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.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF U.S. REPRESENTATIVES CLAUDIA TENNEY, ANDY BIGGS, CORY MILLS, JOHN ROSE, AND BARRY MOORE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

PHILIP J. VECCHIO
Counsel of Record
24 Huntswood Lane
East Greenbush, NY 12061
(518) 857-2897
PhilipJVecchioEsq@gmail.com
Counsel for Amici Curiae

January 27, 2026

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Congressional Bills

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici are United States Representatives Claudia Tenney, Andy Biggs, Cory Mills, John Rose, and Barry Moore. Congress has the "power to establish an uniform Rule of Naturalization" under Article I of the United States Constitution. An overinclusive reading of the Fourteenth Amendment's Citizenship Clause, extending birthright citizenship to those who are not constitutionally entitled to it, would infringe upon Congress's power to set terms and conditions for obtaining citizenship under the Naturalization Clause. *Amicus* Tenney, for example, has recently introduced naturalization legislation that directly conflicts with Respondents' overbroad interpretation of birthright citizenship. Constitutional Citizenship Clarification Act of 2025, H.R. 4741, 119th Cong. § 1 (2025). *Amici* thus have a strong interest in ensuring that the outcome of this case does not interfere with Congress's constitutional authority to legislate naturalization.

SUMMARY OF ARGUMENT

The Citizenship Clause of the Fourteenth Amendment states that "All persons born…in the United States, and subject to the jurisdiction thereof, are citizens of the United States." U.S. Const. amend. XIV, § 1, cl. 1. The Executive Order at issue in this case asserts that the children of foreign parents who are unlawfully or temporarily present in the United States at the time of birth are not "subject to the jurisdiction thereof" for citizenship purposes. Exec.

---

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *Amicus* Tenney, made any monetary contribution intended to fund the preparation or submission of this brief.

Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025). Petitioners and fellow *Amici* have ably and persuasively argued that children of legal-but-temporary visitors to this Nation are not entitled to birthright citizenship. This brief focuses narrowly on the issue of illegal immigrants and birthright citizenship, highlighting how Respondents' argument with regard to illegal immigrants is unpersuasive.

Respondents assert that this Court's decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), supports their claim that the children of illegal immigrants are entitled to birthright citizenship. This brief asserts that *Wong Kim Ark* supports the opposite conclusion: that children of illegal immigrants have no right to citizenship at birth. Respondents' superficial analysis misses the mark because it glosses over *Wong Kim Ark*'s detailed examination of the underlying principles of birthright citizenship.

Wong Kim Ark held that the Citizenship Clause must be interpreted in light of the common law tradition that it codified. *Id.* at 654. The ancient tradition of birthright citizenship dates back to medieval England, where it was assumed that those who lived under the "protection" of the King's peace would in turn be loyal and obedient subjects. *Id.* at 655. Children born to such individuals were considered natural-born subjects. *Id.* Though "subjects" are now called "citizens," the principles of birthright citizenship are still rooted in idea that people will develop a patriotic affinity towards a nation that protects their rights and interests.

With this history in mind, *Wong Kim Ark* identified several exceptions to birthright citizenship. Ambassadors, invaders, and certain Native Americans are not covered by the Citizenship Clause

due to considerations of protection, allegiance, and obedience. *Id.* at 680-81. After discussing these exclusions, *Wong Kim Ark* concluded that the purpose of the Citizenship Clause's term "subject to the jurisdiction" language was to incorporate "by the fewest and fittest words" the common law's limitations on birthright citizenship. *Id.* at 682.

Based on these well-established principles and exceptions, the children of illegal immigrants are not entitled to birthright citizenship. Illegal immigrants do not live under the "protection" of the United States government, but rather live under the ever-present threat of deportation if the government becomes aware of their mere presence within its borders. And by definition, illegal immigrants do not exhibit "obedience" to the United States (in fact, this Court has pointed out that illegal immigration "plainly constitute[s] a continuing crime"). *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 n.3 (1984). Finally, illegal immigrants demonstrate a lack of "allegiance" when they refuse to recognize or respect the United States' sovereign right to protect its territory from foreign intrusion.

Because the Citizenship Clause does not extend to the children of illegal immigrants, and because federal law providing statutory citizenship at birth mirrors the Citizenship Clause's "jurisdiction" language, the Court should reverse and hold that the children of illegal immigrants are not entitled to citizenship at birth.

