

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

**AMICUS CURIAE BRIEF OF
PROFESSOR ERIC L. MULLER
IN SUPPORT OF RESPONDENTS**

JOHN T. NAKAHATA

Counsel of Record

SEAN A. LEV

RACHEL E. GROSSMAN

HWG LLP

1919 M Street N.W.

Washington, D.C. 20036

+1 202 730 1300

jnakahata@hwglaw.com

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE

Professor Eric L. Muller is the Dan K. Moore Distinguished Professor of Law in Jurisprudence and Ethics at the University of North Carolina School of Law.¹ He is an internationally recognized expert on the removal and imprisonment of people of Japanese ancestry in the United States from 1942 to 1946 and has published four books on the subject. Professor Muller has a personal and professional interest in ensuring the Court is properly informed with respect to the history of citizenship conferred on children of “enemy aliens” and other people of Japanese ancestry in the United States who had renounced or never held U.S. citizenship, and the important jurisprudential and ethical considerations stemming from that history.

SUMMARY OF THE ARGUMENT

History confirms that the Citizenship Clause and the Immigration and Nationality Act (“INA”) confer citizenship on children based on where they are born, not the “primary allegiance” or loyalty of their parents, as the Government asserts (U.S. Br. at 15–17), or their status as illegal or enemy aliens “in enmity with the United States,” as is urged by the Government’s amici (Br. of Am. First Pol’y Inst. at 8–

¹ Professor Muller submits this brief as an individual. His institutional affiliation is noted for informational purposes only and does not indicate any institutional endorsement of the positions advocated in the brief. No party or its counsel authored this brief in whole or part, and no person other than amicus and his counsel contributed money intended to fund the preparation or submission of this brief. Sup. Ct. R. 37(6).

10; *see also* Br. of Reps. Tenny et al. at 13–15; Br. of Prof. Wurman at 17).

In World War II, while the United States was at war with Japan, the United States confined multiple classes of people of Japanese ancestry—including enemy aliens, people who had renounced their U.S. citizenship, and people involuntarily transported from Peru and held temporarily as illegally-present aliens in the United States—in wartime confinement facilities. While in confinement on U.S. soil, some of these people gave birth to children. Those children were born to declared enemies of the United States awaiting deportation, repatriation, or involuntary prisoner exchange. The children were also birthright American citizens.

The fact that the United States recognized the birthright citizenship of children of parents deemed disloyal to the United States—especially during the crisis of allegiances ushered in by World War II—undermines the notion that so-called “primary allegiance” (as that concept is presented here by the Government, U.S. Br. at 15) is a precondition of birthright citizenship under the Citizenship Clause of the Fourteenth Amendment or the Nationality Act of 1940, the relevant provisions of which were reenacted in the INA in 1952 shortly after the events recounted in this brief. That is especially so because Congress is presumed to legislate against the background of existing law, and to adopt administrative and judicial interpretations of a statute “when it re-enacts a statute without change.” *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). The history confirms that today, with very limited exceptions,² the law guarantees U.S.

² *See* Resp’ts Br. at 8 (describing common-law exceptions).

citizenship to all children born on U.S. soil, and that the district court's decision should be affirmed.

STATEMENT OF FACTS

This brief presents evidence of the birthright citizenship of the Japanese American children of three categories of parents held in custody in detention facilities on U.S. soil during World War II: (1) children of government-identified enemy aliens; (2) children of second-generation Japanese Americans born as U.S. citizens who renounced their U.S. citizenship prior to the birth of their children; and (3) children of people of Japanese ancestry who were involuntarily transported from their homes in Peru to the United States and held temporarily in this country as illegal aliens to be used in prisoner exchanges. Below, we provide an individual story exemplifying the circumstances of families in each of these situations.

Together, these histories undermine the Government's contention that birthright citizenship is not guaranteed under the Citizenship Clause or Section 1401(a) of the INA to "children of temporarily present aliens or illegal aliens." U.S. Br. at 2. They also stand in the face of the theory, advanced by amici of the Government, that a child's citizenship status is conditioned on whether her parents "are aliens in enmity with the United States," Br. of Am. First Pol'y Inst. at 9, have "statutory permission to be in the realm," Br. of Prof. Wurman at 17, or are "subject to deportation" and living "under the looming shadow of immigration law," Br. of Reps. Tenny et al. at 14.

