Universal Injunctions

By Paul Engel

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- Can a single district judge order everyone in the country to do something?
- What are the limits on the powers federal judges can exercise?
- While the case United State v. CASA is about birthright citizenship, the question before the court is how far does a district judge’s power extend.

Birthright citizenship has been a very hot topic for the last few years. When Donald Trump signed an executive order that quoted both the Constitution of the United States and federal law, claiming that would be the policy of the United States, that triggered multiple lawsuits. The Supreme Court heard oral arguments in United States v. CASA, but rather than focusing on the birthright citizenship question, they were asked to resolve the question of nationwide, or universal injunctions.

ORAL ARGUMENT OF GEN. D. JOHN SAUER ON BEHALF OF THE APPLICANTS

First up is Solicitor General of the United States, John Sauer, on behalf of the United States.

GENERAL SAUER: Mr. Chief Justice, and may it please the Court:

On January 20, 2025, President Trump issued Executive Order 14,160, Protecting the Meaning and Value of American Citizenship. This order reflects the original meaning of the Fourteenth Amendment, which guaranteed citizenship to the children of former slaves, not to illegal aliens or temporary visitors.

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Trump's Executive Order not only quoted the Fourteenth Amendment, but restored its original meaning. During the Senate debate on the joint resolution that would become the Fourteenth Amendment, Senator Jacob Howard Merritt proposed adding the words "and subject to the jurisdiction thereof." This was his explanation on the floor on the Senate.

This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and

national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons."

Congressional Globe p. 2890

This makes it quite obvious that the legislative intent was to limit birthright citizenship to children of parents who were subject to the United States, rather than other nations. That didn't stop multiple judges from attempting to maintain this unconstitutional view of birthright citizenship.

Multiple district courts promptly issued nationwide or universal injunctions blocking this order, and a cascade of such universal injunctions followed. Since January 20, district courts have now issued 40 universal injunctions against the federal government, including 35 from the same five judicial districts. This is a bipartisan problem that has now spanned the last five presidential administrations.

Universal injunctions exceed the judicial power granted in Article III, which exists only to address the injury to the complaining party. They transgress the traditional bounds of equitable authority, and they create a host of practical problems.

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What is the jurisdiction of lower courts? When created by Congress, the District and Circuit Courts were given specific geographical limitations to the cases they could hear. Generally, a court only has jurisdiction over the parties to the case. However, what happens when one of those parties is the United States of America?

Such injunctions prevent the percolation of novel and difficult legal questions. They encourage rampant forum

shopping. They require judges to make rushed, high-stakes, low-information decisions. They circumvent Rule 23 by offering all the benefits but none of the burdens of class certification. They operate asymmetrically, forcing the government to win everywhere while the plaintiffs can win anywhere. They invert — invert the ordinary hierarchy of appellate review. They create the ongoing risk of conflicting judgments. They increase the pressures on this Court's emergency docket. They create what Justice Powell described as repeated and essentially head-on confrontations between the life-tenured and representative branches of government. And they disrupt the Constitution's careful balancing of the separation of powers.

I welcome the Court's questions.

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Solicitor General Sauer points out what, to me, are the two greatest problems with these injunctions. Not the "percolation of novel legal questions", but forum shopping and low-information decisions.

Forum shopping, the practice of finding a judge who agrees with you, not only shows that our current justice system is neither blind, nor a-political. The question of low-information decisions is something we'll come back to in this article.

ORAL ARGUMENT OF JEREMY M. FEIGENBAUM ON BEHALF OF THE STATE AND CITY RESPONDENTS

Before we get to questions, let's listen to the oral arguments of Jeremy Feigenbaum on behalf of the government respondents.

1. FEIGENBAUM: Mr. Chief Justice, and may it please the Court:

This Court should deny the emergency application because this

injunction was properly designed to ensure that the states would get relief for our own Article III injuries as we suffer significant pocketbook and sovereign harms from implementation of this Executive Order, including from the application of this EO to the 6,000 babies born to New Jersey parents out of state every year.

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It shouldn't surprise you that the attorney for the clients who were getting their way think the injunction was properly designed. I will show during the questioning that this is based both on the elevation of precedent above the law and the low-information decisions of the judges.

