No. 25-365

In the

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Petitioners,

vs.

BARBARA, ET AL.,

Respondents.

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

BRIEF FOR PROFESSORS GABRIEL J. CHIN, PAUL FINKELMAN, AND ERIKA LEE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

ANDREW S. ONG*
ISHIKA DESAI
GOODWIN PROCTER LLP
525 Market Street, 32nd Floor
San Francisco, CA 94105
(415) 733-6000
AOng@goodwinlaw.com
IDesai@goodwinlaw.com

Counsel for Amici Curiae

*Counsel of Record

February 24, 2026

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amicus Professor Gabriel J. Chin is the Edward L. Barrett Jr. Distinguished Professor of Law, and Director of Clinical Legal Education at University of California, Davis School of Law. Professor Chin is a scholar of immigration law, criminal procedure, and race and law.

Amicus Professor Paul Finkelman, Ph.D., is a Visiting Professor of Law at the University of Toledo College of Law, the President William McKinley Distinguished Professor of Law and Public Policy, *emeritus,* Albany Law School, and the former President and Chancellor of Gratz College in greater Philadelphia. Professor Finkelman specializes in American legal and constitutional history, constitutional law, the legal history of immigration and naturalization, antisemitism and the law, the Civil War era, the law of slavery, civil rights, and civil liberties.

Amicus Professor Erika Lee, Ph.D., is the Bae Family Professor of History, Radcliffe Alumnae Professor, and the Carl and Lily Pforzheimer Foundation Director Schlesinger Library on the History of Women in America at Harvard University. Professor Lee focuses her research on immigration and

---

[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authored the brief in whole or in part, and no counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than the *amici curiae* or their counsel made a monetary contribution to its preparation or submission.

Asian American history in the United States, as well as the histories of race, xenophobia, law, gender, and society.

Amici Professors Chin, Finkelman, and Lee have a strong interest in assisting the Court to understand the historical and legal landscape of birthright citizenship, specifically as it relates to Asian immigrants, to ensure that the constitutionally protected right is upheld.

SUMMARY OF ARGUMENT

For more than 150 years, the Fourteenth Amendment has guaranteed birthright citizenship to virtually all children born in the United States, without regard to the nationality, immigration, and/or legal status of the child's parents. The Citizenship Clause of the Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1, cl. 1.

This Court emphatically affirmed the foundational tenet of the Citizenship Clause in *United States v. Wong Kim Ark*, holding that the Fourteenth Amendment "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country[.]" 169 U.S. 649, 693 (1898). The Court reached this conclusion notwithstanding the systematic physical, economic, and political exclusion of Asians living in the United States at the time. Indeed, even though anti-Chinese sentiment was socially and politically

popular and Chinese immigration was highly restricted, the Court nevertheless held in *Wong Kim Ark* that the American-born children of Chinese immigrants were citizens at birth. Asian Americans, who make up over 7% of the U.S. population,[2] have since relied on the protections of birthright citizenship, as generations of Asian Americans otherwise had no legal pathway to citizenship in this country.[3]

Petitioners now seek to ignore the Fourteenth Amendment and the Court's holding in *Wong Kim Ark* to deny children born in the United States the birthright citizenship to which they are constitutionally entitled. President Donald J. Trump's Executive Order of January 20, 2025, titled, "Protecting The Meaning and Value of American Citizenship" (the "Executive Order"), abridges the Fourteenth Amendment's guarantee of birthright citizenship and threatens the safeguards and privileges that have long been afforded to immigrant communities.

---

[2] Asian Americans: A Survey Data Snapshot, Pew Research Center, https://www.pewresearch.org/race-and-ethnicity/2024/08/06/asian-americans-a-survey-data-snapshot/ (last visited Jan. 26, 2026).

[3] The term "Asian American" is used herein to include persons of East, Southeast, and South Asian descent.

ARGUMENT

I. The Fourteenth Amendment Makes Birthright Citizenship a Constitutional Right, Including for Children of "Illegal Aliens."

On June 13, 1866, Congress passed the Fourteenth Amendment to the U.S. Constitution, and the States ratified it on July 28, 1868. The first sentence of the Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1, cl. 1. In writing and approving this Clause, Congress and the ratifying States constitutionalized the common law rule of *jus soli*, the principle that one's citizenship is based on place of birth.[4] The Citizenship Clause repudiated the Court's infamous decision in *Dred Scott v. Sandford*, 60 (19 How.) U.S. 393 (1857), that individuals of African descent, whether born a free person, manumitted and thus free, or enslaved, could never be U.S. citizens, even though they were able to vote and hold office in a number of states at the Founding and in the 1850s. Paul Finkelman, *The First Civil Rights Movement: Black Rights in the Age of the Revolution and Chief Taney's Originalism in* Dred Scott, 24 U. Pa. J. Const. L. 676 (2022); Paul Finkelman, Scott v.

[4] Systems based on *jus sanguinis*, on the other hand, determine a child's citizenship based on that of their parents.

Sandford: *The Court's Most Dreadful Case and How It Changed History*, 82 Chi.-Kent L. Rev. 3 (2007).

In addition to the plain language of the Amendment, Congressional debates in 1866 evidence Congress's intent that the Fourteenth Amendment would grant citizenship to all U.S.-born children of foreign nationals—including children of Chinese immigrants. Cong. Globe, 39th Cong., 1st Sess. 498 (1866) ("Mr. COWAN. I will ask whether it will not have the effect of naturalizing the children of Chinese and Gypsies born in this country? Mr. TRUMBULL.[5] Undoubtedly."); *id.* ("Mr. TRUMBULL. If the Senator from Pennsylvania will show me in the law any distinction made between the children of German parents and the children of Asiatic parents, I might be able to appreciate the point, which he makes; but the law makes no such distinction; and the child of an Asiatic is just as much a citizen as the child of a European.").

