



The Supreme Court's Long Shadow Over Latinos

The 2025-2026 Term and the Case for Reform | A Report by LatinoJustice PRLDEF



Table of Contents

Introduction	3
Immigrant Rights.....	4
Voting Rights.....	5
Equal Protection and Racial Justice	6
Enabling the Imperial Presidency.....	7
Towards Supreme Court Reform	8
Conclusion	10



Introduction

The Supreme Court's [birthright citizenship decision](#), issued at the end of the 2025-2026 term and on the eve of our democracy's 250th anniversary, was a slap in the face of millions of Latinos. Despite more than a century of established precedent, the Justices only narrowly issued a 5-4 decision reinforcing the Constitutional guarantee that every person born on American soil is a US citizen.

In a [prior case on birthright citizenship](#) decided last year, the Court evaded the Constitutional question, instead focusing on whether lower courts could issue nationwide injunctions. In the intervening time, countless families in the US held their breath, wondering whether their soon-to-be-born child would have the same right as others had for more than a hundred years. Most of these families were Latino. Of [260,000 babies born every year](#) to whom the President's illegal executive order would have applied, [80% are Latino](#).

This was not the only Supreme Court decision that will have outsized

detrimental effect on Latinos in the US. Many of this term's decisions—on due process, on who and how people can apply to enter the US and how they can live and work legally here, on limits on the right to protest, and several reducing protections for voters—will cause disproportionate harm to Latino communities.

The Supreme Court has set up a framework which favors an imperial presidency and wrongfully asserts that we must eliminate any consideration of race and prior discrimination in seeking equal protection for all people in the US. Such a framework enables and amplifies the Justice Department's [persecution of people who oppose federal immigration policies](#) and the agency's [failure](#) to protect the civil rights of people in the US; the [illegal policies and practices](#) of federal immigration agencies; and federal overreach in state-controlled processes such as [voting and policies at educational institutions](#).

To take advantage of this new framework and circumvent the

established judicial process, the executive branch sends direct requests to the Court's "shadow docket"; the Court has obliged, taking up 30 of the 33 requests that the White House has submitted since January 2025 (see sidebar). Of those 30, the Court has issued [3 in 4 decisions](#) in the administration's favor, a success rate so high as to call into question the Court's nonpartisanship.

Many recent Supreme Court decisions that directly affect what happens to the 68 million Latinos in the US involve struggles that LatinoJustice PRLDEF has been fighting for its entire existence.

Just a year after opening our doors as the Puerto Rican Legal Defense and Education Fund, LatinoJustice sued to enforce the right to bilingual ballots and interpreters for voters ([Lopez v Dinkins](#)). We have successfully challenged warrantless raids by federal immigration agencies ([Aguilar v ICE](#)), racist ordinances that prevented immigrants from renting

or being hired ([Lozano v Hazleton](#)) or from gathering in public spaces to search for work ([Doe v Village of Mamaroneck](#)), and we intervened to end one of the earliest 287(g) agreements in the current administration ([CARECEN v Nassau County et al](#)).

To continue our work toward a more just and equitable society, LatinoJustice strategically uses litigation, advocacy, communications and community education to minimize the negative effects of these Supreme Court decisions. Now we have come to realize that we must call for the transformation of an institution that has calcified into an undemocratic, harm-causing body.

Below is our analysis of selected Supreme Court decisions in the 2025-2026 term, and our plan to move forward.



Immigrant Rights

The Supreme Court considered this term several cases that questioned who can be granted citizenship and the rights of non-citizens, including hundreds of thousands of people with established legal status to live and work in the US.

These decisions reinforced the federal administration's position that the Executive branch has unilateral power to rewrite the rules of engagement at the border and on any street. This stance is in service of achieving its relentless goal to deport millions of people and force those seeking to enter the US legally to jump through nearly insurmountable hoops to qualify for legal status.

In [Noem v Perdomo](#), a case brought under the increasingly-deployed and secretive "shadow docket" (see sidebar), the Court signaled its support for federal immigration authorities to engage in unfettered racial profiling of Latinos. The only insight the public received into the decision was a concurrence by Justice Kavanaugh, where he wrote [it is acceptable to](#) "briefly" stop someone because of their appearance, how they spoke, where they were standing, or what kind of work they did for a living.

