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GENERAL

Clarity from Trump v. CASA, Inc.? More Like Shadows Amid Gaslighting

09.01.25 | Linda J. Rosenthal, JD

It's been two months since *Trump v. CASA, Inc.,* the high-profile Supreme Court ruling on June 27, 2025. It arose from multiple challenges to Executive Order No. 10460: *Protecting the Meaning and Value of American Citizenship* (birthright-citizenship issue), released on Inauguration Day.

There are important follow-up developments to report; that is, how the lower courts dealt with the injunctive-relief requests on remand. There are generally positive results, but it's a developing story that we'll tackle later in the week. First, though, there are serious concerns about the 6-3 majority ruling itself. Making sense of it is no easy task. See, e.g., *Searching for Clarity in Trump v. CASA, Inc.* (August 22, 2025) *FPLG Blog; The Nationwide-Injunctions Ban: Is Clarity Possible?* (August 15, 2025) *FPLG Blog*.

The high-court ruling on the final day of the October 2024 Term raises more questions than answers for these three cases (consolidated in the high court only for decision) going forward on remand in the lower courts. It's also of great interest in connection with many other lawsuits currently in the federal-court pipeline or soon-to-be.

Among the major issues is the process by which this matter made it to the high court: (1) on such an accelerated path at the sole request of the government-defendants; and (2) and within the parameters specified by them.

Several groups of plaintiffs had filed lawsuits in Maryland, Massachusetts and the Eastern District of Washington within twenty-four hours of the president issuing EO No. 14160. By early February 2025, there were three "nationwide" preliminary injunctions in place, the plaintiffs having established their

entitlement to this 'extraordinary' interim relief to prevent 'irreparable harm.'"

"Three appellate panels around the U.S. 'quickly and forcefully affirmed the trial judges' rulings. Routine motions for stays of the preliminary injunctions were easily brushed off at both the trial and appellate levels. By mid-February, these early matters were settled, and the cases were ready to proceed to the merits in the trial courts.

But three weeks later – (where was the "emergency"?) – "… in early March, the White House gave new orders to the acting Solicitor General, Sarah Harris, to steer these cases to the Supreme Court's 'shadow docket.' And that's the point where this litigation went entirely off the rails…."

There have been problems and controversies surrounding Supreme Court practice for at least a few years, but they have accelerated dramatically in the first six months of the new administration in Washington, D.C. Concerns previously voiced quietly by court watchers and experts are now being raised more loudly and insistently.

Conversations about "shadow dockets" and "gaslighting" are moving – as they should be – from whispers on the edges of our national legal discourse out into the open. The most important voices are the "Minority 3": Sotomayor, Kagan, and Jackson. They often read their (quite long) dissenting opinions in open court on rulings days so that no one can miss their brilliantly reasoned and expressed critiques of the majority opinions.

Did you know that, by the summer of 2024, after the end of "one of the most consequential and least constitutional terms in the Supreme Court's history…," Justice Kentanji Brown Jackson had already been dubbed "the court's most junior justice but its senior gaslighting fighter." See *The Supreme Court Is Gaslighting Us All* (*Opinion*) (July 12, 2024), Jesse Wegman, editorial board member, *The New York Times*.

I didn't know that until a few days ago.

It's past time we all paid more attention. Let's begin with a quick sample of the emerging literature, starting with "gaslighting" and moving on to "shadow dockets" that are also sometimes called "secret dockets" or other similar names.

Gaslighting

Most of us nowadays have a general sense of the meaning of the term "gaslighting." It's most familiar in the context of power plays in interpersonal relations.

It's not a very old word, though. It was introduced via a popular classic 1944 movie – a psychological thriller called "Gaslight" – starring Ingrid Bergman, Charles Boyer, and a 17-year-old Angela Lansbury in her first film role as a saucy housemaid. [See official 1944 trailer: https://youtu.be/0ToLfQU2xmg]

Set in 1875 London, the story is about a "plot by a husband to steal jewels that were bequeathed to his young wife." It "includes persistent manipulation and lies, in an effort to make his wife think that she has descended into madness; he hopes that she will be institutionalized so that he will have unfettered access to the jewels." Part of the story line involves gas lights in the couple's home which flicker menacingly whenever he goes out alone. When the wife mentions her fears, he tells her

that it's only her imagination as are the many other oddities happening frequently.

In *The Supreme Court's Gaslight Docket* June 28, 2024) Professor Kyle C. Velte, University of Kansas School of Law, 97 Temple L.Rev. 394, explains: "The term "gaslighting" became part of the American lexicon in 1944, with the release" of the movie. The term "… has migrated from the realm of interpersonal relationships to other fields including philosophy, politics, and our legal system.

"Because gaslighting has epistemic dimensions—knowledge production and gaslighting are connected—gaslighters instill epistemic doubt in their victims as a way to have the gaslighter's production of knowledge 'count and to dismiss as unfounded other understandings of the world.'" Professor Velte elaborates: "The U.S. Supreme Court is an especially powerful 'knower'—indeed, it is given the position of ultimate 'knower' of the meaning and application of the Constitution. With each case it decides, the Court produces legal knowledge in the form of rules that must be followed in similar subsequent cases."

The New York Times's Jesse Wegman, in the article mentioned above – *The Supreme Court Is Gaslighting Us All* (*Opinion*) (July 12, 2024) – writes: It's "hard to ignore one particularly offensive trend: the right-wing justices' repeated and patronizing attempts to minimize the importance of their unprecedented decisions …. 'There's nothing to see here, they regularly seem to say; everyone who is upset at their decisions is being hysterical and should just calm down….'"

