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 Before Judgment to the U.S. Court of Appeals for the First Circuit

Brief *Amicus Curiae* of America's Future, Gun Owners of America, Gun Owners Fdn. Gun Owners of California, Citizens United, Tennessee Firearms Assn., Tennessee Firearms Fdn., Judicial Action Group Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioners

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MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

Amici curiae America's Future, Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Citizens United, Tennessee Firearms Association, Tennessee Firearms Foundation, Judicial Action Group Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income taxation under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, which have filed numerous *amicus curiae* briefs in federal and state courts.

In this Court, some of these *amici* filed a brief supporting President Trump's Application for Stay in *Trump v. CASA, Inc.*, No. 24A884; *see* Brief *Amicus Curiae* of America's Future, *et al.* (Mar. 28, 2025); as well as a brief supporting his petition; *see* Brief *Amicus Curiae* of America's Future, *et al.* (Oct. 29, 2025). Additionally, some of these *amici* filed briefs in two district courts (W.D.WA. and D.N.H.) and in three circuit courts (First, Fourth, and Ninth).

STATEMENT OF THE CASE

On the first day of his second term in office, January 20, 2025, President Trump issued an Executive Order titled, "Protecting the Meaning and

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[1] No counsel for a party authored this brief in whole or in part and no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Value of American Citizenship."[2] This EO corrected a serious error of law made by the Executive Branch during the Administration of President Franklin Roosevelt and compounded by the Office of Legal Counsel during the Administration of President Clinton. *See* Petitioners' Brief ("Pet. Br.") at 6, 42. The EO restored the essential connection between citizenship and allegiance by providing that citizenship would no longer be bestowed automatically on children born to citizens and subjects of foreign nations, whether transients or illegal aliens, who simply happen to be born on U.S. soil.

The EO was challenged in the District of New Hampshire by a pseudonymous group of parents who claimed to fit the excluded definitions under the EO and their children.[3] *Barbara v. Trump*, 790 F. Supp. 3d 80, 88-89 (D. N.H. 2025) ("*Barbara I*"). Barbara is a citizen of Honduras who entered the country during 2024 when the nation's borders were virtually left open. She is located in New Hampshire with her husband and three minor children and applied for asylum, which application was pending when the case was filed. Her husband was almost certainly an illegal

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[2] Executive Order, "Protecting the Meaning and Value of American Citizenship" (Jan. 20, 2025).

[3] The EO ended the practice of granting citizenship: "(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 ... and the father was not a United States citizen or lawful permanent resident."

alien (described by the district court in politically correct terms as "not a U.S.-citizen or lawful permanent resident" *id*. at 88), and she was expecting another child in October 2025. "Barbara plans to seek for her child Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other benefits for which citizens are eligible." *Id*.

The court granted a preliminary injunction to the original plaintiffs, believing they would likely succeed in establishing that the EO violated the Fourteenth Amendment and the Amendment's interpretation by this Court in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). *See Barbara I* at 102.[4] The same day, the court extended the preliminary injunction to a sprawling class of "[a]ll current and future persons who are born on or after February 20, 2025" disqualified by the EO. *Barbara v. Trump*, 2025 U.S. Dist. LEXIS 133887 at *89 (D. N.H. 2025).[5] On December 5, 2025, this Court granted the government's petition for writ of certiorari before

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[4] The district court relied on its prior ruling in *N.H. Indonesian Cmty. Support v. Trump*, 765 F. Supp. 3d 102 (2025) ("*NHIC*") where these *amici* filed a brief. *See* Brief *Amici Curiae* of America's Future, *et al.* (Jan. 31, 2025). Without any analysis, the district court enjoined the President of the United States, vacated on appeal. *See N.H. Indonesian Cmty. Support v. Trump*, 157 F.4th 29, 35 (1st Cir 2025). These *amici* also filed a brief in that appeal criticizing the paucity of analysis by the district court. *See* Brief *Amicus Curiae* of America's Future, *et al.* (June 5, 2025).

[5] This class-wide injunction was the functional equivalent of a universal injunction which this Court determined that district courts did not have the authority to enter. *Trump v. CASA*, 606 U.S. 831 (June 27, 2025).

judgment. *Trump v. Barbara*, 2025 U.S. LEXIS 4487 (2025).

SUMMARY OF ARGUMENT

The district court below, as well as the other lower courts which heard challenges brought in districts and circuits believed to be favorable to challengers, failed utterly to give meaning to both of the Fourteenth Amendment's requirements to achieve citizenship by birth: (i) persons must be "born ... in the United States;" and (ii) the parents and child must be "subject to the jurisdiction thereof..." when the child is born. Fourteenth Amendment, Sec. 1. The "subject to the jurisdiction" requirement was read as narrowly as possible without creating an absurdity, to exclude only children born to Indians, foreign diplomats, and invaders.

