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 FOR RESPONDENTS

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INTRODUCTION

The Citizenship Clause guarantees 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."

That language drew on and reaffirmed a centuries-old, common-law tradition of citizenship by virtue of birth, rather than parentage, repudiating this Court's infamous decision in *Dred Scott v. Sandford*, 60 U.S. 393 (1857). In the shadow of *Dred Scott* and President Andrew Johnson's veto of corrective citizenship legislation, the Clause enshrined birthright citizenship in the Constitution—beyond the reach of officials in any branch of government who might seek to overturn or narrow it.

For generations, all three branches of the U.S. government and the American people have understood, applied, and relied on that constitutional bedrock—embodying our American values of equality and opportunity and contributing to the thriving of our Nation.

Executive Order 14,160 ("the Order") attempts a radical rewriting of the Fourteenth Amendment. The government contends that the Citizenship Clause should be reinterpreted to add a parental "domicile" requirement for U.S.-born children with foreign-national parents. That cannot be squared with the Clause's text or historical context, nor with this Court's precedent. Instead, the Clause guarantees citizenship to all persons born in the United States, subject only to common-law exceptions for foreign sovereigns, ambassadors, warships, and occupying armies, and the uniquely American exception of

children born into Native American Tribes, reflecting the sovereignty of those Tribes.

Thirty years after ratification of the Fourteenth Amendment, at the height of anti-Chinese fervor, this Court rejected the government's last broadside against birthright citizenship. *United States v. Wong Kim Ark* recognized the citizenship of U.S.-born children of virtually all foreign nationals. 169 U.S. 649 (1898). It conclusively disposes of the government's arguments, then and now.

Wong Kim Ark's basic holding is that the Clause enshrines the preexisting common law of citizenship. Under the common law—including the dominant American decision of the era, *Lynch v. Clarke*, 1 Sand. Ch. 583 (N.Y. Ch. Ct. 1844)—the rule was citizenship by birth, regardless of parental nationality or immigration status. Domicile was irrelevant.

More specifically, *Wong Kim Ark* interpreted the phrase "subject to the jurisdiction" in accord with *The Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812) ("*Exchange*"), explaining that even temporary visitors are "subject to the jurisdiction" of the United States. That, too, forecloses the government's asserted parental domicile requirement.

The government is asking for nothing less than a remaking of our Nation's constitutional foundations. The Order may be formally prospective, applying to tens of thousands of children born every month, and devastating families around the country. But worse yet, the government's baseless arguments—if accepted—would cast a shadow over the citizenship of millions upon millions of Americans, going back generations.

The district court must be affirmed.

STATEMENT OF THE CASE

A. Legal Background

The Citizenship Clause guarantees citizenship to "all persons born" in the United States who are "subject to the jurisdiction thereof" at birth.

By that text, the Framers enshrined the common-law rule of birthright citizenship, applying it to "all persons"—not just some. *See* Cong. Globe, 39th Cong., 1st Sess. 2890 (1866) ("Cong. Globe") (statement of Sen. Howard) ("every person born within the limits of the United States"). The Framers' qualification, "subject to [U.S.] jurisdiction," incorporated longstanding English and American exceptions to birthright citizenship. *Id.* (Clause was "simply declaratory of what I regard as the law of the land already"). Congress debated whether birthright citizenship *should* extend to the children of immigrants, but all agreed that the text of the Clause *would* include them. *Id.* at 2890-91 (exchange between Sens. Cowan and Conness confirming the Clause would apply to "the child of the Chinese immigrant" and "Gypsies").

In *Wong Kim Ark*, this Court explained the original meaning of the Clause in seven enumerated parts:

(I) The Constitution must be read against its common-law background, 169 U.S. at 653-55;

(II) At English common law, all children born in the King's territory to foreign nationals

were subjects, with only narrow exceptions, *id.* at 655-58;

(III) The same rule applied to U.S. citizenship after independence, *id.* at 658-66;

(IV) International-law citizenship norms had not displaced the common law in America, *id.* at 666-75;

(V) The Fourteenth Amendment reaffirmed the English common-law rule and exceptions with the "single additional exception" of Native Americans, *id.* at 675-94;

(VI) Later congressional action, including anti-Chinese legislation, could not revoke the constitutional citizenship of Wong Kim Ark, the U.S.-born son of Chinese immigrant parents, *id.* at 694-704; and

(VII) He had not lost his citizenship after birth, *id.* at 704-05.

In 1940, Congress enacted what is today codified at 8 U.S.C. §1401(a), providing that "a person born in the United States, and subject to the jurisdiction thereof" is a citizen. Congress reenacted the same statutory text in 1952.

B. Procedural History

On January 20, 2025, President Trump signed the Order. It purports to deny citizenship to any child born after February 19, 2025, whose mother is "unlawfully present" or has "temporary" status, and whose father is not a U.S. citizen or lawful permanent resident.

Those parents include immigrants who have resided in this country for decades, some since their own infancy; workers with multi-year visas that may

eventually lead to permanent residency and citizenship; and students pursuing undergraduate and advanced degrees.

This class action was filed under pseudonym by two babies subject to the Order and their parents, along with a pregnant woman who has since given birth. After briefing and oral argument, the district court provisionally certified a "children-only class" and issued a preliminary injunction based on the Fourteenth Amendment and §1401(a). Pet.App.31a-34a.

The government sought certiorari before judgment. Subsequently, the First Circuit unanimously held (in parallel challenges) that the Order violated both the Citizenship Clause and §1401(a). *Doe v. Trump*, 157 F.4th 36, 58-64 (1st Cir. 2025). Every other court to address the Order has enjoined its enforcement. *See, e.g.*, *Washington v. Trump*, 145 F.4th 1013 (9th Cir. 2025).

SUMMARY OF ARGUMENT

I. The Citizenship Clause guarantees that virtually all children born in the United States to foreign nationals are U.S. citizens by birth, regardless of their parents' immigration status or domicile. The words "all persons born in the United States" enshrined the common-law rule of citizenship by birth, and repudiated *Dred Scott*'s deviation from that rule. The qualifying words, "subject to [U.S.] jurisdiction," captured a narrow set of exceptions inapplicable here.

At English common law, children born to ordinary foreign nationals were subjects, and their parents'

domicile was irrelevant. That rule carried over to America: *Lynch v. Clarke*, the Framing-era's preeminent American birthright citizenship case, specifically rejected any domicile requirement. The Clause enshrined that common-law rule.

II. This Court's precedents recognize this original meaning of the Clause and foreclose any domicile requirement. *Wong Kim Ark* held that "subject to the jurisdiction" in the Clause carries the meaning elaborated in *Exchange*. Both cases specifically explained that *all* immigrants, including temporary visitors for "business or caprice," are "amenable to [U.S.] jurisdiction." *Wong Kim Ark*, 169 U.S. at 685-86. The Court's conclusion that Mr. Wong and his parents were subject to the country's jurisdiction was an *a fortiori* application of that broader principle—as the dissenting justices specifically recognized.

Elk v. Wilkins—which, like *Wong Kim Ark*, was written by Justice Gray—reinforces that conclusion. 112 U.S. 94 (1884). It illustrates that the English common-law exceptions for children of ambassadors and the like, and the analogous American exclusion of Native American tribal members, all rest on inter-sovereign dynamics inapplicable to ordinary foreign nationals, whether domiciled here or not. *Id.* at 99-100.

III. The government's other arguments are atextual, contradictory, and irrelevant. In particular, the government relies on authors engaged in a concerted effort to undermine the Citizenship Clause—an effort that was eventually presented to and rejected by this Court in *Wong Kim Ark*.

IV. Moreover, even the government's unsupported domicile rule could not justify the Order. Most of the parents it targets are long-term residents domiciled in this country. The government tries to circumvent this problem by suggesting Congress may redefine domicile for constitutional purposes, but such manipulations were precisely what the Fourteenth Amendment was meant to foreclose.

V. The Order independently violates 8 U.S.C. §1401(a). That statute drew the words "subject to the jurisdiction" from the Clause, and the government does not meaningfully contest that the prevailing understanding of those words in 1940 and 1952 forecloses its parental domicile theory. Its primary submission—that if the Clause were narrowed today, the statute should follow suit—is squarely contrary to the statute's original meaning.

ARGUMENT

I. THE FOURTEENTH AMENDMENT GUARANTEES CITIZENSHIP BASED ON BIRTH IN THE UNITED STATES RATHER THAN PARENTAL NATIONALITY, STATUS, OR DOMICILE.

Whether viewed through the lens of text and original meaning, purpose, or history, the Citizenship Clause includes children born in the United States to foreign-national parents, with rare common-law exceptions such as children born to foreign ambassadors.

The Clause guarantees citizenship to "[a]ll persons born" in the United States "and subject to the jurisdiction thereof." With the words "[a]ll persons

born," the Framers enshrined the English common-law rule of citizenship by birth in the country, rejecting citizenship by parentage. *Wong Kim Ark*, 169 U.S. at 675 (Clause "reaffirmed" common law "in the most expl[i]cit and comprehensive terms").

The qualifying words, "subject to the jurisdiction," signify the Framers' intent to "exclude, by the fewest and fittest words" the English common-law "exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory," and the "single additional exception" of children born into Native American Tribes. *Id.* at 676, 682, 693.

Given this context, any interpretation of the Clause's text must look first to the English common law. *See Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 n.10 (1963) (citing *Wong Kim Ark*).

