



Lemkin Institute

for Genocide Prevention
and Human Security

Trump's MAGA Model for Citizenship: The Supreme Court & the Threat Posed by Trump's Assault on Birthright Citizenship in the USA

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The Lemkin Institute for Genocide Prevention and Human Security is deeply concerned and disappointed by the recent *Trump v. CASA* decision issued by the US Supreme Court (SCOTUS) to curb the judicial use of nationwide injunctions, thereby ending the injunction blocking the nationwide enforcement of President Trump's executive order limiting birthright citizenship. This Supreme Court's decision sets the stage for the flagrant use of unconstitutional policies by the Trump Administration, the erosion of birthright citizenship nationwide, the destruction of the power of citizenship to protect people from the whims of the state, and the possible denaturalization of citizens based on political criteria related to the Administration's overarching revolutionary goals. In other words, the Supreme Court has opened the door to lawlessness and totalitarianism.

President Trump released his executive order limiting birthright citizenship, misleadingly called "Protecting the Meaning and Value of American Citizenship," on 20 January 2025. On 5 February, after legal challenges from states and immigrant rights groups, a federal judge indefinitely blocked the implementation of the executive order, with a preliminary injunction that prevented the order from being implemented until all of the legal cases are adjudicated. The injunction was meant to prevent the government from engaging in unconstitutional acts with enormous personal implications for the people affected and legal implications for government policy going forward. In response, the Trump Administration filed an emergency application with the Supreme Court requesting that the Court grant a stay of this injunction.

On 15 May, the US Supreme Court heard oral arguments in *Trump v. CASA*. Instead of asking the Supreme Court to rule on the legality of Trump's executive order, the Administration asked the Court to rule on the ability of federal judges to institute nationwide injunctions.. Despite the fact

that the Supreme Court did not rule on the Executive Order on “Protecting the Meaning and Value of American Citizenship,” its decision to end the nationwide injunctions without commenting on the legality of the executive order itself does affect birthright citizenship in that it allows the Trump Administration to begin enforcing the executive order after a period of 30 days.

The Court is set to deliberate on the legality of Trump’s executive order unilaterally limiting birthright citizenship in October. However, until a final decision is made, states are left to navigate the enforcement of Trump’s order with the possibility of such enforcement being blocked by subsequent narrower injunctions. This will create a confusing and unjust patchwork of legal realities across the United States where the order is blocked in localities with legal challenges while the order comes into force elsewhere – a direct challenge to the legal principle of nondiscrimination. A patchwork enforcement of an order that limits a fundamental constitutional right like birthright citizenship threatens to result in mass violations of civil and human rights, creating legal and logistical chaos while leaving future generations stateless and vulnerable to Trump’s mass deportation efforts.

An example of how these policies may play out can be seen in President Luis Abinader’s “Dominican Model.” Abinader’s Administration has targeted Haitians and Dominicans of Haitian descent in the Dominican Republic for detention and deportation in the wake of a statelessness crisis after thousands of Dominicans across multiple generations (predominantly of Haitian descent) had their birthright citizenship revoked by the government.. In the wake of the SCOTUS decision, Trump has the greenlight to follow in Abinader’s footsteps and further weaponize US citizenship and lawful status – a development bearing many of the hallmarks of the early stages of a genocidal process. Not only has the Court failed in preserving fundamental human and constitutional rights but it has paved the way for Trump’s “MAGA Model” for citizenship. This model will politicize citizenship through a process of denaturalization in which renaturalization is reserved only for people who fit within MAGA’s vision for U.S. society while those who do not fit are slated for detention and deportation.

Legal Precedent Protecting Birthright Citizenship in the US

Unrestricted birthplace-based US citizenship for children of immigrants is protected by domestic legislation and Supreme Court jurisprudence.

In the wake of the U.S. Civil War, the Fourteenth Amendment to the U.S. Constitution rectified the previous Supreme Court decision, *Dred Scott v. Sandford*, which asserted Black people in the US were ineligible for citizenship due to their race. The Fourteenth Amendment states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the state wherein they reside.” Regardless of the race, ethnicity, or nationality of their parents, anyone born within the US is automatically a US citizen.

