

Supreme Court to Hear Challenges to Nationwide Injunctions

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On May 15, 2025, the Supreme Court is scheduled to hear oral argument in *Trump v. CASA, Inc.*, *Trump v. Washington*, and *Trump v. New Jersey*, a trio of cases involving nationwide injunctions against the federal government. The substantive legal issue in these cases concerns the validity of [Executive Order No. 14,160](#), “Protecting the Meaning and Value of American Citizenship” (the Birthright Citizenship E.O.), which provides that the protections afforded to individuals under the [Citizenship Clause](#) of the Fourteenth Amendment (i.e., birthright citizenship) would not apply to certain individuals born in the United States to specified categories of alien parents. The current Supreme Court litigation focuses on a procedural question: whether the trial courts erred in entering nationwide injunctions against enforcement of the Birthright Citizenship E.O., barring enforcement of portions of the E.O. against all relevant persons.

This Legal Sidebar provides an overview of the litigation in *CASA*, *Washington*, and *New Jersey* with a focus on the dispute over nationwide injunctions currently before the Supreme Court and discusses related considerations for Congress.

Birthright Citizenship E.O. and District Court Litigation

The Citizenship Clause ([Section 1, clause 1 of the Fourteenth Amendment](#)) provides, “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 general, the provision historically has been [understood](#) to grant citizenship to all children born on U.S. soil, subject to limited exceptions. The Supreme Court has [interpreted the provision “subject to the jurisdiction thereof”](#) to mean that the government can deny U.S. citizenship only to certain categories of persons born in the United States, such as children born to [foreign diplomatic agents](#) and [children of members of Indian tribes subject to tribal laws](#). Section 301 of the Immigration and Nationality Act (INA), [8 U.S.C. § 1401](#), closely tracks the constitutional language above, providing that any “person born in the United States, and subject to the jurisdiction thereof” is a “national[] and citizen[] of the United States at birth.” Section 301 also grants citizenship at birth to additional categories, including children born in the United States to members of Indian tribes.

On January 20, 2025, soon after taking office, President Trump issued the [Birthright Citizenship E.O.](#) Section 1 of the E.O. notes, “The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not ‘subject to the jurisdiction thereof.’” It then states,

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Among the categories of individuals born in the United States and not subject to the jurisdiction thereof, the privilege of United States citizenship does not automatically extend to persons born in the United States: (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.

Section 2 of the E.O. declares it to be the policy of the United States that no federal department or agency "shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship" of any person who is born 30 days or more after the date of the E.O. and falls within the two categories above. Section 3 of the Birthright Citizenship E.O. directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the commissioner of Social Security to enforce the E.O. and requires all executive departments and agencies to issue public guidance on the order's implementation within 30 days.

Multiple individuals, states, and organizations sued the federal government to challenge the legality of the Birthright Citizenship E.O., and three of those cases are now before the Supreme Court. *Trump v. Washington* involves two consolidated challenges filed in the U.S. District Court for the Western District of Washington, one by a group of states led by Washington and one by a putative [class](#) of expectant mothers whose children might be affected by the E.O. *Trump v. CASA, Inc.*, filed in the U.S. District Court for the District of Maryland, was brought by five pregnant individuals and two nonprofit immigrant-rights organizations with members in all 50 states. *Trump v. New Jersey* was commenced in the U.S. District Court for the District of Massachusetts by 17 states, the District of Columbia, and the City and County of San Francisco and was consolidated with a case filed by an individual expectant mother and two nonprofit associations. The plaintiffs in each case argue that the Birthright Citizenship E.O. violates the Fourteenth Amendment, Supreme Court precedent interpreting the amendment, and the INA.

The district courts in all three cases granted nationwide injunctions barring enforcement of the Birthright Citizenship E.O. As a [CRS Report](#) explains in more detail, an *injunction* is a court order that requires a person or entity to take or not take some specific action. A *nationwide injunction* is an injunction *against the government* that prevents the government from implementing a challenged law, regulation, or other policy *with respect to all relevant persons and entities*, whether or not such persons or entities are parties participating in the litigation. Injunctions, including nationwide injunctions, may be permanent or preliminary in nature. While a permanent injunction is generally issued as part of a final judgment on the merits, a preliminary injunction serves to preserve the status quo during the pendency of litigation. Courts consider [several factors](#) when deciding whether to issue a preliminary injunction, including the likelihood that the party seeking an injunction will succeed on the merits.

