courts rule on the same issue.²³¹ As with the other archetypes identified in the public law context, there is no uniform view of this judicial comity limit; rather, courts have applied a spectrum of approaches. This section identifies three general manifestations of the judicial comity limit that result in a court narrowing the geographic scope of an injunction. Ultimately, however, this section determines that these invocations of judicial comity are something of a red herring, as the results in these cases can be understood as reflections of the complete relief principle.

The thin view of judicial comity in this context is that a court should limit an otherwise valid nationwide injunction only to the extent that it does not interfere with another court's prior ruling on the exact same issue. This view is exemplified by *United States v. AMC Entertainment, Inc.*²³² The case turned on an interpretation of what the appropriate screen-viewing angle was for compliance with the Americans with Disabilities Act.²³³ In resolving the case, the district court found that AMC theaters were noncompliant and would need to be retrofitted nationwide.²³⁴ The Ninth Circuit largely concurred, but, in light of a Fifth Circuit decision that had adopted a more permissive interpretation of the particular ADA provision, it opted to exclude the Fifth Circuit from the scope of the nationwide injunction.²³⁵ One distinguishing feature of *AMC Entertainment* is that it involved the government obtaining a nationwide injunction against a private party, but the same principle has been applied in injunctions issued against the government.²³⁶

231. See, e.g., *L.A. Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 664–65 (9th Cir. 2011) (“The Supreme Court has also suggested that nationwide injunctive relief may be inappropriate where a regulatory challenge involves important or difficult questions of law, which might benefit from development in different factual contexts and in multiple decisions by the various courts of appeals.” (citing *United States v. Mendoza*, 464 U.S. 154, 160 (1984); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979))); *United States v. AMC Entm't, Inc.*, 549 F.3d 760, 779–80 (9th Cir. 2008) (Wardlaw, J., dissenting in part); *Va. Soc'y for Human Life, Inc. v. FEC*, 263 F.3d 379, 393 (4th Cir. 2001), overruled on other grounds by *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012).

232. See 549 F.3d at 770 (citing *Steele v. Bulova Watch Co.*, 344 U.S. 280, 289 (1952)).

233. *Id.* at 762.

234. *Id.* at 770 (citing *Steele*, 344 U.S. at 289).

235. *Id.* at 771 (“Based upon this judicial hierarchy, we must be mindful of the decisions of our sister circuits, when we make decisions in cases affecting litigants’ legal rights and remedies in the geographic boundaries of their circuits.”).

236. See *California ex rel. Lockyer v. U.S. Dep't of Agric.*, 710 F. Supp. 2d 916, 921 (N.D. Cal. 2008) (“Although judicial comity does not require this Court to alter its injunction, issued long before the Wyoming court issued its conflicting injunction . . . , the principles underlying this doctrine, especially to avoid rulings which may ‘trench upon the authority of sister courts,’ counsel in favor of providing some relief.” (first quoting *West Gulf Mar. Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985); then citing *Feller v. Brock*,

A slightly more expansive view of judicial comity asks a court contemplating a nationwide injunction to take notice of whether other courts either had or would have occasion to actually review the same issue.²³⁷ In *Los Angeles Haven Hospice, Inc. v. Sebelius*, the Ninth Circuit reviewed a district court injunction prohibiting the Department of Health and Human Services from enforcing a regulatory cap on reimbursement to hospice care facilities.²³⁸ Relying on the fact that several other courts of appeals were considering the same issue in pending cases, the Ninth Circuit narrowed the scope of the injunction to the hospice care facilities that were party to the action.²³⁹ Expressly invoking *Yamasaki*, the Ninth Circuit explained that a more restrained approach is warranted “where a regulatory challenge involves important or difficult questions of law, which might benefit from development in different factual contexts and in multiple decisions by the various courts of appeals.”²⁴⁰

Finally, a thick view of comity requires courts to presumptively limit injunctive relief to the territorial boundaries of the adjudicating court in order to enable other courts to consider the same issue. In *Virginia Society for Human Life, Inc. v. FEC*, the Fourth Circuit discussed this comity rationale in a decision narrowing a nationwide injunction that prohibited the Federal Election Commission from enforcing a regulation defining “express advocacy” in a statute on corporate campaign expenditures.²⁴¹ In that case, the court noted that an injunction protecting only the named party would have offered complete relief and explained that any broader injunction “encroaches on the ability of other circuits to consider the constitutionality of [the regulation]. Such a result conflicts with the principle that a federal court of appeals’ decision is only binding within its circuit.”²⁴² Unlike the courts expressing the two narrower views of comity, the Fourth Circuit did not rely on the presence of any actual conflicts with other court rulings or invoke the possibility of conflicts because the same issue was pending