The birthright citizenship of children of noncitizens has been reaffirmed by subsequent Supreme Court decisions. In 1898, the Supreme Court decision, United States v. Wong Kim Ark, reaffirmed the birthright citizenship of a child (Wong) born in the US to Chinese immigrants who were denied citizenship due to the Chinese Exclusion Acts. The Court claimed that to deny Wong birthright citizenship would also “deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage who have always been considered and treated as citizens of the United States.” This decision also explicitly states that the executive branch has no right or legal basis to rewrite a Constitutional amendment and limit birthright citizenship.

Attempts to Limit Birthright Citizenship in the US

Attacks on birthright citizenship did not begin with Trump. Since the 1990s, Congress has attempted to introduce bills to end unrestricted birthright citizenship. Trump’s executive order echoes arguments long-made by conservatives which attempt to cast doubt on the interpretation of the Fourteenth Amendment. As previously mentioned, the Fourteenth Amendment defines US citizens as “all persons born or naturalized in the United States” and “subject to the jurisdiction” of the U.S. Conservatives (and Trump) argue that children of noncitizens, while born in the U.S., are not “subject to the jurisdiction” of the US due to their parents’ allegiance to their country of origin. To support their arguments, conservatives have cited racist court cases from the 1800s that deny Indigenous people automatic US citizenship. Despite the fact that Indigenous people were granted US citizenship with the Indian Citizenship Act of 1924, the Justice Department has cited Elk v. Wilkins (1884) which claims that indigenous people are not “subject to the jurisdiction” of the US due to their tribal allegiances and are therefore not eligible to automatically receive US citizenship.

Trump’s executive order parrots these arguments. In his Executive Order, Trump characterizes US citizenship as a “privilege” and “priceless and profound gift.” Trump claims that the Fourteenth Amendment was never intended to extend citizenship to everyone born in the US, asserting that those born in the US but not “subject to the jurisdiction thereof” were always meant to be excluded from birthright citizenship. The order states that birthright citizenship would not automatically extend to people born in the US “(1) when that person’s mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person’s birth, or (2) when that person’s mother’s presence in the United States at the time of said person’s birth was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting

on a student, work, or tourist visa) and the father was not a United States citizen or lawful permanent resident at the time of said person's birth."

A Patchwork Effect: Enforcement Of Trump's Order Without Nationwide Injunctions

Without the option of nationwide injunctions, the SCOTUS decision asserted that "lower courts should determine whether a narrower injunction is appropriate, so we leave it to them to consider these and any related arguments." While the Court assured that the executive order will not be enforced regarding the plaintiffs involved in the current legal challenges, it is unclear at the moment what these narrower injunctions would mean for the broader enforcement of limitations to birthright citizenship.

In their oral arguments, Trump representatives suggested that class-action lawsuits were a more appropriate avenue for the public to challenge executive orders. Class-action lawsuits require judges to identify a "class" of people, whether it be individuals or entire groups, who would be affected by the court ruling before blocking a potentially unlawful policy. This is a higher threshold than an injunction, where judges only have to examine the legality of a policy. In their consideration of narrower injunctions, lower courts could also decide to block the enforcement of the order in the state or localities where legal challenges are being adjudicated. The Trump Administration, while presenting itself as concerned with the noble issue of judicial overreach, is clearly attempting to slow down judicial defense of the Constitution in the face of the Administration's efforts to radically alter the republican nature of the United States.

The implications of a patchwork of legal regimes in the U.S. related to citizenship are extremely dangerous when it comes to the enforcement of Trump's executive order, which conflicts with a fundamental constitutional right. Assuming that the order would remain blocked in the 22 states officially challenging Trump's order, this would mean that the order would be enforced in the 28 remaining states unless they bring their own lawsuits. Not only would this be a blow to fundamental constitutional rights, which should be uniformly enforced and protected, but raises questions of how this patchwork enforcement would be logistically feasible. What does enforcement look like? What happens if someone was born in a state enforcing birthright limitations and then moves to a state where the order is blocked? What happens if a state does enforce birthright limitations, but then a lawsuit is brought and enforcement is blocked? What if a child born in a state enforcing birthright limitations is deported before enforcement is blocked?

