No. 25-365

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Petitioners,

v.

BARBARA, ET AL.,

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICI CURIAE* REPRIEVE, REPRIEVE US INC., INSTITUTE OF RACE RELATIONS, ZOE BANTLEMAN, PROF. DEVYANI PRABHAT, AND DR. TIMOTHY JACOB-OWENS IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST[1]

In 1983, Britain abandoned the rule of common law birthright citizenship that it had recognized for hundreds of years to adopt a system requiring children to demonstrate their parents'—and, increasingly, their grandparents'—status to prove their own citizenship. The change, predictably, has not gone well. Numerous people who are, in fact, citizens cannot prove their citizenship with documentary evidence. They have thus faced removal and inability to rent an apartment or get a job. Some have been rendered stateless—or effectively so.

Amici are organizations and academics with experience serving or studying people born in the U.K. who struggle to prove their own citizenship because of the new system as well as some who work on related issues in the United States. Specifically:

- **Reprieve** advocates, among other things, for the British Government to engage diplomatically with other countries to protect people born in the U.K. who face extreme human rights abuses. Establishing their British citizenship is a core part of that task. It also advocates in opposition to British deprivation of citizenship laws.
- **Reprieve U.S.** works in the United States on, among other issues, ending extreme human rights violations carried out in the name of national security.

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[1] No counsel of any party to this proceeding authored any part of this brief. No party or party's counsel, or person other than *amici*, contributed money to the preparation or submission of this brief.

- **The Institute for Race Relations** researches and publishes on the operation of race in the U.K. in areas such as policing, criminal justice, migration and citizenship, employment, housing, and education, as well as on politics, the media, and extremism. It has studied the "Windrush Scandal" and the policies that led to it extensively.
- **Zoe Bantleman** is a barrister in England and Wales, who has helped Parliamentarians and government departments scrutinize nationality law provisions, the impact of "hostile environment" policies, and the Windrush scandal. She is the Legal Director of the U.K.'s Immigration Law Practitioners' Association, but signs in a personal capacity.
- **Professor Devyani Prabhat, Ph.D.**, is a Professor in Law at University of Bristol Law School,[2] and author of several scholarly books and articles on immigration, migration, citizenship, and nationality, including *Migrating Borders and Citizenship in Law* (2026), a study of how law creates and enforces borders both physical and regulatory.
- **Timothy Jacob-Owens, Ph.D.** is an Early Career Fellow in Citizenship Law and Policy at Edinburgh Law School and a Senior Research Associate at the Global Citizenship Observatory at the European University Institute, Italy.

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[2] Institutional affiliations for individual amici are provided for identification only; this brief does not reflect the views or position of their employers or of any organization with which they are affiliated.

Amici have a unique perspective on the drastic consequences of abandoning the common law regime of *jus soli* and transitioning to *jus sanguinis*. They understand the consequences of departing from the longstanding interpretation of the Citizenship Clause, and why permitting such a change by executive reinterpretation would lead to similar (or worse) administrative chaos in the United States.

SUMMARY OF ARGUMENT

Attempting to paint the United States as an outlier, Petitioners gesture to the United Kingdom's decision to "abandon" by legislation the common law rule of "near-automatic birthright citizenship." Pet. 11. But, far from supporting Petitioners' position, the plethora of challenges resulting from Britain's transition should give this Court pause. That experience confirms what sources contemporaneous with adoption of the Fourteenth Amendment knew: the tremendous benefit and practicality of a simple rule like *jus soli*. Abandoning *jus soli* has caused immense problems of proof and administrability in the U.K., with citizens unable to prove their citizenship or discovering decades later that they were not citizens at all. The U.K.'s experience should caution against upsetting longstanding views of citizenship. It is not one to emulate.

I. *Jus soli* is a well-established rule with a long history. At common law, anyone born in the monarch's dominions—whether to parents who were ancient nobles, sojourners, or even smugglers—was subject to the monarch's power and thus owed him allegiance as a natural-born subject. The common law recognized only narrow exceptions for children born within the dominions to ambassadors and foreign enemy armies. This rule made everyone,

throughout the Empire, equal before the law (at least in principle). As travel became cheaper after World War II, Britain actively encouraged movement between its colonial dominions and what the imperial idiom of the time termed the "mother country."