802 F.2d 722, 728 (4th Cir. 1986)).

Courts implicitly adopt this thin view of the judicial comity limit when they enter nationwide injunctions concerning issues that other courts have not (yet) ruled on. In such cases, the court is the first to reach an issue and, finding no prior rulings on the same subject, declines to limit the scope of its injunction. See, e.g., *City of Chicago v. Sessions*, No. 17 C 5720, 2017 WL 4081821, at *14 (N.D. Ill. Sept. 15, 2017) (concluding that the issues raised were present nationwide, and issuing a nationwide injunction, with no mention of judicial comity); *County of Santa Clara v. Trump*, Nos. 17-cv-00574-WHO, 17-cv-00485-WHO, 2017 WL 1459081, at *29 (N.D. Cal. Apr. 25, 2017) (same).

237. See, e.g., *Romero v. United States*, 883 F. Supp. 1076, 1091 (W.D. La. 1994) (staying enforcement of an injunction pending resolution at the court of appeals).

238. 638 F.3d 644, 648–49 (9th Cir. 2011).

239. *Id.* at 664–65.

240. *Id.* at 664 (citing *United States v. Mendoza*, 464 U.S. 154, 160 (1984); *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *Va. Soc’y for Human Life, Inc. v. FEC*, 263 F.3d 379, 383 (4th Cir. 2001), overruled on other grounds by *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544 (4th Cir. 2012)).

241. 263 F.3d at 381.

242. *Id.* at 393.

elsewhere. Instead, it took a rigidly narrow view that a court should not remedy disputes beyond its own territorial boundaries.²⁴³

At first glance, these invocations of judicial comity appear to present an additional limiting principle separate and apart from the idea that injunctive relief should be no broader than necessary to provide complete relief to the plaintiffs. However, a closer reading of these cases suggests that judicial comity is better understood as a supplemental justification for defining the geographic scope of an injunction according to the complete relief principle. In particular, both *Virginia Society for Human Life* and *Los Angeles Haven Hospice* discuss the value of allowing other courts a chance to consider the same issues but ultimately define the scope of relief according to the precise injury alleged by plaintiffs.²⁴⁴ Had the cases omitted any discussion of judicial comity, the results would have been the same.

AMC Entertainment takes a slightly different approach but can also be harmonized with the complete relief principle. In that case, the Ninth Circuit determined that nationwide relief might be warranted but excluded the Fifth Circuit from the scope of the injunction on the ground that the relevant regulation had been interpreted differently in that circuit.²⁴⁵ In the analogous state law comity context, this Article advanced the argument that limiting an injunction only to jurisdictions where the asserted injury was cognizable was a means of tailoring the remedy to provide the legally available “complete relief.”²⁴⁶ A similar argument can be made with regard to the judicial comity limit. Given that the Fifth Circuit had already held that a certain action—in this case arranging seating in a public venue at a particular angle—was in accordance with the law, it cannot be said that a defendant performing that action was not complying with the law or was causing a legally cognizable harm. For the Ninth Circuit to later enjoin that action nationwide would go beyond the scope of affording a plaintiff complete relief and instead require the court to redefine the action in the Fifth Circuit as a remediable harm. Though some courts have instead taken the judicial comity limit to represent an independent limit on their equitable powers, this relief-focused way of reimagining the limit demonstrates how substantially similar aims can be achieved through a more uniform application of the complete relief principle.

243. *Id.* at 393–94.

244. *L.A. Haven Hospice*, 638 F.3d at 665 (“[E]njoining further enforcement against Haven Hospice . . . would have afforded the plaintiff complete relief.”); *Va. Soc’y for Human Life*, 263 F.3d at 393 (“In this case [the Virginia Society for Human Life (VSHL)] is the only plaintiff. An injunction covering VSHL alone adequately protects it from the feared prosecution.”).

245. *United States v. AMC Entm’t, Inc.*, 549 F.3d 760, 773 (9th Cir. 2008).

