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 *AMICUS CURIAE* OF FORMER NATIONAL SECURITY OFFICIAL JOSHUA STEINMAN IN SUPPORT OF PETITIONERS

JUDD E. STONE II
Counsel of Record
CHRISTOPHER D. HILTON
ARI CUENIN
STONE HILTON PLLC
600 Congress Ave., Ste. 2350
Austin, Texas 78701
judd@stonehilton.com
(737) 465-3897

Counsel for Amicus Curiae

QUESTION PRESENTED

Whether President Trump's January 20, 2025, Executive Order, *Protecting the Meaning and Value of American Citizenship*, complies on its face with the Citizenship Clause and with 8 U.S.C. § 1401(a), which codifies that Clause.

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INTEREST OF AMICI CURIAE[1]

Amicus curiae Joshua Steinman is a former national security official and the Co-founder and CEO of Galvanick, a cybersecurity firm specializing in securing industrial facilities. Prior to that role, Mr. Steinman served on the White House National Security Council Staff from 2017 to 2021 as Deputy Assistant to the President and Senior Director for Cyber. In that role, his duties included oversight of all cyber and telecommunications policy for the federal government. Mr. Steinman has also served as a naval officer, serving in the United States and abroad, and in the private sector as a senior executive in Silicon Valley. While assigned to an emerging technologies task force answering to the Chief of Naval Operations, he successfully advocated for the creation of the Defense Innovation Unit, an entity formed to help the Department of Defense integrate emerging technology and national security.

Amicus has worked at the most senior levels of the federal government and with the highest-level security clearance. He has devoted his career to combating complex security threats to the United States. These threats are perhaps no more complex and consequential than those involving the United States's assessment of and response to foreign intelligence assets in an increasingly globalized, interconnected geopolitical landscape. Such threats include the exploitation of vulnerabilities in United States citizenship requirements on the part of foreign adversaries.

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and no person other than *amici* or their counsel contributed money intended to fund preparing or submitting this brief.

Amicus respectfully submits this brief to offer the Court a perspective on the national-security contours of this case. In particular, *amicus* writes to describe the implications of place-of-birth and citizenship derived therefrom for national security, and why interference with the President's Executive Order (the "EO") giving effect to the Constitution's citizenship provisions may leave the United States vulnerable to harm from its enemies abroad. *See* Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 20, 2025).

SUMMARY OF ARGUMENT

I. The Fourteenth Amendment of the Constitution provides, in relevant part, that a person attains U.S. citizenship if he is both "born or naturalized in the United States" and "subject to the jurisdiction thereof." U.S. Const. amend. XIV. As the Executive has argued, the EO rightly recognizes that the automatic grant of birthright citizenship to a child born on U.S. soil regardless of whether his parents are lawfully and permanently in the United States is not required by the Fourteenth Amendment. The district court's ruling was not in keeping with the text of the Constitution and the national-security interests it serves.

II. The foregoing principles also support the Executive's argument that the EO comports with the Immigration and Nationality Act (INA), ch. 477, § 301, 66 Stat. 235, 235-36. The language of the INA tracks the language of the Citizenship Clause and 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). When Congress enacted this INA provision, it did so consistent with the aims of the Citizenship Clause described above. The injunction thus harms the Executive by

interfering with the laws Congress enacted to guide foreign affairs and national security. And because of the unique challenges posed by U.S.-born foreign-intelligence assets, the Executive is well-suited to redress threats to national security from potential U.S.-born foreign intelligence assets by giving effect to the INA consistently with the Citizenship Clause.