Administering *jus soli* was easy. In 1869, almost contemporaneous with the ratification of the Fourteenth Amendment, Britain's commissioners on nationality law recommended retaining *jus soli* because "[i]t selects as the test a fact readily provable; and this, in questions of nationality and allegiance, is a point of material consequence." ROYAL COMMISSION FOR INQUIRING INTO THE LAWS OF NATURALIZATION AND ALLEGIANCE, REPORT, 1868–69, C. (1st series) 4109 (U.K.), *reprinted in* Papers Relating to the Foreign Relations of the United States, Transmitted to Congress, with the Annual Message of the President, Dec. 1, 1873, at 1238, https://tinyurl.com/4z6prfmm. This report was quickly reproduced in the *Foreign Relations of the United States* and was cited by Wong Kim Ark's counsel before this Court. Brief for the Appellee at 46–48, *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898) (No. 449) (quoting the Royal Commission's "readily provable" language as among the "solid advantages" of *jus soli*).

II. Britain forgot these lessons, and the consequences have been predictably disastrous. Effective 1983, Parliament abolished the long-standing common law *jus soli* principle. After that, only those who could prove that they were born to British parents or parents deemed to be "settled" in the United Kingdom (a status now requiring years to obtain) would be citizens.

But, much as in the United States, there is no comprehensive database of parental citizenship in

the United Kingdom and decentralized vital records systems do not record parental citizenship. To the contrary, many of the records essential to proving parents' citizenship or "settlement" were not preserved. The result was messy: multi-generational groups of people—many of them, as it happens, descendants of people Britain once enslaved—were unable to prove their citizenship and were thus hereditarily excluded from the only country they had ever known. Switching from a simple rule to a complicated regime requiring proving the immigration or nationality status of one's ancestors with documentary evidence thus led to tens of thousands of people unable to prove they can legally work, drive, rent an apartment, or vote.

Two examples are instructive of the damage caused by abandoning *jus soli*.

III. First, the "Windrush Scandal" illustrates how longtime residents from former British colonies—and, after 1983, their U.K.-born children and grandchildren—were suddenly unable to prove their nationality due to a lack of records of their ancestors' immigration status. For intra-Empire moves, that was something the British government either did not record or disposed of to save money. People unable to prove their parents' or grandparents' immigration history suddenly faced losing jobs, could not rent apartments, and risked deportation. After 1983, even a British birth certificate was not enough to prove citizenship, since it did not track parents' immigration status. Rather, parents' or grandparents' long-expired passports or documentary evidence of poorly-recorded internal moves within the Empire were required. As a result, many who were in fact either citizens or had "settled" status could not prove it. That administrative collapse has compounded across gen-

erations as a direct consequence of abandoning *jus soli*. Now, multigenerational proof of status is required to establish citizenship at birth.

IV. Another example of the United Kingdom's misadventures in indeterminate citizenship occurred in recent years. For decades until the U.K.'s departure from the European Union, European citizens enjoyed broad rights to live in the U.K. From 1983 to 2000, when an additional administrative step was introduced, the U.K. Government seemed to assume these European citizens were "settled," so their approximately 167,000 U.K.-born children were British at birth. Many were issued British passports, voted in British elections, and otherwise exercised the rights of citizenship. But they apparently weren't: in 2023, a court held that the U.K. Government had been wrong all along, and they were not citizens. *R. (Roehrig)* v. *Sec'y of State for the Home Dep't* [2023] EWHC 31 (Admin).

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In short, as the 1869 Royal Commission observed and as Wong Kim Ark argued before this Court, *jus soli* has "solid advantages" because it depends on "a fact readily provable." Brief for the Appellee at 48, *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898) (No. 449). Britain forgot those lessons and created a system where children must provide documents proving events long before they were born to establish that they are citizens of the only country they have ever known. Often, in practice, they cannot, because records never existed or were lost. Petitioners' theory that they can, by executive reinterpretation, require the same would lead to predictably similar consequences—citizens unable to get a job and facing deportation because they cannot prove their parents'

citizenship. The U.K.'s experience should thus give this Court pause before abandoning the longstanding interpretation of the Citizenship Clause and 8 U.S.C. § 1401(a).

ARGUMENT

Citizenship has long rested on one of two foundations: the place of one's birth or the lineage of one's parents. *Jus soli*—citizenship "by right of the soil"—ties political membership to the clear, objective fact of birth within the nation's territory. *Jus sanguinis*—citizenship "by right of blood"—hinges citizenship on whether a child can prove the status of a parent or grandparent. In both the United Kingdom and the United States, the historic common law rule was *jus soli*, with statutory additions to allow some citizens' children born overseas to obtain citizenship too.

