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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QUESTION PRESENTED

The Citizenship Clause of the Fourteenth Amendment provides that those "born * * * in the United States, and subject to the jurisdiction thereof," are U.S. citizens. U.S. Const. Amend. XIV, § 1. The Clause was adopted to confer citizenship on the newly freed slaves and their children, not on the children of aliens who are temporarily present in the United States or of illegal aliens. On January 20, 2025, President Trump issued Executive Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, which restores the original meaning of the Citizenship Clause and provides, on a prospective basis only, that children of temporarily present aliens and illegal aliens are not U.S. citizens by birth. The Citizenship Order directs federal agencies not to issue or accept citizenship documents for such children born more than 30 days after the Order's effective date.

The question presented is whether the Executive Order complies on its face with the Citizenship Clause and with 8 U.S.C. 1401(a), which codifies that Clause.

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OPINION BELOW

The district court's order (Pet. App. 1a-41a) is reported at 790 F. Supp. 3d 80.

JURISDICTION

The district court issued a preliminary injunction on July 10, 2025. The government filed a notice of appeal on September 5, 2025. The court of appeals' jurisdiction rests on 28 U.S.C. 1292(a)(1). The petition for a writ of certiorari before judgment was filed on September 26, 2025, and granted on December 5, 2025. This Court's jurisdiction rests on 28 U.S.C. 1254(1) and 2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reprinted in the appendix. App., *infra*, 1a-6a.

INTRODUCTION

The Fourteenth Amendment's Citizenship Clause was adopted to grant citizenship to freed slaves and their children—not to children of temporarily present aliens or illegal aliens. Shortly after the Amendment's adoption, this Court recognized that the Amendment's "one pervading purpose" was "the freedom of the slave race" and "the security and firm establishment of that freedom." *Slaughter-House Cases*, 16 Wall. 36, 71 (1873). The Citizenship Clause's "main object" was to settle "the citizenship of free[d] [slaves]." *Elk* v. *Wilkins*, 112 U.S. 94, 101 (1884).

The Clause accomplished that objective by granting U.S. citizenship to those who satisfy two conditions: being "born or naturalized in the United States," and being "subject to the jurisdiction thereof." U.S. Const. Amend. XIV, § 1. The Clause thus overruled *Dred Scott* v. *Sandford*, 19 How. 393 (1857), which infamously denied citizenship to everyone of African descent. When such individuals were born in the United States, they were subject to its jurisdiction because, as even *Dred Scott* acknowledged, they "owe[d] allegiance to the Government, whether they were slave or free." *Id.* at 420.

The Clause's text, its original meaning and history, and this Court's cases confirm that the Clause extends citizenship only to those who are "completely subject" to the United States' "political jurisdiction"—in other words, to people who owe "direct and immediate allegiance" to the Nation and may claim its protection. *Elk*, 112 U.S. at 102. As this Court has recognized, children of citizens meet that criterion, see *Minor* v. *Happersett*, 21 Wall. 162, 167 (1875), as do children of freed slaves, see *Elk*, 112 U.S. at 101, and children of aliens who "have a permanent domicile and residence in the United

States," *United States* v. *Wong Kim Ark*, 169 U.S. 649, 705 (1898). But the Court's earliest cases interpreting the Clause squarely rejected the premise that anyone born in U.S. territory, no matter the circumstances, is automatically a citizen so long as the federal government can regulate them. See, *e.g.*, *Elk*, 112 U.S. at 102.

A substantial body of historical evidence shows that U.S. citizenship does not extend to children of aliens who are "*in itinere* in the country, or abiding there for temporary purposes." Joseph Story, *Commentaries on the Conflict of Laws* § 48, at 48 (1834). During congressional debates over the Fourteenth Amendment, lawmakers agreed that the Citizenship Clause would not cover someone who "is born here of parents from abroad temporarily in this country." Cong. Globe, 39th Cong., 1st Sess. 2769 (1866). After the Amendment's adoption, Secretaries of State denied passports to children of aliens who were temporarily present in the United States. And commentators explained that the Clause "exclude[s] the children of foreigners transiently within the United States." Alexander Porter Morse, *A Treatise on Citizenship* 248 (1881).

This Court did not repudiate that consensus in deciding *Wong Kim Ark* in 1898. *Wong Kim Ark* recognized that the Clause guarantees citizenship not just to children of citizens, but also to children of aliens "enjoying a permanent domicil and residence" here. 169 U.S. at 652. That limit was central to the analysis; references to domicile appear more than 20 times in the opinion. And the opinion affirmatively suggests that the Clause does not cover children of aliens who are not "permitted by the United States to reside here." *Id.* at 694.

Only decades after *Wong Kim Ark* did a latter-day misconception of the Citizenship Clause take root in the

Executive Branch and outside commentary: that the Clause grants citizenship to anyone born on U.S. territory and subject to U.S. law, including children of temporary visa-holders and children of illegal aliens. Respondents endorse that view, contending (Br. in Opp. 32) that individuals satisfy the Clause's jurisdictional requirement if they are "subject to the laws and authority of the United States." But that interpretation is untenable. It cannot explain the long-established exceptions to birthright citizenship, including for children of tribal Indians, who indisputably must obey U.S. law. Yet, the Executive Branch has previously applied that misinterpretation to confer the privilege of American citizenship on hundreds of thousands of people who do not qualify for it. That misinterpretation has, in turn, powerfully incentivized illegal entry into the United States and encouraged "birth tourists" to travel to the United States solely to acquire citizenship for their children.

Recognizing the harmful consequences of extending "[t]he priceless and profound gift" of U.S. citizenship to countless individuals with no entitlement to it, President Trump on January 20, 2025 issued the Executive Order *Protecting the Meaning and Value of American Citizenship*, Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025) (Citizenship Order or Order). The Order advances broader efforts to combat the "significant threats to national security and public safety" posed by illegal entry and birth tourism. *Protecting the American People Against Invasion* § 1, Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025). Henceforth, consistent with the Citizenship Clause's original meaning, the Executive Branch would not treat future children of temporarily present aliens and illegal aliens as U.S. citizens. See *ibid.*

"Constitutional rights are enshrined with the scope they were understood to have when the people adopted them"; they do not expand or contract because later generations misinterpret them. *District of Columbia* v. *Heller*, 554 U.S. 570, 634-635 (2008). This Court should uphold the Citizenship Order and restore the Citizenship Clause's original meaning.

STATEMENT

A. Background

1. From the Founding until after the Civil War, no constitutional provision or federal statute expressly addressed citizenship by birth in the United States. The scope of birthright citizenship was instead "the subject of differences of opinion." *Slaughter-House Cases*, 16 Wall. 36, 73 (1873).

Congress first established a uniform federal rule of birthright citizenship in the Civil Rights Act of 1866 (Civil Rights Act), ch. 31, 14 Stat. 27, which provided that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." § 1, 14 Stat. 27. Months later, Congress proposed the Fourteenth Amendment, which was ratified in 1868. The Amendment's Citizenship Clause 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." U.S. Const. Amend. XIV, § 1. The Civil Rights Act and Citizenship Clause overturned this Court's infamous decision in *Dred Scott* v. *Sandford*, 19 How. 393 (1857), which wrongly denied citizenship to people of African descent based solely on their race.

The Civil Rights Act's statutory definition of birthright citizenship remained in place until 1940, when

Congress enacted the Nationality Act of 1940 (Nationality Act), ch. 876, 54 Stat. 1137. The Nationality Act tracks the Citizenship Clause's language and provides that a "person born in the United States, and subject to the jurisdiction thereof," is a citizen by birth. § 201(a), 54 Stat. 1138. Congress re-enacted that provision verbatim in the Immigration and Nationality Act (INA), ch. 477, § 301, 66 Stat. 235-236, a comprehensive "codification" of "existing law on the subject," H.R. Rep. No. 1365, 82d Cong., 2d Sess. 31 (1952) (House Report). That provision remains the governing statute today. See 8 U.S.C. 1401(a).

2. The Citizenship Clause was originally understood to extend citizenship to children of citizens, see *Minor* v. *Happersett*, 21 Wall. 162, 168 (1875), and of aliens with "a permanent domicil and residence" here, *United States* v. *Wong Kim Ark*, 169 U.S. 649, 652 (1898). But in the mid-20th century, parts of the Executive Branch came to misread the Clause as granting citizenship even to children of temporarily present aliens or illegal aliens. That misreading took hold by President Franklin D. Roosevelt's Administration, see, *e.g.*, 1 Staff of the House Comm. on Immigration & Naturalization, 76th Cong., 1st Sess., *Nationality Laws of the United States* 7 (Comm. Print 1939), and was endorsed by the Office of Legal Counsel under President Clinton, see 19 Op. O.L.C. 340, 341 (1995).

On January 20, 2025, President Trump issued an Executive Order correcting the government's misreading of the Citizenship Clause. See Citizenship Order.

Section 1 of the Order identifies two circumstances in which someone born in the United States is not subject to its jurisdiction and so is not a citizen by birth: (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," and (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." Citizenship Order § 1. In short, the Order does not recognize children of illegal aliens or temporarily present aliens as citizens by birth.