A. At English Common Law, Citizenship Extended to Children of Foreign Nationals, Subject Only to Narrow Exceptions.

1. At English common law, virtually all children born within the domains of the King were subjects. *See Wong Kim Ark*, 169 U.S. at 655-58 (Part II of the opinion); *Inglis v. Trustees of Sailor's Snug Harbor*, 28 U.S. 99, 155 (1830) (opinion of Story, J.). Blackstone explained: "Natural-born subjects are such as are born within the dominions" and "the allegiance of the king," and "[n]atural allegiance is such as is due from *all* men born within the king's dominions immediately upon their birth." 1 William Blackstone,

Commentaries on the Laws of England 366, 369 (1768) ("Blackstone") (emphasis added).

Indeed, the government concedes that at English common law, the "children of temporarily present aliens were British subjects if born in the United Kingdom." U.S.Br.40. This rule goes back to *Calvin's Case*, which explained that "local obedience being but *momentary and uncertain*, is yet strong enough to make a natural subject, for if he hath issue here," that child is "a natural born subject." 77 Eng. Rep. 377, 384 (1608) (emphasis added).

Despite that concession, the government seeks to transform the common-law concept of "allegiance" into support for a domicile requirement, implying that "allegiance" was a matter of loyalty rather than obedience to the law. U.S.Br.15-17. That is seriously mistaken.

For starters, the relevant allegiance was that of the child, not the parent. That is why "all persons born within the jurisdiction and allegiance" of the country were subjects, "without any regard or reference to the political condition *or allegiance* of their parents." 2 James Kent, *Commentaries on American Law* 38 & n.a (6th ed. 1848) ("Kent") (emphasis added).

But even as to the parents, the suggestion that temporary visitors lacked "allegiance" to England is simply incorrect. At common law, all foreign visitors owed "temporary and local" allegiance to the King. While natural-born subjects owed the King permanent allegiance, an "alien" was deemed to be subject to "local allegiance . . . for so long time as he continues within the king's dominion and protection."

Blackstone 370. This temporary allegiance meant that foreign nationals had to abide by the law and could be punished for crimes, including even treason. *See id.* In exchange, the King owed protection, including in the form of his laws. *See Carlisle v. United States*, 83 U.S. 147, 154 (1872) ("[a]ll strangers," including "transitory" foreign nationals, "are under the protection of the sovereign while they are within his territories, and owe a temporary allegiance in return for that protection").

2. There were a few discrete exceptions to the common-law rule. Children born to "foreign ambassadors," or invaders "during and within their hostile occupation," "were not natural-born subjects, because [they were] not born within the allegiance, the obedience, or the power, or, as would be said [in 19th-century America], within the *jurisdiction* of the King." *Wong Kim Ark*, 169 U.S. at 655 (emphasis added). This Court's pre-Framing decisions "distinctly stated" the "principles upon which each of those exceptions rest[ed]." *Id.* at 682.

In the landmark case *Exchange*, this Court applied the phrase "subject to the . . . jurisdiction" in terms of "allegiance" and its exceptions for certain foreigners. 11 U.S. at 142, 144 . *Exchange* explained that a visiting foreign king, for example, could not be understood to "subject himself to a jurisdiction incompatible with his dignity." *Id.* at 137. Likewise, a "foreign minister[]" was granted "immunity" because he was considered "as in the place of the sovereign he represents, or by a political fiction . . . extraterritorial." *Id.* at 138. But, critically, this "immunity" did not extend to "private individuals": "[J]urisdiction"—that is, the reach of the

laws—*would* extend to ordinary foreigners by virtue of their "temporary and local allegiance." *Id.* at 138-39, 144.

Seven years later, this Court elaborated the common-law exception for foreign armies engaged in "conquest and military occupation." *United States v. Rice*, 17 U.S. 246, 254 (1819) (Story, J.). In that circumstance, "[t]he sovereignty of the [nation] over the [occupied] territory was, of course, suspended, and the laws of the [nation] could no longer be rightfully enforced" in it. *Id.* at 254. As such, "the inhabitants" in the occupied area "passed under a temporary allegiance to the [occupying] government, and were bound by such laws, and such only, as it chose to recognise and impose." *Id.* (occupied town "deemed a foreign port"); *see* Kent 39-40, 42 (discussing "hostile occupation of a territory").

The common-law rule and the common-law exceptions are thus two sides of one coin. Ambassadors had immunity for reasons of inter-sovereign comity, and hostile occupation severed practical application of the law. All other foreign nationals within a country, even temporarily, owed local allegiance and were subject to the law, *i.e.*, the country's *jurisdiction*—and birth of their children yielded natural-born subjecthood. Domicile was irrelevant.

B. Under Antebellum American Law, Foreign Nationals' U.S.-Born Children Were Likewise Citizens.

In general, "the law of England as to citizenship by birth was the law" in America from "the time of the Declaration of Independence" through "the adoption of

the constitutional amendment." *Wong Kim Ark*, 169 U.S. at 658-59, 699; *see id.* at 658-66 (Part III of the opinion). Recognizing that the English rule would doom its case, the government argues that "British law is an especially poor guide." U.S.Br.40. This could not be more wrong.

When the Fourteenth Amendment was framed and ratified, it was established that "the law of birth at the common law of England, clear and unqualified," continued "both in England and America." 10 U.S. Op. Att'y Gen. 382, 396 (1862); *United States v. Rhodes*, 27 F. Cas. 785, 789 (C.C.D. Ky. 1866) (Swayne, J.) (similar).

American courts explicitly embraced the English common-law rule that children of virtually all foreign nationals were citizens from birth, regardless of their parents' domicile. *Lynch v. Clarke*, the preeminent antebellum American case on birthright citizenship, specifically upheld the U.S. citizenship of a child born "of alien parents, during their temporary sojourn." 1 Sand. Ch. at 638.

Lynch's dominance is remarkable. Kent's *Commentaries*—"the most influential American law book of the antebellum period," John H. Langbein, *Chancellor Kent and the History of Legal Literature*, 93 Colum. L. Rev. 547, 548 (1993)—cited only *Lynch* and the venerable *Calvin's Case* as embodying the common-law rule, and Kent recounted how *Lynch* "extensively and learnedly discussed" the American rule of birthright citizenship. *See* Kent 38 & n.a.

Lynch was widely invoked by other American courts. *See, e.g.*, *Ludlam v. Ludlam*, 26 N.Y. 356, 356 (1863); *Munro v. Merchant*, 28 N.Y. 9, 24 (1863);

Rhodes, 27 F. Cas. at 789; *McKay v. Campbell*, 16 F. Cas. 161, 162 (D. Or. 1871); *In re Look Tin Sing*, 21 F. 905, 909 (C.C.D. Cal. 1884) (Field, J.); *Town of New Hartford v. Town of Canaan*, 5 A. 360, 361 (Conn. 1886); *Ex parte Chin King*, 35 F. 354, 355 (C.C.D. Or. 1888); *Maraneck v. Sch. Dist. No. 40, Houston Cnty.*, 73 N.W. 956, 959 (Minn. 1898).

During the Civil War, Attorney General Bates relied *entirely* on *Lynch*'s analysis in concluding that "children born in the United States of alien parents" are citizens, apart from "such exceptional cases as the birth of the children of foreign ambassadors and the like." 10 U.S. Op. Att'y Gen. 328, 328-29 (1862). Several years earlier, Attorney General Black had relied entirely on *Lynch* in assessing American citizenship law. 9 U.S. Op. Att'y Gen. 373, 373-74 (1859).

The government's attacks on *Lynch* only underscore its preeminence. The government cites David Dudley Field's post-ratification statement "that *Lynch* 'seems not to be entirely approved.'" U.S.Br.41 (quoting *Outlines of an International Code* 132 n.1 (2d ed. 1876)). Field cited only *Munro v. Merchant*, 26 Barb. 383, 400-01 (N.Y. Gen. Term 1858), but that decision expressed no view on *Lynch*. Moreover, Field omitted the subsequent decision by the state court of last resort, which fully endorsed *Lynch*. *Munro*, 28 N.Y. at 24; *see also infra* Part III.D (addressing Field).

The same is true of *Ludlam v. Ludlam*, 31 Barb. 486, 503 (N.Y. Gen. Term 1860), *see* U.S.Br.11, 41. Unlike *Lynch*, *Ludlam* involved the citizenship of a person born *outside* the United States. And, as in *Munro*, on further appeal the state high court

endorsed *Lynch* as having "very clearly shown that," absent legislation, "the question of citizenship can only be determined by reference to the English common law." *Ludlam*, 26 N.Y. at 376.

Notably, while the government tries to dismiss *Lynch* today, it acknowledged "the extent of [*Lynch*'s] influence" in its brief in *Wong Kim Ark*. Br. for United States 22-28, *Wong Kim Ark*, No. 132 (S. Ct. 1896); *see id.* at 28 (citing "the opinions of the Attorneys-General, the decisions of the Federal and State courts, and, up to 1885, the rulings of the State Department"). Indeed, the government, seeking to avoid the common-law rule, focused on rebutting *Lynch*. *Id.* at 28-36. This Court held otherwise, describing *Lynch* as "elaborately argued" and "decided upon full consideration." 169 U.S. at 664.

The notion of a domicile requirement cannot be squared with *Lynch*'s dominance at the Framing. *Id.* at 676 (Clause "was not intended to impose any new restrictions upon citizenship" or deny citizenship to any people who would "have become citizens according to the law existing before its adoption").