246. See *supra* section II.B.2.

IV. BRINGING COMPLETE RELIEF INTO SHARP RELIEF:
A REVISION TO RULE 65

District courts possess broad discretion to fashion injunctive relief as the facts require.²⁴⁷ At the apex of that authority is the nationwide injunction. In disputes between private parties, judges typically cabin this discretion by hewing to the standard that relief should be no broader than necessary to afford complete relief to the plaintiff.²⁴⁸ When the federal government enters as a party, outcomes are more varied.²⁴⁹ Some judges continue to apply the complete relief principle, but others apply various bright-line rules to determine whether to issue a nationwide injunction.²⁵⁰ This expanded discretion does not cut in a single direction. There are courts that operate under the assumption that a nationwide injunction cannot issue in the absence of a nationwide class and thus refuse to issue such injunctions even when injuries occur on a much broader scale.²⁵¹ Similarly, there are courts that understand the APA to create a presumption in favor of nationwide injunctions even when narrower relief would have sufficed without creating collateral consequences for nonparties that might benefit from a particular regulatory action.²⁵² Perhaps animating some of this disparity, some courts have also expressed the view that when a case implicates a matter of great public concern, courts should endeavor to resolve the issue nationwide.²⁵³

At bottom, the status quo presents two essential problems. First, there is no satisfactory account of when courts actually issue nationwide injunctions. Both casual and sophisticated observers may be inclined to dismiss nationwide injunctions they disagree with as unprecedented judicial power grabs, while hailing the ones they agree with as routine exercises of judicial

247. See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006).

248. See *supra* Part II.

249. See *supra* Part III.

250. Compare *supra* section III.C.2 (discussing cases that faithfully apply the complete relief principle to craft nationwide injunctions even when addressing individualized harm), with *supra* section III.A (discussing cases that apply a bright-line rule in favor of nationwide injunctions in APA suits), and *supra* section III.B (discussing cases that make nationwide injunctions available only if the plaintiff represents a certified class).

251. See *supra* section III.B.

252. See *supra* section III.A.

253. For some courts this is an express concern, and for others it is implied. Compare *Hedges II*, No. 12 Civ. 331 (KBF), 2012 WL 2044565, at *3 (S.D.N.Y. June 6, 2012) (noting that “the injunction in this action is intentionally expansive because” it implicates the free speech rights of journalists), with *Decker v. O’Donnell*, 661 F.2d 598, 617–18 (7th Cir. 1980) (choosing to recast the case as a facial constitutional challenge appropriate for nationwide relief). See generally Kathleen M. Sullivan, *The Supreme Court, 1991 Term—Foreword: The Justices of Rules and Standards*, 106 *Harv. L. Rev.* 22, 101 (1992) (noting that, even when judges do not conceive of themselves as responding to political concerns, “politics still influences judicial activity, however indirectly”).

discretion.²⁵⁴ But absent a shared framework for contextualizing nationwide injunctions, it is difficult to meaningfully debate whether a particular injunction is within or outside the bounds of accepted judicial authority. Second, there is little clarity about what principle should guide the decision of whether or not to issue a nationwide injunction. Is the variation in how courts define the geographic scope of injunctions a desirable consequence of largely unlimited judicial discretion, or should there be some uniform rule with which to determine injunctive scope?

A. *Codifying the Complete Relief Principle*

The first three Parts of this Article undertook a comprehensive study of when courts issue nationwide injunctions and the considerations that might lead to issuing broader or narrower relief. In short, they attempted to describe “[w]hat we talk about when we talk about nationwide injunctions.”²⁵⁵ What becomes apparent across the diverse contexts in which courts contemplate nationwide injunctions is that there is already a uniform principle that many courts turn to when determining the geographic scope of an injunction: “[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.”²⁵⁶ Although the complete relief principle appears irregularly in cases in which the federal government is a party, it is robustly and consistently applied in disputes between two private parties. And, in both contexts, the principle proves valuable as a uniform reference for measuring injunctive scope and evaluating decisions to issue nationwide injunctions. Thus, the complete relief principle turns out to have not just descriptive but also prescriptive utility.

254. While not phrased in such stark terms, the State of Washington illustrated this conditional approach when it argued in the Texas DAPA litigation that the nationwide injunction was overbroad, see Brief of the Amicus States of Washington et al. in Support of the United States at 13–14, *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015) (No. 15-40238), 2015 WL 1611823, while contending in its own suit against President Trump’s travel ban Executive Order that a nationwide injunction was appropriate, see Motion for Temporary Restraining Order at 23, *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), 2017 WL 511013. Scholars raise a similar criticism in standing cases, arguing that potentially conflicting outcomes reflect a doctrine that is “‘arbitrary’ and manipulable.” Matthew I. Hall, *Standing of Intervenor-Defendants in Public Law Litigation*, 80 *Fordham L. Rev.* 1539, 1559 & n.116 (2012); see also Richard J. Pierce, Jr., *Is Standing Law or Politics?*, 77 *N.C. L. Rev.* 1741, 1775 (1999) (“[Standing doctrine is] extraordinarily complicated and malleable. In a high proportion of cases, a judge can write an opinion that either grants or denies standing without departing from the norms that define the craft of judging.”).