Justice Sotomayor, in dissent, argued that Latinos "should not have to live in a country where the Government can seize anyone who looks Latino, speaks Spanish, and appears to work a low-wage job," but to no avail. The Court overturned an injunction against racial profiling in federal enforcement actions and raids in Los Angeles. We can draw a direct line between this decision and the subsequent actions in sweeping, indiscriminate immigration enforcement operations in Chicago ("Operation Midway Blitz"), Minneapolis

("Operation Metro Surge"), and elsewhere, which resulted in [three deaths](#) and scores of serious injuries to people who were not the targets of enforcement.

In [Mullin v Al Otro Lado](#), the Court also sided with the administration's decision to move immigration agents a short distance from official border entries such that they were no longer obligated, as established law requires, to screen those seeking asylum, because migrants had not technically "arrived" at the physical border entry point. In [Blanche v Lau](#), the Court further empowered border agents, allowing them to downgrade the status of permanent legal residents re-entering the US if they were suspected (not convicted) of committing a crime.

The Court's decision in [Mullin v Doe](#) abrogated judicial responsibility for determining whether DHS could end the Temporary Protected Status (TPS) program for people from Haiti and Syria without input on country conditions from other agencies, as the program requires. In effect, this has given the administration carte blanche to end these programs, which at the start of the current administration covered [1.3 million people](#), some of whom have held the renewable status for over three decades.

In this case, the Court did address the question of whether there was any anti-Black racial animus in the administration's decision to end the program for Haitians, only to decide there was none. Despite [multiple](#) public statements from the President and [members of his administration singling out Haitians](#) as unworthy of living here, the Court [rejected claims of intentional discrimination](#).



This decision unleashed a wave of ever-crueler punishments against millions of people who have been legally living and working in the US, raising their families and contributing to their communities. The most abject example is the [removal of TPS from some 300,000 Haitian people](#). The administration has [placed ankle monitors](#) on hundreds of Ohio community members, and [flown hundreds](#) of others into a situation so bad that people in the US are advised not to travel, due to ["risk of crime, kidnapping, terrorism, unrest, and limited health care."](#)

The Supreme Court's decision on [birthright citizenship](#) was unfathomable. Although the Court upheld the constitutionality of birthright citizenship, it was by a [narrow 5-4 margin](#), opening the door for further challenges to this

bedrock principle. Indeed, [legislation that was recently floated to narrow birthright citizenship](#) and the issuance of an [executive order targeting "birth tourism"](#) means that this will not be the last word on this issue at the Court.

The Court's decisions are creating a body of legal interpretation that rejects established rights for non-citizens and pointedly assumes people of color do not have the full protections afforded to them by the Constitution.

We expect that in the coming term the executive branch will continue to bring cases directly to the Supreme Court to dilute the rights of citizens and non-citizens alike and support its goals to terrorize non-citizens and their families and force them into wrenching life-altering decisions that will affect them for generations.



Voting Rights



The most consequential voting rights decision of this term, [Louisiana v Callais](#), had been anticipated by advocates, and the ruling was just about as damaging to voting rights as many had feared. The opinion continued a pattern that started with the 2013 decision in [Shelby County v Holder](#) as the Court piece by piece has stripped the landmark 1965 Voting Rights Act (VRA) to a husk.

Lower federal court judges saw that Louisiana's electoral district map clearly discriminated against Black voters in the state by providing only one district in which they had equal opportunity to elect a representative of their choice (as opposed to two districts, [which corresponded more closely](#) to that community's share of the state population). However, the majority of the Justices labeled a remedy to discrimination as more harmful than discrimination itself. As long as a state claims that its intention in drawing districts is race-neutral, [the Court sees no evidence of discrimination](#).

Several states took the Court's decision as an open invitation to immediately change their district lines. Most notably, Florida's legislature [approved a new Congressional map](#) the day the Callais decision was issued, with the Governor signing it into law a few days later. [Louisiana suspended primary elections](#) underway and tossed thousands of ballots already cast the day after the decision came out so it could reinstate the discriminatory map. Alabama asked the Court to [lift a lower court injunction](#) that barred it from using maps drawn in 2023; the Court [ruled](#) to remove the injunction less than two weeks later.

