

No. 25-365

---

---

IN THE  
**Supreme Court of the United States**

DONALD J. TRUMP, *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 NEW JERSEY, WASHINGTON,  
MASSACHUSETTS, CALIFORNIA, AND  
21 OTHER STATE AND LOCAL GOVERNMENTS  
AS AMICI IN SUPPORT OF RESPONDENTS**

NICHOLAS W. BROWN  
*Attorney General of  
Washington*

NOAH G. PURCELL  
*Solicitor General*

ANDREA JOY CAMPBELL  
*Attorney General of  
Massachusetts*

DAVID C. KRAVITZ  
*State Solicitor*

ROB BONTA  
*Attorney General of  
California*

SAMUEL T. HARBOUR  
*Solicitor General*

JENNIFER DAVENPORT  
*Attorney General of  
New Jersey*

JEREMY M. FEIGENBAUM\*  
*Solicitor General*

OFFICE OF THE NEW JERSEY  
ATTORNEY GENERAL

25 Market Street, Box 080  
Trenton, NJ 08625  
(862) 350-5800

[jeremy.feigenbaum@njoag.gov](mailto:jeremy.feigenbaum@njoag.gov)

*\*Counsel of Record*

[Additional Counsel Listed On Signature Page]

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	3
I.    The Order Is Unlawful Twice Over.....	3
A. The Citizenship Clause Ensures Children Born In The United States And Fully Subject To Its Laws Are Citizens.....	3
1. Text And History.....	4
2. <i>Wong Kim Ark</i> .....	18
B. The INA Independently Establishes That Children Born In The United States And Fully Subject To Its Laws Are Citizens.....	24
II. The Order Would Gravely Harm The States And Their Residents.....	28
CONCLUSION.....	33

## TABLE OF AUTHORITIES

CASES	Page(s)
<i>Ah How v. United States</i> , 193 U.S. 65 (1904).....	17
<i>Arizona v. Rumsey</i> , 467 U.S. 203 (1984).....	22
<i>Baker Botts v. ASARCO</i> , 576 U.S. 121 (2015).....	24
<i>Barbara v. Trump</i> , 790 F. Supp. 3d 80 (D.N.H. 2025) .....	31
<i>Cherokee Nation v. Georgia</i> , 30 U.S. (5 Pet.) 1 (1831).....	10
<i>Chiafalo v. Washington</i> , 591 U.S. 578 (2020).....	15
<i>Comm’r v. Keystone Consol. Indus.</i> , 508 U.S. 152 (1993).....	24
<i>Dickerson v. United States</i> , 530 U.S. 428 (2000).....	23
<i>Doe v. Trump</i> , 766 F. Supp. 3d 266 (D. Mass. 2025).....	20
<i>Doe v. Trump</i> , 157 F.4th 36 (CA1 2025).....	1, 20, 25, 27, 28, 30
<i>Elk v. Wilkins</i> , 112 U.S. 94 (1884).....	21
<i>Golden v. Prince</i> , 10 F. Cas. 542 (C.C.D.Pa. 1814) .....	29
<i>Goodell v. Jackson ex dem. Smith</i> , 20 Johns. 693 (N.Y. Ct. Corr. Errors 1823) .....	11

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Haig v. Agee</i> , 453 U.S. 280 (1981).....	25
<i>Hintopoulos v. Shaughnessy</i> , 353 U.S. 72 (1957).....	17
<i>Inglis v. Trs. of Sailor’s Snug Harbor</i> , 28 U.S. (3 Pet.) 99 (1830).....	10
<i>INS v. Errico</i> , 385 U.S. 214 (1966).....	17
<i>INS v. Rios-Pineda</i> , 471 U.S. 444 (1985).....	16
<i>Janus v. AFSCME</i> , 585 U.S. 878 (2018).....	22
<i>Ludlam v. Ludlam</i> , 31 Barb. 486 (N.Y. Gen. Term. 1860).....	9
<i>Lynch v. Clarke</i> , 1 Sand. Ch. 583 (N.Y. Ch. 1844) ....	9, 10, 15, 21
<i>McCreery’s Lessee v. Somerville</i> , 22 U.S. (9 Wheat.) 354 (1824) .....	8
<i>Morrison v. California</i> , 291 U.S. 82 (1934).....	17
<i>Murray v. Schooner Charming Betsy</i> , 6 U.S. (2 Cranch) 64 (1804) .....	8
<i>New Jersey v. Trump</i> , 800 F. Supp. 3d 180 (D. Mass. 2025).....	31
<i>New Prime v. Oliveira</i> , 586 U.S. 105 (2019).....	24, 26
<i>Nichols v. United States</i> , 578 U.S. 104 (2016).....	28

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Nishikawa v. Dulles</i> , 356 U.S. 129 (1958).....	17
<i>Patterson v. McLean Credit Union</i> , 491 U.S. 164 (1989).....	22
<i>Perkins v. Elg</i> , 307 U.S. 325 (1939).....	17
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	7, 19
<i>Rogers v. Bellei</i> , 401 U.S. 815 (1971).....	29
<i>Russell v. United States</i> , 471 U.S. 858 (1985).....	26
<i>The Schooner Exch. v. McFaddon</i> , 11 U.S. (7 Cranch) 116 (1812) .....	5, 6
<i>Sessions v. Dimaya</i> , 584 U.S. 148 (2018).....	27
<i>South Carolina v. Gathers</i> , 490 U.S. 805 (1989).....	23
<i>State v. Manuel</i> , 20 N.C. 144 (1838) .....	8
<i>Stirone v. United States</i> , 361 U.S. 212 (1960).....	26
<i>Taggart v. Lorenzen</i> , 587 U.S. 554 (2019).....	26
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958).....	31
<i>United States v. Am. Bldg. Maintenance Indus.</i> , 422 U.S. 271 (1975) .....	26

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>United States v. Kozminski</i> , 487 U.S. 931 (1988).....	27
<i>United States v. Rhodes</i> , 27 F. Cas. 785 (C.C.D. Ky. 1866).....	9
<i>United States v. Rice</i> , 17 U.S. (4 Wheat.) 246 (1819).....	6
<i>United States v. Wong Kim Ark</i> , 169 U.S. 649 (1898).....	2, 3, 6, 18-23, 25
<i>Vance v. Terrazas</i> , 444 U.S. 252 (1980).....	16
<i>Washington v. Trump</i> , 145 F.4th 1013 (CA9 2025).....	1, 30, 31
<i>Weedin v. Chin Bow</i> , 274 U.S. 657 (1927).....	8
<i>Welch v. Texas Dept. of Highways &amp; Public Transp.</i> , 483 U.S. 468 (1987).....	22
<i>Worcester v. Georgia</i> , 31 U.S. (6 Pet.) 515 (1832).....	11
<b>FOREIGN CASES</b>	
<i>Calvin’s Case</i> (1608) 77 Eng. Rep. 377 .....	8
<b>CONSTITUTION</b>	
U.S. Const. art. I.....	26
§§ 2-3 .....	8
U.S. Const. art. II, § 1 .....	8

## TABLE OF AUTHORITIES—Continued

	Page(s)
U.S. Const. amend. XIV .....	1, 7, 11, 16, 18-21
§ 1 .....	1-5, 7, 11-16, 18, 19, 22-24, 27, 29, 30, 32
Cal. Const. art. 5, § 2.....	29
Mass. Const. amend. art. 3 .....	29
N.J. Const. art. 2, § 1, cl. 3.....	29
N.J. Const. art. 5, § 1, cl. 2.....	29
N.Y. Const. art. 4, § 2.....	29
Wash. Const. art. VI, § 1 .....	29

## STATUTES AND REGULATIONS

8 U.S.C.	
§ 1367(a)(2).....	23
§ 1401 .....	2
§ 1401(a).....	2, 24-28
§ 1611(a).....	30
§ 1611(c)(1)(B).....	30
§ 1612(b)(3)(C).....	30
20 U.S.C.	
§ 1400(d)(1)(A).....	30
§ 1412(a)(1).....	30
42 U.S.C.	
§ 1396b .....	30
§ 1983 .....	26