255. With apologies to Raymond Carver. See generally Raymond Carver, *What We Talk About When We Talk About Love* (Harvill Press 1993) (1981).

256. *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (internal quotation marks omitted) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)); see also *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 418–20 (1977) (“The remedy must be designed to redress [the constitutional violation], and only if there has been a systemwide impact may there be a systemwide remedy.”).

Rather than invent from scratch a principle for defining the appropriate geographic scope of injunctions, this Article proposes expressly adopting the requirement that a nationwide injunction should not issue unless it is necessary to provide complete relief to the plaintiffs. Although the Supreme Court could promulgate such a rule, a more direct way of incorporating this requirement would be to amend Rule 65 of the Federal Rules of Civil Procedure.²⁵⁷ As amended, the text could read as follows:²⁵⁸

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

- (A) state the reasons why it issued;
- (B) state its terms specifically;
- (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required; *and*
- (D) *state why the geographic scope extends no further than necessary to provide complete relief to the party seeking the injunction.*

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

- (A) the parties;
- (B) the parties’ officers, agents, servants, employees, and attorneys; and
- (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).²⁵⁹

The aim of this revision is modest. It is not meant to present a dramatic departure from accepted conceptions of equity but rather to codify an already extant principle in the jurisprudence of nationwide injunctions.²⁶⁰ Indeed, the fact that the rule is an extension of existing

257. My thanks to Sarafina Midzik for suggesting the idea of a revision to Rule 65 and for several illuminating conversations on the subject. Since its inception, Rule 65 has been amended on seven occasions. Fed. R. Civ. P. 65 advisory committee’s notes; see also Wright, Miller & Kane, *supra* note 38, § 2941 (discussing revisions). These revisions have included both technical and substantive changes. See *id.* Indeed, part of the inspiration for these suggestions comes from the fact that Rule 65, in particular, has been previously revised “to reflect the substance of the best current practice and introduce[] no novel conception.” Fed. R. Civ. P. 65 advisory committee’s note to 1966 amendment (addressing the revision that allowed a court to combine “the hearing of an application for a preliminary injunction with the trial on the merits”).

258. For clarity, I have included the current text of Rule 65 and inserted the proposed revision in italics.

259. Cf. Fed. R. Civ. P. 65(d) (setting out the current, unmodified rule).

260. Although the precise language of this revision draws primarily from the complete relief concept in *Yamasaki*, similar language, in other contexts, has also been described as grounded in established principles of equity. The closest analog is the limitation on prospective relief in the Prison Litigation Reform Act (PLRA), which provides: “The court shall

practice is one of its virtues. The limited study of Rule 65(d)'s legislative history has shown that its provisions were derived from a now-obsolete anti-trust statute and were meant to primarily reflect "the pre-rule federal practice in injunction suits."²⁶¹ As questions about the geographic scope of injunctions grow in prominence, it seems particularly appropriate to draw on preexisting equitable principles for answers.

Although the primary justification for codifying the complete relief principle is that it is squarely grounded in our traditional understanding of the limits of equity, there are also practical advantages over the status quo. One important benefit of adopting this rule is that it forces courts to engage in a more reasoned decisionmaking process when determining the geographic scope of injunctions. Admittedly, other proposed limits on injunctive authority might have a similar virtue, but this quality should not be understated.²⁶² The primary obstacle to rationalizing the current approach to nationwide injunctions is that so few courts offer any justification at all for selecting a particular injunctive scope. Although this Article

not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A) (2012). Unlike some of the more divisive provisions of the PLRA, this particular language has been understood as a fairly uncontroversial restatement of established law. See *Brown v. Plata*, 563 U.S. 493, 571 (2011) (Alito, J., dissenting) (explaining that the PLRA's limitation on prospective relief "reflect[s] general standards for injunctive relief aimed at remedying constitutional violations by state and local governments"); Margo Schlanger, *Civil Rights Injunctions over Time: A Case Study of Jail and Prison Court Orders*, 81 N.Y.U. L. Rev. 550, 594 (2006) (noting that the PLRA's limitation on prospective relief "might seem important" but "was not a major change from prior law").

261. Wright, Miller & Kane, *supra* note 38, § 2941; see also Armistead M. Dobie, *The Federal Rules of Civil Procedure*, 25 Va. L. Rev. 261, 301 (1939) ("The subject of injunctions in federal courts (particularly in labor disputes) is so loaded with potential dynamite that the committee played quite safe and made very few changes in the existing practice under the single rule covering this field."); Ryan McLeod, *Injunction Junction: Remembering the Proper Function and Form of Equitable Relief in Trademark Law*, 2006 Duke L. & Tech. Rev. ¶ 37, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1159&context=dltr> (on file with the *Columbia Law Review*) ("[T]he drafters of the Federal Rules opted to depend almost entirely on the traditional principles of equity, and Rule 65(d) is no exception to this general approach.").

