

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 to the United States Court of
Appeals for the First Circuit

**BRIEF OF *AMICI CURIAE* NATIONAL ASIAN
PACIFIC AMERICAN BAR ASSOCIATION, ET
AL. IN SUPPORT OF RESPONDENTS**

WENDY M. FENG
Counsel of Record
SEYFARTH SHAW LLP
999 Third Avenue, Suite 4700
Seattle, Washington 98104
Telephone: (206) 946-4910
wfeng@seyfarth.com

LORI CHEN
OWEN R. WOLFE
ANDREW R. ESCOBAR
SEYFARTH SHAW LLP

RAHAT N. BABAR
EDGAR CHEN*
CHRIS M. KWOK*
NATIONAL ASIAN PACIFIC
AMERICAN BAR ASSOCIATION

**Not admitted before this Court*

Attorneys for Amici Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
IDENTITY AND INTERESTS OF <i>AMICI CURIAE</i>	1
LIST OF <i>AMICI CURIAE</i>	3
SUMMARY OF ARGUMENT	7
ARGUMENT	9
I. THE HISTORICAL CONTEXT UNDERLYING <i>WONG KIM ARK</i> REFUTES PETITIONERS' ARGUMENTS	9
A. Chinese Migrants Arrived in the United States Before the Civil War	9
B. The Fourteenth Amendment Was Intended to Confer Birthright Citizenship on All Children Born in the United States, Including Children of Chinese Migrants	11
C. Rising Anti-Chinese Sentiment Led to Exclusionary Laws	14
D. Chinese Migrants Faced Widespread Violence Due to the Anti-Immigrant Sentiments of the Time	18
II. AGAINST THE BACKDROP OF CHINESE EXCLUSION, THIS COURT NONETHELESS HELD THAT WONG KIM ARK WAS A U.S. CITIZEN	19

III. WONG KIM ARK'S PARENTS ARE NOT ANALOGOUS TO PRESENT-DAY IMMIGRANTS	24
CONCLUSION	33

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Chae Chan Ping v. U.S.</i> , 130 U.S. 581 (1889)	10, 28
<i>Chin Bak Kan v. United States</i> , 186 U.S. 193 (1902)	23
<i>Chy Lung v. Freeman</i> , 92 U.S. 275 (1875)	15
<i>Dep't of Homeland Sec. v. Thuraissigiam</i> , 591 U.S. 103 (2020)	28
<i>Fong Yue Ting v. United States</i> , 149 U.S. 698 (1893)	27, 28, 29
<i>Ho Ah Kow v. Nunan</i> , 12 F. Cas. 252 (C.C.D. Cal. 1879)	15
<i>Kwock Jan Fat v. White</i> , 253 U.S. 454 (1920)	29, 30
<i>Lau Ow Bew v. United States</i> , 144 U.S. 47 (1892)	29
<i>Lem Moon Sing v. United States</i> , 158 U.S. 538 (1895)	28, 29
<i>In re Look Tin Sing</i> , 21 F. 905 (1884)	22
<i>Ozawa v. United States</i> , 260 U.S. 178 (1922)	26

<i>People v. Hall</i> , 4 Cal. 399 (1854).....	18
<i>Quock Ting v. United States</i> , 140 U. S. 417 (1891)	21, 22
<i>Tape v. Hurley</i> , 66 Cal. 473, 9 P. 129 (1885)	14
<i>Thind v. United States</i> , 261 U.S. 204 (1923)	26
<i>Tuan Ahn Nguyen v. INS</i> , 533 U.S. 53 (2001)	30
<i>United States v. Wong Kim Ark</i> , 169 U.S. 649 (1898)	7, 8, 9, 11, 20, 21, 22, 23, 24, 27
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886)	15
Statutes	
8 U.S.C. § 1153.....	31
8 U.S.C. § 1401.....	22, 31
8 U.S.C. § 1427.....	25
Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58.....	17, 26
Geary Act, ch. 60, 27 Stat. 25 (1892)	17
Immigration Act of 1917, ch. 29, 39 Stat. 874..	17-18

Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103.....	24, 26
Page Act of 1875, ch. 141, 18 Stat. 477 (repealed 1974)	15, 16
Scott Act, ch. 1064, 25 Stat. 504 (1888).....	17, 28

Other Authorities

Amanda Frost, “ <i>By Accident of Birth</i> ”: <i>The Battle over Birthright Citizenship After United States v. Wong Kim Ark</i> , 32 YALE J.L. & HUMAN. 38-76 (2021)	19
Angell Treaty, China-U.S., Nov. 17, 1880, 22 Stat. 826, <i>available at</i> https://www.govinfo.gov/content/pkg/STATUTE-22/pdf/STATUTE-22-Pg826.pdf#page=1	17
Beth Lew-Williams, <i>The Chinese Must Go</i> (2021)	19
Burlingame-Seward Treaty, China-U.S., July 28, 1868, 18 Stat. 147 art. VI, <i>available at</i> https://www.loc.gov/resource/rbpe.23602400/	17, 24, 26, 30
CAL. CONST. of 1879, art. XIX.....	14
<i>Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2023 Annual Report to Congress October 1, 2022–September 30, 2023</i> , U.S. CITIZENSHIP AND IMMIGRATION SERVICES, (March 6, 2024), https://www.uscis.gov/sites/default/files/docu	

ment/reports/OLA_Signed_H-1B_- Characteristics_Congressional_Report_FY20 23.pdf	2
<i>Chinese Labor and the Iron Road</i> , NATIONAL PARK SERVICE, https://www.nps.gov/gosp/learn/historyculture/chinese-labor-and-the-iron-road.htm (last updated Apr. 29, 2025)	10
CONG. GLOBE, 39th Cong., 1st Sess. (1866)	11, 13, 14
<i>Foreign Affairs Manual</i> , U.S. DEP'T OF STATE, 9 FAM 402.10-10(A)(U) (Sept. 29, 2022)	26
<i>Green Card Processes and Procedures</i> , U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/green-card/green-card-processes-and-procedures (last updated Oct. 19, 2022)	32
<i>I am a Lawful Permanent Resident of 5 Years</i> , U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization/i-am-a-lawful-permanent-resident-of-5-years (last updated Jan. 24, 2025)	25
<i>ICE Releases 2024 SEVP Annual Report</i> , IMMIGRATION AND CUSTOMS ENFORCEMENT (June 5, 2025), https://www.ice.gov/news/releases/ice-releases-2024-sevp-annual-report	26