When Britain abandoned *jus soli* in 1983, the theory may have appeared simple but the practice was brutal. A system built on a bright-line rule gave way to one that bureaucracy could not administer, leaving people who had lived their whole lives as British unable to prove it on paper. That real-world failure should not be recreated in the United States. The Fourteenth Amendment enshrined the *jus soli* model for a reason: it avoids the uncertainty, inequity, and generational disenfranchisement that follow from adding *jus sanguinis* inquiries on top of place of birth—especially ones retrofitted onto records governments never maintained. The Constitution does not permit Petitioners to trade a settled constitutional rule for an unworkable one, or to remake the basic terms of citizenship by decree.

I. The Practical Tradition of Jus Soli

Under the common law tradition of *jus soli*, "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." CONG. GLOBE, 39th Cong., 1st Sess. 600 (1866) (statement of Sen. Lyman Trumbull). To the framers of the Fourteenth Amendment, this connection between soil and citizenship had the character of natural law. In 1862, Attorney General Edward Bates explained that there is "no better title to the citizenship which we enjoy than 'the accident of birth'—the fact that we happened to be born in the United States." Edward Bates, OPINION OF ATTORNEY GENERAL BATES ON CITIZENSHIP 12 (1862). He declared that "our Constitution, in speaking of *natural born citizens*, uses no affirmative language to make them such, but only recognizes and reaffirms the universal principle, common to all nations, and as old as political society, that the people born in a country do constitute the nation, and, as individuals, are natural members of the body politic." *Ibid.*

The rule of *jus soli* is immensely practical—a benefit acknowledged contemporaneously with the Fourteenth Amendment's adoption. Shortly after the states ratified the Fourteenth Amendment, a British Royal Commission proclaimed that *jus soli* "has * * * solid advantages" because "[i]t selects as the test a fact readily provable; and this, in questions of nationality and allegiance, is a point of material consequence." ROYAL COMMISSION FOR INQUIRING INTO THE LAWS OF NATURALIZATION AND ALLEGIANCE, REPORT, 1868–69, C. (1st series) 4109 (U.K.), *reprinted in* Papers Relating to the Foreign Relations of the United States, Transmitted to Congress, with the Annual Message of the President, Dec. 1, 1873, at 1238,

https://tinyurl.com/4z6prfmm. The tradition of *jus soli* "prevents troublesome questions in cases * * * where the father's nationality is uncertain; and it has the effect of obliterating speedily and effectually disabilities of race, the existence of which within any community is generally an evil * * * ." *Ibid.* Absent a choice by the parents to reject British nationality for the child, they endorsed retaining the common law rule. The report quickly found its way to the United States and was included in the *Foreign Relations of the United States* papers in 1873 and was cited by Wong Kim Ark in his successful brief before this Court. Brief for the Appellee at 48, *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898) (No. 449).

Subsequent commentators likewise noted the administrative simplicity of *jus soli*. As Richard W. Flournoy, Jr., the Chief of the Bureau of Citizenship in the State Department and the principal drafter of the Nationality Act of 1940, remarked in 1921, "there is * * * much practical advantage in a system in which mere proof of birth in the United States is sufficient proof of citizenship." Richard W. Flournoy, Jr., *Dual Nationality and Election*, 30 YALE L.J. 545, 553 (1921) (using the example of a child born to a visiting merchant and criticizing as ahistorical and contrary to precedent Wharton's view, which Petitioners now rely upon here); *see also* O. F. Dowson, Book Review, *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes, and Treaties*, 45 HARV. L. REV. 1290, 1291–92 (1932) ("In the case of any country where the principle of the *jus soli* is applied without qualification, a duly attested certificate of birth in itself affords prima facie evidence of nationality.").

By contrast, *jus sanguinis* or hybrid systems are complicated to administer: "If we contrast this with

the evidence required to prove nationality by virtue of the *jus sanguinis* or with cases where nationality is dependent upon proof of residence or domicile, the *jus soli* clearly has the advantage." Dowson, 45 HARV. L. REV. at 1292.

Indeed, as early as 1896, commentators observed that abandoning the *jus soli* rule would lead to chaos: "So generally accepted and acted upon has been the impression that birth in this country *ipso facto* confers citizenship, that there are, to-day, thousands of persons born in the United States of foreign parents, who consider themselves, and are recognized legally, as citizens." Marshall B. Woodworth, *Citizenship of the United States Under the Fourteenth Amendment*, 30 AM. L. REV. 535, 538 (1896).

II. In Britain, Abolishing *Jus Soli* Undermined Clear and Workable Rules of Citizenship

The British experience abolishing *jus soli* proves the prescience of the framers' concerns regarding finality and workability.