## TABLE OF AUTHORITIES—Continued

	Page(s)
Nationality Act of 1940, ch. 876, § 201, 54 Stat. 1137, 1138 .....	24-28
Nationality Act of 1952, Pub. L. No. 82-414, § 301(a)(1), 66 Stat. 163, 235.....	24-28
8 C.F.R. § 274a.12 .....	32
20 C.F.R.	
§ 422.103(c)(2) .....	17
§ 422.107(d) .....	17
42 C.F.R. § 435.406 .....	30
Mass. Gen. Laws ch. 234A, § 4 .....	29
N.J. Stat. Ann. § 2B:20-1(c) .....	29
Wash. Rev. Code § 2.36.070(2).....	29
 LEGISLATIVE AND EXECUTIVE MATERIALS	
1 Annals of Cong. (1789) .....	8
Cong. Globe, 39th Cong., 1st Sess. (1866) ...	11-15
Cong. Rsch. Serv., <i>U.S. Immigration Courts and the Pending Cases Backlog</i> (Apr. 25, 2022) .....	23
Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025).....	1-3, 7, 23, 24, 28-32
44 Fed. Reg. 10,369 (Feb. 20, 1979).....	17
<i>Hr’g. Before the Subcomm. on Immigr. &amp; Claims of the House Comm. on the Judiciary</i> , 105th Cong., 1st Sess. (June 25, 1997).....	17

## TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Leg. Denying Citizenship at Birth to Certain Children Born in the U.S.</i> , 19 Op. O.L.C. 340 (1995) .....	17
9 Op. Atty. Gen. 373 (1859).....	9
10 Op. Atty. Gen. 328 (1862).....	9
U.S. Dep’t of Health & Hum. Servs., <i>Guidance on Executive Order 14160 for Verification Requirements under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996</i> (July 2025).....	31
U.S. Dep’t of State, <i>Regulations Prescribed for the Use of the Consular Serv. of the U.S.</i> (1896) .....	16

## OTHER AUTHORITIES

1 B. Abbott, <i>Dictionary of Terms and Phrases Used in American or English Jurisprudence</i> (1879) .....	4
D. Webster, Report of the Secretary of State to the President on <i>Thrasher’s Case</i> (Dec. 23, 1851).....	20, 21
E. de Vattel, <i>The Law of Nations</i> (J. Chitty ed. 1861) .....	4, 7, 8
F. Van Dyne, <i>Citizenship of the United States</i> (1904).....	10
The Federalist No. 32 (A. Hamilton) .....	29
G. Epps, <i>The Citizenship Clause: A “Legislative History,”</i> 60 Am. U. L. Rev. 331 (2010).....	11, 12

## TABLE OF AUTHORITIES—Continued

	Page(s)
G. Paschal, <i>The Const. of the U.S. Defined &amp; Carefully Annotated</i> (1868) .....	10
H. Wheaton, <i>Elements of Int'l Law</i> (1836) ..	5
J. Hamburger, <i>The Consequences of Ending Birthright Citizenship</i> , 103 Wash. U. L. Rev. 209 (2025).....	31
J. Ho, <i>Birthright Citizenship, the Fourteenth Amendment, &amp; State Authority</i> , 42 U. Rich. L. Rev. 969 (2008)	18
J. Ho, <i>Defining “American” Birthright Citizenship and the Original Understanding of the 14th Amendment</i> , 9 Green Bag 2d 367 (2006) .....	5
2 J. Kent, <i>Commentaries on Am. Law</i> (6th ed. 1848) .....	9
J. Story, <i>Commentaries on the Conflict of Laws, Foreign and Domestic</i> (1846) .....	7, 10
J.J.S. Wharton, <i>Law Lexicon, or Dictionary of Jurisprudence</i> (2d Am. ed. 1860).....	4
J. Worcester, <i>A Dictionary of the English Language</i> (1860) .....	4
M. Ing, <i>Birthright Citizenship, Illegal Aliens, &amp; the Original Meaning of the Citizenship Clause</i> , 45 Akron L. Rev. 719 (2012).....	5, 12, 16
M. Ramsey, <i>Originalism &amp; Birthright Citizenship</i> , 109 Geo. L.J. 405 (2020).....	5, 12

## TABLE OF AUTHORITIES—Continued

	Page(s)
N. Webster, <i>An American Dictionary of the English Language</i> (C. Goodrich & N. Porter eds. 1865) .....	4
Note, <i>The Nationality Act of 1940</i> , 54 Harv. L. Rev. 860 (1941) .....	28
R. Flournoy, Jr., <i>Dual Nationality and Election</i> , 30 Yale L.J. 545 (1921).....	16
T. Stoney, <i>Citizenship</i> , 34 Am. L. Reg. 1 (1886).....	16
1 Travers Twiss, <i>The Law of Nations</i> (1861).....	6
1 W. Blackstone, <i>Commentaries on the Laws of England</i> (12th ed. 1794) .....	7
W. Rawle, <i>A View of the Const. of the United States of America</i> 236 (2d ed. 1829) .....	5
1 Z. Swift, <i>A System of Laws of the State of Conn.</i> (1795) .....	10

## INTEREST OF AMICI

The 23 amici States, the District of Columbia, and San Francisco (the States) have a strong interest in whether children born in the United States and subject to its laws are citizens.<sup>1</sup> Most amici challenged Executive Order No. 14,160 (the Order) and obtained injunctions barring its implementation.<sup>2</sup> Since the Order violates the Constitution and a federal statute by denying citizenship to U.S.-born children based on their parents' immigration status, the States share strong interests in having the Order declared unlawful. Beyond their interests in defending the Constitution and federal laws, amici have concrete interests in preventing the grave financial and sovereign harms the Order would impose on them.

## SUMMARY OF ARGUMENT

**I.** The Order violates the Citizenship Clause and the Immigration and Nationality Act (INA).

**A.** The Citizenship Clause grants citizenship to children born in the United States and subject to its laws—that is, virtually all U.S.-born babies, with only narrow well-defined exceptions known to the common law prior to the Fourteenth Amendment's enactment. This rule reflects the nineteenth-century meaning of “subject to the jurisdiction,” aligns with the preexisting *jus soli* principle from English and American common law, accords with contemporaneous evidence that the Framers saw “subject to the jurisdiction” as tracking the preexisting common law, and comports with extensive evidence from subsequent practice.

---

<sup>1</sup> The Appendix contains a full list of amici.

<sup>2</sup> See *Doe v. Trump*, 157 F.4th 36 (CA1 2025); *Washington v. Trump*, 145 F.4th 1013 (CA9 2025).

Were such compelling text and history not enough, precedent conclusively resolves the issue. This Court's decision in *Wong Kim Ark* closely examined the text, history, and original understanding of the Citizenship Clause and held that it extends to all U.S.-born children subject only to these specific exceptions. All other individuals born in the United States, the Court reasoned, are citizens independent of their parents' domiciliation. Since *Wong Kim Ark*, this Court has treated it as obvious that children born in this country become citizens regardless of their parents' immigration status or the duration of their stay.

**B.** The Order also violates the INA, which confers citizenship on anyone born in the United States “subject to the jurisdiction thereof.” 8 U.S.C. § 1401(a). This Court interprets statutes according to their ordinary public meaning at the time of their enactment. By 1940 and 1952, when Congress enacted and then recodified § 1401, the phrase “subject to the jurisdiction thereof” was understood to mean subject to federal law, as Petitioners barely rebut. Thus, even were this Court to overturn the understanding of the Citizenship Clause it already accepted in *Wong Kim Ark*, that would not change the meaning of § 1401.

**II.** If the Order were to take effect, the States and their residents would suffer profound injuries. States would experience significant sovereign harms—as the Citizenship Clause defines not only the U.S. citizenry, but the citizenry of each State, too. States and their subdivisions would also lose millions in federal funding (often for services they must provide regardless of federal reimbursement) and would incur onerous administrative burdens to implement the Order. And their residents would also suffer. The Order thrusts infants into a new underclass, threatening

their educational, economic, and health outcomes. While U.S.-born children have always been able to call the United States home, the Order would leave numerous U.S.-born children with no home country at all.

## **ARGUMENT**

### **I. The Order Is Unlawful Twice Over.**

Children born in the United States and subject to its laws are U.S. citizens. That rule, enshrined in the Fourteenth Amendment's Citizenship Clause and codified in the INA, derives from the preexisting common law and has—except for the mistreatment of enslaved Americans—prevailed since the Founding. This Court confirmed this rule in *Wong Kim Ark*, which has been respected by all three branches in the 128 years since. This Court should reject the Order's effort to overturn a rule that has governed citizenship in this country throughout nearly its entire history.