Section 2 directs the Executive Branch (1) not to issue documents recognizing U.S. citizenship to persons in those two categories and (2) not to accept documents issued by state, local, or other governments purporting to recognize the U.S. citizenship of such persons. See Citizenship Order § 2(a). Those directives "apply only to persons who are born within the United States after 30 days from the date of this order." *Id.* § 2(b).

Section 3 directs the Secretary of State, Attorney General, Secretary of Homeland Security, and Commissioner of Social Security to take "all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order." Citizenship Order § 3(a). The "heads of all executive departments and agencies" must "issue public guidance" within 30 days "regarding th[e] order's implementation with respect to their operations and activities." *Id.* § 3(b).

Some courts enjoined the issuance of such guidance, but this Court partially stayed those injunctions in *Trump* v. *CASA, Inc.*, 606 U.S. 831, 861 (2025). Since then, U.S. Citizenship and Immigration Services has issued guid-

ance explaining how the Order would apply to various categories of aliens, such as asylees, parolees, and recipients of withholding of removal. See USCIS, U.S. Dep't of Homeland Security, *USCIS Implementation Plan of Executive Order 14,160* (July 25, 2025). Other agencies have issued guidance explaining how individuals could prove citizenship. See, *e.g.*, SSA, *Guidance on Protecting the Meaning and Value of American Citizenship (Executive Order 14,160)* (July 26, 2025).

3. The Citizenship Order addresses serious problems caused by the misunderstanding of the Citizenship Clause. First, automatic citizenship for children of illegal aliens provides a powerful incentive for illegal migration. Such children become citizens upon birth here, and their illegal-alien parents often promptly assert that citizenship to impede their own removal. By "illegally immigrating into and remaining in the country," the parents "are not only violating the immigration laws, but also jumping in front of those noncitizens who follow the rules and wait in line to immigrate into the United States through the legal immigration process." *Noem* v. *Vasquez Perdomo*, No. 25A169 (Sept. 8, 2025), slip op. 8 (Kavanaugh, J., concurring).

Second, unqualified birthright citizenship raises national-security concerns. Some aliens enter the United States to engage in "hostile activities, including espionage, economic espionage, and preparations for terror-related activities," and those and other aliens "present significant threats to national security and public safety." *Protecting the American People Against Invasion*, Exec. Order No. 14,159, § 1, 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025). Conferring citizenship on children of such hostile actors exacerbates risks to America's national security.

Third, near-automatic citizenship has spawned "birth tourism," a practice by which foreigners travel here solely to give birth and obtain citizenship for their children. See Staff of the Senate Comm. on Homeland Sec. & Governmental Affairs, *Report on Birth Tourism in the United States: Minority Staff Report* 1 (2022) (Birth Tourism), https://perma.cc/C8SAZG8X. "[B]irth tourism companies" reportedly collect hefty fees to facilitate such travel. *Id.* at 25. That practice defies U.S. law, under which "obtaining U.S. citizenship for a child" is an impermissible basis for a tourist visa. 22 C.F.R. 41.31(b)(2)(i).

Fourth, birthright citizenship for children of illegal and transient aliens degrades the meaning and value of American citizenship. The Order recognizes that "[t]he privilege of United States citizenship is a priceless and profound gift." Citizenship Order § 1. This Court has likewise observed that "[c]itizenship is a high privilege." *United States* v. *Manzi*, 276 U.S. 463, 467 (1928). Permitting illegal aliens to obtain that privilege for their children by cutting ahead of those who seek entry and citizenship through lawful means degrades that gift and dilutes its meaning. Such a policy would, for example, extend citizenship to the child of an alien who "illegally enter[s] the United States to give birth" and then "return[s] to Mexico" with her baby the following day. *Trejo* v. *Blinken*, No. 22-cv-47, 2024 WL 2091356, at *4 (S.D. Tex. May 9, 2024). Similarly, the birth-tourism industry "demeans" U.S. citizenship, Birth Tourism 39, by extending it to people who lack any meaningful ties to the country.

Hardly any developed country retains a rule of citizenship that resembles the United States' current approach. Even the United Kingdom, which pioneered near-automatic birthright citizenship, abandoned it in

1983. See British Nationality Act 1981, c. 61, § 1 (U.K.) (effective 1983).

B. Proceedings Below

The same day this Court decided *CASA*, a group of individuals (respondents), led by a plaintiff proceeding under the pseudonym Barbara, sued the federal government in federal district court in New Hampshire. Pet. App. 4a-6a. The court certified the following class:

> All current and future persons who are born on or after February 20, 2025, where (1) that person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) that person's mother's presence in the United States was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth.

Id. at 11a; see *id.* at 7a-31a.

The district court entered a class-wide preliminary injunction prohibiting enforcement of the Citizenship Order. Pet. App. 31a-39a. It found that respondents are likely to succeed on the merits of their claims that the Order violates the Citizenship Clause and the INA. See *id.* at 32a-34a. The court relied on its analysis in *New Hampshire Indonesian Community Support* v. *Trump*, 765 F. Supp. 3d 102 (D.N.H. 2025), an earlier case in which it had issued a preliminary injunction against enforcement of the Order. See Pet. App. 33a.

SUMMARY OF ARGUMENT

I. The Citizenship Order complies with the Fourteenth Amendment's Citizenship Clause because the children of illegal aliens, or of aliens temporarily pre-

sent in the United States, are not "subject to the jurisdiction" of the United States.

A. The Citizenship Clause imposes two distinct requirements for birthright citizenship: a person must be both "born" "in the United States" and "subject to the jurisdiction thereof." U.S. Const. Amend. XIV, § 1. This Court has long read the Clause to mean that a person becomes a citizen by birth only if he is "completely subject" to the United States' "political jurisdiction"—*i.e.*, only if he owes "direct and immediate allegiance" to the United States and may claim its protection. *Elk* v. *Wilkins*, 112 U.S. 94, 102 (184). Children of U.S. citizens satisfy that requirement. See *Minor* v. *Happersett*, 21 Wall. 162, 167 (1875). So do children of aliens with a lawful "permanent domicil and residence" here. *United States* v. *Wong Kim Ark*, 169 U.S. 649, 653 (1898). A domiciled alien "owes allegiance to the country" where he lives, *The Pizarro*, 2 Wheat. 227, 246 (1817), and may "invoke its protection against other nations," *Fong Yue Ting* v. *United States*, 149 U.S. 698, 724 (1893).

B. By contrast, children of temporarily present aliens are not completely subject to the United States' political jurisdiction and so do not become citizens by birth. Before the Fourteenth Amendment's ratification, courts and commentators explained that children of "traveling or sojourning" aliens constitute an "exception" to birthright citizenship. *Ludlam* v. *Ludlam*, 31 Barb. 486, 503 (N.Y. Gen. Term 1860). In the debates leading to the Amendment's ratification, members of Congress recognized that children of aliens "temporarily in this country" are not citizens. Cong. Globe, 39th Cong., 1st Sess. 2769. Similarly, after ratification, Secretaries of State denied passports to children of temporarily present aliens, and courts and commentators agreed that the Cit-

izenship Clause does not confer citizenship upon "those born in this country of foreign parents who are temporarily traveling here." *Benny* v. *O'Brien*, 32 A. 696, 698 (N.J. Sup. Ct. 1895).

C. The Citizenship Clause also does not extend U.S. citizenship to children of illegal aliens, who likewise are not completely subject to the United States' political jurisdiction. Such children do not owe primary allegiance to the United States by virtue of domicile, for illegal aliens lack the legal capacity to establish domicile here. Respondents' interpretation of the Citizenship Clause rewards those who violate immigration law with U.S. citizenship for their children, and derivative immigration benefits for themselves, contrary to the maxim that no one should be allowed to profit from his own wrongdoing.

D. Respondents primarily contend that *Wong Kim Ark* requires extending citizenship to children of temporarily present aliens or illegal aliens. But *Wong Kim Ark* involved a child of aliens with a lawful "permanent domicil and residence" here. 169 U.S. at 652. After reviewing the Citizenship Clause's history, the Court concluded that the Clause grants citizenship to "children born, within the territory of the United States, of * * * persons, of whatever race or color, *domiciled within the United States*." *Id.* at 693 (emphasis added). The Court referred to domicile more than 20 times in its opinion, including in describing the facts, stating the question presented, articulating the Clause's meaning, and summarizing its holding. In the years following the opinion's issuance, both this Court and the Executive Branch read the opinion to address only children of domiciled aliens.

E. More broadly, respondents' contrary interpretation of the Citizenship Clause—that a person is "subject to the jurisdiction" of the United States if he is subject to U.S. law—is plainly incorrect. That theory cannot explain well-settled exceptions to birthright citizenship, such as the exception for children of tribal Indians, who undoubtedly must comply with U.S. law. See *Elk*, 112 U.S. at 100. That theory relies on inapt sources, such as British nationality law circa 1776, which provides little insight into the Citizenship Clause's meaning in 1868. Respondents also rely on 20th-century practice, but the Clause's meaning turns on how it was understood when it was ratified, not how it was misinterpreted in the 20th century.

II. The Citizenship Order also complies with the INA. Repeating the language of the Citizenship Clause almost verbatim, the INA provides that "a person born in the United States, and subject to the jurisdiction thereof," is a U.S. citizen. 8 U.S.C. 1401(a). For the same reasons that children of temporarily present aliens or illegal aliens do not satisfy the Citizenship Clause's jurisdictional requirement, they do not satisfy the parallel requirement in the INA.