<i>International Travel as a Permanent Resident</i> , U.S. Citizenship and Immigration Services, https://www.uscis.gov/green-card/after-we-grant-your-green-card/international-travel-as-a-permanent-resident (last updated Sept. 12, 2025)	27
Janet Lau, <i>Stanley Hom Lau: Paper Son</i> , PRIZED WRITING, https://prizedwriting.ucdavis.edu/stanley-hom-lau-paper-son (last visited Jan. 26, 2026)	31
Jill H. Wilson, <i>Optional Practical Training (OPT) for Foreign Students in the United States</i> , CONGRESSIONAL RESEARCH SERVICE (May 30, 2025), https://www.congress.gov/crs-product/IF12631	26
Karthick Ramakrishnan et al., <i>By The Numbers: Immigration</i> , AAPI DATA (Jan. 9, 2025), https://aapidata.com/featured/by-the-numbers-immigration/	2
Kelly Wallace, <i>Forgotten Los Angeles History: The Chinese Massacre of 1871</i> , LOS ANGELES PUBLIC LIBRARY (May 19, 2017), https://www.lapl.org/collections-resources/blogs/lapl/chinese-massacre-1871	18
Kevin Waite, <i>The Bloody History of Anti-Asian Violence in the West</i> , NATIONAL GEOGRAPHIC (May 10, 2021), available at https://www.nationalgeographic.com/history/	

article/the-bloody-history-of-anti-asian-violence-in-the-west	18
Laura A. Lee, <i>History Rewritten: The Story of Quock Mui Jeung</i> , 11 ASIAN PACIFIC AMERICAN LAW JOURNAL No. 1, pg. 77 (Spring 2006)	30
<i>Rights and Responsibilities of a Green Card Holder (Permanent Resident), U.S. CITIZENSHIP AND IMMIGRATION SERVICES, https://www.uscis.gov/green-card/after-we-grant-your-green-card/rights-and-responsibilities-of-a-green-card-holder-permanent-resident (last updated Sept. 12, 2025)</i>	32
S. REP. NO. 689 (1877), <i>available at https://babel.hathitrust.org/cgi/pt?id=coo.31924073426482</i>	16
<i>Senate Roll Call Vote on the 14th Amendment, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/image/RollCall_681866_14thAmendment.htm (last visited Jan. 26, 2026)</i>	12
<i>Table 14, OFFICE OF HOMELAND SECURITY STATISTICS (Aug. 20, 2025), http://ohss.dhs.gov/topics/immigration/yearbook/2024/table14</i>	2
<i>Table 17, OFFICE OF HOMELAND SECURITY STATISTICS (Oct. 2, 2024), http://ohss.dhs.gov/topics/immigration/yearbook/2023/table17</i>	2

Tax information and responsibilities for new immigrants to the United States, INTERNAL REVENUE SERVICE, <https://www.irs.gov/individuals/international-taxpayers/tax-information-and-responsibilities-for-new-immigrants-to-the-united-states> (last updated Oct 3, 2024) 32

Tom Rea, *The Rock Springs Massacre*, WYO HISTORY (November 8, 2014), *available at* <https://www.wyohistory.org/encyclopedia/rock-springs-massacre>..... 18

Tracy Lachica Buenavista, *Deferred Action for Childhood Arrivals (DACA) and Undocumented Asian Americans and Pacific Islanders*, ASIAN AMERICAN AND PACIFIC ISLANDER RESEARCH COALITION (2014), <https://www.higheredimmigrationportal.org/wp-content/uploads/formidable/13/Buenavista-ARC-AAPI-DACA-Brief-1.pdf> 2

Who Needs to Register, SELECTIVE SERVICE SYSTEM, <https://www.sss.gov/register/who-needs-to-register/> (last visited Jan. 26, 2026) .. 32

IDENTITY AND INTERESTS OF *AMICI CURIAE*¹

The National Asian Pacific American Bar Association (NAPABA) and 48 of its affiliated bar associations respectfully submit this *amicus curiae* brief in support of Plaintiffs-Respondents’ position and affirmance of the preliminary injunction order enjoining Executive Order 14160, 90 Fed. Reg. 8449 (January 20, 2025), titled “Protecting the Meaning and Value of American Citizenship” (“EO 14160”).

The below-listed *amici curiae* are non-profit legal professional organizations representing the interests of over 80,000 Asian American, Native Hawaiian, and Pacific Islander (AANHPI) attorneys, judges, law professors, and law students. NAPABA’s mission is to raise the visibility of, and advocate for, AANHPI legal professionals and the communities they represent, including but not limited to the AANHPI affinity bar organizations submitting this brief as *amici curiae*. Since its inception in 1988, NAPABA has served as the national voice for AANHPIs in the legal profession, promoting justice, equity, and opportunity for Asian Pacific Americans.

If the injunction is vacated, EO 14160 will disproportionately harm Asian Americans, who make up a large share of the U.S. immigrant

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

population. Specifically, 65% of Asian American adults in the United States are immigrants.² Asian immigrants of all legal statuses account for a substantial percentage of our overall immigrant population. They account for more than 88% of individuals holding H-1B visas;³ a significant portion of refugees and asylees who fled persecution and pledged their allegiance to the United States;⁴ and an estimated 15% of undocumented immigrants.⁵ Finally, over 108,000 Asian Americans were eligible for protections under the Deferred Action for Childhood Arrivals (DACA) program, instituted in 2012.⁶

² Karthick Ramakrishnan et al., *By The Numbers: Immigration*, AAPI DATA (Jan. 9, 2025), <https://aapidata.com/featured/by-the-numbers-immigration/>.

³ *Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2023 Annual Report to Congress October 1, 2022–September 30, 2023*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, (March 6, 2024), https://www.uscis.gov/sites/default/files/document/reports/OLA_Signed_H-1B_-_Characteristics_Congressional_Report_FY2023.pdf.

⁴ See *Table 14*, OFFICE OF HOMELAND SECURITY STATISTICS (Aug. 20, 2025), <http://ohss.dhs.gov/topics/immigration/yearbook/2024/table14>; *Table 17*, OFFICE OF HOMELAND SECURITY STATISTICS (Oct. 2, 2024), <http://ohss.dhs.gov/topics/immigration/yearbook/2023/table17>.

⁵ *Id.*

⁶ Tracy Lachica Buenavista, *Deferred Action for Childhood Arrivals (DACA) and Undocumented Asian Americans and Pacific Islanders*, ASIAN AMERICAN AND PACIFIC ISLANDER RESEARCH COALITION (2014), <https://www.higheredimmigrationportal.org/wp-content/uploads/formidable/13/Buenavista-ARC-AAPI-DACA-Brief-1.pdf>.

Under EO 14160, children of these categories of immigrants would be excluded from citizenship, despite being born, raised, and educated in the United States, with strong familial and cultural ties to the United States, and despite knowing no other country of allegiance. Accordingly, *amici* have a strong interest in the outcome of this case. They also have an interest in educating the profession and the broader public about the legal history relating to Asian migration to the United States and how those experiences and the resulting caselaw have uniquely shaped modern-day immigration and civil rights law. *Amici* have a further interest in assisting the Court to understand this history and ensure that the promises of the Fourteenth Amendment are not unfairly denied to Asian Americans and other communities.

