

No. 25-365

IN THE
Supreme Court of the United States

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

Petitioners,

v.

BARBARA, ET AL.,

Respondents.

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

**BRIEF OF BLACK IMMIGRANTS' RIGHTS
ORGANIZATIONS AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*

Amici curiae are advocacy organizations that work on behalf of Black immigrant communities to advance racial, social, political, and economic justice in the United States.¹ The Black Alliance for Just Immigration (“BAJI”) fights for the rights of Black migrants and African Americans through organizing, legal advocacy, research, policy, and narrative building to improve the conditions of Black communities. The Haitian Bridge Alliance (“HBA”) is a grassroots and community-based nonprofit organization that provides migrants and immigrants with humanitarian, legal, and social services, with a particular focus on Black immigrants, the Haitian community, women and girls, LGBTQIA+ individuals, and survivors of torture and other human rights abuses. The UndocuBlack Network connects undocumented Black people with critical resources. Based on their extensive experience, *amici* have a unique perspective on how discrimination has historically infected U.S. immigration policy, and how Black immigrant communities are particularly vulnerable to the harms arising from the challenged Executive Order.

INTRODUCTION AND SUMMARY OF ARGUMENT

For the first ninety years of the Republic, race-based notions of citizenship threatened the egalitarian ideals of the U.S. Declaration of Independence. Before the Civil War and the elimination of slavery, some

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to this brief’s preparation and submission.

states and the federal government reserved naturalization for white people, limited the immigration of free Black people, and closely regulated the internal movement of both free and enslaved Black people, thereby buttressing a rigid racial hierarchy. In *Dred Scott v. Sandford*, 60 U.S. 393 (1857), a majority of the U.S. Supreme Court endorsed this race-based definition of citizenship, explicitly excluding Black people from eligibility for membership in the citizenry.

The Fourteenth Amendment was expressly designed to undo this insidious decision, anchoring U.S. citizenship to a more durable and equitable foundation. It replaced a complicated caste system with a simple but profound principle: Except for a few widely recognized categories, anyone born or naturalized in the United States is a U.S. citizen. The Court affirmed that fundamental maxim in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). Even as racial discrimination has persisted in the Nation's immigration laws, birthright citizenship has remained a bedrock pillar of our Constitution—guaranteeing that citizenship does not depend on race or the immigration status of one's parents.

Executive Order 14,160 (the "EO") would undo that hard-won progress. The EO seeks to deny citizenship to any child whose mother is "unlawfully present" or has "temporary" status and whose father is not a U.S. citizen or lawful permanent resident. Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025). If implemented, the EO would replace a birthright shared by *all persons* born in the United States with a system in which citizenship once again depends on lineage and parental domicile.

Amici—organizations that serve and advocate for Black immigrants in the United States—have witnessed the disproportionate toll that an exclusionary immigration system exacts on Black communities. The EO would deepen those harms: exposing children of Black immigrants to heightened surveillance, detention, and deportation; stripping their U.S.-born children of access to critical health and nutrition programs; and inflicting the dignitary wound of a legal regime that once again makes citizenship contingent on ancestry. The Court should reject this dangerous attempt to resurrect a system the Fourteenth Amendment was ratified to eradicate.

ARGUMENT

I. THE CITIZENSHIP CLAUSE OF THE FOURTEENTH AMENDMENT GUARANTEES BIRTHRIGHT CITIZENSHIP TO PEOPLE BORN IN THE UNITED STATES REGARDLESS OF RACE OR PARENTAL LINEAGE.

Before the ratification of the Fourteenth Amendment in 1868, the Constitution did not expressly define citizenship. Antebellum U.S. courts applied the English common-law principle of *jus soli* (citizenship by birth within a state's territory) to determine citizenship. But in *Dred Scott*, a majority of the U.S. Supreme Court excluded enslaved persons and their children from this path to citizenship and infamously adopted a cramped and racist understanding of political membership—which denied Black people any claim to citizenship even if they were born on U.S. soil. 60 U.S. 404-05. United States citizenship before the Civil War was therefore a privilege reserved for white people.

After the Civil War, the Framers of the Fourteenth Amendment sought to override *Dred Scott*. So they enshrined the common-law principle of birthright citizenship in the Citizenship Clause. Just a few decades later, this Court made clear that this constitutional provision “affirm[ed] the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country.” *Wong Kim Ark*, 169 U.S. at 693. As the Framers and this Court understood, the Citizenship Clause was instrumental in postwar efforts to dismantle the odious regime of anti-Black exclusion that had tainted our country since the Founding.