ARGUMENT

The order enjoining the EO's treatment of birthright citizenship lies in error and cannot be defended on constitutional or statutory grounds. This Court has recognized that constitutional liberties—and by logical extension the statutes consistent with those liberties—must coexist with longstanding national-security interests. "Established legal doctrine must be consulted for its teaching. Remote in time it may be; irrelevant to the present it is not. . . . Security subsists, too, in fidelity to freedom's first principles." *Boumediene v. Bush*, 553 U.S. 723, 797 (2008) (cleaned up). *Amicus* agrees that the district court's order enjoining the EO is not in keeping with those principles. The injunction misunderstands the Fourteenth Amendment, raising needless conflict with the United States's national-security interests and the President's obligation to see the Constitution faithfully executed. *See* U.S. Const. Art. II, § 3. The district court abused its discretion in granting a preliminary injunction because, among other reasons, the EO's challengers failed to show a likelihood of success on the merits, let alone the other factors necessary for injunctive relief. *See Nken v. Holder*, 556 U.S. 418, 426 (2009). *Amicus* focuses on explaining why the merits underlying the district court's ruling cannot be defended on constitutional or statutory grounds.

First, the Executive and others have highlighted flaws in the constitutional analysis of Fourteenth Amendment challenges to the EO. *Amicus*, being well-versed in the complex national-security challenges facing the United States, is uniquely situated to shed further light on the conflict between unbounded birthright citizenship and our constitutional system. As a former national security official, *amicus* has diligently worked to uphold constitutional values like those embraced in the Fourteenth Amendment while also balancing the national-security interests vital to the continued safety and security of the United States.

Second, regarding the INA, the EO's national-security implications cut against the injunction as well. Because the Constitution does not confer citizenship in the manner claimed by plaintiffs, the INA does not either. Rather, the INA matches the Citizenship Clause virtually word-for-word and reflects Congress's understanding of the policy choices embodied therein. The injunction frustrates the President's ability to exercise his lawful authority to faithfully execute the law, without undue interference from the courts. The Court should decline to interpret the INA in that manner because courts are particularly ill-suited to second-guess the political branches on matters of national security.

I. The EO Is Faithful to the Constitution and Serves the Interests of National Security.

The district court's preliminary injunction should be reversed because it errs as to the scope of citizenship guaranteed by the Fourteenth Amendment. Moreover, the EO's interpretation of the Constitution aligns with important national-security aims.

A. Under the text of the Fourteenth Amendment's Citizenship Clause, citizenship is not automatically conferred to all persons born in the United States. The Citizenship Clause of the Fourteenth Amendment 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.

The EO addresses what it means to be "subject to the jurisdiction" of the United States. Exec. Order No. 14,160, § 1. The EO examines the Citizenship Clause in reference to the applicable statutory text accompanying it, which extends U.S. citizenship to "a person born in the United States, and subject to the jurisdiction thereof." 8 U.S.C. § 1401(a). The EO recognizes that the Constitution and Congress do not automatically extend citizenship to a person born in the United States whose: (1) mother was unlawfully present and father was not a citizen or lawful permanent resident or (2) mother was present lawfully but only temporarily and father was not a citizen or lawful permanent resident. Exec. Order No. 14,160, § 1. The EO instructs relevant federal authorities with respect to documentation policies and regulations consistent with those narrow limitations. *Id.* §§ 2-3.

There is no dispute that there are limitations on deriving U.S. citizenship solely from the geographic place of one's birth. *See generally* Amy Swearer, *Subject to the (Complete) Jurisdiction Thereof: Salvaging the Original Meaning of the Citizenship Clause*, 24 TEX. REV. L. & POL. 135, 143 (2019). Moreover, no one challenges other well-established exceptions for geographically derived birthright citizenship, such as for children of foreign diplomats, whose "exclusion from birthright citizenship is uncontested." *Id.* at 149 & n.35. Even this Court

in *United States v. Wong Kim Ark*, 169 U.S. 649, 652-53 (1898), spoke in limited terms when it examined how the Citizenship Clause applied to a child born in the United States to parents who were lawfully present Chinese aliens permanently domiciled in the United States. The Court reasoned 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" for purposes of the Citizenship Clause. *Id.* at 693. As the Executive notes, a contrary understanding runs headlong into the power of Congress and the Executive Branch to address concerns about individuals manipulating or flouting the nation's immigration laws to derive geographically derived birthright U.S. citizenship. *See* Pet. Br. 29.[2]