A brief background on the confinement of Japanese Americans during World War II is essential to understanding the positions of the people held and born within wartime American confinement camps.

I. People of Japanese Ancestry in the United States and World War II

Japanese immigrants began arriving in the United States in significant numbers in the mid-1880s, shortly after the enactment of the Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882). See Roger Daniels, *Asian America: Chinese and Japanese in the United States Since 1850* 100–03 (1988). Lawful Japanese immigration continued until passage of the Immigration Act of 1924. See Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924). American law at the time did not permit people of Asian origin to naturalize, so these immigrants remained Japanese nationals. See *Ozawa v. United States*, 260 U.S. 178, 194–98 (1922). Their U.S.-born children were U.S. citizens. See U.S. Const. amend. XIV, § 1; see also *Morrison v. California*, 291 U.S. 82, 85 (1934) (noting, prior to enactment of the Nationality Act of 1940 and citing *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), that “[a] person of the Japanese race is a citizen of the United States if he was born within the United States”).

On December 7, 1941, the Empire of Japan launched the military strike against the United States known as Pearl Harbor. Immediately after, President Roosevelt signed Proclamation 2525, conferring enemy alien status on Japanese nationals in the United States and authorizing their apprehension and removal. See Proclamation No. 2525, 6 Fed. Reg. 6321 (Dec. 7, 1941). Then, in February 1942, President Roosevelt issued Executive Order 9066, authorizing designation of “military areas” from which “any or all persons” could be forcibly removed and excluded. See Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 25, 1942). By mid-February, the Justice

Department held 2,192 Japanese enemy aliens in custody; more were arrested in the following months. See Comm'n on Wartime Relocation and Internment of Civilians, 102d Cong., *Personal Justice Denied* 55 (Comm. Print 1992) (hereafter "*Personal Justice Denied*"). An archipelago of detention facilities soon stretched from New York to California and North Dakota to Texas. See *World War II Enemy Alien Control Program Overview*, Nat'l Archives (Jan. 7, 2021), <https://www.archives.gov/research/immigration/enemy-aliens/ww2>. Two are central to the history recounted in this brief: Tule Lake Segregation Center, located in Northern California, and the Crystal City Alien Enemy Detention Facility in South Texas.

A. Tule Lake Segregation Center

Tule Lake Segregation Center ("Tule Lake") originally was one of ten "relocation centers" built by the War Relocation Authority ("WRA") over the summer of 1942 to confine the more than 120,000 people of Japanese ancestry uprooted from West Coast states under Executive Order 9066. See Jeffrey Burton et al., *Confinement and Ethnicity: An Overview of World War II Japanese American Relocation Sites* 282 (2002). Like other WRA relocation centers, individuals at Tule Lake initially included both U.S. citizens of Japanese descent and non-citizen Japanese aliens removed from the general American population.

In the early spring of 1943, the WRA administered a loyalty questionnaire to the adult prisoners in its ten relocation camps, including Tule Lake. See Eric L. Muller, *American Inquisition: The Hunt for Japanese American Disloyalty in World War II* 31–38 (2007). In the questionnaire, confined Japanese Americans were asked whether they would "swear unqualified

allegiance to the United States of America and foreswear any form of allegiance or obedience to the Japanese emperor.” *Id.* at 35. Many people forced to respond to the questionnaire found it highly insulting and humiliating. *Id.* at 35–36. The questionnaire created fears of family separation and, for non-U.S. citizens, statelessness. *Personal Justice Denied*, at 192–93.

The questionnaire triggered consternation at every camp, but Tule Lake saw the largest number of prisoners answer “no” to the allegiance question, as well as the most severe turmoil. See Eric L. Muller, *Free to Die for Their Country: The Story of the Japanese American Draft Resisters in World War II* 56–57 (2001). The government then imposed segregation orders in an attempt to resolve the loyalty crisis its questionnaire had engendered. *Id.* at 58–59.

In September of 1943, the WRA transferred those it deemed disloyal from the other nine relocation centers to Tule Lake—which it rechristened a “segregation center”—to join the large number of other allegedly “disloyal” Japanese people already held there. *Id.* The move only heightened tensions. Protest and violence soon engulfed the camp, much of it the work of people the WRA labeled “troublemakers.” See Greg Robinson, *By Order of the President: FDR and the Internment of Japanese Americans* 200–01 (2001); Gary Y. Okihiro, *Tule Lake Under Martial Law: A Study in Japanese Resistance*, 5 *J. Ethnic Stud.* 71, 75 (1977).