C. The Fourteenth Amendment's Text and Context Also Preclude Any Parental Domicile Requirement.

Despite all this, the government suggests, *contrary* to the common law, that the "original meaning" of the Clause required domicile. That is incorrect and contradicts this Court's most fundamental holding in *Wong Kim Ark*.

1. The Framers' goal of abrogating *Dred Scott* provides important interpretive context.

Wong Kim Ark explained that when the Clause was framed, it was "beyond doubt" that "all white persons, at least, born within the sovereignty of the United States, whether children of citizens or of foreigners, excepting only children of ambassadors or public ministers of a foreign government, were native-born citizens of the United States." 169 U.S. at 674-75.

But the story was different for Black Americans. Some state courts excluded not only enslaved Black people but also "[f]ree negroes" from the generally prevailing English common-law rule. *Amy v. Smith*, 11 Ky. 326, 334 (1822). This Court infamously agreed, concluding that free Black people born in the United States were "not included, and were not intended to be included, under the word 'citizens' in the Constitution." *Dred Scott*, 60 U.S. at 404.

In his *Dred Scott* dissent, Justice Curtis objected that the majority was departing from the longstanding common-law rule. He explained that "natural-born citizen" in Article II "was used in reference" to "the received general doctrine," which was "in conformity with the common law, that free persons born" in the United States were "citizens of the several States." *Id.* at 576; *see id.* at 578, 586 (similar).

After the Civil War, the Framers of the Citizenship Clause repudiated *Dred Scott* and enshrined the English common-law rule in the Constitution. *See Wong Kim Ark*, 169 U.S. at 662, 676 (citing Justice Curtis's dissent). The Clause thus "affirms the ancient and fundamental rule of citizenship by birth within the territory." *Id.* at 693.

2. To capture the narrow set of English common-law exceptions, and the single additional American exception for Native Americans, *see infra* Part II.B, the Framers used the term "subject to the jurisdiction" to reflect the meaning elaborated in *Exchange*. *See supra* Part I.A.

The Framers' design made sense. At the time of the Citizenship Clause's ratification, as today, "jurisdiction" meant "[t]he authority of government" or "sway of a sovereign power." Benjamin Vaughan Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 671 (1879); *see also* N. Webster, *An American Dictionary of the English Language* 732 (C. Goodrich & N. Porter eds. 1865) ("the power to make, declare, or apply the law"); Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Georgetown L.J. 405, 437 (2020).

The government complains that "jurisdiction" has "too many meanings." U.S.Br.14. But *none* of those meanings would yield a domicile rule, and, strikingly, the government offers *no* alternative definition. Indeed, its argument is remarkably countertextual. If the Framers meant to reject the common law and impose a domicile requirement, they would have said so. *Cf.* U.S. Const. art. II, §1, cl. 5 (imposing residency requirement for presidential eligibility).

3. The debates over the Citizenship Clause underscore the Framers' adoption of the common-law rule. In introducing the Clause, Senator Howard said it "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." Cong. Globe 2890. That common-law rule rendered domicile irrelevant.

The government's contrary interpretation is at odds with the Framers' clear intent "to put citizenship beyond the power of any governmental unit to destroy." *Afroyim v. Rusk*, 387 U.S. 253, 263 (1967). Any parental domicile requirement would be contrary to that purpose, making citizenship uncertain and factually contingent, as it would depend on the "intention" of parents "to remain" in the United States indefinitely. *Mitchell v. United States*, 88 U.S. 350, 352 (1874) (citation modified); *cf. Lynch*, 1 Sand. Ch. at 658 (a domicile test for citizenship would preclude "fixed, certain and intelligible rules"). Such uncertainty would be easily exploited by those hostile to birthright citizenship—as this Court had been in *Dred Scott* and the Framers feared "subsequent congress[es]" might be. *Wong Kim Ark*, 169 U.S. at 675.

The government asserts that "lawmakers agreed" on a domicile requirement. U.S.Br.3. That is wrong. For example, the government quotes Senator Fessenden's words, "born here of parents from abroad temporarily in this country," as if they were a statement of such a rule. U.S.Br.3, 24. But Fessenden was asking a *question*—whether the child of temporary visitors would be a citizen under existing law. Cong. Globe 2769. In response, Senator Wade—a primary supporter of the Clause—confirmed that such a child would be a citizen: "The Senator says a person may be born here and not be a citizen. I know that is so in *one instance*, in the case of *the children of foreign ministers* . . . ." *Id.* (emphases added). Accordingly, "it could hardly be applicable to more

than two or three or four persons." *Id.* This exchange does not support a domicile requirement—it *refutes* one.

Indeed, there was no mention of a supposed domicile rule in the debates on the Clause. The Framers discussed the exception for children of ambassadors, *see* Cong. Globe 2890, 2897—but why mention that, if it would have been subsumed within the broader supposed exception of non-domiciled foreign nationals? Likewise, they extensively debated whether the Clause's language would reflect a peculiarly American exception, namely for the children of Native Americans. *Id.* at 2892-97; *see also infra* Part II.B. If the Framers had thought that language also created another exception, particularly a manipulable domicile rule, surely someone would have said so. *Cf.* Amanda Frost & Emily Eason, *The Dog That Didn't Bark: Eligibility to Serve in Congress and the Original Understanding of the Citizenship Clause*, 114 Geo. L.J. Online 67 (2026).

4. The 1866 Civil Rights Act further refutes the government's domicile theory. In that Act, passed shortly before the Clause was framed and over President Johnson's veto, Congress guaranteed citizenship to "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed." 14 Stat. 27, ch. 31, §1.

Just like the Clause, the Act "reaffirmed" the "fundamental" common-law rule and was "not intended" to deny citizenship to children of foreign nationals who were not "in the diplomatic service" or engaged in "hostile occupation." *Wong Kim Ark*, 169 U.S. at 675, 688. As Representative William

Lawrence, a supporter of the Act, put it: The citizenship provision of the Act "is unnecessary, but nevertheless proper, since it is only declaratory of what is the law without it." Cong. Globe 1832. He specifically invoked "the great case of *Lynch vs. Clarke*" as demonstrating that "all 'children born here are citizens without any regard to the political condition or allegiance of their parents.'" *Id.* at 1832; *see also id.* at 1124 (explaining the Act excepted only "children of ambassadors of foreign powers . . . and Indians not taxed"); *id.* at 1679 (President's veto statement, reflecting same understanding).[1]

In response, the government cites a letter purportedly from Senator Trumbull to President Johnson summarizing the Act and mentioning domicile (with no explanation). U.S.Br.24.[2] Even assuming Trumbull sent the private letter—presumably as an unsuccessful attempt to avoid Johnson's veto—a domicile requirement for birthright citizenship would have been antithetical to his public statements. *See* Cong. Globe 600 ("birth entitles a person to citizenship, that every free-born person in

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[1] The government relies (U.S.Br.23) on a remarkably equivocal statement by Representative James Wilson, suggesting that there "*may be*" an exception for sojourners' children, Cong. Globe 1117 (emphasis added). At most that was an incorrect statement of the common-law rule. *See also* U.S.Br.23 (citing ambiguous statement from Rep. John Bingham seven years before Clause's Framing; Bingham neither asserted that domicile was required, nor specified whether he meant domicile at birth or when citizenship was assessed, *i.e.*, *still* domiciled).

[2] The letter is unsigned and the evidence for its attribution to Trumbull is "extremely weak." *See* Supp. Decl. of Beth Lew-Williams ¶ 15, *OCA v. Rubio*, No. 25-cv-287 (D.D.C. Aug. 13, 2025), ECF No. 40-3.

this land is, by virtue of being born here, a citizen of the United States"); *id.* at 498, 1756-57, 1780.

The government tries to leverage the 1866 Act's language, "not subject to any foreign power," to exclude children of non-domiciled foreign nationals. U.S.Br.17-18. But it also concedes Mr. Wong's citizenship, so it cannot think that language refers to a child's parents being subjects *of* another country. *Wong Kim Ark*, 169 U.S. at 688 (rejecting that interpretation); *id.* at 653 (parents were "subjects of the emperor of China"). It utterly fails to explain how the text of the Act implicitly, much less "unambiguously," refers to *domicile*. U.S.Br.17.[3]

In any event, the government is looking at the wrong text. The Framers of the Clause replaced the Act's language with the more succinct "subject to the jurisdiction thereof." *Wong Kim Ark*, 169 U.S. at 688; *id.* at 682 (Clause used the "fewest and fittest words"). If anything, the shift to the Clause's "affirmative" wording "removed" "any possible doubt" that the Clause enshrined the common-law rule. *Id.* at 688.

5. In response to the overwhelming evidence that the Clause enshrined common law—which rules out a parental domicile requirement—the government

[3] Attempting to bridge the gap between this text and its proposed rule, the government invokes "primary allegiance"—a concept it has invented from whole cloth. U.S.Br.15. The government quotes that phrase from just one source—a funeral oration by a historian that does not mention citizenship. U.S.Br.23 (citing George Bancroft, *Oration* (Apr. 25, 1865)). Elsewhere, that same historian recognized that "every one who first saw the light on the American soil was a natural-born citizen." 9 George Bancroft, *History of the United States, from the Discovery of the American Continent* 439 (1866).

turns to international law. U.S.Br.20-21 (citing, *inter alia*, Emerich de Vattel). As already explained, that is contrary to the text, American history, and the Framers' intent. Accordingly, this Court squarely rejected that same argument in *Wong Kim Ark*. *See* 169 U.S. at 666-75 (Part IV of the opinion) (foreign rules had "no important bearing upon the interpretation and effect of the constitution of the United States"); *id.* at 707-09 (Fuller, C.J., dissenting) (endorsing government's argument, citing Vattel).