When written, and for many years, this text was universally understood to deny citizenship to persons born in the United States with allegiance to other nations. Heavy reliance was placed on dicta in the outlier case of *Wong Kim Ark* decided in 1898, disregarding prior decisions of this Court. Thus, America now gives away citizenship and all the rights and benefits that go with it to anyone born to foreign mothers and fathers on U.S. soil, legally or illegally, in total disregard of the nature of American citizenship which requires the reciprocal duty of allegiance.

The year of "percolation" of litigation against the EO in four carefully chosen district courts (Western District of Washington, Maryland, Massachusetts, and

New Hampshire) situated within three carefully chosen circuits (First, Fourth, and Ninth Circuits) has provided almost no meaningful analysis which could be of assistance in this Court.[6] Every decision assumed without careful analysis that the issue was resolved by *Wong Kim Ark*, a decision that neither addressed nor decided the citizenship of the class of children covered by the President's Executive Order. The lower courts disregarded *Wong Kim Ark*'s reliance on the erroneous assumption that the British notion of citizenship governed in America. Unlike America where we have no king, children born in Britain are subjects of their King, where citizenship is forced on them regardless of their allegiance. In our Declaration of Independence, we renounced all "[a]llegiance to the British Crown," transferring allegiance to our new nation of "Free and Independent States." Viewed in the context of other decisions of this Court after the ratification of the Fourteenth Amendment, which understood the different nature of American citizenship, *Wong Kim Ark* is seen to be a poorly reasoned outlier.

The invented doctrine of birthright citizenship simply "gifts" citizenship to children whose parents are citizens of, and have allegiance to, a foreign country. It created a perverse incentive for illegal immigration

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[6] The district court bolstered its view with the assertion that "three other district courts ... also found the plaintiffs would likely succeed." *Barbara I* at 102. However, even the possibility of diverse perspectives ended when a challenge brought in the U.S. District Court for the District of Columbia was dropped by plaintiffs shortly after being assigned to a judge appointed by President Trump. *See OCA-Asian Pacific American Advocates v. Rubio*, Docket No. 1:25-cv–00287-TJK.

and the creation of a "birth tourism" industry, and opened the country to attack by a hostile Chinese government using IVF to birth threats to national security, all of which demeans the very nature of citizenship. It is essential that this Court act promptly to vacate the ill-advised injunctions entered against the President's Birthright Citizenship EO.

ARGUMENT

I. THE DECISIONS BELOW MISCONSTRUE THE FOURTEENTH AMENDMENT AND THIS COURT'S RULINGS.

The decisions of the district court below, as well as other district and circuit courts below, relied less on sound constitutional analysis than performing a simple recitation of the longstanding but erroneous view taught to generations of law students — that virtually everyone born on U.S. soil is automatically vested with U.S. citizenship. However, there was a time that *Dred Scott v. Sandford*[7] was considered good law, and so also was *Korematsu v. United States*,[8] and more recently, *Roe v. Wade*.[9] This was not a time for the district court to rely on "what everyone believes," but it should have engaged with the compelling arguments presented by the government or by these and multiple other *amici*. This did not occur.

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[7] 60 U.S. 383 (1857).

[8] 323 U.S. 214 (1944).

[9] 410 U.S. 113 (1973).

A. The Text Does Not Support Birthright Citizenship.

The district court asserted that the Executive Order likely "contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it." *Barbara I* at 102 (citation omitted). Where the lower court myopically saw one precondition repeated twice, that text clearly established two preconditions: "All persons [i] **born** or naturalized **in the United States**, and [ii] **subject to the jurisdiction thereof**, are citizens of the United States and of the State wherein they reside." Fourteenth Amendment, Sec. 1 (emphasis added).

Under the view of Respondents and the district court, with narrow exceptions, a person is born "subject to the jurisdiction thereof" simply by being born in the United States. However, the Amendment begins by setting a rule for persons "born ... in the United States," and thus the phrase "subject to the jurisdiction thereof" must have separate meaning. Nevertheless, the courts below treated the second element as surplusage, violating one of the foundational rules of constitutional interpretation, "[i]t cannot be presumed that any clause in the constitution is intended to be without effect...." *Marbury v. Madison*, 5 U.S. 137, 174 (1803). *See also Myers v. United States*, 272 U.S. 52, 151 (1926) (recognizing "the usual canon of interpretation of that instrument, which requires that real effect should be given to all the words it uses").

The court below assumed that "subject to the jurisdiction thereof" meant nothing more than the type of presence which would make a person subject to arrest for the commission of a crime, but that still does not rescue the second precondition from being rendered a nullity. This type of presence is sometimes referred to as "regulatory jurisdiction." *Pet. Br.* at 32, 39-40. The gloss given by the district court to the second element was drawn from *dicta* in one outlier decision of this Court.

B. *Wong Kim Ark* Does Not Control.

The district court adopted the same approach taken by the other lower courts based on what it thought was this Court's holding, which was only *dicta*, in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). More importantly, however, the *Wong Kim Ark* decision neither addressed nor decided the issue presented by the Executive Order.

