

Supreme Court to weigh orders halting Trump's birthright citizenship ban

The Trump administration asked the justices to narrow or limit nationwide injunctions that stopped its birthright citizenship ban while litigation continues.

By Ann E. Marimow
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The Supreme Court will hold a special session Thursday morning to review a case involving President Donald Trump's effort to ban automatic U.S. citizenship for children born to undocumented immigrants and foreign visitors.

It is the first time the justices are hearing arguments related to one of the new administration's initiatives and the last scheduled argument of the court's term.

The question before the justices does not directly address the constitutionality of the president's birthright citizenship order, which opponents say is at odds with the 14th Amendment, past court rulings and the nation's history.

Instead, the Trump administration has asked the justices to lift or narrow orders imposed by three lower-court judges that have blocked his policy from taking effect while its legality is tested in court. Presidents in both parties, members of Congress and several Supreme Court justices have long criticized such nationwide injunctions for putting too much power in the hands of individual judges to halt a president's agenda.

Twenty-two states and D.C. have joined the lawsuits on birthright citizenship in which judges have ruled against the Trump administration. If the Supreme Court sides with the president, it could clear the way for the administration to begin denying citizenship to new babies in the rest of the states if neither parent is a U.S. citizen or legal permanent resident. Here's what to know about the case:

What is the court being asked to decide?

The Justice Department told the court that sweeping orders thwarting the president's agenda have "reached epidemic proportions," with 39 nationwide injunctions issued on a variety of policies since Trump returned to office.

The administration wants the justices to limit the scope of the lower-court orders on birthright citizenship to the individual organizations, pregnant women or states behind the lawsuits.

"The Executive Branch cannot properly perform its functions if any judge anywhere can enjoin every presidential action everywhere," the office of Solicitor General D. John Sauer told the justices in [a court filing](#).

Why do nationwide injunctions matter?

The broad orders temporarily halt a policy or regulation while litigation is underway if a judge believes the action may be unconstitutional or that implementing it would cause immediate harm.

Nationwide injunctions were rarely issued before the 1960s. Their use has risen dramatically as presidents — frustrated by an often polarized and deadlocked Congress — increasingly rely on executive orders to implement new policies.

Federal judges issued six injunctions against the policies of President George W. Bush, 12 against President Barack Obama's initiatives and 64 against Trump's agenda in his first term, according to data compiled by the [Harvard Law Review](#). Biden had 14 injunctions issued against his priorities.

The injunctions put pressure on the justices to quickly respond to a flood of requests from the administration seeking emergency relief. The Supreme Court's decision to take up the administration's request in this case, and to take the unusual step of adding a new case to its calendar late in the term, shows the justices are giving great weight to the matter.

Legal basis for birthright citizenship

In the background of the debate over nationwide injunctions on Thursday will be the question of whether Trump can legally deny automatic citizenship to

babies born in the United States when neither parent is a citizen or a permanent legal resident.

The 14th Amendment, adopted after the Civil War, established citizenship for freed Black Americans as well as “all persons born or naturalized in the United States, and subject to the jurisdiction thereof.” The citizenship clause reversed the Supreme Court’s infamous decision in *Dred Scott v. Sandford*, which had denied citizenship to Black Americans.

Trump and his allies say they have the authority to ban birthright citizenship because unauthorized immigrants are in the country without permanent legal status and, therefore, are not “subject to the jurisdiction” of the U.S. government.

But most legal scholars, as well as the Democratic-led states challenging the policy, say Trump’s argument would require a reinterpretation of the 14th Amendment — and conflicts with settled Supreme Court precedent that protects citizenship for most everyone born on U.S. soil, except for the children of foreign diplomats.

Prior Supreme Court ruling on birthright citizenship

The Supreme Court upheld the guarantee of birthright citizenship in 1898, when it ruled that Wong Kim Ark, a child born in San Francisco, was a citizen even though his immigrant parents were “subjects of the Emperor of China” and ineligible for naturalization.

“To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage who have always been considered and treated as citizens of the United States,” the court said.

What justices have said about nationwide injunctions

Several justices have raised concerns about the use of universal orders by lower-court judges and the impact they have when the Supreme Court is asked to take sides with limited information on a compressed timeline.

When lower courts blocked Trump in his first term from barring travel to the United States for foreigners from mostly Muslim nations, Justice Clarence Thomas, in a concurring opinion, called nationwide injunctions “legally and historically dubious.”

In a case involving Idaho’s ban on gender-transition medical care for minors, Justice Neil M. Gorsuch, joined by Thomas and Justice Samuel A. Alito Jr., said universal injunctions “circumvent normal judicial processes and ‘tend to force judges into making rushed, high-stakes, low-information decisions’ at all levels.”

Justice Brett M. Kavanaugh, joined by Justice Amy Coney Barrett, suggested in a separate opinion in the Idaho case that “prohibiting nationwide or statewide injunctions may turn out to be the right rule as a matter of law regardless of its impact on this Court’s emergency docket.”

In a 2022 appearance at Northwestern Law School, Justice Elena Kagan said such concerns were bipartisan, with “no political tilt to it.”

“It just can’t be right that one district judge can stop a nationwide policy in its tracks and leave it stopped for the years that it takes to go through the normal process,” she said.

Arguments for nationwide injunctions

Those suing over the ban on birthright citizenship warn of chaos, confusion and disparate state-by-state policies if the Supreme Court allows the Trump administration to begin banning birthright citizenship in more than half the country. An infant born to noncitizen parents in New Jersey, for instance, would be a U.S. citizen, because that state joined one of the lawsuits challenging the ban.

But the same child born in Tennessee, which did not join the lawsuits, would be a deportable noncitizen.

Nationwide injunctions are an efficient way to halt potentially illegal government action and to avoid multiple parties filing overlapping lawsuits against policies with national implications such as citizenship — “an area in which nationwide consistency is vitally important,” said the attorneys representing the Asylum Seeker Advocacy Project and CASA, immigrant advocacy groups with more than 800,000 members in 50 states.

“Whether a child is a citizen of our Nation should not depend on the state where she is born or the associations her parents have joined,” the lawyers told the justices in a court filing. “The only workable way to ensure that the government respects the constitutionally guaranteed citizenship of all children born to those members during the pendency of this litigation is through a universal injunction.”

What happens next?

The Supreme Court is expected to issue a ruling before its term ends in late June or early July, and could set new rules for when nationwide injunctions are permissible and when they are not.

If the court narrows the injunctions blocking the birthright citizenship ban to the organizations and states behind the challenge, it could clear the way for the administration to begin implementing its policy in more than half the states. Advocates probably would file new challenges in those states to try to restrict the policy while litigation continues over the constitutionality of banning birthright citizenship.

A court decision limiting or invalidating the use of nationwide injunctions more broadly could also call into question orders issued in other cases halting Trump’s policies, such as those blocking mass layoffs of federal workers, the elimination of federal funding for gender-transition care for minors and requiring proof of citizenship to vote.