When the Supreme Court justices pressed the Trump Administration on their plans for enforcement, it became obvious that there was no clear plan. Justice Ketanji Brown Jackson further commented, "The real concern...is that your argument seems to turn our justice system...into a 'catch me if you can' kind of regime...Everybody has to have a lawyer and file a lawsuit in order for the government to stop violating people's rights." This would

disproportionately affect those who cannot afford a lawyer or are in states sympathetic to Trump's efforts. In the words of Justice Elena Kagan, this patchwork effect would make fundamental constitutional rights "a matter of happenstance." These words ring true in the wake of the Court's final decision.

The Dominican Model

Whether birthright limitations are instituted nationwide or on a state by state basis, an example of how limitations on birthright citizenship coupled with mass deportation campaigns can affect marginalized groups can be seen in the situation of Haitian migrants and Dominicans of Haitian descent in the Dominican Republic. Similar to the Trump Administration's framing of the presence of undocumented migrants as an "invasion" to justify their mass deportation efforts, Dominican President Luis Abinader's administration plays upon nationalistic, racist, and anti-Haitian sentiments by whipping up public fear about Haiti's ongoing gang violence to justify carrying out mass deportation campaigns targeting peaceful Haitian migrants coming into the Dominican Republic – many of whom are trying to escape the political upheaval in Haiti. Abinader's administration has deported over 119,000 Haitians from January-April 2025 alone, threatening to have 2025 surpass the deportation totals of previous years since the crackdown began in 2022. Mass deportation operations carried out by Dominican authorities disproportionately target low-income Black communities. One only has to "look Haitian" to authorities to be detained and potentially deported with little to no regard for one's actual status. Many Dominicans of Haitian descent have been caught up in these operations. Similar to those detained by ICE in the U.S., many Haitians are held in detention centers before deportation, where they are denied the ability to challenge their detention, access to legal assistance, and contact with their family.

The threat to Dominicans of Haitian descent posed by Abinader's anti-Haitian crackdown is intensified by limitations placed on birthright citizenship which has caused a mass statelessness crisis in the country. A 2010 constitutional reform denied citizenship to those born on Dominican soil whose parents are of irregular migratory status. In 2013, a Constitutional Court judgment interpreted this constitutional reform retroactively, meaning those born between 1929 and 2010 would not have Dominican citizenship. Dominican authorities began a mass cancellation of birth certificates and identity documents, leaving thousands of Dominicans of Haitian descent stateless. In 2014, the Dominican government passed Law 169 which required those who lost their citizenship under the constitutional reform to officially declare themselves foreigners in order for Dominican authorities to assess their case and determine a path to citizenship. Due to bureaucratic delays and unrealistic documentation requirements, over 130,000 Dominicans (mainly of Haitian descent) remain stateless and are left vulnerable to Abinader's mass deportation efforts.

Trump's MAGA Model for Citizenship

If Trump's executive order is allowed to unilaterally limit birthright citizenship, Abinader's "Dominican Model" could very much play out in the U.S. With the executive order currently only affecting those born after it comes into force in 30 days, millions of people born in the U.S. in the coming years would be left as undocumented, "illegal," residents. The Trump Administration's rapid changes to the immigration system, which have chipped away at legal avenues of immigration and revoked much needed legal resources for those attempting to navigate the complicated immigration legal system, only exacerbate the situation. All of the Trump Administration's policies have intended to make it harder to achieve legal status and to increase the likelihood of people being found unlawfully present and subject to deportation – often to unknown third countries and the U.S.'s external concentration camps, like the CECOT prison in El Salvador.