The U.S. prefers alternative approaches for granting that relief, alternatives it never raised in the district court below. But its approach would require citizenship to vary based on the state in which you're born or even turn on or off when someone crosses state lines, raising serious and unanswered administrability questions not just for the federal government but also for the states.

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This statement about 6,000 babies born out of state confused me at first, along with state based citizenship. That, too, will make more sense as we go through questioning.

And it would offend the text and history of the Citizenship Clause itself. Since the Fourteenth Amendment, our country has never allowed American citizenship to vary based on the state in which someone resides because the post-Civil War nation wrote into our Constitution that citizens of the United States and of the states would be one and the same without variation across state lines.

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The statement about citizenship being uniform among the states is true, but not the way New Jersey and the other respondents think it is.

The U.S. has claimed that Article III establishes a bright-line rule barring such injunctions no matter the circumstance, even where the states do need it to meet their own harms, finds no support in this Court's cases or in the history of equity.

Its argument that a single district court cannot decide birthright citizenship or that we need more percolation on that question for the nation overlooks that this Court already settled this exact constitutional question 127 years ago and that this EO is contrary to over a century of executive practice.

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While the Constitution doesn't mention injunctions, Article III does state:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

U.S. Constitution, Article III, Section 2

The question is, how far does that case extend? The arguments on both sides have merit, at least in certain circumstances. I'll delve deeper into this as we go through the article.

Finally, the U.S.'s objection that nationwide PIs have simply become too common in the last few months, a complaint about other injunctions sought by other parties, cannot undermine the extraordinary bases for this one. The states, who regularly come before this Court as plaintiff and defendant alike, agree that nationwide relief can be reserved for narrow

circumstances, but it was needed here.

I welcome this Court's questions.

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To me it seems the problems of forum shopping and overly broad injunctions create a positive feed-back loop. Attorneys search for a judge who will be sympathetic to them, who then issues a nationwide injunction, thus encouraging more forum shopping.

ARGUMENT OF KELSI B. CORKRAN ON BEHALF OF THE PRIVATE RESPONDENTS

Lastly we have Kelsi Corkran, attorney for the private respondents.

1. CORKRAN: Mr. Chief Justice, and may it please the Court:

The executive order's stripping of citizenship from U.S.-born children is contrary not only to the Fourteenth Amendment's plain text but also our common law history, this Court's precedent, a federal statute, and over a century of executive branch practice.

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Except that order is not contrary to the Fourteenth Amendment, but fulfills its stated purpose. It also fulfills federal law. It may be contrary to court precedent, but the Supreme Court is not the supreme law of the land, the Constitution is.

Every court to have considered the issue agrees that the order is blatantly unlawful, a determination the stay application does not challenge.

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I believe that the judge of most, if not every court that has considered this issue, was appointed by the political opponents of President Trump. Is it that hard to believe that

such judges would lean toward opposing the Trump agenda?

The government instead argues that Article III and equitable tradition categorically prohibit providing nonparty relief from the order's enforcement regardless of the order's illegality or the irreparable harm it inflicts.

The government is wrong. It is well settled that preliminary injunctions may benefit nonparties when necessary to provide complete relief to the plaintiffs or when warranted by extraordinary circumstances, both of which are true here.

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Again, I see both sides of this issue. Let's face it, the same people fighting against these injunctions didn't complain when they were against President Biden. After all, when the President does something unconstitutional we look to the courts for redress, but when we think the President is acting constitutionally, we hate the idea of his agenda being obstructed.

The Court should reject the government's efforts to stay a preliminary injunction that maintains a status quo all three branches of government have ratified and operated under for over a century and that prevent the catastrophic consequences that will result for the plaintiffs and our country if the government is allowed to execute an unconstitutional citizenship-stripping scheme simply because legal challenges take time.

I welcome the Court's questions.

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There is some logic to retaining the status quo while the courts look at the merits of the cases, especially since the status quo is over 100 years old. But do the District Courts have that authority?

Universal Injunctions

Justice Thomas seemed interested in the origins of these universal injunctions.

JUSTICE THOMAS: General Sauer, the — these universal injunctions, as you say, have proliferated over the last three decades or so. Would you discuss, though, the origins of universal injunctions? In particular, I'm interested in sort of historical analogues or the historical pedigree, particularly the bill of peace that was proffered by Respondents.