262. For instance, the proposals to apply a multifactor balancing test, Walker, *supra* note 18, at 1145–51, or to employ equal protection and severability analysis when deciding the breadth of relief, Morley, *De Facto Class Actions?*, *supra* note 18, at 549–53, might offer a similar advantage. However, other proposals such as ones to adopt a presumption against certifying classes when the government is a defendant, Slack, *supra* note 18, at 944, or to rely on a bright-line rule that limits injunctions only to the plaintiffs, Bray, *Multiple Chancellors*, *supra* note 12 (manuscript at 51), fare less well in this regard. Although these latter proposals are more easily implemented, they do not demand judges meaningfully interrogate the scope of a plaintiff's injury or what relief such injury might require. These proposals also have the disadvantage of being underinclusive. In particular, the examples of incidental nationwide injunctions illustrate situations in which enjoining a defendant's activity only as to the particular plaintiffs would not actually remedy the harm the plaintiffs asserted. See *supra* sections II.C, III.C.2.

sought out every stray explanation in decisions about nationwide injunctions, the reality is that many courts either completely ignore the geographic dimension of injunctions or provide conclusory declarations about where the injunction should apply.²⁶³ The complete relief principle, by contrast, demands that courts interrogate the scope of a plaintiff's asserted injury and justify why a particular remedy is not overbroad. Ultimately, this may not change whether the nationwide injunction is more or less available, but it does force courts to better rationalize their decisions. It also creates a fuller record for appellate courts to review when determining whether a particular injunction was an abuse of discretion or not.

A second benefit of the complete relief principle is that it counteracts strategic litigation incentives that exist in the status quo. Currently individuals who seek to launch broadsides against executive agendas they disagree with can initiate litigation in jurisdictions more amenable to nationwide injunctions to achieve programmatic relief on the cheap. Likewise, potential defendants who foresee their operations grinding to a halt nationwide may try to file declaratory relief actions or take advantage of venue rules to situate cases in courts that are least willing to issue broad relief.²⁶⁴ Both of these approaches result in equitable relief that is not properly tailored to the actual injury shown by plaintiffs. The complete relief principle reduces the incentive to forum shop and demands courts, regardless of their views about the importance of a case or the appropriateness of nationwide relief, structure an injunction that precisely remedies the harm before them.²⁶⁵

A third benefit of the complete relief principle is that it reduces the likelihood of conflicting mandates. Take, for instance, the recent litigation over President Trump's Executive Order restricting immigration into the United States.²⁶⁶ Shortly after the Order was issued, a series of lawsuits seeking to enjoin its enforcement were filed in district courts across the country.²⁶⁷ As these cases progressed through the system, both plaintiffs

263. See *supra* note 34 and accompanying text.

264. Although no scholar has empirically examined the incentives to forum shop on this basis, the general effects of forum shopping are well studied in the literature. See, e.g., Kevin M. Clermont & Theodore Eisenberg, *Exorcising the Evil of Forum-Shopping*, 80 *Cornell L. Rev.* 1507, 1511–12 (1995) (noting that plaintiffs win fifty-eight percent of cases in which there is no transfer of venue but just twenty-nine percent of cases in which there is a transfer).

265. Admittedly, as with any rule, different courts may be more or less inclined to issue nationwide relief even when applying the complete relief principle. While an approach that encourages reference to a common standard may promote more uniform application of law, it will not guarantee it.

266. See Exec. Order No. 13,769, 82 *Fed. Reg.* 8977, 8977 (Jan. 27, 2017).

267. According to one report, the American Civil Liberties Union alone was involved in eleven such lawsuits. Josh Gerstein, *Trump Travel Ban Lawsuits Pile Up*, *Politico* (Feb. 9, 2017), <http://www.politico.com/story/2017/02/donald-trump-travel-ban-lawsuits-234828> [<http://perma.cc/A654-T4CD>]. For examples of these suits, see generally *Aziz v. Trump*,

and defendants remained confused about the effect of each successive ruling. Ultimately, one court ordered a nationwide injunction,²⁶⁸ but others limited relief only to the named plaintiffs,²⁶⁹ and at least one court issued only a statewide injunction after the nationwide ruling.²⁷⁰ The Supreme Court has since granted certiorari and largely stayed the injunctions,²⁷¹ but most cases cannot rely on such a safety valve to resolve brewing conflicts. By contrast, if the geographic scope of the remedies in these cases were limited to what was necessary to afford complete relief to the plaintiffs, there would be less risk of a conflict. Moreover, it would be easier to sort out potentially competing injunctions because litigants could appeal to the same complete relief rule when debating whether the injunctions were appropriately limited.