Despite some unduly broad dicta, *Wong Kim Ark* did not even address those specific children covered by the Executive Order — those born to a mother either **illegally or temporarily present** in the United States. The question addressed in *Wong Kim Ark* was:

> whether a child born in the United States, of parents of [foreign] descent, who, at the time of his birth, are subjects of [a foreign government], 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 [foreign government], becomes at the time of his birth a citizen of the United States. [*Wong Kim Ark* at 653 (emphasis added).]

Thus, those "without permanent domicile and residence" are not citizens, even under this flawed decision.

And, as to the issues it did address, *Wong Kim Ark* was fundamentally flawed. Consider first how significantly it differs from the several cases this Court had decided previously. In 1873, just five years after ratification of the Fourteenth Amendment, this Court interpreted the Citizenship Clause to exclude from citizenship the very children addressed by the EO:

> That its main purpose was to establish the citizenship of the negro can admit of no doubt. The phrase, "**subject to its jurisdiction**" was intended to **exclude** from its operation **children of** ministers, consuls, and **citizens or subjects of foreign States born within the United States**. [*Slaughter-House Cases*, 83 U.S. 36, 73 (1873) (emphasis added).]

Two years later, the Court again questioned acquiring citizenship by location of birth, while focusing on inapplicable rules of British citizenship:

> **Some** authorities go further and include as citizens children born within the jurisdiction **without reference to the citizenship of their parents**. As to this class there have

> been **doubts**.... [*Minor v. Happersett*, 88 U.S. 162, 167-68 (1875) (emphasis added).]

Just 14 years before *Wong Kim Ark*, writing for the Court, Justice Gray had highlighted the critical difference between the children of citizens and the children of aliens owing allegiance to foreign powers. This Court declared:

> [t]he main object of the opening sentence of the Fourteenth Amendment was to settle the question ... as to the citizenship of free Negroes ... and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and **owing no allegiance to any alien power**, should be **citizens** of the United States.... [*Elk v. Wilkins*, 112 U.S. 94, 101 (1884) (emphasis added).]

Because the plaintiff in *Elk* was a member of a Native American tribe to which he owed allegiance, and had never been naturalized, the Court found that he was **not a citizen** despite being born on U.S. soil. By this rule, those born to foreigners temporarily or illegally here remain citizens of other countries as they owe allegiance to an "alien power."

The lower court believed that it gave full effect to the "subject to the jurisdiction thereof" language. Typical of this justification was the Ninth Circuit's explanation in the Washington State case:

> The [Supreme] Court stated that "[t]he real object of" the dual requirements of birth in U.S. territory and being subject to the United States jurisdiction was, "to exclude, by the fewest and fittest words ... the two classes of cases, — children born of alien enemies **in hostile occupation**, and children of **diplomatic representatives** of a foreign State...." [*Washington v. Trump*, 145 F.4th 1013, 1028 (9th Cir. 2025) (emphasis added).]

The lower court ignored the narrowness of the *Wong Kim Ark* exceptions. Under the district court's holding, the "**in hostile occupation**" exception likely bars no one from birthright citizenship today, while granting free citizenship to the children of women who are from (and are citizens of) the nations on the State Department's list of State Sponsors of Terrorism[10] (Cuba, North Korea, Iran, and Syria) as well as other countries like Russia or China. Additionally, the "**diplomatic representative**" exception would appear to apply only to those with actual diplomatic status with diplomatic immunity, while granting citizenship to children born to those working in those embassies who were from (and citizens of) foreign nations.

However, if *Wong Kim Ark* is now understood to hold that "subject to the jurisdiction" of the United States simply meant to be present "within the jurisdiction" thereof, equating (i) children born to aliens who owe allegiance to foreign governments to

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[10] *See* https://www.state.gov/state-sponsors-of-terrorism/.

(ii) children of American citizens, then that decision was in error, an outlier, inconsistent with this Court's decisions in the *Slaughter-House Cases, Minor,* and *Elk*, and should be overruled.

C. American vs. British Citizenship.

Any decision, such as *Wong Kim Ark*, based on the belief that the Fourteenth Amendment incorporated principles of British citizenship is doomed to reach the wrong result. Yet numerous litigants and courts below have contended that birthright citizenship is derived from the English common law principle of *jus soli*, or citizenship determined by birthplace. In truth, the common-law principle of *jus soli* is completely inapplicable here, as it was developed under the British view of "subjectship," not the American view of citizenship.

In *Wong Kim Ark*, Justice Gray accurately described the English common law's presumption that everyone born on English soil was a subject of the King for life, whether he wished to be or not. "By the common law of England, every person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country, was an English subject." *Wong Kim Ark* at 657. Justice Gray incorrectly assumed the British rule of citizenship that he described also applied in America, when it does not. As Justice Story explained in 1829, "The common law of England is not to be taken in all respects to be that of America. Our ancestors brought with them its

general principles, and claimed it as their birthright. But they brought with them, and adopted only that portion which was applicable to their situation." *Van Ness v. Pacard*, 27 U.S. 137, 144 (1829).