In the Washington case, the district court issued a January 23, 2025, [temporary restraining order](#) blocking enforcement of the E.O. for a limited time. On February 6, 2025, the same court issued a [preliminary injunction](#) extending the bar on enforcement of the E.O. The court held that the plaintiffs were likely to prevail on their challenge to the E.O. and had shown that injunctive relief was necessary to prevent irreparable harm. It further [held](#) that a nationwide injunction was required because the government had no valid interest in enforcing an unconstitutional policy, the E.O. arrogated power from Congress to the executive branch, and a more limited injunction would be ineffective and unworkable.

In the Maryland litigation, the court granted a [preliminary injunction](#) on February 5, 2025. The court [held](#) that the plaintiffs were likely to succeed on the merits of their claims because "[t]he President's novel interpretation of the Citizenship Clause contradicts the plain language of the Fourteenth Amendment and conflicts with 125-year-old binding Supreme Court precedent" and that "denial of the precious right to

citizenship for any period of time will cause [the plaintiffs] irreparable harm,” including rendering some of the individual plaintiffs’ children stateless. The court [held](#) that a nationwide injunction was warranted because “[o]nly a nationwide injunction will provide complete relief to the plaintiffs,” and because the Birthright Citizenship E.O. is a “categorical policy” that “concerns citizenship—a national concern that demands a uniform policy.”

In the Massachusetts case, the district court granted a [preliminary injunction](#) against the Birthright Citizenship E.O. on February 13, 2025. The court [held](#) that, under the plain language of the Fourteenth Amendment “as interpreted by the Supreme Court more than a century ago and routinely applied by all branches of government since then,” the plaintiffs’ challenges to the E.O. were “nearly certain to prevail.” The court [held](#) that the individual and nonprofit plaintiffs in that case had not demonstrated the need for a nationwide injunction. With respect to the state plaintiffs, however, the court [held](#) that they had “identified harms that do not hinge on the citizenship status of one child, or even of all children born within their borders,” such that a nationwide injunction was warranted.

In another case, *New Hampshire Indonesian Community Support v. Trump*, the U.S. District Court for the District of New Hampshire issued a [preliminary injunction](#) barring the government defendants from enforcing the Birthright Citizenship E.O. “with respect to the plaintiffs [or] any individual or entity in any other matter or instance within the jurisdiction of this court.” That order does not appear to be a nationwide injunction and is not currently before the Supreme Court. [Additional challenges](#) to the Birthright Citizenship E.O. are also pending in the lower federal courts.

Appeals and Supreme Court Litigation

The government appealed the three nationwide injunctions against the Birthright Citizenship E.O. and filed an emergency motion for a partial stay with the appeals court in each case. A *stay* is a court order that temporarily pauses a different court order or other government action. In these cases, the government sought to stay only the nationwide scope of each injunction, which would allow the executive branch to implement the Birthright Citizenship E.O. with respect to *persons other than the plaintiffs* in each case while the litigation was pending. Because district courts in three different circuits had entered nationwide injunctions against the E.O., the government would have had to prevail on all three stay motions before it could enforce the order against any non-plaintiffs. The U.S. Courts of Appeals for the [First](#), [Fourth](#), and [Ninth Circuits](#) all denied the government’s stay motions.

The government then sought emergency relief from the Supreme Court, filing [substantially similar applications](#) in all three cases on March 13, 2025, seeking a partial stay of each of the three nationwide injunctions. To obtain a stay from the Supreme Court, a party must generally [show](#) that (1) it is likely to succeed on the merits, (2) it will suffer irreparable injury without a stay, (3) the stay will not substantially injure the other parties interested in the proceedings, and (4) a stay is in the public interest. As was the case before the circuit courts, the government’s Supreme Court applications challenge only the scope of the injunctions in these cases. The district court decisions at issue in these applications did not finally rule on the legality of the Birthright Citizenship E.O. While the Supreme Court may consider the legality of the E.O. in evaluating the government’s likelihood of success on the merits, the Court could resolve the applications without reaching that issue.

In the stay applications, the government [argues](#) that nationwide injunctions improperly grant relief to persons who are not parties to the cases and conflict with [Supreme Court precedent](#) holding that Article III of the Constitution limits judicial relief to parties with [standing](#)—that is, persons with a concrete, personal interest in the dispute. It also [contends](#) that nationwide injunctions (1) “transgress restrictions on courts’ equitable powers,” which traditionally limited relief to parties to a case; (2) “subvert the Article III hierarchy of judicial review” by allowing district court orders to have nationwide effect; (3) undermine existing procedures related to joinder and class actions; (4) potentially provide relief to those who do not

want it; (5) “cause significant harm to the government” by encouraging [forum shopping](#) and requiring the government to seek emergency relief in order to implement its policies; and (6) harm the courts by encouraging rushed decisions and increasing interbranch conflict. The government [argues](#) that Supreme Court intervention is particularly warranted due to the recent increase in nationwide injunctions.