ARGUMENT

The Executive Order at issue in this case essentially limits birthright citizenship to children born in the United States to citizens and permanent residents. Exec. Order No. 14160, 90 Fed. Reg. 8449

(Jan. 20, 2025). Citing the Fourteenth Amendment's Citizenship Clause and 8 U.S.C. § 1401(a)'s limitation of birthright citizenship to those who are "subject to the jurisdiction" of the United States at birth, the Executive Order excludes children of nonimmigrants and illegal immigrants from birthright citizenship. *Id.* This *Amici* brief focuses solely on the question of whether illegal immigrants are entitled to birthright citizenship, and explains why this Court's ruling in *Wong Kim Ark* strongly supports the Petitioner's position regarding illegal immigrants and birthright citizenship.

This Brief will first discuss how *Wong Kim Ark* held that the Citizen Clause ratified common law principles regarding birthright citizenship. It will then discuss the *Calvin's Case*, 77 Eng. Rep. 377 (1608), a landmark English case that *Wong Kim Ark* relied on to determine what those common law principles were, showing that the concept of "subjection for protection" determines who is a citizen at birth. The Brief will then explain that exclusions to birthright citizenship are not limited to the specific exceptions identified in *Calvin's Case* and *Wong Kim Ark*, but instead are determined by how common law principles apply to a class of individuals in question. It will discuss how illegal immigrants neither subject themselves to nor are protected by the United States government, and are thus not entitled to citizenship at birth under the principles incorporated by the Fourteenth Amendment.

I. The Citizenship Clause ratified the common law principle of "subjection for protection"

Like the Second Amendment and the right to bear arms, the Fourteenth Amendment's birthright

citizenship clause "was not intended to lay down a novel principle but rather codified a right inherited from our English ancestors." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___ (2022); *see also Wong Kim Ark*, 169 U.S. at 676 (stating that the Citizenship Clause is "declaratory in form" because it ratifies birthright citizenship principles "existing before its adoption"). Under the centuries-old principles of the English common law, Americans of African descent should have received citizenship at birth. Because black Americans were wrongfully denied birthright citizenship, the Fourteenth Amendment enshrined our common law tradition in the Constitution to ensure that states adhered to its principles. *Wong Kim Ark*, 169 U.S. at 676.

With this context in mind, *Wong Kim Ark* held that the term "subject to the jurisdiction" in the Fourteenth Amendment "must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the constitution." *Id.* at 654. This approach resembles the one taken by this Court in more recent cases like *District of Columbia v. Heller,* 554 U.S. 570 (2008). Like *Heller*, *Wong Kim Ark* considered the contemporary understanding of the Amendment's text at the time of ratification, as well as the common law history that influenced that understanding.

Wong Kim Ark identified a 1608 English ruling called *Calvin's Case* as "the leading case" regarding citizenship at birth. *Wong Kim Ark*, 169 U.S. at 656. The Court stated that *Calvin's Case* "clearly, though quaintly" sets forth the "fundamental principle" of birthright citizenship under the common law. *Id. Calvin's Case* is one of the earliest and most influential common law cases concerning birthright

citizenship, and the historical context of the decision helps shed light on the doctrine's logic.

Calvin's Case reflects nascent ideas of social contract theory that were beginning to take shape at the time that case was decided.[2] It clearly echoes Jean Bodin, the 16th century political philosopher who is "rightly considered the father of the modern theory of Sovereignty" and whose theories would go on to influence Enlightenment thinkers like Hobbes and Locke. Bodin's theory of citizenship is reflected in *Calvin's Case*'s discussion of subjecthood at birth.

Bodin posited that a citizen is one who trades absolute but untenable anarchic freedom for a more limited but sustainable ordered liberty.[3] Bodin asserted that "anyone who did not wish to abandon part of his liberty, and live under the laws and commands of another, lost it altogether" through death or enslavement. Jean Bodin, *Six Books of the Commonwealth* 18 (M.J. Tooley trans., Oxford, 1955). The relationship between a citizen and sovereign, Bodin argued, was the product of a contractual bargain: subjection for protection.

Bodin asserted that it is "the submission and obedience of a free subject to his prince, and the

---

[2] For a more in-depth discussion of the Western shift from an Aristotelian concept of citizenship to a Bodinian one, *see* Gage Raley, *Could the Supreme Court Defy the Legal Consensus and Uphold a Trump-Like Executive Order on Birthright Citizenship?* 17 Charleston L. Rev. 94, 103-05 (2022).