ARGUMENT

I. THE CITIZENSHIP ORDER COMPLIES WITH THE FOURTEENTH AMENDMENT'S CITIZENSHIP CLAUSE

The Citizenship Clause provides that "[a]ll 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." U.S. Const. Amend. XIV, § 1. It repudiates *Dred Scott* v. *Sandford*, 19 How. 393 (1857), which misinterpreted the Constitution to deny citizenship to people of African descent based solely on their race. Its "main object" was to "set-

tle" "the citizenship of free[d] [slaves]." *Elk* v. *Wilkins*, 112 U.S. 94, 101 (1884). It does not, however, extend citizenship universally to everyone born in the country and merely subject to U.S. law to some extent. It imposes two distinct requirements for birthright citizenship: birth "in the United States" and being subject to "the jurisdiction thereof." U.S. Const. Amend. XIV, § 1. A person satisfies the jurisdictional requirement only if he is "completely subject" to the United States' "political jurisdiction," owing it "direct and immediate allegiance." *Elk*, 112 U.S. at 102.

Applying that test, this Court has identified several categories of persons who do not become citizens by birth here: children of foreign heads of state or diplomats, children born on foreign public ships in U.S. waters, children of invading enemy aliens, and children of tribal Indians. See *Wong Kim Ark*, 169 U.S. at 693. So too, children of temporarily or unlawfully present aliens do not become citizens by birth, for they are not completely subject to the United States' political jurisdiction.

A. A Person Is A Citizen By Birth Only If He Is Completely Subject To The United States' Political Jurisdiction

"Jurisdiction," this Court has often observed, "is a word of many, too many, meanings." *Wilkins* v. *United States*, 598 U.S. 152, 156 (2023) (citation omitted). The term can refer to subject-matter jurisdiction, personal jurisdiction, remedial jurisdiction, agency jurisdiction, and much else besides. Discerning the word's meaning requires examining its context. In the context of the Citizenship Clause, "jurisdiction" refers to "political jurisdiction," a concept that turns on whether a person owes sufficient allegiance to and may claim protection from the United States. *Elk*, 112 U.S. at 102.

Political jurisdiction is a reciprocal relationship in which an individual owes "allegiance" to and receives "protection" from a sovereign. *Wong Kim Ark*, 169 U.S. at 655. And this Court has long interpreted the Citizenship Clause's jurisdictional requirement to mean that a person must be "completely subject" to the United States' political jurisdiction, not subject to it merely "in some respect or degree." *Elk*, 112 U.S. at 102. A person thus acquires citizenship by birth under the Clause only if, under background principles of American law as understood at the time of the Fourteenth Amendment's ratification, he also owes primary allegiance to the country and has a "complete" claim to its protection. *Ibid.* That understanding of "jurisdiction" is supported by pre-ratification evidence showing that primary allegiance was widely understood to be a prerequisite for birthright citizenship; is confirmed by ratification-era evidence tying citizenship to primary allegiance; and is consistent with contemporaneous cases identifying the categories of individuals who become citizens by birth.

Pre-ratification history. Under British law, a person was a natural-born subject only if he was born "within the King's allegiance and subject to his protection." *Wong Kim Ark*, 169 U.S. at 655; see 1 William Blackstone, *Commentaries on the Laws of England* 354 (1765); Ilan Wurman, *Jurisdiction and Citizenship* 9-20 (rev. July 17, 2025).[1] Those who did not satisfy that criterion were aliens, even if born on British soil. See *Wong Kim Ark*, 169 U.S. at 655. For instance, children of foreign diplomats "were not natural-born subjects, because not born within the allegiance, * * * or, as would be said at this day, within the jurisdiction of the King." *Ibid.*

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[1] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5216249

Although the United States' conception of allegiance differed from Great Britain's, American law likewise treated a form of allegiance as essential for citizenship. See Wurman 20-32; Kurt T. Lash, *Prima Facie Citizenship* 12-15 (rev. Aug. 13, 2025).[2] American common law before the Citizenship Clause recognized two prerequisites for citizenship at birth: "first, birth locally within the dominions of the sovereign; and secondly, birth within the protection and obedience, or in other words, within the ligeance of the sovereign." *Inglis* v. *Trustees of the Sailor's Snug Harbour*, 3 Pet. 99, 155 (1830) (Story, J., dissenting); see *Wong Kim Ark*, 169 U.S. at 659. Commentators often used "jurisdiction" interchangeably with "allegiance" in describing the latter requirement. See Wurman 40-63. Chancellor Kent, for example, wrote that, to be a citizen by birth, "the party must be born, not only within the territory, but within the ligeance of the government." 2 James Kent, *Commentaries on American Law* 41 (5th ed. 1844). Other commentators explained that "[n]atives are persons born within the jurisdiction and allegiance of the United States," while "alien[s]" are persons "born out of the jurisdiction or allegiance of the United States." John Fine, *Lectures on Law* 79-80 (1852).[3]

Ratification-era history. *Dred Scott* departed from that traditional, allegiance-based view of citizenship.

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[2] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5140319

[3] See, *e.g.*, Joel Tiffany & E.F. Bullard, *The Law of Trusts and Trustees* 340 (1862) ("All persons born within the jurisdiction and allegiance of the United States are natives."); 1 Theophilus Parsons, *The Law of Contracts* 396 (5th ed. 1864) ("An alien, by the definition of the common law, is a person born out of the jurisdiction and allegiance of this country."); 1 Charles H. Scribner, *A Treatise on the Law of Dower* 147 (1867) ("[A]n alien is defined to be a person born out of the jurisdiction and allegiance of the Federal government.").

The Court acknowledged that members of the "African race" who were "born in the country" "owe[d] allegiance to the Government, whether they were slave or free," *Dred Scott*, 19 How. at 420, but nonetheless held that they were categorically ineligible for citizenship because of their race, see *id.* at 404-427. President Lincoln's Attorney General, Edward Bates, later criticized that decision, explaining that someone who is "bound to [the United States] by the reciprocal obligation of allegiance on the one side and protection on the other" is a U.S. citizen regardless of race. 10 Op. Att'y Gen. 382, 388 (1862); see Lash 30-35.

Congress repudiated *Dred Scott* and incorporated the allegiance-based understanding of citizenship into the Civil Rights Act, the Fourteenth Amendment's "blueprint." *General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 389 (1982). That statute extended citizenship to "all persons born in the United States and *not subject to any foreign power*, excluding Indians not taxed." § 1, 14 Stat. 27 (emphasis added).

The phrase "not subject to any foreign power" unambiguously excluded those who owed primary allegiance to foreign sovereigns. Senator Lyman Trumbull, the Act's Senate sponsor, explained that the Act sought "to make citizens of everybody born in the United States who owe allegiance to the United States." Cong. Globe, 39th Cong. 1st Sess. 572 (1866). Representative John Bingham explained that the Act extended citizenship to children born here "of parents not owing allegiance to any foreign sovereignty." *Id.* at 1291. Other members, too, recognized that citizenship requires allegiance.[4]

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[4] See Cong. Globe, 39th Cong., 1st Sess. 525 (Sen. Davis) ("[A] foreigner is one who owes allegiance to another Government."); *id.* at 570 (Sen. Morrill) ("[T]hese are the essential elements of citizen-

The phrase "subject to the jurisdiction thereof" in the Citizenship Clause harks back to, and should be read in tandem with, the phrase "not subject to any foreign power" in the Civil Rights Act. Senator Trumbull explained that, although the Clause and Act use different words, the "object to be arrived at is the same." Cong. Globe, 39th Cong., 1st Sess. 2894. He added: "What do we mean by 'subject to the jurisdiction of the United States?' Not owing allegiance to anybody else. That is what it means." *Id.* at 2893. Senator Jacob Howard elaborated that this allegiance or jurisdiction must be "full and complete"—that is, "the same jurisdiction in extent and quality as applies to every citizen of the United States." *Id.* at 2895. Said otherwise, a person becomes a citizen only if he is subject to "that full and complete jurisdiction to which citizens generally are subject, and not any qualified or partial jurisdiction, such as may consist with allegiance to some other government." Thomas Cooley, *The General Principles of Constitutional Law in the United States of America* 243 (1880).

Contemporaneous precedent. Soon after the Citizenship Clause's adoption, this Court recognized in *Elk* that the jurisdictional requirement's "evident meaning" "is, not merely subject in some respect or degree to the jurisdiction of the United States, but *completely subject to* [*its*] *political jurisdiction, and owing* [*it*] *direct and immediate allegiance*." 112 U.S. at 102 (emphasis

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ship, allegiance on the one side and protection on the other."); *id.* at 1152 (Rep. Thayer) ("[E]very man born in the United States, and not owing allegiance to a foreign power, is a citizen of the United States."); *id.* at 1262 (Rep. Broomall) ("What is a citizen but a human being who by reason of his being born within the jurisdiction of a Government owes allegiance to that Government?").

added). Decades later, in *Wong Kim Ark*, the Court again recognized that the Clause "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country." 169 U.S. at 693; see pp. 32-37, *infra*.