Over the past 150 years, the United States has made important strides in ridding itself of the badges and incidents of racism and slavery. But, as *amici* have experienced firsthand, the Fourteenth Amendment’s guarantee of equality for all remains a promise unfulfilled—especially for Black immigrants who bear the brunt of our country’s draconian immigration enforcement regime. In the face of all this, the Citizenship Clause has been a crucial bulwark against a total return to a regime that made citizenship dependent on race. It should remain one.

A. Laws governing immigration and internal migration were pillars of the anti-Black legal hierarchy that prevailed in the United States before the Fourteenth Amendment.

During the antebellum period, slavery was the glaring exception to the common-law rule of *jus soli* that otherwise prevailed throughout the United States—the “ancient and fundamental rule of citizenship by birth within the territory.” *Wong Kim Ark*, 169

U.S. at 693. As a result, Black people in the United States were largely excluded from full membership in society. Enslaved people in the South had no rights. And although some Northern states recognized Black citizenship, this rarely amounted to anything like full equality, not least because they lived under the constant threat of re-enslavement.² By contrast, white European immigrants who homesteaded could claim full legal status as citizens after fulfilling a five-year residency requirement.³

The federal and state governments regulated eligibility for citizenship through immigration laws that closely controlled the movement of persons, both into the United States and within its borders. In this way, federal and state lawmakers attempted to shape the demographics of the United States to conform with an entrenched racial hierarchy. The federal government left immigration largely unregulated until the 1880s, but when it did legislate, it did so in ways that were notably hostile to racial equality and deferential to the states. The first federal naturalization law, the 1790 Naturalization Act, created a pathway to citizenship solely for “free white person[s],” excluding Black persons from ever obtaining citizenship. *See*

² Elizabeth Keyes, *Race and Immigration, Then and Now: How the Shift to “Worthiness” Undermines the 1965 Immigration Law’s Civil Rights Goals*, 57 *Howard L. J.* 899, 903 (2014); *see also* Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860*, at 15 (1961) (“Until the post-Civil War era . . . most northern whites would maintain a careful distinction between granting Negroes legal protection—a theoretical right to life, liberty, and property—and political and social equality.”).

³ Keyes, *supra* note 2, at 903-04.

Naturalization Act of 1790, ch. 3, 1 Stat. 103.⁴ Congress then enacted the first immigration ban in 1803, barring ship captains from bringing free Black persons into any state that prohibited their entry and making it a federal crime to do so. Act of Feb. 28, 1803, ch. 10, 2 Stat. 205. The Act specifically targeted free Black immigrants from the Caribbean.⁵

These outward-facing immigration laws had their inward-facing counterparts in the fugitive slave laws. Just as the former restricted the arrival of Black persons from abroad, the latter limited the movement of Black persons within the United States, and they did so in the cruelest way possible: by facilitating—and later, mandating—their return to slavery. See Fugitive Slave Act of 1793, ch. 7, 1 Stat. 302 (empowering slaveholders to arrest runaway slaves); Fugitive Slave Act of 1850, ch. 60, 9 Stat. 462 (requiring federal officials to execute warrants for runaway slaves and penalizing anyone who interfered). Compared to today’s highly reticulated federal regime, the early national immigration system might be viewed as reflecting a light touch. But for Black people coming to or already

⁴ See also Peniel Ibe, *Immigration is a Black Issue*, Am. Friends Serv. Comm. (Feb. 16, 2021), <https://perma.cc/4F7M-D8R9>. In 1795, Congress amended the Naturalization Act of 1790, see Naturalization Act of 1795, ch. 20, § 1, 1 Stat. 414, 414 (repealed 1802), but did not extend naturalization eligibility to “aliens of African nativity and to persons of African descent” until 1870, see Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254, 256.

⁵ See Kelly Lytle Hernandez, *The Whites-Only Immigration Regime*, 56 W. Hist. Q., at 6 (2024); Gerald Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 Colum. L. Rev. 1833, 1869-70 (1993).

within the United States, the system was a heavy hand.

The federal framework worked in parallel to the more expansive backdrop of state laws regulating the movement of Black persons before the Civil War. So-called “Seamen’s Acts” required ships docking in Southern ports to confine their Black crew members to local jails at the captains’ expense. *See, e.g.*, Act of Dec. 20, 1800, 1800 S.C. Acts 31, 35; Act of Dec. 12, 1793, 1793 Va. Acts 28. If the captains failed to comply, the acts permitted local authorities to sell the crew members into slavery.⁶ In 1822, South Carolina passed the Negro Seaman Act; other Southern states, including North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, followed suit with analogous laws.⁷ In 1823, the South Carolina law was declared unconstitutional, *Elkison v. Deliesseline*, 8 F. Cas. 493, 497-98 (C.C.D.S.C. 1823) (No. 4,366), but the federal government was unable to prevent its enforcement.⁸

The reach of these laws extended to every corner of the Union. In slave states, free Black people were barred from entry, required to register with authorities and carry proof of their status, and were subject to expulsion or re-enslavement for any failure to comply.⁹ By the time of the Civil War, approximately twenty

⁶ Hernandez, *supra* note 5, at 6-7.