The legal principle of *jus soli* was based on the idea that the king owned the land, and anyone born on the land, whether to a citizen or to an alien, became by birth a subject of the king, to whom that person now owed allegiance for life, being permanently a subject by birth on the king's land.[11] America has no king.

The shift to the American notion of citizenship occurred when our forefathers declared their land and persons "Absolved from all Allegiance to the British Crown." Thus, in 1776, the Framers expressly rejected the notion of being unalterably subjects by birth:

> The Declaration of Independence is not just a thorough repudiation of that old feudal idea of "permanent allegiance" [to the king by accident of birth], but perhaps the most eloquent repudiation of it ever written.... The notion that the English common law of *jus soli* therefore continued unabated after the Declaration of Independence could not be more mistaken.[12]

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[11] *See* William J. Olson & Jeffrey C. Tuomala, "Birthright Citizenship and Covenental Allegiance," at 2-6, *America's Future* (Jan. 2026).

[12] John Eastman, "The Significance of 'Domicile' in *Wong Kim Ark*," 22 CHAP. L. REV. 301, 308-09 (Spring 2019).

Chief Justice Fuller's dissent in *Wong Kim Ark* is far more well-reasoned and far more faithful to the original meaning of the Citizenship Clause than the majority opinion and its dicta. Fuller first noted that the British common law notion of *jus soli* — that anyone born on the King's soil was a subject of the king for life — was a poor fit for the Constitution of a nation founded on the rejection of a king.

> The tie which bound the child to the Crown was indissoluble. Though born during a temporary stay of a few days, the child was irretrievably a **British subject**. The rule was the outcome of the connection in feudalism ... and the allegiance due was that of liegemen to their liege lord. It was not local and temporary as was the obedience to the laws owed by aliens within the dominions of the Crown, but permanent and indissoluble, and not to be cancelled by any change of time or place or circumstances. [*Wong Kim Ark* at 706-07 (Fuller, C.J., dissenting) (emphasis added).]

Fuller argued that the rule of lifelong subservience to the king imposed upon anyone born on his land was abrogated by the Revolution itself:

> [T]he rule making locality of birth the criterion of citizenship because creating a permanent tie of allegiance, no more survived the American Revolution than the same rule survived the French Revolution. Doubtless, before the

> latter event, in the progress of monarchical power, the rule which involved the principle of liege homage may have become the rule of Europe; but **that idea never had any basis in the United States**. [*Id.* at 710 (emphasis added).]

He explained that "from the Declaration of Independence to this day, the United States have rejected the doctrine of indissoluble allegiance." *Id.* at 711. Fuller then surveyed the Law of Nations writers of the Revolutionary period, showing that the British concept of subjection to the king for life by virtue of being born on his land was contrary to the Law of Nations. *Id.* at 708.

Fuller followed in the path of Emmerich de Vattel, viewed as the foremost scholar on the Law of Nations at the time of the Revolution in explaining: "[t]he true **bond** which connects the child with the body politic is **not** the matter of an inanimate piece of **land, but** the moral relations of his **parentage**...." *Id.* (emphasis added).

Fuller then argued that the text of the Clause appears to exclude more than only the children of diplomats or invading armies, and indeed the language "subject to the jurisdiction thereof" would not only have been mere surplusage, but would have been wholly unnecessary to cover such children.

> [Foreign diplomats] do not owe allegiance otherwise than to their own governments, and **their children cannot be regarded as born**

> **within any other**. And this is true as to the children of aliens within territory in hostile occupation, who necessarily are not under the protection of, nor bound to render obedience to, the sovereign whose domains are invaded; but it is not pretended that the children of citizens of a government so situated would not become its citizens at their birth, as the permanent allegiance of their parents would not be severed by the mere fact of the enemy's possession. [*Id.* at 720-21 (emphasis added).]

Thus, the language "subject to the jurisdiction thereof" would have been unnecessary language if only intended to cover the children of diplomats or invading armies, since those children would be legally viewed as having been born on the territory of the foreign sovereign, despite actual physical presence on United States soil. *See id.* at 721. Additionally, Fuller argued:

> [t]here was no necessity as to [the children of diplomats or invading armies] for the insertion of the words although they were embraced by them. But there were others in respect of whom the exception was needed, namely, the children of aliens, whose parents owed local and temporary allegiance merely, remaining subject to a foreign power by virtue of the tie of permanent allegiance. [*Id.*]

Fuller made clear the purpose or object of the language by which it must be understood: "it was to **prevent** the acquisition of citizenship by the children

of such aliens **merely by birth** within the geographical limits of the United States that the words were inserted." *Id.* (emphasis added). Fuller's position squared with the rulings in the *Slaughterhouse Cases* and *Elk,* while the majority opinion viewed as sacrosanct by the court below was the outlier.