If Trump is able to limit birthright citizenship unilaterally through executive orders, the way is paved for the sinister possibility that Trump will institute a form of racialized totalitarianism that is typical in the Americas, particularly Central and South America, where the U.S. has been enabling and supporting genocidal dictatorships since before World War II. The Trump Administration has clearly already taken the SCOTUS decision to be a green light to keep moving the goalpost to target those whose ethnicity, race, politics, or religion are not in line with Trump's vision for the U.S. In response to the news of the decision, Trump described it as a win against the "Birthright Citizenship Hoax" that has allowed individuals to "scam" the immigration process. The Trump Administration has already weaponized citizenship and lawful status to go after critics of the U.S. and its allies, with ICE disappearing pro-Palestine activists who had lawful status in the U.S. and claiming to revoke their status due to alleged "terrorist" affiliation. Due to ICE's racial profiling tactics and violation of due process rights, Black and Brown citizens and noncitizens with legal status have been unlawfully arrested, detained, and even deported. What is to stop the Trump Administration from unilaterally applying additional limitations or applying them retroactively, as was done in the Dominican Republic?

Going hand in hand with their efforts to limit birthright citizenship, the Trump Administration has recently announced efforts to prioritize denaturalization cases where naturalized citizens who have committed certain crimes would lose their citizenship. Trump officials have also released new expanded criteria of what crimes would qualify individuals for denaturalization. The Trump Administration has already made statements threatening to investigate, denaturalize, and deport those in opposition to Trump policies and efforts, like Elon Musk and Zohran Mamdani, further weaponizing citizenship and lawful status in an attempt to force people into alignment with MAGA ideology.

Another concerning possibility is that the Trump Administration may pass legislation – or issue an executive order – similar to the Dominican Republic’s *Law 169* that would politicize a path to citizenship or lawful status. As previously mentioned, the Trump Administration frames U.S. citizenship as a “privilege” and “gift” -- not a right. His Administration has also argued that alleged “allegiances to other countries” is enough for a person to not be under U.S. jurisdiction and therefore not eligible for citizenship. The Trump Administration seems already to be planning to politicize citizenship through a process of denaturalization, with renaturalization reserved for those who submit to a loyalty oath – not to the U.S.A. but to the President himself and the MAGA vision of society. The beginnings of this can be seen in the recent decision of the Trump Administration to extend refugee status to white South Africans while denying asylum, humanitarian parole, and temporary protected status for others like Venezuelans, Cubans, Haitians, Afghans, Nicaraguans, Palestinians, and South Sudanese. The threatening of Trump critics, like Musk and Mamdani, with denaturalization and deportation serves as further evidence of the radicalization process that is already underway, with the help of the Supreme Court.

With *Trump v CASA*, the Supreme Court had the opportunity to protect the fundamental constitutional rights enshrined in the Fourteenth Amendment and affirmed and protected by the Court’s own jurisprudence. Six of the Supreme Court justices failed miserably. In her dissent, Justice Sonia Sotomayor wrote, “With the stroke of a pen, the President has made a ‘solemn mockery’ of our Constitution...Rather than stand firm, the Court gives way.” Sotomayor further characterized the decision as “nothing less than an open invitation for the government to bypass the Constitution.”

The Court does have one more opportunity to put the brakes on creeping totalitarianism in the USA when it hears arguments related to the legality of Trump’s Executive Order on birthright citizenship in October. The Court must uphold its previous stance that the children of noncitizens born in the US automatically possess birthright citizenship and that the executive branch has no right or legal basis to unilaterally rewrite a Constitutional amendment and limit birthright citizenship. In ruling on the legality of Trump’s executive order, the Court can clarify the interpretation of the 14th Amendment, putting to rest conservative arguments attempting to cast doubt on its scope. However, given the many Supreme Court decisions favorable to the Trump Administration’s agenda, the American people must contend with the possibility that the Court will not rule in their favor.

While we still can, we must challenge Trump’s unlawful policies, especially those that threaten fundamental constitutional rights, not only in the courts but everywhere else. Without nationwide injunctions, individuals and organizations from every state must challenge this blatantly unconstitutional executive order in their respective courts in an effort to prevent or at least mitigate a patchwork enforcement. U.S. citizenship is not a “gift” reserved for the most loyal. Birthright citizenship is not a means to “scam” the U.S. immigration system. U.S. citizenship is a

constitutional right that should be protected and not subject to the whims of a power-hungry executive. If Trump's attempts at expanding his executive power are left unchecked, Trump's MAGA Model will become a reality across the US and any vestiges of the country's democratic institution will be completely erased.