The government could quickly rid Tule Lake of “troublemakers” who were Japanese aliens by spiriting them off to existing Department of Justice-run enemy alien internment camps. See Eric L. Muller, *Government Lawyers, Ethical Dilemmas: The*

Case of Herbert Wechsler and Japanese American Incarceration, 93 Fordham L. Rev. 1197, 1206 (2025). For the subset of the “troublemakers” who were United States citizens, Congress enacted “an act to provide for loss of United States nationality under certain circumstances.” Renunciation Act, ch. 368, 58 Stat. 677 (1944). That law allowed imprisoned Japanese American citizens to make “a formal written renunciation of nationality,” including:

I hereby formally renounce my United States nationality and all of its rights and privileges and abjure and renounce all allegiance to the United States of America in accordance with Section 401(i) of the Nationality Act of 1940, as amended.

See Gladys Ishida, *The Background and Effects of the Renunciation of Citizenship by Japanese-Americans in World War II* 58 (June 1946) (Master’s Thesis, Univ. of Chicago) (on file with author). Once accepted, the renunciant received from the Department of Justice a document stating: “[Y]ou are no longer a citizen of the United States of America nor are you entitled to any of the rights and privileges of such citizenship.” *Id.* at 59.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

NOTICE OF APPROVAL OF RENUNCIATION OF UNITED STATES NATIONALITY

To: ~~XXXXXXXXXXXX~~
(born April 14, 1924, San Francisco, Calif.)
1416-B
Tule Lake Center
Newell, California

You are hereby notified that, pursuant to Section 401(i) of the Nationality Act of 1940, as Amended, and the regulations issued pursuant thereto, your renunciation of United States nationality has been approved by the Attorney General as not contrary to the interests of national defense. Accordingly you are no longer a citizen of the United States of America nor are you entitled to any of the rights and privileges of such citizenship.

Date: March 23, 1945

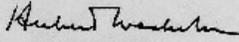

Herbert Wechsler
Assistant Attorney General
War Division

Fig. 1: Notice of Approval of Renunciation (Mar. 23, 1945)

Eventually 5,461 Japanese Americans renounced their citizenship at Tule Lake. See U.S. Dep't of Interior, *The Evacuated People: A Quantitative Description* 177 (1946). Many were deported to Japan at the end of the war. See *Encyclopedia of Japanese American Internment* 19 (Gary Y. Okihiro ed., 2013). Some remained temporarily at Tule Lake through March 1946 while the Justice Department reconsidered some of its deportation orders. See *id.* Others were put on trains to the Crystal City Alien Enemy Detention Facility. See *id.*

B. Crystal City Alien Enemy Detention Facility

The Crystal City Alien Enemy Detention Facility (“Crystal City”) in Texas was one of the facilities administered by the Department of Justice. It differed from the Department’s other enemy alien detention facilities in that internees were permitted to live together with family members. Some of those family members might themselves be enemy aliens who had resided (sometimes temporarily) in the U.S. before the war; others were U.S. citizens. *See* John E. Schmitz, *Enemies Among Us* 259 (2021).

Still others detained at Crystal City had no connection to the United States at all. These included ethnically Japanese people domiciled in Peru—some of them Peruvian citizens—who were deported from Peru to Texas at the invitation of the U.S. government to give the United States better control than it believed Peru could provide, as well as for possible prisoner exchanges with Japan. *See Personal Justice Denied* at 308–09; Edward N. Barnhart, *Japanese Internees from Peru*, 31 *Pac. Hist. Rev.* 169, 173 (1962). The U.S. Immigration and Naturalization Service classed these Peruvian Japanese as enemy aliens that had entered the United States illegally, notwithstanding that they arrived involuntarily on order by the U.S. government. *See Personal Justice Denied* at 308; Barnhart, *supra*, at 173. They too were subject to removal. *See* Proclamation No. 2662, 10 *Fed. Reg.* 179 (Sept. 12, 1945).

By late 1944, Crystal City housed nearly four thousand internees. *See* Schmitz, *supra*, at 260. And because those internees could be housed as family units, over the course of the war, the population of Crystal City continued to grow.