[3] The term "ordered liberty" is often employed by the Supreme Court in unenumerated rights cases to describe historical freedoms that are compatible with (or even necessary to maintain) an orderly society. *See, e.g.*, *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). One of the earliest American uses of that term appears in a letter by Puritan leader John Cotton citing Bodin's theory of sovereignty. Letter from John Cotton to Lord William Fiennes (1636).

tuition, protection, and jurisdiction exercised by the prince over his subject that makes the citizen. This is the essential distinction between the citizen and the foreigner. All other differences are accidental and circumstantial." *Id.* at 21.

If Bodin's ideas on social contract and citizenship sound familiar to modern Americans, it is because they are echoed in the famous "state of nature" passage in Hobbes' *Leviathan*. Hobbes wrote that people will voluntarily submit to a powerful protector to avoid experiencing a "nasty, brutish, and short" life in the state of nature. Thomas Hobbes, *The Leviathan* 62 (1651). An effective Leviathan is a dominant authority figure whose protective hand inspires loyalty, and whose threat of punishment instills obedience.

Calvin's Case (decided in 1608) is a clear product of its time, comfortably situated between Bodin's *Six Livres* (published in 1576) and Hobbes' *Leviathan* (published in 1651) *Calvin's Case* uses language almost identical to Bodin's when it held that "ligeance join[s] together the Soveraign and all his subjects . . . for as the subject oweth to the King his true and faithful ligeance and obedience, so the Sovereign is to govern and protect his subjects." *Calvin's Case*, 77 Eng. Rep. at 382. *Calvin's Case* also foreshadowed *The Leviathan* when it stated that "power and protection draweth ligeance." *Id.* at 388.

A key assumption that *Calvin's Case* adopts is that "*protectio trahit subjectionem, et subjectio protectionem*" (a Latin maxim meaning "protection draws subjection, and subjection protection"). *Id.* at 382. Subjecthood is seen as a naturally-occurring, mutually-beneficial relationship between a king and his subjects. It acknowledges that people will organically develop a loyalty and submit to a king that

protects their interests, and that a king will be moved to protect loyal and obedient subjects.

Calvin's Case employs the phrase "ligeance and obedience" frequently. It pairs those two words together to capture a subject's recognition of his sovereign's comprehensive right to rule. A subject's ligeance acknowledges the sovereign's right to rule as opposed to rival sovereigns,[4] and a subject's obedience acknowledges the sovereign's right to rule over the subject himself.[5]

Calvin's Case held that "[w]hosoever is born within the King's power or protection, is no alien." *Id.* at 407. As Blackstone later explained, a "natural allegiance" begins developing in "all men born within the king's dominions immediately upon their birth. For, immediately upon their birth, they are under the king's protection; at a time too, when (during their infancy) they are incapable of protecting themselves. Natural allegiance is therefore a debt of gratitude." William Blackstone, *Commentaries on the Laws of England, Book I* 369 (1768).

Calvin's Case held that "when an alien that is in amity cometh into England, … as long as he is within England, he is within the King's protection; therefore so long as he is here, he oweth unto the King a local obedience or ligeance." *Calvin's Case*, 77 Eng. Rep. at 383. In other words, if an alien recognized and respected the king's sovereignty and right to rule in

---

[4] *See Calvin's Case*, 77 Eng. Rep. at 386 (stating that "the subjects of England are bound by their ligeance to go with the King in his wars" against challengers to his sovereignty). *See also* William Blackstone, *Commentaries on the Laws of England, Book I* 367 (1768) (stating that a subject's "allegiance … bear[s] faith to his sovereign lord, in opposition to all men").

[5] *Calvin's Case*, 77 Eng. Rep. at 393 (stating that subjects are "bound to obey" the king).

opposition to rival sovereigns (ligeance) and to himself (obedience), that alien would enjoy the king's protection. Children of such aliens who "are born under the obedience, power, faith, ligealty, or ligeance of the King, are natural subjects, and no aliens." *Id.*

Calvin's Case was clear that it was the parents' fealty, not the location of birth, that was decisive factor when it came to natural-born subjecthood. The court observed that "ligeance is a quality of the mind, and not confined within any place." *Id.* at 388. *Calvin's Case* also made clear that *jus soli* is a misnomer, as the court observed that it is not "the soil, but ligeantia and obedientia that make the subject born." *Id.* at 384. It is not enough that "the place of his birth be within the King's dominion"; "the parents [must] be under the actual obedience of the King" as well, because "any place within the King's dominions without obedience can never produce a natural subject." *Id.* at 399.