LIST OF *AMICI CURIAE*

Alabama Asian Bar Association

Arizona Asian American Bar Association

Asian American Bar Association of the Greater Bay Area

Asian American Bar Association of Greater Chicago

Asian American Bar Association of New York

Asian American Bar Association of Ohio

Asian American Criminal Trial Lawyers Association

Asian American Lawyers Association of
Massachusetts

Asian Bar Association of Washington

Asian Pacific American Bar Association of Central
Ohio

Asian Pacific American Bar Association of Colorado

Asian Pacific American Bar Association of Los
Angeles County

Asian Pacific American Bar Association of
Pennsylvania

Asian Pacific American Bar Association of Silicon
Valley

Asian Pacific American Bar Association of Solano
County

Asian Pacific American Bar Association of South
Florida

Asian Pacific American Bar Association of Tampa
Bay, Inc.

Asian Pacific American Women Lawyers Alliance

Asian/Pacific Bar Association of Sacramento

California Asian Pacific American Bar Association

Dallas Asian American Bar Association

Filipino American Lawyers Association of Chicago

Filipino American Lawyers Association of New York

Filipino American Lawyers of San Diego

Filipino Bar Association of Northern California

Filipino Lawyers of Washington

Georgia Asian Pacific American Bar Association

Greater Orlando Asian American Bar Association

Japanese American Bar Association

Korean American Bar Association of Northern California

Korean American Bar Association of San Diego

Korean American Bar Association of Southern California

Korean American Bar Association of Washington, DC

Minnesota Asian Pacific American Bar Association

Missouri Asian American Bar Association

National Asian Pacific American Bar Association

National Asian Pacific American Bar Association Hawaii

National Asian Pacific Islander Prosecutors Association

National Conference of Vietnamese American Attorneys

National Filipino American Lawyers Association

Oregon Asian Pacific American Bar Association

Pan Asian Lawyers of San Diego

Philippine American Bar Association

Sacramento Filipino American Lawyers Association

South Asian Bar Association - San Diego

South Asian Bar Association of New Jersey

Southern California Chinese Lawyers Association

Thai American Bar Association

Vietnamese American Bar Association of Washington

SUMMARY OF ARGUMENT

The plain text of the Fourteenth Amendment and longstanding historical precedent lead to the inevitable conclusion that EO 14160 is unconstitutional. In an attempt to justify depriving millions of Americans of birthright citizenship, Defendants-Petitioners (“Petitioners”) distort the holding of *United States v. Wong Kim Ark*, relying upon the Court’s statement that Wong Kim Ark was born to parents who “were at the time of his birth domiciled residents of the United States, having previously established and still enjoying a permanent domicile [sic] and residence therein at San Francisco.” 169 U.S. 649, 652 (1898). Based on the Court’s statement, Petitioners assert that the Supreme Court’s holding was limited “to the children of those with a ‘permanent domicil[e] and residence in the United States,’” and argue by analogy that only children of U.S. citizens or lawful permanent residents are eligible for birthright citizenship under the Fourteenth Amendment. *See* Pet. Br. at 32-37 (*quoting Wong Kim Ark*, 169 U.S. at 652-53).

Petitioners’ reliance on this ancillary factual assertion in *Wong Kim Ark* is dubious at best, and it does not support the constitutionality of EO 14160. To the contrary, *Wong Kim Ark* affirms the fundamental principle that the right to citizenship enshrined in the Fourteenth Amendment *cannot* be revoked on a whim, regardless of the popularity of anti-immigrant sentiment or the determination of the Executive Branch at any particular point in history. That holding is consistent with the plain

language of the Fourteenth Amendment. The holding is also underscored by the Congressional debates surrounding the Fourteenth Amendment's enactment, which make clear that Congress explicitly considered the children of Chinese migrants—who, at the time, were widely viewed as temporary sojourners rather than permanent residents of the United States—and intended for them to be covered by the concept of birthright citizenship enshrined in the Amendment.

Wong Kim Ark tested the strength of the Constitution at a time when strong anti-Asian immigrant sentiment resulted in a systematic effort to drive the Chinese out of the United States. As set forth below, the concept of a “permanent” domicile for Chinese migrants in the United States was illusory in the late 1800s, due to legal restrictions and heinous violence. Chinese migrants had nothing close to the legal rights or stability enjoyed by today's lawful permanent residents. They had no pathway to U.S. citizenship, only a pathway back to China or, in some cases, death.

Even within the socio-political context of that time, however, and when the “permanency” of his parents' domicile was notional at best, this Court held that *Wong Kim Ark* had a constitutional right to citizenship. The children of immigrants born in the United States today must have the same protections. Petitioners' arguments should be rejected, and the injunction should be affirmed.

ARGUMENT

I. THE HISTORICAL CONTEXT UNDERLYING *WONG KIM ARK* REFUTES PETITIONERS' ARGUMENTS.

To understand why Petitioners' arguments regarding *Wong Kim Ark* and other cases from the late 1800s and early 1900s fail, it is important to first understand the historical context leading up to those decisions. In that regard, Petitioners repeatedly invoke the notion that birthright citizenship hinges on the status of the alien parent, who, through "domicile," purportedly becomes "completely subject" to the United States' "political jurisdiction" by giving "direct and immediate allegiance to the Nation and in return claiming its protection." Pet. Br. at 2, 11, 14, 18-20. As the history demonstrates, Chinese migrants, such as Wong Kim Ark's parents, who resided in the United States during the era following the ratification of the Fourteenth Amendment and wholesale Chinese exclusion, were neither afforded protections by, nor were they considered as having given their allegiance to, the United States. Yet children born on U.S. soil to this disfavored migrant class were conferred with birthright citizenship.

A. Chinese Migrants Arrived in the United States Before the Civil War.

Chinese migrants first arrived in the United States in large numbers beginning in 1849, contributing grueling—and often deadly—labor that was integral to the expansion and prosperity of the

United States, including mining and the building of the transcontinental railway.⁷ The influx of these laborers from China, and the early immigrant communities they established, were met by strong xenophobic sentiment and racial tensions, however. In 1889, this Court recounted the prevailing hostile sentiments at the time by summarizing California politicians’ grievances about Chinese migrants:

[T]he presence of Chinese laborers had a baneful effect upon the material interests of the State, and upon public morals; that their immigration was in numbers approaching the character of an Oriental invasion, and was a menace to our civilization

Chae Chan Ping v. U.S., 130 U.S. 581, 595-96 (1889). The Court noted that politicians at the time were being asked “to take measures to prevent [the Chinese migrants] further immigration.” *Id.* Thus, as discussed below, by the time Wong Kim Ark was born in the late 1800s, the social and political sentiments were culminating in legal—and illegal—efforts to prevent people like his parents from living, working, and raising their families in American society.

