

No. 25-365

IN THE
Supreme Court of the United States

—————
DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, *et al.*,
Petitioners,

v.

BARBARA, *et al.*,
Respondents.

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

**BRIEF OF PROFESSOR AMANDA L. TYLER
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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 OTHER AUTHORITIES	
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Public Proclamation No. 4, 7 Fed. Reg. 2601 (March 27, 1942).....	5
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Report on meeting with Governors and other officials regarding relocation of Japanese, Salt Lake City, Utah (Apr. 7, 1942) (on file with National Archives, Washington, D.C.).....	9
Roger Daniels, <i>The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion</i> (1962).....	11

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Ryan Fonseca, <i>This Fraternal Order Made California's Flag Official. How will they face their racist Past?</i> , L.A. Times, July 5, 2024	11
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INTEREST OF AMICUS CURIAE¹

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SUMMARY OF ARGUMENT

This is not the first time this Court has faced the question whether to revisit its decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), which held that the Fourteenth Amendment recognizes birthright citizenship by “affirm[ing] the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country,” *id.* at 693. During World War II, this Court was asked to overrule *Wong Kim Ark* in a case seeking to revoke citizenship from Japanese Americans born in the United States. The argument advanced in that case contended that persons born in the United States whose ancestors were ineligible for citizenship could not claim birthright citizenship under the Fourteenth Amendment. But after the district court and then the *en banc* Ninth Circuit rejected the argument—the Ninth Circuit doing so in the middle of oral argument—this Court chose not to entertain the

¹ This brief was not authored in whole or in part by counsel for any party, and no person or entity other than amicus curiae or its counsel has made a monetary contribution toward the brief's preparation or submission.

case. See *Regan v. King*, 134 F.2d 413 (9th Cir. 1943), *cert. denied*, 319 U.S. 753 (1943).

The effort to strip citizenship from Japanese Americans failed notwithstanding that it took place against the backdrop of then-existing racially restrictive federal policies prohibiting Asian immigrants from naturalizing and the mass incarceration of over 120,000 Japanese Americans, 70,000 of whom were born in the United States. But as the story of *Regan v. King* underscores, even in this context, no one seriously questioned that Japanese Americans born on United States soil enjoyed birthright citizenship. Amicus submits this brief to tell the story of *Regan v. King* because its historical context and result shed light on the important stakes and potential implications of the case at bar.

ARGUMENT

I. DURING WORLD WAR II, EVEN IN THE CONTEXT OF RACIALLY RESTRICTIVE NATURALIZATION LAWS PROHIBITING ASIAN IMMIGRANTS FROM BECOMING CITIZENS AND THE MASS INCARCERATION OF 120,000 PERSONS OF JAPANESE ANCESTRY WITHOUT TRIAL, SENIOR GOVERNMENT OFFICIALS AND THE COURTS DID NOT QUESTION THE BIRTHRIGHT CITIZENSHIP OF JAPANESE AMERICANS.

A. Until 1952, Asian immigrants could not naturalize.

In 1941, when the United States entered World War II, federal law prohibited Asian immigrants from naturalizing and becoming citizens. Specifically, the United States Code provided, “The right to become a

naturalized citizen . . . shall extend only to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western hemisphere.” Nationality Act of 1940, 8 U.S.C. § 703, ch. 876, title I, subch. III, § 303, 54 Stat. 1140, 1140. This followed from the first Naturalization Act, which limited naturalization to “free white person[s].” Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103, 103. Following ratification of the Reconstruction Amendments, Congress amended the Act to permit “aliens of African nativity” and “persons of African descent” to become citizens. Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254, 256.

In *Ozawa v. United States*, 260 U.S. 178 (1922), this Court held that Takao Ozawa, a Japanese immigrant who had been born in Japan but subsequently lived and worked in the United States for two decades, was “ineligible for citizenship.” *Id.* at 198. This Court reasoned that when Congress used the term “white person” in the Nationality Act, it meant “Caucasian.” *Id.* One year later, in *Thind v. United States*, 261 U.S. 214 (1923), a case involving Bhagat Singh Thind, who had been born in India and immigrated to the United States, this Court further limited the category of immigrants eligible for naturalization beyond those who could claim to be “Caucasian” instead to persons who would be considered “white” in the eyes of the “common man.” *Id.* at 214-215.

The *Ozawa* and *Thind* decisions along with other decisions of this Court made clear that the waves of Asian immigrants who had come to the United States in the late nineteenth and early twentieth century could not pursue citizenship. See generally Ian Haney López, *White By Law: The Legal Construction of Race* (2006) (detailing caselaw). Meanwhile, in the

Immigration Act of 1924, federal law effectively banned immigration by Asians when it prohibited immigration by “aliens ineligible for citizenship.” Pub. L. No. 68-139, 43 Stat. 153, 159 (1924).²

With rare exceptions, it was not until the Immigration and Nationality Act of 1952 that Asian immigrants could apply for citizenship. See Pub. L. No. 82-414, 66 Stat. 163 (1952).³

B. During World War II, the United States government incarcerated without trial over 120,000 Japanese Americans based on their Japanese ancestry.

