

A stunning and tragic Supreme Court decision

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The Supreme Court on Friday, June 27, dealt a grievous blow to separation of powers by holding that federal courts cannot issue nationwide injunctions to halt unconstitutional actions by the president and the federal government. At a time when President Trump is asserting unprecedented powers, the court made it far more difficult to restrain his unconstitutional actions.

The case, Trump v. CASA, involved the president's executive order ending birthright citizenship. The first sentence of the 14th Amendment provides that "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." In 1898, in United States v. Wong Kim Ark, the Supreme Court held that this means that everyone born in the United States, regardless of the immigration status of their parents, is a United States citizen. The court explained that "subject to the jurisdiction thereof" was meant to exclude just children born to soldiers in an invading army or those born to diplomats.

Trump's executive order directly contradicted this precedent and our national understanding of citizenship by decreeing that only those born here to citizens or to residents with green cards are citizens too. Immediately, several federal courts issued nationwide injunctions to stop this from going into effect.

But the Supreme Court, in a 6-3 ruling split along ideological lines, said that federal courts lack the power to issue such orders. Justice Amy Coney Barrett, writing for the conservative justices, declared that such universal injunctions "likely exceed the equitable authority that Congress has granted to federal courts." Justice Clarence Thomas, in a concurring opinion, put this succinctly: "Today puts an end to the 'increasingly common' practice of federal courts issuing universal injunctions."

Indeed, the court's opinion indicated that a federal court can give relief only to the plaintiffs ^{Note} in a lawsuit. This is a radical limit on the power of the federal courts. Nothing in any federal law or the Constitution justifies this restriction on the judicial power. The court did not rule on the constitutionality of Trump's executive order ending birthright citizenship, but it made it far more difficult to stop what is a clearly unconstitutional act.

The practical consequences are enormous. It would mean that to challenge the constitutionality of a presidential action or federal law a separate lawsuit will need to be brought in all 94 federal districts. It means that the law often will be different depending on where a person lives. Astoundingly, it could mean that there could be two people born in identical circumstances in different federal districts and one would be a citizen, while the other would not. This makes no sense.

It will mean that the president can take an unconstitutional act and even after courts in some places strike it down, continue it elsewhere until all of the federal districts and all of the federal courts of appeals have invalidated it. In fact, the court said that a federal court can give relief only to the named plaintiff, which means that in the context of birthright citizenship each parent affected by the birthright citizenship executive order will need to sue separately. Never before has the Supreme Court imposed such restrictions on the ability of courts to provide relief against unconstitutional acts.

The court holds open the possibility of class actions as a way around this. But the requirements for class action litigation are often burdensome, and the Supreme Court has consistently made it much more difficult to bring such suits.

Justice Sonia Sotomayor in a powerful dissent expressed what this means. She wrote: "No right is safe in the new legal regime the Court creates. Today, the threat is to birthright citizenship. Tomorrow, a different administration may try to seize firearms from law-abiding citizens or prevent people of certain faiths from gathering to worship. The majority holds that, absent cumbersome class-action litigation, courts cannot completely enjoin even such plainly unlawful policies unless doing so is necessary to afford the formal parties complete relief. That holding renders constitutional guarantees meaningful in name only for any individuals who are not parties to a lawsuit. Because I will not be complicit in so grave an attack on our system of law, I dissent."

Let there be no doubt what this means; the Supreme Court has greatly reduced the power of the federal courts. And it has done so at a time when the federal judiciary may be our only guardrail to protect the Constitution and democracy. As Justice Ketanji Brown Jackson explained in her dissent, "The Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law." It is a stunning and tragic limit on the power of the courts to enforce the Constitution.

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