B. *Assessing the Limitations of the Complete Relief Principle*

While the complete relief principle provides a valuable mechanism for reconciling the disparate approaches to nationwide injunctions, there are objections to the proposal.²⁷² The primary objection to the complete relief principle is that it is an insufficiently specific constraint.²⁷³ According to this argument, the typical application of the complete relief principle asks a court to determine the “extent of the violation” and then to order a corresponding remedy.²⁷⁴ In cases involving a federal regulation, however, the “extent of the violation” can always be characterized as nationwide, and thus the complete relief principle provides little guidance in crafting an appropriately limited relief. The issue with this objection is that it ignores that a key element of the complete relief principle is that it asks what is necessary to provide “complete relief to the plaintiffs.”²⁷⁵ The

234 F. Supp. 3d 724 (E.D. Va. 2017); *Washington v. Trump*, No. C17-0141JRL, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017); *Tootkaboni v. Trump*, No. 17-cv-10154, 2017 WL 386550 (D. Mass. Jan. 29, 2017); *Darweesh v. Trump*, No. 17 Civ. 480 (AMD), 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017).

268. *Washington v. Trump*, 2017 WL 462040, at *2.

269. See, e.g., *Azad v. Trump*, No. LA CV 17-00706-VBF-FFMx, 2017 WL 429728, at *2 (C.D. Cal. Jan. 30, 2017) (substituting new named plaintiffs in accordance with an amended complaint and dismissing as moot the complaint of individuals no longer party to the action).

270. *Aziz*, 234 F. Supp. 3d at 739.

271. *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2089 (2017).

272. See *Bray, Multiple Chancellors*, supra note 12 (manuscript at 16–20) (arguing that the complete relief principle is “problematic” because it “fails as a legal principle intended to have outcome-determinative force”).

273. See *id.* (manuscript at 18) (suggesting that complete relief will “often be indeterminate”).

274. See *id.* (citing *Nat’l Fed’n of Indep. Bus. v. Perez*, No. 5:16-cv-00066, 2016 WL 3766121, at *46 (N.D. Tex. June 27, 2016)).

275. *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (emphasis added). This Article’s proposed amendment to Rule 65 would require that a court “state why the geographic scope extends no further than necessary to provide complete relief to the party seeking the injunction.” See supra notes 255–260 and accompanying text. This echoes the Supreme

question, even when the legality of a federal law is at stake, is not what constitutes complete relief in the abstract but rather what is the harm alleged by the litigants in a given case and how can that harm be remedied. Yes, every allegedly unlawful federal regulation might be described as presenting nationwide concern. But not every case is brought by a properly constituted group of plaintiffs that can substantiate the claim that they personally are suffering harm on a nationwide basis.

A more general form of the same objection might be that, if complete relief is already the prevailing rule for determining geographic scope, the wide divergence in current case law suggests that it is ineffective as a guiding or limiting principle. As this Article has attempted to show, however, the view that nationwide injunction cases are divergent is one that comes from focusing on public law cases. In the majority of private law cases, courts are able to routinely and consistently operationalize the complete relief principle when determining the appropriate geographic scope of injunctions.²⁷⁶ Furthermore, this Article has demonstrated that a substantial cause of the variation in public law cases is the fact that courts ignore the complete relief principle because a case is thought to be of national importance or because the court has adopted a rule in favor of nationwide relief in administrative challenges. This is not to say that the complete relief principle will not be inconsistently applied. However, courts, especially in the public law domain, have yet to focus squarely on this principle as the appropriate measure for the geographic scope of injunctions. As these courts begin to reorient their analysis and apply the rule to additional contexts, it seems likely that the expanding case law can only promote more consistent and reasoned decisionmaking.

Another objection that flows from the concern that the complete relief principle is inadequately specific is that it may just encourage more artful pleading in order to secure broader relief. Strategic plaintiffs may cobble together fifty plaintiffs from fifty states—or, better yet, one institutional plaintiff with members in fifty states—to justify a claim for nationwide relief. The assumption underlying this criticism is that nationwide injunctions should be disfavored. This Article does not share that view. It takes no position on whether nationwide injunctions, as a whole, should be more or less available; it only contends that injunctive relief should be tailored to fit the precise harms asserted by a particular plaintiff. Indeed, in some courts this rule might lead to fewer injunctions (for example, those courts in which a judge is inclined to issue a nationwide injunction because the case is an APA challenge or because it raises a matter of national concern), while in others it might lead to more injunctions (for example, those courts in which a judge refuses to issue

Court's teaching that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Yamasaki*, 442 U.S. at 702; see also *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994); *Dayton Bd. of Educ. v. Brinkman*, 433 U.S. 406, 418–20 (1977).