II. BIRTHRIGHT CITIZENSHIP VIOLATES THE PRINCIPLES OF THE DECLARATION OF INDEPENDENCE AND THE FOURTEENTH AMENDMENT.

A. The Importance of Allegiance.

Citizenship cannot be understood without understanding that it reflects and requires the allegiance of the person in exchange for a reciprocal duty of protection by the nation. Only those persons who can be expected to have a "**permanent allegiance**" to our country can become citizens, because only on that permanent allegiance does the country's reciprocal duty of protection arise. No such relationship exists with the two classes of persons addressed by the Executive Order:

> By **allegiance** is meant the obligation of **fidelity and obedience** which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an **absolute and permanent allegiance** to his government or sovereign, or

> at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another sovereign. The alien, whilst domiciled in the country, owes a **local and temporary allegiance**, which continues during the period of his residence. [*Carlisle v. United States*, 83 U.S. 147, 154 (1872) (emphasis added).]

The Declaration of Independence not only freed the new country from the notion that persons born in America were British citizens with allegiance to England, but it also demonstrated the solemn, binding, and covenantal action undertaken on behalf of the people, which was later confirmed by the People's ratification of the Constitution, which begins, "We the People":

> We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are **Absolved from all Allegiance to the British Crown**, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved…. [Declaration of Independence (emphasis added).]

The Declaration of Independence declared that Americans were shifting from their previous "**[a]llegiance to the British Crown**" to allegiance to the new nation formed of "**Free and Independent States**."

B. The Fourteenth Amendment.

The court below gave little consideration to the views of the Framers of the Fourteenth Amendment but preferred to rely on later case law.[13] Following the Civil War, Congress took action to overrule *Dred Scott*, which held that slaves and their descendants, even as freedmen, were excluded from U.S. citizenship. Congress first acted to override *Dred Scott* by enacting the **Civil Rights Act of 1866**, 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." 14 *Stat*. 27 (emphasis added).

Due to concerns that this Court might rule the Civil Rights Act unconstitutional or that a subsequent Congress might repeal the Act, Congress initiated the process required to amend the Constitution. *See* R. Berger, Government by the Judiciary: The Transformation of the Fourteenth Amendment at 48 (Liberty Fund: 1997). The resulting Fourteenth Amendment included this language:

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[13] "There is no reason to delve into the amendment's enactment history...." *NHIC* at 110.

> Section 1. 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 ... deny to any person **within its jurisdiction** the equal protection of the laws. [Emphasis added.]

The language "**subject to the jurisdiction thereof**" in the Fourteenth Amendment was understood as conveying the same meaning as the language "**and not subject to any foreign power**" as used in the Civil Rights Act of 1866. Most countries recognize as citizens those children born to parents who are their citizens. Consequently, even if born on American soil, those children born to foreigners are **subjects of a foreign power** and thus **not subject to the jurisdiction of the United States**. Accordingly, children born in the United States of parents who are not U.S. citizens have no lawful claim of citizenship simply because they are born on U.S. soil.

Just as with the Declaration of Independence, the ratification history of the Fourteenth Amendment, discussed *infra*, demonstrates that "subject to the jurisdiction" entails an **obligation of allegiance** to the United States and not simply an **obligation of obedience** to the laws of the United States. The obligation of allegiance signified in the Citizenship Clause is different in kind from the obligation of every person in the territory of the United States to obey the laws of the land.

Citizens subject to the jurisdiction of the United States are entitled to corresponding privileges and immunities of citizenship. Article IV, Sec. 2, cl. 1. On the other hand, all persons who come "within its jurisdiction" have a duty to obey the law, together with a corresponding right to the equal protection of the law. The meaning of the phrase "subject to the jurisdiction" as used in the Fourteenth Amendment context is very different from the meaning of "within its jurisdiction."

Congress's deliberations on the Fourteenth Amendment reveal the limited objective for which the Citizenship Clause was adopted — to reverse *Dred Scott* and to ensure that the citizenship of freedmen was recognized on the same basis as other Americans born in the United States. The purpose was not to change the law regarding citizenship, but rather to affirm its proper understanding. The deliberations addressed the issue of children born in the United States to non-citizens and assumed that they did not qualify as natural born citizens. It was understood by the Framers that the best evidence that a person will bear true faith and allegiance to America is birth in the United States to American parents.

Senator Jacob Howard of Michigan, who authored the Citizenship Clause, explained its meaning:

> This … is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a

> citizen of the United States. **This will not, of course, include persons born in the United States who are foreigners**, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. [Congressional Globe, 39th Cong., 1st Sess., 2890 (emphasis added).]

Senator Howard also explained what he meant by use of the term "jurisdiction":

> "jurisdiction" as here employed, ought to be construed so as to imply a **full and complete jurisdiction** on the part of the United States ... that is to say, the **same jurisdiction in extent and quality** as applies to every citizen of the United States now. [*Id*. at 2895 (emphasis added).]

Senator Lyman Trumbull of Illinois, Chairman of the Senate Judiciary Committee, concurred with Senator Howard regarding his characterization of the meaning of "jurisdiction":

> That means "subject to the complete jurisdiction thereof".... **Not owing allegiance to anybody else**. That is what it means.... It cannot be said of any [person] who owes allegiance, partial allegiance if you please, to some other Government that he is "subject to the jurisdiction of the United States…."