⁷ *Id.*; Neuman, *supra* note 5, at 1873-74.

⁸ Neuman, *supra* note 5, at 1875.

⁹ Neuman, *supra* note 5, at 1868; *see also* Alina Das, *No Justice in the Shadows: How America Criminalizes Immigrants* 39 (2020).

thousand free Black persons had been arrested by Southern authorities—and either incarcerated or sold into slavery.¹⁰ But the exclusion was not limited to the South: The state constitutions of Illinois, Indiana, and Oregon all contained clauses forbidding Black settlement within their borders.¹¹ “Lawmakers in Northern and Southern states alike viewed the free movement of Black people as a threat to the institution of slavery and to the Whiteness of the country.”¹²

During this period, some state courts and a majority of this Court blessed restrictions on Black residency and citizenship. *See Moore v. Illinois*, 55 U.S. 13, 18 (1852) (affirming that states could bar entry of persons “to protect themselves against the influx either of liberated or fugitive slaves”); *State v. Clairborne*, 19 Tenn. 331, 341 (1838) (upholding indictment of emancipated Black man for moving from Kentucky to Tennessee, because he was not a citizen). Most notoriously, in *Dred Scott*, the Supreme Court made plain what was at times implicit in the pre-Fourteenth Amendment patchwork of laws: That no Black person was eligible for U.S. citizenship. 60 U.S. at 406. In his dissent, Justice Curtis advanced an expansive view of *jus soli* that encompassed free Black people; he protested that the majority decision was contrary to “the received general doctrine” prevalent in the United States since the Declaration of Independence—namely, “in conformity with the common law, that free

¹⁰ Hernandez, *supra* note 5, at 6.

¹¹ Neuman, *supra* note 5, at 1866-67; Das, *supra* note 9, at 39-40.

¹² Das, *supra* note 9, at 40.

persons born” in the United States were citizens. *Id.* at 576.

Notably, even the majority in *Dred Scott* conceded a critical point: That Black people born in the country “did owe allegiance to the Government, whether they were slave or free.” *Id.* at 420. The Court’s shameful rebuke of birthright citizenship for enslaved people thus rested not on any deficiency of allegiance or connection to the Nation, but purely on race and parentage. *Dred Scott* lent constitutional credence to the notion that these immutable characteristics—not birth, not allegiance—determined who could be a citizen.

B. The Fourteenth Amendment broke the legal link between race and citizenship.

The Fourteenth Amendment put an end to the legal regime that had excluded Black people from full inclusion in the United States polity. Ratified in 1868, it replaced the fractured patchwork of state-level citizenship rules and abrogated *Dred Scott* by establishing a uniform, constitutional guarantee of birthright citizenship. U.S. Const. amend. XIV, § 1. In particular, the Citizenship Clause of the Fourteenth Amendment provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” *Id.* The government suggests that this language was limited only “to freed slaves and their children.” U.S. Br. 2. This is plainly incorrect: The Citizenship Clause is written without regard to race or bondage (or the immigration status of one’s parents); it refers only to “all persons.” U.S. Const. amend. XIV, § 1. And quite unlike the Fifteenth Amendment, the Citizenship Clause says nothing

about “previous condition of servitude.” U.S. Const. amend. XV, § 1.

Thus, in guaranteeing birthright citizenship to “all persons born or naturalized in the United States,” the Citizenship Clause severed the legal link between citizenship and ancestry, parentage, and state-by-state racial classifications—the qualifications that had been the United States’s insidious revision of the English *jus soli* principle. Virtually all children born on U.S. soil became citizens at birth, subject to a handful of well-established common-law exceptions: one for children of foreign diplomats and hostile occupying forces, and another for members of tribal nations. These groups, this Court has made clear, cannot be said to be “born in the United States and subject to the jurisdiction thereof.” *Elk v. Wilkins*, 112 U.S. 94, 102 (1884). Apart from those well-defined carveouts, there is no broader exception to birthright citizenship in the Citizenship Clause. And if Congress had intended to limit birthright citizenship to formerly enslaved Black Americans, it could have done so by making that explicit in the text of the Citizenship Clause.