⁷ See *Chinese Labor and the Iron Road*, NATIONAL PARK SERVICE, <https://www.nps.gov/gosp/learn/historyculture/chinese-labor-and-the-iron-road.htm> (last updated Apr. 29, 2025).

B. The Fourteenth Amendment Was Intended to Confer Birthright Citizenship on All Children Born in the United States, Including Children of Chinese Migrants.

The Fourteenth Amendment was ratified in 1868, nearly two decades after large numbers of Chinese migrants first began coming to the United States. While addressing the holding in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), which swept away the prospect of citizenship for anyone of African descent (whether free or enslaved), Congress did not, contrary to Petitioners’ argument (Pet. Br. at 2-3, 13-14, 23-24), intend to limit the Citizenship Clause of the Fourteenth Amendment only to the newly freed former slaves and their children. In fact, the Congressional debates surrounding the Fourteenth Amendment confirm that Congress specifically considered the application of the Citizenship Clause to the children of Chinese migrants, and intended that the Citizenship Clause would cover those children.

As this Court recounted in greater detail in *Wong Kim Ark* (see 169 U.S. at 698-99), Senator Edgar Cowan of Pennsylvania objected to the proposed text of the Citizenship Clause because it would provide for birthright citizenship to any child born in the United States.⁸ In response, Senator John Conness of California stated that “[t]he proposition before us,” *i.e.*, the Citizenship Clause, “relates simply in that respect to the children

⁸ CONG. GLOBE, 39th Cong., 1st Sess. 2890 (1866), *available at* <https://babel.hathitrust.org/cgi/pt?id=chi.11948493&seq=120>.

begotten of Chinese parents in California, and it is proposed” by the Citizenship Clause “to declare that they shall be citizens.”⁹ Senator Conness continued that the proposal before Congress was “to incorporate...in the fundamental instrument of the nation...that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States, entitled to equal civil rights with other citizens of the United States.”¹⁰ Senator Conness’ views prevailed; rather than amend the text, as Senator Cowan apparently wished, the Fourteenth Amendment, with the Citizenship Clause included, passed the Senate 33-11.¹¹

Although Petitioners take a partial quote from another portion of the Congressional debate out of context (Pet. Br. at 3, 24), that exchange actually reinforces the point that birthright citizenship was intended to cover all children born in the United States. Specifically, Senator Benjamin Wade of Ohio proposed that the Senate amend the text of the Fourteenth Amendment to omit the word “citizen,” due to uncertainty about the meaning of that term, and to instead provide for “equal rights and protection of person and property to all persons born in the United States or naturalized under the

⁹ *Id.* 2890-91.

¹⁰ *Id.*

¹¹ See *Senate Roll Call Vote on the 14th Amendment*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/image/RollCall_681866_14thAmendment.htm (last visited Jan. 26, 2026).

laws thereof.”¹² Senator Wade stated that any persons born in the United States would “[m]ost assuredly...be citizens of the United States, unless they went to another country and expatriated themselves....”¹³

At that point, Senator William Fessenden of Maine interjected with the hypothetical that Petitioners misquote in part: “[s]uppose a person is born here of parents from abroad temporarily in this country.”¹⁴ Senator Wade responded by stating that “[t]he Senator says a person may be born here and not be a citizen. I know that is so in one instance, in the case of children of foreign ministers, who reside ‘near’ the United States, in the diplomatic language.”¹⁵ In other words, Senator Wade stated that all persons born in the United States would be citizens, even if their parents were only here temporarily, unless they renounced their citizenship or fell into recognized exceptions, such as the children of diplomats, invading armies, and those born on foreign public ships.¹⁶

Far from signaling that Congress “agreed” that birthright citizenship did not apply to children born to those in the United States temporarily

¹² CONG. GLOBE, 39th Cong., 1st Sess. 2768-69 (1866), available at <https://babel.hathitrust.org/cgi/pt?id=osu.32437011560394-&seq=7>.

¹³ *Id.* 2769.

¹⁴ *Id.* (emphasis added). When misquoting this portion of the debate, Petitioners omitted the word “suppose.” See Pet. Br. 3, 24.

¹⁵ CONG. GLOBE, 39th Cong., 1st Sess. 2769 (1866), available at <https://babel.hathitrust.org/cgi/pt?id=osu.32437011560394-&seq=7>.

¹⁶ See *id.*

(*contra* Pet. Br. at 3, 24), the debates around the Fourteenth Amendment confirm that birthright citizenship would extend to the children of Chinese migrants and others widely considered to be sojourners,¹⁷ even if the parents were only in the country temporarily.

C. Rising Anti-Chinese Sentiment Led to Exclusionary Laws.

Mounting anti-Chinese sentiment in the United States in the late 1800s was accompanied by aggressive legislative efforts to exclude Chinese migrants from living and working in American society, underscoring that Chinese migrants with a purported “domicile” in the United States did not have legal status, rights, or protections.

California, where a significant portion of the Chinese immigrant community lived, systematically imposed draconian measures on persons of Chinese ancestry, including a constitutional ban on the employment of “any Chinese or Mongolian” by any California company or government agency and the exclusion of Chinese children from schools.¹⁸ Other laws that were facially neutral were ultimately

¹⁷ See, e.g., CONG. GLOBE, 39th Cong., 1st Sess. 2890, 2892 (1866), *available at* <https://babel.hathitrust.org/cgi/pt?id=chi.11948493&seq=120> (discussing children of Chinese migrants and itinerant “Gyps[ies]”).

¹⁸ See CAL. CONST. of 1879, art. XIX; *Tape v. Hurley*, 66 Cal. 473, 9 P. 129 (1885) (upholding law permitting the exclusion of a San Francisco-born child of Chinese descent from attending California public school).

found to be discriminatory in intent and application.¹⁹

Laws were also enacted seeking, either directly or indirectly, to prevent the arrival of new immigrants. For example, a California law empowered the State's Commissioner of Immigration to, at his discretion, bar the arrival of any passenger deemed to be "lunatic, idiotic, deaf, dumb, blind, crippled . . . a convicted criminal, or a lewd or debauched woman." See *Chy Lung v. Freeman*, 92 U.S. 275, 277 (1875). As exemplified in *Chy Lung v. Freeman*, in which California's Commissioner of Immigration had ordered the detention and deportation of over 20 female passengers on a vessel from China, the statute (and many other similar laws) served to bar women of Asian descent from entering the United States under the gendered pretext of immorality. See *id.* After the Supreme Court struck down the California law in 1875,²⁰ the regulation of immigration largely shifted from state to federal jurisprudence.

