

The Muñoz case: Biden administration joins forces with far-right Supreme Court majority to dismantle democratic rights

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In a 6-3 decision Friday, the US Supreme Court upheld the Biden administration's assertion of unrestricted powers to separate married US citizens from their immigrant spouses. The decision prepares the way for a vast escalation of attacks on basic rights.

What was done to Sandra Muñoz and Luis Asencio-Cordero is one of countless injustices perpetrated by US immigration authorities on a daily basis.

Muñoz, a US citizen, married Asencio-Cordero, originally from El Salvador, in 2010. Because Asencio-Cordero had originally entered the US without documents in 2005, the couple was required to undergo a protracted and arduous process for him to acquire lawful immigration status.

Muñoz and her husband met all the deadlines and checked all of the boxes, including the degrading requirement that they prove that their marriage was “bona fide” or genuine. However, as a condition for obtaining a visa, the government required Asencio-Cordero to travel to El Salvador for an interview in 2015. When he did, authorities refused to allow him to return—and refused to tell the couple why.

After years of bitterly contested litigation, the government was finally forced to state a reason for denying Asencio-Cordero a visa. His tattoos, officials claimed, were gang-related. But as Muñoz and her attorneys proved in court, her husband was never in a gang, he has no criminal record, and his tattoos (including Catholic religious imagery and a portrait of Sigmund Freud) have no plausible connection to anything illegal.

The government's position remained unchanged throughout the Obama, Trump and Biden administrations. Asencio-Cordero has been forced to remain in El Salvador ever since, unable to live with his wife or to be a part of her daily life. It was not until 2022 that the Ninth Circuit Court of Appeals finally ruled that Muñoz's rights had been violated by the government's refusal to give any reasons for the visa denial for so long.

If the Biden administration had taken no action at that point, the family could have been reunited by now. Instead, the Biden administration took the vindictive step of appealing the Ninth Circuit decision in order to keep the family separated and to prevent any diminution of its allegedly unchallengeable powers over immigration. The Biden administration's petition to the Supreme Court took the most authoritarian positions possible, which the Supreme Court ratified in its decision Friday.

The Muñoz case is significant because it features the Biden administration in an open alliance with the Supreme Court's Republican-aligned majority. The result of this unholy alliance is a decision so reactionary, both in its immediate content and its implications, that it was the subject of a dissenting opinion by the three Democratic-aligned justices in the minority, including Biden's own Supreme Court appointee Ketanji Brown Jackson.

Many prominent reports in the US media following the decision Friday downplayed its significance, framing the case as a question of “tattoos” or suggesting that Asencio-Cordero was, after all, a gang member. Contrary to these misleading reports, the case was about whether the government had to give Muñoz and her husband any reason *at all* for denying his visa. The *New York Times*, a mouthpiece for the Biden administration, did not prominently report the decision at all, likely because it would conflict with its efforts to promote Biden's recent electoral maneuver promising a limited pathway to legal status for some immigrant spouses.

The more openly fascist wing of the American political establishment, spearheaded by Trump and the Republicans, responded to the ruling with gloating, lying and racist incitement, celebrating the exclusion of an “MS-13 gang member” from the country.

The alliance between the Biden administration and the far-right Supreme Court majority is another manifestation of the effective coalition that now exists between the Biden administration and the Republican Party in Congress, based on a joint program of war abroad and attacks on democratic rights at home. Specifically, this includes massive military spending for the US-NATO war in Ukraine, preparations for war with China, full backing for the Israeli genocide in Gaza, a joint assault on the rights of immigrants and refugees and the suppression of strikes and protests inside the US.

The basic argument advanced by the Supreme Court's decision in the Muñoz case is that all rights that are not specifically enumerated in the Constitution or Bill of Rights, and which, according to the far-right majority, are not otherwise “deeply rooted” in national tradition, have no constitutional protection. Christian fundamentalist Justice Amy Coney Barrett, writing for the majority, concluded on this basis that “a citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country.”

Justice Sonia Sotomayor, writing for the three dissenters, countered with a citation to *Obergefell v. Hodges*, the 2015 ruling that protects same-sex marriages, which states, “The right to marry is fundamental as a matter of history and tradition.” Even more importantly, Sotomayor observed, the majority’s tendentious logic is a departure from decades of precedent, clearing a path for a vast expansion of efforts to weaken or abolish other basic democratic protections.

