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 UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICUS CURIAE* DAVID BOYLE IN SUPPORT OF RESPONDENTS

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AMICUS CURIAE STATEMENT OF INTEREST

The present *amicus curiae*, David Boyle (hereinafter, "Amicus"),[1] respectfully supports Respondents, children/families, Barbara et al. Amicus filed a brief in *Trump v. CASA, Inc./ Washington/New Jersey et al.*, Nos. 24A884, 24A885, 24A886 (March 17, 2025), to question efforts to destroy birthright citizenship, since children don't deserve that abuse, being stripped of that precious inheritance. —It is one thing, say, to prosecute adult "birth tourist" rings, to prevent their wrongly profiting; but to take it out on the kids, innocent, vulnerable children, is unconscionable.

Petitioners, Trump and administrators, make a specious, even spurious, case against birthright citizenship, e.g., citing (Merits Br. at 20) to a case page "659" *that doesn't exist*, in "*Robertson v. Cease*, 97 U.S. 646, 659 (1878)", since *Cease*, *id.*, …ceases at p. 651, https://tinyurl.com/4p5was4t. (Department of Justice retraction/correction is appropriate, to "cease" the falsehood.) Those who would jeopardize little children's futures should present a flawless case, not a fictitious one.

And Petitioners' case has many other flaws as well, since, e.g., *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) ("*Ark*"), makes a near-airtight case for birth-citizenship, *see id.*, if read properly. Any reasons for overturning *Ark*—God forbid—are unconvincing, especially, and ironically, if Trump's Administration has driven away huge numbers of immigrants (when not killing protesters like Renée

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[1] No party or its counsel wrote or helped write this brief or gave money for its writing or submission, *see* S. Ct. R. 37.

Good and Alex Pretti, RIP), since that makes it less urgent that further measures, such as destroying birth-citizenship, be enacted.

In that line, Amicus will show that *Ark*: a. enshrines birthright citizenship; b. is correct to do so; c. hasn't been overturned; and d. doesn't deserve to be overturned. Indeed, certiorari may have been improvidently granted (note the April-Fools'-Day oral argument!). Amicus respectfully wonders whether ending the "national injunction" during *CASA, supra* (June 27, 2025), slip op. at 21, was good timing, either—why at that particular moment, with children's welfare at stake? On that note, Amicus tries here to protect America's children from lawless disenfranchisement.

SUMMARY OF ARGUMENT

The very idea of sinking *Ark* is of cinematically repulsive, even evil, proportions, given the weakness of the case against *Ark*; the United States' noble history as an "ark" of refuge, per Emma Lazarus, for the wretched immigrants of the Earth; and the misfocus on overturning *Ark* rather than on, say, stopping immigration police from killing protesters.

Justice Gray's *Ark* opinion uses, *see id.* at 657, 689-90, Lord Chief Justice Alexander Cockburn's words to confirm that the Fourteenth Amendment enshrines common-law birthright U.S. citizenship for children of aliens, whether the parents are illegally and/or temporarily here and/or undomiciled, or not. Indeed, *Ark*'s dissent complains, *see id.* at 705-07, that the Opinion so uses Cockburn.

Therefore, *Ark* enshrines birthright American

citizenship, per Cockburn and common law, even for "illegal"/undomiciled/transitory parents' children, since *Ark*'s opinion and dissent both agree on this.

If Petitioners claim common law doesn't justify *Ark*'s opinion, they err, e.g., Petitioners don't acknowledge Cockburn's influence as mentioned *supra*; and, *pace* Petitioners, 19th-century American practice did uphold common law, even if twists such as dual citizenship complicated things.

Claims that "feudalism" infects common law and that Continentalism/"law of nations" holds instead, defeating birth-citizenship, are false. Common law actually gives children more freedom than Continentalism, since children born here have American identity but can renounce it later if desired. Too, each nation, including America, can choose its own immigration regime.

The Fourteenth Amendment's "and subject to the jurisdiction thereof", *id.* § 1 cl. 1 (the "Citizenship Clause"), doesn't exclude undomiciled aliens' children from birth-citizenship, *see id.*, since that "jurisdiction", *id.*, overlies such children, as *Ark* explains, *see id.* at 682, with some exceptions (tribe-loyal Native Americans, per *Elk v. Wilkins*, 112 U.S. 94 (1884); diplomatic families; etc.—although those exceptions may obey some American laws).

Parental domicil/domcile doesn't hurt aliens' children's birth-citizenship, but *Ark* never calls it necessary, *see id.*, and even calls it unnecessary, *see id.* at 693. Petitioners never manage to prove otherwise, no matter how many times *Ark* mentions domicil(e) (or being Chinese), thus making it hard to

call portions of *Ark* about undomiciled aliens' children, mere "dicta".

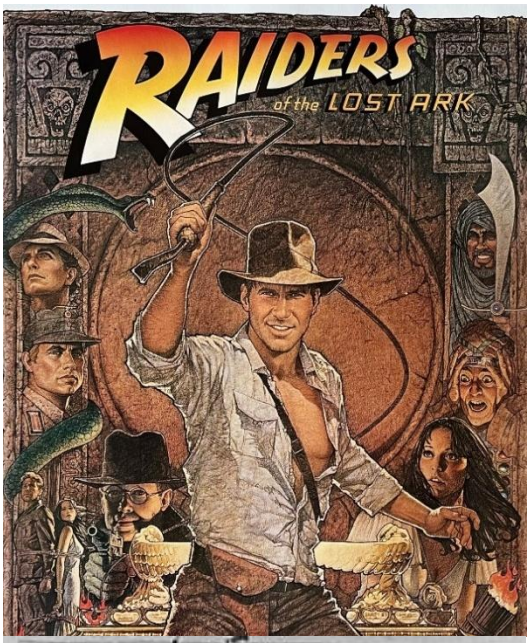
Even *Chin Bak Kan v. United States*, 186 U.S. 193 (1902), which might *prima facie* seem to promote Petitioners' "dominance-of-domicile" idea, doesn't truly do so, *see id.* Indeed, *Chin*, *supra*, may point out *Ark*'s verdict, *Chin* at 200, but not *Ark*'s full holding which echoes, *see id.* at 694, Cockburn in giving undomiciled aliens' offspring birthright-citizenship.