A. Britain's Historic Empire-Wide *Jus Soli* Rule

At common law it was "universally admitted" that "all persons born within the colonies * * * subject to the crown of Great Britain, were natural born British subjects." *Inglis* v. *Trustees of Sailor's Snug Harbor*, 28 U.S. 99, 120 (1830). England's Lord Chief Justice commented in 1869 that "[b]y the Common law of England, 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[.]" Alexander Cockburn, NATIONALITY: OR THE LAW

RELATING TO SUBJECTS AND ALIENS 7 (1869). And "the law of the United States of America," he noted, "agrees with our own." *Id.* at 12; *see also* Brief for the Appellee at 47, *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898) (No. 449) (citing Cockburn's treatise).

Much like the Fourteenth Amendment in the United States, emancipation from slavery went hand-in-hand with the concept of equal citizenship. The Governor of Jamaica, for example, proclaimed in 1848 that the rights of freedpeople "stand[] on the same foundations as those of the Planter or Proprietor, or those of the People of England, and are a part of the Constitution of the Empire." Kennetta Hammond Perry, LONDON IS THE PLACE FOR ME: BLACK BRITONS, CITIZENSHIP, AND THE POLITICS OF RACE 28 (2015). Thus, in language strikingly similar to the Fourteenth Amendment two decades later, the Governor talked both of citizenship and equality before the law: "[t]he Crown, *to which the allegiance of all its Subjects is equally due, will afford to all equally the protection of the Laws*[.]" *Ibid.* (emphasis added). Freedpeople in Britain's former slave colonies thus invoked their equal citizenship in decrying maltreatment and lack of representation. *Id.* at 33 (1858 petition asserting that "a serious injury is done to the class of your Majesty's subjects, who were emancipated from slavery, and invested with the rights of British Freemen" because "an exceedingly small minority of *fellow Citizens*" who "belong to that class who but too recently owned our bodies and souls" seemed "lo[a]th and backward to accord us the equality of political rights secured by the British Constitution, alike to all classes."); *ibid.* (petitions from freedpeople that decade invoking their rights as "loyal and Devoted Subjects," "sable subjects of Jamaica,

of African descent," and fundamentally as "British subjects.").

Statutes increasingly codified the common law *jus soli* principle. The British Nationality and Status of Aliens Act, 1914, 4 & 5 Geo. 5, c. 17 (U.K.) proclaimed that anyone "born within His Majesty's dominions and allegiance" was a British subject. *Id.* § 1(1). After Canada's post-World War II effort to use its autonomy to define its own distinctive citizenship laws (then as now, also on a *jus soli* basis), the British Nationality Act, 1948, 11 & 12 Geo. 6, c. 56 (U.K.), similarly codified *jus soli*, while distinguishing between the autonomous countries under a common monarch that had defined their own citizenship laws like Canada and Australia and the rest of the Empire. Section 4 of the 1948 Act defined what was now called Citizenship of the United Kingdom and Colonies ("CUKC") in the traditional *jus soli* manner: "[E]very person born within the United Kingdom and Colonies * * * shall be a citizen of the United Kingdom and Colonies by birth," with the two traditional exceptions—a child of a father who "possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to His Majesty" and a child of a father who "is an enemy alien and the birth occurs in a place then under occupation by the enemy."[3] As Home Secretary James Chuter Ede put it during the debate on the 1948 Act, it was "essential" to the purpose of the bill that "we recognise the right of the colonial peoples to be regarded as men and brothers with the people of

[3] This was no theoretical exception; the Channel Islands were occupied by Germany for most of World War II and several British colonies in Asia had been occupied by Japan.

this country." 453 PARL. DEB., H.L. (5th ser.) (1948) 394 (U.K.). Thus, British subjects "had the right at common law to enter the United Kingdom without let or hindrance when and where [t]he[y] pleased and to remain [t]here as long as [t]he[y] liked." *D.P.P.* v. *Bhagawan* [1972] A.C. 60 (H.L.) 74 (appeal taken from Eng.).

B. Britain Abandons the Common Law *Jus Soli* Tradition

That principle did not last forever. After World War II, as Britain sought to rebuild bombed-out cities and faced labor shortages and long-distance travel became more affordable, significant numbers of British subjects from across the Empire started to move to the "Mother Country." Amelia Gentleman, THE WINDRUSH BETRAYAL: EXPOSING THE HOSTILE ENVIRONMENT 99–101 (2019). This period of migration from Britain's Caribbean colonies to the so-called "Mother Country" became symbolized by the 1948 arrival of the *S.S. Empire Windrush* at Tilbury Docks just outside London, filled with hundreds of British subjects from the Caribbean. Kennetta Hammond Perry, LONDON IS THE PLACE FOR ME: BLACK BRITONS, CITIZENSHIP, AND THE POLITICS OF RACE 1 (2015).