Following the attack on Pearl Harbor on December 7, 1941, Congress declared war on Japan the next day and Germany three days later. See Act of Dec. 8, 1941, Pub. L. No. 77-328, 55 Stat. 795 (1941); Act of Dec. 11, 1941, Pub. L. No. 77-331, 55 Stat. 796 (1941). A little over two months later, on February 19, 1942, President Roosevelt issued Executive Order Number (EO) 9066 authorizing the Secretary of War to designate military zones “from which any or all persons may be excluded” and to regulate the terms on which persons could enter, remain in, or be compelled to leave such areas. 3 C.F.R. 1092 (1942) (repealed 1976). In EO 9066, the President further empowered the Secretary to take necessary steps to enforce compliance with military

² The United States did not restrict immigration under federal law until 1875, see Page Act of 1875, ch. 141, 18 Stat. 477, maintaining an open-door policy to immigrants before that time.

³ See, e.g., Nye-Lea Act (Alien Veteran Naturalization Act), Pub. L. No. 74-162, 49 Stat. 397 (1935) (permitting naturalization by World War I veterans); Magnuson Act of 1943, Pub. L. No. 78-199, 57 Stat. 600 (permitting 105 visas for Chinese immigrants each year going forward).

orders and “to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary. . . .” *Id.*⁴

Pursuant to EO 9066, Commanding General of the Western Defense Command John L. DeWitt issued a series of orders designating military zones throughout the western United States and subjecting all alien enemies and “all persons of Japanese ancestry” residing in such zones to, among other things, registration requirements, curfew orders, exclusion orders, and prohibitions on travel. Starting in April, General DeWitt ordered that all such persons report to “Assembly Centers” and from there, to ten “War Relocation Centers” spread throughout the western states.⁵ As a result, over the course of the war, the United States Government incarcerated over 120,000 persons of Japanese ancestry in the ten camps for an average term of 900 days based on nothing more than their ancestry. This number included over 70,000 Japanese Americans born on United States soil. See Amanda L. Tyler, *Habeas Corpus in Wartime: From the Tower of London to Guantanamo Bay* 211-212, 222-228 (2017) (detailing events). Studying this episode four

⁴ The President later established the War Relocation Authority to oversee the incarceration camps, see Executive Order No. 9102, 3 C.F.R. 1123 (1942), and Congress enacted Public Law 503, making it a criminal offense to violate military orders issued under 9066, see Act of Mar. 21, 1942, Pub. L. No. 77-503, 56 Stat. 173, 173 (repealed 1976).

⁵ See, e.g., Public Proclamation No. 3, 7 Fed. Reg. 2543 (March 24, 1942); Public Proclamation No. 4, 7 Fed. Reg. 2601 (March 27, 1942); Public Proclamation No. 8, 7 Fed. Reg. 8346 (June 27, 1942); see also Civilian Restrictive Order 1, 8 Fed. Reg. 982 (May 19, 1942). For additional details, see *Ex parte Endo*, 323 U.S. 283, 289 (1944).

decades later, a Commission appointed by Congress concluded that it was the product of “race prejudice, war hysteria, and a failure of political leadership.” Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied, Part 2: Recommendations* 5 (1983).

C. Even against this backdrop, it was presumed that Japanese Americans born on United States soil enjoyed birthright citizenship.

Even in the face of racially-restrictive naturalization laws and the constitutional stain of the mass incarceration of Japanese Americans during World War II, in conformity with this Court’s decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), it was essentially taken for granted that children born on United States soil—even to immigrants ineligible for naturalization—were United States citizens under the Fourteenth Amendment’s Citizenship Clause. See U.S. Const. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”).

In *Wong Kim Ark*, this Court held, in keeping with what it described as “the law of England for the last three centuries,” that the Fourteenth Amendment, “in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States.” 169 U.S. at 658, 693. Thus, the Court explained, “Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and

consequently subject to the jurisdiction, of the United States.” *Id.*⁶

Applying this standard, the Court held that Wong Kim Ark was a citizen by reason of having been born in San Francisco in 1873 to Chinese immigrant parents, even though they could not naturalize under federal law and were, to borrow from Justice Gray’s majority opinion, “subjects of the Emperor of China” who had subsequently returned to China. *Id.* at 652.