> It is only those persons who are completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens. [*Id*. at 2893 (emphasis added).]

Senator George Williams of Oregon concurred:

> In one sense, all persons born within the geographical limits of the United States, are subject to the jurisdiction of the United States, but they are not subject to the jurisdiction of the United States in every sense.... I understand the words here, "subject to the jurisdiction of the United States," to mean fully and completely subject to the jurisdiction of the United States. [*Id*. at 2897.]

Senator Edgar Cowan of Pennsylvania specifically expressed concern that the amendment should not be interpreted to grant citizenship to Chinese immigrant workers in California and went on to discuss the rights of travelers in the United States from foreign nations:

> If a **traveler** comes here from Ethiopia, from Australia, or from Great Britain, he is entitled to a certain extent, to the protection of the laws. You cannot murder him with impunity. It is murder to kill him, the same as it is to kill another man. You cannot commit an assault and battery on him, I apprehend. He has a right to the protection of the laws; but he is

> **not a citizen** in the ordinary acceptation of the word. [*Id.* at 2890 (emphasis added).]

Before the debate on Senator Howard's proposal to add the qualifying phrase "subject to the jurisdiction thereof," Senator Saulsbury concisely stated the Senate's object with regard to this amendment, and in so doing, removed all doubt as to the limited purpose of the amendment as drafted:

> I do not presume that any one will pretend to disguise the fact that the object of this first section is simply to declare that negroes shall be citizens of the United States. [*Id.* at 2897.]

Allegiance has continued to be at the center of American citizenship. An oath of allegiance was required of most Confederate combatants after the Civil War.[14] It is at the core of the "**Oath of renunciation and allegiance**" required by persons seeking naturalization:

> A person who has applied for naturalization shall, in order to be and before being admitted to citizenship, take ... an oath ... to renounce and abjure absolutely and entirely all **allegiance** and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen....; to support and defend the

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[14] *See* National Archives and Records Administration, "Presidential Pardons and Congressional Amnesty to Former Confederate Citizens, 1865-1877" (Nov. 2014).

> Constitution and the laws of the United States against all enemies, foreign and domestic [and] to bear true faith and **allegiance** to the same. [8 U.S.C. § 1448 (emphasis added).]

III. NO STATUTE PROVIDES AN ALTERNATIVE BASIS TO CHALLENGE THE EO.

Respondents argue that, even if *Wong Kim Ark* had been wrongly decided, 8 U.S.C. § 1401 memorialized Congress' deliberate choice to adopt Birthright Citizenship as the rule for our nation. Respondents confidently assert that § 1401 expresses Congress' determination that: "'it is the fact of birth within the territory and jurisdiction, and not the domicile of the parents, which determines the nationality of the child.'" Brief in Opposition to Certiorari at 14-15 (emphasis omitted). They claim that "[t]he congressional debates [over § 1401] reflected precisely the same understanding." *Id.* at 21. According to this view, even though this statute simply repeats the operative language of the Fourteenth Amendment, it supports the full weight of their challenge to the EO. While the legislative history regarding birthright citizenship in this provision is brief, it is long enough to disprove Respondents' assertions.

In 1940, Congress set about to "[t]o revise and codify the nationality laws of the United States into a

comprehensive nationality code."[15] The House Immigration Committee discussion of proposed § 1401 included Assistant Legal Adviser to the State Department Richard Flournoy, and Immigration and Naturalization Service Assistant Commissioner Thomas B. Shoemaker. Flournoy advised the Committee that, under *Wong Kim Ark*, "persons who are born in the United States of alien parents, and are taken by their parents to the countries from which the parents came … acquire citizenship under the 14th amendment … and … they may … enter this country themselves as citizens." Representative Robert Poage (D-Tex) replied, "Isn't that based on the constitutional provision that all persons born in the United States are citizens there?" Flournoy responded, "Yes." Poage replied, "in other words, **it is not a matter we have any control over**." *Id.* at 37 (emphasis added).

Similarly, Shoemaker advised the committee, "[i]n the United States, and so far as the question of citizenship is concerned, the doctrine of *jus soli* applies." Poage replied, "and the constitution makes that apply." *Id.* at 49. Representative Edward Rees (R-Kan) expressed the same understanding of Congress' limitations, imposed by this Court's *Wong Kim Ark* ruling. "**[W]e cannot change** the

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[15] House Immigration Committee, "To revise and codify the nationality laws of the United States into a comprehensive nationality code: Hearings before the Committee on Immigration and Naturalization, House of Representatives, 76th Congress, 1st session, on H.R. 6127, superseded by H.R. 9980, a bill to revise and codify the nationality laws of the United States into a comprehensive nationality code..." at 429-30.

citizenship of a man who went abroad, who was born in the United States." *Id.* at 38 (emphasis added). As far as President Roosevelt's Administration and Congress were concerned, this Court had interpreted the Constitution in *Wong Kim Ark*, and Congress had no role or authority to change that interpretation.