#### **A. The Citizenship Clause Ensures Children Born In The United States And Fully Subject To Its Laws Are Citizens.**

The Citizenship Clause provides that “[a]ll persons born ... in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. amend. XIV, § 1. This language guarantees citizenship to every child born on U.S. soil and fully subject to its laws. The text and history of the Clause, and this Court's longstanding and well-reasoned precedent, compel this conclusion. Because children born to parents with temporary or undocumented status are subject to U.S. jurisdiction, the Order is invalid.

## 1. Text And History.

The text of the Citizenship Clause extends citizenship to every child born on U.S. soil and subject to its complete sovereign authority. That reflects the preexisting common-law rule and the Framers' decision to constitutionalize that rule. And that is exactly how it has long been understood and followed.

1. The contemporaneous meaning of the Clause's plain text enshrines birthright citizenship.

Under the Citizenship Clause, babies born on U.S. soil are U.S. citizens if they are born "subject to the jurisdiction" of our Nation. Dictionaries of the time defined "jurisdiction" to mean being subject to a nation's laws and sovereign authority. Noah Webster's classic work defined "jurisdiction" as the "[p]ower of governing or legislating," or "the power or right of exercising authority." N. Webster, *An American Dictionary of the English Language* 732 (C. Goodrich & N. Porter eds. 1865). Other widely used references gave functionally identical definitions of "jurisdiction." See 1 B. Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 671 (1879) ("[t]he authority of government; the sway of a sovereign power"); J.J.S. Wharton, *Law Lexicon, or Dictionary of Jurisprudence* 408 (2d Am. ed. 1860) ("legal authority; extent of power; declaration of the law"); J. Worcester, *A Dictionary of the English Language* 795 (1860) ("legal authority or power"; "the power of executing laws"; "[t]he power or the right of exercising authority").

Contemporaneous scholars likewise equated "jurisdiction" with the reach of a nation's laws and authority. See E. de Vattel, *The Law of Nations* § 84, at 166 (J. Chitty ed. 1861) ("The sovereignty united to the

domain establishes the jurisdiction of the nation in her territories, or the country that belongs to her.”); H. Wheaton, *Elements of Int’l Law* 100 (1836) (equating “sovereign power of municipal legislation ... within its territory” to its “territorial jurisdiction”); W. Rawle, *A View of the Const. of the United States of America* 236 (2d ed. 1829) (“The geographical limits of the United States and those of the territories, are subject to the jurisdiction of all the courts of the United States, in all matters within the scope of their authority.”).<sup>3</sup>

No less an authority than Chief Justice Marshall recognized the same understanding of jurisdiction. As he explained, “[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute.” *The Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812). So when a foreign national of whatever immigration status steps onto U.S. soil, he is “amenable to the jurisdiction of the country,” meaning he “is amenable to the laws of the [United States].” *Id.*, at 144. This is true even for individuals who enter briefly for “business or caprice,” as they owe a “temporary and local allegiance” to the Nation’s laws. *Id.* Any contrary rule would be “inconvenient and

---

<sup>3</sup> Modern-day scholars, no less than scholars of that era, likewise understand the plain text to have carried that meaning. See, e.g., J. Ho, *Defining “American” Birthright Citizenship and the Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 368-369 (2006) (“To be ‘subject to the jurisdiction’ of the U.S. is simply to be subject to the authority of the U.S. government.... The clause thus covers the vast majority of lawful and unlawful aliens.”); M. Ramsey, *Originalism & Birthright Citizenship*, 109 Geo. L.J. 405, 440 (2020) (same); M. Ing, *Birthright Citizenship, Illegal Aliens, & the Original Meaning of the Citizenship Clause*, 45 Akron L. Rev. 719, 749 (2012) (same).

dangerous” and “subject the laws to continual infraction.” *Id.*<sup>4</sup>

The only exceptions to that jurisdiction recognized in the late nineteenth century were narrow and defined: representatives of foreign sovereigns (including diplomats and their families as well as those on foreign public ships), foreign enemies in a hostile occupation, and tribal governments and their members. See *United States v. Wong Kim Ark*, 169 U.S. 649, 693-694 (1898). The first two categories were outside U.S. jurisdiction since the United States either consented to that status (for foreign sovereigns and their representatives) or its authority was displaced by force (as in an enemy occupation). *Id.*, at 684-686; see *Schooner Exchange*, 11 U.S., at 138 (foreign ministers seen “as in the place of the sovereign he represents, or by a political fiction ... extra-territorial”); *United States v. Rice*, 17 U.S. (4 Wheat.) 246, 254 (1819) (Story, J.) (recognizing “sovereignty of the United States over” territory occupied by hostile force “was, of course, suspended”). And Tribes and their members were viewed as “alien nations,” exercising their own self-governing authority within the territorial borders of the United States. *Wong Kim Ark*, 169 U.S., at 681-683.

---

<sup>4</sup> Petitioners rely on Travers Twiss to argue domicile is “the foundation of jurisdiction,” Br. 20, but ignore that Twiss opens the key chapter by explaining that a nation’s jurisdiction “within its own territory is ... exclusive and absolute,” and “extends over all persons ... within its territory, with the exception ... of Sovereign Princes and their Representatives.” 1 Travers Twiss, *The Law of Nations* §§ 150, 157, at 214, 225 (1861). Twiss even specifies that a child’s “place of birth ... may constitute a person a natural born subject of one Sovereign for municipal purposes,” even if the child “is a domiciled subject of another sovereign for international purposes.” *Id.*, § 164, at 238.

Beyond that, however, all other individuals in U.S. territory were understood to be completely subject to its laws and authority—and so were considered born “subject to the jurisdiction thereof.” Indeed, it was already accepted by the Fourteenth Amendment’s ratification that a nation’s laws extend to temporary visitors. See, *e.g.*, Vattel, *The Law of Nations* §§ 99-101, at 171-172 (explaining “foreigners who pass through or sojourn in a country” are “subject to [its] laws,” as a nation’s laws apply to “all orders of people throughout the whole extent of the state”); J. Story, *Commentaries on the Conflict of Laws, Foreign and Domestic* §§ 541-542, at 913-914 (1846) (“All persons, who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof.”). And—as this Court previously observed—“no plausible distinction with respect to Fourteenth Amendment ‘jurisdiction’ can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful.” *Plyler v. Doe*, 457 U.S. 202, 211 n.10 (1982). After all, that an individual can be present in this country *unlawfully* reflects that she is subject to this Nation’s laws. Because the plain meaning of “subject to the jurisdiction” turns on sovereign authority, the Order contravenes the Clause’s text.

2. This understanding of “subject to the jurisdiction” aligns with the common-law principle of *jus soli* that predated the Fourteenth Amendment.

*Jus soli*—citizenship based on birth within a country’s territory—was deeply rooted in English common law. See 1 W. Blackstone, *Commentaries on the Laws of England* 386, 394 (12th ed. 1794) (“[n]atural-born subjects ... are born within the

dominions of the crown of England,” including “[t]he children of aliens”); *Calvin’s Case* (1608) 77 Eng. Rep. 377, 409 (“[A]ll those that were born under one natural obedience ... should remain natural born subjects ... for that naturalization due and vested by birthright, cannot ... be taken away.”). Even Vattel—on whom Petitioners rely to argue citizenship should depend on “parents’ political status,” Br. 21—agreed that the actual rule in England was that “the single circumstance of being born in the country naturalizes the children of a foreigner.” Vattel, *The Law of Nations* § 214, at 102.

In the absence of an express constitutional definition of citizenship, U.S. Const. art. I, §§ 2-3; *id.*, art. II, § 1, American law followed the English common-law principle of *jus soli*. See *Weedin v. Chin Bow*, 274 U.S. 657, 660 (1927) (“[A]t common law in England and the United States the rule with respect to nationality was that of the *jus soli*.”). As one example, James Madison noted “birth is a criterion of allegiance” that could convey citizenship in two different ways: “sometimes from place and sometimes from parentage.” 1 Annals of Cong. 404 (1789). “[B]ut, in general,” Madison specified, “place is the most certain criterion,” and “it is what applies in the United States.” *Id.*

In the decades that followed, American courts confirmed children “born within the United States” were citizens at birth. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 120 (1804) (Marshall, C.J.); see *McCreery’s Lessee v. Somerville*, 22 U.S. (9 Wheat.) 354, 354 (1824) (noting U.S.-born children of noncitizen as “native born citizens”); *State v. Manuel*, 20 N.C. 144, 151 (1838) (“[A]ll free persons born within the State are born citizens of the State.”). Like Madison, these

courts recognized that “[b]irth and allegiance go together,” that is, persons born in the United States and subject to its authority are “born in the allegiance of the United States” and are “natural born citizens.” *United States v. Rhodes*, 27 F. Cas. 785, 789 (C.C.D. Ky. 1866) (Swayne, J.).