The government's reliance (U.S.Br.3, 22) on Justice Story's treatise is similarly mistaken; it primarily addressed "*foreign* laws." Joseph Story, *Commentaries on the Conflict of Laws* §39 (1834) (emphasis added); *see, e.g.*, *id.* §42 (Roman law), §43 (French).[4] In that context he posited that the exclusion of children of temporary visitors might be a "reasonable qualification" to citizenship rules generally. *Id.* §48.[5]

But, when it came to American law, Justice Story agreed with the established principle that children of noncitizens—including temporary visitors—were

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[4] Many of the cases on which the government relies, U.S.Br.19-20, are about international law. *See The Venus*, 12 U.S. 253, 278 (1814); *The Pizarro*, 15 U.S. 227, 246 (1817) (both invoking "law of nations").

[5] This suggestion was quoted in *Hardy v. De Leon*, but that case was about whether a child was an "alien enemy" to the then-*Republic of Texas*. 5 Tex. 211, 226-27 (1849). In contrast to *Lynch*, *Hardy*'s reference to Story appears to have been obscure and had no impact on the U.S. law of citizenship. The government's other citation, U.S.Br.22, argued from "principles of natural reason," not common law. 1 Henry St. George Tucker, *Commentaries on the Laws of Virginia* 57 (1836).

citizens by birth. In his separate *Inglis* opinion, Justice Story set out the common-law rule of citizenship based on "birth locally within the dominions of the sovereign" as well as the narrow common-law exceptions of "the children of an ambassador" and "the children of enemies" occupying a territory "by conquest." 28 U.S. at 155-56 & n.g (Story, J.) (citing *Calvin's Case*); *see id.* at 164 ("[n]othing is better settled at the common law than the doctrine" that children born to foreigners, "owing a temporary allegiance [], are subjects by birth"). And so, when the government argued (as it does now, U.S.Br.21) that Story had endorsed "the law of nations" as the basis for American citizenship in *Shanks v. Dupont*, 28 U.S. 242, 248 (1830), *Wong Kim Ark* rejected that contention, explaining that Story "did not mean to suggest" that international law "could defeat the operation of the established rule of citizenship by birth within the United States," 169 U.S. at 660.[6]

* * *

There is no basis for the government's proposed parental domicile rule. The English common law concededly forecloses it. American law rejected it. The text of the Clause rebuts it. And the Framers' design cannot be squared with it.

Even if this Court had never considered the question of domicile and citizenship, the answer would

[6] In 1868, Congress rejected the English common-law rule barring *expatriation*. *Wong Kim Ark*, 169 U.S. at 704; *see* U.S.Br.40-41. That only underscores that the Framers could have rejected the common-law rule of birthright citizenship but did not do so.

thus be clear. However, as explained below, this Court has in fact already rejected the idea that one must be domiciled in the United States to be subject to its jurisdiction.

II. THIS COURT'S PRECEDENTS FORECLOSE THE GOVERNMENT'S EFFORT TO WRITE A PARENTAL DOMICILE REQUIREMENT INTO THE CITIZENSHIP CLAUSE.

Wong Kim Ark interpreted "subject to the jurisdiction" to incorporate the analysis from *Exchange*—and in so doing specifically explained that non-domiciled foreign nationals *are* subject to the jurisdiction of the United States. That forecloses the government's domicile theory. And the Court has also already rejected the government's efforts to leverage the well-established exceptions to the Clause into a broader exclusion, explaining that U.S.-born children of non-domiciled foreign nationals are subject to the direct and complete jurisdiction of the United States. *Wong Kim Ark* was well-reasoned and correctly decided, and it forecloses the government's arguments, then and now.

A. *Wong Kim Ark* Correctly Interpreted the Citizenship Clause to Include Children of Foreign Nationals Without Regard to Parental Domicile.

1. In *Wong Kim Ark*, this Court interpreted the words of the Citizenship Clause to *specifically* foreclose the government's parental domicile argument. Under its textual analysis, foreign nationals who are temporarily present for "business or pleasure" are "'amenable to the jurisdiction of the

country.'" *Id.* at 685-86 (quoting *Exchange*, 11 U.S. at 144).

As the Court explained, the words "subject to the jurisdiction thereof" in the Clause "must be presumed to have been understood and intended by the congress which proposed the amendment, and by the legislatures which adopted it, in the same sense in which the like words had been used by Chief Justice Marshall in the well[-]known case of *The Exchange*." *Wong Kim Ark*, 169 U.S. at 687. And in that "great case," "the grounds upon which foreign ministers are, *and other aliens are not*, exempt from the jurisdiction of this country, were set forth by Chief Justice Marshall in a clear and powerful train of reasoning." 169 U.S. at 683 (emphasis added); *see also id.* at 683-86 (quoting and discussing *Exchange* at length).

In *Exchange* and again in *Wong Kim Ark*, the Court explained that while ambassadors are immune from jurisdiction and treated as though they are still in their home countries, *see supra* Part I.A, there is no such fiction for ordinary foreign nationals: They are in the United States and are completely subject to its jurisdiction. Indeed, there were "powerful motives for not exempting" ordinary foreign nationals "from the jurisdiction of the country": "When private individuals of one nation spread themselves through another . . . it would obviously be inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals . . . did not owe *temporary and local allegiance*, and were not amenable to the *jurisdiction* of the country." 169 U.S. at 685-86 (quoting *Exchange*, 11 U.S. at 144) (emphases added).

Thus, *Wong Kim Ark*'s holding that the Clause's language reflected *Exchange*'s meaning and both cases' explanation that even temporary visitors for "business or pleasure" are subject to U.S. jurisdiction, *id.* at 686, foreclose the government's parental domicile argument.

2. In light of this analysis, the government's argument turns *Wong Kim Ark* on its head. The government notes that the opinion "mentioned domicile 22 times." U.S.Br.36. But that ignores its holding and its reasoning—the other 20,000 words—which is "just as binding" as the judgment in Mr. Wong's favor. *Bucklew v. Precythe*, 587 U.S. 119, 136 (2019). Its *ratio decidendi* cannot be dismissed as "isolated statements" or "dicta." U.S.Br.35-36.

Indeed, *Wong Kim Ark* explicitly denied that parental domicile was relevant to the decision. The Court saw the case as an *a fortiori* application of the Clause's common-law rule. The Court explained that "*[i]ndependently of a residence with intention to continue such residence; independently of any domiciliation* . . . an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be." *Id.* at 693-94 (emphasis added). Given this *broader* rule, it could "hardly be denied" that Mr. Wong's parents—who, it was stipulated, were domiciled in the United States—were of course "completely subject to the [country's] political jurisdiction." *Id.* at 693.

Or, to put it in common-law terms going back to *Calvin's Case*, it was obvious that "[e]very" foreign

national "is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States" "while domiciled here" because *every* foreign national on our shores (domiciled or not) owes temporary and local allegiance to the United States "for so long a time as he continues within the dominions." *Id.* at 693-94. *Wong Kim Ark* never suggested that parental domicile was *necessary*, just that it was more than *sufficient* in Mr. Wong's case. *See id.* at 693 (clause "*includes*" children of domiciled noncitizens) (emphasis added); *see also Carlisle*, 83 U.S. at 155 (very similar *a fortiori* reasoning); *Mali v. Keeper of the Common Jail* ("*Wildenhus' Case*"), 120 U.S. 1, 4 (1887) (temporary visitors on private ship subject to U.S. jurisdiction) (both cited by *Wong Kim Ark*).

3. Indeed, the *Wong Kim Ark* dissenters recognized that the majority had rejected any domicile requirement under the Clause. 169 U.S. at 705-06 (Fuller, C.J., dissenting). Chief Justice Fuller noted that under the Court's ruling, "the children of foreigners, happening to be born to them *while passing through the country*," are natural-born citizens. *Id.* at 715 (emphasis added). Justice Harlan, who joined the dissent, put the point more concretely in a subsequent lecture:

> Suppose an English father and mother went down to Hot Springs to get rid of the gout, or rheumatism, and while he is there, there is a child born. Now, he goes back to England. Is that child a citizen of the United States, born to the jurisdiction thereof, by the mere accident of his birth?

Justice John Marshall Harlan: Lectures on Constitutional Law, 1897-98, Lecture 27 (May 7, 1898), *in* 81 Geo. Wash. L. Rev. Arguendo 12, 344 (Brian L. Frye et al., eds., 2013) (footnote omitted). Justice Harlan thought the answer should be no, but he recognized that the majority disagreed, explaining: "I was one of the minority, and of course I was wrong." *Id.*

That is exactly how this Court has long applied *Wong Kim Ark*. The government argues that this Court has twice "read the opinion to address *only* children of domiciled aliens." U.S.Br.12 (emphasis added); *see also id.* at 36. But in neither cited case did the Court say *Wong Kim Ark*'s rule was limited by parental domicile, and the point was irrelevant to both. In contrast, the Court has repeatedly recognized the citizenship of children born in the United States to foreign-national parents, regardless of their immigration status—and has never once inquired into parental domicile. *See, e.g.*, *Hirabayashi v. United States*, 320 U.S. 81, 96 (1943) (noting, in context of World War II, that "persons of Japanese descent" "born in the United States" were citizens); *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (child of deportable noncitizens); *INS v. Errico*, 385 U.S. 214, 215 (1966) (child of noncitizen who fraudulently entered); *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (child of noncitizens who unlawfully entered).