The inhabitants of the "Mother Country" were, however, not always happy to see their non-white fellow citizens. In 1964, a special election in the Birmingham suburb of Smethwick brought accusations that the ultimately-successful candidate had refused to condemn his supporters' use of the slogan "[i]f you want a n——r neighbor, vote Labor" in opposing intra-Empire migration. *Wilson Charges Tories Appeal to Racism in British Elections*, N.Y. TIMES, Mar. 11, 1964, at 8 (spelling Americanized by the Times). A

few miles away in 1968, shadow minister Enoch Powell called for "re-emigration" of people who had moved to the mainland from other parts of the Commonwealth, invoking Virgil's image of "the River Tiber foaming with much blood"—as well as frequent analogies to the United States—to invoke a fear of civil war or riots otherwise in what became known as the "Rivers of Blood" speech. Enoch Powell, Speech at Birmingham (Apr. 20, 1968), https://www.enochpowell.net/fr-79.html.

In this increasingly racialized context, Parliament moved to end the equal citizenship of all British subjects. First, in 1962, Britain imposed an internal border within the Empire as a "temporary provision," initially exempting people born in the United Kingdom or holding a Citizen of the United Kingdom and Colonies passport issued by the United Kingdom. Commonwealth Immigrants Act, 1962, 10 & 11 Eliz. 2, c. 21, §§ 1–2 (U.K.). A month before the "Rivers of Blood" speech in 1968, Parliament passed a bill stripping the right to live in the U.K. from most non-U.K.-resident Citizens of the United Kingdom and Colonies, too. Commonwealth Immigrants Act, 1968, c. 9, § 1 (U.K.). It used a literal grandfather clause designed to protect (largely white) descendants of emigrants while excluding (largely non-white) descendants of indigenous people or enslaved people in Britain's colonies. *Id.* § 1(2A) (exempting people with a grandparent born in Britain).[4]

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[4] Cabinet papers unsealed decades later would reveal that the reason for restricting the movement of these undoubted citizens was because they "are not nationals of this country in any racial sense" and because "immigration and settlement" of these Citizens of the United Kingdom and Colonies was "largely by coloured persons * * * ." Mark Lattimer, *When Labour Played the*

[Footnote continued on next page]

The door continued to close. In 1971, Parliament further restricted the right of Citizens of the United Kingdom and Colonies born in British colonies to live in the United Kingdom unless they had a parent born in the U.K. Immigration Act, 1971, c. 77, § 2 (U.K.). Citizens of the United Kingdom and Colonies born in the colonies rather than the British Isles who had *already* moved to the mainland now risked removal if they could not prove that they were "settled" or had the "right of abode" in the United Kingdom, such as by having "been ordinarily resident" in the British Isles "for the last five years or more." *Id.* § 2(1)(c). Later, effective 1983, Parliament would abolish Citizenship of the United Kingdom and Colonies altogether, requiring longtime residents who had arrived with the same citizenship as their British neighbors to register if they wished to retain citizenship. British Nationality Act, 1981, c. 61, § 7 (U.K.); Immigration Act, 1988, c. 14, § 1 (U.K.). But rather than informing the people affected of the need to register, the British government inaccurately told people with this status that "[y]our position under the immigration laws is not changed." U.K. Home Office, THE HISTORICAL ROOTS OF THE WINDRUSH SCANDAL: INDEPENDENT RESEARCH REPORT 47–48 (2024), https://tinyurl.com/yrzuk7b6 ("[W]hen advice was provided to erstwhile CUKC citizens, it was misleading and inaccurate."); *see also* WENDY WILLIAMS, WINDRUSH LESSONS LEARNED REVIEW, 2019–21, H.C. 93, at 59 (U.K.), https://tinyurl.com/2yrvuuvf.

[Footnote continued from previous page]

Racist Card, THE NEW STATESMAN, Jan. 22, 1999, https://tinyurl.com/3nke46pw (quoting newly-unsealed Cabinet memoranda).

And finally, in 1981, Parliament abolished birthright citizenship outright, effective 1983. British Nationality Act, 1981, c. 61, § 1 (U.K.); *id.* §§ 1(1), 50(2), (4) (only people who had at least one citizen or "settled" parent would be a citizen). When the Act came into force on January 1, 1983, British Nationality Act 1981 (Commencement) Order 1982, S.I. 1982/933 (U.K.), hundreds of years of *jus soli* came to an end.

