The Trump v. Barbara Oral Arguments Fallout

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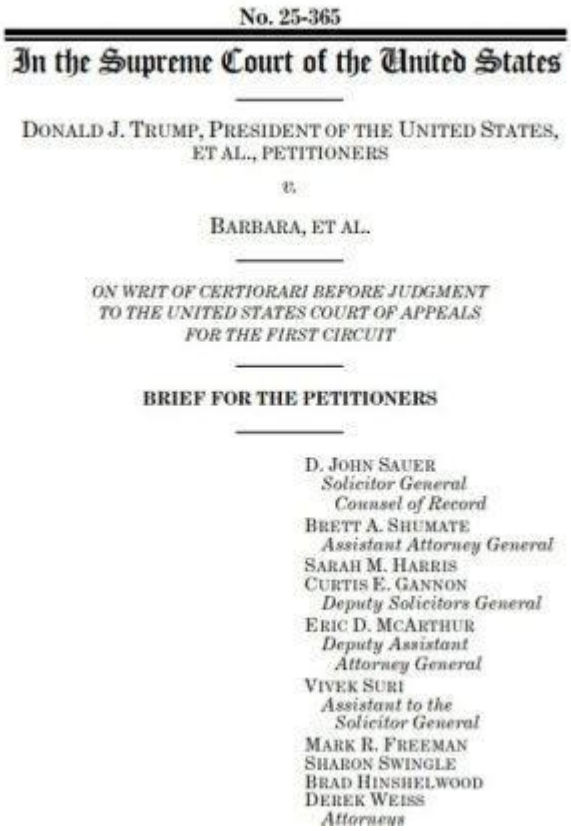

No. 25-365

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS

v.

BARBARA, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONERS

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https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/25-365_k536.pdf

(Apr. 3, 2026) — Well, the oral arguments in *Trump v. Barbara*, the "birthright citizenship" case, are over and the matter is now under advisement with SCOTUS. Interested readers can view the transcript here.

And as usual, the armchair pontificators are busily at work tapping out their predictions on their keyboards…, not unlike your humble servant. And the fact that President Trump attended the event (although he left before it was over…, arguably not the wisest or most courteous move…, where is Susie Wiles when you need her…?) rendered it even more interesting.

Your servant has made his views known here as to what the constitutional and principled outcome should be. That outcome, of course, is not to be confused with what the actual

outcome *might* be in the hyper-politicized and toxic/TDS-afflicted/anti-Trump Beltway swamp…, where, BTW, the U.S. Supreme Court is located.

Moreover, as previously noted by your servant here at *The P&E*, those who believe that the Supreme Court functions in an independent "deep, logical and rational cocoon," unaffected by outside political or societal forces, are foolishly indulging in a controlled substance.

Stated otherwise, predictions on the final outcome should be taken with a "grain of salt" or, depending on who is gazing into their Amazon Prime crystal ball, an entire shaker of salt. But I digress.

The arguments of both Solicitor General D. John Sauer and ACLU lawyer Cecillia Wang well-articulated their respective positions as set out in their respective briefs. Naturally, your servant was more persuaded by General Sauer, but that is another story.

There is a saying at the Supreme Court, as well as perhaps at other courts of "last resort": You cannot really "win" the case at oral argument, even with stellar prose…, but you can certainly ***lose*** it, particularly if you botch your answers to questions from the court. Some questions may be "softballs" while others will be hostile, but you'd better be prepared for both. And whatever you do, don't break down crying. As in baseball, there's no crying in SCOTUS oral arguments.

While each side was peppered with some pretty good inquiries, particularly those based on hypothetical "what if" scenarios, your servant would venture that neither side "lost" their case by fumbling an answer. That being the case, the briefs become critical.

So, to repeat, your servant would venture that, if that assumption is sound, the Court should rule, most likely in a badly fractured or "split" decision, in President Trump's favor. And if your servant is proven wrong in that prediction when the decision is released sometime later this year, likely in June, it certainly will not be the first time.

That said, one point emerging out of the oral arguments should be noted. That point concerns the main interest of your servant, and the one he most frequently addresses here at *The P&E:* the "natural born Citizen" ("nbC") issue, While *Trump v. Barbara* does not directly address the nbC issue – which is governed by Art. 2, § 1, Cl. 5 of the Constitution rather than the 14th Amendment – the historical backdrop and many of the concepts regarding the 14th Amendment "birthright citizenship" issue are related to the nbC question.

Specifically, when Justice Barrett was questioning the ACLU lawyer representing those opposing President Trump – Ms. Cecillia Wang – regarding how Executive Order 14160 would affect tribal Indians, she used the term "natural born citizens" instead of the correct term, "***native***-born citizens." *See* Oral Argument Transcript at 127; 131.

Justice Barrett asked Ms. Wang: "Is an — a tribal Indian born on a reservation today, on tribal land, a natural-born citizen under the Fourteenth Amendment?"

Ms. Wang correctly answered: "Under the Fourteenth Amendment, no. Of course, Congress has provided for citizenship for all tribal members in the 1924 [Indian Citizenship] Act."

The issue here is the distinction virtually everyone – including Supreme Court Justices – usually blunders over: those who are (or are not) a "natural born Citizen" as determined by Art. 2, § 1, Cl. 5 of the Constitution and *not* the 14th Amendment or 8 U.S.C. § 1401(b), the codified version of the 1924 Act.

While Ms. Wang's negative answer was technically correct, her statement that Congress "has provided for citizenship for all tribal members in the 1924 Act…," failed to qualify itself. It should have noted that although the 14th Amendment applies to both "native born citizens" as well as to nbC's – because while all nbC's are also native born citizens, not all native born citizens are nbC's (the "Euler Diagram issue" addressed here – only those native born citizens who *in addition* satisfy the criteria for being an nbC as the Founders used and understood the term when drafting and adopting the Constitution's "Eligibility Clause" would qualify.

Those criteria, of course, are articulated in Book 1, Ch. 19, § 212 of Emer de Vattel's 1758 treatise, *The Law of Nations,* mandating that in order to be a natural born citizen, one must be born ***in*** a nation to parents who, at the time of birth, are ***already*** citizens of that nation, whether themselves native-born, natural born or naturalized. Otherwise, while the person may be a "citizen," he/she is not an nbC as understood and intended by the Founders in 1787.

An interesting sidelight to Justice Barrett's question to Ms. Wang is this: Is tribal "Indian Country" even "in" the United States? The generally-accepted answer is "yes," of course, under the Supreme Court decision in *Cherokee Nation v. Georgia*, where Indian tribes and their lands are described as being "domestic dependent nations." But the question has never been directly addressed or adjudicated by the Court, and certainly not in the context of whether a "native American" born on a reservation today could be considered an nbC.

Perhaps the Court will find the time, interest…, and backbone…, at some future date to address the question…, maybe when Senator Elizabeth Warren, who once claimed to be "part Cherokee, part Delaware…," tries to run for President (or Vice-President).

Interesting issue…, no?