B. *Elk* Reinforces That, in Contrast to Native Americans, Foreign Nationals and Their Children Owe Direct Allegiance to the United States.

The English common-law principles elaborated in *Exchange* yielded one uniquely American exception to the Citizenship Clause: children born as members of Native American Tribes.[7] *Elk v. Wilkins* confirmed that exception. The government argues that non-domiciled foreign nationals are in the same position as the members of Tribes in *Elk*, *i.e.*, not "'completely subject' to the United States' 'political jurisdiction'" and not "ow[ing] 'direct and immediate allegiance'" to the United States. U.S.Br.2 (quoting *Elk*, 112 U.S. at 102). That is mistaken. *Elk*—which, like *Wong Kim Ark*, was written by Justice Gray—supports Respondents' case. Indeed, *Wong Kim Ark* held that *Elk* has "no tendency to deny citizenship to children born in the United States of foreign parents" other than those "in the diplomatic service of a foreign country." 169 U.S. at 682.

1. *Elk* considered the citizenship of a man who was born a member of a Tribe. The Court reached two conclusions: first, that he was not born a citizen because at birth he owed "direct and immediate allegiance" to his Tribe, 112 U.S. at 102; and second, that without congressional consent to his subsequent naturalization, he did not become a citizen by having later "severed" his relationship with the Tribe, *id.* at

[7] All Native Americans born in this country are now U.S. citizens by statute. 8 U.S.C. §1401(b).

95, 109. The second question was the focus of the case, but only the first is relevant here.

The Court explained that, while Tribes were "not, strictly speaking, foreign states," they nevertheless "were alien nations, distinct political communities," *id.* at 99, and so tribal members, "although in a geographical sense born in the United States, are no more 'born in the United States, and subject to the jurisdiction thereof,' . . . than the children of subjects of any foreign government born within the domain of that government," *id.* at 102.

That inter-sovereign relationship was nothing new. Justice Gray traced the ways in which Tribes had been constitutionally unique since the founding, including the exclusion of "Indians not taxed" from apportionment, Congress's power to regulate commerce not only with foreign nations but also with Tribes, and the fact that general acts of Congress did not apply to Tribes absent clear legislative intent to include them. *Id.* at 99-100 (citing U.S. Const. art. I, §§2, 8; art. II, §2). That unique status continued under the Fourteenth Amendment. *Id.* at 102-03.

Indeed, the Framers emphasized the Tribes' unique position as sovereign nations within the territory of the United States. Senator Trumbull noted, "[w]e make treaties with them, and therefore they are not subject to our jurisdiction." Cong. Globe 2893; *see id.* at 2894 (statement of Sen. Trumbull) (Native Americans were "subject to their own laws and regulations, and we do not pretend to interfere with them"); *id.* at 571 (statement of Sen. Doolittle) ("tribes are always spoken of in the Constitution as if

they were independent nations"); *id.* at 2895 (Sen. Howard making similar point).

2. Now, as in *Wong Kim Ark*, the government tries to misapply language pulled out of context from *Elk*. But it ignores that *Elk* specifically addressed the children of foreign nationals, pointedly noting that the Clause excludes U.S.-born children "of ambassadors or other public ministers of foreign nations"—but *not* suggesting it excludes other foreign nationals' children. 112 U.S. at 102.

Indeed, *Elk* helps to illuminate three commonalities among the exceptions recognized in *Wong Kim Ark*, and why there was no such exception for children of ordinary foreign nationals.

First, each of the exceptions implicates inter-sovereign relationships. Individuals subject to those exceptions (*e.g.*, foreign ambassadors) do not owe "direct and immediate" allegiance to the United States (if they owe any at all) because they owe allegiance to a foreign or quasi-foreign nation that exercises sovereignty even within U.S. territory. That is why this Court's cases speak of the common-law exceptions in terms of extraterritoriality—such as an ambassador deemed "by a political fiction . . . extra-territorial," *Exchange*, 11 U.S. at 138, or an occupied town "deemed a foreign port," *Rice*, 17 U.S. at 254.

Elk held that members of Tribes were also deemed to be, in a sense, born abroad, similar to "children of subjects of any foreign government born within the domain of that government." 112 U.S. at 102. By contrast, as *Exchange* explained, ordinary foreign nationals—whether domiciled here or not—owe temporary allegiance that has nothing to do with

another sovereign; it is a *direct* relationship between the individual and the United States. *Supra* Parts I.A, II.A. That commonality is why, when the government sought to use language in *Elk* to question Mr. Wong's citizenship, Justice Gray explained that *Elk* had "*no tendency* to deny citizenship" to children of foreign nationals *except* those "*in the diplomatic service of a foreign country*." *Wong Kim Ark*, 169 U.S. at 682 (emphases added).

Second, each of the exceptions involves "peculiar reasons" that the relationship of the *parent* to the United States would also apply to their child. *Id.* at 659 (quoting *Inglis*, 28 U.S. at 155). Diplomatic immunity (unlike other immunities) applies to a diplomat's family because of its comity-driven purpose. *See Look Tin Sing*, 21 F. at 906. Likewise, a Native American child was "born a member" of their Tribe no less than their parents. *Elk*, 112 U.S. at 99. But it is different for children of foreign nationals. Under the common law, the foreign-national parent owes temporary and local allegiance, but their child owes *natural* allegiance. *Supra* Part I.A. As Attorney General Bates explained, birthright citizenship is not a matter of descent; it is "original in the child." 10 U.S. Op. Att'y Gen. 382, 399; *Wong Kim Ark*, 169 U.S. at 666 (similar).

Third, the exception for Native Americans illuminates what the Court meant by "complete" jurisdiction. The question is whether the United States has stayed its own sovereign jurisdictional

hand to some significant degree in recognition of an inter-sovereign relationship.[8]

As the Court explained in *Exchange*, "jurisdiction" is not defined by how far the United States *could* go in asserting legal authority. If so, there would be no exception for ambassadors: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute," so any limitation on that jurisdiction *must* be "imposed by itself." 11 U.S. at 136. The common-law exceptions for ambassadors and public ships were thus self-imposed, based on principles of comity and mutual respect between sovereigns. *See id.* at 136-37.

The government's argument that "Congress possesses plenary authority over the Indians and all their tribal relations," U.S.Br.38 (citation modified), therefore misses the point. The scope of federal authority over Tribes was controversial and contested throughout the 19th century. Perhaps the United States could have gone further to assert its jurisdiction over Native Americans, as some Members of Congress argued; perhaps, as others argued, not. *See, e.g.*, Cong. Globe 506-07; *id.* at 571-74. However, everyone understood that the United States had significantly limited the reach of general federal statutes over Tribes and their members. *See id.* That was not true for children of foreign nationals, whether domiciled in this country or not.

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[8] By contrast, "hostile occupation of the place where the child was born," *Wong Kim Ark*, 169 U.S. at 658, completely supplants U.S. authority. The government's reliance on *Ex parte Quirin*, 317 U.S. 1 (1942), is misplaced, as it involved no occupation.

The exception for Native Americans is conceptually complex because Tribes have a unique relationship with the United States "which exist[s] no where else." *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831). But the question in this case is not what relationship the federal government has (legally, practically, or constitutionally) with Tribes. It is what the phrase "subject to the jurisdiction" means. In answering that question, Justice Gray's opinions in *Elk* and *Wong Kim Ark* cannot be squared with the government's parental domicile theory.

C. The Government Offers No Good Reason to Disturb this Court's Foundational 128-Year-Old Precedent.

The government is asking the Court to reject *Wong Kim Ark*'s central reasoning, though it seemingly cannot bring itself to ask that the case be formally overruled. Because *Wong Kim Ark*'s construction of the Clause is correct, there is "no need for" stare decisis "to prop [it] up." *Kimble v. Marvel Ent. LLC*, 576 U.S. 446, 455 (2015). But even beyond the government's lack of evidence, eviscerating *Wong Kim Ark* would be at odds with each of the other "traditional *stare decisis* factors." *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 290 (2022).

The rule of *Wong Kim Ark* is eminently workable and entirely consistent with related decisions. And the reliance interests here could scarcely be higher. Birthright citizenship is foundational to who we are as a Nation. *Wong Kim Ark* is one of the most important decisions in our history, and its vindication of the Clause stands as a cornerstone of modern American

society. Our entire Nation has relied on the decision in determining citizenship and thus eligibility for countless rights, obligations, and benefits. In short, *Wong Kim Ark* is central to "our national culture." *Dickerson v. United States*, 530 U.S. 428, 443 (2000).

The government says that "the President has accounted for reliance" by making the Order prospective. U.S.Br.43. That is cold comfort for the millions of U.S. citizens who the government has proclaimed "do not qualify" for citizenship under its reading of the Clause, which it is now asking the Court to adopt and endorse. *Id.* at 4. The Order may be prospective, but the *interpretation* the government advances would be the beginning, not the end, of a constitutional revolution rippling out in innumerable ways—some of which can be anticipated, others perhaps not.