In Georgia, a legal challenge to discriminatory district maps failed in federal court, with the judge citing [Callais as part](#)

[of the rationale](#) for rejecting the claim of discrimination. And in South Carolina, a new map approved by the House a few weeks after the decision [did not make it out of the Senate](#) before the end of session in May.

While some of the efforts to change maps prior to the 2026 elections have not succeeded, we expect these and other states to continue pushing for changes that will be in place before the next Presidential election.

These changes threaten the ability of Black and Brown communities to elect representatives of their choice in many parts of the country, and of Black and Brown candidates to win office. Three-quarters of all Congressional representatives of color were elected in "majority-minority" districts, including [74% of Black members and 84% of Latino members](#). And the effects of the Callais decision will be acutely felt in state legislatures, city councils, and county commissions.

And to the earthquake of Callais, there are tremors that undermine voters' ability to defend their right to the ballot. Denying certification to [Turtle Mountain Band of Chippewa Indians v. Howe](#), the Court effectively concurred with the lower court ruling that rejected the long-standing understanding that [individual voters have standing to bring lawsuits](#) to reinforce Section 2 of the VRA, a vital tool to preventing vote dilution. This potentially means that only the US Department of Justice would have standing to file Section 2 lawsuits, making it highly unlikely that we would see any of these suits under the current administration.

Similarly, when it declined to review the Eighth Circuit Court of Appeals decision in [Arkansas United v Thurston](#), the Court effectively allowed states to deny individuals

and groups the [ability to sue](#) to protect voters' rights to assistance due to disability or language ability. Providing information and assistance needed for voters not fluent in English has been at the heart of several LatinoJustice cases throughout its history and is an important part of the [model state voting rights](#) legislation we helped craft and have promoted.

There was a small ray of hope regarding voting by mail. In [Watson v. Republican National Committee](#), the Court ruled that states could continue to count mail-in ballots postmarked by Election Day and received shortly afterward. And in [USPS v. California](#), the Court declined to stay a preliminary injunction against the US Postal Service's implementation of a rule that would give it unprecedented power to determine who would receive ballots by mail. But these decisions must be taken as [a temporary victory at best](#). The administration continues to attempt to interfere with mail-in voting, used by one third of voters in the nation.

The consequences of these decisions will continue to ripple out well beyond this election cycle. With redistricting now taking place year-round, narrower avenues to challenge electoral maps that disenfranchise Latinos and other communities of color, and deeply entrenched partisan interests both at the state level and at the top court, we could see a major rollback of representation for and by people of color.



Equal Protection and Racial Justice

Over the past few years, this Supreme Court has issued decisions that rest on the notion of a “color-blind” Constitution. These decisions, separately and cumulatively, present grave threats to Latino civic participation and economic mobility.

In its 2023 decision in *Students for Fair Admissions v. Harvard and University of North Carolina*, where the Court prohibited race consciousness in higher education admissions, a majority of the justices applied an ahistorical, skewed vision that prohibits any consideration of race and ethnicity in striving for equal protection under the Constitution.

By saying that using race-conscious criteria disadvantages some groups and is therefore discriminatory, and that such measures must have an end date, the majority opinion turns strict scrutiny into a standard that can almost never be met to remedy prior discrimination or its cumulative effects over time.

The phrase “our Constitution is color-blind” comes from the famous dissent by Justice John Marshall Harlan in *Plessy v. Ferguson* (1896), the Supreme Court case that held that having “separate but equal” institutions and facilities was constitutional (until the Court overturned that principle in *Brown v. Board of Education of Topeka, KS* in 1954). Justice Harlan wrote, “there is in this country no superior, dominant, ruling class of citizens. There is no caste here,” that the Constitution “neither knows nor tolerates classes among citizens,” and that “all citizens are equal before the law.”