ARGUMENT

I. Children Born in U.S. Detention in World War II Were Birthright Citizens Notwithstanding Their Parents' Legal Status

Children born to individuals at the Tule Lake and Crystal City detention camps were recognized as United States citizens, even though their parents were enemy aliens and U.S. citizenship renunciants held in custody in the United States. The government does not engage with these historical facts. It argues instead that the Citizenship Clause of the Fourteenth Amendment and Section 1401(a) of the INA condition citizenship of a child born in the United States on the child's *parents'* loyalty to and domicile in the United States. *See* U.S. Br. at 14–17. The Government's amici are even more explicit, suggesting—also without regard to this history—that “children of illegal aliens do not inherit the requisite allegiance and obedience from their parents because their parents are aliens in enmity with the United States,” “do not possess the same protections” from the United States, and “face the constant threat of removal.” Br. of Am. First Pol’y Inst. at 9–10. As Respondents have argued, the Government’s position is incorrect for multiple reasons. *See* Resp’t’s Br. at 9–23.

This brief highlights one reason: if birthright citizenship was constrained by tests of political loyalty or a parent’s domicile, World War II would have been the moment for that rule to assert itself. Instead, in the wake of the Immigration Act of 1940 and prior to its recodification in the INA in 1952, the United States government adhered unflinchingly to the rule of territorial birthright citizenship. In the three

representative cases that follow—each involving a different legal posture of parental political “allegiance”—the United States government reaffirmed that children born in the United States to enemy aliens, U.S. citizenship renunciants, and aliens that did not enter the United States lawfully are U.S. citizens.

A. Tsuneo Larry Oda, U.S. Citizen Child of Japanese Enemy Aliens

Tsuneo Larry Oda is a United States Citizen who was born at the Crystal City internment camp in Texas. Today he is a resident of Monterey, California. He holds a U.S. Department of State-issued passport, has a government-issued Social Security number, and is a registered California voter. He served honorably in the United States Navy during the Vietnam War, holding a top security clearance as an Intelligence Librarian. He has twice served as National President of the Japanese American Citizens League.



Fig. 2: The Oda Family (JACL)

Oda is a U.S. citizen under the Citizenship Clause of the Fourteenth Amendment and Section 1401(a) of the INA. He was born on January 24, 1945, to Junichi and Maki Lorraine Oda, both of whom were enemy aliens under U.S. law. See Proclamation No. 2525, 6 Fed. Reg. 6321 (Dec. 7, 1941). Oda's father Junichi had been born in Japan in 1900; he came to the United States in 1917 and found work in the fish processing industry. See Larry Oda, *Experiences of Japanese Americans Under the AEA: Junichi & Larry Oda*, Japanese Am. Citizens League, <https://jacl.org/junichi-and-larry-oda>. With no option for naturalization, Junichi remained a Japanese citizen. See *Ozawa*, 260 U.S. at 198. Oda's mother was born in the United States but lost her U.S. citizenship upon her marriage, acquiring Junichi's Japanese citizenship pursuant to Section 3 of the Expatriation Act of 1907, ch. 2534, 34 Stat. 1228 (1907). See Oda, *supra*; *Mackenzie v. Hare*, 239 U.S. 299 (1915).

Junichi and Lorraine's Japanese citizenship took on a fateful meaning when the United States went to war with Japan. The family was first uprooted from Monterey, California, to Clovis, California, just outside the initial exclusion zone created under Executive Order 9066. Oda, *supra*. When the exclusion zone was expanded in July 1942, Junichi was arrested and interned. *Id.* Whatever his domicile had been before, the circumstances would have plunged Junichi's expectations about home and future into chaos. He was transferred among various Justice Department detention camps and eventually arrived at Crystal City in April 1944. *Id.* Lorraine was incarcerated separately in 1942 at the WRA's Colorado River War Relocation Center in Poston,

Arizona. *Id.* She joined her husband at Crystal City in April 1944. *Id.*

Tsuneo Larry Oda was born the following January. *Id.*; Japanese Internee Card for Junichi Oda, Nat'l Archives, <https://catalog.archives.gov/id/1093880?objectPage=4> (“Son, Tsuneo, vol. internee, rec'd at Crystal City 1-24-45. (Born)”). His birth in the Crystal City hospital was memorialized in a Zavala County, Texas birth certificate.