Amicus respectfully submits that national-security implications should be considered when interpreting the Constitution, especially when such concerns were known to its Framers. For instance, Alexander Hamilton warned, "foreign powers" would "not be idle spectators" in American affairs: "They will interpose, the confusion will increase, and a dissolution of the Union ensue." JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787, at 113 (Gaillard Hunt & James Brown Scott, eds. 1920) (recounting Hamilton's speech of June 18, 1787). Hamilton elsewhere insisted that the Constitution must give "provident and judicious attention" to addressing "the desire in foreign powers to gain

[2] Because the EO addresses citizenship under 8 U.S.C. § 1401(a), this brief does not address the other avenues to U.S. citizenship that Congress has or could have provided elsewhere. *Amicus* takes no position on U.S. citizenship in this brief beyond the narrow issue of geographically derived birthright U.S. citizenship under Section 1401(a) as it relates to the EO.

an improper ascendant in our councils." THE FEDERALIST NO. 68, at 412-13 (Alexander Hamilton) (Clinton Rossiter, ed. 1961). And concerns about "foreign influence" animated the debate over the workings of Congress's sphere of federal supremacy over the states.[3] MADISON, *supra*, at 76 (noting Elbridge Gerry's remarks of June 8, 1787, concerning the proposal to give Congress a "negative on such laws of the States as might be contrary to the articles of Union, or Treaties with foreign nations").

Indeed, concerns about foreign influence provided powerful motivation to enshrine other constitutional protections. For instance, foreign influence motivated the express inclusion of an impeachment mechanism in the Constitution:

> [The Executive] may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard against by displacing him. One would think the King of England well secured against bribery. Yet Charles II was bribed by Louis XIV.

2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 68-69 (Max Farrand, ed. 1911) (Gouverneur Morris). And the addition of the Foreign Emoluments Clause followed after Charles Pinckney had "urged the necessity of preserving foreign Ministers & other officers of the

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[3] Even Thomas Jefferson, "who was not generally favorable to broad federal powers," conceded that "whatever may concern . . . any foreign nation should be made a part of the federal sovereignty." *Hines v. Davidowitz*, 312 U.S. 52, 63 n.11 (1941) (quoting *Letter to Mr. Wythe*, in 2 MEMOIR, CORRESPONDENCE AND MISCELLANIES FROM THE PAPERS OF THOMAS JEFFERSON, at 230 (1829)).

U.S. independent of external influence." *Id.* at 389. The Constitution elsewhere provides that, in "guarantee[ing] to every State in this Union a Republican Form of Government," the United States would "protect each of them against Invasion." U.S. Const. Art. IV, § 4.

Nor were these early concerns merely academic. The War of 1812, for example, resulted in part from the Royal Navy's impressment of sailors whom the United Kingdom viewed as British subjects, but whom the United States viewed as U.S. citizens. ALEX COCKBURN, NATIONALITY OR THE LAW RELATING TO SUBJECTS AND ALIENS 70-79 (1869). As the War of 1812 came to illustrate, concerns about conflicting claims of allegiances can create real-world "problems for the governments involved." *Rogers v. Bellei*, 401 U.S. 815 (1971). The United States "has long recognized the general undesirability of dual allegiances" for good reason. *Savorgnan v. United States*, 338 U.S. 491, 500 (1950).

Importantly here, the Fourteenth Amendment and its Citizenship Clause were "drafted by Congress in 1866, with the concerns of the then-recent past in mind," as war with Britain over dual allegiance was still "[w]ithin the living memory of some members of Congress." Robert E. Mensel, *Jurisdiction in Nineteenth Century International Law and Its Meaning in the Citizenship Clause of the Fourteenth Amendment*, 32 ST. LOUIS U. PUB. L. REV. 329, 334 (2013). "The status of dual allegiance, ordinary as it seems today," would have "seemed anomalous and inappropriate" to the Citizenship Clause's framers. *Id.* And, as the Executive notes (at 24), debates over the Fourteenth Amendment reflect concerns about giving birthright citizenship to anyone born to foreign parents "abroad temporarily in this country." Given this context, it is especially appropriate for

requirements for U.S. citizenship in the Constitution to be read in harmony with concerns about national security.

