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US birthright citizenship: Supreme Court decision limits nationwide injunctions on Trump's birthright citizenship order

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In a 6-3 decision, the US Supreme Court (SC) made a partial ruling on President Trump's executive order (EO) regarding birthright citizenship. Deciding on the procedural issue, the SC held that judges of federal district courts cannot issue nationwide injunctions to block a government policy (The birthright citizenship-EO, in this case). It is important to note that the SC did not decide whether the EO itself is constitutional or not – this issue is still being examined by the federal district courts.

WIDE RAMIFICATIONS BEYOND BIRTHRIGHT CITIZENSHIP:

The order, which has upended decades of precedent and curtailed federal courts' power to issue injunctions, is seen as having wide-reaching, onerous ramifications, which would not be

restricted to just the issue of birthright-citizenship. Jath Shao, immigration attorney, explained, "This would potentially mean that every affected party would have to file a lawsuit on their own, and not benefit from being similarly situated. This may also mean that activists have to fight in multiple jurisdictions, and can't just win nationwide relief in one federal courtroom anymore."

Todd Schulte, President at FWD.us said, "Moreover, we are deeply concerned this will create new incentives for an administration to press ahead on unlawful, harmful actions by placing a new, substantial burden on any harmed individuals, for whom seeking relief and justice will now be more challenging."

Abhinav Tripathi, immigration attorney and founder of Protego Law Group, said, "This decision to limit nationwide injunctions is a major shift in how unlawful federal policies can be challenged. While class actions remain available, they are no substitute, especially in urgent immigration matters where delay can mean detention, deportation, or family separation. Class certification takes time, often excludes many affected, and lacks the immediacy that nationwide injunctions once provided. This ruling in short, fragments relief, weakens judicial oversight, and concentrates power in the executive, undermining due process and equal protection at a structural level."

Greg Siskind, co-founder of Siskind Susser, an immigration law firm, viewed that federal courts could be brought to a screeching halt as thousands of separate lawsuits are filed. And now ordinary people will need to file suits to protect their constitutional rights, no matter how many courts say a policy is unconstitutional.

Jeff Joseph, President, American Immigration Lawyers Association (AILA), said, "In a 6-3 decision, the SC has limited the ability for district judges to grant universal relief in cases where the government is facially violating the Constitution in ways that have implications for the entire country. Now, plaintiffs will have to go through the burdensome process of establishing a nationwide class of similarly situated individuals and then seek a nationwide injunction. Or cases will have to be filed on an individual and piecemeal basis, resulting in chaos in the courts. By requiring piecemeal suits and protection in this manner, the Court is setting American families up for failure. For example, if a young scientist, here on an H-1B visa, who is working and contributing to our economy, gives birth, she would need to join a class action suit or sue individually to try to fight for her child's constitutionally guaranteed right. This is impractical and will result in clogging up the courts on an issue that facially violates the Constitution and should not even be under question. The Constitution is clear—birthright citizenship is guaranteed under the 14th Amendment. Once again, the rule of law is the loser today with this decision."

THE BIRTHRIGHT CITIZENSHIP EO:

According to the EO, US citizenship is denied to children born in the United States if they are not born to at least one biological parent who is a US citizen or green card holder. Thus, if the mother is in the US lawfully but temporarily (eg: as a visitor or on a non-immigrant visa – be it a dependent visa like H-4 or even a work visa) and

the father is not a green card holder or US citizen, the child even if born in the US will not get automatic American citizenship.

TOI had analysed the EO. Read also: [Citizenship by birth curtailed even for legal immigrants; over 1 million Indians in green card queue impacted](#)

Previously, three different lower courts (federal district courts) had issued orders that stopped this EO from being put into effect across the entire country. These were the district courts of Maryland, the Western District of Washington and Massachusetts.

The Supreme Court's new ruling means these original court orders will now only protect the specific individuals, organisations, and states that filed the lawsuits against the executive order. The 22 protected states are: Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, plus Washington D.C. and San Francisco. For everyone else not involved in those lawsuits, the government will be allowed to start implementing the executive order in 30 days.