1. PLACE OF BIRTH		TEXAS DEPARTMENT OF HEALTH	
STATE OF TEXAS		BUREAU OF VITAL STATISTICS	
COUNTY OF	Zavala	STANDARD CERTIFICATE OF BIRTH	
CITY OR PRECINCT NO.	Precinct # 3, Alien Internment Camp, Crystal City, Tex.		
2. FULL NAME OF CHILD		GIVE STREET AND NUMBER OR NAME OF INSTITUTION	
Tsuneo Larry Oda			

Fig. 3: Texas Birth Certificate of Tsuneo Larry Oda

Not quite a year after Oda's birth, at the end of 1945, his father Junichi repatriated to Japan. *Id.* (“SUBJ REPATRIATED ON SS MATSONIA ON . . . 12-8-45.”).

Tsuneo Larry Oda's parents were held in detention in the United States because, in the heated wartime sentiments of World War II, both had been declared by the President to be enemy aliens of the United States. Yet Tsuneo Larry Oda himself, born in detention on U.S. soil to enemy aliens who faced deportation, was determined by the State of Texas and the United States to be a United States citizen. Nor were his circumstances an anomaly. For example, midway through an official Immigration and Naturalization Service-produced publicity film on conditions at Crystal City, the scene cuts to the camp hospital's maternity ward. *See* Nat'l Archives, *Alien Enemy Detention Facility, Crystal City, Texas (c. 1942–43)*, YouTube (posted Apr. 16, 2024), https://youtu.be/8j5NIQXUodo?si=uwPSR8r_Fxtrc2Ex&t=55

2. A nurse presents a newborn to the camera, and the

INS narrator intones: “Young America. About 250 Americans were born in this hospital.” *Id.* The United States government recognized these children as U.S. citizens because they were born within the territorial limits of the United States, not because their parents bore this country “primary allegiance” as declared enemy aliens.

***B. Frank Tanaka, U.S. Citizen Child of
Citizenship Renunciants***

Frank Tanaka is also a United States citizen, born at the Crystal City hospital in April of 1946.³ He later became a prominent chemist with a federal agency in California. His many published research papers made important contributions to the field of metabolic health.

Tanaka is a U.S. citizen under the Citizenship Clause of the Fourteenth Amendment and Section 1401(a) of the INA. He is the first child of Tetsudo and Kumiko Tanaka. Tetsudo, Tanaka’s father, was born a U.S. citizen in Hawaii in 1911. He lived in Japan from 1920 to 1933, then returned to Hawaii, where he worked as a carpenter. He was taken into custody on order of U.S. military authorities in August 1942 and held at the Sand Island Detention Camp in Hawaii until February 1943, when authorities ordered him transferred to detention on the mainland. He arrived at the Central Utah War Relocation Center (“Topaz”) at the beginning of March 1943 and was promptly made to complete the WRA’s loyalty questionnaire. To the question inquiring if he would swear

³ The names of individuals in the “Tanaka” family are pseudonyms. Supporting archival and secondary source material for Frank Tanaka’s story is in the possession of amicus and can be made available to the Court on request.

“unqualified allegiance to the United States of America,” he answered “no,” and followed up by renouncing his U.S. citizenship. As a result, in September 1943, the WRA transferred him to Tule Lake to be held pending repatriation to Japan. He arrived on September 20, 1943.

Tetsudo met Kumiko, Tanaka’s mother, four days later. Kumiko had been born a U.S. citizen in California in 1920. Her parents took her to Japan as a young child, where she remained until 1937. She then returned to the United States and was working as a seamstress in Los Angeles when the attack on Pearl Harbor occurred. She was uprooted under President Roosevelt’s Executive Order 9066 in the spring of 1942 and confined at the Santa Anita Assembly Center until October 1942. From there she was transferred to the Heart Mountain War Relocation Center in Wyoming, where, in March 1943, she answered “no” to the allegiance question on the WRA’s loyalty questionnaire and renounced her U.S. citizenship. She was transferred to Tule Lake on a segregation train on September 21, 1943.

At Tule Lake, Tetsudo and Kumiko met as U.S. citizenship renunciants—now considered enemy “native American aliens,” see *Encyclopedia of Japanese American Internment* at 19—and married. Kumiko was late in her pregnancy in March 1946 when she and Tetsudo were transferred to Crystal City, where they could be held as a family unit in anticipation of their removal to Japan.