One argument advanced by the Administration and those favoring restriction of birthright citizenship is that there were no undocumented migrants, or "illegal aliens," in the United States when the Citizenship Clause became law. Pet'rs Br. at 29.[6]

---

[5] Trumbull was a leading Senator, a founder, along with Lincoln, of the Republican Party in Illinois, and in 1864 the author of the Thirteenth Amendment, which ended in the United States upon ratification.

[6] *See also* Br. for Amicus Curiae Article III Project in Supp. of Pet'rs & Reversal, at 16; Br. of U.S. Reps. Claudia Tenney, Andy

Therefore, the contention goes, Congress and the ratifying States could not have intended to grant them citizenship. In addition to the other arguments against this claim, it is historically erroneous.

When Congress drafted and the States ratified the Fourteenth Amendment, it was common knowledge, inside and outside of Congress, that unauthorized migrants lived within the United States, as evidenced by the numerous then-existing immigration statutes regulating entry and deportation; most notably, those prohibiting the slave trade. Gabriel J. Chin & Paul Finkelman, *Birthright Citizenship, Slave Trade Legislation, and the Origins of Federal Immigration Regulation*, 54 U.C. Davis L. Rev. 2215 (2021) ("Chin & Finkelman, *Birthright Citizenship*"). Those laws provided for the mandatory, involuntary deportation of Africans brought to the United States in violation of the slave trade laws. *Id.* at 2226-27, 2235-36. It is virtually undisputed—including by Petitioners—that Congress intended the Fourteenth Amendment to grant citizenship to all formerly enslaved persons *born* in the United States. *Wong Kim Ark*, 169 U.S. at 703. This necessarily included the children of enslaved Africans illegally brought into, and remaining in, the United States between the passage of the 1819 law requiring that illegally imported Africans be deported to Africa and the end of slavery (1865).

Biggs, Cory Mills, John Rose, & Barry Moore as Amici Curiae in Supp. of Pet'rs, at 11.

Congress, well aware of the exclusion and deportability of illegally imported enslaved persons, passed over a dozen appropriations to suppress the international slave trade and for funding the removal of illegally imported Africans between 1859 and 1868. Chin & Finkelman, *Birthright Citizenship*, at 2245-26. President Lincoln discussed the illegal slave trade in each of his annual addresses to Congress. *Id*. at 2245.

Actions of this Court also underscore the prominence of the prohibition on the importation of such persons. In 1861, this Court declined to intervene in the execution of Nathaniel Gordon, who was convicted of illegally importing slaves. *Ex parte Gordon*, 66 U.S. 503, 504 (1861).

In the complicated case of *The Antelope. The Vice-Consuls of Spain and Portugal, Libellants*, the Court ultimately ruled that more than 100 Africans illegally brought to the United States should be deported to Liberia. While the case was litigated before the Court, some of the slaves from the ship, *The Antelope*, were rented out, sold, or simply given to local planters in Georgia, and thus remained in the United States, even though their forced presence violated a number of federal laws. Therefore, *The Antelope* illustrates that, for many years before the adoption of the Fourteenth Amendment, the United States faced the problem of people who were illegally in the United States in violation of the federal slave trade laws. Children born in the United States to those Africans from *The Antelope* who were forcefully and illegally brought into the United States would become citizens

under the Fourteenth Amendment. *The Antelope*, 23 U.S. (10 Wheat) 66 (1825); *The Antelope*, 24 U.S. (11 Wheat.) 413 (1826); *The Antelope*, 25 U.S. (12 Wheat.) 546 (1827); *see also* Paul Finkelman, *Supreme Injustice: Slavery in the Nation's Highest Court*, 90-102 (2018).

As this Court has noted, "the world is not made brand new every morning," and therefore, there is a presumption that people are "familiar with the history of the government's actions and competent to learn what history has to show." *McCreary Cnty., Ky. v. Am. C.L. Union of Ky.*, 545 U.S. 844, 866 (2005). This presumption certainly applies to Congress, and with special force when Congress addressed citizenship against the backdrop of the single most important political, social, economic, and legal issue of the age—slavery. Thus, there is no room to question that Congress and the ratifying States knew that the Citizenship Clause would apply to children of illegally imported enslaved persons, notwithstanding the deportability of their parents under the 1819 law.

II. *Wong Kim Ark* Holds that Children of Foreign National Parents Are Entitled to Birthright Citizenship.

This Court's seminal decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), affirmed Congress's intent that birthright citizenship applied to children of foreign national parents, including Chinese immigrants who were denied the opportunity to

become members of the political community.[7] In *Wong Kim Ark* the Court faithfully upheld the plain language of the Constitution in the face of political tides, specifically, then-popular sentiments against Chinese immigration and the anti-Chinese policies of President William McKinley, who was the first president in twenty-four years (since 1872) to win both a popular vote majority and an electoral college majority.

As explained below, a long line of federal laws, state laws, and court decisions prohibiting Asians and Asian Americans from participating in the political community and becoming naturalized citizens legitimized anti-Chinese hostilities in the United States. §§ III-VI, *infra.* The Administration's attempt to characterize Wong Kim Ark's parents as being different from illegal aliens because they were legally domiciled in and "owe[d] primary allegiance to the United States, not a foreign power," Pet'rs Br. at 32, is both historically inaccurate and a misleading application of the Court's decision in *Wong Kim Ark*. Indeed, as the Court noted, Wong's parents were "subjects of the emperor of China," and when they left the United States they were not allowed to return.

---

[7] "Political community" is a term with multiple meanings. According to Professor of Philosophy Tomasz Homa, political community "primarily refers to a civic community . . . that is co-created by its members who are entitled to participate in its governance and its judicial system (courts), i.e. its citizens[.]" Tomasz Homa, *Political community* (Apr. 22, 2021), https://ww.researchgate.net/publication/351057543_Political_community.