Consistent with *Wong Kim Ark*, during World War II, senior government officials and the courts did not question the birthright citizenship of Japanese Americans born on United States soil. For example, in January 1942, Attorney General Francis Biddle told Congress that “unless the writ of habeas corpus is suspended, I do not know any way in which Japanese born in this country, and therefore American citizens, could be interned.” Letter from Attorney Gen. Francis Biddle to Representative Leland Merritt Ford (Jan. 24, 1942), in *Documents of the Commission on Wartime Relocation and Internment of Civilians* 5739, 5740, reel 5, 417-418 (Frederick, MD, University Publications of America 1983).⁷ Biddle also noted “the legal difficulties presently involved in attempting to intern or evacuate the thousands of American born persons of Japanese race, who are, of course, American citizens.” Letter

⁶ See also *id.* (“His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory.”).

⁷ Biddle was responding to Representative Leland M. Ford’s statement that “all Japanese, whether citizens or not, be placed in inland concentration camps.” Letter from Representative Leland Ford to Attorney Gen. Francis Biddle (Jan. 23, 1942) (on file with Bancroft Library, University of California, Berkeley, Japanese Evacuation and Relocation Study Papers, reel 1).

from Attorney Gen. Francis Biddle to Representative Leland Merritt Ford (Jan. 27, 1942) (on file with Bancroft Library, University of California, Berkeley, Japanese Evacuation and Relocation Study Papers, reel 1). Days later, the Attorney General also informed the President of his view that “American born Japanese, being citizens, cannot be apprehended or treated like alien enemies.” Memorandum from Attorney Gen. Francis Biddle to President Franklin Delano Roosevelt (Jan. 30, 1942) (on file with Bancroft Library, University of California, Berkeley, Japanese Evacuation and Relocation Study Papers, reel 1).

Early on, Secretary of War Henry L. Stimson also saw constitutional problems with the proposed detention of Japanese Americans, writing in his diary on February 3, 1942: “We cannot discriminate among our citizens on the ground of racial origin.” Notably, in so doing, he confirmed his view that Japanese Americans born on United States soil were citizens. Henry L. Stimson, Diary (Feb. 3, 1942) (on file with Henry L. Stimson Papers, Yale University Library, reel 7); see also *id.* at 102 (Feb. 10, 1942) (writing that discrimination against Japanese American citizens “will make a tremendous hole in our constitutional system”).⁸ The following year, in the process of reopening the United States military to Japanese American citizen soldiers, President Roosevelt also publicly affirmed his view that Japanese Americans born in the United States enjoyed birthright

⁸ Notwithstanding these early statements by Stimson and Biddle, the War and Justice Departments ultimately presided over and then defended the removal and mass incarceration of Japanese Americans. For details, see Tyler, *supra*, at 222-240.

citizenship, and the War Department's official position followed suit. See *infra* Part II.

Even those government officials who pushed the most aggressively for removal and incarceration during this period recognized the citizenship status of Japanese Americans born on United States soil. This group includes General DeWitt, who stated weeks after the attack on Pearl Harbor with respect to Japanese Americans born in the United States, "An American citizen, after all, is an American citizen."⁹ The group also includes Utah Governor Herbert Maw, who complained at a governors' meeting in early April that "the Army and the WRA were much too concerned about the constitutional rights of Japanese-American citizens." Report on meeting with Governors and other officials regarding relocation of Japanese, Salt Lake City, Utah (Apr. 7, 1942) (on file with National Archives, Washington, D.C., at 19, RG 220, pp. 4188-4216). Indeed, for this reason, Governor Maw suggested, "the constitution" should perhaps "be changed." *Id.*

Further, during the War, even as this Court handed down multiple decisions upholding General DeWitt's orders, it likewise recognized that Japanese Americans born in the United States were citizens. See, *e.g.*, *Korematsu v. United States*, 323 U.S. 214, 219-220 (1944) ("Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when . . . our shores

⁹ Peter Irons, *Justice at War: The Story of the Japanese American Internment Cases* 30 (1983) (quoting Transcript of Telephone Conversation, Commanding Gen. of the Western Defense Command John L. DeWitt and Provost Marshal Gen. of the U.S. Army Major Gen. Allen W. Gullion (Dec. 26, 1941) (internal quotation marks omitted)).

are threatened by hostile forces, the power to protect [must prevail].”¹⁰; Ex parte *Endo*, 323 U.S. 283, 284 (1944) (recognizing that Mitsuye Endo, who was born in Sacramento, California, to Japanese immigrant parents “is an American citizen of Japanese ancestry”).

* * *

Nonetheless, during the War, a California lawsuit funded by an exclusionist organization aimed to secure the overruling of this Court’s decision in *Wong Kim Ark* and in so doing strip the birthright citizenship of Japanese Americans. The effort failed.