At the barest minimum, "departure from precedent" requires "more than ambiguous historical evidence." *Gamble v. United States*, 587 U.S. 678, 691 (2019) (citation modified). Here, the government has fallen far short.

III. THE GOVERNMENT'S OTHER ARGUMENTS FOR A PARENTAL DOMICILE REQUIREMENT ARE ATEXTUAL, CONTRADICTORY, AND IRRELEVANT.

Without a coherent account to rebut *Wong Kim Ark*, the Clause's text and original meaning, the Framers' design, or the common law, the government

advances a hodge-podge of other flawed arguments in favor of a domicile requirement.

A. The Government's Sole Textual Argument Badly Misreads the Clause.

The government offers one argument based on the Citizenship Clause's text: It points to the word "reside"—all U.S.-born persons "are citizens of the United States *and of the State wherein they reside*"—and claims this "[c]onfirm[s] the relevance of domicile" to the Clause. U.S.Br.20. Of course, residence is not the same as domicile—which has long been defined as residence *with intent to indefinitely remain*. *Mitchell*, 88 U.S. at 352.[9] More to the point, the residence requirement applies only to *state* citizenship, and a person can "be a citizen of the United States without being a citizen of a State." *Slaughter-House Cases*, 83 U.S. 36, 74 (1873). "He must reside within the State to make him a citizen of it, but it is *only necessary that he should be born* or naturalized *in the United States* to be a citizen of the Union." *Id.* (emphases added). Indeed, the fact that "resides" was made an express requirement for *state* citizenship only highlights that neither residence nor domicile is anywhere to be found in the text as to *national* citizenship.

B. The Government's Broadest Arguments Contradict Its Own Position.

The government also raises a number of self-contradicting arguments. For example, it suggests

[9] The government fails to explain how *Robertson v. Cease*, 97 U.S. 646 (1878), U.S.Br.20, which concerns pleading standards for diversity jurisdiction, suggests otherwise.

that the Citizenship Clause was limited "to freed slaves and their children." U.S.Br.2. This argument contradicts the government's concession that Mr. Wong was a citizen. *Id.* at 19. Moreover, *Wong Kim Ark* disposed of it. *See* 169 U.S. at 676 ("the opening words" of the Clause "are general, not to say universal," unrestricted "by color or race"); *see also Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (similar).

Similarly, the government argues that the Clause excludes the children of "citizens or subjects of foreign States born within the United States." U.S.Br.24 (quoting *Slaughter-House Cases*, 83 U.S. at 73); *see also id.* (citing *Minor v. Happersett*, 88 U.S. 162, 168 (1874), as raising "doubts" about children of foreign nationals). That is likewise squarely contrary to the government's concession that *Wong Kim Ark*'s outcome was correct. *See Wong Kim Ark*, 169 U.S. at 652. In any event, this Court rightly dismissed this dictum from *Slaughter-House Cases* as "wholly aside from the question in judgment," "unsupported by any argument," and "not formulated with" adequate "care and exactness." *Id.* at 678.

C. References to Long-Term Residence in Inapt Contexts Are Irrelevant.

Next, the government attempts to bolster its alleged domicile requirement by drawing on far-flung contexts. But while domicile mattered for issues such as marriage and inheritance, *see Wong Kim Ark*, 169 U.S. at 656-57, it was irrelevant to the Clause.

The government points to language in *Fong Yue Ting v. United States* that certain foreign nationals may "invoke [this country's] protection against other nations." U.S.Br.20 (quoting 149 U.S. 698, 724

(1893)). *Fong Yue Ting*'s citation to "Koszta's Case," 149 U.S. at 724, referred to a "remarkable" situation in which the United States afforded protection *abroad* to a foreign national who was not just domiciled here, but had "made his declaration of intention to become a citizen," then a formal step toward naturalization, *Cunningham v. Neagle*, 135 U.S. 1, 64 (1890); *see also* U.S.Br.20 (citing Alexander Cockburn, *Nationality* 118-22 (1869), also addressing Mr. Koszta). That has nothing to do with the Citizenship Clause. Indeed, *Fong Yue Ting* was also written by Justice Gray, yet five years later in *Wong Kim Ark* he never mentioned protection of such quasi-citizens *overseas* as remotely relevant to the question of citizenship by birth in the United States.

The government similarly asserts that foreign nationals domiciled in this country were "subject to conscription" in the Civil War. U.S.Br.20. That is wrong; conscription applied only to quasi-citizen "declar[ants]" like Mr. Koszta. *See* Act of Feb. 24, 1864, ch. 13, §§6, 18, 13 Stat. 6-7, 9 (1864). Congress declined to go beyond that, largely because broader conscription threatened political "collision with foreign nations." Cong. Globe, 38th Cong., 1st Sess. 228 (1864) (statement of Sen. Howard). That is irrelevant to birthright citizenship.

More generally, it is of course true that the federal government may choose to afford foreign nationals greater rights and responsibilities *in some ways* based on longer residence or greater ties to the country. U.S.Br.31; *see, e.g.*, *Lau Ow Bew v. United States*, 144 U.S. 47, 61-62 (1892) (cited by government, noting some examples). But the common law drew no such distinctions when it came to local allegiance or

jurisdiction, or the resulting citizenship of children born on U.S. soil. *Supra* Parts I.A, II.A. To suggest that birthright citizenship depends on parents' "ties that go with permanent residence," U.S.Br.31 (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)), is to reject the common-law rule, the Framers' choice to enshrine it in the Clause, and *Wong Kim Ark*'s most basic holding.

D. Commentary from the Losing Side in *Wong Kim Ark* Is Irrelevant.

Finally, the government mistakenly places great weight on "commentators" who advocated for a narrow reading of the Clause in the years preceding (and even following) *Wong Kim Ark*. U.S.Br.26-28.

As a threshold matter, the government is wrong to suggest that "[c]ontemporary commentators agreed" that American citizenship was subject to a parental domicile requirement. U.S.Br.26. For example, Marshall B. Woodworth, a United States Attorney, explained that in *Wong Kim Ark* the Court would decide whether the Clause "was intended to be declaratory of the common law or of the international doctrine." Marshall B. Woodworth, *Citizenship of the United States under the Fourteenth Amendment*, 30 Am. L. Rev. 535, 536 (1896). Woodworth's own view as a matter of "policy" was that the international rule was "undoubtedly superior to the common-law rule." *Id.* at 552.

However, Woodworth recognized that "the commonly accepted notion in this country, both prior and subsequent to the adoption of the Fourteenth Amendment, and [the view] very generally entertained by the profession, has been that birth

within the United States, although of alien parents, was sufficient, of itself, to confer the right of citizenship[.]" *Id.* at 537; *see id.* at 554 (in "England or the United States," every person "born on the soil is claimed as a subject or citizen, respectively"). Importantly, he recognized *Lynch*—which rejected any domicile requirement—as "the leading[] case[] in favor of the common-law rule in this country," citing it five times. *Id.* at 539; *see also id.* at 536-39, 550; D.H. Pingrey, *Citizenship and Rights There-under*, 24 Cent. L.J. 540, 540 (1887) ("[B]irth within the jurisdiction of the United States, creates citizenship" "without reference to the political allegiance of their fathers") (citing *Lynch*).

The government cites other commentators who suggested that the children of temporary visitors were not citizens. U.S.Br.26-30. Many of these sources, driven by opposition to Reconstruction and anti-Chinese sentiment, were attempting to undermine the clear meaning of the Citizenship Clause. In particular, Alexander Porter Morse (who argued for Louisiana in *Plessy v. Ferguson*) spent years inventing legal arguments to undermine birthright citizenship. *See* Sam Erman & Nathan Perl-Rosenthal, Jus Soli *Nation to* Jus Soli *Evasion: International Lawyers for White Supremacy and the Road through* Wong Kim Ark, 3 J. Am. Const. Hist. 615, 617, 655 (2025). Morse and others of his ilk first advanced a supposed parental domicile requirement as a way of excluding children of Chinese immigrants they perceived to be temporary and unassimilable, but eventually abandoned that tack as unworkable. *Id.* at 641-43 (discussing Francis Wharton, cited at U.S.Br.25-26); *see also id.* at 637-39, 641 (discussing David Dudley

Field, cited at U.S.Br.22, 41, who "fiercely opposed Reconstruction and believed in the inherent inferiority of people of African descent"). Instead, Morse settled on international-law arguments that George Collins and his anti-Chinese allies in the Executive Branch eventually presented to this Court—and that *Wong Kim Ark* rejected. *Id.* at 648-49, 659-60. The Court should dismiss the government's citation to these individuals out of hand.

In any event, these commentators' cursory discussions are unpersuasive even on their own terms. Most were published before *Wong Kim Ark*. Some rest on misreadings of the language of the 1866 Act (addressed *supra* Part I.C) that were rejected in *Wong Kim Ark*. *See, e.g.*, 2 *A Digest of the International Law of the United States* §183 (Francis Wharton ed., 2d ed. 1887); William Edward Hall, *A Treatise on International Law* 236-237 & n.1 (4th ed. 1895) (parroting Wharton); *see also* U.S.Br.25 (citing Secretary of State decisions making the same mistake).[10] Others wrongly rely on *Slaughter-House* or *Elk*. Alexander Porter Morse, *A Treatise on Citizenship* 248 & n.4 (1881) (crediting *Slaughter-House* dicta); M.A. Lesser, *Citizenship and Franchise*, 4 Colum. L. Times 113, 145-46 (1891) (misreading *Elk*); Samuel F. Miller, *Lectures on the Constitution of the United States* 279, 280 & n.1 (1891) (same); Henry Campbell Black, *Handbook of American Constitutional Law* 458 & n.7 (1895) (parroting Miller). These are flawed arguments based on misreadings of the Court's earlier cases or the 1866

[10] The same is true of the cited dicta in *Benny v. O'Brien*, 32 A. 696, 698 (N.J. Sup. Ct. 1895), which was not about the children of visitors at all.