Mistaking *Ark*'s multi-element verdict, *id.* at 705, for a complete holding, can lead to absurdities and/or hypocrisy, e.g., a pick-and-choose "cafeteria" mindset which accuses others of neglecting particular elements, while one oneself neglects different elements, e.g., "carrying on business", or Wong's parents' subjection to a foreign power, *id.*

Finally, *stare decisis*, including multiple 20th-century cases upholding *Ark*; plus traditional—religious and otherwise—humane respect for children's well-being; and protecting the "ark" America is for the world's hopeful and downtrodden, support enshrining *Ark*, and its legacy of citizenship for those "born in the U.S.A.", rather than overturning *Ark*, which would resemble overturning *Brown v. Board of Education*, 347 U.S. 483 (1954) (desegregation; rights above political-branch abuse; equality; hope for children).

ARGUMENT

I. RAIDERS OF THE *WONG KIM ARK*



(RAIDERS poster *available at* https://tinyurl.com/34bsyza2; Wong Kim Ark photo *available at* https://en.wikipedia.org/wiki/File:WongKimArk.gif)

(Shirt/image commemorating Alex Pretti and Renée Good *available at* https://tinyurl.com/bpaebdcv)

The evil done by overturning *Ark* and hurting little children might be of cinematic proportions; hence, one resorts to the cinema to highlight that, *supra* at 5. Of course, there is the pun on the shared last word of RAIDERS OF THE LOST ARK (Lucasfilm Ltd. 1981) and *Wong Kim Ark*, i.e., "ark", a word which has various meanings here.

One meaning is that America has long been a sacred "ark", a refuge, for people all over the world. *See, e.g.*, Emma Lazarus, *The New Colossus* (1883), about the Statue of Liberty: "[H]er name/Mother of Exiles./ … 'Give me [y]our huddled masses yearning to breathe free,/The wretched refuse of your teeming shore./Send these, the homeless, tempest-tost to me,/ I lift my lamp beside the golden door!'" *Id.*

This being so, for any "raiders" to try to overturn *Ark* and hurt little children, seems un-American. Indeed, the case Petitioners make for overturning *Ark* is so weak, that Petitioners may be considered "raiders" on *Ark*, and on America's noble tradition as an ark for troubled humanity, including "tempest-tost", *New Colossus*, *supra*, immigrants.

Indeed, while individual immigrants can hypothetically be threats, the more imminent threat to Americans may be immigration enforcement itself, *see supra* at 6 the T-shirt/image memorializing Alex Pretti, an ICU nurse, and Renée Good, a mother, a "pretty good" pair of people killed by "ICE" (Immigration and Customs Enforcement) for trying to defend immigrants' rights. More ICU and less ICE might improve Americans' health.

(*See* Bruce Springsteen, *Streets of Minneapolis* (Columbia 2026), https://tinyurl.com/43pkbyyv, "We'll remember the names of those who died/On the streets of Minneapolis", *id.*)

ICE's fatal "raid" on Pretti's and Good's liberty and lives is tragic, but overturning *Ark* can lead to further tragedy; after all, *Ark*'s common-law defense of birth-citizenship, which protects children, has been clearly valid for centuries, as we now discuss.

II. THE COCKBURN SYLLOGISM: OR, WHEN *ARK*'S OPINION AND DISSENT AGREE THAT *ARK* ORDERS COMMON-LAW BIRTHRIGHT CITIZENSHIP, THEN — *ARK* ORDERS COMMON-LAW BIRTHRIGHT CITIZENSHIP

So, what confers U.S. citizenship as a right of birth? Justice Horace Gray's opinion in *Ark* uses America's mother-country's common law to answer that. First, "In *Udny v. Udny,* (1869) L.R. 1 H.L. Sc. 441[,] Lord Chancellor Hatherley said: 'The question of naturalization and of allegiance is distinct from that of domicil.'" *Ark* at 656. Then,

> Lord Chief Justice Cockburn, in the same year, reviewing the whole matter [of people's political allegiance, as opposed to mere domicil], said:
>
> "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, save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during the hostile occupation of any part of the territories of England. No effect appears to have been given to

> descent as a source of nationality."
>
> Cockburn on Nationality, 7.

Ark at 657. We thus see that *jus soli* ("law of the soil") obtained, since "every person born within the dominions of the Crown[,] was an English subject", *id.* And, "no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled or merely temporarily sojourning[.] No effect appears to have been given to descent as a source of nationality", *id.*

There is no "wiggle room" here to except children from birth-citizenship because their parents were "illegal aliens", or "merely temporarily sojourning", *id.*, or "undomiciled". Only two exceptions are specified: diplomats' children, and alien enemy occupiers' children, *see id.* (And anyone who says *Ark* doesn't address illegal/unlawful aliens is wrong; "foreigner[s] hostile[ly] occup[ying] England", *id.*, are the ultimate "illegal aliens", indeed so illegal that their children aren't citizens, unlike most other children of "illegals".)

In case anyone missed it: "No effect appears to have been given to descent as a source of nationality", *id. No effect*. Descent means *nothing*, *see id.*

Thus, when enemies of birth-citizenship bring up parentage issues, it is *per se* futile, because such issues have been declared irrelevant, *see id.*

And Gray links the above to the Citizenship Clause, *supra* at 3, quoting Secretary of State Fish (further citation omitted):

> The Fourteenth Amendment …

> declares that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." This is simply an affirmance of the common law of England and of this country so far as it asserts the status of citizenship to be fixed by the place of nativity, irrespective of parentage. The qualification, "and subject to the jurisdiction thereof" was probably intended to exclude the children of foreign ministers, and of other persons who may be within our territory with rights of extraterritoriality.

Ark at 689-90. Thus, *see id.*, Cockburn, along with any other supporting common-law authorities Gray cites—and therefore, birthright citizenship—, is incorporated into the Fourteenth Amendment.

(Incidentally, "Cockburn" is pronounced "COE-burn", lest anyone pronounce it in a borderline-obscene-sounding way.)