B. The EO's faithful reading of the Fourteenth Amendment's text is confirmed by the important national-security interests it serves. *See* Pet. Br. 4 (citing Exec. Order No. 14,159, § 1, 90 Fed. Reg. 8443 (Jan. 20, 2025)). Specifically, the EO tracks the reality that some illegal aliens enter the United States to engage in "hostile activities, including espionage, economic espionage, and preparations for terror-related activities," and that such aliens "present significant threats to national security and public safety." Exec. Order No. 14,159, § 1, 90 Fed. Reg. 8443. Concerns about illegal immigration and national security have long shaped federal policy. For instance, Congress passed the Immigration Reform and Control Act of 1986 a year after President Ronald Reagan described illegal immigration as a "threat to national security." James T. Kimer, *Landmarks in US Immigration Policy*, NACLA.ORG (Sept. 25, 2007), https://nacla.org/article/landmarks-us-immigration-policy. Former Attorney General John Ashcroft likewise announced national-security reforms after the 9/11 hijackers were "easily able to avoid contact with immigration authorities and violate the terms of their visas with impunity." Attorney General Prepared Remarks on the National-Security Entry-Exit Registration System (June 6, 2002), https://www.justice.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm. Other scholarship has explained that modern anti-illegal-alien enforcement policy is grounded in national-security concerns. *See, e.g.*, Kevin J. Fandl, *Immigration Posses: U.S. Immigration Law and Local Enforcement Practices*, 34 J. LEGIS. 16, 18-20 (2008). As the Executive

argues (at 29), the Constitution leaves room for Congress and the Executive Branch to respond to such threats with respect to geographically derived birthright U.S. citizenship. As explained below, the EO's national-security aims are consistent with the Constitution.

This Court has recognized national security as a governmental interest of the highest order. *See Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010). And it has consistently ruled that national-security interests and constitutional rights form an interconnected framework of carefully balanced policy considerations regarding issues of immigration. *See, e.g.*, *Trump v. Hawaii*, 585 U.S. 667, 702 (2018). By necessary implication, the EO affects such decisions because a child born to parents covered by the EO who then returns from abroad will have to seek admission as a non-citizen if and when he chooses to return to the United States. *See, e.g.*, *Dep't of State v. Munoz*, 602 U.S. 899, 907 (2024) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." (cleaned up)). "Because decisions in these matters may implicate relations with foreign powers, or involve classifications defined in the light of changing political and economic circumstances, such judgments are frequently of a character more appropriate to either the Legislature or the Executive." *Hawaii*, 585 U.S. at 702 (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)).

Of course, an executive official invoking national security alone does not suffice; courts do not "abdicat[e] the judicial role" in the face of the executive asserting such an interest. *Humanitarian L. Project*, 561 U.S. at 34. Rather, this Court gives "respect" to the

Government's conclusions regarding national security while maintaining the "obligation to secure the protection that the Constitution grants." *Id.* Importantly, the Court does not "substitute [its] own evaluation" of "serious threats to our Nation and its people." *Id.*

Here, the Executive has explained why the EO forms an integral part of President Trump's efforts to repair the American immigration system and respond to the urgent national-security crisis of unchecked migration at the Southern Border. *See* Exec. Order No. 14,159, § 1, 90 Fed. Reg. 8443 (explaining that President Trump's immigration policy is designed to fight the threat to "national security and public safety" from unlawful immigration); *see also* Exec. Order No. 14,165, 90 Fed. Reg. 8467 (Jan. 20, 2025); Proclamation No. 10,886, 90 Fed. Reg. 8327 (Jan. 20, 2025) (declaring a national emergency at the southern border); Proclamation No. 10,888, 90 Fed. Reg. 8333 (Jan. 20, 2025) (explaining the President's actions to protect the border under Article IV, Section 4 of the Constitution). As the Executive has explained, executing federal policy consistent with the correct reading of the Citizenship Clause is a key component of the President's national-security efforts because it removes incentives for unlawful immigration and closes loopholes that can be exploited by foreign adversaries. *See* Pet. Br. 4.