The conservative majority in the Court has interpreted “color-blind” to mean that one can *never* consider race and the long term and cumulative effects of centuries of racist policies and practices. This interpretation ignores how systemic discrimination persists today and views the tools to fight it as unnecessary. As Justice Sotomayor has written, “Ignoring race will not equalize a society that is racially unequal.... Equality requires acknowledgment of inequality.”

The majority’s view drove the Supreme Court’s 2023 decision in *Students for Fair Admissions* and is now being used by the Court and the current federal administration to try to eliminate programs in education, as well as in employment and government contracting that have been essential to Latino access and advance. This Court’s view of what it means to be color-blind also propelled the majority’s decision last month in *Louisiana v. Callais*, which all but gutted the federal VRA and will certainly negatively impact Latino voting power going forward.

At the same time, this Court has ignored strong evidence of racial animus underlying key government decisions. Writing in dissent in *Mullin*, Justice Kagan pointed out repeated statements by the President “so repellent and racially inflected that the majority decline[d] to put them in print,” and that these statements “fairly shout, in their racial undertones and overtones alike, that race entered into the president’s resolve to remove Haitians.” Thus, the Court has made it even more difficult to challenge discriminatory policies and practices even when the government’s racism is “plain to see.”





Enabling the Imperial Presidency



A key feature of the way this Court has functioned under the current administration is the exponential growth of the use of the so-called “[shadow docket](#)” or emergency docket.

Emergency requests for stays or injunctions presented to the Court bypass the standard process and timeline of how cases are reviewed and heard by the Court. An individual Justice who receives the request decides whether the Court will take it up; if the Court does, the decision covers just the basics, without explanation of legal reasoning. This means that when these abbreviated decisions come out, without any opportunity for parties to present thorough, briefed arguments, or any insight into how the Justices arrived at their decision, any potential future challenge has slim evidence on which to build.

The shadow docket’s rushed timelines, lack of careful preparation and opacity have made it an attractive instrument for an administration intent on crashing through norms and laws and unbothered by clearly established constitutional principles. Most of the administration’s requests have sought expanded and immediate powers for the executive branch to carry out its agenda, and this Court has, for the most part, obliged.

Since January 2025, the administration has submitted 39 emergency applications to the Court (an additional three petitions were filed in cases related to the administration by other litigants in the case). With four petitions withdrawn and [one pending](#) as of the publication date of this report, the Court granted 25 of the remaining petitions, deciding 74% of cases in the President’s favor.

In comparison, the executive branch submitted a total of [8 emergency requests total](#) in the four presidential terms prior to 2017 (which covered administrations led by both major parties), President Biden submitted 19 during his four-year term, and [President Trump submitted 41 during his first term](#).

It’s difficult to overstate how important the shadow docket shortcut has become to furthering this administration’s agenda. The Court has granted the president the ability to fire agency heads without cause ([Trump v Wilcox](#) and [Trump v Boyle](#)), to allow people representing the pseudo agency DOGE to access Social Security records ([Social Security Administration v AFSCME](#)), to deport people to countries where they have no ties and may be detained or tortured ([Department of Homeland Security v DVO et al](#)), and, in the first run at birthright citizenship ([Trump v CASA](#)), to nullify the ability of lower court judges to grant nationwide injunctions, several of which had stopped some of the president’s illegal executive orders.

This year, one of the “shadow docket” decisions effectively stated that Fourth Amendment protections against unreasonable search and seizure do not apply equally to Latinos, and that federal agents can harass and detain people based on what they look like, how they speak, what kind of work they do, or even where they happen to be standing. [Noem v Perdomo](#) only deviated from the “shadow docket” playbook in that Justice Kavanaugh provided a 10-page concurring opinion in which he characterized these racial profiling sweeps as “brief investigative stops” based on “reasonable suspicion,” and that the government would be “harmed” if their ability to carry out these operations was curtailed.

The rate at which the Court has been taking on ruling on matters with such wide-ranging and immediate consequences via the “shadow docket” has led many to begin to lose faith in the Court, and to look upon it as yet another governmental entity, like the executive branch, that disregards “we the people” and sees itself as an unimpeachable source of power. That is not what our founders intended, nor does it serve our multiracial democracy.