Even as Parliament abolished automatic citizenship based on birthplace, it attempted to address concerns critics had raised about children being exiled from the only country they had ever known by providing numerous "registration" provisions to address certain cases thought to be sympathetic. *E.g.*, British Nationality Act, 1981, c. 61, §§ 1(3), 1(4), 3(1) & sch. II (U.K.). To be sure, these provisions leave many without relief. For example, many require an application before the age of 18, but children may not realize that they are not citizens unless they try to apply for a passport. And since 2006, most of these registration rights for children have been made conditional on showing good moral character if the applicant is over ten years old. Immigration, Asylum & Nationality Act 2006 c. 13, § 58 (U.K.); *see* JOINT COMMITTEE ON HUMAN RIGHTS, LEGISLATIVE SCRUTINY: NATIONALITY AND BORDERS BILL (PART 1)—NATIONALITY, 2021–22, H.C. 764, H.L. 90, at 3, 7, 15–17 (U.K.) (discussing controversy). The fees associated with the application, currently £1,214 (approximately $1,650), are unaffordable for many. *See R (O)* v. *Sec'y of State for the Home Dep't* [2022] UKSC 3 (appeal taken from Eng.) (upholding power to charge substantial fees). But for all these flaws, the changes were a legislative compromise, not a bare abolition of birthright citizenship without relief valves, as

Petitioners seek to pursue through executive action here.

Nevertheless, as addressed below, the new rules have placed extreme burdens on many U.K.-born children. Two prominent examples: those entitled to citizenship at birth under the Act but unable to obtain documentary evidence of their parents' status to *prove* their citizenship; and those whose lawfully-resident parents' status was retroactively deemed to have been insufficient to pass down citizenship.

III. The "Windrush Scandal": Longtime Residents Born in British Colonies and Their U.K.-Born Children Cannot Prove Their Citizenship

Abandoning the rule of birthright citizenship in the United Kingdom was profoundly destabilizing. Tens of thousands of existing British residents born in then-colonies who had made what were then-regarded as internal moves, often as children, were suddenly asked to prove details about their arrival in Britain (sometimes decades ago) to work or rent an apartment. And, with *jus soli* abolished, this problem was now hereditary: a parent's inability to provide documentary evidence of their right of abode or other basis for "settled" status now was visited upon their children and their children's children. Britain was unprepared for the administrative complexity that followed, and tens of thousands of citizens fell through the cracks.

This series of administrative failings became known as the "Windrush Scandal," after the "Windrush Generation." *See, e.g.*, WINDRUSH LESSONS LEARNED REVIEW at 7. But, thanks to the abolition of birthright citizenship, it was a multigenerational scandal: with proof of parents' immigration

status now essential, the Windrush Generation's children were affected—"even though they'd been born and raised in the U.K." *Id.* at 57; *see also id.* at 82.

A. "Hostile Environment" Policies Suddenly Require Detailed Documentary Evidence of Intra-Empire Moves Half a Century Later

As a result of the changes in British nationality law, people born in British colonies were tasked with proving details that that no one had thought important enough to record. After all, when they moved, they were Citizens of the United Kingdom and Colonies no less than their Britain-born compatriots; only later had that citizenship been divided.

In the 2010s, however, concern over unauthorized immigration generated what became known as the "hostile environment" policy, which required documentary proof of citizenship or legal immigration status for basic life requirements: everything from renting an apartment to enrolling in higher education, working, or receiving some types of healthcare. Amelia Gentleman, THE WINDRUSH BETRAYAL: EXPOSING THE HOSTILE ENVIRONMENT 8, 118, 124–25 (2019); Devyani Prabhat, MIGRATING BORDERS AND CITIZENSHIP IN LAW 52 (2026) (describing these policies as "internal bordering" and "immigration control within the borders of the UK"). In essence, the whole of government, private employers, landlords, and hospital administrators were deputized as immigration enforcement (generally with little or no training beyond asking to see a passport or visa, which Empire and Commonwealth migrants were previously not required to carry). *See* Gentleman at 131–33, 139; Prabhat at 65–70 (discussing

pervasiveness of internal border controls); Immigration, Asylum & Nationality Act, 2006, c. 13, § 21 (U.K.) (two-year sentence for employing unauthorized person with "reasonable cause to believe that the employee is disqualified"); Immigration Act, 2016, c. 19, § 35 (U.K.) (increasing penalty to five years).