Baby Frank Tanaka came along a month later, according to records maintained by the Texas Department of Health. That May, when Frank was just a month old, he and his parents left Crystal City to board a ship departing from San Francisco. The

U.S. Immigration and Naturalization Service recorded their passage in a ship manifest, listing Tetsudo and Kumiko as citizens of “JAPAN” of “JAPANESE” ancestry. One month old Frank was recorded as a “U S CITIZEN.”

██████	██████	✓	32	M	M	CARPENTER	Y	ENGLISH	Y	JAPAN	JAPANESE
██████	██████		27	F	M	WIFE	Y	ENGLISH	Y	JAPAN	JAPANESE
██████	██████		1MO	M	S	U S CITIZEN					

Fig. 4: Entries on INS Manifest for SS Lurline (May 31, 1946)

He was not the only one. In December of 1945, just months after Japan’s surrender, a newspaper report about Tule Lake explained that “minors born in the United States” to citizenship renunciants at the camp “subsequently may return to this country as United States citizens.” *Minor Age Deportees Will Be Permitted to Return to U.S.*, Pac. Citizen, Dec. 8, 1945, at 3. The report indicated the WRA was setting up “a fingerprinting department under the jurisdiction of the Department of Justice” to assist in documenting the children’s citizenship status and urging parents “to obtain copies of [their children’s] birth certificates before leaving.” *Id.*

C. *Teruhiko Terry Maoki, U.S. Citizen Child of Japanese Peruvians*

Teruhiko Terry Maoki was born a United States citizen at Crystal City on July 23, 1945. He lived his entire life as a U.S. citizen under the Citizenship Clause of the Fourteenth Amendment and Section 1401(a) of the INA.

Maoki was born to Usaburo Victor Maoki and Hitomi Elena Maoki, two Peruvians of Japanese ancestry forced from their homes in Peru to internment in the United States. Their involuntary transfer to the United States was the result of an

international agreement meant to give the United States custody over Japanese individuals from other countries for wartime control and prisoner exchanges. See Barnhart, *supra*, at 170–71. Maoki’s father had been born in Japan in 1893. Libia Hideko Maoki Yamamoto, *Detour to Crystal City* 158 (2025). He emigrated to Peru as a young adult and settled in Chiclayo, a coastal town 500 miles north of Lima. *Id.* In the 1920s and 1930s he turned a small coffee shop into a successful commercial hub, including a general store, tire repair shop, bakery, and noodle operation. *Id.* at 158–59. He returned to Japan in 1922 and married Japanese-born Hitomi Takaki, bringing her immediately back to Peru. *Id.* at 158. There they adopted the names Victor and Elena and started a family. *Id.*

In January 1943, Victor was arrested at his home, jailed in Chiclayo, and taken on an involuntary odyssey from Peru to the Panama Canal Zone to San Pedro, California, to an INS-operated detention facility near Los Angeles, and ultimately to a Justice Department internment camp at Kenedy, Texas. *Id.* at 162. Along the way he learned that he would be held in the United States for a prisoner exchange with Japan. *Id.* Elena and the couple’s three Peruvian-born children arrived in the United States that June, journeying from Peru to Havana, Cuba, and then to New Orleans. *Id.* In August, Victor, Elena, and their children were reunited at Crystal City to await a prisoner exchange. *Id.* at 163. They almost certainly did not intend to remain in the camp indefinitely. All were considered illegally present aliens in the United States. See *Personal Justice Denied* at 308; Barnhart, *supra*, at 173.

Maoki was born while his family lived at Crystal City in 1945. Yamamoto, *supra*, at 163. His birth was recorded with the Texas Bureau of Vital Statistics. *Texas, U.S., Birth Index 1903-1997*, Ancestry.com, <https://www.ancestry.com/search/collections/8781/> (searchable collection of Tex. Dep't of Health records; subscription required). He eventually settled in Berkeley, California, and attended Humboldt State University, where he was a star linebacker on the football team. *See Final Home Game*, Times Standard (Eureka, Cal.), Nov. 11, 1966, at 15. He eventually became a chiropractor. *See Effects of Stress Focus of Seminar*, Argus-Courier (Petaluma, Cal.), Nov. 13, 1985, at 12.