And Chief Justice Melville Fuller's dissent admits that Gray's *Ark* opinion says this, lengthily quoting Cockburn:

> I cannot concur in the opinion and judgment of the court in this case.
>
> …
>
> The argument is, that, although the Constitution prior to th[e Fourteenth A]mendment nowhere attempted to define the words "citizens of the United

> States" and "natural-born citizen" as used therein, yet that it must be interpreted in the light of the English common law rule which made the place of birth the criterion of nationality[.]
>
> …
>
> The English common law rule, which it is insisted was in force after the Declaration of Independence, was that
>
> > "every person born within the dominions of the Crown, [and the rest of the lengthy Cockburn quote following that, *supra* at 8-9, ending in] territories of England."
>
> Cockburn on Nationality 7.
>
> …
>
> And it is this rule, pure and simple, which it is asserted determined citizenship of the United States[,] prior to … ratification of the Fourteenth Amendment[. I]f that amendment bears the construction now put upon it, it imposed the English common law rule on this country for the first time[.]

Ark at 705-07. Fuller disagrees that America had previously obeyed "the English common law rule", *id.* at 707; but the point is that Fuller confirms *the Court* believed that America had followed that rule, and that in any case America *currently* followed that rule, *see id.* So, Fuller admits Gray leaves no "gray area" that excludes undomiciled aliens' children.

Ergo, both *Ark*'s opinion and dissent confirm that

the Court's opinion stated that the Fourteenth Amendment "bears the construction now put upon it", *Ark* at 707, and thus follows Cockburn's common-law rule mandating that all children born of aliens, except for diplomats' or hostile occupying aliens' children, were born as U.S. citizens. (There are also exceptions for some Native Americans, and children born on foreign public ships, discussed *infra*.)

That is all that is needed to be shown: any talk of "domicile", "international law", "Executive Branch not always following the common law", "treatises", or anything else, is not relevant, because the *Ark* opinion and dissent confirm that the opinion stated the Fourteenth Amendment followed Cockburn on birthright citizenship.

Indeed, it is basically a syllogism:

1. If both *Ark*'s opinion-writer, Gray, and the dissent-writer, Fuller, agree that Cockburn controls in *Ark*, then Cockburn controls (since there are no other writers in *Ark*).

2. Gray and Fuller do agree that Cockburn controls in *Ark*.

3. Q.E.D., Cockburn controls in *Ark*.

Some people may not *like* this; they may find *Ark* deplorably liberal and pro-immigrant, inviting the so-called "Yellow Peril" or "Brown Peril" or whatever to "invade" America and have their babies here, etc.

But what some people *dislike*, is irrelevant to what *Ark* actually *says*. And *Ark*, as proven above, is basically an instantiation and endorsement of Cockburn, quoted *supra* at 8-9, 11: if this weren't so,

the dissent wouldn't have complained that it was so.

It is so. Q.E.D.

III. PETITIONERS' INCORRECT OBJECTIONS TO COMMON-LAW BIRTHRIGHT CITIZENSHIP: *LAMAR*, *INGLIS*, *LUDLAM*, ETC.

Petitioners did cite Cockburn once, Merits Br. at 20 (citation omitted), but, astoundingly, only to mention the U.S. protecting a U.S.-domiciled alien abroad, *see id.* They never mention Cockburn's most important contribution to *Ark*, common-law birth-citizenship regardless of parentage, *Ark* at 657. If Cockburn is authority enough to mention at all, it is quite disingenuous that they didn't cite him on common-law birth-citizenship.

Even one of their amici's briefs has more candor: Senator Eric Schmitt and Representative Chip Roy's brief says, "To be sure, the Court majority opined at length, in dicta, that our Nation's Founders adopted the English feudal principle of *jus soli*[, *Ark*] at 657 (quoting Cockburn Nat. 7)." Br. at 27-28. But Amicus notes that Cockburn is more *ratio decidendi* than mere dicta, *see infra* this brief's Section VII, on *Ark*'s holding and *ratio decidendi*.

As for other common-law issues: Petitioners, Br. at 21, say "Under … common law, the domicile (and hence allegiance) of a child follows … the parents", *id.*, citing *Lamar v. Micou*, 112 U.S. 452, 470 (1884); but *Lamar* doesn't say domicile equals national allegiance/citizenship, *Lamar* being merely a case about guardianship and property (e.g., railroad

bonds), *see id.* at 452.

Too, Petitioners say,

> American common law before the Citizenship Clause recognized two prerequisites for citizenship at birth: "first, birth locally within the dominions of the sovereign; and secondly, birth within the protection and obedience, or in other words, within the ligeance of the sovereign." *Inglis v. Trustees of the Sailor's Snug Harbour*, 3 Pet. 99, 155 (1830) (Story, J., dissenting)[.]

Br. at 16. But this is extremely odd, since *Ark* used the same Story quote (though *Ark* has "allegiance" instead of "ligeance") to *support* birth-citizenship, *see Ark* at 659, not to attack it. (Indeed, *Ark* extensively quotes Story, *see id.* at 659-61, to support birth-citizenship.)

And Petitioners quote, Br. at 16 & n.3, some treatises' words, e.g., "An alien, by the definition of the common law, is a person born out of the jurisdiction and allegiance of this country", *id.* (citation omitted): however, even by those quoted terms, what if "born" aliens… travel to the U.S. and enter its jurisdiction, showing some allegiance? And what if their offspring are born citizens, per Cockburn? So, not all treatises may help Petitioners.

Finally, Petitioners, re "19th-century practice", attack Respondents' use of *Lynch v. Clarke*, 1 Sand. Ch. 583 (N.Y. Ch. Ct. 1844), which Respondents said "specifically held that the child of temporary visitors was a citizen [and] was the 'leading judicial

decision[]' on the issue", Opp'n Br. at 34 (citation omitted). Petitioners cite *Ludlam v. Ludlam*, 31 Barb. 486, 503 (N.Y. Gen. Term 1860) to "reject[] that theory, holding that children of 'traveling' aliens fall within 'an exception' to birthright citizenship", Br. at 41, having also mentioned *Ludlam* previously, against "traveling or sojourning" aliens' children's birthright-citizenship, Br. at 11.