276. See *supra* Part II.

nationwide injunctions in the absence of a nationwide class). Moreover, the complete relief principle is no more susceptible to “artful pleading” than other procedural rules such as standing doctrine or Rule 23’s requirements for class certification. The test of a good rule cannot be whether it is impervious to creative lawyering. Rather, if plaintiffs can adequately prove to a court that there is a genuine injury nationwide, they should receive nationwide relief. Finally, a clearer standard provides defendants and nonparties better notice of when nationwide relief is a possibility and establishes a uniform ground for arguing that nationwide relief is actually unnecessary to remedy the asserted harm.

It is true that the complete relief principle will not always resolve whether a nationwide injunction is appropriate in a particular case. Take the recent litigation over the Department of Homeland Security’s memorandum deferring the deportation of unauthorized immigrants who are parents of children who are permanent residents or citizens.²⁷⁷ This case exemplifies the virtues and limits of defining injunctive scope in terms of what is required to afford complete relief to a set of plaintiffs. Despite assertions that the nature of the injunction was unprecedented,²⁷⁸ the court of appeals affirmed the order of nationwide relief for a fairly ordinary reason: It found that “there [was] a substantial likelihood that a [geographically limited] injunction would be ineffective because DAPA beneficiaries would be free to move between states.”²⁷⁹ Given the schema laid out in this Article, the Texas injunction appears to be a straightforward example of the incidental nationwide injunction.²⁸⁰ If one agrees with the district court that Texas suffers some injury from having deferred action beneficiaries within its territorial boundaries, the only way to afford *complete* relief to Texas and prevent any deferred action beneficiaries from making their way to Texas is by enjoining the grant of deferred action nationwide.²⁸¹ But this case, like other incidental nationwide injunction

277. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *aff’d per curiam* mem. by an equally divided Court, 136 S. Ct. 2271 (2016).

278. See *supra* note 2.

279. *Texas v. United States*, 787 F.3d 733, 769 (5th Cir. 2015). The court also held that a nationwide injunction advances the constitutional imperative of a “uniform rule of Naturalization.” *Id.* (emphasis omitted). However, under the complete relief view that is an irrelevant consideration.

280. See *supra* section III.C.2.

281. *Texas v. United States*, 809 F.3d at 188. This same principle has also been invoked in the litigation over the travel ban executive orders. Courts across the country have found both the first and second iteration of these orders unlawful and issued or affirmed nationwide injunctions enjoining their enforcement in whole or in part. See *Int’l Refugee Assistance Project v. Trump*, No. TDC-17-0361, 2017 WL 1018235, at *17–18 (D. Md. Mar. 16, 2017), *aff’d in part, vacated in part en banc*, 857 F.3d 554 (4th Cir. 2017); *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at *2 (W.D. Wash. Feb. 3, 2017), emergency stay denied, 847 F.3d 1151 (9th Cir. 2017). But see *Aziz v. Trump*, 234 F. Supp. 3d 724, 738 (E.D. Va. 2017) (limiting the injunction against section 3(c) of the first Executive Order to Virginia residents). These particular injunctions all invoke the complete relief principle but explain the need for nationwide relief in slightly different ways.

cases, also raises questions about the probability and magnitude of harm. How likely is it Texas will be injured? How great is the injury Texas is likely to suffer? Does the near certainty that at least one unauthorized immigrant will enter Texas justify a nationwide injunction? What about the possibility that thousands might? Of course, given the current absence of any framework for understanding nationwide injunctions, the *Texas v. United States* decision makes no effort to engage with these questions, but the complete relief principle would not automatically answer these questions.²⁸²

The hard cases, which test the outer bounds of what complete relief requires, should not cause us to abandon the rule. As the substantial body of private law cases illustrate, the rule can be consistently and robustly applied across a range of domains. Indeed, part of this Article's aim is to catalog a set of shared precedents that courts can draw on as they confront the possibility of nationwide injunctions in ever more diverse and complex scenarios. Moreover, as the geographic scope of injunctions moves from afterthought to central concern, courts will only become better able to address what it means to afford complete relief in a particular situation.