Act, not the text of the Clause; in any event, their views were rejected in *Wong Kim Ark* and rightly so.

Of the sources that postdate *Wong Kim Ark*, some simply continued to recycle earlier sources without acknowledging this Court's intervening analysis. *See* Hannis Taylor, *A Treatise on International Public Law* 220 & n.43 (1901) (citing Wharton); John Westlake, *International Law* 219, 220 & n.1 (1904) (same); 1 Hugh H.L. Bellott, *Leading Cases on International Law* 183 & n.(m) (4th ed. 1922) (similar).

Others represent little more than disagreement with this Court's decision. *See, e.g.*, Comment, *Citizenship of Children of Alien Chinese*, 7 Yale L.J. 365, 367 (1898) (suggesting that the *Wong Kim Ark* dissenting opinion had "the better view"). For example, the government cites a memorandum attached as an appendix to a 1910 Justice Department report, reflecting a subordinate attorney's views—*not* the Department's. U.S.Br.36-37. That attorney conceded that *Wong Kim Ark* was "generally taken and considered as settling the rule for the United States, that all children born within the territory of the United States, except Indians and children of foreign ministers, are citizens of the United States." E.S. Huston, Assistant Att'y, *Brief on the Law of Citizenship* 147, included as Appendix D to *Final Report of William Wallace Brown, Assistant Attorney General* (1910). But he called for the "abandon[ment] [of] so much of the fourteenth amendment as by construction may be held to undertake to make an American citizen out of children born to foreign parents on American soil," *id.* at 124—in other words, he disagreed with the outcome in *Wong Kim Ark*

(which the government now accepts as correct). The Executive Branch officially rejected that view. *See* Citizenship Law Scholars Amicus Br.12-15 & n.7.

These sources are not perspectives that should inform this Court's understanding of the Clause; they were efforts to circumvent the judgment of the Framers and this Court's holding.

* * *

Finally, the government leans on policy arguments.

Its assertions are unsupported on their own terms. Even if "birth tourism" were more than marginal, U.S.Br.9, the government has a range of tools to address this concern while abiding by the Fourteenth Amendment. Indeed, as the government acknowledges, *id.*, federal regulations already prohibit issuance of tourist visas "for the primary purpose of obtaining U.S. citizenship for a child by giving birth in the United States," 22 C.F.R. §41.31(b)(2)(i), (iii). Likewise, its warning that a citizen child's birth will "promptly" "impede" her parents' removal, U.S.Br.8, is inaccurate: The relevant statute requires a *decade's* residence along with "exceptional and extremely unusual hardship" to the child just to be eligible for a rare grant of relief in the government's discretion. 8 U.S.C. §1229b(b)(1)(D).

And to the extent the government's complaint is that birthright citizenship is part of what draws immigrants to this country, that is simply one of many features of American life that the Framers embraced, alongside freedom and equality. They deliberately

chose a rule that would apply to the children of immigrants, and that choice—enshrined in the Constitution and reflective of our national values—is a pillar of American culture and society.

More fundamentally, such arguments are beside the point. The Framers of the Citizenship Clause intended "to put citizenship beyond the power of any governmental unit to destroy." *Afroyim*, 387 U.S. at 263. If the government believes the Nation should alter birthright citizenship, it must do what Congress did in 1866: propose a constitutional amendment.

IV. THE GOVERNMENT'S ARGUMENTS ABOUT LONG-TERM RESIDENTS UNDERSCORE THE INCOHERENCE OF ITS DOMICILE THEORY.

"Domicile," the centerpiece of the government's case, is thus a dead end. But even if there were such a requirement, that could not justify the Order's exclusion of children of long-term residents of this country.

A. Most Parents of the Children Targeted by the Order *Are* Domiciled Here.

The government's efforts to shoehorn the Order's targets into the proposed parental domicile rule fail—and underscore the incoherence of the government's entire case.

Under the longstanding definition, undocumented immigrants are domiciled in this country: They reside here, with "an intention to remain." *Mitchell*, 88 U.S. at 352 (citation modified). Thus, "illegal entry into the country would not, under traditional criteria, bar a

person from obtaining domicile within a State." *Plyler v. Doe*, 457 U.S. 202, 227 n.22 (1982). The same is true for many people in categories the government labels as "lawful but temporary." *See* U.S. Citizenship & Immigr. Servs., *Implementation Plan of Executive Order 14160* (July 25, 2025), http://perma.cc/T5AX-C9ZP. That includes people "paroled" into the country and seeking asylum; recipients of temporary protected status; and individuals on work visas—many of whom have access to a path to permanent residence and, ultimately, citizenship. *See, e.g.*, *Toll v. Moreno*, 458 U.S. 1, 14 (1982) (noting "Congress' decision to permit" certain visa holders "to establish domicile in this country").

Recognizing as much, the government invents an argument out of thin air: that *Congress* has dictated that undocumented immigrants "lack the legal capacity to form a domicile in the United States." U.S.Br.30. To be clear, there is no such statute. More fundamentally, the government's argument is premised on supposed congressional power to control domicile *for purposes of the Clause*, and thereby control who is a birthright citizen. But the Clause was created specifically to insulate birthright citizenship from congressional control. *See Afroyim*, 387 U.S. at 262-63. Even if Congress were to act to foreclose domicile for certain noncitizens (for instance, for state-law purposes), such action could not circumvent the "peremptory and explicit language of the fourteenth amendment." *Wong Kim Ark*, 169 U.S. at 694; *see also id* at 694-704 (Part VI of the opinion) (holding anti-Chinese legislation could not "control [the Clause's] meaning, or impair its effect").

That conclusion illuminates how unworkable the government's domicile theory is. Without this second step—claiming that Congress can deny and has denied domicile to these entire categories for purposes of the Clause—its theory would mean every child's citizenship would depend on their parents' *subjective intent* at the time of the birth. That means birthright citizenship would be subject to dueling proof and trial, and could be upended years or even generations later by new evidence. The result would be a glaring invitation to question the citizenship of millions of people by weaponizing the factually contingent concept of domicile. That is totally inconsistent with the Framers' goals. *Supra* Part I.C.

B. The Clause Cannot Accommodate an Atextual Carveout for Undocumented Immigrant Parents.

To the extent the government suggests (at U.S.Br.29) that changes in immigration law since 1866 mean children of undocumented immigrants can now be excluded, it is mistaken.

Undocumented immigrants are obviously "subject to the jurisdiction" of the United States in the sense of the Clause; indeed, that is why they are subject to the laws, including the immigration laws. *See supra* Part II.A. "[N]othing in text or history suggests that the drafters intended to draw distinctions between different categories of aliens." James C. Ho, *Defining "American": Birthright Citizenship and the Original Understanding of the Fourteenth Amendment*, 9 Green Bag 2d 367, 374 (2006). And "the Constitution can, and must, apply to circumstances beyond those the

Founders specifically anticipated." *NYSRPA v. Bruen*, 597 U.S. 1, 28 (2022).

In any case, the concepts of unauthorized immigration and large-scale migration were not unforeseeable; indeed, the debates referred to both. Senator Edgar Cowan of Pennsylvania objected that the Clause would afford citizenship to the children of "Gypsies," whom he characterized as "invad[ing]" "trespassers"; warned of a "flood of immigration" that might "double or treble" California's population; and anticipated legal systems to "forbid the entrance" of and "expel" Chinese nationals. Cong. Globe 2890-91. (Sen. John Conness of California, himself an immigrant, stoutly responded that he would vote for the Clause to ensure citizenship for children of whatever parentage. *Id.* at 2891; *see Wong Kim Ark*, 169 U.S. at 697-99.)

The government also cites (at U.S.Br.3, 35) *Wong Kim Ark*'s passing observation that people "born out of the United States" owe local allegiance "so long as they are permitted by the United States to reside here," 169 U.S. at 694. The Court's use of the word "permitted" does not refer to lack of immigration status, but rather to the discussion in *Fong Yue Ting* of people who have *been deported*—and hence physically removed from the government's jurisdiction. *See* 149 U.S. at 724 (Constitution protects foreign nationals "so long as they are permitted by the government of the United States to remain in the country"); *see also Wong Kim Ark*, 169 U.S. at 701 (similar). By contrast, even those "unlawfully within the United States" are nevertheless "entitled to the protection" of the Constitution. *Wong Wing v. United States*, 163 U.S.

228, 231, 238 (1896) (cited by *Wong Kim Ark*). The government's effort to twist *Wong Kim Ark*'s stray phrase into a new exclusion from the Citizenship Clause is squarely contradicted by the decision's own conclusion: The Clause did *not* "impose any new restrictions upon citizenship." 169 U.S. at 688.