II. DURING WORLD WAR II, THE FEDERAL COURTS—INCLUDING THIS COURT—REJECTED ATTEMPTS TO OVERRULE UNITED STATES V. WONG KIM ARK AND STRIP NATURAL-BORN JAPANESE AMERICANS OF THEIR BIRTHRIGHT CITIZENSHIP.

This is not the first time this Court has been invited to revisit its landmark decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). During World War II, it had the opportunity to do so when it faced a challenge to the citizenship of Japanese Americans born on United States soil. The Court declined to grant review in that case, *Regan v. King*, leaving in place lower court decisions that upheld birthright citizenship for Japanese Americans and rejected the attack at every turn. See 134 F.2d 413 (9th Cir. 1943), *cert. denied*, 319 U.S. 753 (1943).

Founded in 1875, the Native Sons of the Golden West adopted a constitution setting forth the organization’s

¹⁰ This Court has declared the broader holding in *Korematsu* was “gravely wrong.” *Trump v. Hawaii*, 585 U.S. 667, 719 (2018).

objectives as promoting an interest in California history and supporting the “upbuilding of the State of California.” Constitution and Laws of the Grand Parlor of the Native Sons of the Golden West, art. I, § 2, at 7 (1901). Today, the organization carries out its mission of preserving the history of the State of California in various ways, including managing important California historical sites.

In 1920, the Native Sons pursued different objectives. That year, the organization’s Grand President, William P. Caubu, asserted that “California was given by God to a white people, and with God’s strength we want to keep it as He gave it to us.” Roger Daniels, *The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion* 79 (1962) (quoting Caubu); Ryan Fonseca, *This Fraternal Order Made California’s Flag Official. How will they face their racist Past?*, L.A. Times, July 5, 2024. In keeping with this idea, the organization openly advocated against immigration by Asians and Mexicans to the United States. Later, in the lead up to World War II, the Native Sons aggressively supported the removal, exclusion, and detention policies that the United States military implemented under EO 9066. See Peter T. Conmy, *The History of California’s Japanese Problem and the Part Played by the Native Sons of the Golden West in its Solution* (July 1, 1943) (on file with the University of California, Berkeley f F870.J3C6).

In the spring of 1942, as General DeWitt was implementing orders compelling the mass removal and incarceration of the Japanese American population

on the West Coast,¹¹ the Native Sons voted to go further. Specifically, at their annual “Grand Parlor” in May 1942, the group endorsed the following strategy:

[F]irst to prosecute, then to carry through to the Supreme Court of the United States, if necessary, a suit challenging the United States citizenship of the Japanese; and second to draft and sponsor an amendment to the Constitution of the United States which shall have for its object the exclusion of all persons of Japanese ancestry from American citizenship.

Native Sons Will Challenge Citizenship of Japanese, L.A. Times, May 22, 1942, at 8; see also Greg Robinson, *The Great Unknown: Japanese American Sketches* 161 (2016).

Thereafter, on May 7, 1942, with financial backing from the Native Sons, the organization’s Grand Secretary John T. Regan filed a lawsuit in the United States District Court for the Northern District of California against San Francisco’s voting registrar, Cameron King. See Greg Robinson, with Frank H. Wu, *In Defense of Birthright Citizenship: The JACL, the NAACP, and Regan v. King*, AABANY L. Rev. 1, 13 & n.64 (2014). Ostensibly the suit sought to strike some 2,600 Japanese Americans born in the United States from the San Francisco voting rolls. But Regan’s complaint broadly sought an order directing King “to strike the names of all Japanese from the register of voters on the ground that they are enemy aliens,

¹¹ General DeWitt ordered the removal of Japanese Americans living in San Francisco beginning in late April 1942. By May 20, 1942, the military effectively had cleared the city of San Francisco of Japanese Americans. See *S.F. Clear of All But 6 Sick Japs*, S.F. Chronicle, May 21, 1942, at 1.

citizens of Japan, and therefore ineligible to citizenship and the right to vote.” *Regan v. King*, 49 F. Supp. 222, 223 (N.D. Cal. 1942) (quoting complaint).

The Native Sons were represented by former California Attorney General Ulysses S. Webb, who had served ten terms in the role and been succeeded in 1938 by Earl Warren. From the outset of the litigation, Webb made clear that the lawsuit sought to overturn this Court’s 1898 birthright citizenship decision in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

At a hearing in the district court before Judge Adolphus F. St. Sure, Webb argued that *Wong Kim Ark* was “one of the most injurious and unfortunate decisions ever rendered by th[is] Court.” Transcript of Record at 34, *Regan v. King*, 49 F. Supp. 222 (N.D. Cal. 1942) (No. 22178-S); see also *Japanese Citizens Win a Court Fight*, N.Y. Times, July 3, 1942, at 7. Webb also stated that he hoped the Native Sons’ lawsuit would prove “an opportunity to” the Supreme Court to “correct itself” with respect to its *Wong Kim Ark* decision. Tr. of Rec. at 34; see also *Asks U.S. Japanese Lose Citizenship: Suit by Native Sons of Golden West Seeks to Disenfranchise American Born*, N.Y. Times, June 26, 1942, at 6.