Courts of the era recognized this principle applied regardless of the domiciliation of the U.S.-born child’s parents. For example, in *Lynch v. Clarke*, 1 Sand. Ch. 583 (N.Y. Ch. 1844), the court explained that “every person born within the dominions and allegiance of the United States, *whatever were the situation of his parents*, is a natural born citizen.” *Id.*, at 663 (emphasis added). The court thus held that a child born to two Irish parents who had not intended to remain in the United States—and returned to Ireland shortly after the birth—was a citizen. *Id.*, at 638.<sup>5</sup> Two U.S. Attorneys General relied on *Lynch* as reflecting accepted American common law. See 10 Op. Atty. Gen. 328, 328 (1862) (AG Bates) (“children born in the United States of alien parents, who have never been naturalized, are native-born citizens of the United States”); 9 Op. Atty. Gen. 373, 374 (1859) (AG Black) (same).

Leading legal authorities agreed. See 2 J. Kent, *Commentaries on Am. Law* 38-39 (6th ed. 1848) (explaining all native-born children were citizens “without any regard or reference to the political condition or allegiance of their parents, with the exception of the children of ambassadors,” citing

---

<sup>5</sup> Petitioners’ assertion (Br. 41) that *Ludlam v. Ludlam*, 31 Barb. 486 (N.Y. Gen. Term. 1860), “rejected” *Lynch*, is off base. *Ludlam* concerned a child born *overseas* to a U.S. citizen, not children born on U.S. soil to alien parents. *Id.*, at 488.

*Lynch*); F. Van Dyne, *Citizenship of the United States* 3-7 (1904) (surveying common law and finding “beyond doubt” that “children of ... foreigners, excepting only children of ambassadors or public ministers” were “native-born citizens”). *Jus soli* meant babies born subject to U.S. laws were “born in the allegiance of the United States” and entitled to citizenship. G. Paschal, *The Const. of the U.S. Defined & Carefully Annotated* 274 (1868); 1 Z. Swift, *A System of Laws of the State of Conn.* 163, 167 (1795) (“The children of aliens, born in this state, are considered as natural born subjects, and have the same rights with the rest of the citizens.”).

Exceptions again prove the common-law rule. English common law, adopted into American common law, recognized just two exceptions to birthright citizenship: for a foreign sovereign’s representatives, such as the “children of an ambassador,” and the “children of enemies, born in a place ... then occupied,” *Inglis v. Trs. of Sailor’s Snug Harbor*, 28 U.S. (3 Pet.) 99, 155-156 (1830) (Story, J.).<sup>6</sup> The only other common-law exception—concerning the children of members of tribal governments—was uniquely American. The relationship between the Tribes and the United States was “marked by peculiar and cardinal distinctions,” *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 2 (1831), reflecting each tribal government’s status as “a nation claiming and receiving the protection of one more

---

<sup>6</sup> Petitioners note Justice Story’s remark that a “reasonable qualification” on birthright citizenship “would seem to be, that it should not apply to the children of parents, who were ... abiding there for temporary purposes.” Br. 22. But whatever his views as to what the rule *should* be, Justice Story confirmed that the rule *is*, in fact, that children “born in a country, are generally deemed to be citizens ... of that country,” acknowledging any other qualification was *not* “universally established” under “public law.” Story, *Commentaries on the Conflict of Laws* § 48, at 60.

powerful” without “submitting as subjects to the laws of a master,” *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 555 (1832). So “the general view [was] that individual Indians born within tribal society did not qualify as citizens by birth.” G. Epps, *The Citizenship Clause: A “Legislative History,”* 60 Am. U. L. Rev. 331, 367 (2010); *Goodell v. Jackson ex dem. Smith*, 20 Johns. 693, 712 (N.Y. Ct. Corr. Errors 1823) (“Indians are considered as born under the dominion of their tribes,” not “within the purview of [U.S.] law”). That stood in contrast to the children born to aliens.

3. The Framers of the Fourteenth Amendment understood that the Citizenship Clause’s wording constitutionalized this preexisting *jus soli* principle.

When Senator Howard opened debate on the proposed Fourteenth Amendment, he explained that “a citizen” was “[u]ndoubtedly ... a person who was *born within the limits of the United States and subject to their laws.*” Cong. Globe, 39th Cong., 1st Sess., 2765 (1866) (emphases added). He added that citizenship arose “in virtue of national law, or rather of natural law which recognizes persons born within the jurisdiction of every country as being subjects or citizens of that country.” *Id.* By equating children “born within the limits of the United States and subject to their laws” with those “born within the jurisdiction,” Senator Howard made clear “jurisdiction” referred to a sovereign’s exercise of legal authority over national territory. U.S.-born children fully subject to that authority were “citizens of the United States.” *Id.*

Senator Wade confirmed this approach in urging the Amendment make explicit that “citizen” includes all “persons born in the United States or naturalized by the laws thereof.” *Id.*, at 2768. While he believed the Civil Rights Act of 1866 had “settled” the issue, he

sought to “fortify and make it very strong and clear” that “every person, of whatever race or color, who was born within the United States was a citizen.” *Id.*, at 2768-2769. When asked whether this encompassed children of “parents from abroad temporarily in th[e] country,” Senator Wade answered that he knew of no basis for excluding them. *Id.*, at 2769. He identified only one exception: “the children of foreign ministers,” who “by a fiction of law” were not subject to U.S. authority, “although born” here. *Id.*

Senator Howard formally proposed the Citizenship Clause a week later. *Id.*, at 2869. The Clause was “declaratory” of the longstanding *jus soli* principle: “that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States.” *Id.*, at 2890. So it covered “every other class of persons” born in the United States except for the “foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States.” *Id.*; see Ramsey, *supra*, 109 *Geo. L.J.*, at 448-449 (explaining this was a single group, not a list that separated out foreigners and ambassadors, because otherwise the references to ambassadors would be surplusage); Epps, *supra*, 60 *Am. U. L. Rev.*, at 354 n.92 (same); Ing, *supra*, 45 *Akron L. Rev.*, at 758 (same).

The ensuing debate for and against the Clause reflected a consensus that the phrase “subject to the jurisdiction” carried its usual meaning—consistent with its common-law backdrop. Senator Cowan, an outspoken opponent, objected to the Clause specifically because it would grant citizenship to U.S.-born children of “the Chinese immigrant in California” and the “Gypsy,” groups he compared to “sojourner[s] in the

United States.” Cong. Globe, 39th Cong., 1st Sess., 2890 (1866). In his view, “the mere fact that a man is born in the country” should not “entitle[] him to the right to exercise political power.” *Id.*, at 2890-2891. Such objections underscored the Clause’s reach.

Indeed, in defending the Clause from the criticism, Senator Conness agreed that its object was to ensure “that the children of all parentage whatever, born in [the United States], should be regarded and treated as citizens of the United States.” *Id.*, at 2891-2892. The Nation, he insisted, was “ready to accept the provision proposed ... that the children born here of [foreign] parents, shall be ... entitled to civil rights and to equal protection before the law with others.” *Id.*, at 2892. No Senator disputed this understanding.

The debate over the children of tribal members further underscored the point. Senator Doolittle (another opponent) proposed an amendment to exclude “Indians not taxed,” fearing that absent such caveat, tribal children would be citizens as Tribes were “subject to the jurisdiction of the United States.” *Id.*, at 2890. He emphasized the United States exercised “jurisdiction, both civil and military,” over the Tribes, citing “civil agents” and “military commanders” who had “control” over “reservations.” *Id.*, at 2892. Senator Johnson likewise worried that because the Tribes were “within the territorial limits of the United States,” it “would seem to follow necessarily that they are subject to the jurisdiction of the United States, as is anybody else who may be born” here. *Id.*, at 2893.

Once again, the Clause’s proponents never denied the underlying meaning or reach of the term “jurisdiction”; their focus instead was on the unique relationship between U.S. sovereign authority and the Tribes. Senator Howard answered critics by clarifying

that children of tribal members who “maintain[ed] their tribal relations” are not “born subject to the jurisdiction of the United States” because, under U.S. “legislation and jurisprudence,” tribes are “*quasi* foreign nations.” *Id.*, at 2890. That is, the Tribes were by law not subject to the “full and complete jurisdiction” because the Tribes kept aspects of “national independence,” including their territorial autonomy and internal self-government. *Id.*, at 2895.