Wong Kim Ark, 169 U.S. at 651; *see also Fong Yue Ting v. United States*, 149 U.S. 698, 724 (1893) (noting that Chinese migrants "continue to be aliens, having taken no steps towards becoming citizens, and incapable of becoming such under the naturalization laws").

A. Wong Kim Ark Is Born to Foreign National Parents in California.

According to stipulated facts, Wong Kim Ark was born in 1873 in San Francisco to parents who "were persons of Chinese descent, and subjects of the emperor of China" but who "at the time of his birth [were] domiciled residents of the United States[.]" *Wong Kim Ark*, 169 U.S. at 652. Under existing U.S. naturalization law, Wong Kim Ark's parents, although long-time San Francisco residents, were racially ineligible for citizenship. Erika Lee, *Birthright Citizenship, Immigration, and the U.S. Constitution: The Story of* United States v. Wong Kim Ark*, in* Race Law Stories 89, 90 (Rachel F. Moran & Devon W. Carbado eds., 2008) ("Lee"). As further stipulated, Wong Kim Ark and his parents maintained "permanent domicile and residence . . . [in] San Francisco[.]" *Wong Kim Ark*, 169 U.S. at 652; Lee at 91.

B. Wong Kim Ark Is Denied Entry into the United States.

In 1890, anti-Chinese hostilities in San Francisco drove Wong Kim Ark and his parents to leave California for China, and while his parents remained in China, Wong Kim Ark returned to California later that year. Lee at 91-92; *Wong Kim*

Ark, 169 U.S. at 652. Upon entry, "Wong was recognized as a native-born citizen and quickly re-admitted into the country" as a U.S. citizen. Lee at 92; *Wong Kim Ark*, 169 U.S. at 652.

In 1894, Wong Kim Ark "again departed for China on a temporary visit, and with the intention of returning to the United States[.]" *Wong Kim Ark*, 169 U.S. at 652. But at this point, "the United States was quickly moving towards greater immigration restriction, eventually affecting American-born Chinese like him." Lee at 92. Thus, "Wong realized that his status as a U.S. citizen was precarious," particularly given that immigration officials were known to "deny entry to those claiming birth in the United States." *Id.* at 95. Indeed, Wong Kim Ark was denied re-entry to the United States and detained on "the sole ground that he was not a citizen of the United States." *Wong Kim Ark*, 169 U.S. at 653; Lee at 96. Because he was of Chinese descent, immigration officials asserted he was not a U.S. citizen, deemed subject to the Chinese Exclusion Act of 1882, and not permitted to enter the country. *Wong Kim Ark*, 169 U.S. at 699. He was detained for four months. *Id.*

C. The Court Holds that Wong Kim Ark and All Children of Foreign Nationals Born in the United States Are Citizens.

Wong challenged his exclusion as contrary to the Fourteenth Amendment's Citizenship Clause, asserting that he was a United States citizen by birth. In a 6-2 decision in 1898, the Court agreed, holding the

Fourteenth Amendment "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country[.]" *Wong Kim Ark*, 169 U.S. at 693. The Court explained:

> The right of citizenship never descends in the legal sense, either by the common law, or under the common naturalization acts. It is incident to birth in the country, or it is given personally by statute. The child of an alien, if born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle.

Id. at 665 (internal quotations omitted); *see also id.* at 702 ("[C]itizenship by birth is established by the mere fact of birth under the circumstances defined in the constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States[.]").

With this ruling, the Court made even more clear that the Fourteenth Amendment's Citizenship Clause applied to all persons born in the United States, regardless of their race, or the race, citizenship, or other status of their parents, with the limited exceptions recognized in common law and "the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes." *Id.* at 693. The Court thus applied a "readily administrable bright line rule," as it has in other jurisdictional contexts. *Henderson* ex rel.

Henderson v. Shinseki, 562 U.S. 428, 435 (2011). This interpretation avoids the possibility of creating generations of U.S.-born, stateless noncitizens, and casting doubt on the citizenship of every U.S.-born person whose ancestors, in spite of U.S.-birth, might have been noncitizens under the Administration's theory.

III. Federal Laws Prohibited Asians from Immigrating and Naturalizing, Undercutting the Administration's Characterization of *Wong Kim Ark*.

Although today Asian immigrants can become naturalized citizens, that right has come about only gradually. From the late eighteenth century through the mid-twentieth century, U.S. immigration and citizenship laws explicitly excluded certain immigrants based on their race and nationality. As a result, Asian immigrants—who have been in the United States since the late eighteenth century—were denied both formal legal status and the possibility of inclusion and integration into the political community. This exclusion lasted, in whole and in part, from 1790 until 1952. Such exclusion from the political community, which applied to Wong Kim Ark's parents, led to, and legitimized, the anti-Asian hostilities that they experienced. This history illustrates the dangers of the Administration's attempts to reverse *Wong Kim Ark*'s holding that foreign national children born in the United States are citizens under the Fourteenth Amendment and that, as such, they "owe primary allegiance to the United States, not a foreign power,"

Pet'rs Br. at 32, irrespective of the status of their parents.

A. The Naturalization Act of 1790

The Naturalization Act of 1790, the first federal statute governing citizenship, restricted naturalization to "[a]ny free white person." Naturalization Act of 1790, Pub. L. No. 1-3, ch. 3, § 1, 1 Stat. 103 (1790). After the Civil War, Congress amended the law to allow naturalized citizenship "to aliens of African nativity and to persons of African descent." Naturalization Act of 1870, Pub. L. No. 41-254, § 7, 16 Stat. 256 (1870). Asian and other non-White immigrants continued to be denied the right to become U.S. citizens.