That allegiance-based reading of the Citizenship Clause explains this Court's cases identifying the classes of people who become U.S. citizens by birth here. Most obviously, "it was never doubted that all children born in [the] country of parents who were its citizens became themselves, upon their birth, citizens also." *Minor* v. *Happersett*, 21. Wall. at 162, 167 (1875). Children born here to U.S. citizens owe full allegiance to the United States, not "to any alien power." *Elk*, 112 U.S. at 101.

Similarly, the Citizenship Clause made clear that freed slaves and their children were U.S. citizens. See *Elk*, 112 U.S. at 101. Representative John Bromall explained that, because no one could "point to the foreign Power to which [a freed slave was] subject, the African potentate to whom after five generations of absence he still owe[d] allegiance," a freed slave born in the United States was a U.S. citizen. Cong. Globe, 39th Cong., 1st Sess. 1262 (1866).

Wong Kim Ark held that children of aliens with a "permanent domicil and residence in the United States" likewise become citizens by birth here. 169 U.S. at 705. A person's domicile is his "true, fixed, and permanent home and place of habitation." *Martinez* v. *Bynum*, 461 U.S. 321, 331 (1983). The law has traditionally treated an alien domiciled in the country as "a kind of citizen," "united and subject to the society." *The Venus*, 8 Cranch 253, 278 (1814). "[F]oreigners who have become domiciled in a country other than their own, ac-

quire rights and must discharge duties in many respects the same as possessed by and imposed upon the citizens of that country." *Lau Ow Bew* v. *United States*, 144 U.S. 47, 61-62 (1892).

Importantly for present purposes, a domiciled alien owes a "fixed" "allegiance to the country" where he lives, *The Pizarro*, 2 Wheat. 227, 246 (1817) (Story, J.), and may "invoke its protection against other nations," *Fong Yue Ting* v. *United States*, 149 U.S. 698, 724 (1893). For example, in 1853, the United States intervened to protect an alien who was domiciled in the United States and who had been seized while traveling in Turkey. See Alexander Cockburn, *Nationality* 118-122 (1869). And under traditional principles of the law of nations, "[d]omiciled foreigners" are subject to conscription. H.W. Halleck, *International Law* 385 (1861); see Wurman 89. In short, aliens "domiciled here"—and, by extension, their children—are "completely subject to the political jurisdiction of the country." *Wong Kim Ark*, 169 U.S. at 693. Treatises from the 19th century described "[d]omicil" as "the foundation of jurisdiction over persons" "under the Law of Nations," 1 Travers Twiss, *The Law of Nations Considered as Independent Political Communities* § 164, at 239 (1861), and as a tie that "bind[s]" "the individual to the jurisdiction of a particular territory," 4 Robert Phillimore, *Commentaries Upon International Law* 32 (2d ed. 1874).

Confirming the relevance of domicile, the Citizenship Clause provides that persons born in the United States and subject to its jurisdiction "are citizens of the United States *and of the States wherein they reside*." U.S. Const. Amend. XIV, § 1 (emphasis added). As used here, "reside[nce]" means "domicile." See *Robertson* v. *Cease*, 97 U.S. 646, 659 (1878). The Clause thus sug-

gests that someone who acquires U.S. citizenship by birth in a State will usually also acquire state citizenship by virtue of domicile in a State. *Ibid.*

B. Children Of Temporarily Present Aliens Are Not Fully Subject To The United States' Political Jurisdiction

The Citizenship Clause does not extend birthright citizenship to children of temporarily present aliens, as extensive historical evidence confirms. Under background principles of American common law, the domicile (and hence allegiance) of a child follows that of the parents. See *Lamar* v. *Micou*, 112 U.S. 452, 470 (1884). Children of alien parents who are domiciled elsewhere, and are only temporarily present in the United States, owe primary allegiance to their parents' home countries, not the United States. They are not "completely subject to [the United States'] political jurisdiction," as the Clause requires. *Elk*, 112 U.S. at 102.

Pre-ratification history. Before the Fourteenth Amendment, citizenship depended on the "general principles of the law of nations," as understood in the United States. *Shanks* v. *Dupont*, 3 Pet. 242, 248 (1830) (Story, J.); see Wurman 4-5. Emerich de Vattel—"the founding era's foremost expert on the law of nations," *Franchise Tax Board* v. *Hyatt*, 587 U.S. 230, 239 (2019)—recognized that a child's citizenship status depends on his parents' political status. Vattel wrote that "natives, or natural-born citizens, are those born in a country, of parents who are citizens." Emerich de Vattel, *The Law of Nations* § 212, at 101 (1797 ed.). He added that, if a person "fixe[s] his abode" in another country, he becomes "a member of [that] society, at least as a perpetual inhabitant; and his children will be members of it also." *Id.* § 215, at 102. But where "the father has not entirely quitted his country in order to settle elsewhere," the

child is a citizen of the father's home country rather than the country where he was born, consistent with the principle that "children follow the condition of their fathers." *Ibid.*

American jurists likewise distinguished between children of resident aliens and children of temporarily present aliens. Justice Story wrote that children of aliens, born "while the parents are resident [in a country] under the protection of the government," become "subjects by birth." *Inglis*, 3 Pet. at 164 (dissenting opinion). He also explained in a treatise that, while individuals "are generally deemed citizens" of their country of birth, a "reasonable qualification of this rule would seem to be, that it should not apply to the children of parents, who were *in itinere* [*i.e.*, on a journey] in the country, or abiding there for temporary purposes, as for health, or occasional business." Joseph Story, *Commentaries on the Conflict of Laws* § 48, at 48 (1834).

Although that "reasonable qualification" was not "universally established" throughout the world, Story § 48, at 48, it was widely accepted in the United States. One commentator wrote that "a child born of foreign parents is not * * * a *citizen*" if the parents are "not designing a permanent change of country." 1 Henry St. George Tucker, *Commentaries on the Laws of Virginia* 57 (1836). The Texas Supreme Court explained that the exception to birthright citizenship for "'children of parents who were *in itinere* in the country'" is "fully sanctioned by law" and "too rational and well settled to admit of a question." *Hardy* v. *De Leon*, 5 Tex. 211, 237 (1849) (citation omitted). And a commission led by the prominent lawyer David Dudley Field proposed a model code specifying that citizenship does not extend to "children of transient aliens." Commissioners of the Code,

The Political Code of the State of New York § 5, at 51 (1860).

Ratification-era evidence. Evidence from the period surrounding the Fourteenth Amendment's ratification confirms that children of temporarily present aliens do not acquire citizenship by birth here. In a speech condemning *Dred Scott*, Representative Philemon Bliss cited children of "temporary sojourners" as one of the "exceptions" to birthright citizenship. Cong. Globe, 35th Cong., 1st Sess. 210 (1858). Similarly, Representative John Bingham stated: "Who, sir, are citizens of the United States? First, all free persons born and domiciled within the United States." Cong. Globe, 35th Cong., 2d Sess. 984 (1859). During a Civil War dispute about whether children born here to French nationals were U.S. citizens and so eligible for conscription, a Union general explained that, "when parents of foreign birth become permanently domiciled in the U.S. [their] children born in this country are citizens by birth." Note of Major General Hurlbut, Feb. 5, 1865.[5] And in a funeral oration for President Lincoln, historian George Bancroft observed that individuals born on American soil, except "children of travellers and transient residents," owe "primary allegiance" to the United States. George Bancroft, *Oration* (Apr. 25, 1865), *reprinted in The Pulpit and Rostrum*, Nos. 34 & 35, at 5 (June 1865).

Members of Congress expressed similar views in debates over the Civil Rights Act. See Lash 35-48. Representative James Wilson explained that, under "the general law relating to subjects and citizens recognized by all nations," birthright citizenship is subject to an "except[ion]" for "children born on our soil to temporary sojourners." Cong. Globe, 39th Cong., 1st Sess.

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[5] https://catalog.archives.gov/id/188124588?objectPage=70

1117 (1866). Senator Lyman Trumbull wrote that the legislation extended U.S. citizenship to persons "born of parents domiciled in the United States." Letter from Sen. Lyman Trumbull to President Andrew Johnson, *reprinted in* Andrew Johnson Papers, Reel 45, Manuscript Div. Library of Congress. And a newspaper reported that the bill granted citizenship to "persons born in the United States, save those subject to foreign governments, as the children * * * of foreign parents temporarily sojourning in this country." *The Chicago Republican*, Mar. 30, 1866, at 4.

Debates over the Fourteenth Amendment reflect the same understanding. Senator Benjamin Wade initially proposed a version of the Amendment that would have granted citizenship to "persons born in the United States" (without the requirement of being "subject to the jurisdiction"). Cong. Globe, 39th Cong., 1st Sess. 2768. But Senator William P. Fessenden objected that the proposal would extend citizenship to "a person [who] is born here of parents from abroad temporarily in this country." *Id.* at 2769.

Post-ratification evidence. Soon after ratification, this Court explained that the Clause's jurisdictional requirement "was intended to exclude from its operation children of * * * citizens or subjects of foreign States born within the United States." *Slaughter-House Cases*, 16 Wall. 36, 73 (1873). In another case, the Court expressed "doubts" about the citizenship of children who are not "born of citizen parents." *Minor*, 21 Wall. at 168. Though the Court eventually recognized the citizenship of children of "domiciled" aliens, *Wong Kim Ark*, 169 U.S. at 652, it never suggested that children of temporarily present aliens become citizens by birth.