Notably, the EO addresses a vulnerability in citizenship derivation that is well-known to the intelligence community. *See generally* Pet. Br. 45-46. Birthright citizenship creates opportunities for dual loyalty that can be exploited by malign foreign actors to cultivate intelligence assets. Conferring U.S. citizenship at birth begins a long timeline that is difficult to track on an individual

level, let alone counteract or prosecute if it materializes into criminal espionage activity.

From the standpoint of a foreign adversary, an individual who appears to be a citizen of the target country is an ideal intelligence asset. In the intelligence community, these assets known as "illegals" masquerade as American citizens when in fact they are not. Foreign actors deploy significant resources to create such assets, often by stealing or assuming another's identity. But that approach is costly and time-consuming for the foreign adversary, with attendant risks for detection and traceability. Well-publicized examples have come to light in recent years. For example, a network of 10 Russian sleeper agents, including Anna Chapman, was exposed in 2010 after a decade-long FBI investigation. *How the FBI Busted Anna Chapman and the Russian Spy Ring*, ABC NEWS (Nov. 1, 2011), https://abcnews.go.com/blogs/politics/2011/11/how-the-fbi-busted-anna-chapman-and-the-russian-spy-ring. The program, known as the "Illegals Program," involved individuals living in the U.S. under deep cover for many years, using stolen identities to pose as ordinary citizens while gathering intelligence. *See* Kristin A. Vara, *Espionage: A Comparative Analysis*, 22 ILSA J. INT'L & COMP. L. 61, 68-70 (2015); *see also, e.g.*, Shaun Walker, *"I Thought I Was Smarter Than Almost Everybody": My Double Life as a KGB Agent*, THE GUARDIAN (Feb. 11, 2017), https://www.theguardian.com/world/2017/feb/11/thought-smarter-everybody-kgb-spy-jack-barsky (interviewing Jack Barsky, an ex-KGB spy who lived a double life in the U.S. under an assumed identity).

But birthright U.S. citizenship lets foreign adversaries avoid many of those pitfalls. With a round-trip plane ticket, a malign actor can send an expecting

mother to the United States, receive mother and baby on return, indoctrinate and train the child, and then send the individual back to the United States to engage in espionage activity. That mechanism, for instance, stymies major advances in digital surveillance and biometric technologies that make it harder for undercover agents to remain anonymous and operate in the target country under a false identity. *See* Kevin P. Riehle, *Russia's Intelligence Illegals Program: An Enduring Asset*, 35 INTELLIGENCE & NAT'L SEC. 385, 386 (2020). And foreign agents who are "subject to less scrutiny by the host government" are "extremely valuable intelligence asset[s]." Press Release, DOJ, Attorney General Holder Announces Charges Against Russian Spy Ring in New York City (Jan. 26, 2015), https://www.justice.gov/opa/pr/attorney-general-holder-announces-charges-against-russian-spy-ring-new-york-city.

Thus, with an extremely modest financial investment and the passage of time, a foreign adversary can use geographically derived birthright citizenship to create a nearly undetectable human intelligence asset with no bonds of affection for his country of birth and carte blanche access to the United States. And as the example of Russia's "Illegals Program" shows, malign foreign actors are perfectly willing to make such long-term plays. *See, e.g.*, Riehle, *supra*, 386 ("Russian intelligence services remain proud of their intelligence illegals program, claiming it is an object of envy for Western intelligence services.").

The EO thus forms an important part of President Trump's efforts to improve national security. For example, many high-value foreign officials cannot travel without advance permission, and law enforcement at the U.S. border increases risks of apprehension for foreign

adversaries seeking to infiltrate the country. *See, e.g.*, Walker, *supra* (describing the "complex passport switches and documents left via dead drop" necessary for a deep-cover Soviet spy to travel between the U.S. and Europe). The Executive has taken significant steps to secure the border and deter threats from unlawful immigration. *See, e.g.*, Exec. Order No. 14,159, § 1, 90 Fed. Reg. 8443. And as noted in Part II, *infra*, the EO's faithful constitutional reading works in tandem with Congress's statutes, providing additional avenues for screening potential malign actors from entering the United States as non-citizens. *Cf. Hawaii*, 585 U.S. at 689 (describing the system for "vetting" aliens seeking admission to the United States). The EO not only removes an incentive for illegal immigration, it removes birthright citizenship as an attractive alternative for American adversaries seeking to easily cultivate intelligence assets.