See also, for instance: *A Federal Judge Just Called Out the Trump Administration for Lying to the Supreme Court*: SCOTUS, again does not seem to care (August 1, 2025, 1:54 pm EDT) Mark Joseph Stern, *slate.com* ["Lower court judges have consistently pushed back against this gaslighting. The Supreme Court, by contrast, seems to welcome it."]

In *Trump v. CASA, Inc*., the majority and concurring opinions, are prime examples of gaslighting, complete with self-righteous smugness that is entirely unwarranted. Indeed, the ruling is an inscrutable mess, according to many observers including constitutional experts. See, for example, *Trump v. CASA and the future of the universal injunction* (July 2, 2025) Professor Mila Sohoni, *scotusblog.com.* "The best that can be said for Trump v. CASA is that it could have been far worse. Its methodology and conclusions are myopic and wrong, and it is especially unwelcome during a period in which each passing day seems to bring new incursions by the executive branch upon individual rights, the separation of powers, federalism, and the rule of law."

Similarly, see Professor Carolyn Shapiro in *Whose Irreparable Harm?* (July 10, 2025) *scotusblog.com* :"Alarmingly, the CASA opinion seems to confirm what Justice Ketanji Brown Jackson has been warning: that the court is holding the government to a different, and much more lenient, standard from all other litigants (including past administrations) who seek a stay of an injunction or judgment, whose applications are routinely denied by the court."

Of course, the best take down came from Justice Sonia Sotomayor. In her superb dissent, she ripped apart the majority's opinions apart – piece by piece.

Shadow Dockets

In *Deep in the Shadows?: The Facts About the Emergency Docket* (April 30, 2023), Pablo Das et al, *Virginia L.Rev.,* the authors explain: "The past few years have witnessed a particular accusation leveled repeatedly and loudly at the U.S. Supreme Court's conservative supermajority: that they are using the Court's emergency (or pejoratively, "shadow") docket to issue highly consequential decisions in a sneaky, secretive fashion."

"The emergency docket," they note, "goes by various names, including the 'non-merits docket,' the 'procedural docket,' and the 'shadow docket.' Credit for originating the term 'shadow docket" is generally given to an article by University of Chicago Law Professor Will Baude: *Foreword: The Supreme Court's Shadow Docket*, 9 N.Y.U. J.L. & Liberty 1,5 (2015).

Notably, in a case like *Trump v. CASA, Inc.*, the high-profile proceedings were not in secret and the result was certainly not limited to a brief order without an opinion or explanation. (The combined opinions are scores and scores of pages long. And almost all of the justices took a crack at explaining their positions.) Nevertheless, there are significant questions including, but not limited to, how and why this case was selected as a test of "nationwide injunctions" when the underlying merits issue must surely go against the president. The Executive Order is "flagrantly" unconstitutional.

See also, for example, more recent commentary:

- *Beware the Supreme Court's 'Shadow Docket'* (June 2, 2025) Bill Blum, Esq., for Truth Dig, *The Constitutionality Accountability Center* ["A secretive set of emergency rulings is expanding presidential power and undermining precedent…; a rapidly expanding and highly controversial set of truncated decisions known as the 'shadow docket'"]
- Supreme Court Must Explain Why It Keeps Ruling in Trump's Favor [August 14, 2025) Alicia Bannon, Esq., Director, Judiciary Program, Brennan Center for Justice ["The Supreme Court's so-called shadow docket for emergency motions has played an outsized role in legal challenges against the new Trump administration. On issues ranging from dismantling the Department of Education to banning transgender people from serving in the military, federal trial judges from across the ideological spectrum have repeatedly blocked actions by the administration, only for the Supreme Court to halt those rulings with little or no explanation."]
- *The justices have the easiest job in the judiciary* (August 21, 2025) Professor Rory Little, scotusblog.org ["…There has been a record-setting increase in cases on the court's "emergency" or "short order" docket this year; and of the critique that the court is using that too-fast, un-argued, and lightly briefed mechanism to decide important merit-based questions. This too is a choice of the justices themselves. Traditionally, the court denied virtually all interlocutory efforts to stop lower court merits proceedings, so much so that – with the exception of death penalty cases – it was viewed as a waste of time to even try…."

Conclusion

Lots to discuss on these topics, as applied to the "birthright-citizenship" case as well as other important litigation against the administration.

Stay tuned.

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[Note: 9/3/25]:

For a perfect example of the “secret docket” and “gaslighting” colliding this year to create havoc for lower courts, see *Judge Apologizes to Conservative Justices in Case Over N.I.H. Cut*s (September 2, 2029), Zach Montague, *The New York Times*.

A few weeks ago, the high court overturned a June 2025 ruling by Judge William C. Young (D. MA) in which the Reagan appointee had – with particularly harsh commentary – blocked the Trump administration’s order to slash NIH funding.

Justices Kavanaugh and Gorsuch then slammed Judge Young: “Lower-court judges may sometimes disagree with this Court’s decisions, but they are never free to defy them,” adding: “When this court issues a decision, it constitutes a precedent that commands respect in lower courts.”

Yesterday, Judge Young issued an “apology” from the bench, saying he “ … had not realized he was expected to rely on a slim three-page order issued with minimal legal reasoning in April to his case dealing with a different agency.”

“Despite Tuesday’s display of contrition, Judge Young, 84, who was confirmed as a federal judge before either of the justices who had scolded him started law school, said the justices’ rebuke was like nothing he had seen in nearly five decades as a judge.”