Continuing, Webb told the court that the Native Sons’ lawsuit transcended persons born to Japanese nationals on United States soil. Instead, Webb stated, the case involved “the right of citizenship of all peoples and all races who do not fall under the characterization or description of white people.” Tr. of Rec. at 23. Referring to the debates preceding ratification of the Fourteenth Amendment, Webb posited that the “chief purpose” of that Amendment was “to citizenize and then to enfranchise the Negro.” *Id.* Webb then made clear: “Our contention is that that provision of the

Constitution citizenizes all persons born in the United States of parents who were eligible to citizenship.” *Id.* at 27.¹² It followed, on his view, that persons of Japanese ancestry born on United States soil whose lineage traced to persons ineligible to naturalize were not themselves citizens under the Fourteenth Amendment.

In support of the argument, Webb launched into a lengthy speech in which he asserted “[t]his country . . . was settled by the white race”; he proceeded to list a number of key Founding-era moments when, he maintained, only whites were present¹³; and he contended with respect to “We, the People” for whom the Constitution was ratified, “those words comprehended the white people.” *Id.* at 30. Turning eventually to *Wong Kim Ark*, Webb described the holding in this way: “that somewhere, somehow the United States adopted th[e] common law of England, that it came across the sea and crept its way into the Constitution of the United States, and we were bound and chained by the common law of England.” *Id.* at 33. He closed by urging the district court to join camp with the dissenters in *Wong Kim Ark*.

Within days of the arguments, Judge St. Sure dismissed the action in July 1942 before subsequently

¹² This meant, Webb elaborated, that the Amendment’s Citizenship Clause “excludes the Hindus, the Chinese, the Japanese, the Hottentots, and the inhabitants of the islands of the Pacific.” *Id.*

¹³ For example, Webb asserted, “the War of Revolution was fought by white people, and won by white people, except in so far as the Indians participated in one side or the other.” *Tr. of Rec.* at 28. But see National Park Service, *African Americans in the Revolutionary War*, <https://www.nps.gov/chyo/learn/historyculture/african-americans-in-the-revolutionary-war.htm> (last visited Feb. 23, 2026).

granting judgment for Registrar King. See *Regan v. King*, 49 F. Supp. 222 (N.D. Cal. 1942).¹⁴ His brief dismissal order pointed to the binding precedent of *Wong Kim Ark* while also emphasizing that the decision had been reaffirmed more than once by this Court, including in a case involving an individual born on United States soil to Japanese immigrant parents, *Morrison v. California*, 291 U.S. 82 (1934). In that case, Judge St. Sure noted, Justice Cardozo authored an opinion declaring, “A person of the Japanese race is a citizen of the United States if he was born in the United States.” *Regan*, 49 F. Supp. at 223 (citing *Morrison*, 291 U.S. at 85). Judge St. Sure also relied on *Perkins v. Elg*, 307 U.S. 325 (1939), in which this Court upheld the citizenship status of an individual born on United States soil to alien parents, notwithstanding the fact that the parents had returned to their native country with her when she was a young child. See *id.*

In September 1942, the Native Sons appealed the loss in the district court to the United States Court of Appeals for the Ninth Circuit. In briefing the case, Webb pushed the same arguments he had below, while expanding the reach of certain nativist angles. For example, Webb’s brief asserted, “Because of racial characteristics of the Japanese, assimilation with Caucasians is as impossible as it is undesirable.” Appellant’s Brief at 42, *Regan v. King*, 134 F.2d 413

¹⁴ Judge St. Sure would go on two months later to convict Fred Korematsu of violating General DeWitt’s exclusion orders. He sentenced Korematsu to five years of probation, after which this Court affirmed the conviction. See *Korematsu v. United States*, 140 F.2d 289 (9th Cir. 1943) (detailing proceedings), *aff’d*, 323 U.S. 214 (1944). This Court more recently declared *Korematsu* has been overruled by the “court of history.” *Trump v. Hawaii*, 585 U.S. 667, 719 (2018).