The *Washington* injunction, like the Texas DAPA injunction, cites the need for a “uniform Rule of Naturalization” and explains that limiting the injunction to particular ports of entry would afford less than complete relief to the plaintiffs. *Washington*, 2017 WL 462040, at *2 (emphasis omitted); see also *Washington*, 847 F.3d at 1166–67 (acknowledging the possibility that “a fragmented immigration policy would run afoul of the constitutional and statutory requirement for uniform immigration law and policy”); *id.* at 1167 (noting the absence of a “workable alternative form of the TRO that accounts for the nation’s multiple ports of entry and interconnected transit system and that would protect the proprietary interests of the States at issue here while nevertheless applying only within the States’ borders”).

The injunction affirmed by the en banc Fourth Circuit invoked the same interest in a uniform immigration policy but provided additional justifications for the nationwide scope of the remedy. In particular, the Fourth Circuit explained that enjoining the implementation of the Executive Order against the plaintiffs, while allowing it to be enforced against all other travelers, “would only serve to reinforce the ‘message’ that Plaintiffs, ‘are outsiders, not full members of the political community.’” *Int’l Refugee Assistance Project*, 857 F.3d at 605 (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 309 (2000)). Thus, offering something less than nationwide relief would fail to remedy completely the Establishment Clause violation that was the basis for the injunction in the first place. *Id.*

282. How these questions are ultimately resolved is beyond the scope of this Article. However, as courts and scholars engage in the iterative process of evaluating what constitutes complete relief across different cases, one can imagine developing standards similar to those that govern whether an injury is sufficiently nonconjectural to support standing or whether claims are sufficiently common to support class certification. *Cf. Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (finding insufficient commonality to support class certification in an employment discrimination suit “[b]ecause [the plaintiffs] provide[d] no convincing proof of a companywide discriminatory pay and promotion policy”); *City of Los Angeles v. Lyons*, 461 U.S. 95, 108–09 (1983) (holding that the plaintiff lacked standing to seek injunctive relief against a police officer’s unconstitutional use of force because it was “no more than speculation to assert . . . that [the plaintiff] himself will again be involved in one of those unfortunate instances”).

CONCLUSION

Whatever one's view on the merits of a particular nationwide injunction, there is no denying that this exercise of judicial authority is an increasingly prominent feature of our legal system. As major governmental endeavors grind to a halt across the country on the rulings of individual district court judges, scholars, citizens, and fellow courts are left to wonder how best to understand these expansive remedies. What quickly becomes apparent is that we lack a shared language for describing and debating the nationwide injunction. This Article set out to remedy that gap by developing the first comprehensive account of when courts issue nationwide injunctions.

The few prior attempts to study iterations of the nationwide injunction have focused primarily on cases involving the federal government and quickly concluded that this domain was one of unbridled judicial discretion.²⁸³ A broader view suggests, however, that there is actually some method to the madness. A closer examination of cases involving only private parties illustrates that courts routinely define the geographic scope of a remedy according to the principle that an injunction should be no broader than necessary to afford complete relief to the plaintiffs. While this principle is applied across a diverse array of contexts, the practical effect is that nationwide injunctions ordinarily issue only when a nationwide harm can be shown—whether or not the plaintiffs constitute a nationwide class—or when affording an individual plaintiff complete relief incidentally requires a nationwide remedy. Admittedly, when the federal government is reintroduced as a party, the complete relief principle loses some of its explanatory power. There are cases in which courts faithfully limit an injunction according to the demands of complete relief, but there are also deviations. Nonetheless, the complete relief principle provides a useful mechanism for organizing and contextualizing both private and public cases.

In an effort to regularize this area of law, this Article advocates for codifying the complete relief principle as a formal requirement for injunctive relief under Rule 65. Adopting this revision would not only demand that courts provide more reasoned explanations for the particular geographic scope of an injunction but also discourage the use of bright-line proxies that result in over- or underinclusive remedies. Of course, the complete relief principle will not resolve every outstanding concern about injunctive scope. Other traditional equitable concerns, such as whether a remedy is warranted by the balance of hardships between the parties or the public interest is disserved by the issuance of the injunction,²⁸⁴ will

283. See *supra* note 18 and accompanying text.

284. The merits of these constraints and guidance on how they should operate are extensively discussed in the literature. See, e.g., Mark P. Gergen et. al., *The Supreme Court's Accidental Revolution? The Test for Permanent Injunctions*, 112 *Colum. L. Rev.* 203, 226–32 (2012); Zygmont J.B. Plater, *Statutory Violations and Equitable Discretion*, 70 *Calif. L. Rev.* 524, 535–45 (1982).

continue to influence whether a particular injunction is justified. But the complete relief principle should serve as a reminder that equitable relief cannot be justified if it cannot properly account for the demands on the plaintiff's side of the ledger.