Senator Trumbull, Chair of the Judiciary Committee, concurred. He emphasized that the exclusion of tribal members’ children rested on the fact that the United States recognized tribal governments as sovereign. The United States, he stated, acknowledged tribal governments’ sovereignty and, thus, the force of tribal law by making “treaties with them”; it did not subject Tribes to its courts, regulate their internal affairs, or prosecute crimes committed by one tribal member against another. *Id.*, at 2893. For Senator Trumbull, the governing principle that excluded tribal children from the Citizenship Clause’s reach was simple: “only those persons who come completely within [the United States’] jurisdiction, who are subject to our laws,” would be “citizens.” *Id.*

The debates over the Civil Rights Act of 1866, the statutory precursor to the Citizenship Clause, confirm the same understanding. As revised, the Act provided that “all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed” are “citizens.” *Id.*, at 527. This language, Senator Trumbull explained, made clear that, except for tribal members and foreign diplomats, “birth entitles a person to citizenship, that every free-born person in this land is, by virtue of being born here, a citizen of the United States.” *Id.*, at 527, 572, 600.

Representative Lawrence likewise explained the Act reflected settled law: “all ‘children born here are citizens without any regard to the political condition or allegiance of their parents.’” *Id.*, at 1832 (quoting *Lynch*, 1 Sand. Ch. 583); see *id.*, at 570 (Sen. Morrill) (“[B]irth by its inherent energy and force gives citizenship.”).

Opponents understood the statute similarly. Senator Cowan attacked the Clause for granting citizenship to “children of Chinese and Gypsies born in this country”—a result that Senator Trumbull agreed was “[u]ndoubtedly” required. *Id.*, at 498. Indeed, President Andrew Johnson’s veto message also objected that the Act would make citizens of “[e]very individual ... born in the United States,” including the children of immigrants. *Id.*, at 1679. When Congress overrode that veto, Senator Trumbull reiterated that the Act rested on the rule that “all persons born in the United States were citizens,” even if “the infant child of a foreigner born in this land” becomes a citizen “before his father.”<sup>7</sup> *Id.*, at 1756-1757. The Framers, consistent with the common-law backdrop, understood they were adopting the clear rule of birthright citizenship.

4. That understanding of text and history has long prevailed in this Nation. Cf. *Chiafalo v. Washington*, 591 U.S. 578, 592-593 (2020) (according “long settled and established practice” “great weight”).

---

<sup>7</sup> Petitioners cite a single reference to “domicile” in an unsigned, undated letter that President Johnson purportedly received from Senator Trumbull describing the Act. Br. 24. Its provenance is not clear. And in any event, one questionable letter cannot bear any serious weight considering the surrounding contemporaneous history and preexisting legal context.

During the two-year ratification period, both supporters and opponents of the Fourteenth Amendment conveyed to the public that it “would grant citizenship to those who were ‘native-born’ or ‘born here,’” including “aliens’ U.S.-born children.” Ing, *supra*, 45 Akron L. Rev., at 743-747 (collecting sources). Following ratification, commentators and officials recognized the Clause granted citizenship to U.S.-born children subject to U.S. laws. *Id.*, at 747-749; see R. Flournoy, Jr., *Dual Nationality and Election*, 30 Yale L.J. 545, 553 (1921) (explaining, like English common law, “the law of citizenship of the United States ... makes no distinction between persons born in the country of alien sojourners and those born of domiciled aliens”); U.S. Dep’t of State, *Regulations Prescribed for the Use of the Consular Serv. of the U.S.* 49 ¶ 137 (1896) (“The circumstance of birth within the United States makes one a citizen thereof, even if his parents were at the time aliens, provided they were not, by reason of diplomatic character or otherwise, exempted from the jurisdiction of its laws.”); T. Stoney, *Citizenship*, 34 Am. L. Reg. 1, 4 (1886) (“Fourteenth Amendment ... intended to extend the rights of citizenship to all persons who at their birth became subject to the authority and laws of the United States.”).

Every branch of the Federal Government has followed this understanding. For its part, this Court has repeatedly accepted, in case after case, that children born in the United States and subject to its laws are citizens regardless of their parents’ immigration status or domicile. See *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (child of undocumented immigrants “was a citizen” due to birth “in the United States”); *Vance v. Terrazas*, 444 U.S. 252, 255 (1980) (“Appellee ... was born in this country, the son of a Mexican citizen” and “acquired at birth ...

citizenship.”); *INS v. Errico*, 385 U.S. 214, 215 (1966) (child of parents who fraudulently procured entry “acquired United States citizenship at birth”); *Nishikawa v. Dulles*, 356 U.S. 129, 131 (1958) (child of Japanese citizen parents was “[b]y reason of” birth in United States “a citizen”); *Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (child of parents who had overstayed temporary lawful stay is “of course, an American citizen by birth”); *Perkins v. Elg*, 307 U.S. 325, 329 (1939) (“[A] child born here of alien parentage becomes a citizen of the United States.”); *Morrison v. California*, 291 U.S. 82, 85 (1934) (“A person of the Japanese race is a citizen of the United States if he was born within the United States.”); *Ah How v. United States*, 193 U.S. 65, 65 (1904) (stating petitioner offered evidence he “was born in the United States, and therefore was a citizen”).

The Executive has likewise adhered to this understanding across Administrations. The Office of Legal Counsel has twice concluded that denying birthright citizenship to children of parents with temporary lawful or undocumented status would be “unquestionably unconstitutional.” *Leg. Denying Citizenship at Birth to Certain Children Born in the U.S.*, 19 Op. O.L.C. 340, 340-347 (1995); see *Hr’g. Before the Subcomm. on Immigr. & Claims of the House Comm. on the Judiciary*, 105th Cong., 1st Sess., 19-26 (June 25, 1997) (denying such children citizenship “would be flatly unconstitutional”). The Social Security Administration has, for decades, accepted proof of birth in the United States as proof of citizenship, ever since it first promulgated rules for establishing citizenship. 44 Fed. Reg. 10,369, 10,371 (Feb. 20, 1979); 20 C.F.R. § 422.107(d); 20 C.F.R. § 422.103(c)(2). Other agencies likewise recognize a U.S. birth certificate is sufficient to establish citizenship. See *Washington v.*

*Trump*, No. 25-127 (W.D. Wash. Jan. 2025) (*Washington* (W.D. Wash.)), Dkt. 12-5, 12-6. Even Petitioners recognize that Executive practice has uniformly followed this understanding since at least 1939. See Br. 6.

Taken together, “the text of the Constitution, common law history, legislative history,” and established practice each “make[] clear that birthright citizenship is a matter of constitutional right, no less for the U.S.-born children of unlawful aliens and undocumented persons than for the descendants of passengers of the *Mayflower*.” J. Ho, *Birthright Citizenship, the Fourteenth Amendment, & State Authority*, 42 U. Rich. L. Rev. 969, 970 (2008). That is dispositive.

## **2. *Wong Kim Ark*.**

1. Longstanding precedent confirms precisely what text and history reveal.

Over 125 years ago, this Court unequivocally held that U.S.-born children are citizens under the Citizenship Clause, with only narrow and well-defined exceptions. See *Wong Kim Ark*, 169 U.S. 649. To reach this holding, this Court exhaustively canvassed the Fourteenth Amendment’s text, English and American common law, and the original understandings of the Fourteenth Amendment’s drafters. It affirmed the *jus soli* principle embodied in the Clause, concluding that the Clause stood for “the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents.” *Id.*, at 688; see *id.*, at 692-693. In emphasizing the broad scope of the citizenship grant, this Court explained that it “was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have

become citizens according to the law existing before its adoption.” *Id.*, at 676.

*Wong Kim Ark* focused in particular on the meaning of the phrase “subject to the jurisdiction thereof.” As this Court found, the “real object” of that language was “to exclude, by the fewest and fittest words,” the following categories of persons: “children of members of the Indian tribes,” “children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state.” *Id.*, at 682.

The Court held that the appellee, Wong Kim Ark, was a citizen because he fit none of these three narrow exceptions. *Id.*, at 704. Since his parents were living in San Francisco at the time of his birth, they “owe[d] allegiance to the United States” and were “subject to the jurisdiction thereof,” despite “remaining subjects of the emperor of China.” *Id.*, at 694. Wong Kim Ark was a citizen—and regardless of “[w]hatever considerations” led the political branches “to decline to admit persons of the Chinese race to the status of citizens,” none could overcome “the peremptory and explicit language of the” Clause. *Id.*, at 694, 705.