The Page Act of 1875 was the first federal law designed to restrict immigration into the United

¹⁹ See *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886) (finding that law requiring permits for laundries targeted Chinese businesses in application); *Ho Ah Kow v. Nunan*, 12 F. Cas. 252 (No. 6546) (C.C.D. Cal. 1879) (ordinance permitting shearing of culturally-significant braided hair worn in queues by Chinese men was intended only for Chinese men and constituted cruel and unusual punishment).

²⁰ The California statute was found to be in violation of the Constitution, as State regulation of immigration conflicted with the exclusive authority of Congress to make laws governing foreign relations and international commerce. See *Chy Lung*, 92 U.S. at 281.

States, barring “any importation . . . of women into the United States for the purposes of prostitution” and singling out those from “China, Japan, or any Oriental country.”²¹ Two years later, a Congressional Joint Committee concluded: “[t]he Chinese do not come to make their home in this country; their only purpose is to acquire what would be a competence in China and return there to enjoy it.”²² Referring to foreign-born, non-U.S. citizen migrants, the Committee stated: “[t]he Chinese do not desire to become citizens of this country, and have no knowledge or appreciation for our institutions....[I]t would be destructive to the Pacific States to put the ballot in their hands....”²³

Yet, this Chinese migrant population, widely viewed as a source of temporary labor and whose members intended to return to China, were characterized as “domiciled,” in the United States. Far from viewing Chinese migrants as having an entrenched and permanent presence, with attendant allegiance to the United States, the Joint Committee heard testimony from Frank McCoppin—the former mayor of San Francisco and, at the time, a California State Senator—that thousands of Chinese were “domiciled” in San Francisco, including Chinese women who were barred from entering into the United States by the Page Act, and individuals that McCoppin asserted were part of “the class called criminal.”²⁴ Another

²¹ Page Act of 1875, ch. 141, 18 Stat. 477 (repealed 1974).

²² S. REP. NO. 689 at VII (1877), *available at* <https://babel.hathitrust.org/cgi/pt?id=coo.31924073426482>.

²³ *Id.* at VII.

²⁴ *Id.* at 10-11.

witness before the Joint Committee, former California Attorney General Frank M. Pixley, stated that “[a]ll Chinese contemplate returning” and that “[i]f any Chinese homestead in the State of California has ever been carved out under our law I have never heard of it.”²⁵ It is clear from this Congressional testimony that the word “domicile” was simply used at the time to mean that the Chinese “lived there.”

Three years after the Joint Committee Report, the Angell Treaty of 1880 amended an earlier treaty between the United States and China (the Burlingame Treaty) to permit the United States to regulate, limit, or suspend the entrance or residence of Chinese immigrants.²⁶ This treaty was followed by the Chinese Exclusion Act of 1882 (suspending the immigration of all Chinese laborers for 10 years), the Scott Act of 1888 (providing that any Chinese laborer previously residing in the United States who had left and not returned by the effective date of the Act could not return to or remain in the United States, including those holding reentry certificates who remained overseas), and the Geary Act of 1892 (extending the 1882 Chinese Exclusion for another decade and expanding its prohibitions).²⁷ Subsequent laws, such as the Immigration Act of

²⁵ *Id.* at 16.

²⁶ Angell Treaty, China-U.S., Nov. 17, 1880, 22 Stat. 826 available at <https://www.govinfo.gov/content/pkg/STATUTE-22/pdf/STATUTE-22-Pg826.pdf#page=1>.

²⁷ See Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58; Scott Act, ch. 1064, 25 Stat. 504 (1888); Geary Act, ch. 60, 27 Stat. 25 (1892).

1917, more broadly banned immigrants from other parts of Asia.²⁸

D. Chinese Migrants Faced Widespread Violence Due to the Anti-Immigrant Sentiments of the Time.

Chinese exclusion laws were not the only obstacle facing Chinese migrants during this era. Throughout the years of Wong Kim Ark's childhood, Chinese migrants faced the threat of widespread violent attacks, expulsions, and lynchings.²⁹ Historians recount a systematic wave of anti-Chinese violence and expulsions that many would consider incomprehensible today.³⁰ In October 1871, a mob of over 500 swarmed the tiny Chinatown in Los Angeles, looting and gruesomely murdering 18 Chinese men in one of the largest lynchings in American history.³¹ Nearly 30 Chinese persons were murdered in the 1885 Rock Springs massacre in Wyoming.³² In the same year, between 150-200

²⁸ Immigration Act of 1917, ch. 29, 39 Stat. 874.

²⁹ Kevin Waite, *The Bloody History of Anti-Asian Violence in the West*, NATIONAL GEOGRAPHIC (May 10, 2021), available at <https://www.nationalgeographic.com/history/article/the-bloody-history-of-anti-asian-violence-in-the-west>.

³⁰ Laws at the time often protected the perpetrators of violence by prohibiting non-Caucasian witnesses from testifying against a "free white citizen." See *People v. Hall*, 4 Cal. 399 (1854) (reversing the murder conviction of a "free white citizen" upon the exclusion of testimony from Chinese eyewitnesses).

³¹ Kelly Wallace, *Forgotten Los Angeles History: The Chinese Massacre of 1871*, LOS ANGELES PUBLIC LIBRARY (May 19, 2017), <https://www.lapl.org/collections-resources/blogs/lapl/chinese-massacre-1871>.

³² Tom Rea, *The Rock Springs Massacre*, WYO HISTORY (November 8, 2014), available at

Chinese persons were expelled at gunpoint in Tacoma, Washington, with their homes burned to the ground.³³ And in Wong Kim Ark’s hometown of San Francisco, when he was about four years old, the deadly 1877 riot in San Francisco’s Chinatown lasted for two days, with the mob of hundreds looting and torching businesses, and killing four Chinese immigrants.³⁴

Possibly due to this widespread hostility and violence, Wong Kim Ark’s parents—contrary to Petitioners’ attempted characterization of them as “permanent residents”—ultimately returned to China. As Professor Amanda Frost put it, Wong Kim Ark’s parents “likely never considered America to be their permanent home, however, and for good reason. ‘The Chinese must go,’ was the slogan of one prominent labor leader—a message the family received daily in big ways and small.”³⁵

II. AGAINST THE BACKDROP OF CHINESE EXCLUSION, THIS COURT NONETHELESS HELD THAT WONG KIM ARK WAS A U.S. CITIZEN.

Wong Kim Ark was a California-born U.S. citizen whose return from an overseas trip to visit family in China resulted in months-long detention and a drawn-out legal battle for his right to remain

<https://www.wyohistory.org/encyclopedia/rock-springs-massacre>.

³³ Beth Lew-Williams, *The Chinese Must Go* (2018).