In 1898, this Court confirmed that the Citizenship Clause extended far more broadly. In *Wong Kim Ark*, the Court held that a man born in San Francisco to Chinese-subject parents—who were themselves barred from naturalization under federal law—was a citizen at birth under the Fourteenth Amendment. 169 U.S. at 705. In reaching that conclusion, the Court specifically rejected any argument that the Citizenship Clause applied only to enslaved people and their descendants, a population that obviously did not include Wong Kim Ark himself. Since *Wong Kim Ark*, the resounding “judicial and scholarly consensus” has been

that “the Fourteenth Amendment’s grant of citizenship . . . applies regardless of the citizenship or status of one’s parents.”¹³

C. Despite the enactment of the Fourteenth Amendment, race-based exclusion remained a feature of the U.S. immigration system.

Although the Fourteenth Amendment settled the question of birthright citizenship, its adoption did not end efforts to police the boundaries of national membership along racial lines. From Reconstruction onward, Congress shifted the locus of racial exclusion from citizenship to immigration control.

Beginning in the 1870s, the federal government assumed greater power over immigration regulation, and racial exclusion defined the new regime.¹⁴ After the Fourteenth Amendment’s adoption, Congress acted swiftly to reinforce the Amendment’s promise by amending the 1790 Naturalization Act in 1870 to extend eligibility for naturalization to “aliens of African nativity” and “persons of African descent.” Naturalization Act of 1870, ch. 254 § 7, 16 Stat. 254, 256. Nevertheless, the Naturalization Act of 1870 still maintained racial distinctions, particularly with respect to Asian immigrants. Five years later, the 1875 Page Act barred the entry of persons from “China, Japan, or any Oriental country” for “lewd and immoral purposes,” though in practice it was “discriminatorily applied and

¹³ Jacob Hamburger, *The Consequences of Ending Birthright Citizenship*, 103 Wash. U. L. Rev. 209, 211 (2025).

¹⁴ See Br. of Immigr. L. & Hist. Scholars as *Amici Curiae* in Supp. of Resp’ts, *Dep’t of State v. Munoz*, No. 23-334, 2024 WL 1420708, at *5 (U.S. Mar. 28, 2024).

aimed to exclude all Chinese women.”¹⁵ The Chinese Exclusion Act of 1882 went further, barring the immigration of Chinese laborers for ten years and denying naturalization to Chinese immigrants already in the United States. *See* Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (repealed 1943).

But even at the height of this exclusionary era, the principle of birthright citizenship held firm. When the government argued in *Wong Kim Ark* that the child of Chinese immigrants (who, as noted, were barred from naturalization) could not be a citizen, this Court rejected that argument decisively. 169 U.S. at 693-94. Congress could restrict who entered the country, but it could not strip citizenship from those born within it.

In the decades that followed, the Court continued to enforce racial restrictions on naturalization, denying citizenship to a Japanese immigrant in *Ozawa v. United States*, 260 U.S. 178 (1922), and to an Indian immigrant in *United States v. Thind*, 261 U.S. 204 (1923), on the ground that neither was “white” within the meaning of the 1790 Act. But even these decisions, which embraced the racial prerequisites of an earlier era, did not disturb the settled principle that the U.S.-born children of such immigrants were citizens from birth. Congress could restrict who entered and who was naturalized. But, again, birthright citizenship remained a grounding principle.

Congress deepened these racial hierarchies in the 1924 Johnson-Reed Act. The Act “bann[ed] entry to all persons ineligible to become citizens” and “reserved 84

¹⁵ Stewart Chang, *Feminism in Yellowface*, 38 Harv. J.L. & Gender 235, 242 (2015); *see also* Page Act of 1875, ch. 141, 18 Stat. 477.

percent of quota slots” to immigrants from northwestern Europe, effectively shutting down Asian immigration.¹⁶ But the Act’s reach extended well beyond Asia. By pegging quotas to two percent of each nationality’s 1890 U.S. population, the statute deliberately sought to freeze in place the demographics of a period when migration was overwhelmingly western European.¹⁷ The Act also required all migrants to obtain visas from U.S. consuls overseas *before* arriving in the United States. Together, the quotas and the new visa requirement radically slashed Black immigration, ensuring that the exclusionary impulse that had defined antebellum law persisted in a new form.¹⁸

And yet, as other *amici* in this case have explained, even as a rising tide of racist anti-immigrant sentiment led to new entry restrictions throughout the late nineteenth and early twentieth centuries, all three branches of the federal government understood that birthright citizenship was an ironclad constitutional principle they were bound to respect. *See* Br. of Citizenship L. Scholars as *Amici Curiae* Supporting Resp’ts at 10-15, *Trump v. Barbara*, No. 25-365 (Feb. 18, 2026).