Executive practice from the 19th century likewise supports the Citizenship Order. See Samuel Estreicher & Rudra Reddy, *Revisiting the Scope of Birthright Citizenship* 20-29 (rev. Sept. 22, 2025).[6] In 1885, Secretary of State Frederick T. Frelinghuysen issued an opinion denying a passport to an applicant who was "born of Saxon subjects, temporarily in the United States." 2 *A Digest of the International Law of the United States* § 183, at 397 (Francis Wharton ed., 2d ed. 1887) (*Wharton's Digest*). He explained that the applicant's claim to citizenship was "untenable" because the applicant was "subject to [a] foreign power," adding that "the fact of birth, under circumstances implying alien subjection, establishes of itself no right of citizenship." *Id.* at 398. Later that year, Secretary Frelinghuysen's successor Thomas F. Bayard issued an opinion denying a passport to an applicant born in Ohio to "a German subject" "domiciled in Germany." *Id.* at 399. Secretary Bayard explained that the applicant "was on his birth 'subject to a foreign power' and 'not subject to the jurisdiction of the United States.' He was not, therefore, under the statute and the Constitution a citizen of the United States by birth." *Id.* at 400 (citation omitted).

Many States agreed that children of temporarily present aliens do not become U.S. citizens by birth here (and thus do not acquire state citizenship by residence). Several States enacted laws declaring that "children of transient aliens" are not state citizens. See Cal. Political Code § 51(1) (1872); N.D. Political Code § 11(1) (1895); Mont. Political Code § 71(1) (1895). And a New Jersey court determined that "those born in this country of foreign parents who are temporarily traveling here" are not U.S. citizens because "[s]uch children are, in theory,

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[6] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5223361

born within the allegiance of [a foreign] sovereign." *Benny* v. *O'Brien*, 32 A. 696, 698 (N.J. Sup. Ct. 1895).

Contemporary commentators agreed. They wrote:

- "Chinese born of Chinese non-naturalized parents, *such parents not being here domiciled*, are not citizens." Francis Wharton, *A Treatise on the Conflict of Laws* § 12, at 41 (2d ed. 1881) (emphasis added).
- "Indians are held not within this clause, not being 'subject to the jurisdiction of the United States.' The same reasoning, it may be argued, would exclude children born in the United States to foreigners here on transient residence, such children not being by the law of nations 'subject to the jurisdiction of the United States.'" 2 *Wharton's Digest* § 183, at 393-394 (citation omitted).
- "The words 'subject to the jurisdiction thereof' exclude the children of foreigners transiently within the United States." Alexander Porter Morse, *A Treatise on Citizenship* 248 (1881).
- "If a stranger or traveller passing through, or temporarily residing in this country, who has not himself been naturalized, and who claims to owe no allegiance to our Government, has a child born here which goes out of the country with its father, such child is not a citizen of the United States, because it was not subject to its jurisdiction." Samuel F. Miller, *Lectures on the Constitution of the United States* 279 (1891).
- "Indians are no more 'born within the United States *and* subject to the jurisdiction thereof,' within the meaning of the XIVth amendment, than the children of foreign subjects, born while

the latter transiently sojourn here." M.A. Lesser, *Citizenship and Franchise*, 4 Colum. L. Times 113, 146 (1891).

- "[I]f a stranger or traveler passing through the country, or temporarily residing here, * * * has a child born here, who goes out of the country with his father, such child is not a citizen of the United States, because he was not subject to its jurisdiction. But the children, born within the United States, of permanently resident aliens, * * * are citizens." Henry Campbell Black, *Handbook of American Constitutional Law* 458-459 (1895).
- "In the United States it would seem that the children of foreigners in transient residence are not citizens." William Edward Hall, *A Treatise on International Law* 236-237 (4th ed. 1895).
- "[T]he requirement of personal subjection to the 'jurisdiction thereof'" excludes "children of persons passing through or temporarily residing in this country." Boyd Winchester, *Citizenship in Its International Relation*, 31 Am. L. Rev. 504, 504 (1897).
- "[I]n this country, the alien must be permanently domiciled, while in Great Britain birth during mere temporary sojourn is sufficient to render the child a British subject." Comment, *Citizenship of Children of Alien Chinese*, 7 Yale L.J. 365, 367 (1898).
- "[M]ere birth within American territory does not always make the child an American citizen. * * * Such is the case with children of aliens born here while their parents are traveling or only temporarily resident." Henry Brannon, *A Treatise on*

the Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States 25 (1901).

- "[C]hildren born in the United States to foreigners here on transient residence are not citizens, because by the law of nations they were not at the time of their birth 'subject to the jurisdiction.'" Hannis Taylor, *A Treatise on International Public Law* 220 (1901).
- "[W]hen the father has domiciled himself in the Union * * * his children * * * are citizens; but * * * when the father * * * is in the Union for a transient purpose his children born within it have his nationality." John Westlake, *International Law* 219-220 (1904).
- "[C]hildren * * * of foreigners in transient residence * * * are excluded from citizenship, even though born in the United States." 1 Hugh H.L. Bellott, *Leading Cases on International Law* 183 (4th ed. 1922).

The exclusion of children of temporarily present aliens makes sense. American law has traditionally limited U.S. citizenship to individuals who have a meaningful "tie [to] this country." *Tuan Ahn Nguyen* v. *INS*, 533 U.S. 53, 68 (2001). A child born here to a temporarily present alien, such as a foreign tourist, has no such tie. Nor is the child likely to develop such a relationship, given that the parents will presumably return to their home countries after completing their trips to the United States. "Embracing [such] a child as a citizen entitled as of birth to the full protection of the United States, to the absolute right to enter its borders, and to full participation in the political process," *id.* at 67,

would pose national-security risks, encourage birth tourism, and dilute the meaning of citizenship.

C. Children Of Illegal Aliens Are Not Fully Subject To The United States' Political Jurisdiction

Though 19th-century commentators extensively discussed the citizenship of children of temporarily present aliens, see pp. 26-28, *supra*, they had little occasion to discuss children of illegal aliens. Congress enacted the first modern federal immigration statute only in 1875, see *DHS* v. *Thuraissigiam*, 591 U.S. 103, 124 (2020), and the first federal immigration quota only in 1921, see *Kerry* v. *Din*, 576 U.S. 86, 96 (2015) (plurality opinion). Because most aliens could freely enter the United States and take up permanent residence here, questions concerning the citizenship of children of illegal aliens rarely arose. But the same logic that excludes children of temporarily present aliens from birthright citizenship extends to children of illegal aliens. Again, a person is subject to the United States' political jurisdiction only if he owes sufficient "allegiance" to it and may claim its "protection." *Wong Kim Ark*, 169 U.S. at 655. By definition, illegal aliens are in the United States in defiance of U.S. law. That defiance is inconsistent with establishing the requisite allegiance—*i.e.*, "natural, lawful, and faithful obedience" to the United States. J.J.S. Wharton, *Law Lexicon, or Dictionary of Jurisprudence* 40 (Edward Hopper ed., 2d Am. ed. 1860). And like temporarily present aliens, illegal aliens are not entitled to the reciprocal benefit of "protection against other nations" when they travel abroad. *Fong Yue Ting*, 149 U.S. at 724.

Unlike children of permanent residents, moreover, children of illegal aliens do not owe sufficient allegiance to the United States by virtue of their parents' domicile

here. Illegal aliens lack the legal capacity to form a domicile in the United States. Since Roman times, an individual has lacked the capacity to establish a domicile in a place "forbidden to him." 4 *The Digest of Justinian* 906a (Theodor Mommsen et al., eds. 1985) (Dig. 50.1.31). Relatedly, a 19th-century treatise explained that a person could not retain a domicile in a country from which he had been exiled or deported. See Robert Phillimore, *The Law of Domicil* 63 (1847).

Those principles remain embedded in modern law. Today, a person may acquire a domicile only if he is "legally capable" of doing so. Restatement (First) of Conflict of Laws § 15 (1934); accord Restatement (Second) of Conflict of Laws § 15 (1971) (requiring "legal capacity" to change domicile). Federal immigration law, however, "preclude[s]" certain classes of aliens "from establishing domicile in the United States." *Toll* v. *Moreno*, 458 U.S. 1, 14 (1982). For example, Congress has "expressly conditioned" the admission of certain groups, such as foreign students, "on an intent not to abandon a foreign residence or, by implication, an intent not to seek domicile in the United States." *Elkins* v. *Moreno*, 435 U.S. 647, 665 (1978). Likewise, an illegal alien, whose very "presence in this country" violates the law, "lacks the legal capacity to establish domicile in the United States." *Carlson* v. *Reed*, 249 F.3d 876, 880-881 (9th Cir. 2001). "It would be inconsistent to conclude that Congress sought to preclude [temporarily present aliens] who *comply* with federal immigration law from the benefits that flow from * * * domiciliary status while permitting [aliens] who *violate* [the law] to share in them." *Park* v. *Barr*, 946 F.3d 1096, 1099 (9th Cir. 2020) (per curiam).