However, in a twist worthy of a Robert Ludlum thriller, Petitioners fail to tell the Court that *Ludlam* actually helps Respondents' case. U.S. citizen Richard Ludlam moved to Peru, where his son Maximo was born, 31 Barb. at 487. The case concerned whether Maximo was a U.S. citizen; the court held he was, *id.* at 504. Thus, the *Ludlam* excerpts Petitioners quote *supra* re traveling/ sojourning aliens, concern whether Maximo's being born in Peru made him a Peruvian, not whether an alien's children born in the U.S. are Americans.

This is because, "By the common law when a subject is traveling or sojourning abroad[,] his children, though born in a foreign country, are not born under foreign allegiance, and are an exception to the rule which makes the place of birth the test of citizenship." *Id.* at 503. But this same "common law", *id.*, makes people born in America Americans, *Ark* at 657 (quoting Cockburn). In that line: "It is true that, the doctrine of allegiance, as consequent or dependent upon the *place of birth*, was always strongly insisted upon by English courts and lawyers in favor of the English crown", *Ludlam* at 500 (emphasis added).

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amicus brief also quotes *Ludlam*, using it, Br. at 14, to attack *Lynch*, *supra* at 14-15. They quote largely the *Ludlam* words quoted *supra* by Amicus (and Petitioners, to an extent), but fail, as do Petitioners, to quote the other *Ludlam* portions favoring Respondents.

The Center even doubles down by quoting another *Ludlam* case, to affirm the first one: "*By the law of nature alone*, children follow the condition of their *fathers*, and enter into all their rights. The *place of birth* produces no change in this particular …." *Ludlam v. Ludlam*, 26 N.Y. 356, 368 (1863) (emphasis in original)." Br. at 14. But the latter *Ludlam* also supports Respondents (which the Center fails to mention), saying,

> the child, from the circumstances of his birth in a country where the father is not a citizen, may acquire rights, and be subject to duties in regard to such country, which do not attach to the father.
>
> It does not militate against this position, that by the law of England the children of alien parents, born within the kingdom, are held to be citizens.

Ludlam, 26 N.Y. at 360-361, 371. In other words, *see id.*, by common law, aliens' children—and no exceptions are mentioned in the excerpt *supra*—, born in America are American citizens, even if Peruvian-born Maximo Ludlam had to deal with possible Peruvian citizenship in addition to his American citizenship.

So, both *Ludlam* cases support Gray's *Ark* opinion; and the *Ludlam* cases also help segue to our next section, on dual allegiance and "modern vs. feudal" notions of citizenship.

IV. "FEUDAL" COMMON LAW GIVES MORE FREEDOM TO CHILDREN THAN "MODERN" CONTINENTAL LAW MAY, SO *ARK* RIGHTLY UPHOLDS COMMON LAW

Petitioners criticize *jus soli* by "explaining[, with 1868 material,] that the British theory of citizenship rested on the 'feudal' notion that, because 'rights [are] dependent upon the possession of the soil,' '[a]llegiance' is 'controlled by the place of birth[', and calling] that theory … 'obsolete' and 'absurd[.]'" Br. at 41 (citation partially omitted). However, maybe "feudal" common law is not so oppressive, if you're a child who gets the privilege of American citizenship thereby.

Amicus knows there is feudal/monarchical history in Britain, and that the Enlightenment-era American Revolution was often about rights, consent of those governed, and other modern-sounding matters. (But generalizations aren't always true: for example, who got rid of slavery first, the U.S. or Britain?)

And in the case of aliens' children, it is hardly oppressive for them to receive U.S. citizenship. Only many years after their birth do they receive obligations like jury duty, the military draft, etc. Before that time, American citizenship is largely a wonderful privilege for them. So, consent problems may apply to adult aliens seeking U.S. citizenship; to

their children, not so much, commonsensically.

This is especially so, since while old-style British citizenship didn't usually allow for renunciation of one's citizenship, until 1870 (two years after the 1868 material cited *supra* at 17), *see* Naturalization Act 1870 (33 & 34 Vict. c. 14), and thus could be seen as repressive before 1870: however, in America, renunciation of one's citizenship was available before 1870, *see, e.g.*, "'the right of expatriation is a natural and inherent right of all people'" as of 1868 at latest, *Ark* at 704 (citation omitted); and according to *Ark*'s dissent, "[F]rom the Declaration of Independence to this day, the United States have … maintained the general right of expatriation", *id.* at 712.

So, aliens' children born here have a "best of both worlds" scenario, whereby they are born with U.S. citizenship, but can freely renounce it if desired, unlike the old-style British regime which offered citizenship, but didn't allow renouncing it.

Petitioners prefer some "law of nations" scenario, with Continental theorists like Emer de Vattel allegedly proving that children's citizenship follows their parents', *see* Br. at 21-22, so that aliens' children wouldn't all get citizenship. *See also* Schmitt/Roy Br. *supra* at 13, saying America's founders wouldn't "adhere to principles derived from regal government", Br. at 28. However, there is a false dichotomy here, since, again, children aren't *oppressed* by being American citizens.

And as *Ludlam* notes: "There are many instances of double allegiance[.] So[,] a child may be in a position which will enable him to elect, when he

becomes of age, of which of two countries he will become a permanent citizen. … The balance of advantages is decidedly in his favor." 26 N.Y. 370-71, 377 (citation omitted). Sounds good for the kid.

(If some people find dual citizenship undesirable, laws could be passed to end or restrict dual citizenship—say, preventing it for adults—, without overturning *Ark* and birth-citizenship.)

As for Vattel-style Continentalism/"law of nations", *Ark* already considered and rejected it, e.g., though a government lawyer contended that "a person['s being a] citizen of a particular country is to be determined … by … international law": "Justice Story certainly did not … suggest that … international law … could defeat … citizenship by birth within the United States, [and] said[,] 'each government had a right to decide for itself who should be admitted or deemed citizens'", *Ark* at 660-61 (citations omitted).

In all, one is tempted to quip that Petitioners want foreign citizenship-laws illegally to invade and replace our American/English legal traditions. But perhaps we had best keep our traditions, and their benefits for children's birth-citizenship, given "the inherent right of every independent nation to determine[,] according to its own constitution[/]laws, what classes of persons shall be entitled to its citizenship." *Ark* at 668.