II. National-Security Concerns Also Support the Executive's Correct Interpretation of the INA.

Respondents likewise fail in arguing that the EO violates the INA. *See* Pet. Br. 43-48. Respondents' contrary view of the INA runs headlong into core national-security aims of the Citizenship Clause discussed above. Preserving federal authority to function properly within the national-security and foreign-affairs realm is of the highest importance. *See Hawaii*, 585 U.S. at 704. There is a "heavy presumption of constitutionality to which a carefully considered decision of a coequal and representative branch of our Government is entitled." *U.S. Dep't of Labor v. Triplett*, 494 U.S. 715, 721 (1990) (cleaned up). And "[a]ny rule of constitutional law that would inhibit the flexibility of the President to respond to changing world conditions should be adopted only with the greatest

caution." *Hawaii*, 585 U.S. at 704. A rule that interprets the INA inconsistently with the Citizenship Clause guts this Court's traditional restraint in that sphere. *See, e.g.*, *id.* (emphasizing that the Court's "inquiry into matters of entry and national security is highly constrained" (citing *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976))).

Congress did not jettison those principles when it codified the immigration laws of the United States. Rather, tracking the Citizenship Clause's language essentially word-for-word, the INA provides that persons "born in the United States, and subject to the jurisdiction thereof," are U.S. citizens. 8 U.S.C. § 1401(a). As the Executive correctly maintains, "Section 1401(a)'s scope depends on what the Citizenship Clause actually means," and the plainest indicator of that scope is the statutory text. Pet. Br. 44. And by the time Congress enacted the INA, it was already well-established that "[t]o the extent there is any ambiguity about the scope of Section 1401(a) (or the Citizenship Clause), it should be resolved against extending citizenship." Pet. Br. 47. Had Congress intended to depart from the Citizenship Clause, "one would expect it to have said so in clear and understandable terms." *Russello v. United States*, 464 U.S. 16, 25 (1983).

Moreover, one would certainly expect Congress to speak clearly to a matter of such unmistakable national importance. Granting citizenship to an individual is a profoundly consequential action of sovereignty—after all, "in the exercise of its broad power over immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens." *Reno v. Flores*, 507 U.S. 292, 305-06 (1993) (cleaned up). That distinction is perhaps no clearer than in cases touching on aliens and immigration. As this Court recognized in

upholding other national-security Executive actions, "Congress designed an individualized vetting system that places the burden on the alien to prove his admissibility." *Hawaii*, 585 U.S. at 689. Rules governing the conferral of citizenship thus implicate the "vetting" of individuals who are or may become intelligence assets of a foreign adversary by virtue of advantageously derived U.S. citizenship. *Cf.* Pet. Br. 8. Under this Court's precedent, Congress would have been expected to speak far more clearly before attempting to interfere with such Executive functions.

Because "[Congress] does not . . . hide elephants in mouseholes," it certainly did not alter "fundamental details" of U.S. citizenship *sub silentio*. *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 468 (2001). There is hardly a question of greater "economic and political significance" to the United States than the terms and conditions under which citizenship may attach. *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)). Under the "major questions doctrine" in the administrative-law context, this Court avoids overreading statutory text in favor of creating agency power absent clear statements, "given both separation of powers principles and a practical understanding of legislative intent." *Id.* at 723. There is no lesser need for respecting the separation of powers and legislative intent as to the INA, given the "major policy decisions" Congress expects the Executive to make regarding foreign affairs and national security. Curtis Bradley & Jack Goldsmith, *Foreign Affairs, Nondelegation, and the Major Questions Doctrine*, 172 U. PA. L. REV. 1743, 1792 (2024). In those domains, "the usual understanding is that Congress intends to give the President substantial authority

and flexibility to protect America and the American people—and that Congress specifies limits on the President when it wants to restrict Presidential power in those national security and foreign policy domains." *Fed. Commc'ns Comm'n v. Consumers' Rsch.*, 606 U.S. 656, 706-07 (2025) (Kavanaugh, J., concurring).