Toward Supreme Court Reform



LatinoJustice litigates cases to protect immigrant rights and the rights of voters. We work to transform the criminal justice system and to maintain access to opportunity. We also continue our advocacy efforts to shore up protections at the state and municipal level and knock out bad laws.

That said, this is a fight where we must use every tool available to make lasting change. And as the president has used the Supreme Court as a bypass valve to get his way and end the conversation, especially through the anti-democratic “emergency” or “shadow” docket, we realize that LatinoJustice must join the growing call to reform the Supreme Court.

Our guiding principles and values for deciding which reforms to support include:



Furthering diversity in a multiracial democracy – Diversity here is not just related to identity along race/ethnicity, gender/sexual orientation or religion, but also includes diversity of professional and personal experiences, educational background, socioeconomic experiences, and geography. Future Justices who simply reproduce the established social order and viewpoints are less likely to rule justly for a complex, changing population.



Promoting fairness – The current system of appointments and tenure—whereby appointments happen when an individual Justice retires or dies—is arbitrary. It is also subject to abuse and politicization, as well as partisan manipulation of the process when different parties control the Senate and the Presidency.



Restoring the balance of power – The Supreme Court as a whole, and the individual justices who sit on the Court, wield an enormous amount of power with little accountability. A single Justice who is unelected and life-tenured—such that they can serve 30 to 40 years—holds more power than any one person should hold in a democracy.



Offering fresh perspectives and not stagnation – Justices are being nominated earlier in their careers, allowing them to serve potentially for up to 40 years under the current life tenure system. We need more turnover so that Justices can inform debate with fresh perspectives from their real-world experiences.



Following a binding code of ethics – The Justices of the U.S. Supreme Court are the only members of the federal judiciary not bound by a code of conduct. The Justices are likewise not bound by the complaint-and-discipline framework governing other federal judges. Questionable ethical behavior by individual Justices reported in the press has eroded public confidence in the Court. Justices must be governed by a binding code of ethics that is monitored and enforced by persons/entities outside the Court so its credibility can be restored.



The “shadow docket” is bad for democracy – Use of the Court’s “emergency list” has ballooned under the current administration (39 requests submitted since January 2025, compared with 19 total under the previous administration, and 41 total under the current President’s previous administration, and just 8 under the four presidential terms prior to 2017). This Court has granted applications to stay lower-court injunctions against executive actions that sought major changes in policies and federal agencies. “Shadow docket” decisions lack transparency in legal reasoning and rationale for these important decisions. This practice also undercuts public confidence in the Court.



Reform proposals cannot be viewed in silos. Proposals to change the Court’s processes cannot be viewed in isolation. We must analyze how potential reforms depend on concurrent implementation of others. For example, LatinoJustice believes that the success of term limits or court expansion reforms is contingent on reforms to the appointment process.



Toward Supreme Court Reform

With these principles in mind, LatinoJustice recommends the following reforms to the Supreme Court:



Impose Term Limits. LJP supports the implementation of term limits on the Justices and eliminating lifetime tenure on the Court. There is broad bipartisan consensus on imposing term limits of 18 years, along with a new appointment process (see next point below).



Reform the Appointment Process. LJP supports a process, in conjunction with term limits, whereby each President nominates a set number of justices during each of the President's terms. The most widely supported proposals establish that each President nominate two Supreme Court Justices in every term thus creating a more standard and predictable nomination process.

At a minimum, the party in power in the Senate should not have the power to block a presidential nominee from receiving a fair and full hearing. In other words, there must be some anti-impasse mechanism built into the process.

Various proposals aim at finding the right balance between Presidential and Senate power in the case of an impasse. LJP does not take a position on these various proposals at this time but notes that one party cannot be allowed to indefinitely suspend the nomination and appointment process.