(9th Cir. 1943) (No. 10299). The brief also claimed that “[d]ishonesty, deceit, and hypocrisy are racial characteristics” associated with persons of Japanese ancestry. *Id.* at 42-43. Ultimately, the brief reduced its argument to the following: “A Japanese born in the United States is still a Japanese.” *Id.* at 43.¹⁵

Exclusionist organizations like the Native Sons made this argument regularly in the decades before the war, sometimes pointing to the fact that until 1924, Japan treated all persons born to Japanese nationals anywhere in the world as Japanese citizens under the doctrine of *jus sanguinis*. This—or so the argument often went—meant that such persons were not fully “subject to the jurisdiction” of the United States under the Fourteenth Amendment because they owed their loyalty to another sovereign. See Tom Stewart, *Does the Constitution Make Citizens of Children Born of Japs?*, *The Grizzly Bear*, Apr. 1942, at 3¹⁶; see also George Miller, *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians* 39 (1992).¹⁷

¹⁵ In 1943, General DeWitt would make a similar statement to Congress. See Testimony of John L. DeWitt, Apr. 13, 1943, before the House Naval Affairs Subcommittee to Investigate Congested Areas, Part 3, 739-740 (78th Cong., 1st Sess.) (“It makes no difference whether he is an American citizen, he is still a Japanese.”), cited in *Korematsu v. United States*, 323 U.S. 214, 218 (1944) (Murphy, J., dissenting).

¹⁶ *The Grizzly Bear* was the publication of the Native Sons.

¹⁷ Other countries, including Italy, followed the same rule during World War II. See Maurice Alexandre, *Wartime Control of Japanese-Americans*, 28 *Corn. L.Q.* 385, 447-448 (1943). Domestically, federal law has treated children born abroad to United States citizen-parents as citizens in a range of cases since

At the Ninth Circuit, Registrar King added amicus support from the Japanese American Citizens League (JACL),¹⁸ which filed a brief authored by American Civil Liberties Union lawyer A. L. Wirin, prominent African American Los Angeles attorney Hugh E. Macbeth, and NAACP lawyer Thomas L. Griffith, Jr. Also listed as counsel on the brief were past and current JACL Presidents Walter T. Tsukamoto and Saburo Kido, even though Wirin had informed the court in an earlier filing that the two lawyers faced enormous challenges working on the brief because they were incarcerated at “Relocation Centers” without any access to law libraries. (At the time, the government detained Tsukamoto at Tule Lake Camp near the California-Oregon border and Kido at Poston Camp in Arizona.)

The JACL’s brief relied heavily on *Wong Kim Ark*’s holding that the Fourteenth Amendment’s Citizenship Clause incorporates the common law doctrine of *jus soli*. The JACL also underscored the reach of the position being advanced by the Native Sons as well as the impact it would have in terms of calling into question the citizenship of a massive number of persons who had been born on United States soil to parents who were ineligible for citizenship. Finally, the JACL brief openly feared that if successful in the instant case, in short order the Native Sons would campaign to deprive Black Americans of citizenship.

1790. See Paul Clement & Neal Katyal, *On the Meaning of “Natural Born Citizen”*, 128 Harv. L. Rev. F. 161 (2015).

¹⁸ For more details on the JACL’s involvement in *Regan v. King*, see Robinson, with Wu, *supra*, at 29-33; see also Rachel E. Rosenbloom, *Litigating Birthright Citizenship in the Shadow of World War II: The Continuing Relevance of a Forgotten Case*, 31 Mich. J. Race & L. 1 (2026) (detailing the case).

See Brief for Japanese American Citizens League as Amicus Curiae Supporting the Appellee at 47, *Regan v. King*, 134 F.2d 413 (9th Cir. 1943) (No. 10299).¹⁹

The *en banc* Ninth Circuit scheduled the *Regan v. King* oral argument for February 19, 1943, a day on which the court had other considerable pressing business. That is because on the same calendar day, the judges of that court sat *en banc* to hear arguments in three other cases involving the civil rights of Japanese American citizens, all of which the court would later certify to this Court for review. See *United States v. Hirabayashi*, 230 U.S. 81 (1943) (affirming Gordon Hirabayashi's conviction for violating General DeWitt's registration and curfew orders); *United States v. Yasui*, 320 U.S. 115 (1943) (affirming Minoru Yasui's conviction for violating curfew order); *United States v. Korematsu*, 323 U.S. 214 (1944) (affirming Fred Korematsu's conviction for violating exclusion order); see also "*Jap Day*" in *Court: Seven Judges to Sit In on Three Exclusion Cases*, S.F. Chronicle, Feb. 19, 1943, at 13 (detailing the arguments).²⁰ When the dust settled, the *Regan* case was the only one of the four cases argued that day in which Japanese American interests prevailed.

This is because Ninth Circuit judges viewed *Regan v. King* as an easy case. After Webb presented his oral argument, the *en banc* panel declined even to hear

¹⁹ The JAACL brief noted that an exclusionist organization with which the Native Sons were affiliated had offered testimony in February 1942 to the House of Representatives' Tolan Committee stating that granting citizenship to Black Americans after the Civil War was a "grave mistake." *Id.* (citing testimony).