An example from 1889, involving a pregnant woman who arrived in New York from Ireland, confirms that the children of illegal aliens do not become citizens by birth. See Letter from F.A. Reeve, Acting Solicitor of the Treasury, to the Secretary of the Treasury, Mar. 4, 1890, *in* 11 *Documents of the Assembly of the State of New York, One Hundred and Thirteenth Session, 1890*, No. 74, at 47-48 (1890). Before immigration authorities admitted her and allowed her to take up residence here, she was taken to a hospital in the city, where she gave birth to a child. *Id.* at 47. The Acting Solicitor of the Treasury issued an opinion letter determining that the child was not a citizen of the United States. *Id.* at 48. Because the child was born before U.S. authorities could determine that the "the mother [was] permitted" to enter and live in the United States, the opinion letter explained, the child "was not * * * subject to the jurisdiction of the United States." *Id.* at 47-48.

It would make little sense for the Citizenship Clause to grant citizenship to children of illegal aliens but not children of legally but temporarily present aliens. Under our Constitution, an alien "does not become one of the people" through "an attempt to enter forbidden by law." *United States ex rel. Turner* v. *Williams*, 194 U.S. 279, 292 (1904). But an alien who enters lawfully is "accorded a generous and ascending scale of rights as he increases his identity with our society." *Johnson* v. *Eisentrager*, 339 U.S. 763, 770 (1950). "Mere lawful presence in the country * * * gives him certain rights," which "become more extensive and secure" over time. *Ibid.* Once a lawfully admitted alien "develop[s] the ties that go with permanent residence, his constitutional status changes accordingly." *Landon* v. *Plasencia*, 459 U.S. 21, 32 (1982).

On respondents' contrary view, the Citizenship Clause would perversely defy "the maxim that no one shall be permitted to take advantage of his own wrong." *Reynolds* v. *United States*, 98 U.S. 145, 159 (1878). Aliens could obtain the priceless gift of U.S. citizenship for their children by violating the United States' immigration laws—and by jumping in line ahead of others who are complying with the law. Such aliens could then obtain derivative benefits for themselves, including by asserting their children's citizenship as a basis for avoiding their own removal.

D. *Wong Kim Ark* Supports The Government's Reading

1. Echoing Justice Sotomayor's dissent in *Trump* v. *CASA, Inc.*, 606 U.S. 831, 881 (2025), respondents contend (Br. in Opp. 32) that the Citizenship Clause confers citizenship on everyone who is born on U.S. soil and subject to U.S. law. Like the dissent, they rely primarily (Br. in Opp. 25-31) on this Court's 1898 decision in *Wong Kim Ark*. See *CASA*, 606 U.S. at 884-885 (Sotomayor, J., dissenting). But *Wong Kim Ark* concerned children of aliens with a lawful domicile in the United States, not children of temporarily present aliens or illegal aliens. Properly read, that decision supports the government's position: Children of aliens lawfully domiciled in the United States fall within the Citizenship Clause because their parents owe primary allegiance to the United States, not a foreign power. Indeed, much of *Wong Kim Ark*'s analysis would be nonsensical dicta if all that mattered were being subject to U.S. regulatory jurisdiction, as respondents contend.

To begin, the status of Wong Kim Ark's parents as "domiciled residents" was central to the Court's analysis. The Court's statement of the facts explained that Wong Kim Ark's parents were, at the time of his birth,

"domiciled residents of the United States, having previously established and still enjoying a permanent domicil and residence therein." *Wong Kim Ark*, 169 U.S. at 652. The Court then stated:

> The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, *but have a permanent domicil and residence in the United States*, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States.

Id. at 653 (emphasis added).

In analyzing that question, the Court repeatedly noted the parents' domiciliary status. It quoted an opinion by Justice Story recognizing that "children, even of aliens, born in a country, *while the parents are resident there under the protection of the government*, * * * are subjects by birth." *Wong Kim Ark*, 169 U.S. at 660 (quoting *Inglis*, 3 Pet. at 164 (Story, J., dissenting)) (emphasis added). The Court approvingly quoted a state court's statement that "*when the parents are domiciled here* birth establishes the right to citizenship." *Id.* at 692 (quoting *Benny*, 32 A. at 698) (emphasis added). And the Court stated that "[e]very citizen or subject of another country, *while domiciled here*, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States." *Id.* at 693 (emphasis added).

After reviewing the relevant history, the Court reached the following "conclusions," which tied domicile to allegiance to the United States:

> The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, *in the allegiance and under the protection of the country*, including all children here born of *resident aliens*, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes *owing direct allegiance* to their several tribes. The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, *domiciled within the United States*. Every citizen or subject of another country, *while domiciled here*, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

Wong Kim Ark, 169 U.S. at 693 (emphases added). Then, at the end of the opinion, the Court stated that it had decided a "single question"—"namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, *but have a permanent domicil and residence in the United States,* * * * becomes at the time of his birth a citizen of the United States." *Id.* at 705 (emphasis added).

Wong Kim Ark strongly suggests that children of aliens who are merely temporarily present do not acquire U.S. citizenship by birth. Such children fall outside the "fundamental rule" established by the Citizenship Clause: citizenship for children born here to "resident aliens" who are "domiciled within the United States."

Wong Kim Ark, 169 U.S. at 693. The Court's repeated references to domicile would have been inexplicable if domicile were irrelevant to citizenship.

Wong Kim Ark likewise suggests that children of illegal aliens fall outside the Citizenship Clause's scope. It states that aliens "are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here." *Wong Kim Ark*, 169 U.S. at 694. Illegal aliens are not "permitted by the United States to reside here," *ibid.*, so their children do not acquire citizenship by birth.

2. Respondents' contrary interpretation of *Wong Kim Ark* is incorrect. Like Justice Sotomayor's dissent in *CASA*, see 606 U.S. at 884-885 & n.1, respondents invoke (Br. in Opp. 1) *Wong Kim Ark*'s listing of the "exceptions" to birthright citizenship for children of foreign heads of state or diplomats, children born on foreign public ships, children of alien enemies, and children of tribal Indians. But respondents ignore how *Wong Kim Ark* described the general rule to which those categories are exceptions: "The Fourteenth Amendment affirms the ancient and fundamental rule of birth within the territory, *in the allegiance and protection of the country, including all children here born of resident aliens*, with [specified] exceptions. * * * The Amendment * * * includes the children born, within the territory of the United States, of all other persons, of whatever race or color, *domiciled in the United States*." 169 U.S. at 693 (emphases added). Even if *Wong Kim Ark*'s list of exceptions to the general rule were exhaustive, temporarily present aliens and illegal aliens fall outside the general rule in the first place.

Even if isolated statements in *Wong Kim Ark* support respondents' theory, they deserve little weight.

Domicile was central to *Wong Kim Ark*'s analysis. The Court mentioned domicile 22 times in its opinion, including in describing the facts, see *Wong Kim Ark*, 169 U.S. at 652; stating the question presented, see *id.* at 653; setting forth the meaning of the Citizenship Clause, see *id.* at 693; and summarizing the Court's holding, see *id.* at 705.

By contrast, because *Wong Kim Ark* concerned children of lawfully domiciled aliens, any statements about children of other aliens were dicta. As *Wong Kim Ark* itself observed, dicta "ought not to control the judgment in a subsequent suit when the very point is presented for decision." 169 U.S. at 679 (citation omitted).

3. Ensuing interpretations of *Wong Kim Ark* underscore that its holding addresses only children of lawfully domiciled aliens. A few years after the decision, the Court stated that "[t]he ruling in [*Wong Kim Ark*] was to this effect: 'A child born in the United States, of parents * * * who, at the time of his birth, are subjects of the Emperor of China, *but have a permanent domicil and residence in the United States*, * * * becomes at the time of his birth a citizen.'" *Chin Bak Kan* v. *United States*, 186 U.S. 193, 200 (1902) (emphasis added; citation omitted). Two decades later, the Court cited *Wong Kim Ark* for the proposition that someone is a U.S. citizen if born here to aliens who "were permanently domiciled in the United States." *Kwock Jan Fat* v. *White*, 253 U.S. 454, 457 (1920).

The Executive Branch and commentators shared that view of *Wong Kim Ark*. In 1910, the Department of Justice explained that "it has never been held, and it is very doubtful whether it will ever be held, that the mere act of birth of a child on American soil, to parents who are accidentally or temporarily in the United States,

operates to invest such child with all the rights of American citizenship. It was not so held in the Wong Kim Ark case." Spanish Treaty Claims Comm'n, U.S. Dep't of Justice, *Final Report of William Wallace Brown, Assistant Attorney-General* 124 (1910). And even after *Wong Kim Ark*, commentators continued to state that "children born in the United States to foreigners here on transient residence are not citizens." Taylor 220; see pp. 27-28, *supra*.

E. Respondents' Contrary Interpretation Is Ahistorical

Respondents' theory, under which everyone who is born in the United States becomes a U.S. citizen if he is subject to its laws, is untenable. That theory rests on a misreading of the Citizenship Clause's text and on a misinterpretation of the historical evidence.

Text. Respondents read (Br. in Opp. 32) "subject to the jurisdiction thereof" to mean "subject to the laws and authority of the United States." Although that is one possible meaning of the word "jurisdiction," it does not fit in this context. Indeed, it makes a hash of the well-recognized exceptions to birthright citizenship—exceptions whose validity respondents concede, see Br. in Opp. 4.

