The legal and political issues in the Supreme Court hearing on Trump's attack on birthright citizenship

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On May 15, 2025, the US Supreme Court heard oral arguments in *Trump v. CASA*, a case that poses an extraordinary threat to democratic rights, as the Trump administration asserts essentially unlimited executive power to override laws and judicial rulings.

The case arises from an executive order signed by Trump on his first day back in office which seeks to end birthright citizenship in open defiance of the Fourteenth Amendment. That Amendment was ratified after the Civil War and drafted to negate the notorious 1857 Supreme Court decision in *Dred Scott v. Sandford*, which held that individuals of African ancestry could never become citizens. It guarantees citizenship to all persons born on US soil (excluding only children of diplomats).

The birthright citizenship clause is closely tied to the due process and equal protection clauses, which protect basic democratic principles. Together, they ensure that citizenship status and fundamental democratic rights are both universal and protected against encroachment by both the federal and state governments.

Thaddeus Stevens, the radical Republican, explained that the Fourteenth Amendment

> allows Congress to correct the unjust legislation of the states, so far that the law which operates upon one man shall operate equally upon all.

Opposition to the Amendment was rooted in overtly anti-democratic views. Representative Andrew Rogers of New Jersey argued it would deprive the government of the power to decide who deserved the "privileges and immunities" of citizenship, insisting that voting, marriage and even the right to hold office were not in fact rights but "privileges"—subject to arbitrary government approval or denial.

These basic issues are at the center of the Supreme Court case heard yesterday. The specific issue being argued was not birthright citizenship itself. Rather, the Trump administration asked the Supreme Court to declare that federal court injunctions against its executive orders cannot apply beyond the individuals or states that filed the lawsuits.

This case has implications that go beyond the executive order on birthright citizenship. There have been dozens of nationwide injunctions from federal district courts since the beginning of Trump's second term, a reflection of the wholesale and massive illegality of the government.

In response to these rulings, the Trump administration is arguing that courts should only "shield" the named plaintiffs in a lawsuit. This would mean that even when an executive order attacking a fundamental right is ruled unconstitutional, it could still be enforced across most of the country.

In Wednesday's hearing, Solicitor General D. John Sauer contended that nationwide injunctions have no basis in the Constitution and restrict the president's constitutional duty to "faithfully execute" the law. The administration's legal arguments, advanced with a tone of cynical demagogy, rest on the claim that "one unelected judge" should not have the power to block presidential actions nationwide.

First, one should make the point that the administration is demanding that five unelected justices on the Supreme Court should have the right to abolish democratic rights for an entire country. Its intention is not to ensure the "faithful execution" of the law but to allow the president to "faithfully" violate it.

More fundamentally, the administration is seeking the effective elimination of judicial oversight over executive power. Under the framework being advanced by Trump's attorneys, the president could declare slavery legal by executive order, and even if a federal judge ruled it unconstitutional, that order would remain in effect everywhere outside that particular courtroom's jurisdiction.

That is, the executive could issue decrees with nationwide impact, while any opposition would be forced to fight back

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county by county, state by state, plaintiff by plaintiff. Challenges, moreover, would be confined to those with the financial means to hire expensive federal litigators or the wherewithal to seek out pro bono representation from law firms that have not capitulated to Trump. Rights would become temporary "privileges."

Justice Elena Kagan stated during the arguments that limiting injunctions would make fundamental rights "a matter of happenstance," depending on wealth or geography. Justice Ketanji Brown Jackson responded to Sauer's argument by noting:

> It's a very common concept for the court to enjoin a defendant from doing particular unlawful behavior. What you're now asking us to do is to require that the court have an additional limitation in its order that says you only have to stop doing this with respect to the plaintiff.

Trump v. CASA is not just about immigrant rights or the Fourteenth Amendment. It is a direct assault on the concept of judicial review. Justice John Marshall famously declared in *Marbury v. Madison:*

> It is emphatically the province and duty of the judicial department to say what the law is.

The Trump administration is attacking this fundamental axiom essential to the separation of powers, which, in the minds of the American revolutionaries, above all aimed at restricting the power of the executive.

The Trump administration has repeatedly treated adverse court rulings as optional, responding with threats and refusals. Now it seeks to legalize this practice by stripping courts of the power to halt executive overreach. Even were a federal circuit court of appeals to strike down such a policy, Sauer said during arguments that the administration's policy is "generally" to comply.

Sauer's position before the Supreme Court, only translated into legal mumbo jumbo what Trump declared in February:

> He who saves his country does not violate any laws.

The administration is counting on the gang of fascists on the Supreme Court to sanction its assault on democratic rights. The majority last year ruled, in *Trump v. United States*, that the president is immune from criminal prosecution for any action taken under the cover of the office.

Regardless of what the court decides, however, the Trump administration is proceeding with the erection of a dictatorship. The same legal theories now used to attack immigrants can be turned against any expression of political dissent. Protests could be outlawed, free speech curtailed and political opponents jailed—all justified under executive "emergency powers" no longer subject to nationwide judicial restraint.

Trump, who represents the most grotesque and rapacious layers of the financial oligarchy, is constructing a regime of permanent, unaccountable executive rule. His social agenda of mass deportations, state violence, censorship, war and the destruction of social programs requires the destruction of democratic rights and the consolidation of all power in the executive.

The Democratic Party has paved the way. Despite cosmetic differences, the Democrats refuse to mount a serious defense of democratic rights. The attack on birthright citizenship began in Trump's first term and continued unopposed under Biden.

Only the working class can stop this descent into fascist barbarism. The defense of democratic rights cannot be entrusted to the courts, institutions or political parties that serve the capitalist class. It must be rooted in the independent, mass mobilization of workers, based on a socialist program.

The Socialist Equality Party insists that the fight against dictatorship is inseparable from the struggle against capitalism itself. We call on workers, students and all defenders of democratic rights to draw the necessary conclusions. Build a mass revolutionary movement to abolish capitalist rule and secure the social and democratic rights of the working class.

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