²⁰ Subsequently, on remand from this Court, the Ninth Circuit affirmed Fred Korematsu's conviction before his case returned to this Court. See 140 F.2d 289 (9th Cir. 1943).

from Registrar King's attorney or supporting amicus groups. Instead, after a few moments of hushed discussion among the judges, Judge Curtis Wilbur spoke for the bench and announced, "It is not necessary for the court to hear further argument. The decision of the lower court is sustained." *U.S. Japanese Must be Allowed to Vote*, S.F. Chronicle, Feb. 21, 1943, at 59 (quoting Judge Wilbur); see also *Upholds Japanese in Citizens' Right: Federal Court in California Refuses to Deprive 70,000 Evacuees of Status*, N.Y. Times, Feb. 21, 1943, at 23.²¹

The panel issued a one-paragraph *per curiam* order affirming the district court the next day. See *Regan v. King*, 134 F.2d 413 (9th Cir. 1943). In total, the order read:

On the authority of the Fourteenth Amendment to the Constitution, Sec. 1, making all persons born in the United States citizens thereof, as interpreted by the Supreme Court of the United States in *United States v. Wong Kim Ark*, 169 U.S. 649, and a long line of decisions, including the recent decision in *Perkins, Secretary of Labor et al. v. Elg*, 307 U.S. 325, the judgment of dismissal, 49 F. Supp. 222, is affirmed.

Having lost in the Ninth Circuit, the Native Sons responded in three ways.

First, undaunted by the results in the district court and Ninth Circuit, the Native Sons made a last-ditch

²¹ Among other things, before becoming a federal judge, Judge Wilbur served as Secretary of the Navy from 1924-1929. See United States Naval Academy Notable Graduates, Curtis Dwight Wilbur, <https://www.usna.edu/Notables/cabinet-members/1888wilbur.php> (last visited Feb. 23, 2026).

effort in their litigation campaign, filing a petition for review in this Court of the Ninth Circuit's decision in *Regan v. King*. This Court declined to review the case without comment on May 17, 1943, bringing the *Regan v. King* litigation to an end. See 134 F.2d 413 (9th Cir. 1943), *cert. denied*, 319 U.S. 753 (1943).

Second, the organization took aim at a new target—specifically, President Franklin D. Roosevelt's February 1943 decision to open the United States military to Japanese American citizens who volunteered for military service. See Letter from Franklin D. Roosevelt to Secretary of War Henry L. Stimson (Feb. 1, 1943) (on file with University of Hawaii, 442nd Veterans Club Collection, RG 107, Box 57, Folder 3).²² Led by Regan, the Native Sons' Board of Directors reaffirmed its position that “[p]ersons of Japanese ancestry born in the United States are subjects of and owe allegiance to the Emperor of Japan and cannot therefore become loyal citizens of the United States.”²³ The Board next

²² The President accompanied the decision with a speech in which he declared, “The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart. Americanism is not, and never was, a matter of race or ancestry.” Franklin D. Roosevelt, Division of Public Inquiries, Office of War Information, *Americanism is not, and never was, a matter of race or ancestry* (Feb. 3, 1943) (on file with Washington State University Libraries' Manuscripts, Archives, and Special Collections, sc005f43-212). This Court echoed the President's statement in *Ex parte Endo*, 323 U.S. 283 (1944); see *id.* at 302 (“Loyalty is a matter of the heart and mind, not of race, creed, or color.”).

²³ After 1924, Japanese law ceased automatically to recognize persons born to Japanese nationals abroad as Japanese citizens. Further, by the time of World War II, the majority of Japanese Americans born in the United States held United States citizenship exclusively. See Densho Encyclopedia, *Dual Citizenship*, https://encyclopedia.densho.org/Dual_citizenship/ (last visited Feb. 23, 2026).

resolved, “Their presence in the United States has been recognized by the President of the United States as a possible menace to the efforts of the United States in the present war.” Finally, the Board declared, “Their membership in the armed forces of the United States would be extremely dangerous to the United States and would subject the members of the armed forces of the United States to treachery at the hands of our common enemy.” Native Sons of the Golden West, Grand Parlor, Office of the Grand Secretary, Resolution (Mar. 5, 1943).

Of course, as any armchair historian of World War II knows, the Japanese American community answered President Roosevelt’s call to serve with patriotism and heroism that is the stuff of legend. Over 33,000 Japanese American soldiers served during the war including those who volunteered in direct response to the President’s call to make up the 442nd Regimental Combat Team and its 100th Infantry Battalion. Once ready, the military deployed these soldiers to the most dangerous assignments in Italy and France, where they took on staggering casualties, living up to their creed “Go for Broke!” In one of their most dramatic rescues, the 442nd and 100th saved the “Lost Battalion” of the Texas National Guard in the Vosges Mountains in France, in the process losing as many soldiers as they saved. After the war, the 442nd and 100th emerged as the most decorated units in American military history, earning literally thousands of bronze stars and purple hearts, among countless other commendations. See generally Daniel James Brown, *Facing the Mountain: A True Story of Japanese American Heroes in World War II* (2021).