To begin, this Court has long held that "children of members of the Indian tribes owing direct allegiance to their several tribes" are not subject to the United States' jurisdiction and so do not acquire citizenship under the Citizenship Clause. *Wong Kim Ark*, 169 U.S. at 693; see *Elk*, 112 U.S. at 102.[7] Yet it is "firmly and

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[7] Congress has since, by statute, granted citizenship to any "person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe." 8 U.S.C. 1401(b); see Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253.

clearly established" that "Indian tribes residing within the territorial limits of the United States are subject to [its] authority." *United States* v. *Rogers*, 4 How. 567, 572 (1846); see *Mackey* v. *Coxe*, 18 How. 100, 104 (1855) ("Cherokee country * * * is within our jurisdiction and subject to our laws."). Under a line of cases that began at around the same time this Court decided *Elk* and about a decade before it decided *Wong Kim Ark*, Congress possesses "plenary authority over the Indians and all their tribal relations." *Winton* v. *Amos*, 255 U.S. 373, 391 (1921) (citation omitted); see *Haaland* v. *Brackeen*, 599 U.S. 255, 272-273 (2023); *United States* v. *Kagama*, 118 U.S. 275, 384-385 (1886).

Though some Justices have questioned that plenary-power doctrine, no one doubts that Indians must obey valid laws enacted pursuant to Congress's enumerated powers. For instance, the Indian Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3, enables Congress to regulate interactions between Indians and non-Indians. See *Brackeen*, 599 U.S. at 273; *id.* at 321 (Gorsuch, J., concurring). Since the early 19th century, Congress has exercised that power to punish Indians for crimes against non-Indians in Indian country. See General Crimes Act of 1817, ch. 92, § 1, 3 Stat. 383; General Crimes Act of 1834, ch. 46, § 25, 4 Stat. 733; 18 U.S.C. 1152. Similarly, Indians must comply with laws enacted under other enumerated powers (such as counterfeiting laws or copyright laws). If, as respondents contend, "subject to the jurisdiction thereof" means "must obey U.S. law," the exception for children of tribal Indians would make no sense.

Respondents' interpretation also cannot explain the exception for "children born of alien enemies in hostile occupation." *Wong Kim Ark*, 169 U.S. at 682. Alien en-

emies present in the United States are, for instance, subject to trial and punishment for war crimes. See *Ex parte Quirin*, 317 U.S. 1, 31 (1942). As a practical matter, a hostile occupation of the United States may make it more difficult to enforce laws against alien enemies, but as a constitutional matter, alien enemies remain subject to U.S. regulatory authority.

Nor can respondents' reading explain the exceptions for children of foreign heads of state, children of foreign diplomats, and children born on foreign government ships. See *Wong Kim Ark*, 169 U.S. at 693. Although foreign heads of state, diplomats, and government ships enjoy immunities from U.S. judicial process and enforcement, see *The Schooner Exchange* v. *McFaddon*, 7 Cranch 116, 137-141 (1812), they remain subject to U.S. law while in U.S. territory or waters. Take "foreign public ministers," whom the First Congress exempted only from "writ[s] or process," not altogether from the obligation to follow U.S. law. Act of Apr. 30, 1790, ch. 9, § 25, 1 Stat. 117. The governing treaty today similarly exempts diplomats from criminal process but requires them, "without prejudice to their privileges and immunities," to "respect the laws and regulations of the receiving State." Vienna Convention on Diplomatic Relations art. 41, *done* Apr. 18, 1961, 23 U.S.T. 3227. "Even when performing his official duties, [a diplomat] must respect traffic laws, fire regulations, and tort, criminal, and property law generally, although the law cannot be enforced by legal process." Restatement (Third) of Foreign Relations Law § 464, cmt. c (1987).

Taken to its logical conclusion, respondents' theory would altogether nullify the Citizenship Clause's jurisdictional requirement. Because the United States is sovereign over its territory, everyone who is born (and

hence present) here is subject to its regulatory power. See *Schooner Exchange*, 7 Cranch at 136. Foreign sovereigns and their representatives enjoy immunity as "a matter of grace and comity on the part of the United States," not by virtue of "a restriction imposed by the Constitution." *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). Under respondents' theory, everyone born in the United States would be a U.S. citizen, and the phrase "subject to the jurisdiction thereof" would do no work. But "every word" in the Constitution "must have its due force," and no word "can be rejected as superfluous or unmeaning." *Holmes* v. *Jennison*, 39 U.S. 540, 570-571 (1840).

British law. Respondents invoke (Br. in Opp. 27-28) British law, under which children of temporarily present aliens were British subjects if born in the United Kingdom. See *Wong Kim Ark*, 169 U.S. at 655-658. But British law "is not to be taken in all respects to be that of America." *NYSRPA* v. *Bruen*, 597 U.S. 1, 39 (2022) (citation omitted). The Framers "did not purport to take [British] law or history wholesale and silently download it into the U.S. Constitution." *United States* v. *Rahimi*, 602 U.S. 680, 722 n.3 (2024) (Kavanaugh, J., concurring). British law does not control the meaning even of the Bill of Rights, which was ratified 15 years after independence, see *Bruen*, 597 U.S. at 39; *a fortiori*, it does not control the meaning of the Fourteenth Amendment, which was ratified 92 years after independence.

British law is an especially poor guide to interpreting the Citizenship Clause. Though the United States agreed with the United Kingdom that citizenship turns on allegiance, it rejected the British view of the scope of allegiance. Months before the Fourteenth Amendment's

ratification, a congressional committee issued a report explaining that the British theory of citizenship rested on the "feudal" notion that, because "rights [are] dependent upon the possession of the soil," "[a]llegiance" is "controlled by the place of birth." *Report of the Comm. on Foreign Affairs Concerning the Rights of American Citizens in Foreign States*, *in* Cong. Globe, 40th Cong., 2d Sess. App. 95 (1868). The report criticized that theory as "obsolete" and "absurd," adding that "the American Constitution is itself proof that [the British] theory of allegiance was not accepted by the American governments." *Id.* at 95, 99.

19th-century practice. Turning to American practice, respondents cite (Br. in Opp. 34) *Lynch* v. *Clarke*, 1 Sand. Ch. 538 (1844), where the New York Chancery Court held that a child is a citizen of his place of birth even if his parents are only temporary sojourners. But a New York appellate court later rejected that theory, holding that children of "traveling" aliens fall within "an exception" to birthright citizenship. *Ludlam* v. *Ludlam*, 31 Barb. 486, 503 (N.Y. Gen. Term. 1860). David Dudley Field observed, moreover, that *Lynch* "seems not to be entirely approved" and "probably would at the most be considered as authority only * * * within that State." David Dudley Field, *Outlines of an International Code* 132 n.1 (2d ed. 1876).

Respondents also note (Br. in Opp. 9) that, during congressional debates over the Citizenship Clause, members of Congress explained that children of foreign parents could become U.S. citizens by birth here. But that is consistent with the government's position, under which birthright citizenship extends to children of some aliens, such as lawful permanent residents. Respondents do not cite any statements showing that the Clause

was understood to extend citizenship to children of temporarily present or illegal aliens.

Respondents also fail to reconcile their position with the Civil Rights Act, whose language ("not subject to any foreign power") excludes children who owe primary allegiance to foreign countries. They instead dismiss (Br. in Opp. 27) the Act as "of dubious relevance." But this Court has described the Act as the Fourteenth Amendment's "blueprint." *General Building Contractors*, 458 U.S. at 389. It is implausible that Congress adopted the Act in April 1866, proposed the Fourteenth Amendment in June 1866, re-enacted the Act two years after the Amendment's ratification, see Enforcement Act of 1870, ch. 114, § 18, 16 Stat. 144, and then allowed the Act to remain in effect until 1940, unless the Act was consistent with the Constitution.

20th-century practice. Finally, respondents' reliance on 20th-century practice (Br. in Opp. 20-21) is misplaced. By 1939, President Franklin D. Roosevelt's Administration had begun misreading the Citizenship Clause to confer citizenship even upon the children of aliens who are not domiciled here. See p. 6, *supra*. But that reading was not universally accepted. For example, one writer explained soon after the enactment of the Nationality Act in 1940 that "[a] child born at Ellis Island to alien parents awaiting admission to this country apparently will remain an alien." Note, *The Nationality Act of 1940*, 54 Harv. L. Rev. 860, 861 (1941). And soon after the INA's adoption in 1952, another commentator explained that "[a] child born in the United States of an alien mother who is here for permanent residence, is an American citizen," but that children of "transients or visitors" do not become U.S. citizens by birth. Sidney

Kansas, *Immigration and Nationality Act Annotated* 183 (1953).

In any event, that 20th-century development came too late. Courts should interpret constitutional provisions in accordance with the meaning that "they were understood to have when the people adopted them." *District of Columbia* v. *Heller*, 554 U.S. 570, 634-635 (2008). Evidence from the time of ratification outweighs later evidence, see *Powell* v. *McCormack*, 395 U.S. 486, 541-547 (1969), and here, the evidence from the era surrounding the Fourteenth Amendment's ratification confirms the Citizenship Order's validity.