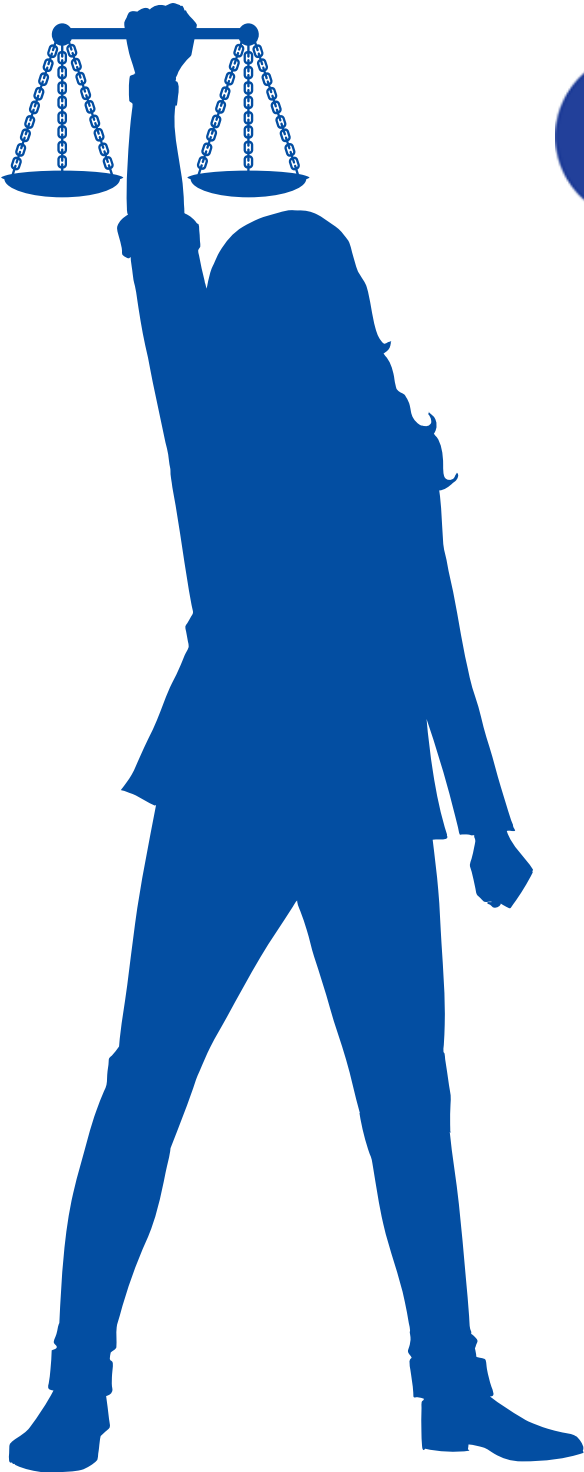
Increase the Number of Justices. LJP supports increasing the number of justices **only if** term limits and a reform in the appointment process are concurrently implemented (see above). LJP does not support increasing the number, absent these two other reforms. These three reforms taken together will lessen the power of individual justices and increase the diversity of the Court.



Implement a Mandatory, Enforceable Ethics Code. Justices must be governed by a binding code of ethics that is monitored and enforced by persons/entities outside the court. It is paramount that an outside body be identified to enforce the code as institutions are notoriously bad at holding their own accountable. This includes having clear standards and more transparency around recusals and sources of gifts, travel and other income, as well as a process to receive and investigate outside complaints.



Severely Curtail Use of the Shadow Docket. LJP supports reform proposals that seek to limit the Court's use of the shadow docket to issue stays and orders, i.e., to those situations in which actual irreparable harm is imminent. LJP also supports proposals to increase the transparency of shadow docket decisions by requiring written reasoning to support the order and a record of how the Justices voted.



Conclusion

Latinos have become the canary in the coal mine for testing how far the current administration can go in disregarding and even stripping established civil rights and protections from anyone in our country. The shadow that hangs over the one in five people in the US who is Latino—and those who are assumed to be Latino—is one that is decidedly being cast by the workings of the current Supreme Court.

To maintain the checks and balances our government has depended on to ensure no government entity becomes all-powerful and unresponsive to the governed, we must address the crucial vulnerabilities in institutions like the Supreme Court.

We call organizations across society—civic groups, community organizations, faith groups, business leaders—to demand accountability from the Supreme Court, and to ask their Congressional representatives to make it happen. Not in some distant future, but now, before the shadow spreads over us all.



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