¹⁶ Hernandez, *supra* note 5, at 2-3.

¹⁷ *See* Muzaffar Chishti & Julia Gelatt, *A Century Later, Restrictive 1924 U.S. Immigration Law Has Reverberations in Immigration Debate*, Migration Pol’y Inst. (May 15, 2024).

¹⁸ *See* Hernandez, *supra* note 5, at 8.

D. Although racially discriminatory enforcement of U.S. immigration laws persisted in the mid-twentieth century, the Fourteenth Amendment’s Citizenship Clause has remained a cornerstone of our Nation’s citizenship law.

The mid-twentieth century brought significant reforms. In 1940, Congress passed 8 U.S.C. § 1401, which (consistent with the Citizenship Clause) recognized citizenship for “person[s] born in the United States, and subject to the jurisdiction thereof.” This law was then reenacted in 1952, as the Immigration and Nationality Act (“INA”). *See* 66 Stat. 163 (1952). That statutory language remained in place in 1965, when Congress enacted the Immigration and Nationality Act of 1965, which eliminated the national origins quota system, thereby promoting formal equality in immigration and setting in motion significant demographic changes. *See* 79 Stat. 911 (1965).¹⁹

Yet formal equality did not eliminate racial disparities in enforcement. For one thing, neither the INA nor the Immigration and Nationality Act of 1965 addressed the intensification of Border Patrol operations along the Nation’s southern boundary with Mexico. In the 1940s, federal authorities had shifted Border Patrol’s focus from the northern border with Canada to the U.S.-Mexico border, where the agency began using the kind of large-scale deportation operations that have since become a hallmark of U.S. immigration enforcement. Predictably, this new geographic emphasis led to ethnic disparities: since 1965,

¹⁹ *See also* Keyes, *supra* note 2, at 906-08.

Mexicans have represented more than “90 percent of immigrants” forcibly removed from the United States.²⁰

Moreover, after 1965, the federal government began tightening visa requirements and travel controls in ways that privileged white migrants. The Visa Waiver Program, enacted in 1986, provides a telling example of these racialized distinctions. The INA and the Immigration and Nationality Act of 1965 left intact the Johnson-Reed Act’s requirement that migrants must first obtain a visa from a U.S. consul overseas, and the federal government used the threat of fines to require airlines to conduct visa and passport checks before boarding international flights into the United States.²¹ The Visa Waiver Program, however, allows people from designated countries to enter the U.S. without a visa and remain for up to 90 days, but it applies overwhelmingly to European nations. Of the 41 nations eligible for the program, not one is in Africa or the Caribbean.²²

In the decades following the enactment of the INA and the Immigration and Nationality Act of 1965, racism continued to plague immigration enforcement. Before the 1970s, detention was not a major feature of U.S. immigration policy; parole was the default, and prolonged detention was viewed as unnecessary and

²⁰ Hernandez, *supra* note 5, at 16.

²¹ *Id.* at 17.

²² U.S. Dep’t of State, *Visa Waiver Program*, <https://perma.cc/AW2F-5UYW> (last visited Feb. 25, 2026).

inhumane.²³ That changed when Haitian migrants began fleeing the repressive dictatorship of François Duvalier. Starting in 1972, the federal government began to categorically deny asylum to Haitian applicants—in what has aptly been described as a sharply xenophobic response to “the arrival of . . . poor and [B]lack migrants.”²⁴ From 1981 onward, the government detained all undocumented Haitians without the possibility of bond, transforming detention from an exception into the default rule. *Id.* What began as an anti-Haitian measure soon expanded into a universal detention apparatus.²⁵ Regrettably, today’s immigration enforcement system traces directly to that anti-Black response.²⁶

Throughout this turbulent history, the Citizenship Clause has served as a constitutional baseline. By establishing a clear rule (citizenship by birth on U.S. soil), our Constitution prevents the creation of hereditary classes of noncitizens and places the definition of national membership beyond the reach of shifting political preferences. The EO threatens to shatter that foundational principle, not by restricting who may enter the country or who may naturalize, but by denying

²³ See generally Carl Lindskoog, *Detain and Punish: Haitian Refugees and the Rise of the World’s Largest Immigration Detention System* (2018).

²⁴ See Carl Lindskoog, *How the Haitian Refugee Crisis Led to the Indefinite Detention of Immigrants*, Wash. Post (Apr. 9, 2018), <https://perma.cc/9669-BP6T>.

²⁵ See Lindskoog, *supra* note 24.