And, speaking of "foreign":

V. WHEN *ARK* CABINED *ELK*; OR, "SUBJECT TO THE JURISDICTION THEREOF" SPARES CHILDREN FROM

"THREATENING FOREIGNER" STATUS

Some may claim, falsely, that the Citizenship Clause's "subject to the jurisdiction thereof", *id.*, excludes undomiciled foreigners' children because they are too… *foreign*: supposedly disloyal; under another, non-American sovereign; etc.

Re "jurisdiction", Petitioners interestingly assert that birthright-citizenship exceptions are invalid for: tribe-allegiant Native Americans; diplomats'/heads-of-state's children; children born on foreign public ships; and children of invading armies, Br. at 37-39, under Respondents' notion that "subject to the jurisdiction thereof" merely means those groups are subject to American law/authority.

Petitioners claim that various exceptions to legal immunity for the groups, e.g., diplomats may have to obey traffic laws, Br. at 39, invalidate the whole idea of legal immunity. But *Ark* upheld immunity for those groups, *see id.* at, e.g., 692. Petitioners, though, argue that "primary allegiance" is what counts, not just being subject to some laws, *see* Br. at 15.

In fact, Petitioners quote a precursor to *Ark*, *Elk v. Wilkins*, *supra* at 3 ("*Elk*"), repeatedly, to insist that there must be a total political allegiance to America, that precludes undomiciled aliens' children from U.S. citizenship, *see* Br. at, e.g., 18 (citation partially omitted).

But Petitioners, bizarrely and neglectfully, don't mention that *Ark* cabined *Elk* to cover only Native Americans: "The decision in [*Elk*] concerned only members of the Indian tribes[,] and had no tendency to deny citizenship to children born in the United

States of foreign parents of Caucasian[/]African[/] Mongolian descent not in the diplomatic service of a foreign country." *Ark* at 682. (Gray also wrote the *Elk* opinion, *id.* at 98.)

This precludes *Elk* from being relevant here, except maybe to diplomats' children etc., as *Ark* goes on to say,

> The real object of the Fourteenth Amendment [in using] "and subject to the jurisdiction thereof," would appear to have been to exclude, by the fewest and fittest words (besides children of … Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law)[,] children born of alien enemies in hostile occupation and children of diplomatic representatives of a foreign State[.]

Id. at 682. And, "Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law", *id.*, may explain why their children are treated like diplomats' children etc.: Native American tribes were inside America, geographically, but were "alien nations", *id.* at 681. This differed from Wong Kim Ark's identity: Californian, not Native American, *id.* at 651.

Returning to "legal jurisdiction vs. political allegiance": first, even if Respondents' brief somehow phrased things imperfectly, *Ark* still upholds undomiciled aliens' children's birthright-citizenship, *see id.* at 657. Too, there may be some truth to Respondents' reading.

For example, Petitioners claim "grace and comity", not Constitutional limits, *see* Br. at 40, give diplomats' children legal immunity. But this chimes with *Ark*'s saying a "fiction of exterritoriality could not be … supported against the will of the sovereign of the territory", *id.* at 685 (citation and internal quote-marks omitted). So, if America gracefully precludes diplomats' and their children's "subject[ion] to [U.S.] jurisdiction thereof", then those foreigners are not subject or not fully subject, e.g., even if encouraged to follow speed limits, they may not be arrested for speeding.

As for occupying alien enemies' children: even if some enemies are captured and tried, Br. at 38-39, *Ark* makes it clear that the children are not born under America's jurisdiction, *id.* at 655-56.

And as for Native Americans, similarly, while there is clearly some jurisdiction by the U.S.—evinced by Native nations being within U.S. territory—, it was often limited, e.g., exempting some Native Americans from taxation, *Ark* at 681 (citation omitted). John Elk of *Elk* fame was himself not taxed, *see Ark* at 680.

So, Respondents may have some point re legal jurisdiction and its exemptions, though *Ark* handles exceptions to birth-citizenship well enough even without those arguments of Respondents.

Indeed, *Ark* deals with the "political jurisdiction" issue, *vis-à-vis* "not subject to any foreign power", Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27, by exempting from birth-citizenship, tribe-loyal Native Americans' children, re "not subject to any foreign

power, excluding Indians not taxed", *id.*, *Ark* at 681, and diplomats' children, etc., per *Ark*'s noting that

> "not subject to any foreign power" w[as] not intended to exclude any children born in this country from … citizenship[,] or … to deny … citizenship to native-born children of foreign white parents not in the diplomatic service[,] nor in hostile occupation[.] But any possible doubt … was removed when the negative words[,] "not subject to any foreign power," gave way, in the Fourteenth Amendment[,] to the affirmative words, "subject to the jurisdiction of the United States."

Ark at 688. (If any reenactment of the Civil Rights Act still used the words "not subject to any foreign power": first, the Constitution is supreme, and second, the Congress may not have felt it necessary to change the words, if the words meant what "subject to the jurisdiction of the United States" did.)

Too, per *Ludlam*, again, even if a child has dual citizenship, "a child may … elect, when … of age, of which of two countries he will become a permanent citizen[; t]he balance of advantages is decidedly in his favor." 26 N.Y. 371, 377. Maximo Ludlam wasn't even born in the U.S., but was allowed U.S. citizenship; all the more should someone born here be allowed U.S. citizenship.

Hence, "subject to the jurisdiction thereof" does not strip undomiciled foreigners'/aliens' children of

citizenship. (Alien parents may not always achieve citizenship, but their children born here achieve it, with few exceptions: diplomat etc., *see Ark* at 693.)

Speaking of "undomiciled", *supra*, we now explore "domicile":

VI. "DOMICIL(E)" MAY BE SUFFICIENT, BUT NEVER NECESSARY, FOR BIRTHRIGHT CITIZENSHIP

Petitioners say, "Though the Court eventually recognized the citizenship of children of 'domiciled' aliens, [*Ark*] at 652, it never suggested that children of temporarily present aliens become citizens by birth." Merits Br. at 24. But this is flatly contradicted by the Citizenship Clause's constitutionalizing Cockburn's common-law citizenship-by-birth for all born here, including temporary aliens' children (though not diplomats' children etc.), as Amicus showed in Part II of this brief.