³⁴ Amanda Frost, “By Accident of Birth”: *The Battle over Birthright Citizenship After United States v. Wong Kim Ark*, 32 YALE J.L. & HUMAN. 38-76 (2021).

³⁵ *Id.* at 43-44.

and live in his actual homeland, the country of his birth. His case established a landmark precedent, affirming that the Citizenship Clause of the Fourteenth Amendment applies to children born to non-citizens in the United States. *Wong Kim Ark*, 169 U.S. at 652–705.

Wong Kim Ark was born in 1873 to Chinese parents who lived in and operated a business in San Francisco’s Chinatown. *Id.* at 652.³⁶ As recounted by the Court, Wong Kim Ark’s parents “continued to reside and remain in the United States until the year 1890, when they departed for China.” *Id.*

In 1890, the then-17-year-old Wong Kim Ark “departed for China upon a temporary visit,” returning home to the United States later that year without incident. *Id.* at 653. Wong Kim Ark continued to live in California into his 20s, reportedly working as a cook in San Francisco. In 1894, at the age of 21, Wong Kim Ark again made what the Court described as a “temporary visit” to China to see his family “with the intention of returning to the United States.” *Id.* But when he attempted to re-enter the United States one year later, he was denied entry and detained with a threat of deportation “upon the sole ground that he was not a citizen of the United States.” *Id.* Although Wong Kim Ark’s parents were described as “subjects of the Emperor of China,” the Supreme Court found that Wong Kim Ark himself had always held

³⁶ Although subsequent historical analyses and popular accounts have varied on different details, the facts of the case are recounted herein as they were described in this Court’s recitation of the parties’ agreed facts.

“allegiance” to the United States. *Id.* at 652. In recounting the stipulated facts of the case, the Supreme Court noted:

Wong Kim Ark, ever since his birth, has had but one residence, to-wit, in California, within the United States and has there resided, claiming to be a citizen of the United States, and has never lost or changed that residence, or gained or acquired another residence; and neither he, nor his parents acting for him, ever renounced his allegiance to the United States, or did or committed any act or thing to exclude him therefrom.

Id. at 652-53.

Despite the historical context described above, including the numerous laws passed during Wong Kim Ark’s life denying Chinese persons a pathway to U.S. citizenship, the Court held that “acts of Congress or treaties [excluding Chinese persons from naturalization] cannot exclude Chinese persons born in this country from the operation of the broad and clear words of the Constitution, ‘All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States.’” *Id.* at 704.

Wong Kim Ark was consistent with other decisions from the 1890s. The Court noted that in its earlier decision in *Quock Ting v. United States*, 140 U. S. 417 (1891), “it was assumed on all hands that a person of the Chinese race, born in the United

States, was a citizen of the United States.” *Wong Kim Ark*, 169 U.S. at 696. The *Quock Ting* case turned on the quantum of evidence required to prove birth in the United States; the Court made no mention whatsoever of the status of Quock Ting’s parents (let alone the issue of domicile), nor did it suggest that an analysis of Quock Ting’s parents was in any way relevant. *See* 140 U.S. at 419-22.

The *Wong Kim Ark* Court noted other supporting decisions, including *In re Look Tin Sing*, 21 F. 905 (9th Cir. 1884), in which then-Supreme Court Justice Stephen Field, sitting by designation, delivered the opinion of the court. *See Wong Kim Ark*, 169 U.S. at 697. Justice Field and the Ninth Circuit judges held that a Chinese child born in the United States was automatically a U.S. citizen: “no one asks whether his parents were citizens or foreigners. It is enough that he was born here, **whatever** was the *status* of his parents.” *Look Tin Sing*, 21 F. at 910 (bold emphasis added).³⁷

Justice Field stated that the plain language of the Citizenship Clause “would seem to be sufficiently broad to cover the case of the petitioner. He is a person born in the United States.” *Id.* at 906.

³⁷ The holding of *Look Tin Sing* is consistent with 8 U.S.C. § 1401(f). *See* Pet. App. 2a. That provision provides that “a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining age of twenty-one years, not to have been born in the United States” is a “national[] and citizen[] of the United States at birth.” *See id.* Congress concluded, like the Court in *Look Tin Sing*, that the status of a child’s parents is irrelevant to the question of whether the child is a U.S. citizen when that child is born on U.S. soil.

Consistent with Senator Wade’s statements during the Fourteenth Amendment debates, *supra*, Justice Field noted that there are exceptions for “persons engaged in the diplomatic service of foreign governments”; “[p]ersons born on a public vessel of a foreign country”; and persons who “have renounced their allegiance to our government” and have chosen “to expatriate himself and” move to “another country.” *Id.* Justice Field found that the petitioner in that case did not fall “within any of the classes of persons excepted from citizenship,” and thus was a citizen by birthright. *Id.* at 906.

Those contemporaneous decisions are consistent with, and help explain the reasoning of, *Wong Kim Ark*: Wong Kim Ark’s citizenship did not depend on parents having a “domicile” in the United States, but rather on his being born in the United States. Petitioners’ cited authorities (Pet. Br. at 36) are not to the contrary.³⁸ For example, *Chin Bak Kan v. United States*, 186 U.S. 193, 200 (1902) addressed the question of whether a federal commissioner had jurisdiction to render a deportation ruling, in what we would now call an administrative proceeding, when the individual to be deported claimed to be a U.S. citizen; the Court did not decide whether that individual was, in fact, a citizen.

In short, the Court in *Wong Kim Ark* held, consistent with the plain language of the Fourteenth Amendment, that a child born on U.S. soil is a U.S. citizen, regardless of the status of the child’s

³⁸ Certain of Petitioners’ other cited authorities are addressed in Section III below.

parents. Petitioners' argument that the Fourteenth Amendment and *Wong Kim Ark* mean something other than what they actually say should be rejected.

III. WONG KIM ARK'S PARENTS ARE NOT ANALOGOUS TO PRESENT-DAY IMMIGRANTS.

As the discussion above makes clear, the immigration landscape of Wong Kim Ark's time differed dramatically from present-day immigration laws and regulations. Wong Kim Ark's parents cannot be analogized to the lawful permanent residents of today, and the Court's decision in *Wong Kim Ark* cannot be read as excluding from its reach the children of persons who today might be derisively referred to as "unlawful immigrants" or "illegal aliens."

When Wong Kim Ark was born, there was no Immigration and Customs Enforcement, Customs and Border Protection, Ellis Island, green cards, or visas. The only federal immigration law in place was the Naturalization Act of 1790.³⁹ That statute limited *naturalization* to free, Caucasian persons, but *immigration* was, in theory, open to individuals of any race or nationality.⁴⁰ The only other federal authority relating to "Chinese subjects visiting or residing in the United States" when Wong Kim Ark was born was the Burlingame Treaty of 1868.⁴¹

³⁹ Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103.