²⁶ See Alina Das, *Inclusive Immigrant Justice: Racial Animus and the Origins of Crime-Based Deportation*, 52 U.C. Davis L. Rev. 171, 176 (2018).

citizenship to children born on U.S. soil. That stark and sudden departure from over a century of settled constitutional law would fall hardest on the communities the Citizenship Clause was designed to protect.

II. THE APPLICATION OF THE CHALLENGED EO IS LIKELY TO EXACERBATE THE DISPROPORTIONATE HARMS BLACK IMMIGRANTS FACE FROM THE OVER-ENFORCEMENT OF U.S. IMMIGRATION AND CRIMINAL LAW REGIMES.

The history recounted above is not merely a record of past injustice. It is the context in which the EO would operate. If implemented, the EO would not affect all communities on an equal basis. Its effects would fall hardest on Black immigrants, who already face disproportionate enforcement, exclusion from public benefits, and stigmatization—compounding the very harms the Fourteenth Amendment was designed to redress.

A. The EO would put Black immigrants, who are already subject to disproportionately harsh immigration enforcement, at risk of statelessness.

The systemic disparities in immigration enforcement are well-documented. Between 2003 and 2015, Black immigrants made up 5.4 percent of the undocumented population in the United States, yet they composed 10.6 percent of immigrants in removal proceedings.²⁷ Black immigrants are nearly three times more

²⁷ See Juliana Morgan-Trostle, Kevin Zheng & Carl Lipscombe, *The State of Black Immigrants: Part II: Black Immigrants in the Mass Criminalization System*, N.Y. Univ. Sch. L. Immigrant

likely to be detained and deported for an alleged criminal offense than non-Black immigrants.²⁸ Once in custody, they are six times more likely to be placed in solitary confinement, and in 2019, the lengthiest ICE detentions involved Black migrants.²⁹ Haitian migrants illustrate the pattern: As of early 2022, over 40 percent of ICE-detained families were Haitian, and they paid an average of \$16,700 per person for bond release—54 percent higher than the average for other detained immigrants.³⁰ From 2012 to 2017, Haitian migrants had the second-highest asylum denial rate, at 86 percent, and other Black immigrant groups faced similarly disproportionate outcomes: In 2017, Somali migrants were deported at the highest rate of any group.³¹

The current Administration has intensified these patterns, singling out Black immigrant communities for targeted enforcement action. An ICE operation in Minneapolis that cost the lives of two U.S. citizens originated as a “sweep” of Somali migrants in the

Rights Clinic & Black All. For Just Immigr. 20 (2020), <https://perma.cc/7U9C-E32W>.

²⁸ Ibe, *supra* note 4.

²⁹ Reema Ghabra, *Black Immigrants Face Unique Challenges*, Hum. Rts. First (Feb. 17, 2022), <https://perma.cc/92N4-R9G3>; Ibe, *supra* note 4; *see generally* Karla M. McKanders, *Immigration and Racial Justice: Enforcing the Borders of Blackness*, 37 Ga. St. U. L. Rev. 1139, 1160-69 (2021).

³⁰ Ghabra, *supra* note 29.

³¹ Ibe, *supra* note 4.

Minneapolis-St. Paul region.³² On January 13, 2026, the Department of Homeland Security (“DHS”) terminated Temporary Protected Status (“TPS”) for Somali migrants, requiring them to depart the United States by March 17, 2026—shortly after President Trump characterized Somalia as “barely a country” and Somali nationals as “garbage.”³³ The administration has similarly sought to terminate TPS for 300,000 Haitian migrants; a federal court has stayed that order, but the stay itself prompted death threats against the presiding judge.³⁴

The record leaves little doubt about what motivates these actions. In early February 2026, President Trump posted a video depicting former President Barack Obama—whom President Trump once falsely claimed was born in Kenya—and former First Lady Michelle Obama as apes.³⁵ During the 2024 presidential campaign, he repeated groundless claims that

³² See Hamed Aleasziz, Zolan Kanno-Youngs & Ernesto Londoño, *New ICE Operation Is Said to Target Somali Migrants in Twin Cities*, N.Y. Times (Dec. 2, 2025), <https://perma.cc/AV77-W8ET>.

³³ 91 Fed. Reg. 1547 (Jan. 14, 2026); Luke Barr, Ivan Pereira & Laura Romero, *DHS Announces Termination of Protected Status for Somalis After Group Targeted by Trump*, ABC News (Jan. 13, 2026, at 16:07 ET), <https://perma.cc/B424-ZYWY>.

³⁴ Jacqueline Charles, *Federal Judge Maintains Block on Ending Haitian TPS, Responds to Death Threats*, Miami Herald (Feb. 12, 2026), <https://perma.cc/VN2B-LASV>.