GENERAL SAUER: Yes, Justice Thomas. As you, I think, first pointed out in your separate opinion in Trump against Hawaii, the bill of peace is something very distinct from a universal injunction. So the bill of peace involved a — a resolution of a small, discrete set of claims of a small, discrete group. And, even more fundamentally, it was binding on the members of that class and those represented by the class. So it's much more analogous to a modern class action under Rule 23.

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The justices spent a lot of time considering something called a "bill of peace." An English court practice from back in the 17th and 18th century, it allowed the English Court of Chancery to settle the question of rights from multiple parties into a single case. Today, we have Class Actions to handle similar situations. I believe Rule 23 is the primary rule governing class actions suits.

JUSTICE THOMAS: General, when were the first universal injunctions used?

GENERAL SAUER: We believe that the best reading of that is what you said in Trump against Hawaii, which is that Wirtz in 1963 was really the first universal injunction. There's a dispute about Perkins against Lukens Oil going back to 1940.

And, of course, we point to the Court's opinion that reversed that – that – that universal injunction issued by the D.C. Circuit and said it's – it's profoundly wrong.

So, when the Court has considered and addressed this, it has consistently said you have to limit the remedy to the plaintiffs who are appearing in court and complaining of that remedy.

JUSTICE THOMAS: So we survived until the 1960s without universal injunctions?

GENERAL SAUER: That's exactly correct. And, in fact, those were very limited – very rare even in the 1960s. It really exploded in 2007 in our cert petition in Summers against Earth Island Institute. We pointed out that the Ninth Circuit had started doing this in a whole bunch of cases involving environmental claims.

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So if this nation survived until the 1960s without universal injunctions, why do we need them now? More importantly, what changed to authorize them? I think Justice Alito got right to the point.

JUSTICE ALITO: So what do you say about the – the practical problem? So put out of – let's put out of our minds the merits of this and just look at the abstract question of universal injunctions.

What is your response to what some people think is the practical problem? And the practical problem is that there are 680 district court judges, and they are dedicated and they are scholarly, and I'm not impugning their motives in any way. But, you know, sometimes they're wrong, and all Article III judges are vulnerable to an occupational disease, which is the disease of thinking that I am right and I can do whatever I want.

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Isn't that the real problem? 680 district court judges, all of whom think they could not be wrong and many of them willing to jump to conclusions about the merits of the case before even hearing them. Then, based solely on their assumptions about the case, issuing injunctions as if they were laws that needed to be followed. That, however, is not the only instance of judicial hubris exposed in this case.

Judicial Hubris

Next, Justice Sotomayor got into a back and forth with Solicitor General Sauer.

JUSTICE SOTOMAYOR: So can I ask you a question? Your theory here is argue – arguing that Article III and principles of equity both prohibit federal courts from issuing universal injunctions. Do I have your argument correct?

GENERAL SAUER: We argue both of those and there are independent reasons.

JUSTICE SOTOMAYOR: You argue both of those?

GENERAL SAUER: Yeah.

JUSTICE SOTOMAYOR: If that's true, that means even the Supreme Court doesn't have that power.

GENERAL SAUER: The Supreme Court would have the authority to issue binding precedent nationwide, but as this Court –

JUSTICE SOTOMAYOR: But we couldn't enforce it against – universally is your argument?

GENERAL SAUER: If there was a – a – a decision that violated the precedent of the Court, then the affected plaintiffs could get a separate judgment.

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Interesting question: What are the limits on the Supreme Court? They can issue decisions, what General Sauer calls "binding precedent," but I challenge the "binding" part of that statement.

JUSTICE SOTOMAYOR: No, we don't, because the argument here is that the president is violating an established – not just one but, by my count, four established Supreme Court precedents.

We have the Wong Ark case, where we said fealty to a foreign sovereign doesn't defeat your entitlement – your parents' fealty to a foreign sovereign doesn't defeat your entitlement to citizenship as a child. We have another case where we said that even if your parents are here illegally, if you're born here, you're a citizen. We have yet another case that says, even if your parents came here and were stopped at the border and – but you were born in our territory, you're still a citizen. And we have another case that says, even if your parents secured citizenship illegally, you're still a citizen.

So, as far as I see it, this order violates four Supreme Court precedents.

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First of all, Supreme Court precedents are not law; only Congress can make law. A party to the case can violate their decision, but no one else. Besides, the first "precedent" Justice Sotomayor refers to, the Wong Kim Ark case, actually violates both the Constitution and federal law.