B. The Anti-Coolie Act of 1862

In 1862, Congress passed "An Act to Prohibit the 'Coolie Trade' by American Citizens in American Vessels," which prohibited U.S. citizens or vessels from transporting "the inhabitants or subjects of China, known as 'coolies,' . . . as servants or apprentices, or to be held to service or labor[.]"[8] Ch. 27, § 1, 12 Stat. 340 (1862). Although couched as anti-slavery legislation, the Anti-Coolie Act sought to

---

[8] The term "coolie" is a derogatory term referring to "an unskilled laborer or porter usually in or from the Far East hired for low or subsistence wages." *Coolie*, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/coolie (last visited Jan. 26, 2026); *see also* Moon-Ho Jung, *Outlawing "Coolies": Race, Nation, and Empire in the Age of Emancipation*, 57 Am. Q. 677, 679 (2005).

protect the economic interests of White laborers by restricting Asian immigration and to respond to growing anti-Chinese sentiment that was openly and notoriously based on racial animus.

C. The Page Act of 1875

"An Act Supplementary to the Acts in Relation to Immigration" (commonly known as the "Page Act of 1875"), Pub. L. No. 43-141, ch. 141, 18 Stat. 477 (1875), specifically "targeted Chinese women, requiring them to obtain certificates of immigration showing that they were not entering the United States 'for lewd and immoral purposes.'" Adam B. Cox & Eric A. Posner, *The Second-Order Structure of Immigration Law*, 59 Stan. L. Rev. 809, 836 (2007). The Page Act provided:

> In determining whether the immigration of any subject of China, Japan, or any Oriental country, to the United States, is free and voluntary, . . . it shall be the duty of the consul-general or consul of the United States . . . to ascertain whether such immigrant has entered into a contract or agreement for a term of service within the United States, for lewd and immoral purposes . . . .

Page Act of 1875 § 2. While couched as anti-prostitution legislation, "the Page Act was discriminatorily applied and aimed to exclude all Chinese women based on a constructed stereotype that Chinese women had a cultural inclination toward prostitution." Stewart Chang, *Feminism in Yellowface*, 38 Harv. J.L. & Gender 235, 242 (2015).

To that end, "the Asian prostitute was politically utilized in the nineteenth century as a racial 'Other' against which normative citizen and immigrant subjects who could racially and culturally belong in America were defined." *Id.*

D. The Chinese Exclusion Act of 1882 and the Geary Act of 1892

The Chinese Exclusion Act of 1882 codified rising anti-Asian sentiments by halting the immigration of laborers from China or of Chinese ancestry, expressing "the opinion of the Government of the United States [that] the coming of Chinese laborers to this country endangers the good order of certain localities within the territory[.]" Pub. L. No. 47-126, ch. 126, § 1, 22 Stat. 58 (1882). This Act halted the immigration of "skilled and unskilled [Chinese] laborers and Chinese employed in mining" for a ten-year period and reaffirmed existing racial discrimination in naturalization law by specifically prohibiting Chinese immigrants from becoming naturalized citizens. *Id.* §§ 1, 14-15.

The Act of May 5, 1892, commonly known as the Geary Act, extended the Chinese Exclusion Act by ten years. Pub. L. No. 52-60, 27 Stat. 25 (1892). Section 6 of the Geary Act also required Chinese persons lawfully present in the country—and only Chinese persons—to register with the "collector of internal revenue of their respective districts" and carry a "certificate of residence" to prove their lawful entry. *Id.* Failure to register rendered the Chinese person's presence unlawful and subjected that person to arrest,

imprisonment, and deportation. *Id.*

In 1902, as the Geary Act was expiring, Congress extended the Chinese Exclusion Act indefinitely. Act of April 29, 1902, Pub. L. No. 57-90, 32 Stat. 176 (1902). The Chinese Exclusion Act was not repealed until 1943. Magnuson Act of 1943, Pub. L. No. 78-199, 57 Stat. 600 (1943) ("Magnuson Act of 1943"). In addition, until 1965, Chinese immigrants were restricted by other provisions of the Immigration and Nationality Act of 1952, such as a limit on Asian immigration from anywhere in the world to 2,000 annually. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. Rev. 273, 291 & nn.68-69 (1996).

E. The Immigration Act of 1917

The Immigration Act of 1917, building in part on the Chinese Exclusion Act, banned all immigrants from the "Asiatic Barred Zone" which spanned from the Middle East to Southeast Asia. Immigration Act of 1917, Pub. L. No. 64-301, ch. 29, § 3, 39 Stat. 874, 875-76 (1917). As a result, an estimated 500 million Asian people were officially barred from immigrating. Erika Lee, *America for Americans: A History of Xenophobia in the United States*, 138 (2019).

Between 1940 and 1946, Congress allowed people from the Philippines, China, and the Indian Subcontinent to naturalize, while people from Japan, other parts of east, central, and southeast Asia, and various islands in the Pacific were not allowed to naturalize. Gabriel J. Chin & Paul Finkelman, *The*

"Free White Person" Clause of the Naturalization Act of 1790 As Super-Statute, 65 Wm. & Mary L. Rev. 1047, 1110 (2024); *see, e.g.*, Magnuson Act of 1943 (repealing the Chinese Exclusion Act and allowing Chinese immigrants to naturalize); Luce-Celler Act of 1946, Pub. L. No. 79-483, ch. 534, 60 Stat. 416 (1946) (allowing persons from India and the Philippines to naturalize). Finally, the Immigration and Nationality Act of 1952 permitted Asians and all other immigrants to seek U.S. citizenship. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, ch. 477, § 201(a), 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. § 1101 (2012)). The passage of the Immigration and Nationality Act of 1952, which repealed the Immigration and Nationality Act of 1917, ended more than a century and a half of discriminatory laws that precluded Asians and other non-White immigrants from becoming naturalized citizens.