In this context as well, even as the United States government continued to incarcerate tens of thousands

of Japanese Americans solely based on their ancestry, government officials continued to reaffirm the birthright citizenship of Japanese Americans by specifically recognizing Japanese American soldiers as citizens. President Roosevelt, for one, proclaimed that “[t]he proposal of the War Department to organize a combat team consisting of loyal American citizens of Japanese descent has my full approval.” Letter from Franklin D. Roosevelt to Secretary of War Henry L. Stimson (Feb. 1, 1943). And under the leadership of Secretary Henry L. Stimson, the War Department invited “[l]oyal Americans of Japanese ancestry” to “compose a special unit in the United States Army.” To be clear, the War Department defined these Americans as “American citizens of Japanese ancestry.” Office of War, Information Digest No. 652 at 1 (Jan. 28, 1943).

Third, when the *Regan v. King* litigation failed, as did their attempts to preclude the service of Japanese American soldiers, the Native Sons turned to drafting a resolution aimed at altering the Citizenship Clause of the Fourteenth Amendment. The proposed constitutional amendment read, “All persons born *of citizens* or naturalized in the United States and subjected to the jurisdiction thereof, are citizens of the United States and of the states in which they reside.” *Jap Citizenship Ban Demanded*, Oakland Tribune, May 18, 1943, at 5; see also Robinson, with Wu, *supra*, at 38 (detailing events). The Native Sons’ proposed amendment, of course, never achieved ratification.

**III. HAD THE NATIVE SONS PREVAILED IN
REGAN V. KING, GENERATIONS OF
INDIVIDUALS WOULD HAVE LOST
THEIR CITIZENSHIP, BUT THEY DID
NOT BECAUSE NO ONE SERIOUSLY DIS-
PUTED THE BIRTHRIGHT CITIZENSHIP
OF JAPANESE AMERICANS BORN ON
UNITED STATES SOIL.**

Had the Native Sons prevailed in *Regan v. King*, the outcome would have stripped citizenship from tens of thousands of Japanese Americans born on United States soil who could trace their lineage to ancestors who had immigrated from Japan. This is because the Native Sons' core contention was that from the time of its ratification, the Fourteenth Amendment did not recognize such individuals as citizens.

The affected group would have included the most decorated soldiers in United States military history, the members of the 442nd and 100th. It also would have included, to name but a few, Gordon Hirabayashi, Fred Korematsu, and Minoru Yasui, all future recipients of the Presidential Medal of Freedom; Tommy Kono, the future two-time United States Olympic gold medalist in weightlifting; Ruth Asawa, the celebrated artist whose work recently formed the basis of a retrospective at the Museum of Modern Art in New York; George Ariyoshi, who would go on to become the first Asian American Governor of a State, Hawai'i; Norman Mineta, who would later serve as Secretary of Commerce under President Bill Clinton and Secretary of Transportation under President George W. Bush; scientist Harvey Itano, whose cutting-edge discoveries with respect to sickle cell disease and other research helped lay the foundation for modern hematopathology; and Mitsuye Endo, who sacrificed her freedom

during World War II and remained in the camps in order to keep her habeas case alive that directly challenged the constitutionality of the mass incarceration of Japanese Americans.

Had the Native Sons prevailed, the result also would have retroactively stripped citizenship and all its privileges from countless more individuals born in the United States who traced their lineage to immigrants who were not permitted to naturalize in their lifetimes. Recall, in the 1940s, the United States Code limited naturalization opportunities from a wide swath of immigrants, providing that “[t]he right to become a naturalized citizen . . . shall extend only to white persons, persons of African nativity or descent, and descendants of races indigenous to the Western hemisphere.” Nationality Act of 1940, 8 U.S.C. § 703, ch. 876, title I, subch. III, § 303, 54 Stat. 1140, 1140.

But even in the face of racially restrictive naturalization policies and against the backdrop of the constitutional stain of the mass incarceration of Japanese Americans, during this period no one seriously disputed the birthright citizenship of Japanese Americans born on United States soil, including members of this Court.

Today, as this Court faces a new challenge to birthright citizenship, there are generations of individuals who have been born on United States soil who can trace their lineage to ancestors who were ineligible for naturalization. As this Court is asked once again to interpret the Fourteenth Amendment’s Citizenship Clause, the rights and privileges of these individuals hang in the balance, underscoring the important reliance interests in adhering in full to this Court’s holding in *Wong Kim Ark*.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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