A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the Constitution,

United States v. Wong Kim Ark, 169 U.S. 649 (1898)

The Supreme Court said that the child of parents who were subjects of the Emperor of China was a citizen because the parents were permanent residents at the time of his birth. But the Fourteenth Amendment clearly 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.

U.S. Constitution, Amendment XIV, Section 1

Not only that, but federal law states:

- 1401. Nationals and citizens of United States at birth
  The following shall be nationals and citizens of the United States at birth:
  (a) a person born in the United States, and subject to the jurisdiction thereof;

8 USC §1401 – Immigration and Nationality Act

So how can the child of parents who are subjects of the Emperor of China be granted citizenship at birth? The answer is simple, the Supreme Court simply violated their oath and effectively rewrote the law. And now, Justice Sotomayor wants to use that decision, and the subsequent cases, to effectively rewrite the Constitution, claiming that the words “and subject to the jurisdiction thereof” don’t matter. She claims the decisions of the Supreme Court supersede the supreme law of the land.

JUSTICE SOTOMAYOR: And you are – and you are claiming that not just the Supreme Court – that both the Supreme Court and no lower court can stop an executive from – universally from violating that holding – those holdings by this Court.

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I believe she meant that the courts cannot stop the executive branch from "violating" their decisions. That is absolutely correct. Alexander Hamilton stated this in Federalist Paper #78.

The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

Federalist Paper #78

Justice Sotomayor then brought up the other side of the issue. Not the idea that universal injunctions are wrong, but when they're used in support of another agenda.

JUSTICE SOTOMAYOR: – so, when a new president orders that because there's so much gun violence going on in the country and he comes in and he says, I have the right to take away the guns from everyone, then people – and he sends out the military to seize everyone's guns – we and the courts have to sit back and wait until every named plaintiff gets – or every plaintiff whose gun is taken comes into court?

GENERAL SAUER: In appropriate cases, courts have certified class actions on an emergency basis. We found at least four cases in recent years where that was done.

But, more fundamentally, we profoundly disagree with the characterization of the merits.

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I, too, disagree with the characterization of the merits, but she does make a point. How would the Solicitor General, or others for that matter, react if the President signed an EO to

confiscate our firearms. We could argue that the Second Amendment prohibits that, while the Fourteenth Amendment limits birthright citizenship to those who are subject to the United States, but that doesn't deal with a fundamental issue: Are we OK with universal injunctions when they benefit us, but not when they oppose us?

JUSTICE SOTOMAYOR: We can act quickly if we are worried about those thousands of children who are going to be born without citizenship papers that could render them stateless in some places because some of their parents' homes don't recognize children of their nationals unless those children are born in their countries.

They're not going to be receiving federal benefits because that's the claim of the – of the – of the plaintiffs here that – of the state plaintiffs, that they're going to – they're not going to be able to provide services to those children.

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That is the complaint of the states: They won't be able to provide services to these children. That is the point though, because they aren't citizens, they are not entitled to those services. Justice Kagan stepped in it a bit farther.

JUSTICE KAGAN: And – and – and for four years, there are going to be, like, an untold number of people who, according to all the law that this Court has ever made, ought to be citizens who are not being treated as such.

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Except the court doesn't make law. In fact, the claims that people like Wong KimArk are citizens are themselves illegal, since they violate the Fourteenth Amendment and 8 USC §1401. The fact that the court got it wrong over 100 years ago does not change the fact that these children do not legally qualify for citizenship. Furthermore, since they think they are

citizens they do not attempt to naturalize, which would give them the legitimate rights of citizens, except for the chance to be President. Justice Jackson brought up another issue.

Think about it. The question at hand is: What is the personal jurisdiction of the courts? Is it only the parties to the case or is it anyone they think is involved? In fact, General Sauer had an interesting comeback.

But, more fundamentally than that, it is a feature, not a bug, of Article III that courts grant relief to the people who sue in front of them. So the notion that relief has to be given to the whole world because others who have not taken the time to sue are not before the courts –

JUSTICE GORSUCH: Last – last –

GENERAL SAUER: – is something that results in all of these problems.

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So many of the justices see the limitations on their injunctions as a failure; a bug in the Constitution. However, the idea that unelected judges from any level of the federal judiciary can issue orders they claim have legal force, completely destroys the concept of a government's just powers coming from the consent of the governed. We delegated legal powers to elected branches, Congress the power to make law, the President the power to execute those laws, but the courts only have the power to decide controversies.