Despite this, Petitioners repeatedly claim, *see* Br. at, e.g., 21, that alien parents' having domicil/ domicile is necessary for their children to become citizens. However, "domicil(e)" may actually be mentioned only to describe the Wong family's particular status or characteristics (besides being Chinese, etc.); Amicus could find nothing in *Ark* stating that domicile was *necessary* for aliens' children to have birth-citizenship.

Was domicil(e) mentioned frequently? Yes; if Amicus' electronic word-counter worked correctly, "domicil" (which could include "domicile") appears 31 times in *Ark*, *id.* However, "Chinese" appears almost

twice as often, 51 times, *id.*

Therefore, when Petitioners claim, "The Court's repeated references to domicile would have been inexplicable if domicile were irrelevant to citizenship", Br. at 35, they could (or should) even more easily say, "The Court's repeated references to 'Chinese' would have been inexplicable if Chinese-ness were irrelevant to citizenship." So, Petitioners' word-count argument that alien parents must possess domicil(e) for their children to have birth-citizenship, falls apart quickly.

And Petitioners quote, Br. at 34, an immense paragraph-chunk from *Ark* at 693, which mentions, *see* Chunk, "domiciled" twice, saying the Fourteenth Amendment includes the children of the domiciled, and that the alien domiciled is under U.S. protection/jurisdiction, *see Ark* at 693. So, the credulous (or manipulative) may take, or present, that as meaning domicile is necessary… even though the paragraph-chunk, *see id.*, doesn't say it is necessary.

However, Petitioners mysteriously fail to quote the end portion of that *Ark* paragraph: "It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides — seeing that, as said by Mr. Webster,", *id.*, and then quoting Secretary of State Webster,

> [I]ndependently of a residence with intention to continue such residence; independently of any domiciliation [or] allegiance[:] an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to [its]

> laws[,] and may be punished for … crimes as a native-born subject might be.

Id. at 693-94 (citations omitted). When "[I]ndependently of a residence with intention to continue such residence; independently of any domiciliation", *id.* at 693, is explicitly stated, that precludes Petitioners from wielding their paragraph-chunk to support mandatory *domiciliation* as a necessity for aliens' children's birthright-citizenship.

What is worse, is that Petitioners already must have known that Webster's words, *supra*, contradict their case, because Respondents' brief-in-opposition quotes the *exact same words* (with added emphasis), ending with "subject might be", Opp'n Br. at 29, that Amicus quotes *supra* from Webster. So, since Petitioners repeat political-jurisdiction ideas which Respondents already debunked, one almost wonders if Petitioners deliberately deceive the Court, or are they just incredibly reckless? as with the nonexistent *Robertson v. Cease* case-page they cite, *supra* at 1.

So, domicil(e) may, say, be considered *sufficient* to give domiciled aliens' children birth-citizenship, but not *necessary*. (If people have domicile here, then, they're obviously here—unless they've skipped off somewhere else—, and their children, because born within U.S. borders, can get U.S. citizenship… just as children of non-domiciled, illegal, and/or temporarily-sojourning aliens can, since "[n]o effect [is] given to descent as a source of nationality", *Ark* at 657 (quoting Cockburn).

Petitioners also try flash-forwarding to the 20th

century and *Kwock Jan Fat v. White*, 253 U.S. 454 (1920), to say, "[T]he Court cited [*Ark*] for the proposition that someone is a U.S. citizen if born here to aliens who 'were permanently domiciled in the United States'", Br. at 36, *Fat*, *supra*, at 457.

But *Fat* really says, *id.*, "It is not disputed that if petitioner is the son of [his parents], he was born to them when they were permanently domiciled in the United States, is a citizen thereof, and is entitled to admission to the country. [*Ark* at] 649." That doesn't say, at all, that domicile was *required* for Fat's citizenship, *see id.*

As a last word on domicil(e) for now: Petitioners claim, Br. at 36, "[B]ecause [*Ark*] concerned children of lawfully domiciled aliens, any statements about children of other aliens were dicta. As [*Ark*] itself observed, dicta 'ought not to control the judgment in a subsequent suit when the very point is presented for decision.' 169 U.S. at 679 (citation omitted)." *Id.*

However, *Ark* concerns all manner of children, not just Wong Kim Ark or others of his exact description (Chinese, with parents subject to China's emperor, etc., *Ark* at 653). This is seen in various places, e.g., "To hold that the Fourteenth Amendment … excludes from citizenship the children, born in the United States, of citizens or subjects of other countries would be to deny citizenship to thousands of persons of … European parentage", *Ark* at 694. European, not Chinese, *id.*

Therefore, statements about children, maybe thousands, of not-necessarily-domiciled aliens aren't "dicta" at all. Petitioners' conceit would make any part of *Ark* not about domiciled aliens' children,

mere dicta, which is ridiculous ("re-dicta-lous"?).

Moreover, as for "dicta 'ought not to control the judgment in a subsequent suit when the very point is presented for decision'", *supra*: not only is much of *Ark* not dicta, but *Ark* actually uses those quoted words to support birth-citizenship, since they criticize Justice Miller, who, in *The Slaughterhouse Cases* (1873), 16 Wall. 36, 83 U. S. 73, dared to claim, "'subject to its jurisdiction' was intended to exclude from its operation[,] citizens or subjects of foreign States born within the United States", *Ark* at 678 (further citation omitted).

But, *Ark* says that Miller's words were careless, unsupported… dicta, *see id.* at 678-79. So, Petitioners shouldn't have so quoted *Ark* re dicta, without noting that *Ark* used those quoted words to *uphold* birth-citizenship, *see id.*

Since "dicta" is discussed here: what is *Ark*'s holding? The next section discusses this, and also Petitioners' possible best case—which is still not a very good case for them.

VII. *ARK*'S HOLDING FOR BIRTHRIGHT CITIZENSHIP TRUMPS *CHIN BAK KAN* AND "CAFETERIA CONSTITUTIONALISM"

Chin Bak Kan, *supra* at 4 ("*Chin*"), a case whose name even sounds like a racist taunt, "*Chin*-ese *can* go *back* [to China]", is an artifact, like *Ark*, of the sad era of the Chinese Exclusion Act, Pub. L. 47–126, 22 Stat. 58, Ch. 126 (1882) (repealed 1943). That Act may be useful in interpreting *Chin*, which even uses the slur "Chinaman", *id.* at 197 (citation omitted).