Since *Wong Kim Ark*, this Court has reiterated repeatedly that children born in this country are citizens—without regard to their parents’ lawful status or their duration in the United States. See *supra*, at 16-17. And in *Plyler*, this Court unanimously rejected the argument that undocumented immigrants lie outside the “jurisdiction” of the United States under the Fourteenth Amendment. 457 U.S., at 211 n.10; see *id.*, at 243 (Burger, J., dissenting) (agreeing).

2. *Wong Kim Ark* did not turn on the domicile of that particular appellee’s parents.

Petitioners argue that *Wong Kim Ark*'s holding is limited to children born to parents lawfully domiciled here, but that argument asks this Court to “ignore all but a handful of sentences from *Wong Kim Ark*” and disregard “the bulk of the majority’s lengthy opinion.” *Doe v. Trump*, 766 F. Supp. 3d 266, 280 (D. Mass. 2025), *aff’d*, 157 F.4th 36 (CA1 2025). The parents’ domicile played no role in the Court’s rationale.

*Wong Kim Ark* made clear domicile is not a prerequisite to citizenship. As this Court reasoned, the Fourteenth Amendment “affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens,” with specific exceptions. 169 U.S., at 693. This does not depend on parents’ domicile. To be sure, the Court held this “*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,” because “[e]very 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.* (emphasis added). But this is a sufficient condition, not a necessary one.

Indeed, immediately following this statement, this Court emphasized that such “allegiance to the United States is direct and immediate” even where it is “but local and temporary,” so a child born to a “temporary” visitor is “a natural-born subject.” *Id.* The Court proceeded to quote Secretary of State Webster’s report in *Thrasher’s Case*, in which he explained this allegiance is established “independently of a residence with intention to continue such residence; independently of any domiciliation; [and] independently of

the taking of any oath of allegiance or of renouncing any former allegiance.” *Id.* That is, the U.S.-born children of visitors are entitled to citizenship.

*Wong Kim Ark* brims with reasoning in direct opposition to Petitioners’ domicile argument. The opinion examines English common law, where “every person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country, was an English subject” with narrow exceptions. 169 U.S., at 657; see also *id.*, at 656 (distinguishing political status drawn from citizenship from civil status drawn from domicile). The Court made clear this longstanding common-law rule “continued to prevail” in the United States. *Id.*, at 658. Indeed, in discussing the rule’s continued force, the Court recited *Lynch*’s holding that a person born “of alien parents, during their temporary sojourn” was a citizen. 1 Sand. Ch., at 638; *Wong Kim Ark*, 169 U.S., at 664. And it explained the Framers constitutionalized this common-law rule via the Fourteenth Amendment. 169 U.S., at 682, 693.

Petitioners’ reliance on *Elk v. Wilkins*, 112 U.S. 94 (1884), for their domicile theory is also misplaced. *Elk* and *Wong Kim Ark*—written by the same Justice—are aligned. *Elk* recognized the Founding-era understanding that certain tribal members are not completely subject to U.S. jurisdiction at birth, and considered whether a noncitizen tribal member obtained citizenship by virtue of “sever[ing] his tribal relation to the Indian tribes, and ha[ving] fully and completely surrendered himself to the jurisdiction of the United States.” *Id.*, at 95, 98-99. *Wong Kim Ark* itself noted that *Elk* “concerned only members of the Indian tribes within the United States,” and thus “had no tendency to deny

citizenship to children born in the United States of foreign parents.” 169 U.S., at 682.

Petitioners’ domicile theory cannot overcome *Wong Kim Ark*’s controlling interpretation of the meaning of “jurisdiction” in the Citizenship Clause. The Clause’s grant of citizenship includes U.S.-born children “independent[] of any domiciliation.” *Id.*, at 693.

3. There is no basis to reconsider *Wong Kim Ark* or its progeny. Petitioners do not ask for reconsideration, and *stare decisis* decidedly weighs against it.

“The doctrine of *stare decisis* is of fundamental importance to the rule of law.” *Patterson v. McLean Credit Union*, 491 U.S. 164, 172 (1989) (citations omitted). Even in constitutional cases, where *stare decisis* is less rigidly required, departure from precedent “demands special justification.” *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). More than “ambiguous historical evidence” is required to “overrule” this Court’s “major decisions.” *Welch v. Texas Dept. of Highways & Public Transp.*, 483 U.S. 468, 479 (1987). Before overturning precedent, this Court considers the quality of the prior decision’s reasoning, the workability of its rule, consistency with related decisions, subsequent developments, and reliance on the Court’s decision. *Janus v. AFSCME*, 585 U.S. 878, 917 (2018).

Here, all factors point to faithfully abiding by this longstanding precedent. *Wong Kim Ark*’s reasoning is sound. This opinion—in nearly eighty-five pages—meticulously examines the historical foundations of *jus soli* and explains in detail that the Citizenship Clause codifies that tradition. The decision is also consistent with every subsequent case that touches this constitutional right. See *supra*, at 16-17. And *Wong Kim Ark*’s rule is workable. It is substantially

easier to identify where a baby is born than to determine the immigration status of her parents—not only can immigration cases last for years, see Cong. Rsch. Serv., *U.S. Immigration Courts and the Pending Cases Backlog 2* (Apr. 25, 2022), but federal law renders certain immigration statuses confidential, see, e.g., 8 U.S.C. § 1367(a)(2), and in some cases, parental immigration status may be difficult or impossible to ascertain.

Moreover, the Order would profoundly disrupt core reliance interests. Routine government functions, including determining eligibility for voting, healthcare, benefits, jobs, and more, have long been premised on the Citizenship Clause’s established meaning. *Infra*, at 29-31 The Order would disrupt all of this. Worse, a decision by this Court endorsing Petitioners’ theory would call into question the citizenship of countless Americans accorded birthright citizenship even decades ago, along with their descendants. While the Order suggests prospective-only effect, there is no assurance that the Federal Government will stop there.

Constitutional rights that have “become embedded” in our “national culture” especially merit *stare decisis*. *Dickerson v. United States*, 530 U.S. 428, 443 (2000). As Justice Scalia observed, “the respect accorded prior decisions increases ... as [] society adjusts itself to their existence, and the surrounding law becomes premised upon their validity.” *South Carolina v. Gathers*, 490 U.S. 805, 824 (1989) (Scalia, J., dissenting). Birthright citizenship is such a quintessential right. *Wong Kim Ark* must hold firm.

**B. The INA Independently Establishes That Children Born In The United States And Fully Subject To Its Laws Are Citizens.**

Even if Petitioners could overcome these substantial constitutional hurdles, the Order still runs headlong into a federal statute. In 1940, Congress wrote the language of the Citizenship Clause, essentially unchanged, into the U.S. Code. See Nationality Act of 1940, ch. 876, § 201, 54 Stat. 1137, 1138 (providing that any “person born in the United States, and subject to the jurisdiction thereof” is a “citizen[] of the United States at birth”). Congress then recodified that language when it enacted the INA in 1952. See Pub. L. No. 82-414, § 301(a)(1), 66 Stat. 163, 235 (codified at 8 U.S.C. § 1401(a)). Whatever Petitioners claim regarding the nineteenth century understanding of the Clause, by 1940 and 1952, those words had a settled meaning—one directly contrary to the Order.

1. If a word or phrase has a settled meaning by the time Congress uses it in a statute, that meaning controls. See *New Prime v. Oliveira*, 586 U.S. 105, 113-114 (2019); *Baker Botts v. ASARCO*, 576 U.S. 121, 129 n.2 (2015). That includes settled meanings stemming from prior judicial decisions or executive actions. See, e.g., *Comm’r v. Keystone Consol. Indus.*, 508 U.S. 152, 159 (1993) (noting phrase “acquired a settled judicial and administrative interpretation over the course of a half century before Congress enacted” the relevant statute, and thus according it that meaning).