IV. Courts Upheld Laws Denying Asian Immigrants from Participating in the Political Community.

Courts consistently upheld laws prohibiting Asians from naturalizing, denying Asian immigrants citizenship on grounds that they were not White. Such rulings reinforced the notion that Chinese immigrants were not part of, and could never be part of, the political community.

When the Chinese-born immigrant Ah Yup sought to naturalize, the United States Circuit Court for the District of California denied the petition because, "[i]n all the acts of congress relating to the

naturalization of aliens, from that of April 14, 1802, down to the Revised Statutes, the language has been 'that any alien, being a free white person, may be admitted to become a citizen,' etc." *In re Ah Yup,* 1 F. Cas. 223, 223 (C.C.D. Cal. 1878). The court found that "it [wa]s entirely clear that congress intended by this legislation to exclude Mongolians from the right of naturalization." *Id.* at 224. Because "a native of China . . . is not a white person within the meaning of the act of congress," Ah Yup could not become a U.S. citizen. *Id.*

In *Fong Yue Ting v. United States*, 149 U.S. at 698, the Court upheld the constitutionality of the Geary Act of 1892, explaining that "[t]he right of a nation to expel or deport foreigners who have not been naturalized, or taken any steps towards becoming citizens of the country . . . is as absolute and unqualified, as the right to prohibit and prevent their entrance into the country." *Id.* at 707. Chinese migrants "continue to be aliens, having taken no steps towards becoming citizens, and incapable of becoming such under the naturalization laws; and therefore remain subject to the power of Congress to expel them, or to order them to be removed and deported from the country, whenever, in its judgment, their removal is necessary or expedient for the public interest." *Id.* at 724. The reasoning articulated in *Fong Yue Ting* made clear the Court's belief that Chinese immigrants were inferior to, and not entitled to, the same legal rights as "White" immigrants.

In *Ozawa v. United States*, 260 U.S. 178 (1922),

the Court expanded its views on what it meant to be White for purposes of naturalization. Takao Ozawa was born in Japan. After residing in the United States for 20 years, he sought citizenship under the Naturalization Act of June 29, 1906, 34 Stats. at Large, Part I, Page 596, which provided "for a uniform rule for the naturalization of aliens." Despite this, the Court concluded that it was Congress's intent for naturalization to be limited to "aliens, being free white persons and to aliens of African nativity and to persons of African descent," as set forth in section 2169 of the Revised Statutes. *Ozawa*, 260 U.S. at 192-94. The Court recognized the exclusion of non-White aliens from citizenship as "a rule in force from the beginning of the government, a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions[.]" *Id.* at 194. The Court declared that Ozawa was not White because he was "clearly of a race which [wa]s not Caucasian." *Id.* at 198 ("[T]he words 'white person' are synonymous with the words 'a person of the Caucasian race[.]'").

Similarly, in 1925, the Court denied naturalization to a Japanese immigrant who had honorably served in the United States Navy in World War I and sought citizenship under a statute that allowed honorably discharged veterans from the war to be naturalized. *Toyota v. United States*, 268 U.S. 402 (1925); *see also* Paul Finkelman, *Coping with a New Yellow Peril: Japanese Immigration, the Gentlemen's Agreement, and the Coming of World War*

II, 117 W. Va. L. Rev. 1409, 1456 (Spring 2015).

A year after *Ozawa*, the Court held that "Whiteness" also excluded Indians of South Asian descent. *United States v. Thind*, 261 U.S. 204 (1923). Bhagat Singh Thind, an immigrant from India, applied for citizenship. *Id.* at 210. The Court held that "the words 'free white persons' [we]re words of common speech, to be interpreted in accordance with the understanding of the common man, synonymous with the word 'Caucasian' only as that word is popularly understood." *Id.* at 214-15. Because Thind was not Caucasian, he was not entitled to citizenship. *Id.* at 215.

V. State Legislation Denied Economic Opportunities for Asian Immigrants and Asian Americans.

People from China and of Chinese ancestry from other countries were not just restricted from immigrating or naturalizing. States and local governments enacted laws prohibiting Chinese and other Asian immigrants who were already in the United States from fully participating in the labor market and the economy. Such laws further established Asian immigrants as the "other" in the political and economic community.

A. Alien Land Laws

In the mid-1800s, several states enacted laws denying Asian immigrants the right to own or lease property, thereby prohibiting them from farming their

own land and ensuring they remained economically subordinate to their White counterparts.

In 1879, California amended its Constitution to restrict land ownership to only immigrants of "the white race or of African descent." Cal. Const., art. XIX, § 2, as ratified 1879. In 1913, California passed the first Alien Land Law, which allowed only "aliens eligible to citizenship [to] acquire, possess, enjoy, transmit, and inherit real property or any interest therein." Gen. Laws Cal. Act 261, § 1. The 1913 Alien Land Law was expressly designed to exclude Asian immigrants from owning land. In 1920, California voters passed an initiative banning "persons ineligible to citizenship," as well as corporations with a majority of shareholders who were ineligible for citizenship, from leasing agricultural land. California Initiative, 1921 Cal. Stat. lxxxvii, §§ 1-14 (Nov. 2, 1920)

Between 1917 and 1935, Arizona, Washington, Louisiana, New Mexico, Idaho, Montana, Oregon, and Kansas enacted their own alien land laws with similar language. 1917 Alien Land Law Act (Ariz.), ch. 43, 1917 Ariz. Sess. Laws 56, 56-58; 1921 Alien Land Law Act (Wash.), ch. 50, 1921 Wash. Sess. Laws 156, 156-60; 1921 Alien Land Law Act (La.), La. Const. art. XIX, § 21 (1921); 1922 Alien Land Law Act (N.M.), ch. 116-117, 1922 N.M. Laws 1473, 1473; 1923 Alien Land Law Act (Idaho), ch. 122, 1923 Idaho Sess. Laws 160, 160-65; 1923 Alien Land Law Act (Mt.), ch. 57-58, 1923 Mt. Sess. Laws 123, 124-26; 1923 Alien Land Law Act (Or.), ch. 98, 1923 Or. Laws 145, 145-50; 1935 Alien Land Law Act (Kan.), ch. 67, 1935 Kan. Stat. Ann.