Wong Kim Ark endorsed the common law principles of birthright citizenship as laid out in *Calvin's Case*. In that case, this Court recognized that the "fundamental principle of the common law with regard" to birthright citizenship is "expressed in the maxim *protectio trahit subjectionem, et subjectio protectionem*" (the phrase from *Calvin's Case* meaning "subjection draws protection, and protection subjection"). *Wong Kim Ark*, 169 U.S. at 655. This Court found that those "born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the King" were natural-born subjects under the common law. *Id.* This Court concluded that "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." *Id.* at 693.

II. "Peculiar" exceptions to birthright citizenship: ambassadors, invaders, and Indians

To illustrate the importance of a parent's allegiance and obedience as opposed to location of birth, *Calvin's Case* provided two exceptions to the rule. First, it noted that "if any of the King's ambassadors in foreign nations, have children there of their wives, being English women, by the common laws of England they are natural-born subjects, and yet they are born out-of the King's dominions." *Calvin's Case*, 77 Eng. Rep. at 399. Second, it observed that "if enemies should come into any of the King's dominions and surprise any castle or fort, and possess the same by hostility, and have issue there, that issue is no subject to the King, though he be born within his dominions, for that he was not born under the King's ligeance or obedience." *Id.* These two illustrative examples came to be known as the ambassadors and invaders exceptions to natural-born subjecthood.

There is no indication that *Calvin's Case* intended to provide a comprehensive list of all possible situations where someone could be born within the King's territory but not be considered a natural-born subject. Rather, the court was simply providing, in the words of Justice Story, "some exceptions which are founded upon peculiar reasons and which indeed illustrate and confirm the general doctrine." *Inglis v. Trustees of Sailor's Snug Harbor*, 28 U.S. 99, 155 (1830) (Story, J., concurring in part and dissenting in part).

When *Wong Kim Ark* held that the Fourteenth Amendment's "subject to the jurisdiction" language

was intended "to exclude, by the fewest and fittest words … the two classes of cases" (ambassadors and invaders) excluded by the common law, it also recognized that those "standing in a peculiar relation to the National Government, unknown to the common law" could still be excluded under common law principles. *Wong Kim Ark*, 169 U.S. at 682. This Court noted that "children of members of the Indian tribes" are excluded from birthright citizenship under the common law's principle of allegiance, even though the English common law never specifically addressed the status of their citizenship at birth. *Id.*

III. The common law did not address illegal immigrants because they "stand in a peculiar relation to the National Government, unknown to the common law"

Like Native Americans, illegal immigrants "stand[] in a peculiar relation to the National Government, unknown to the common law." Going back to the original Magna Carta, England essentially had an open borders policy. Clause 41 of the 1215 Magna Carta expressly granted foreign merchants from peaceful nations the right to enter, stay, and travel in England. Magna Carta 1215, cl. 41 (British Library trans.). Clause 42 further declared that "it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war," with only narrow exceptions for prisoners and outlaws, as well as persons (including merchants) from a nation at war with England. *Id.* at cl. 42. A local allegiance, meaning acknowledgement of the king's sovereignty over the English realm, was

assumed of foreigners during peacetime,[6] and they were thus permitted to enter freely.

That liberal immigration policy continued through Blackstone's time, who wrote that "[g]reat tenderness is shown by our laws, not only to foreigners in distress … but with regard also to the admissions of strangers who come spontaneously." William Blackstone, *Commentaries on the Laws of England, Book I* 259 (1768). Blackstone wrote that only a "subject of a nation at war" with England was prohibited from "com[ing] into the realm." *Id.* at 260. Border control was still in its infancy even in Blackstone's time, as he observed that "passports under the king's sign manual, or licenses from his ambassadors abroad, are now more usually obtained." *Id.* England did not impose immigration controls and mandatory registration until the passage of the Aliens Act 1905, which, in the words of Winston Churchill, marked a change from "the old tolerant and generous practice of free entry and asylum to which this country has so long adhered." Randolph Churchill, *Winston S. Churchill: Young statesman, 1901-1914* 355 (1969).

The closest thing to an illegal immigrant in common law England was a person hailing from a nation at war with England. If such a foreign enemy entered England in defiance of a wartime border closure and had a child, that child would fall under the invader exception to natural-born subjecthood.