Additionally, in the "Sections of Proposed Code With Explanatory Comments" attached to the House report on the INA, the House cited "Mr. Justice Gray in *United States v. Wong Kim Ark*" for the proposition that "within the jurisdiction" and "subject to the jurisdiction" had the same meaning.[16] The approach taken by Congress was simply to "cut and paste" the language of the Fourteenth Amendment into § 1401. This legislative history makes clear that the meaning of § 1401 is derivative of the meaning of "subject to the jurisdiction thereof" in the Fourteenth Amendment, and thus, contrary to Respondents' assumption, this statute simply cannot provide an independent basis to support their challenge to the EO.

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[16] House Immigration Committee Hearing at 429-30.

IV. BIRTHRIGHT CITIZENSHIP CREATES BIZARRE RESULTS.

The injunctions issued in these cases omitted discussion of or dismissed the significance of one of the most important aspects of citizenship — the **allegiance** that a person owes to his own country, sometimes described as loyalty or fidelity to the nation. Most countries recognize citizenship based on the principle of *jus sanguinis* — that a child acquires the citizenship of the child's natural parents. *See* Edward J. Erler, The Founders on Citizenship and Immigration (Claremont Inst.: 2007) at 28-29. Thus, children born anywhere in the world to citizens of most other countries acquire the citizenship of their parents at birth. Under Respondents' notion of "birthright citizenship" — a term of recent origin that cannot be sourced to the Declaration, Constitution, or any statute — almost all such children automatically would be citizens of multiple countries. To which country do these children owe their allegiance?

The United States has long required naturalized citizens to disavow allegiance to all foreign sovereigns, but not so with those benefitting from "birthright citizenship." Most children born in the United States to parents with foreign citizenship are recognized as foreign nationals under international law, and not any more "subject to the jurisdiction" of the United States than are the children of diplomats, Native Americans (before the Indian Citizenship Act of 1924), or foreign invaders, whom Respondents concede are not citizens.

The importance of allegiance is most acutely felt during time of war when the obligations of citizenship are most consequential. An American citizen is "subject to the jurisdiction" of the United States and may be drafted into the military even if outside the country. Citizens who take up arms against the United States may be prosecuted for treason. *See* U.S. Constitution, Article III, Sec. 3. Non-citizens who take up arms against the United States are prisoners of war if captured, and they are not subject to prosecution simply for waging war against the United States. A person who is a citizen of two different countries that are at war will be placed in an untenable position. The problems that arise with dual citizenship were acutely felt by U.S. citizens who were impressed into service with the British navy leading up to the War of 1812.

Neither of the two categories of children born to aliens in the United States that are addressed by the Executive Order can be expected to demonstrate allegiance to our nation. First, those children born of parents who are not legally in the United States cannot be expected to be nurtured in the values of American citizenship by parents who entered the country illegally — being here not "subject to" but rather "in defiance of" our nation's laws. Second are those children of birth tourists, who travel to the United States for the purpose of giving birth and thereby obtaining cheap and easy citizenship for their children. They too are unlikely to have any allegiance to nurture their children in values of American citizenship.

Indeed, as explained *supra*, only those persons who can be expected to have a "**permanent allegiance**" to our country can become citizens, because based on that permanent allegiance, the country then owes to its citizens a reciprocal duty of protection. But no such relationship can be said to be established with the two classes of persons covered by the Executive Order.

If *Wong Kim Ark* is read to support the preliminary injunctions, it contravenes common sense and our sense of justice. According to the lower courts' theory, under *Wong Kim Ark*, a person born in the United States of alien parents is constitutionally entitled to American citizenship, whereas a person born outside the United States to American citizens is entitled to such citizenship only by statute. Why should there be an irrebuttable legal presumption of allegiance in the former case, but not in the latter?

Under the Respondents' theory of the case, and the district courts' preliminary injunctions, children of the 9/11 hijackers, human traffickers, and enemy combatants captured overseas and held in the United States who are born on U.S. territory would be entitled to citizenship.[17]

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[17] *See, e.g.*, DOJ Office of the Inspector General, "A Review of the FBI's Handling of Intelligence Information Prior to the September 11 Attacks," ch. 5 (Nov. 2004); U.S. Department of Justice, "Two sent to prison for roles in cartel-linked human smuggling scheme" (Oct. 30, 2024); U.S. Department of Justice, "Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System" (June 9, 2009).

Furthermore, Second Amendment rights belong to the People, which is to say, the Citizens, the polity of the nation: "the right of **the people** to keep and bear Arms, shall not be infringed." (Emphasis added.) Thus, birthright citizenship gives the "right to keep and bear arms" to persons who bear no allegiance to the United States except by accident of birth. This is consistent with "the conception of the militia at the time of the Second Amendment's ratification was the **body of all citizens** capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty." *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (emphasis added). "'"The people" seems to have been a term of art employed in select parts of the Constitution' to 'refer[] to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.'" *United States v. Carbajal-Flores*, 143 F.4th 877, 881 (7th Cir. 2025).