1638, 1662-64.

During this period, the Naturalization Acts dating from 1790 and 1870 continued to make Asian immigrants ineligible for citizenship. § III(A), *supra*. Thus, while these Alien Land Laws appeared to be race-neutral, they in fact targeted Asian immigrants. The Court upheld the constitutionality of such laws, despite their discriminatory intent and effects. *E.g.*, *Webb v. O'Brien*, 263 U.S. 313, 322 (1923) ("The provision of the [1920 California Alien Land Law] which limits the privilege of ineligible aliens to acquire real property or any interest therein . . . is not in conflict with the Fourteenth Amendment."); *Porterfield v. Webb*, 263 U.S. 225, 233 (1923); *see also Terrace v. Thompson*, 263 U.S. 197, 211, 216-17 (1923) (upholding Washington's 1921 Alien Land Law).

B. Laws Restricting Job Opportunities

Economic opportunities for Asian immigrants were further reduced by state and local laws that sought to restrict the types of businesses Asian immigrants could own or operate, and excluded them from certain occupations.

"Anti–Chinese sentiment was a major impetus for the California Constitutional Convention of 1879." *In re Chang*, 60 Cal. 4th 1169, 1172 (2015). In addition to prohibiting Chinese immigrants from owning land, the California Constitution was amended to make it unlawful for corporations to "employ directly or indirectly, in any capacity, any Chinese or Mongolian." Cal. Const., art. XIX, § 2, as ratified 1879.

In 1880, San Francisco sought to limit Chinese persons from operating laundries by passing two ordinances that required laundries constructed of wood to obtain a permit from the Board of Supervisors. *Yick Wo v. Hopkins*, 118 U.S. 356, 366 (1886). The Board of Supervisors had sole discretion over who would receive a permit. *Id.* At the time, people of Chinese descent owned 240 of the 320 laundries in San Francisco—none of them had been granted a permit. *Id.* at 373. The Court unanimously held that, despite the race-neutral language of the ordinances, this biased enforcement of the laws regulating laundries violated the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 374. The Court made clear that "[t]he rights of the petitioners, as affected by the proceedings of which they complain, are not less, because they are aliens and subjects of the emperor of China." *Id.* at 368.

Chinese immigrants were also precluded from practicing law in many states. *In re Chang*, 84 Cal. 163, 165 (1890), *abrogated by In re Chang*, 60 Cal. 4th 1169 (2015) ("Only those who are citizens of the United States, or who have *bona fide* declared their intention to become such in the manner provided by law, . . . are entitled to be admitted to practice as attorneys and counselors of this court[.]") (citing Cal Civ. Proc. Code, former § 279, enacted 1872 and repealed by Stats. 1931, ch. 861, § 2, p. 1762). Because the Chinese Exclusion Act (as well as the existing federal naturalization act) prohibited Chinese immigrants from becoming citizens, they were also denied admission to the state bar. *In re Chang*, 60 Cal. 4th at

1175 (the discriminatory exclusion of noncitizen Chinese immigrants "was . . . a blow to countless others who, like Chang, aspired to become a lawyer only to have their dream deferred on account of their race, alienage, or nationality. And it was a loss to our communities and to society as a whole, which denied itself the full talents of its people and the important benefits of a diverse legal profession.").[9]

VI. Legal and Economic Exclusions Legitimized Anti-Asian Violence.

The legal and economic exclusion of Asian Americans both reinforced and legitimized acts of anti-Asian violence. The Chinese Massacre of 1871 was one of the largest racially based mass killings in the United States at this time, and the first in a series of targeted attacks on Chinese immigrants across the United States.[10] On October 24, 1871, a mob of 500 people ambushed Los Angeles's Chinatown neighborhood in a coordinated and racially driven attack. Within two hours, at least eighteen Chinese men—approximately 10 percent of the Chinese

---

[9] In *In re Chang*, the California Supreme Court "grant[ed] Hong Yen Chang posthumous admission as an attorney and counselor at law in all courts of the State of California." 60 Cal. 4th at 1170. Mr. Chang, who had graduated from Columbia Law School in 1886, had been denied admission to the State Bar of California in 1890 on grounds that he was not a U.S. citizen. *Id.*; *see In re Chang*, 84 Cal. 163.

[10] Scott Zesch, The Chinatown War: Chinese Los Angeles and the Massacre of 1871 (Oxford University Press, 1st ed. 2012).

population of Los Angeles at that time—were brutally murdered.

The California Supreme Court's ruling in *People v. Hall* laid the foundation for this type of Anti-Asian violence. 4 Cal. 399 (1854). There, the California Supreme Court held that because Chinese people were "a race of people whom nature has marked as inferior" who were "incapable of progress or intellectual development beyond a certain point," *id.* at 404-05, they could not testify against White defendants in court. This precedent effectively granted immunity to Whites who committed crimes against Chinese Americans, because Chinese victims of White violence could not testify against their assailants, and affirmed the belief that Asian Americans were not entitled to legal protections. The Page Act of 1875 and the Chinese Exclusion Act of 1882 reinforced such sentiments. §§ III.C-D, *supra*.