England had no concept of illegal immigration neatly analogous to today's concept. The common law thus had no occasion to address illegal immigration and birthright citizenship. The lack of a historical

---

[6] *See Wong Kim Ark*, 169 U. S. at 655 (stating that allegiance was "predicable of aliens in amity so long as they were within the kingdom").

exclusion for illegal immigrants cannot be taken as a principled affirmation of their right to birthright citizenship.

IV. Illegal immigrants do not subject themselves to and are not protected by the United States, and are thus not entitled to birthright citizenship

Because the common law had no opportunity to confront illegal immigration and birthright citizenship, the Court should determine whether the principles behind the already-identified exclusions apply. The question becomes, to paraphrase *Wong Kim Ark*, whether subjection and protection are "predicable of [unlawful] aliens … so long as they [are] within" the United States. *Wong Kim Ark*, 169 U.S. at 655. The answer is very obviously "no," as that reciprocal bond is completely severed when it comes to illegal immigrants.

Regarding "ligeance and obedience," illegal immigration demonstrates a lack of allegiance through its refusal to recognize the United States' sovereign right to prohibit foreign intrusion. And unlike one-and-done crimes, unlawful immigration is an ongoing act of defiance and disobedience, as this Court has held that an unlawful immigrant's very presence on American soil "plainly constitute[s] a continuing crime." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 n.3 (1984). By definition, illegal immigrants refuse to "subject" themselves to the United States' sovereignty over its jurisdiction.

Regarding protection, the government refuses to provide unlawful immigrants with the most basic protection of all: the right to live within the nation's borders and under its protection. Though unlawful immigrants are entitled to baseline constitutional

protections like equal protection and due process, it would strain credulity to claim that they are "protected" by the sovereign in the common law's relational sense of the word. They are subject to deportation if the government becomes aware of their mere presence in U.S. territory, something a protective English king would not do to loyal and obedient subjects. The most basic protection a king provided to his subjects was the right to dwell securely in his realm,[7] and this is a protection that is not extended to illegal immigrants.

Illegal immigrants living under fear of deportation might even view the American government as a persecutor rather than a protector. And instead of the "debt of gratitude" Blackstone spoke about, the children of illegal immigrants may develop a grudge of resentment towards the United States as they grow up living with their family under the looming shadow of immigration law.

Extending birthright citizenship to illegal immigrants also runs the risk of straining the allegiance of other citizens. Though "[p]eople understand that some of the Constitution's language is hard to fathom," *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 866 (1992), if the Court holds that children of illegal immigrants, born on U.S. soil in defiance of the voters' wishes as expressed through immigration law, are entitled to compete against voters at the ballot box, this could be seen by many citizens as a grave betrayal by their sovereign. If, as *Calvin's Case* held, "power and protection draweth

---

[7] This right was enshrined in the Magna Carta, which provided due process protections against exile and established a right of reentry into the kingdom after travel abroad. Magna Carta 1215, cls. 39 & 42 (British Library trans.).

ligeance," *Calvin's Case*, 77 Eng. Rep. at 388, we can conversely assume that weakness and dereliction corrode it.

The extension of birthright citizenship to the children of illegal immigrants is clearly inconsistent with the principles espoused in *Wong Kim Ark*. All three elements identified in that decision—allegiance, obedience, and protection—are absent when it comes to the relationship between illegal immigrants and the United States government.

V. Respondents fail to address the Citizenship Clause's underlying principles

Respondents argue that, because illegal immigrants do not fall under the ambassadors, invaders, and Indians exceptions, they are entitled to birthright citizenship. Their argument presumes that *Wong Kim Ark*'s illustrative counter-examples have calcified into three fixed exceptions. This confuses dicta for doctrine.

Wong Kim Ark thoroughly discussed and endorsed the principle of protection and subjection, and explained how the three exceptions are based on that principle. The Court also discussed why the extension of citizenship to Wong Kim Ark was consistent with common law principles, rather than mechanically holding that he did not fall under one of the three previously-identified exceptions. Respondents fail to follow *Wong Kim Ark*'s methodology and show how they are entitled to birthright citizenship under the principles discussed in that case.

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to rule in favor of Petitioners and reverse.

Respectfully submitted,

PHILIP J. VECCHIO
Counsel of Record
24 Huntswood Lane
East Greenbush, NY 12061
(518) 857-2897
PhilipJVecchioEsq@gmail.com
Counsel for Amici Curiae

January 27, 2026