Fig. 5: Article Featuring Maoki as a College Athlete (Nov. 1966)

He held a U.S. Department of State-issued passport, had a Social Security number, and voted in elections. He passed away in 2020 in Chico, California. *See Maoki Family Tree, Teruhiko Maoki*

Profile, Ancestry.com, <https://www.ancestrylibrary.com/family-tree/person/tree/36156949/person/332083368023/facts>.

II. Recognition of Citizenship For Children Born To Japanese Enemy Aliens and Others During World War II Demonstrates That Birthright Citizenship Does Not Turn on a Child’s Parents’ “Primary Allegiance”

The Government’s position in this case is that the Fourteenth Amendment’s Citizenship Clause, the Nationality Act of 1940, and the Immigration and Nationality Act of 1952 all premise birthright citizenship on a child’s parents’ “primary allegiance” or loyalty to the United States. *See* U.S. Br. at 2, 14–17, 44–45. That position is echoed by several of the Government’s amici, who insist that children of “illegal” and “enemy” aliens are not birthright citizens under this country’s Constitution and laws. *See* Br. of Am. First Pol’y Inst. at 8–10; Br. of Rep. Tenny et al. at 13–15; Br. of Prof. Wurman at 17.

That rule is incompatible with the histories of the United States citizens recounted above, and of so many others born in U.S. detention facilities during World War II. The war produced a frenzy of domestic anxieties about loyalty and “primary allegiance”—precisely the focus of the Government’s theory of this case. *See* U.S. Br. at 15. Japanese Americans were the principal targets of these fears. For instance, the infamous War Department document published in 1943 to justify the uprooting and detention of Japanese Americans anchored that decision in the view that, “[i]n the war in which we are now engaged,” the “Japanese race” was “an enemy race” and “racial affinities [were] not severed by migration.” John L. DeWitt, *Japanese Evacuation From the West Coast* 34

(1943). The WRA and Department of Justice likewise oversaw complex allegiance-policing operations aimed at Japanese Americans. *See* U.S. War Relocation Auth., *WRA: A Story of Human Conservation* 72 (1946). Even this Court upheld the racially targeted curtailments of the rights of Japanese Americans, including U.S. citizens, based on wartime concerns about the loyalty of people of Japanese ancestry living in the United States. *See Hirabayashi v. United States*, 320 U.S. 81, 98–100 (1943).

Yet even in that atmosphere, the Government never took the position that children born within detention facilities in the territorial limits of the United States were not U.S. citizens, no matter the political status or domicile of their parents, since they all were subject to and required to obey the laws of the United States while on U.S. soil. Notably, the 1940 and 1952 statutes bracketed the war and the events recounted in this brief, showcasing the contemporaneous understanding of the birthright citizenship provisions of those Acts.

This historical commitment to the rights of children born in the territorial United States is evidence that the district court was correct in finding Respondents are likely to succeed on the merits of their argument that Executive Order 14160 violates the INA as well as the Citizenship Clause of the Fourteenth Amendment. *See Lorillard*, 434 U.S. at 580 (“Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.”); *see also* H.R. Rep. No. 1365, at 27 (1952) (the INA “represents the final product of a most intensive and searching investigation and study of our entire immigration and naturalization

system”). Congress made numerous “basic and significant changes” to the country’s immigration and naturalization laws, yet despite the “new conditions brought on by World War II,” Congress “carrie[d] forward substantially those provisions of the Nationality Act of 1940 which prescribe who are citizens by birth.” *Id.* at 28, 75–76.

The histories of Larry Oda, Frank Tanaka, Terry Maoki, and many others like them show that territorial birthright citizenship survived the greatest loyalty crisis in American history without ever becoming subject to the tests of “primary allegiance,” loyalty, and domicile the Government now claims a right to impose.

CONCLUSION

For these reasons, amicus curiae respectfully urges the Court to rule in favor of Respondents and affirm that Executive Order 14160 likely violates the Citizenship Clause of the Fourteenth Amendment, Section 1401(a) of the INA, or both.

Respectfully submitted,
JOHN T. NAKAHATA
Counsel of Record
SEAN A. LEV
RACHEL E. GROSSMAN
HWG LLP
1919 M Street N.W.
Washington, D.C. 20036
+1 202 730 1300
jnakahata@hwglaw.com

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Counsel for Amicus Curiae