

The following is an excerpt the questioning of Solicitor General D. John Sauer by Justice Amy Coney Barrett. The exchange took place on Thursday, May 15, 2025, during the Supreme Court oral arguments in the case of *Trump v. CASA, Incorporated*, which concerned the authority of lower courts to block the president's executive order on birthright citizenship.

JUSTICE BARRETT: Did I understand you correctly to tell Justice Kagan that the government wanted to reserve its right to maybe not follow a Second Circuit precedent, say, in New York because you might disagree with the opinion?

GENERAL SAUER: Our general practice is to respect those precedents, but there are circumstances when it is not a categorical practice.

JUSTICE BARRETT: Is that this administration's practice or the longstanding practice of the federal government? And I'm not talking about in the Fourth Circuit, are you going to respect a Second Circuit? I'm talking about within the Second Circuit. And can you say, is that this administration's practice or a longstanding one?

GENERAL SAUER: As I understand it, longstanding policy of the Department of Justice.

JUSTICE BARRETT: Really?

GENERAL SAUER: That we generally, as it was phrased to me, generally respect circuit precedent but not necessarily in every case and some examples might be a situation where we're litigating to try to get that circuit precedent overruled and so forth.

JUSTICE BARRETT: I'm not talking about when there's a case from 1955 and you think it's time to be challenged. I'm talking about, this week, the Second Circuit holds that the executive order is unconstitutional, and then what do you do the next day or the next week?

GENERAL SAUER: Generally, we follow that.

JUSTICE BARRETT: So you're still saying generally? And you still think that it's generally the policy, longstanding policy, of the federal government to take that approach?

GENERAL SAUER: That is my understanding.

JUSTICE BARRETT: OK. So -- but it sounds to me like you accept a *Cooper v. Aaron* kind of situation for the Supreme Court, but not for, say, the Second Circuit... where you would respect the opinions and the judgments of the Supreme Court. And you're saying you would respect the judgment, but not necessarily the opinion of a lower court.

GENERAL SAUER: And, again, and I think, in the vast majority of instances, our practice has been to respect the opinion as well, in the circuits as well. But my understanding is, that has not been a categorical practice in the way respect for the precedents and the judgments of the Supreme Court has been.