The government further [contends](#) that the district courts in two cases erred in awarding relief to states because states “cannot assert citizenship rights on behalf of individuals.” It [argues](#) that the injunctions improperly “micromanage the internal operations of the Executive Branch” by prohibiting the government not only from enforcing the Birthright Citizenship E.O. but also from taking internal steps to implement it. Finally, the government [asserts](#) that the balance of equities supports a stay because “universal injunctions irreparably harm the Executive Branch by preventing a branch of government from carrying out its work,” while limiting the injunctions “would not harm the only plaintiffs properly before the district courts.” The government thus [asks](#) the Supreme Court to stay the nationwide injunctions except as to the individual plaintiffs or, if the Court finds that the states are proper plaintiffs, to limit the stay to “individuals who are born or reside in those States.” It also [asks](#) the Court to stay the injunctions “to the extent they prohibit executive agencies from developing and issuing guidance explaining how they would implement the Citizenship Order in the event that it takes effect.”

The Supreme Court ordered the parties challenging the Birthright Citizenship E.O. to respond to the stay applications by April 4, 2025. The respondents in *Trump v. CASA, Inc.* [argue](#) that the Court should deny the stay because the government has not shown that it will be irreparably harmed by the nationwide injunctions and that the injunctions are in the public interest. They [contend](#) that a nationwide injunction is necessary to prevent injury to the plaintiffs, which include organizations with members in every state, and to [preserve](#) the uniformity of the law related to citizenship. They also assert that universal relief is appropriate because the E.O. is “facially unlawful” and that non-party relief is consistent with Article III and traditional principles of equity. If the Court decides to stay the nationwide injunction in part, the *CASA* respondents [assert](#) that it should do so in a way that still prevents harm to all members of the organizational plaintiffs. Finally, they [argue](#) that the government forfeited its argument related to internal implementation of the E.O. by failing to raise it in the lower courts.

The state respondents in *Trump v. Washington* [argue](#) that the Supreme Court should deny the application for stay because the government will not “be irreparably harmed by continuing to respect a foundational constitutional right that has been established—and accepted by all branches of the federal government—for more than a century.” They [assert](#) that a stay is not warranted because there is “no basis for granting certiorari [in these cases] and certainly no fair prospect of reversal” and that the “[equities](#) and public interest also heavily weigh against the stay request.” With respect to the states’ standing, they [emphasize](#) that they “are not asserting [parens patriae](#) or ‘third-party standing’” but rather are seeking to vindicate “their own direct legally protected pecuniary and sovereign interests.”

The individual respondents in *Trump v. Washington* [state](#) that the government does not seek to stay the district court’s injunction as applied to them. They note, however, that they seek to represent a proposed class of pregnant persons and future children and [contend](#) that narrowing the nationwide injunction in part “will result in immediate, irreparable harm to putative class members who are similarly situated to Plaintiffs and the growing number of babies born to them every day.”

The respondents in *Trump v. New Jersey* [assert](#) that the Supreme Court should deny the stay because the Court’s “emergency docket is no place to seek permission to contravene multiple precedents of this Court, and [the government] will not suffer the sort of irreparable injuries needed to justify [its] extraordinary demand.” They also [argue](#) that a stay is not warranted because the Court is not likely to grant certiorari on the questions presented and, if it does so, the government is not likely to prevail on its claims that the states lack standing or that the injunctions are overbroad. With respect to state standing, they [contend](#) that the states do not seek to protect the rights of third parties but rather seek to prevent direct financial harm the states will suffer absent the current nationwide injunction.

On April 17, 2025, after receiving full briefing on the stay applications, the Supreme Court consolidated the three cases and scheduled oral argument on the stay applications for May 15, 2025.

Considerations for Congress

Trump v. CASA, Inc., *Trump v. Washington*, and *Trump v. New Jersey* raise potential considerations for Congress related to the substantive law on birthright citizenship as well as procedural questions around litigation before the Supreme Court and in federal courts generally.

Birthright Citizenship

As a substantive matter, these three cases involve claims that the Birthright Citizenship E.O. conflicts with the Fourteenth Amendment and the INA. The applications currently before the Supreme Court do not ask the Court to rule on the legality of the Birthright Citizenship E.O. The Court may consider the merits of the parties' substantive arguments in deciding whether or not to grant a stay, however, so a ruling from the Court on these cases may provide some guidance on the underlying substantive legal issues.

To the extent the challenges to the Birthright Citizenship E.O. are based on the INA, Congress has the legal authority to amend the governing statute. Any amendments to the statute, like the Birthright Citizenship E.O., would be subject to applicable constitutional limits, including any contained in the Fourteenth Amendment.