The economic exclusion of Asian Americans similarly encouraged discriminatory acts of violence. Chinese migrants working in California's gold mines in the 1850s were met with rigid resistance.[11] California imposed Foreign Miners' Taxes[12] on Chinese miners to discourage their participation in

---

[11] Law, Order, and Justice for Some – Discrimination, Oakland Museum of California, http://explore.museumca.org/goldrush/fever16-di.html (last visited Jan. 26, 2026).

[12] Foreign Miners' Tax Act of 1850, ch. 97, 1850 Cal. Stat. 221, 221-23 (repealed 1851); Foreign Miners' Tax Act of 1852, ch. 37, 1852 Cal. Stat. 84, 85 (repealed 1853).

the gold rush and limit competition for White miners.[13] This legislatively imposed economic restrictions, which almost all local authorities supported, fueled resentment, and justified White miners harassing and violently expelling Chinese from mining camps. The Rock Springs Massacre of 1885 in the Wyoming Territory resulted from a labor dispute over Chinese migrants' willingness to work for lower wages. The violence left 28 Chinese miners dead and 15 others wounded.[14] The White miners then set close to eighty homes ablaze, effectively eradicating the Chinatown neighborhood in that region.[15] As in California after the mass attack on Chinese in Los Angeles, the Rock Spring Massacre attackers in

---

[13] From Gold Rush to Golden State, Library of Congress, https://www.loc.gov/collections/california-first-person-narratives/articles-and-essays/early-california-history/from-gold-rush-to-golden-state/ (last visited Jan. 26, 2026); John S. Caragozian, Anti-Asian Discrimination Circa 1852, California Supreme Court Historical Society (May 27, 2021), https://www.cschs.org/wp-content/uploads/2021/06/History-Resources-Caragozian-Anti-Asian-Discrimination-Circa-1852.pdf

[14] Michael Luo, When An American Town Massacred Its Chinese Immigrants, New Yorker Magazine (Mar. 3, 2025), https://www.newyorker.com/magazine/2025/03/10/when-an-american-town-massacred-its-chinese-immigrants.

[15] Kalen Churcher, Rock Springs Massacre, EBSCO (2022), https://www.ebsco.com/research-starters/history/rock-springs-massacre.

Wyoming faced no lasting legal repercussions, as no White person would testify against White miners.[16]

VII. The Executive Order Defies the Fourteenth Amendment and *Wong Kim Ark*.

The Executive Order relies on an incorrect presumption that U.S.-born children of parents who are outside the political community should likewise be excluded from the national community. This presumption runs contrary to the Court's decision in *Wong Kim Ark* that all children of foreign nationals born in the United States are citizens, and seeks to implement an incorrect interpretation of the Fourteenth Amendment that has never been accepted by the Court, while ignoring the literal language of the Fourteenth Amendment and then conflating race with membership in the political community.

The logic embedded in the Executive Order echoes the prior exclusionary frameworks, directed toward Asians and Asian Americans, found in the Chinese Exclusion Act of 1882, *Fong Yue Ting*, *Ozawa*, and *Thind*, all of which have been repudiated. §§ III(D), IV, *supra*. But none of those cases rejected the validity of *Wong Kim Ark*, that persons born in the United States are citizens, even if their parents are not, and cannot become, citizens. In each of these cases, the Court upheld statutes that explicitly tied *naturalization* to Whiteness, excluding those deemed racially incompatible with U.S. naturalization. The

---

[16] *Id.*

Executive Order's challenge to birthright citizenship for non-White children attempts to expand this racialized gatekeeping by rejecting the plain language of the Fourteenth Amendment. Like *Fong Yue Ting*, it questions the legitimacy of long-term residents; like *Ozawa* and *Thind*, it reinforces the belief that American citizenship must align with Whiteness. Not only is this blatantly unconstitutional, it attempts to reverse more than a century's worth of efforts of ensuring that Asians, Asian Americans, and other non-Whites are permitted to participate in the political community as equals.

We are not the first scholars to note that, if the Executive Order is valid, it will create havoc, perhaps in particular for Asians and other non-Whites, but for Americans of all backgrounds. As no constitutional amendment or statute came into effect on January 20, 2025 independently authorizing the Executive Order, it is valid if, and only if, it is an accurate construction of the Fourteenth Amendment as written when ratified in 1868. While the Executive Order purports to apply only prospectively and to deny citizenship only to children of certain classes of noncitizens, what is at issue for this Court cannot be so limited.

While this Court has sometimes made its rulings prospective, that path is not open in the context of citizenship. There are "two sources of citizenship, and two only: birth and naturalization." *Wong Kim Ark,* 169 U.S. at 702. This Court has previously held that, "[n]either by application of the doctrine of estoppel, nor by invocation of equitable

powers, nor by any other means does a court have the power to confer citizenship in violation of the limitations imposed by Congress in the exercise of its exclusive constitutional authority over naturalization." *I.N.S. v. Pangilinan*, 486 U.S. 875, 875 (1988). Similarly, if, as the Administration argues, the Fourteenth Amendment does not make citizens of certain people, neither this Court nor the Administration has the power to create citizens of children of ineligible foreign nationals simply because they were born before issuance of the Executive Order. In other words, a prospective-only application is not possible.

Since many of the authorities cited by the Administration rest on the idea that citizens or subjects of foreign nations cannot give birth to U.S. citizens (Pet'rs Br. at 17-19), the logical implication of accepting the argument is that the children of dual citizens are not U.S. citizens, nor are the children of naturalized citizens, unless they successfully renounce their previous nationalities.[17] Of course, this noncitizenship would flow through the generations, for if the children of dual citizens born in 1880 were not citizens, neither would be their grandchildren or more remote descendants, if they

[17] Since 1795, U.S. law has required naturalization applicants to forswear their current allegiance. 8 U.S.C. § 1448(a). However, "even though naturalization requires the renunciation oath, legally effective expatriation from naturalized citizens' countries of origin is not required." Karin Scherner-Kim, Note, *The Role of the Oath of Renunciation in Current U.S. Nationality Policy--to Enforce, to Omit, or Maybe to Change?*, 88 Geo. L.J. 329 (2000).

trace their lineage to people ineligible under the Administration's theory.