⁴⁰ *See id.*

⁴¹ Burlingame-Seward Treaty, China-U.S., July 28, 1868, 18 Stat. 147 art. VI, *available at* <https://www.loc.gov/resource/rbpe.23602400/>.

Accordingly, Petitioners’ attempts to draw a fraught parallel between the lawful permanent residents of today (*i.e.*, “green card holders”) and Wong Kim Ark’s parents fail because the concepts of “lawful permanent residence” and visa-based legal residency simply did not exist in 1873.⁴² Moreover, at the time of Wong Kim Ark’s birth, “permanent residence” for Chinese immigrants was an illusory concept that came under a withering barrage of legal attack. Besides having an unclear immigration status that was continuously and systematically derogated, Chinese migrants like Wong Kim Ark’s parents did not have the same rights or responsibilities as modern-day immigrants and green card holders.

First, green card holders today have a pathway to U.S. Citizenship (8 U.S.C. § 1427)⁴³—something expressly prohibited for Chinese migrants like Wong Kim Ark’s parents. Similarly, H-1B visa holders may have “dual intent,” permitting otherwise “temporary” nonimmigrant workers to

⁴² It was not until the Immigration Act of 1924 that the concept of a lawful permanent resident as an immigration category was enshrined into statute. That law distinguished between “immigrants” (*i.e.*, those intending to stay permanently in the United States) and “non-immigrants” (*i.e.*, tourists and other temporary visitors). Asian immigrants were denied lawful permanent resident status at the time, however, as the Act extended a prior 1917 ban on immigration from most Asian countries to the entire continent of Asia.

⁴³ See *I am a Lawful Permanent Resident of 5 Years*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/citizenship/learn-about-citizenship/citizenship-and-naturalization/i-am-a-lawful-permanent-resident-of-5-years> (last updated Jan. 24, 2025).

seek lawful permanent residence.⁴⁴ Even holders of non-resident or non-immigrant visas that do not carry a path to citizenship may potentially apply for a change of status to a resident visa or to a green card. For example, international student visa holders (many of whom are here for years) can apply for the Optional Practical Training (OPT) program that allows them to work in their field of study for up to 12 months after completing their degree, after which they can potentially transition “to other immigration statuses,” including lawful permanent resident status;⁴⁵ this is particularly relevant for students hailing from Asia, who comprise 71% of the foreign student population in the United States.⁴⁶

Unlike today’s legal immigrants, Wong Kim Ark’s parents had no chance of ever gaining citizenship in the United States due to numerous legal barriers, including the Naturalization Act of 1790, the Burlingame Treaty of 1868, the Chinese Exclusion Act of 1882, and later Supreme Court precedents.⁴⁷ Petitioners nonetheless persist in claiming that “the law has traditionally treated an alien domiciled in the country as a ‘kind of citizen,’

⁴⁴ See *Foreign Affairs Manual*, U.S. DEP’T OF STATE, 9 FAM 402.10-10(A)(U) (Sept. 29, 2022).

⁴⁵ See Jill H. Wilson, *Optional Practical Training (OPT) for Foreign Students in the United States*, CONGRESSIONAL RESEARCH SERVICE (May 30, 2025), <https://www.congress.gov/crs-product/IF12631>.

⁴⁶ See *ICE Releases 2024 SEVP Annual Report*, IMMIGRATION AND CUSTOMS ENFORCEMENT (June 5, 2025), <https://www.ice.gov/news/releases/ice-releases-2024-sevp-annual-report>.

⁴⁷ See, e.g., *Ozawa v. United States*, 260 U.S. 178 (1922); *Thind v. United States*, 261 U.S. 204 (1923).

‘united and subject to the society’” (Pet. Br at 19), but their own cited authority is to the contrary. As this Court put it in a case cited by Petitioners (Pet. Br. at 11, 20, 29), although migrants with a “domicile” in the United States were entitled “to the safeguards of the Constitution” while here, “they continue to be aliens, having taken no steps towards becoming citizens, **and incapable of becoming such under the naturalization laws,**” such that Congress could “expel them, or [] order them to be removed,” essentially at will. *Fong Yue Ting v. United States*, 149 U.S. 698, 724 (1893) (emphasis added). Being “incapable” of becoming U.S. citizens, and being removable essentially at will, is a far cry from the circumstances of today’s green card holders.

For that reason, Petitioners are wrong to rely upon a statement by a commentator that pre-dated *Wong Kim Ark* and asserted that “Chinese born of Chinese non-naturalized parents, *such parents not being domiciled*, are not citizens.” Pet. Br. at 26 (emphasis added by Petitioners). This statement cannot be reconciled with *Wong Kim Ark*, since Wong Kim Ark’s parents, though they had a U.S. “domicile,” were “non-naturalized” and in fact could not become naturalized citizens, as set forth above. This Court held that Wong Kim Ark was a U.S. citizen anyway.

Second, holders of present-day immigration visas and green cards may freely travel overseas, on the condition that they return to the United States,⁴⁸

⁴⁸ See *International Travel as a Permanent Resident*, U.S. Citizenship and Immigration Services,

something that most Chinese migrants in the 1880s were not allowed to do. For example, in 1889, this Court upheld the exclusion of Chae Chan Ping, a Chinese laborer and decades-long U.S. resident, who left for a visit to China in 1887 while holding a valid certificate of return. *See Chae Chan Ping*, 130 U.S. at 582. On his way back, literally while at sea, Congress passed the Scott Act of 1888, which forbade his entry. *Id.* In denying his re-entry, the Court wrote of Chinese migrants:

[T]hey remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people, or to make any change in their habits or modes of living.

Id. at 595. Similar exclusions were upheld by the Court in *Fong Yue Ting*, *supra*, and *Lem Moon Sing v. United States*, 158 U.S. 538, 548 (1895),⁴⁹ the latter of which denied reentry of a Chinese merchant with “permanent domicile” in San Francisco—exactly like Wong Kim Ark’s parents. *See Lem Moon Sing*, 158 U.S. at 539. The Court stated that Lem Moon Sing “cannot, by reason merely of his domicile in the United States for purposes of business,”

<https://www.uscis.gov/green-card/after-we-grant-your-green-card/international-travel-as-a-permanent-resident> (last updated Sept. 12, 2025).

⁴⁹ *Lem Moon Sing* was superseded by *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 136 (2020) (stating that, in early finality era cases, the Court took pains to note that it did not express any opinion on whether an alien was entitled to enter).

demand to re-enter the country. *Id.* at 548. Chinese individuals who purportedly had “permanent domicile and residence” during this period often lost that right as soon as they left the United States, distinguishing them from today’s visa-holders and lawful permanent residents. For all the purported protections and allegiances the Petitioners attribute to having a domicile in the United States, in the case of Chinese migrants like Wong Kim Ark’s parents, “domicile” would not even be enough for re-entry into the country, let alone the lynchpin for birthright citizenship.