Petitioners quote *Chin* to support their notions about domicil(e):

> "[t]he ruling in [*Wong Kim Ark*] was to this effect: 'A child born in the United States, of parents * * * who, at the time of his birth, are subjects of the Emperor of China, *but have a permanent domicil and residence in the United States*, * * * becomes at the time of his birth a citizen.'" [*Chin* at 200] (emphasis added; citation omitted).

Merits Br. at 36. That quote's words are largely repeated on the *Ark* opinion's last page,

> The evident intention, and the necessary effect, of the submission of this case were to present for determination the single question[:] namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.

Id. at 705. As a worst-case scenario for Respondents,

then, one might claim that *Chin* identified as *Ark*'s holding ("ruling", *Chin* at 200), that aliens must have permanent U.S. domicil/residence to let their children receive birth-citizenship; and that everything else in *Ark* is dicta besides this ostensible holding, since the "single question", *id.* at 705, revolves around domicil(e) etc.

If true, this might make *Chin* Petitioners' best case, helping Petitioners win the instant case quickly. (Not to mention that *Chin* was only 4 years after *Ark*, and that Justice Gray, *Ark*'s writer, was part of the *Chin* Court and opinion.)

But is it true? Or does it lead to absurd consequences?

First off, consider what a worst-case scenario(s) for *Petitioners* (and others), the *Ark* "holding" described *supra* might be. …Since *Ark* limns birth-citizenship, one possibility, if insane-sounding, is that if China has had no Emperor since c. 1912, then *nobod*y since then can have been born as a U.S. citizen, at least by *Ark*'s terms, which specifically describe, *id.* at 705, parents who're subjects of a Chinese Emperor, etc., and no one else covered by the Citizenship Clause. (Of course, other cases, or statutes, might create citizens—unless the statutes "carry the soil of *Ark*" with them…)

No U.S. citizens born since 1912? Amazing.

Again, that proposition is insane—but that's the point, i.e., the absurd, *reductio ad absurdum* consequences that could flow from claiming "subjects of the Emperor of China", etc. is *Ark*'s full holding. A step up the "sanity ladder" might be, say, claiming that only aliens' parents are referred to thereby—but

they still must be Chinese under an Emperor, etc., to give their offspring birth-citizenship. Still crazy, but again, a logically-conceivable consequence of the citizenship-restrictive holding Petitioners want.

Going somewhat further up the "sanity ladder", we may arrive at Petitioners' desired *Ark* holding, Br. at 36: alien parents' permanent U.S. domicil/ residence is necessary for their children's having birth-citizenship. …However, does that really follow the supposed holding of *Ark*? There's nothing there about China, or Emperor…

But even if we somehow grant that nothing about China/Emperor has to be taken seriously… what about "and are there carrying on business", *id.* at 649/705?

Here we see, "cafeteria constitutionalism": i.e., Petitioners' favored interpretation of the Citizenship Clause conveniently leaves out "and are there carrying on business", although that phrase is clearly part of Petitioners' alleged *Ark* holding. That phrase isn't needed to denote that aliens aren't in a diplomatic/official capacity, because that requirement's already been said, *id.* at 649, 705.

How do Petitioners have any right to pick and choose, cafeteria-style, and just pretend that the "carrying on business" requirement doesn't exist? If Petitioners claimed they're just being more lenient than *Ark*, by not requiring that people "carry[ ] on business": then what was wrong with Franklin Roosevelt's not requiring that aliens be domiciled to give their children birth-citizenship? Br. at 6, 42 (FDR welcomes undomiciled aliens' children).

This may largely destroy Petitioners' case, then, this double standard whereby they claim that *Ark* at 649/705 sets up some sacred standard which must be obeyed, and mandates aliens be domiciled to give their offspring birth-citizenship; but Petitioners themselves ignore parts of the "standard" that they don't want. (Their brief quoting *Chin* neatly leaves out, "and are there carrying on business", Br. at 36.)

(Note, too, Mr. Wong's parents, "subjects of the Emperor of China", *Ark* at 705, were ***subject*** *to a foreign power*, thus unable to have a child born a citizen, by Petitioners' own standards: *see* Br. at 17, "parents not owing allegiance to any foreign sovereignty" (citation omitted); *Ark* dissent at 732.)

Does *Ark* at 649/705 really house *Ark*'s holding, though? *Chin* calls the *Ark*-at-649 version *Ark*'s "ruling", *Chin* at 200. But is "ruling" synonymous with "holding"? Not necessarily; a ruling could be a verdict or order, say, not necessarily the full holding.

How, then, can one determine *Ark*'s holding?

The best way may be to see where *Ark* uses the word… "hold". E.g.: "To *hold* that the Fourteenth Amendment … excludes from citizenship the children, born in the United States, of citizens or subjects of other countries would be to deny citizenship to thousands of persons", *supra* at 27, *Ark* at 694 (emphasis added). Similarly,

> It is impossible to construe the words "subject to the jurisdiction thereof" in the opening sentence [of the Fourteenth Amendment, Section 1], as less comprehensive than the words

> "within its jurisdiction" in the concluding sentence of the same section; or to hold that persons "within the jurisdiction" of one of the States of the Union are not "subject to the jurisdiction of the United States."

Id. at 687 (and largely repeated at 696). This shows, since it uses the word "hold", *id.*, that *Ark* …*holds* that anyone "within the jurisdiction" of a State (e.g., Wong Kim Ark's California) is "subject to the jurisdiction of the United States", *id.* at 687. (Note, though, *residence* in a State is *unnecessary* for U.S. citizenship, *see Ark* at 677 (citation omitted).)

This chimes with *id.* at 694, which, by following the *Ark*-at-694 Webster excerpt quoted *supra* at 25-26 (stating domicile's irrelevance), and condemning "hold[ing for] exclud[ing] from citizenship the children … of citizens or subjects of other countries[,] deny[ing] citizenship to thousands of persons", shows that: *Ark* **holds**, *see id.* at 694, that the Citizenship Clause *includes* such children, children of non-domiciled aliens in all 50 States, in citizenship. (And thus also holds, *Ark* at 705, that Wong Kim Ark was a citizen—though he didn't need domiciled parents.)