It appears that Solicitor General Sauer has also missed this point.

JUSTICE KAVANAUGH: I want to ask one thing about something in your brief. You said: "And, of course, this Court's decisions constitute controlling precedent throughout the nation. If this Court were to hold a challenged statute or policy

unconstitutional, the government could not successfully enforce it against anyone, party or not, in light of stare decisis." You agree with that?

GENERAL SAUER: Yes, we do.

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It appears to be drilled into law students' head that 'stare decisis," Latin for "let the decision stand," is the supreme law of the land. I would have liked to remind him and the Justices of the Supremacy Clause.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;

U.S. Constitution, Article VI, Clause 2

Earlier this year this court decided in the Dobbs case that the Roe court got it wrong back in 1973. Is it really that hard to believe that the same court has been getting the Fourteenth Amendment wrong since 1898?

Forum Shopping

Forum shopping is the practices of choosing where to file your lawsuit based on the likelihood of your case being assigned to the sympathetic judge.

JUSTICE KAGAN: I guess what I worry about here, Ms. Corkran, is that this case is very different from a lot of our nationwide injunction cases in which many of us have expressed frustration at the way district courts are doing their business.

And, you know, our – our – the typical way in which that frustration emerges is that questions, legal questions, are hard, and they're come complicated, and different courts would

decide them differently. And, instead, because of the forum selection process, a party goes to one place. You know, in the first Trump administration, it was all done in San Francisco, and then, in the next administration, it was all done in Texas.

1. CORKRAN: Right.

JUSTICE KAGAN: And – and – and there is a big problem that is created by that mechanism, and that leads to the questions to you and to General Feigenbaum, which is, like, you know, your third buckets, which are, oh, if it's, like, super-important or if it's quintessentially national or whatever the way – you know, is not going to solve our problem for that set of cases, which is not this case.

This case, what's problematic about it is that the courts keep deciding the same way, and nobody really thinks that the lower courts are going to do anything different.

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Where Justice Kagan sees a no-win case, I see the effectiveness of forum shopping. Since every one of these cases were brought to oppose the Trump agenda, I don't think it's s stretch to think they searched for judges that would agree.

Low-Information Decisions

One of the issues with any preliminary injunction is the fact that they are made before the case is decided.

JUSTICE KAGAN: This is not a hypothetical. This is happening out there, right? Every court has ruled against you.

GENERAL SAUER: We've only had snap judgments on the merits. You know, obviously, we're fully briefing the merits in the courts of appeals, and our arguments are compelling.

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When you get to choose the judges, when you prepare the battlefield, of course you're going to have the advantage. Does that mean the other side is wrong? Should a judge be allowed to impact not just the parties to the case, but the entire nation, without all the facts? Justice Jackson pointed out:

But here we are at the beginning of this litigation. No one has determined whether or not the government's conduct is actually unlawful. We have a district court, several district courts and now courts of appeals that say it is, and so, as an interim matter, we are saying the government has to stop doing it while we litigate the issue of the unlawfulness.

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I didn't count how many times justices pointed out that the government has lost every decision so far, but did they? After all, not a single case I'm aware of so far has actually come to a decision. All that has happened is that individual judges, hand picked by those promoting birthright citizenship, believe they'll eventually win. After all, one of the conditions necessary for the issuing of preliminary injunctions or temporary restraining orders is that belief that the their position will win. These are the kind of snap judgments Solicitor General Sauer talked about.

And that kind of snap judgment on the merits that was presented in the lower courts is exactly the problem with the issue of racing to issue these nationwide injunctions.

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And that, I think, should be the central point of the government's position. That District judges, making decisions based on little data and a lot of emotion, should not be able to use their position to effectively dictate policy for the

nation.

Interstate Citizenship

Let’s go back to the statement made by Mr. Feigenbaum, several times, about 6,000 babies born out of state going into New Jersey.

And we have in New Jersey 6,000 babies born out of state every year when they come into the state and they need benefits. The Boyle declaration from Massachusetts suggests that’s going to cover 40 percent of kids. They come into our state. They need benefits. We have to do citizenship verifications, which is a burden for us.