The words in § 1401(a) had developed exactly that kind of long-settled meaning when Congress adopted them in 1940 and incorporated them into the INA in 1952. By then, decades of case law and consistent executive practice made abundantly clear that the

children of noncitizens are “subject to the jurisdiction” of the United States regardless of their parents’ immigration status. Indeed, Petitioners concede the Executive Branch consistently followed that interpretation before the INA’s passage, admitting that it “took hold” within the Executive Branch by 1939. Br. 6; see *id.*, at 3-4 (admitting this view had “take[n] root in the Executive Branch and outside commentary,” “confer[ring] ... American citizenship on hundreds of thousands of people”); Pet. 4, 29 (same). And on the judicial front, *Wong Kim Ark* likewise cemented that interpretation well before 1952. See *supra*, at 18-19.

The drafting history of the 1940 Act confirms that the operative phrase had acquired a settled meaning by that law’s passage. The Act was drafted by a group of thirteen representatives from the Departments of State, Labor, and Justice. *Doe*, 157 F.4th, at 60. In explanatory comments accompanying its draft, the interdepartmental group made clear the phrase “subject to the jurisdiction thereof” tracked perfectly the rule of *Wong Kim Ark*—which, the group explained, “is also applicable to a child born in the United States of parents residing therein temporarily.” *Id.*, at 61.

Someone reading § 1401(a) in 1952 would have understood it to incorporate that settled meaning. After all, when there is “no evidence of any intent to repudiate” a “longstanding administrative construction,” the natural conclusion is that Congress “adopted [it].” *Haig v. Agee*, 453 U.S. 280, 297-298 (1981).

2. Petitioners offer no persuasive reason to construe § 1401(a) differently.

Petitioners first argue (Br. 44) that § 1401(a) does not depend on “what Congress thought it meant in 1940 or 1952,” but that attacks a strawman. The point

is not about what “Congress thought,” but about how one reading the statute in 1940 or 1952 would have understood it. See *New Prime*, 586 U.S., at 113-114. That person would read the phrase in light of the settled understanding that, by Petitioners’ own account, “took hold” within the Executive Branch no later than 1939, Br. 6, and was “pervasive,” Pet. 4.

Petitioners’ argument about “old soil” (Br. 44) likewise fails. Petitioners note that when statutory text is “transplanted from another legal source, it brings the old soil with it.” *Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019). But Petitioners promptly ask this Court to *disregard* the old soil—*i.e.*, the judicial decisions and executive practices that, by the mid-twentieth century, filled in around the phrase “subject to the jurisdiction [of the United States].” That is simply not how this Court interprets statutes.

Petitioners’ references (Br. 44) to § 1983 and to unspecified statutes with “interstate-commerce jurisdictional elements” miss the mark. Section 1983 tracks today’s understandings of the Constitution (not those that prevailed in 1871) because—unlike § 1401(a)—it simply cross-references the Constitution. Meanwhile, statutes with an interstate-commerce hook have long been understood, in context, to reflect Congress’s desire to legislate to the full extent of its Article I powers.<sup>8</sup> Section 1401(a), by contrast, merely “borrow[s]” a particular phrase from the preexisting amendment. When faced with that kind of copied-and-pasted

---

<sup>8</sup> *Russell v. United States*, 471 U.S. 858, 859 (1985) (“[R]eference to ‘any building ... used ... in any activity affecting interstate or foreign commerce’ expresses an intent by Congress to exercise its full power under the Commerce Clause.”); *United States v. Am. Bldg. Maintenance Indus.*, 422 U.S. 271, 280 (1975) (similar); *Stirone v. United States*, 361 U.S. 212, 215 (1960) (similar).

language from a constitutional provision, especially “[i]n the absence of any contrary indications,” this Court “give[s] effect to congressional intent by construing” the copied language in line with “the understanding of the [Constitution] *that prevailed at the time of [the statute’s] enactment.*” *United States v. Kozminski*, 487 U.S. 931, 945 (1988) (emphasis added).

Petitioners offer nothing that undermines *Kozminski*’s force. They provide no “contrary indications” that Congress was codifying anything other than the settled meaning that prevailed by 1940 and 1952, nor do they offer any bases to distinguish that case.<sup>9</sup> Instead, *Kozminski*’s application is especially apt here: because “the statutory scheme reflects an intent to extend citizenship beyond the constitutional floor,” where Congress extended citizenship to individuals not covered by the Clause, there is “no reason to conclude that Congress meant to hold § 1401(a) hostage to future interpretations of the Citizenship Clause that would narrow its scope.” *Doe*, 157 F.4th, at 60. Congress understood the precise meaning of the phrase it was codifying into the U.S. Code, and only deviated from that settled meaning where it wished to do so.

Petitioners next dispute whether the meaning of “subject to the jurisdiction thereof” was actually settled by 1952. See Br. 45. But its codification was the culmination of nearly two decades of interagency and congressional work, during which time “the plaintiffs’ view of the scope of the birthright citizenship

---

<sup>9</sup> Before the First Circuit in *Doe*, Petitioners attempted to distinguish *Kozminski* on the ground that the statute there imposed criminal penalties. 157 F.4th, at 59. But *Kozminski* did not turn on that fact—and, regardless, § 1401(a) “defines who is protected from, among other things, being removed from this country.” *Id.*, at 60; cf. *Sessions v. Dimaya*, 584 U.S. 148, 156-157 (2018).

guarantee was widely shared.” *Doe*, 157 F.4th, at 64; *id.*, at 60-64 & nn.12-13 (surveying practice between 1933 and 1952). The most Petitioners offer is two *ipse dixit* statements—one from an unsigned student note, the other from a treatise. See Br. 42-43. But those unsupported statements come nowhere near establishing a serious dispute in 1952 as to § 1401(a)’s ordinary public meaning, and Petitioners offer no reason to think either was especially influential.<sup>10</sup>

Petitioners finally argue at length (Br. 45-47) that maintaining the understanding of birthright citizenship that has prevailed since before the INA’s enactment “undermines one of the Nationality Act’s core purposes: reducing the incidence of dual nationality.” But “even the most formidable argument concerning [a] statute’s purposes [can]not overcome the clarity [found] in the statute’s text.” *Nichols v. United States*, 578 U.S. 104, 112 (2016). The meaning of “subject to the jurisdiction” at the time that phrase was codified was crystal clear. The President cannot change this long-settled statutory meaning by fiat.

## **II. The Order Would Gravely Harm The States And Their Residents.**

1. From fiscal harm to administrability challenges to sovereign injuries, the impacts of the Order on the States and their subdivisions would be enormous.

---

<sup>10</sup> Even on its own terms, the student note does not support Petitioners. The note’s author believed that, under the 1940 Act, “[a] child born at Ellis Island to alien parents awaiting admission to this country apparently [would] remain an alien” by virtue of the entry fiction. Note, *The Nationality Act of 1940*, 54 Harv. L. Rev. 860, 861, 870 & n.8 (1941). But the author was clear that “[t]his appears to work a denial of citizenship to one *clearly within the words of the Constitution*.” *Id.* (emphasis added).

Begin with the States' sovereign harms. The Citizenship Clause does not merely define the citizenry of the United States; it defines States' citizens too. 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."). Put differently, States lack authority to define someone as a "citizen" of, say, Massachusetts who is not also a citizen of the United States. See *Rogers v. Bellei*, 401 U.S. 815, 828-831 (1971) (acknowledging, after Civil War, the two ways to obtain citizenship in this country are via the Citizenship Clause or pursuant to federal statutes); *The Federalist* No. 32, at 155 (A. Hamilton) (power to define citizenry "exclusive" in Congress, not States); *Golden v. Prince*, 10 F. Cas. 542, 545 (C.C.D.Pa. 1814) (finding it "obvious" that States lack power to define naturalization differently within their borders). The contrary rule would be a contradiction: no State could make an individual a citizen of their State who is not permitted in the United States in the first place, as that person would not be permitted to remain within that State's territorial borders.

The Order thus strips the States of groups of people who have long been understood to fall within their polity—throwing into chaos their citizenry. Nor is this abstract: state laws and constitutions frequently link participation in civic life to citizenship, from participation in juries, see, e.g., N.J. Stat. Ann. § 2B:20-1(c); Wash. Rev. Code § 2.36.070(2); Mass. Gen. Laws ch. 234A, § 4; to voting in state elections, see, e.g., N.J. Const. art. 2, § 1, cl. 3; Wash. Const. art. VI, § 1; Mass. Const. amend. art. 3; to holding certain public offices, including governor, see, e.g., N.J. Const. art. 5, § 1, cl. 2; Cal. Const. art. 5, § 2; N.Y. Const. art. 4, § 2. And although the Order operates prospectively, the

interpretation of the Citizenship Clause on which Petitioners rest does not—opening the door, for example, to challenging the legitimacy of those residents who previously served as jurors.