Another problem arises with respect to parents whose status changes. Historically, a person could be denaturalized if their initial naturalization was invalid or in bad faith: "There is no right to naturalization unless all statutory requirements are complied with. And so if a certificate is procured when the prescribed qualifications have no existence in fact, it may be canceled by suit." *Baumgartner v. United States*, 322 U.S. 665, 672 (1944) (citations omitted); *see also United States v. Siegel*, 152 F.2d 614, 615 (2d Cir. 1945) (per curiam) (affirming denaturalization judgment because applicant falsely claimed to be loyal to the United States).

In addition, noncitizens could be in the process of gaining citizenship, through, for example, naturalization or military service, and they might, or might not, ultimately succeed. Similarly, in many cases, it will be difficult to determine whether parents are in fact domiciled in the U.S. because they leave, as occurred in *Perkins v. Elg*, 305 U.S. 325 (1939), and *Wong Kim Ark* itself. Yet, in determining Wong Kim Ark was a citizen, this Court found it unnecessary to evaluate the status of his parents. It is not possible that the practical, experienced, and wise Framers of the Fourteenth Amendment intended to create a citizenship system so uncertain and unwieldy.

VIII. The Executive Order Will Have a Disproportionate Impact on Asian Americans.

If the Executive Order is upheld, Asian Americans will be disproportionally negatively and irreparably affected. Sixty-five percent of Asian Americans are foreign-born, over 63% of international students are from Asia, and 85% of H-1B workers are from either India or China.[18] As of 2022, there were approximately 1.7 million undocumented Asian immigrants in the nation; 1 out of every 7 undocumented immigrants is Asian.[19] Denying birthright citizenship to children of parents on student or work visas or children of undocumented Asian immigrants may render those children stateless and deprive them of fundamental civil rights, including the rights to vote, serve on juries, run for elected office, obtain employment in some professions, obtain student loans, receive a passport, and obtain various federal and state benefits. This Order would also

---

[18] Karthick Ramakrishnan *et al.*, By The Numbers: Immigration, AAPI Data (Jan. 9, 2025), https://aapidata.com/featured/by-the-numbers-immigration/; Carolyne Im, Alexandra Cahn & Sahana Mukherjee, What we know about the U.S. H-1B visa program, Pew Research Center (Mar. 4, 2025), https://www.pewresearch.org/short-reads/2025/03/04/what-we-know-about-the-us-h-1b-visa-program/; Open Doors Report: Top 25 Places of Origin of International Students, 2000/01 – 2023/24, Institute of International Education (2024), https://opendoorsdata.org/data/international-students/leading-places-of-origin/.

[19] Ramakrishnan *et al.*, *supra* note 18.

prevent the American-born children of many immigrants from obtaining Social Security numbers and, thus, prevent them from obtaining formal and legal employment or attending college.

As citizenship for Asian immigrants was severely restricted until 1952, birthright citizenship became the sole means for Asian Americans to participate in the political community; it "continues to be one of the most common pathways for Asian Americans . . . to establish roots and build thriving futures in America."[20] Millions of Asian Americans are descended from immigrants. Without birthright citizenship, the millions of Asian Americans descended from immigrants would be denied the right to participate in American society.

As explained above, state-sanctioned discrimination and racially motivated exclusionary laws of the eighteenth, nineteenth, and twentieth centuries impacted generations of Asian Americans. §§ III-VI, *supra*. While these laws have been repealed, this disenfranchisement of Asian immigrants and Asian Americans deprived Asians of political representation, left them unable to participate in American democracy, and dramatically limited their economic and professional opportunities.

Despite this painful history, the United States has slowly recognized that denying citizenship to

---

[20] Protect Birthright Citizenship, Stop AAPI Hate, https://stopaapihate.org/protect-birthright-citizenship/ (last visited Jan. 26, 2026).

people based on race alone is un-American and counterproductive to the American economy and society. Congress in passing the Fourteenth Amendment, and the Court in deciding *Wong Kim Ark*, came to the right conclusions regarding birthright citizenship as belonging to virtually all U.S.-born children,[21] regardless of race, citizenship, or other status of their parents. The Executive Order unconstitutionally seeks to undo more than a century of citizenship guaranteed by the Fourteenth Amendment that provides Asian Americans the right to political and economic participation. Today, more than 150 years after the ratification of the Fourteenth Amendment, is not the time to revive the experiment that made the Amendment necessary—namely, the exclusion of large hereditary groups from the political community.

CONCLUSION

For the foregoing reasons, the Court should affirm the District Court's ruling enjoining the

[21] The Citizenship Clause does not apply to the common-law exceptions 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 of members of the Indian tribes owing direct allegiance to their several tribes." *Wong Kim Ark*, 169 U.S. at 693. Although most Native Americans were initially denied birthright citizenship (*Elk v. Wilkins*, 112 U.S. 94 (1884)), Congress statutorily granted it to them in 1924 (8 U.S.C. § 1401(b)).

enforcement and implementation of the Executive Order.

Date: February 24, 2026

Respectfully Submitted,

Andrew S. Ong*
Ishika Desai
GOODWIN PROCTER LLP
525 Market Street, 32nd Floor
San Francisco, California 94105
(415) 733-6000
AOng@goodwinlaw.com
IDesai@goodwinlaw.com

Counsel for Amici Curiae

*Counsel of Record