This true holding, *see also Ark* at 687, accords completely with Cockburn and common-law capacious birthright-citizenship. And it excludes the illusion that only domiciled aliens' children—much less, only Chinese/under-the-Emperor/etc. children, *see Ark* at 649, 705—achieve birth-citizenship.

Though we now know *Ark*'s holding, there's still mystery re what *Chin* really meant. As Marty

Lederman notes, "In neither Chin Bak Kan nor Kwock Jan Fat, however, did the parties dispute the petitioners' (or their parents') domicile, let alone contest whether U.S. domicile is a necessary precondition for birth-citizenship. They did not do so because that question simply wasn't at issue in those cases[.]" *Taking Stock of the Birthright Citizenship Cases, Part IV: DOJ's Ineffective Responses to Plaintiffs' Statutory Argument*, Just Security (Sept. 29, 2025), https://tinyurl.com/466cexty. What did the *Chin* Court mean, then?

Chin does mention birth, indirectly:

> [I]t is argued that the commissioner [of the district-court judge] had no jurisdiction to act because the claim of citizenship was made. The ruling in [*Ark*] was to this effect:
>
> [the passage, *id.* at 649, resembling that at 705, re China/Emperor/etc.]
>
> It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

Id. at 200. Since it was impossible for Chin Bak Kan, a Chinese laborer who traveled from Canada to New York and was arrested there, *see Chin* at 193, to be naturalized in the U.S., given "the Chinese exclusion laws", *id.* at 198, basically the only way for Chin to claim citizenship would be to claim birth in the U.S. Thus, *Ark*'s importance here (birth-citizenship).

However, do "the various facts on which citizenship depends under [*Ark*]", *Chin* at 200, comprise only the *Ark* quote from 649, so that Chin was obliged to be born of domiciled parents etc.? But *Chin* doesn't say that: it just recites the mentioned *Ark*-at-649 elements—which describe Mr. Wong—; and *Ark* holds for him, but as a *subset* of the *ratio decidendi* holding, as noted *supra* at 32-33.

Indeed, the version of the *Ark*-at-649 quote at 705, is followed by, "For the reasons above stated, this court is of opinion that the question must be answered in the affirmative." *Id.* And the "reasons", *id.*, a.k.a., the *ratio,* or *rationes*, *decidendi*, include Cockburn/common law, *see Ark* at 657, 689-90, 705-07, so that domiciled aliens are a mere *subset* of those parents (almost anyone: alien, temporary, undomiciled, etc.) able to have children with birthright citizenship.

Thus, *Chin*, *see id.* at 200, doesn't overturn *Ark*, especially seeing no statement there, *id.*, that *Ark*'s Cockburn/common-law axis is being overturned.

In sum, various worst-case scenarios for Respondents have been disproven, and we have seen *Ark*'s holding, *supra.* If even *Chin* can't overturn *Ark*, likely nothing to date can. After all, the…

Citizenship Clause Constitutionalizes Cockburn's Common-Law Citizenship-by-Birth:

Ark concisely crystallized in 6 capital Cs.

* * *

Morrison v. California, 291 U.S. 82 (1934) (Japanese born in the U.S. is U.S. citizen); *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S.

72 (1957) (child of illegal aliens "is, of course, an American citizen by birth"); *INS v. Rios-Pineda*, 471 U. S. 444 (1985) (illegally-entering/deportable aliens' U.S.-born child is U.S. citizen). These cases may not overturn *Ark* either; but rather, repeatedly uphold it.

Petitioners' falsified excerpt, Br. at 47, from *United States v. Manzi*, 276 U.S. 463 (1928), "Citizenship is a high privilege, and when doubts exist concerning a grant of it, they should be resolved in favor of the United States and against the claimant", *id.* at 467—omitting the words "generally at least," between "it," and "they", *id.*—, might not overturn *Ark*, either, Petitioners' crude quote-doctoring aside. That is, there may be no reasonable doubt about *Ark*'s validity, especially given *Morrison*/*Hintopoulos*/*Rios-Pineda*, *supra*.

But even if there were somehow some doubt—and *Manzi*, *supra*, allows protecting claimants if so, *see id.* at 467—: *Ark*'s 128 years of *stare decisis* means much. Plus, profound humane considerations, *see, e.g.*, Cynthia M. Smith, *The Catholic Church's Position on Birthright Citizenship*, U.S. Conf. of Cath. Bishops (2026), https://tinyurl.com/3r78w6y5, "The Church believes that a repeal of birthright citizenship would create a permanent underclass[,] contravening U.S. democratic tradition; undermining the human dignity of innocent children[,] though they did nothing wrong; and ultimately weakening the family." *Id.*

That said, maybe the most execrable assertion Petitioners make, Br. at 47, is to cite *Brown v. Board*, *supra* at 4, to overturn birth-citizenship, *de facto* overturning *Ark*. But *Brown*, *see id.* at 495, was

about desegregation, racial equality, children; by contrast, *see* Church Birth-Citizenship Article, *supra*, on the dangers of a "permanent underclass", *id.*, from ending birth-citizenship.

And letting the political branches decide on birth-citizenship could have un-American consequences, *see, e.g.*, Zolan Kanno-Youngs & Shawn McCreesh, *Trump Calls Somalis 'Garbage' He Doesn't Want in the Country*, N.Y. Times, Dec. 2, 2025, https://tinyurl.com/yvn2wu73 (Trump vents racist animus).

Finally: Amicus is proud to be "Born in the U.S.A.", https://tinyurl.com/3acy24ma, Bruce Springsteen (Columbia 1984), because there's so much of which to be proud, *see New Colossus*, *supra* at 7 (America welcomes the "wretched" to its "golden door"). If this Court sinks *Ark* and the "ark" it gives immigrants' children, it would be like raiding and abusing the spirit of America itself. "Is that justice?"

CONCLUSION

Amicus respectfully asks the Court to uphold *Ark* and undomiciled aliens' children's U.S. birthright citizenship, affirming the district court; and humbly thanks the Court for its time and consideration.

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