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Preview of Upcoming Nationwide-Injunction Oral Argument

05.09.25 | Linda J. Rosenthal, JD

By the middle of March 2025, President Donald Trump and his administration couldn't help but notice the steady stream of preliminary-injunction rulings – many nationwide in scope – that were gumming up the progress of more than a few of his "Shock and Awe 2.0" executive orders.

He was particularly miffed at the three (parallel) federal district court rulings from Massachusetts, Washington State, and Maryland that had preliminarily enjoined one of his first-day favorites: his attempt to curb birthright citizenship. No matter that the presidential directive was blatantly and unmistakably unconstitutional under the clear language of the Fourteenth Amendment and 150 years of jurisprudence. As Judge John Coughenour, a Reagan appointee who was the first judge to block the order, said from the bench, "I've been on the bench for over four decades, I can't remember another case where the question presented is as clear as this one is."

When three appellate courts – the First, Fourth, and Ninth Circuits – rapidly affirmed these nationwide bans, the president said "enough is enough." He asked the United States Supreme Court to help him out with a "modest request": "…[W]hile the parties litigate weighty merits questions, the Court should "restrict the scope" of multiple preliminary injunctions that 'purpor[t] to cover every person * * * in the country.'" *Application for a Partial Stay of the Injunctions Issued by the United States District Court of Maryland,* Supreme Court docket No. 24A884 [Parallel stay applications were filed for the additional two injunctions.]

See *Trump asks Supreme Court to curb judges' power to block policies nationwide* (updated March 13, 2025, 6:26 pm) Josh Gerstein, *politico.com* ["President Donald Trump is asking the Supreme

Court to eliminate a key tool that lower courts have used to block various aspects of his agenda….[He wants the justices] to rein in or shelve three nationwide injunctions lower-court judges have issued against his bid to end birthright citizenship. But his request could have repercussions far beyond the debate over the controversial citizenship plan."]

Developments in Response

The state plaintiffs in the Washington litigation (in a brief adopted by plaintiffs in the other two cases) wrote: "Being directed to follow the law as it has been universally understood for over 125 years is not an emergency warranting the extraordinary remedy of a stay. This Court should deny the federal government's request…."] *States of Washington, Arizona, Illinois, and Oregon's Response to the Application for Partial Stay of the Injunction* (April 4, 2025) Supreme Court docket No. 24A885.

The plaintiffs argue: "The federal government … contends that nationwide injunctions have 'reached epidemic proportions since the start of the current Administration.' But that's not an argument about nationwide injunctions being improper. The number of recent injunctions simply reflects the massive disruption caused by the unprecedented nature and scope of the President's initial orders…."]

Within two weeks of the Trump administration's request, there was a development from the United States Supreme Court. In a "terse order" dated April 17, 2025, the Chief Justice scheduled an oral argument for May 15, 2025, for the three (now parallel but consolidated) stay requests. See *Supreme Court to hear arguments on Trump's bid to start implementing his plan to end birthright citizenship* (April 17, 2025, 3:27 p*m* EDT) Erica Orden, *politico.com.* ["The court will consider a technical issue with potentially momentous consequences: the authority of lower-court judges to issue broad injunctions that block a president's policies nationwide….]

This is an extraordinary turn of events, according to court watchers.

"For only the fourth time since 1971, the United States Supreme Court will hold an emergency oral argument on rulings from 3 circuit courts of appeal that all agree that Donald Trump's January 20th executive order is attempting to unconstitutionally rewrite (actually, eliminate to some degree) the Fourteenth Amendment's sweeping right to birthright citizenship."

In *Four questions in the Supreme Court arguments in birthright citizenship cases* (April 30, 2025) *CNN, Georgetown Law professor Steve Vladeck* explains, "the Supreme Court will hear oral arguments on May 15 in three cases challenging an executive order President Donald Trump signed on January 20 purporting to limit who is entitled to "birthright citizenship," i.e., who automatically becomes a US citizen if they are born on US soil."

"The argument is not," he emphasizes, "formally about whether Trump's policy is constitutional, but is, instead, focused on a technical question about the injunctions that three different lower courts issued to block the policy from taking effect."

Nevertheless, how the court rules "…will have a lot to say about whether and to what extent the policy is allowed to go into effect. While extraordinarily significant, that is not necessarily the same thing as a ruling on the policy's legality; it is distinctly possible that the Supreme Court will go out of its way to not address whether Trump's policy is constitutional in a ruling that nevertheless allows it

go into effect across much (if not most) of the country."

This shadow-docket action is worrisome and perplexing. *The Supreme Court's birthright citizenship case isn't really about birthright citizenship* (May 9, 2025, 4:30 am PDT) Ian Millhiser, *vox.com* ["The justices will soon decide whether to weaken the courts holding back Trump."]

"On May 15, the Supreme Court will hear three cases — consolidated under the name Trump v. CASA — which concern his unconstitutional attempt to strip many Americans born in the United States of citizenship. The mere fact that this hearing is happening is significant," explains Mr. Millhiser, "as the Court rarely gives cases a full hearing in May, and typically only does so for matters of extreme urgency."

"There is no plausible argument," he adds, "that the Donald Trump executive order at the heart of this case, which targets birthright citizenship — the constitutional principle that nearly anyone born in the United States is automatically a citizen — is lawful."

Arguments Briefed and Accepted At Least Six Times

Three district court judges and three federal court judges separately issued or affirmed nationwide injunctions against Trump's birthright citizenship order. They said it blatantly violates the 14th Amendment, which has long been understood to guarantee citizenship to virtually anyone born in the U.S.

If the high court agrees with Trump that the judges overstepped their authority, it could allow the administration to begin immediately enforcing its citizenship policy in some parts of the country.

It's important to note that injunctive relief at the trial court level is "extraordinary" and is granted only after the proponent jumps through standard – and quite rigorous – hoops.

Generally, the plaintiff-movant must establish – in addition to "standing to sue" – (1) likelihood of success on the merits; (2) the likelihood of the movant suffering irreparable harm; (3) the balance of equities; and (4) whether granting the injunction is in the public interest.'" Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist., 969 F.3d 12, 22 (1st Cir. 2020).

Then, on appeal, the proponent of the injunctive relief that was granted in the lower court must again persuade the court that it meets these tests.

Note that, in each opinion – district as well as appellate – the court discussed the merits of the case – that is, the unconstitutionality of the executive order – as intertwined with the matter of the proper scope of the remedy afforded. In each such opinion, the matter of nationwide injunctive relief was decided in the context of the particular facts and circumstances. It's hard to see how that might be – or should be – untangled.

Conclusion

The peculiar circumstances of this upcoming May 15, 2025, oral argument in the U.S. Supreme Court will – or should be – front and center as these proceedings unfold.

Note also that the proponent of the emergency stay – the government – has its own high challenges in showing it is entitled to any extraordinary high-court relief. In particular, the Trump administration must establish the likelihood that the Supreme Court will accept certiorari in this case and that the Trump administration will ultimately prevail on the merits.

That should be an impossible hurdle.

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