“The opinion’s rationale—that fundamental rights do not exist unless enumerated textually in the Constitution—poses an imminent threat to the right to marriage, to privacy, to vote, to contraception, and much more,” said attorney Eric Lee, who represented Muñoz at oral arguments before the Supreme Court in April, in response to the ruling.

Lee continued:

The opinion ominously relies on the explicitly racist policy of Chinese Exclusion and on the National Origins Quota Acts to justify its absurd conclusion that a citizen’s right to marriage does not include the right to live with their spouse.

Indeed, wherever anything progressive in American social and political development has found reflection in a legal reform, that reform is currently under attack. Today marks exactly two years since the Supreme Court’s decision abolishing the right to abortion, one of a string of reactionary rulings attacking democratic rights across the board.

This string of rulings coincides with a historic corruption scandal on the Supreme Court. More recently, Justice Samuel Alito was exposed for flying political flags at his home associated with the January 6, 2021 coup attempt, a conspiracy in which Justice Clarence Thomas’s wife Virginia “Ginni” Thomas was implicated at the highest level.

But as the Muñoz case makes clear, the rampage against basic rights is not just emanating from the fascist Republican wing of the political establishment. Socialist Equality Party presidential candidate Joseph Kishore, the only candidate who signed a petition demanding Asencio-Cordero be brought home, stated in a response to the ruling on X:

The Democrats always argue that it is necessary to vote for them in every election because of the importance of Supreme Court appointments. But the Muñoz case demonstrates that the Democrats rely on the fascist judges to back their joint attack on democratic rights.

For all of the official political rhetoric about “freedom and democracy,” the staggeringly undemocratic character of the American political setup is becoming more and more apparent. All state power is in the hands of a narrow set of grotesquely wealthy individuals and their agents and accomplices. Insulated from

democratic accountability by the Electoral College and ballot access laws that are practically impossible to satisfy, the ruling class is doing everything in its power to prevent popular opposition to its rule from expressing itself.

Every institution of the state is infected with the dictatorial consequences of endless war and extreme levels of social inequality, from the Congress of millionaires, to the massive military-police apparatus, to the executive presidency. The latter was the focus of an attempted fascist coup just three-and-a-half years ago, spearheaded by the presumptive nominee of the Republican Party in the 2024 elections, Donald Trump. Meanwhile, Biden is focused on backing a genocide in Gaza and escalating the US-NATO war with Russia in Ukraine, with the most catastrophic consequences, entirely behind the backs of the population.

The Supreme Court, the branch of government most insulated from democratic accountability, is stacked with far-right political operatives. All nine justices are appointed for life, and on the present Court most were appointed by presidents who lost the popular vote. There is no appeal from their decisions, and as recent experience has made clear, there are no functioning mechanisms for addressing the justices’ rampant corruption or their refusal to adhere to logic or established precedent.

In 1857, shortly before the outbreak of the Civil War, the Supreme Court issued its infamous decision in the Dred Scott case. Dred Scott, a slave, had sued for his freedom on the grounds that he had lived in areas where slavery was illegal. Out of all the possible grounds for deciding the case, the Supreme Court chose the most reactionary grounds imaginable, declaring that Scott could never be a citizen because of his African ancestry, that he had no constitutional rights, and moreover that Congress had no right to restrict slavery in the territories.

The Dred Scott decision was not overturned by any act of self-correction on the part of the Supreme Court. It was “overruled” by a revolutionary struggle that mobilized masses of people, which culminated in the abolition of slavery and the emancipation of 3.5 million human beings.

The constituency for the defense of democratic rights is the working class, in the US and throughout the world. It is not through appeals to a corrupt and discredited political system, but through the development of the class struggle that authoritarianism and dictatorship will and must be opposed.

The logic of these struggles is the conquest of power by the working class, the expropriation of the oligarchs, the creation of genuine institutions of participatory democracy, and the establishment democratic control over social and economic life. For these reasons, the defense of democratic rights is inseparable from the struggle for socialism.



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