³⁵ Gregory Svirnovskiy, *Trump Deletes Racist Video Depicting Obamas as Monkeys After Bipartisan Backlash*, Politico (Feb. 6, 2026, at 8:28 ET), <https://perma.cc/46E7-8JAK>; Meg Anderson & Danielle Kurtzleben, *Tracking the Rebirth of the ‘Birther’ Conspiracy*, NPR (Sept. 9, 2016, at 17:44 ET), <https://perma.cc/3LDJ-H9UK>.

Haitian immigrants in Ohio were eating other people's pets.³⁶ This is the context in which the EO was issued—and in which it would be enforced.

The EO would layer a new burden on top of this existing regime. If implemented, Black immigrants stand to lose the protection of birthright citizenship for their U.S.-born children, particularly if they cannot produce the documentation required to prove their own immigration status at the time of a child's birth.³⁷ Children denied citizenship at birth would face deportation to countries where they have no ties, no language, and no community. And if a parent's country of origin does not recognize the child as a citizen either, the consequence would be statelessness—a child belonging to no nation at all. These are harms that, once inflicted, no court can adequately undo. The Court should not take us down that perilous path.

B. The EO's harms will fall with particular cruelty on pregnant Black immigrants and their children.

Pregnant Black immigrants and their children already face severe health disparities. The EO would make those disparities worse—both by stripping their children of eligibility for early life healthcare and by deepening the fear that already deters immigrant families from seeking care.

The disparities Black immigrants face in pregnancy and infant health outcomes are well-

³⁶ Claire Wang, 'A Very Old Political Trope': *The Racist History Behind Trump's Haitian Pet Eater Claim*, *The Guardian*, (Sept. 14, 2024 at 10:00 ET), <https://perma.cc/8FA6-766J>.

³⁷ See Hamburger, *supra* note 13, at 18-22.

established.³⁸ Black immigrant women face heightened maternal mortality rates and elevated risks of pregnancy-related complications, including hysterectomy and ICU admission.³⁹ Their children face higher rates of preterm birth, low birth weight, and late-pregnancy and postpartum death.⁴⁰

Government nutrition and health programs are critical counterweights to these disparities, but the EO would likely place them out of reach. A newborn denied birthright citizenship would qualify for none of these programs, leaving the children most at risk of adverse health outcomes without the safety net designed to prevent them. Moreover, the fear of arrest and potential deportation of children would result in

³⁸ Regardless of immigrant status, Black women face higher maternal morbidity rates than white women and other ethnic groups. See Tessa Peredy et al., *Maternal Mortality Rates Among Im/Migrant Populations in the United States*, 14 *Open J. Obstetrics & Gynecology* 1161, 1170 (2024). The few studies that disaggregate U.S.-born Black women from non-U.S.-born Black women suggest that non-U.S.-born Black mothers face higher rates of maternal morbidity. See, e.g., Mariah Jiles, Ndola Prata & Kim G. Harley, *Maternal and Infant Health Outcomes in US-Born and Non-US-Born Black Pregnant People in the US*, 7 *JAMA Network Open*, at 7-8 (Dec. 26, 2024).

³⁹ See Peredy, *supra* note 38, at 1170; Jiles, *supra* note 38, at 1-2; Tejumola M. Adegoke et al., *Inequities in Adverse Maternal and Perinatal Outcomes: The Effect of Maternal Race and Nativity*, 26 *Maternal & Child Health J.* 823, 827 (2022).

⁴⁰ See Tiffany L. Green, *Black and Immigrant: Exploring the Effects of Ethnicity and Foreign-Born Status on Infant Health*, Migration Pol’y Inst., at 10-12 (Sept. 2012); Ehiremen Adesua Azugbene, Llewellyn J. Cornelius, Crista E. Johnson-Agbakwu, *African Immigrant Women’s Maternal Health Experiences in Clarkston, Georgia: A Qualitative Study*, 4 *Women’s Health Reps.* 603, 604 (Dec. 12, 2023).

irreversible trauma, thus exacerbating the public health consequences of the EO's enforcement.⁴¹

Even where benefits remain technically available, the EO would deepen the chilling effect that already discourages immigrant families from seeking help. Twenty-seven percent of likely undocumented immigrants and eight percent of lawfully present immigrants report avoiding applications for food, housing, or health care assistance due to immigration-related fears.⁴² An EO that treats the birth of a child as a trigger for scrutinizing parents' immigration status would intensify those fears, driving families further from the care they need when they need it most.

C. In addition to practical harms, the EO, if implemented, will inflict dignitary harms on Black immigrants and their children.