The government finally urges that birthright citizenship allows a person "to take advantage of his own wrong," suggesting some immigrants are "hostile." U.S.Br.32, 8 (citations modified). But the Citizenship Clause is about recognizing the *child's* natural-born status—not punishing any supposed sins of their parents. That reflects the "fundamental" American principle "that guilt" (if any) "is personal and not inheritable." *Korematsu v. United States*, 323 U.S. 214, 243 (1944) (Jackson, J., dissenting) (citing Bill of Attainder Clause).

V. THE ORDER VIOLATES 8 U.S.C. §1401(a).

The Order also violates 8 U.S.C. §1401(a), which is an independent basis for affirmance. BIO.16-24. As Respondents previously explained, the statute borrows the phrase "subject to the jurisdiction thereof" from the Citizenship Clause and thus incorporates the understanding of those words that prevailed when the statute was first enacted in 1940 and reenacted verbatim in 1952. *Id.* at 17-18.[11] At that time—as the government all but concedes—Congress understood that the Clause's "jurisdiction" language incorporated the English common-law rule and exceptions, with the

[11] For ease of reference, Respondents refer to the statute as §1401(a) even though it received that U.S. Code numbering only after 1940.

sole additional exception of Native American tribal members.

In addition to *Wong Kim Ark*'s construction of "subject to the jurisdiction," Congress's understanding is underscored by (1) decades of administrative practice, *see Doe*, 157 F.4th at 61 & n.12; (2) the express rejection of any domicile requirement by the Executive Branch committee that drafted the bill and testified in its support before Congress, *id.* at 60-61; (3) contemporaneous private bills reflecting the same understanding, *id.* at 62; and (4) other provisions, from both 1940 and today, that reflect the same understanding, BIO.22-23. *See generally* Citizenship Law Scholars Amicus Br.; Members of Congress Amicus Br..

These points have been presented for over a year, were adopted in the First Circuit's primary holding, and were detailed in Respondents' brief in opposition. Yet, strikingly, the government does not mention them.

Instead, the government makes a handful of flawed arguments.

First, the government says the statute's language "depends on what the Citizenship Clause actually means, not what Congress thought it meant in 1940 or 1952." U.S.Br.44. It does not cite a single authority for that. By contrast, Respondents and the court of appeals cited *United States v. Kozminski*, which held that statutory language "clearly . . . borrowed" from the Constitution incorporated "the understanding of the Thirteenth Amendment *that prevailed at the time of*" the statute's enactment. 487 U.S. 931, 944-45 (1988) (emphasis added). The Court made clear that

any later reinterpretation of the Thirteenth Amendment would have no effect on the meaning of the statute. *See id.* at 948 (looking to "the scope of that constitutional provision at the time § 1584 was enacted"); *cf. id.* at 944 ("draw[ing] no conclusions . . . about the *potential* scope of the Thirteenth Amendment") (emphasis added); *see also Loughrin v. United States*, 573 U.S. 351, 359 (2014) (similar). Of course, that just reflects the general principle that courts look to "the state of [the relevant] body of law" and the "prevailing understanding" of words "under the law that Congress looked to when codifying" them. *George v. McDonough*, 596 U.S. 740, 750, 752 (2022) (citation modified); *see Bostock v. Clayton Cnty.*, 590 U.S. 644, 655 (2020).

The government does not so much as acknowledge *Kozminski* or the other relevant precedents. *See Doe*, 157 F.4th at 59-60 (rejecting the government's attempt below to distinguish *Kozminski*). Instead, it suggests this law is like 42 U.S.C. §1983. U.S.Br.44. But §1983 refers *to* the "Constitution" ("and laws"); it doesn't draw language from those documents. Such "a statutory reference to a '*general* subject' incorporates 'the law on that subject as it exists whenever a question under the statute arises.'" *Brown v. United States*, 602 U.S. 101, 116 (2024) (quoting *Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 209 (2019)) (emphasis in original). "But a reference 'to another statute by specific title or section number' . . . 'in effect cuts and pastes the referenced statute *as it existed when the referring statute was enacted*, without any subsequent amendments." *Id.* (quoting *Jam*, 586 U.S. at 209-10) (emphasis added and omitted). The lesson is the same as *Kozminski*: By using the Clause's text, §1401(a)

incorporates the Clause's meaning "as it existed when" the statute "was enacted." *Id.*[12]

Second, the government contends that the rejection of a parental domicile requirement was not "universally accepted" in 1940 and 1952. U.S.Br.42. Almost nothing is, and that is not the relevant question. The understanding that "prevailed at the time," *Kozminski*, 487 U.S. at 945, dooms the Order, and the government effectively *concedes* that prevailing understanding.

In particular, it does not contest the "longstanding administrative construction" that domicile was not required. *Monsalvo Velazquez v. Bondi*, 604 U.S. 712, 725 (2025) (such administrative practice can be "all but dispositive") (citation modified); Citizenship Law Scholars Amicus Br.11-15, 24-30 (cataloguing administrative practice). Congress was well aware of that understanding because the statute was drafted by an Executive Branch committee, which specifically told Congress in 1940 that §1401(a)'s language "accords with" *Wong Kim Ark*; that the Court's analysis was "in agreement with" *Lynch*; and that *Wong Kim Ark*'s holding "is also applicable to a child born in the United States of parents residing therein temporarily." Citizenship Law Scholars Amicus Br.19 (citation modified). That same point was discussed and agreed to during debates on the bill. *See* Members of Congress Amicus Br.14-15 (discussing consensus

[12] The government invokes unspecified "interstate-commerce jurisdictional elements" without citing a single case. U.S.Br.44. In that context, Congress might well have a special interest in exercising its lawmaking authority to its constitutional maximum, but that is irrelevant to the interpretation of §1401(a).

that child born to foreign nationals "on a visitor's visa and 2 weeks after they arrive" was a U.S. citizen).

In response, the government offers just two sources. *See* U.S.Br.42-43, 45. One (apparently a student Note) supports Respondents: It explains that the Clause "reaffirmed" the common law "as the basis of American citizenship," citing *Lynch* and *Wong Kim Ark*. *The Nationality Act of 1940*, 54 Harv. L. Rev. 860, 861 n.6 (1941).[13]

In the second, *after* the 1952 recodification, Sidney Kansas suggested a domicile requirement (without addressing *Wong Kim Ark*). U.S.Br.42-43. That single, equivocal line without "any support for the assertion," *Doe*, 157 F.4th at 63—is "thin stuff" that "does not come close to moving the mountain of contrary" evidence, *George*, 596 U.S. at 749 (disregarding "[o]ne uncertain outlier").

Third, the government suggests that §1401(a) serves no purpose other than to echo "the baseline" of the Clause, so if the Clause is someday reinterpreted more narrowly, the statute's protections will also shrink. U.S.Br.45. That denies the statute any effect as an *independent* guarantee of citizenship—which

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[13] The Note does speculate that the so-called "entry fiction"—a doctrine addressing procedural due process rights in immigration proceedings of people on the threshold of entry—could apply to the Clause. *Id.* at 861 & n.8. That speculation was incorrect even when published. *See* Citizenship Law Scholars Amicus Br.14 (discussing 1930 report of U.S. citizen born on Ellis Island); *contra* U.S.Br.31 (relying on a similar case where the child was deemed a noncitizen *before Wong Kim Ark*). The entry fiction has no bearing on the Citizenship Clause. *See Doe*, 157 F.4th at 55 n.11; *Wildenhus' Case*, 120 U.S. at 4 (private ship in port subject to U.S. jurisdiction) (cited in *Wong Kim Ark*).

would leave this "entire subparagraph meaningless." *Pulsifer v. United States*, 601 U.S. 124, 143 (2024) (citation modified).

The government's attempt to gloss §1401(a) out of existence ignores its history and effect. Section 1401(a) was not created as a placeholder; rather, it replaced and updated the language of the 1866 Act, which predated the Clause. And §1401(a) in fact reached beyond the settled effect of the Clause, given that the Act defined the term "United States" to include Puerto Rico and the Virgin Islands, so that §1401(a) guaranteed birthright citizenship for persons born in those territories. *See* Citizenship Law Scholars Amicus Br.8-9.

Fourth, the government invokes Congress's "purpose[]" in limiting dual nationality to suggest §1401(a) *must* limit birthright citizenship. U.S.Br.45-47. But dual nationality is "a status long recognized in the law." *Kamakita v. United States*, 343 U.S. 717, 723 & n.2 (1952). And "[i]t is the statutory text of §[1401(a)] that best reflects Congress's intent." *Republic of Hungary v. Simon*, 604 U.S. 115, 137 (2025). While Congress expressed interest in limiting dual nationality in other respects, *nothing* in the text remotely limits citizenship by birth in the United States. Congress could have omitted §1401(a) entirely or redrafted it. Instead, it enacted the text as drafted by the Executive Branch, mirroring the words of the Citizenship Clause—and further enacted an enormous nationality and immigration infrastructure premised on the settled understanding of birthright citizenship. *See* Members of Congress Amicus Br.22-32.

Finally, the government asks the Court to *presume* Congress meant to narrow citizenship from the centuries-old rule. U.S.Br.47 (arguing "any ambiguity" should cut "against" citizenship). But birthright citizenship "is no light trifle to be jeopardized" in such a cavalier manner. *Afroyim*, 387 U.S. at 267-68. "The very nature of our free government" refutes the notion that those "temporarily in office can deprive another group of citizens of their citizenship." *Id.* Where there is not one whit of textual or historical support, the Court should not impute to Congress the extraordinary intent to shatter this cornerstone of American life.

CONCLUSION

The Court should affirm.

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