If there were any doubt about Congress's intent, Respondents' view cannot be the correct one because it affirmatively undermines the INA. As the Executive correctly notes, Respondents' reading of the INA interferes with the "central objective of minimizing dual nationality." Pet. Br. 47. Under Respondents' view, Congress left the President powerless to address serious national-security risks, including those discussed above in Part I. *See, e.g.*, *Kawakita v. United States*, 343 U.S. 717, 733 (1952) ("One who has a dual nationality will be subject to claims from both nations, claims which at times may be competing or conflicting."). As this Court has recognized, "[c]ircumstances 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. The Court should reject Respondents' invitation to read the INA to favor that result.

Indeed, the injunction ordered below can have serious foreign-affairs consequences regardless of the raw number of births involved, the number of U.S. citizenships conferred, or the total number of individuals who ultimately attain dual nationality. The EO expresses President Trump's position on a matter of domestic policy with foreign-relations implications. It is beyond serious dispute that judicial action can have profound effects on foreign policy and the range of options available to the Executive in responding to national-security threats. *Cf., e.g.*, Timothy Meyer & Ganesh Sitaraman, *The National*

Security Consequences of the Major Questions Doctrine, 122 MICH. L. REV. 55, 61, 80 (2023) ("Judicial action [in restraint of domestic Executive action] can thereby weaken the executive branch's hand on the international plane").

To be sure, enjoining the EO threatens irreparable injury to the Executive and the public, whose interests "merge." *Nken*, 556 U.S. at 435. It is beyond serious dispute that an injunction that prevents the President from carrying out responsibilities for immigration matters is "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS v. Legalization Assistance Project of the L.A. Cty. Fed'n of Labor*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers). If nothing else, these serious concerns should have counseled against enjoining the EO. But they also confirm that Respondents misread the INA because Congress did not intend to hamstring the Executive.

Courts are ill-suited to interfere with such matters of national security and foreign affairs, let alone remedy them. After all, "[u]nlike the President and some designated Members of Congress, neither the Members of [the Supreme] Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." *Boumediene*, 553 U.S. at 797. The Court has emphasized that "[i]t is pertinent to observe that any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). Matters like these, which involve complex national-security and foreign-affairs considerations, "are so exclusively entrusted to the political branches of

government as to be largely immune from judicial inquiry or interference." *Id.* at 589.

Congress was also well-aware that the United States should "speak with one voice" on matters affecting the nation's foreign affairs. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 381 (2000). The President has "a unique role in communicating with foreign governments," as "only the Executive has the characteristic of unity at all times" that is necessary for diplomacy. *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 14, 21 (2015). While this Court has declined to recognize an unbounded Executive power over foreign affairs in the face of contrary Congressional action, *see id.* at 20, the President here has chosen to exercise his authority in furtherance of the Constitution and laws of the United States.

Reversing the judgment below thus restores the proper alignment of power between Congress and the Executive. The district court's injunction interferes with the crucial "one voice" of the United States in matters of sovereignty and foreign affairs. Had Congress intended to countenance such interference, it would be expected to "speak clearly" and indicate as much. *Cf., e.g.*, *Henderson v. Shinseki*, 562 U.S. 428, 436-38 (2011) (explaining that Congress would have cast a deadline in different language if it had intended the provision to be jurisdictional); *see also Consumers' Rsch.*, 606 U.S. at 706-07 (Kavanaugh, J., concurring) (explaining the Court's longstanding view that Congress speaks clearly when it intends to limit the Executive in the "national security and foreign policy domains"). Congress has not done so here.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted.

JUDD E. STONE II
Counsel of Record
CHRISTOPHER D. HILTON
ARI CUENIN
STONE HILTON PLLC
600 Congress Ave.,
Ste. 2350
Austin, Texas 78701
judd@stonehilton.com
(737) 465-3897

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