According to Cyrus D. Mehta, founder of a NY-based immigration law firm, “The order means that the practice of extending citizenship to the US-born children of undocumented immigrants and some temporary residents and visitors would end in the 28 states that have not challenged the measure. The only way out is to file a class action. Or each person would have to make an individual constitutional challenge.”

Rajiv Khanna, managing attorney at Immigratoin.com said, “The injunctions blocking the policy remain in effect for 30 days, giving time for new legal strategies. The reality check: This creates a complex patchwork. The policy remains blocked in the 22 states that sued, but could theoretically be implemented elsewhere, though the practical challenges of selective enforcement are enormous.”

Charles Kuck, an immigration attorney, was aghast. He posted on a social media platform, “Anyone who wants to

challenge Trump's illegal executive order on birthright citizenship (it's illegal because there is a federal law on this), has to sue INDIVIDUALLY to secure their child's citizenship. A truly moronic decision. (The court did NOT rule on the legality of Trump's order, just the process to challenge it)." "Nearly 3,50,000 lawsuits a year to verify citizenship, that is what the Supreme Court ordered. Nice work for lawyers. Terrible for America!", he quipped.

THE SPECIFIC FALL OUT:

David Leopold, an Ohio based immigration attorney, on a social media platform, pointed out the dissenting voice of Justice Sotomayor, who said, "Newborns subject to the Citizenship order will face the gravest harms imaginable. If the order does in fact go into effect without further intervention by the district courts, children will lose, at least for the time being, 'a most precious right,' and 'cherished status' that 'carries with it the privilege of full participation in the affairs of our society. The order will cause chaos for families of all affected children, too, as expecting parents scramble to understand whether the order will apply to them and what ramifications that will have."

Indeed, the ramifications could be gut-wrenching as newborns could face deportation even as their parents remain lawfully in the country (eg: those on temporary work visas).

Bhumireddy Sai Srinivas Reddy, a high court advocate in India and an Indiana based legal consultant raised some important issues. "While the SC has allowed the executive order to take effect after 30 days, it hasn't provided a clear framework for how it should be enforced or challenged. This opens the door to a troubling scenario — what happens if different federal courts issue conflicting rulings? For instance, if the Southern District of Indiana blocks the order but the Northern District allows it, does that mean a child born in one district qualifies as a US citizen, while another child, born just a few miles away, does not?"

"This could lead to a situation where families might be forced to seek jurisdictions with favorable court rulings to secure citizenship for their children. It also raises the question of whether citizenship will now depend on the location of the hospital where the child is born or the legal residence of the parents," he added.

SUMMING UP:

"The SC's ruling today undermines equal justice under the law. The Court's decision means that constitutional protections now depend on which state you live in or whether you can afford to file a lawsuit," was a statement given by Senator Alex Padilla, Ranking Member of the Senate Judiciary Immigration Subcommittee.

"Today's decision emboldens President Trump's unconstitutional attack on birthright citizenship, designed to stoke fear and persecute immigrant communities. It also fails every American who looks to the court to serve as a check to ensure that the executive branch follows the law. The SC is supposed to serve as a safeguard against presidential overreach, not incentivize it. We must heed Justice Jackson's warning that today's decision will permit the Executive to violate the Constitution with respect to anyone who has not yet sued," added the statement.

Ben Johnson, AILA's executive Director, summed up: "Rather than try to defend an obviously unconstitutional executive order directly, the Trump administration manipulated the legal process to avoid swift judicial review, delaying justice for those affected and setting the stage for confusion and chaos. And today, the SC played along."

" Instead of stepping in to declare this EO unconstitutional, the SC has greenlit a prolonged and punishing legal battle across the country. We are now facing the prospect of hundreds of individual lawsuits and likely multiple class actions to protect a right that is plainly guaranteed by the Constitution. It's a shameful dereliction of duty. By refusing to allow federal judges to block an executive action that clearly violates the Constitution, the SC is forcing millions of individuals affected by this Executive Order to bear the full burden of seeking justice on their own. This not only imposes an enormous cost—financially and emotionally—on those families, but it also squanders government resources litigating the same issue over and over again. Birthright citizenship is not ambiguous, nor is it a vague legal question; it is a cornerstone of American democracy enshrined in the Constitution. This decision fails us all, fails the courts, and fails our Constitution," said Johnson.