Regardless, the President has accounted for reliance on the Executive Branch's previous position by making the Citizenship Order prospective. See p. 7, *supra*. This Court sometimes determines that a legal ruling should apply purely prospectively. See, *e.g.*, *Office of the U.S. Trustee* v. *John Q. Hammons Fall 2006, LLC*, 602 U.S. 487, 496 (2024); *Barr* v. *AAPC, Inc.*, 591 U.S. 610, 634 n.12 (2020) (plurality opinion). For instance, in *Sessions* v. *Morales-Santana*, 582 U.S. 47 (2017), the Court invalidated a discriminatory citizenship statute only "prospectively," to avoid taking citizenship from those who had relied on the statute. *Id.* at 77. The President has taken a similar approach here.

II. THE CITIZENSHIP ORDER COMPLIES WITH THE INA

Tracking the Citizenship Clause's language, Section 1401 provides that persons "born in the United States, and subject to the jurisdiction thereof," are U.S. citizens. 8 U.S.C. 1401(a). Respondents contend (Br. in Opp. 16-24) that, even if the government is correct about the Citizenship Clause's meaning, the Citizenship Order violates the nearly identical language of Section 1401(a). They contend (*ibid.*) that Section 1401(a)'s

meaning depends on what Congress believed the Citizenship Clause meant when it enacted the provision as part of the Nationality Act in 1940 and re-enacted it as part of the INA in 1952—and that, at those times, it was well settled that children of temporarily present aliens and of illegal aliens become U.S. citizens by birth here. Each step of that theory, under which the same language would mean different things, is wrong.

Section 1401(a)'s scope depends on what the Citizenship Clause actually means, not what Congress thought it meant in 1940 or 1952. Where, as here, the language of a statute "is obviously transplanted from another legal source, it brings the old soil with it." *Taggart* v. *Lorenzen*, 587 U.S. 554, 560 (2019) (citation and internal quotation marks omitted). By transplanting the phrase "subject to the jurisdiction thereof" from the Citizenship Clause to Section 1401, Congress incorporated the meaning that phrase carries in the Constitution.

In other contexts, courts usually interpret statutory references to the Constitution to incorporate the Constitution's actual meaning, not Congress's assumptions about its meaning. "[A]ssumptions are not laws." *Oklahoma* v. *Castro-Huerta*, 597 U.S. 629, 648 (2022). Courts applying 42 U.S.C. 1983, which creates a cause of action to enforce rights secured by the Constitution, ask what the Constitution actually means, not what Congress thought it meant in 1871. And courts applying ubiquitous interstate-commerce jurisdictional elements ask how far the Commerce Clause actually extends, not how far Congress thought the Commerce Clause went whenever the relevant statute was enacted.

Section 1401(a)'s context confirms that it works the same way and bears the same meaning as the Citizenship Clause. Section 1401 consists of eight subsections.

Subsection (a) repeats the Citizenship Clause's language. Subsections (b) to (h) then confer citizenship by birth upon other persons who are not guaranteed citizenship under the Constitution, such as children born in the United States to members of Indian tribes, 8 U.S.C. 1401(b), and children born outside the United States to certain U.S. citizens, 8 U.S.C. 1401(c). That structure suggests that Congress made the Citizenship Clause the baseline in subsection (a), and then used its Article I naturalization authority when reaching additional categories of persons in ensuing subsections.

Section 1401(a)'s history, too, shows that it incorporates the actual constitutional standard, not just how it was perceived at particular times. The Nationality Act's full title explains that Congress enacted the statute "[t]o revise and codify the nationality laws of the United States into a comprehensive nationality code." 54 Stat. 1137. The INA "carries forward" the Nationality Act's provisions as part of a new "codification" of "existing law on the subject." House Report 31, 76. A statutory codification of the United States' citizenship laws would include a provision codifying the Citizenship Clause—here, Section 1401(a).

Respondents in any event are wrong to suggest that their interpretation of the phrase "subject to the jurisdiction thereof" was well settled by 1940 or 1952. As discussed above, their theory of the phrase's meaning was contested even then. See pp. 42-43, *supra*.

Respondents' theory, moreover, undermines one of the Nationality Act's core purposes: reducing the incidence of dual nationality. See Estreicher & Reddy 33. "The United States has long recognized the general undesirability of dual allegiances." *Savorgnan* v. *United States*, 338 U.S. 491, 500 (1950). A child with two na-

tionalities is often "reared" "in an atmosphere of divided loyalty." *Rogers* v. *Bellei*, 401 U.S. 815, 832 (1971). "One who has a dual nationality will be subject to claims from both nations, claims which at times may be competing or conflicting." *Kawakita* v. *United States*, 401 U.S. 815, 733 (1952). "Circumstances may compel one who has a dual nationality to do acts which otherwise would not be compatible with the obligations of American citizenship." *Id.* at 736.

In the Nationality Act—and, by extension, in the reenactment of its provisions as part of the INA—Congress sought, as far as possible, to "put an end to dual citizenship." 86 Cong. Rec. 11,944 (1940) (statement of Rep. Dickstein). Congress carefully crafted grants of citizenship to minimize the likelihood of dual nationality —for instance, by providing that the child of U.S. citizens becomes a U.S. citizen at birth only if at least one parent has resided in the United States. See 8 U.S.C. 1401(c). It also provided that a citizen would lose his nationality by obtaining naturalization in a foreign state, either on his own or through his parents. See Nationality Act § 401(a), 54 Stat. 1168; but see *Afroyim* v. *Rusk*, 387 U.S. 253 (1967) (holding certain statutory expatriation provisions unconstitutional). Further, Congress required individuals to renounce any foreign allegiances before being naturalized as U.S. citizens. See 8 U.S.C. 1448(a).

Respondents' interpretation eviscerates Congress's handiwork. For centuries, countries, including the United States, have extended citizenship to the foreign-born children of their citizens. See *Miller* v. *Albright*, 523 U.S. 420, 477 (1998) (Breyer, J., dissenting); Act of Mar. 26, 1790, ch. 3, 1 Stat. 104. An article published a few years before the Nationality Act's adoption noted the "widespread extent" of that rule and "its paramount

influence upon the law of nationality throughout the world." Durward V. Sandifer, *A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality*, 29 Am. J. Int'l L. 248, 278 (1935). Given that children of temporarily present and illegal aliens are highly likely to be citizens of their parents' home countries, extending U.S. citizenship to those children defeats the Nationality Act's central objective of minimizing dual nationality.

In addition, "[c]itizenship is a high privilege, and when doubts exist concerning a grant of it, they should be resolved in favor of the United States and against the claimant." *United States* v. *Manzi*, 276 U.S. 463, 467 (1928); see *Berenyi* v. *District Director*, 385 U.S. 630, 637 (1967). To the extent there is any ambiguity about the scope of Section 1401(a) (or the Citizenship Clause), it should be resolved against extending citizenship.

* * * * *

In other cases, this Court has not hesitated to correct long-enduring misconceptions of the Constitution's meaning. For instance, *Brown* v. *Board of Education*, 347 U.S. 483 (1954), overturned the decades-old practice of school segregation; *INS* v. *Chadha*, 462 U.S. 919 (1983), overturned 295 legislative-veto provisions in 196 statutes spanning half a century; and *District of Columbia* v. *Heller*, 554 U.S. 570 (2008), rejected a militia-focused reading of the Second Amendment that had become prevalent during the 20th century. The same approach is appropriate here. This Court should uphold the Citizenship Order and restore the original meaning of the Citizenship Clause.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. U.S. Const. Amend. XIV, § 1, 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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 8 U.S.C. 1401 provides:

Nationals and citizens of United States at birth

The following shall be nationals and citizens of the United States at birth:

(a) a person born in the United States, and subject to the jurisdiction thereof;

(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;

(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmar-

ried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

3. Executive Order 14,160 provides:

Executive Order 14160 of January 20, 2025

Protecting the Meaning and Value of American Citizenship

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose*. The privilege of United States citizenship is a priceless and profound gift. The Fourteenth Amendment states: "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." That provision rightly repudiated the Supreme Court of the United States's shameful decision in *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393 (1857), which misinterpreted the Constitution

as permanently excluding people of African descent from eligibility for United States citizenship solely based on their race.

But the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States. The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not "subject to the jurisdiction thereof." Consistent with this understanding, the Congress has further specified through legislation that "a person born in the United States, and subject to the jurisdiction thereof" is a national and citizen of the United States at birth, 8 U.S.C. 1401, generally mirroring the Fourteenth Amendment's text.

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.

Sec. 2. *Policy*. (a) It is the policy of the United States that no department or agency of the United States government 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, to persons: (1) when that person's mother was unlawfully present in the United States and the person's 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 was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth.

(b) Subsection (a) of this section shall apply only to persons who are born within the United States after 30 days from the date of this order.

(c) Nothing in this order shall be construed to affect the entitlement of other individuals, including children of lawful permanent residents, to obtain documentation of their United States citizenship.

Sec. 3. *Enforcement.* (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security shall take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order, and that no officers, employees, or agents of their respective departments and agencies act, or forbear from acting, in any manner inconsistent with this order.

(b) The heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities.

Sec. 4. *Definitions.* As used in this order:

(a) "Mother" means the immediate female biological progenitor.

(b) "Father" means the immediate male biological progenitor.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

/s/ DONALD J. TRUMP

THE WHITE HOUSE,
January 20, 2025.