That was often difficult. Much as in the United States a move from California to Florida would not require immigration paperwork, a move from one part of the British Empire to another "was effectively considered an internal journey." Gentleman at 68. Caribbeans with Citizen of the United Kingdom and Colonies status had identical passports to Britons. *Ibid.* Classified in British bureaucratese as "freely landed," there were no visas or immigration restrictions at the time. *Ibid.* Minors frequently traveled as dependents of relatives without passports or other identification documents. *Id.* at 70. Even those with official records often lost them through moves, fires, breakups, and other life events. *Id.* at 181. So, suddenly, "thousands of elderly British, mainly from the Caribbean, who came to the UK before 1973 as children with or to join parents, were finding themselves tracked and made irregular." Prabhat at 52.

Worse, the government itself typically disposed of documentation—such as landing cards—to save money. Gentleman at 149–51; Prabhat at 63. By the time the "hostile environment" policy made documentary proof of citizenship or legal residence essential, many of those affected had a faint memory and no records of the ships or planes that brought them over decades earlier. *See generally Mahabir* v. *Sec'y of State for the Home Dep't* [2021] EWHC 1177, [41] (Admin) ("[A]lthough the Immigration Act 1971 conferred on Windrush migrants coming to the United

Kingdom before January 1973 a right of abode in the United Kingdom many were not issued with the documentation to prove it, and the Home Office did not keep a consistent set of records to that effect.").

For example:

- A woman in her sixties, born a Citizen of the United Kingdom and Colonies, who had previously worked at Parliament's cafeteria suddenly was detained and days away from removal because she had no documents proving what flight she was on 50 years earlier when she was 11 years old, the adults who had flown with her had long since passed away, and the government had not preserved any records either. Gentleman at 17–41.
- A CUKC-born man whose parents brought him at age eight was fired and repeatedly detained because, even though he could name the head teacher at his English elementary school in the 1960s, he could not find *documents* proving he arrived before 1973; multiple of his classmates, he told reporters, faced the same issues. *Id.* at 42–46, 60.
- A CUKC-born man who arrived at age three lost his job as a janitor, was deemed ineligible for unemployment insurance, was unable to visit his dying mother, and was instructed to leave the country because he could not produce documentary evidence of a move he was too young even to remember—in part because his mother's expired passport, stamped on arrival in 1960, was deemed insufficient proof that

he lived in the U.K. before 1973. *Id.* at 67–68; *R. (Rose)* v. *Sec'y of State for the Home Dep't* [2022] EWCA Civ 1068, [5], [46] (noting that he died "less than a month" after his citizenship was finally resolved and noting that he was "shamefully treated" and "[t]here should never have been any question of his entitlement to live and work in this country").

- A woman who arrived at age nine with CUKC status in 1963 and worked for London's Metropolitan Police was left jobless, in debt, and unable to visit her dying mother. Gentleman at 72.
- Some left for countries they had never known because, unable to prove their right to work, they could not afford lawyers to challenge the decision that their evidence of arrival was inadequate. *Id.* at 171–74.
- Many became stranded for years on (what were intended as brief) trips abroad. *Id.* at 262–64; *R. (Donald)* v. *Sec'y of State for the Home Dep't* [2024] EWHC 1492, [2] (Admin); *R. (Vanriel)* v. *Sec'y of State for the Home Dep't* [2021] EWHC 3415, [7]–[9] (Admin).

So, even for those who had moved within the Empire, proving nationality or immigration status based on events that happened decades earlier, often when they were children, was extraordinarily hard.

B. Because of the Abolition of *Jus Soli*, Children Must Now Prove Their Parents' and Grandparents' Migration History

But with the end of *jus soli* the problem of *proving* nationality through very old paper records that may have long since been lost became multigenerational; children "born and raised in the U.K." now needed to prove their parents' status to be citizens. WINDRUSH LESSONS LEARNED REVIEW at 57, 82; Prabhat at 62. So, the uncertainty of a parent's status was inherited by children and their children's children. The parent might be dead, estranged, imprisoned, or simply have lost old paper records over the course of their life. It became the burden of the child to prove their parents' immigration status.

Thus, for example:

- Courtney Lawrence, a 25-year-old woman born in the U.K., and her London-born toddler were denied housing and became homeless because she could not prove that they were British because her parents lacked documentary evidence of exactly when they arrived from the Caribbean, even though Courtney had photographs of her parents as children in the U.K. Amelia Gentleman, *Three Generations of Windrush Family Struggling to Prove They Are British*, THE GUARDIAN, Dec. 18, 2019, https://tinyurl.com/2h32tr7v.
- Cynsha Best, a 31-year-old lifelong Londoner with two British sons, was detained because, though her grandparents had been in the U.K. since 1956 and her mother lawfully joined them in 1968, she could

not produce evidence of her parents' status when she was born. Emily Dugan, *This Woman Always Thought She Was British. Now, After 30 Years, The Home Office Says She's Not*, BUZZFEED U.K. NEWS, July 8, 2017, https://tinyurl.com/yu3jbf75 (cited in Parliamentary reports).