The financial injuries to States will be no less profound. As this Court is aware, citizenship or qualifying immigration status is bound up into a series of federal programs providing funds for health, education, and social services programs, especially for children. See *Doe*, 157 F.4th, at 52; *Washington*, 145 F.4th, at 1022-1023. By stripping countless children born in the States of citizenship and qualifying immigration status, the Order renders them ineligible for a range of federally funded programs. See, e.g., 8 U.S.C. §§ 1611(a), (c)(1)(B), 1612(b)(3)(C); 42 U.S.C. § 1396b; 42 C.F.R. § 435.406. So the States and their subdivisions will lose millions of dollars in funding under federal programs like Medicaid, the Children’s Health Insurance Program (CHIP), the Individuals with Disabilities in Education Act, and Title IV-E funding for child welfare services. See 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1). Yet these same children will require the same services—the States will simply have to provide them without federal support.<sup>11</sup>

The Order would also impose substantial administrative burdens on the States and their subdivisions. Under the Order, a child’s birth in the United States can no longer prove citizenship, so States would be forced to fundamentally restructure eligibility determination systems for federally funded programs such

---

<sup>11</sup> States will also lose substantial sums under the Enumeration at Birth (EAB) program, through which the Federal Government pays States to help families apply for SSNs shortly after birth. See *Doe*, 157 F.4th, at 50.

as Medicaid, CHIP, Title IV-E, TANF, and SNAP. See J. Hamburger, *The Consequences of Ending Birthright Citizenship*, 103 Wash. U. L. Rev. 209, 228-242 (2025). Indeed, federal agencies have already issued guidance setting forth new citizenship and immigration status verification procedures that would require States, for the first time, to collect and process evidence of parental citizenship or immigration status. See U.S. Dep't of Health & Hum. Servs., *Guidance on Executive Order 14160 for Verification Requirements under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (July 2025).

2. The States' residents will also face devastating effects should the Order take effect. Petitioners do not dispute that the Order would strip citizenship from hundreds of thousands of newborns each year. See *Washington*, 145 F.4th, at 1022; *New Jersey v. Trump*, 800 F. Supp. 3d 180, 188 n.9 (D. Mass. 2025).

The Order leaves these infants with no legal immigration status and no prospects for legalization. Babies will be at immediate risk of removal. Some will be stateless with no home country to return to, voluntarily or otherwise. See *Barbara v. Trump*, 790 F. Supp. 3d 80, 103 (D.N.H. 2025) ("The denial of citizenship ... would render the children either undocumented noncitizens or stateless entirely."). As this Court has noted, those who are stateless are assigned "a fate of ever-increasing fear and distress." *Trop v. Dulles*, 356 U.S. 86, 102 (1958).

Depriving the States' residents of citizenship will also harm their economic and educational outcomes. One study indicates undocumented immigrant youth are twice as likely not to complete high school compared to citizens. *Washington* (W.D. Wash.), Dkt. 20. Those impacted by the Order will be ineligible for

employment authorization, 8 C.F.R. § 274a.12, and are likely to earn significantly less than if they were U.S. citizens. *Washington* (W.D. Wash.), Dkt. 18; *New Jersey v. Trump*, No. 25-10139 (D. Mass. Jan. 2025) (*New Jersey* (D. Mass.)), Dkt. 5-21.

Immigration status also impacts health. Undocumented individuals are more likely to report greater depression, social isolation, anxiety, and post-traumatic stress. *Washington* (W.D. Wash.), Dkt. 20; *New Jersey* (D. Mass.), Dkt. 196-2. The impact is particularly acute for children. *Washington* (W.D. Wash.), Dkt. 20. “In the most extreme cases, despair about blocked paths to mobility caused by legal status can lead to self-harm, suicidal ideation, or even suicide itself.” *Id.* The Order further threatens monetary and food assistance that children would otherwise be entitled to, depriving them of access to healthy food, shelter, warm clothing, and safety. *Id.*, at Dkt. 21; *New Jersey* (D. Mass.), Dkt. 196-4. All of this, too, will negatively impact residents’ health. Significant numbers of residents will become uninsured and “receive[] only emergency care when absolutely necessary, leading to worse health outcomes.” *Washington* (W.D. Wash.), Dkt. 14; *New Jersey* (D. Mass.), Dkt. 196-5.

It is difficult to overstate the devastating impacts of the Order. It profoundly harms the States, and it threatens to create a new and vulnerable underclass of children across the country. It does so by flagrantly violating the Citizenship Clause and INA alike.

**CONCLUSION**

This Court should affirm.

Respectfully submitted,

NICHOLAS W. BROWN  
*Attorney General of  
Washington*

NOAH G. PURCELL  
*Solicitor General*

CRISTINA SEPE  
MARSHA J. CHIEN  
*Deputy Solicitors  
General*

LANE M. POLOZOLA  
DANIEL J. JEON  
*Assistant Attorneys  
General*

ANDREA JOY CAMPBELL  
*Attorney General of  
Massachusetts*

DAVID C. KRAVITZ  
*State Solicitor*  
GERARD J. CEDRONE  
*Deputy State Solicitor*  
JARED B. COHEN  
*Assistant Attorney  
General*

JENNIFER DAVENPORT  
*Attorney General of  
New Jersey*

JEREMY M. FEIGENBAUM\*  
*Solicitor General*

SHANKAR DURAISWAMY  
*Deputy Solicitor General*

BASSAM F. GERGI  
MARYANNE M. ABDELMESIH  
SHEFALI SAXENA  
*Deputy Attorneys General*

OFFICE OF THE NEW JERSEY  
ATTORNEY GENERAL  
25 Market Street, Box 080  
Trenton, NJ 08625  
(862) 350-5800  
jeremy.feigenbaum@njoag.gov

ROB BONTA  
*Attorney General of  
California*

SAMUEL T. HARBOUR  
*Solicitor General*

MICHAEL L. NEWMAN  
*Senior Assistant  
Attorney General*

CARA M. NEWLON  
*Deputy Solicitor General*

MARISSA MALOUFF  
*Supervising Deputy  
Attorney General*

DENISE LEVEY  
*Deputy Attorney General*

February 26, 2026

*\*Counsel of Record*

(Additional Counsel Listed On Next Page)

KRIS MAYES <i>Attorney General of Arizona</i>	PHILIP J. WEISER <i>Attorney General of Colorado</i>
WILLIAM M. TONG <i>Attorney General of Connecticut</i>	KATHLEEN JENNINGS <i>Attorney General of Delaware</i>
BRIAN L. SCHWALB <i>Attorney General of District of Columbia</i>	ANNE E. LOPEZ <i>Attorney General of Hawai'i</i>
KWAME RAOUL <i>Attorney General of Illinois</i>	AARON M. FREY <i>Attorney General of Maine</i>
ANTHONY G. BROWN <i>Attorney General of Maryland</i>	DANA NESSEL <i>Attorney General of Michigan</i>
KEITH ELLISON <i>Attorney General of Minnesota</i>	AARON D. FORD <i>Attorney General of Nevada</i>
RAÚL TORREZ <i>Attorney General of New Mexico</i>	LETITIA JAMES <i>Attorney General of New York</i>
JEFF JACKSON <i>Attorney General of North Carolina</i>	DAN RAYFIELD <i>Attorney General of Oregon</i>
PETER F. NERONHA <i>Attorney General of Rhode Island</i>	CHARITY R. CLARK <i>Attorney General of Vermont</i>
JAY JONES <i>Attorney General of Virginia</i>	JOSHUA L. KAUL <i>Attorney General of Wisconsin</i>
DAVID CHIU <i>City Attorney of San Francisco</i>	

## **APPENDIX**

APPENDIX TABLE OF CONTENTS

	Page
APPENDIX: List of Amici .....	1a

**APPENDIX: List of Amici**

State of New Jersey  
State of Washington  
Commonwealth of Massachusetts  
State of California  
State of Arizona  
State of Colorado  
District of Columbia  
State of Connecticut  
State of Delaware  
State of Hawai'i  
State of Illinois  
State of Maine  
State of Maryland  
State of Michigan  
State of Minnesota  
State of Nevada  
State of New Mexico  
State of New York  
State of North Carolina  
State of Oregon  
State of Rhode Island  
State of Vermont  
Commonwealth of Virginia  
State of Wisconsin  
City and County of San Francisco