JUSTICE SOTOMAYOR: That’s for you in New Jersey, but there’s I think how many states?

1. FEIGENBAUM: That’s just an example.

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So I think I’ve figured it out. If SCOTUS says these courts can only issue injunctions or restraining orders for the parties to the case, then what happens when said order only impacts one or two of the 50 states? In this case, some states would award citizenship based on birth, others based on the citizenship of the parents. According to Mr. Feigenbaum, that means a child would be a citizen in one state, but not another, forcing New Jersey to reverify the citizenship of every child who applies for benefits. Is that how it would work? Yes, under those circumstances, a child would be a citizen if born in one state and not another. Then, if a child born in one state is not a citizen, do they suddenly become one when they cross state lines? The answer is, not unless Congress passes a law that says they do. So far, no such law exists, which means Mr. Feigenbaum’s next statement doesn’t make much sense.

So individuals will move in. When they were born, they were treated as noncitizens. They didn't get Social Security numbers because they wouldn't have been eligible for the enumeration-at-birth program in their states, and they're going to arrive and they're going to seek benefits that we administer.

But federal law requires that they have Social Security numbers for the administration of those benefits. This is 7 U.S.C. 2025 for SNAP, 42 U.S.C. 1320b-7 for TANF, for Medicaid, and so on. So they're going to need to have Social Security numbers. They're going to arrive without them even though they were under this Court's precedents, citizens who should have been in the enumeration-at-birth program, and who should have had Social Security numbers. And it's going to be a burden on us either in delaying the benefits, training county social service workers in having to administer benefits without the — without the SSNs on a provisional basis.

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Federal law requires a Social Security number to receive benefits because it requires these benefits be for citizens. If a child is not a citizen, they don't have a right to benefits.

And then the last point is we've never in this country's history since the Civil War had your citizenship turn on when you cross state lines. So we don't have answers to these workability questions, not just because it wasn't presented in the district court, not just because it's two sentences in an emergency application, but because, for over a century, executive practice has been uniformly to the contrary, building on this Court's decision in Wong Kim Ark. So we genuinely don't know how this could possibly work on the ground.

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That’s because citizenship doesn’t change when you cross state lines, whether you’re dealing with someone born overseas or in one of the United States.

Conclusion

It will probably be some time before we know how the court decides this case. However, this is what I’ve gleaned from the oral arguments.

First, I’m with the United States on the fundamental question of universal or nation-wide injunctions. After all, when Congress created the District Courts, they put them in limited districts for a reason. Do we really want unelected judges effectively setting national policy through their injunctions? After all, forum shopping will continue to allow petitioners to seek out a friendly judge to aid their cause. Especially when those judges are issuing injunctions long before the merits of the case are heard.

Then there’s the question of judicial hubris. First we have Mr. Feigenbaum, who seems to think the Supreme Court supersedes the Constitution.

And I don’t see how you could have a stronger merits showing than we have here: 127 years of Supreme Court precedent, over a century of executive practice, and congressional statutes that codified both into law in 1940 and 1952.

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After all, who can blame him. Law schools apparently don’t teach the Constitution anymore, and Justice Sotomayor reinforced this lie.

JUSTICE SOTOMAYOR: No, we don’t, because the argument here is that the president is violating an established – not just one but, by my count, four established Supreme Court precedents.

We have the Wong Ark case, where we said fealty to a foreign

sovereign doesn’t defeat your entitlement – your parents’ fealty to a foreign sovereign doesn’t defeat your entitlement to citizenship as a child. We have another case where we said that even if your parents are here illegally, if you’re born here, you’re a citizen. We have yet another case that says, even if your parents came here and were stopped at the border and – but you were born in our territory, you’re still a citizen. And we have another case that says, even if your parents secured citizenship illegally, you’re still a citizen.

So, as far as I see it, this order violates four Supreme Court precedents.

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Again, Justice Sotomayor seems to ignore the fact that the Wong Kim Ark case directly violates the Constitution of the United States. That, ladies and gentlemen, is the height of judicial hubris.

Where does all of this leave us? Well, it certainly isn’t an answer to the question of birthright citizenship. And I doubt we’ll get a satisfying answer on the question of nationwide or universal injunctions. At best I expect the court to find a way to come up with a very limited decision that focuses on the facts in this case. I could be wrong, but somehow I don’t expect this court to establish the nationwide precedent either party really wants.

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