This Court has often extolled the inestimable value of U.S. citizenship. “Citizenship,” the Court has said, “is no light trifle to be jeopardized” at the President’s whim. *Afroyim v. Rusk*, 387 U.S. 253, 267-68 (1967). It “is a precious right.” *Costello v. United*

⁴¹ See Myriam Vidal Valero, *U.S. Immigration Policy: Mental Health Impacts of Increased Detentions and Deportations*, Am. Psychological Assoc. (Sept. 1, 2025), <https://perma.cc/UET4-XGR3> (discussing public health and mental health effects of fear of deportation); *Child Policy Brief No. 1: Deportation Threatens the Psychological, Physical, and Socioeconomic Well-Being of Children and Families*, Soc’y for Rsch. in Child Dev. (Mar. 2025), <https://perma.cc/4WKC-ZUVX> (discussing long-term trauma and developmental harm caused by fear of deportation).

⁴² See Drishti Pillai et al., *Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants*, KFF (Sept. 17, 2023), <https://perma.cc/QB4P-ZNGB>.

States, 365 U.S. 265, 269 (1961). “By many it is regarded as the highest hope of civilized men.” *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

Something so valuable cannot be denied or taken away without inflicting grave harm. As this Court has recognized, denationalization—the inevitable consequence of President Trump’s EO—is “a form of punishment more primitive than torture.” *Trop v. Dulles*, 356 U.S. 86, 99-102 (1958); *see also Bell v. Wolfish*, 441 U.S. 520, 589-90 (1979) (Stevens, J., dissenting) (“The withdrawal of rights is itself among the most basic punishments that society can exact, for such a withdrawal qualifies the subject’s citizenship and violates his dignity.”).

For almost a century, from the Founding until 1868, the United States inflicted that primitive punishment within its borders. The Fourteenth Amendment did not end attempts to make citizenship a racial preserve, but it established a constitutional rule that has held firm against every such attempt since.

The EO represents an assault on that standard. Its scope is breathtakingly wide. As Respondents correctly explain, the EO is “formally prospective, applying to tens of thousands of children born every month,” but its implementation would also “cast a shadow over the citizenship of millions upon millions” of people whom the Fourteenth Amendment recognizes as citizens. Resp’ts. Br. 2. That shadow of doubt and uncertainty will inflict severe dignitary harms: on the children denied a right the Constitution grants them by virtue of their birth on U.S. soil; on those children’s parents, who must see their children condemned to a precarious state of noncitizenship; and on any Black citizen forced to go to greater lengths than their non-

Black compatriots to prove their rights as a citizen.⁴³ In the words of one of *amici*'s members (an immigrant from Africa lawfully present in the United States on a student visa): "The thought of my child not belonging anywhere was devastating. It was not just about paperwork. It was about whether my daughter would have an identity, whether she would have rights, and whether she would ever feel like she truly belonged anywhere." Statement of Jane Doe (Feb. 19, 2026) (on file with counsel for *amici curiae*). If the EO takes effect, the United States risks returning to a world in which a person's citizenship can be determined by nothing more than the birthplace of their parents.

The parallels to the antebellum regime are difficult to ignore. Before the Fourteenth Amendment, free Black people were required to register with authorities and carry proof of their status; failure to produce the right papers could result in imprisonment or re-enslavement. *See supra* Section I.A. If implemented, the EO will forbid the federal government from issuing "documents recognizing United States citizenship" to U.S.-born persons when neither parent is a citizen or lawful permanent resident. It also bars the federal government from accepting any such person's state or local documents "purporting to recognize" U.S. citizenship. Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025). Under the EO, children of Black immigrants would once again face a regime in which their fundamental rights depend on documentation their families may not possess—and in which the failure to produce

⁴³ *See* Hamburger, *supra* note 13, at 27 n.137 (noting that only about 51 percent of Americans have passports, and that access to passports for Black people, people without college degrees, and people earning less than \$50,000 a year is lower).

it could mean the denial of citizenship itself. Worse, the consequences would compound across generations. A child born in the United States and denied citizenship would, as a parent, lack the lawful status needed to secure citizenship for their own U.S.-born children—creating precisely the hereditary underclass of noncitizens that the Fourteenth Amendment was designed to eliminate.

* * *

The Citizenship Clause settled the question of birthright citizenship more than 150 years ago. The government seeks to reopen that question by resurrecting a regime from a shameful era that anchored United States citizenship to race, lineage, and parental domicile. This Court repudiated that repugnant view more than a century ago in *Wong Kim Ark*. It should do so again.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

Respectfully submitted,

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February 2026