Even the British government could not calculate the number of people impacted. *See* HOME AFFAIRS COMMITTEE, THE WINDRUSH GENERATION, 2017–19, H.C. 990, at 7 (U.K.) ("We are not aware of any estimates of how many people may fall into these post-1973 categories."). Birth registration in Britain—much like the United States—is handled by various local offices operating under largely unchanged nineteenth century statutes. Those records do not capture parental nationality or immigration status. H.M. PASSPORT OFFICE, GUIDANCE: BIRTH REGISTRATION (2025), https://tinyurl.com/2s3puyzb. The vital records simply did not track the information essential for determining citizenship under a non-*jus soli* system. And the burden fell on children to prove facts necessary to establish citizenship.

IV. More than 150,000 U.K.-Born Children Are Suddenly Deemed Not Citizens After All

The "Windrush scandal" was not the only administrative chaos prompted by the abolition of *jus soli*. For decades until the U.K.'s departure from the European Union, European citizens enjoyed broad rights to live in the U.K. (and vice versa). *See* Treaty Establishing the European Economic Community, Rome, Mar. 25, 1957, 298 U.N.T.S. 11, 36, art. 48 § 1. From the abolition of birthright citizenship in 1983 until a legislative change in 2000, the British gov-

ernment assumed that these European citizens were "settled," and thus that their children were automatically citizens.

Because of that assumption, roughly 167,000 of their U.K.-born children were treated as British citizens at birth. C.J. McKinney, RESEARCH BRIEFING: BRITISH NATIONALITY (REGULARISATION OF PAST PRACTICE) BILL 2022-23, House of Commons Library No. CBP-9809, at 4, 9 (2023). Many were issued British passports, voted in British elections, and otherwise lived as British citizens. *Ibid.*

Except they apparently weren't. In 2023, a court held that the government had been wrong all along. The High Court held that those European parents did not actually meet the statutory definition of "settled" under the nationality laws then in force. *R. (Roehrig)* v. *Sec'y of State for the Home Dep't* [2023] EWHC 31 (Admin). That meant their U.K.-born children were never actually British citizens and, after Brexit, might have no right to live in the only country they had ever known. And because they were over 18 by the time of the *Roehrig* decision, it was too late for them to take advantage of certain relief mechanisms Parliament had passed for children. Ultimately, Parliament enacted a statute granting citizenship to those affected. British Nationality (Regularisation of Past Practice) Act 2023, c. 27, § 1 (U.K.).

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The U.K.'s experience shows that rejecting the longstanding view of *jus soli* citizenship is a recipe for chaos, disenfranchisement, unemployment, and deportation of people who are, in fact, citizens. Even people whose parents were citizens frequently cannot provide documents proving that fact decades later. Parents may be dead, estranged, or imprisoned.

There is no comprehensive government database of parental citizenship.

The Executive Order does not appear even to consider these problems. Instead, it appears to put all the burden of proving parents' status on children. The U.K.'s experience shows where that will lead: children who are in fact citizens even by Petitioners' definition but cannot find documents to prove their parents' status effectively denied their rights as citizens.

As in the U.K., moreover, proving a parent's citizenship in the United States often requires more than a birth certificate or certificate of naturalization, and may turn on facts that generate no official documentation. *See, e.g.*, 8 U.S.C. § 1401(g) (residence requirements if a parent was born abroad to a citizen parent); 8 U.S.C. § 1431 (naturalization occurring automatically for certain children residing with citizen parents); 8 U.S.C. § 1409(a)(4)(A) (legitimation requirements for children of unmarried citizen fathers). Under the Executive Order, these people's U.S.-born descendants would have to track those same obscure details about their ancestors to prove their own citizenship. Future generations would be forced to carry proof not only of where they were born, but also decades-old paperwork about their ancestors' status and residence. That system is unworkable—and, as in the U.K.—guarantees that citizens will be wrongfully denied employment, detained, and deported.

CONCLUSION

Petitioners, through executive fiat, attempt to impose the same administratively unworkable system of proving ancestors' citizenship that caused chaos in the United Kingdom. The United States is

fortunate that the framers of the Fourteenth Amendment long since settled that question. The District Court's decision should be affirmed.

Respectfully submitted.

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