Supreme Court Motions Docket

The challenges to the Birthright Citizenship E.O. may also be of interest to Congress as examples of emergency litigation before the Supreme Court. Applications for stays pending appeal proceed on the Supreme Court's non-merits docket, also called the Court's motions docket or "[shadow docket](#)." The Court may grant or deny non-merits relief with limited briefing and can act quickly on requests for emergency relief when the Court deems it appropriate. For instance, in *Trump v. J.G.G.*, the Court received an emergency application from the government on March 28, 2025, asking it to vacate district court orders barring the removal of certain foreign nationals. The Court granted the application on April 7, 2025. In another case, *A.A.R.P. v. Trump*, the Court took less than a day to rule on an emergency application for an injunction preventing the removal of certain individuals, receiving the application on April 18, 2025, and issuing an order barring removal before 1:00 a.m. on April 19, 2025.

The birthright citizenship cases are unusual in that the Court requested briefing with a three-week deadline for responses—a schedule that is more condensed than the usual schedule in a merits case but less expedited than what the Court might order in cases it deems truly time-sensitive. It is also unusual that the Court has granted oral argument in these cases. One commentator [states](#) that this will be the fourth time the Court has held oral argument on emergency applications since 1971.

Multiple cases filed by the federal government, such as the stay applications in the birthright citizenship cases, have appeared on the Supreme Court's [emergency docket](#) for the 2024-2025 term. Congress has significant legal authority to regulate federal court procedures and could consider legislation related to [emergency litigation involving the government](#) or the Supreme Court's non-merits docket. A [CRS Report](#) provides analysis of considerations for Congress related to the Supreme Court's motions docket.

Nationwide Injunctions

The challenges to the Birthright Citizenship E.O. represent a potential development in the law related to nationwide injunctions. As a [CRS Report](#) discusses in more detail, in recent years, nationwide injunctions have been the subject of significant legal and policy debate. [Defenders](#) of nationwide injunctions argue that they prevent widespread harm, reduce the burdens of litigation by eliminating the need for every

person affected by a challenged policy to bring suit, and promote consistency and the rule of law by uniformly halting allegedly illegal government actions. Some argue that nationwide injunctions are particularly appropriate in [certain circumstances](#), including immigration litigation, environmental and civil rights cases, and challenges to agency rulemaking under the Administrative Procedure Act.

Opponents counter that nationwide injunctions undermine established [litigation procedures](#) and trigger fast-tracked litigation in which the federal courts must evaluate challenged policies based on limited factual and legal records. Some contend that nationwide injunctions raise [constitutional concerns](#) because they award relief to people who are not parties to the litigation and who may lack standing to seek relief in federal court. Others argue that nationwide injunctions may prevent the government from effectively implementing its policies or create legal uncertainty, as implementation of a challenged government program may stop and start as a case moves through each level of the federal courts. In addition, some commentators assert that nationwide injunctions contribute to the [politicization of the courts](#) and erode judicial legitimacy.

[Available counts](#) of nationwide injunctions indicate that the number of nationwide injunctions increased under every presidency from George W. Bush through the first Trump Administration. The number dropped during the Biden Administration, though it remained higher than under any Administration before President Trump. As of late March 2025, CRS had identified 17 nationwide injunctions issued during the [second Trump Administration](#).

Currently, no federal statute, procedural rule, or Supreme Court majority decision either expressly authorizes courts to issue nationwide injunctions or expressly limits their ability to do so, though several Supreme Court Justices have expressed [views](#) on nationwide injunctions in [concurrences](#) or [dissents](#). It is possible that a ruling from the Court in the current birthright citizenship cases will provide guidance to lower courts on whether and when it is appropriate to issue nationwide injunctions.

Congress also has authority to enact legislation regulating courts' ability to issue injunctive relief, and several proposals from the 119th Congress would do so. For instance, H.R. 1526 (the [No Rogue Rulings Act of 2025](#)), which passed the House on April 9, 2025, would provide that federal district courts can generally issue injunctive relief only "to limit the actions of a party to the case ... with respect to the party seeking injunctive relief from such district court and non-parties represented by such a party acting in a representative capacity pursuant to the Federal Rules of Civil Procedure." As an exception to this limitation, the bill would allow a three-judge district court to issue broader injunctive relief "[i]f a case is brought by two or more States located in different circuits challenging an action by the executive branch." Additional proposals from the 119th Congress related to nationwide injunctions include S. 1206 (the [Judicial Relief Clarification Act of 2025](#)), S. 1099 (the [Nationwide Injunction Abuse Prevention Act of 2025](#)), H.R. 2274 (the [Court Shopping Deterrence Act](#)), and H.R. 97 (the [Injunctive Authority Clarification Act of 2025](#)).

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