To try to get around this result, Petitioners cite to cases (involving litigants of Asian heritage) that do not support their contention. For example, *Lau Ow Bew v. United States*, 144 U.S. 47 (1892) (cited in Pet. Br. at 19-20)—a case that did not relate to birthright citizenship—stated in dicta, relied upon by Petitioners, that under “general international law...foreigners who have become domiciled in a country other than their own, acquire rights and must discharge duties in many respects the same as possessed by and imposed upon citizens of that country.” *Lau Ow Bew*, 144 U.S. at 61-62. Notwithstanding the dicta in *Lau Ow Bew*, the Court later made clear in *Fong Yue Ting* and *Lem Moon Sing* that not every Chinese migrant with a U.S. “domicile” had the legal right to re-enter or remain in the United States. *Fong Yue Ting*, 149 U.S. at 724-32; *Lem Moon Sing*, 158 U.S. at 548.

Other cases cited by Petitioners are even further afield. *See* Pet. Br. at 36. Petitioners rely on *Kwock Jan Fat v. White*, 253 U.S. 454, 457 (1920) for

the proposition that “someone is a U.S. citizen if born here to aliens who ‘were permanently domiciled in the United States.’” But, Kwock Jan Fat’s father, a Chinese-American named Kwock Tuck Lee, was actually born in the United States, *not* an “alien”; the Court described his father as “native born” and a “registered voter.” *Kwock Jan Fat*, 253 U.S. at 460. That case, and the others cited by Petitioner, quite obviously say nothing about whether foreign-born immigrants, like Wong Kim Ark’s parents, had rights equivalent to today’s legal permanent residents.⁵⁰ Petitioners also rely on *Tuan Ahn Nguyen v. INS*, 533 U.S. 53 (2001) to justify the exclusion of children born to persons not permanently settled in the United States by claiming that “American law has traditionally limited U.S. citizenship to individuals who have a meaningful ‘tie [to] this country.’” Pet. Br at 28. But *Tuan* involved a child born *overseas* in Vietnam, not on United States soil. See *Tuan Anh*, 533 U.S. at 57. The “meaningful tie” at issue was whether a child born overseas had a “meaningful relationship” with

⁵⁰ Notably, Kwock Tuck Lee was considered a natural-born U.S. citizen despite the fact that his parents (Kwock Jan Fat’s grandparents) entered the country without documentation, in a boat that shipwrecked near the coast of California and decided to settle nearby, despite not arriving under the auspices of the Burlingame Treaty or through an authorized point of entry, and despite never being inspected by government officials. See Laura A. Lee, *History Rewritten: The Story of Quock Mui Jeung*, 11 ASIAN PACIFIC AMERICAN LAW JOURNAL No. 1, pg. 77 (Spring 2006). *Kwock Jan Fat* therefore undermines Petitioners’ argument because it supports the proposition that all children born on U.S. soil are entitled to U.S. citizenship, irrespective of their parents’ status or mode of entry.

his U.S. citizen father sufficient to render the child a “national[] and citizen[] of the United States” pursuant to 8 U.S.C. § 1401(g). *See id.* at 64-68. That case has nothing to do with children born in the United States, as to whom the Fourteenth Amendment establishes the “tie” by virtue of their birth on U.S. soil.

There are yet more differences between Chinese migrants in the late 1800s and today’s legal permanent residents. Today’s green card holders may petition for their children and spouses residing overseas to join them permanently in the United States,⁵¹ conferring upon those relatives their own pathway to citizenship. For Chinese migrants in the United States at the end of the 19th century, like Wong Kim Ark’s parents, however, the *inability* to unite and live with their families was their legal and everyday reality.⁵²

Finally, unlike Wong Kim Ark’s parents, today’s legal immigrants and lawful permanent residents must all demonstrate admissibility, which means they are carefully scrutinized on a variety of criteria including health-, national security-, and

⁵¹ *See* 8 U.S.C. § 1153(a)(2).

⁵² This anti-Chinese immigration regime even gave rise to the “paper son” phenomenon, where aspiring Chinese immigrants paid U.S.-born Chinese Americans to pretend to be their birth fathers in order to claim derivative U.S. citizenship. Indeed, these discriminatory anti-Chinese laws transformed today’s so-called “model minorities” into our nation’s first “illegal aliens.” *See* Janet Lau, *Stanley Hom Lau: Paper Son*, PRIZED WRITING, <https://prizedwriting.ucdavis.edu/stanley-hom-lau-paper-son> (last visited Jan. 26, 2026).

public safety- related grounds.⁵³ Holders of resident visas and green cards are required to pay federal income taxes, and men ages 18-26 must register for selective service.⁵⁴ Lawful permanent residents are further entitled to live permanently in the United States, work at any legal job of their choosing (with narrow national security exceptions), and be protected by all the laws of the federal, state, and local jurisdictions.⁵⁵

Lawful permanent residents and holders of many categories of visas today are on a pathway to U.S. citizenship. The America that Wong Kim Ark's parents lived in was absolutely determined to send Chinese migrants like them on a pathway back to China. To suggest that Wong Kim Ark's citizenship status was dependent upon his parents being akin to today's lawful permanent residents ignores the historical reality.

⁵³ See *Green Card Processes and Procedures*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/green-card/green-card-processes-and-procedures> (last updated Oct. 19, 2022).

⁵⁴ See *Tax information and responsibilities for new immigrants to the United States*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/individuals/international-taxpayers/tax-information-and-responsibilities-for-new-immigrants-to-the-united-states> (last updated Oct 3, 2024); *Who Needs to Register*, SELECTIVE SERVICE SYSTEM, <https://www.sss.gov/register/who-needs-to-register/> (last visited Jan. 26, 2026).

⁵⁵ See *Rights and Responsibilities of a Green Card Holder (Permanent Resident)*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/green-card/after-we-grant-your-green-card/rights-and-responsibilities-of-a-green-card-holder-permanent-resident> (last updated Sept. 12, 2025).

CONCLUSION

For the Asian American communities that NAPABA and its affiliates represent, EO 14160 would visit upon them the same injustices leveled against Wong Kim Ark's generation. For the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

Date: February 25, 2026

Wendy M. Feng
Counsel of Record
SEYFARTH SHAW LLP
999 Third Avenue, Ste 4700
Seattle, Washington 98104
Telephone: (206) 946-4910
wfeng@seyfarth.com

Lori Chen
Owen R. Wolfe
Andrew R. Escobar
SEYFARTH SHAW LLP

Counsel for Amici Curiae