V. BIRTHRIGHT CITIZENSHIP LEADS TO ABUSES AND ENDANGERS NATIONAL SECURITY.

A. Respondent Came to America for Benefits.

Barbara is a citizen of Honduras who most likely traveled by land first to Guatemala, and then to Mexico, where she should have sought asylum under the "first safe country" rule, even though voided by the Biden Administration before Barbara entered the country in 2024. Barbara was expecting a child in

October 2025, and "plans to seek for her child Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other benefits for which citizens are eligible." *Barbara I* at 88. Even illegal aliens receive free education under this Court's decision in *Plyler v. Doe*, 457 U.S. 202 (1982) and free medical care under the Emergency Medical Treatment and Active Labor Act. Nobel Prize-winning economist Milton Friedman explained that before 1914 immigration could be more open, but today: "It's just obvious you can't have free immigration and a welfare state."[18] Previously, immigrants came to work and support themselves, not for the benefits they could receive, estimated at $150.7 billion in 2023.[19] On top of all those incentives for foreigners to enter the country illegally the lower courts believe that Birthright Citizenship is to be given away as a further bonus.

B. Birthright Citizenship Has Created a Birth Tourism Industry.

Birthright Citizenship has created a vast "birth tourism" industry.[20] A 2020 report also estimated about 33,000 children are born on tourist visas in the

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[18] *See* Robert Rector, "Look to Milton: Open borders and the welfare state," *Heritage Foundation* (June 21, 2007).

[19] "The Fiscal Burden of Illegal Immigration on United States Taxpayers," *Federation for American Immigration Reform* (Mar. 8, 2023).

[20] *See, e.g.*, N. Nnorom, "Birthright citizenship: Nigerians in diaspora kick, say Trump's action illegal," *Vanguard* (Jan. 23, 2025).

United States each year.[21] This industry draws mothers from "China, Taiwan, South Korea, Nigeria, Turkey, Russia, Brazil, and even Mexico." This birth tourism industry includes as many as 500 companies in China, which assist in the process, including "coach[ing] Chinese customers about how to lie to U.S. officials and hide their pregnancies." *Id.* It is estimated that, just in the past 15 years, there already are 750,000 to 1.5 million Chinese nationals holding U.S. citizenship simply by being born on American soil. *See* Peter Schweitzer, The Invisible Coup: How American Elites and Foreign Powers Use Immigration as a Weapon (Harper: 2026) at 78.

C. Birthright Citizenship Has Been Weaponized by the Chinese Government.

The People's Republic of China has turned Birthright Citizenship into a weapon to destabilize our country from within. The Chinese have been paying Caucasian American women (preferably blonde and blue-eyed women) to serve as surrogate mothers, carrying the babies of high ranking Chinese businessmen and officials. After birth, and receiving the free gift of U.S. citizenship here, those children are then taken to China and raised with loyalty to China and the Chinese Communist Party. However, as U.S. Citizens, they are able at any time to return to the United States with full legal and civil rights. Nothing prevents them from serving in U.S. political office, the

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[21] P. Styrna, "Birth Tourism," Federation for American Immigration Reform (Mar. 2020) https://www.fairus.org/issue/birth-tourism.

military, perhaps even the intelligence services, and of great importance — vote in federal elections. A vitally important book exposing this threat was published earlier this month exposing how these dual citizens can serve as conduits for Chinese Communist cash to dark money groups supporting left-wing causes, skirting the laws against foreign donations. *See* The Invisible Coup at 79-83, 100-01, 200.

A wealthy Chinese executive, Xu Bo, claims to have fathered more than 100 children by U.S. surrogates.[22] His ex-girlfriend says the number is closer to 300.[23] The SAFE KIDS Act is a bill introduced to curb such uncontrolled surrogacy citizenship to end a legal pipeline for Chinese nationals to travel to Guam and the Commonwealth of the Northern Marianas Islands ("CNMI"), to have Chinese babies born on American soil, with U.S. citizenship. [24]

Neither the framers of the Fourteenth Amendment, nor Congress, opened the nation to attack through the absurdity of Birthright Citizenship. The fault lies with the administrations of Presidents

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[22] K. Long, B. Foldy and L. Wei, "The Chinese Billionaires Having Dozens of U.S.-Born Babies Via Surrogate," *Wall Street Journal* (Dec. 13, 2025).

[23] M. McCartey, "Who Is Xu Bo? Chinese Billionaire Allegedly Has Over 100 US-Born Babies," *Newsweek* (Dec. 16, 2025).

[24] Senator Rick Scott, "Sen. Rick Scott Introduces SAFE KIDS Act to Stop Foreign Adversaries from Exploiting U.S. Surrogacy Laws" (Nov. 5, 2025).

Franklin Roosevelt and William Clinton, and those since which have continued it. This vulnerability has now been remedied by President Trump. It is now the duty of this Court to end this threat to American citizenship and to our nation.

CONCLUSION

For the foregoing reasons, this Court should vacate all injunctions against the EO, and order that all challenges be dismissed.

Respectfully submitted,

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