

No. 25-365

In the Supreme Court of the United States

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

Petitioners,

v.

BARBARA, ET AL.,

Respondents.

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

**BRIEF OF COREY J. BIAZZO AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE¹

Amicus curiae previously submitted an amicus brief at the certiorari stage addressing the original meaning and historical structure of the Fourteenth Amendment's Citizenship Clause. Amicus now writes again to address a distinct but fundamental constitutional issue implicated by this case: the structural limits imposed by Articles II, III and V when executive action seeks reconsideration of long-settled constitutional meaning.

Amicus has a professional and civic interest in preserving constitutional stability, the separation of powers and the integrity of Article V's amendment process.

SUMMARY OF THE ARGUMENTS

For more than 125 years, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), has been understood to constitutionalize a territorial rule of birthright citizenship subject only to narrow, historically recognized exceptions. That rule has been embedded in federal law, incorporated into 8 U.S.C. §1401(a), and relied upon by generations.

The Executive Order at issue, Exec. Order No. 14160, titled, *Protecting The Meaning and Value of American Citizenship* departs from that settled understanding by conditioning citizenship on parental immigration status. It invites this Court to reinterpret the Citizenship Clause to include a domicile-based limitation not recognized in *Wong Kim Ark*.

¹ No counsel for any party authored this brief in whole or in part, and no person or entity, other than Biazzo has contributed money that was intended to fund preparing or submitting the brief.

This Court retains authority to reconsider precedent when warranted by compelling textual, historical or doctrinal justification. But executive disagreement with settled precedent does not itself constitute such justification. Judicial reconsideration must be grounded in principled legal reasoning—not triggered by unilateral executive action inconsistent with existing law.

The Government’s domicile theory misreads *Wong Kim Ark*. The decision’s references to domicile described the facts before the Court; they did not constitutionalize lawful permanent residence as a prerequisite for citizenship at birth. The holding was territorial and the recognized exceptions were tied to the absence of sovereign jurisdiction—not to immigration status.

Even if reconsideration was contemplated, stare decisis principles strongly counsel reaffirmation. *Wong Kim Ark* has endured for more than a century, generated profound reliance interests, integrated seamlessly into federal statutory law and provided a clear and administrable rule. Nothing presented here constitutes the “special justification” required to unsettle such precedent.

Finally, Article V confirms the structural caution appropriate when constitutional reinterpretation would alter a foundational rule of national membership. While judicial reconsideration is not amendment, structural stability demands that any departure from long-settled constitutional meaning be supported by compelling justification. No such justification exists here.

The Court should reaffirm *Wong Kim Ark* and hold the Executive Order unconstitutional.

ARGUMENTS

I. *Wong Kim Ark* Settled a Territorial Rule of Birthright Citizenship

The Fourteenth Amendment provides “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”

In *Wong Kim Ark*, this Court held that a child born in the United States to alien parents lawfully residing here was a citizen at birth. 169 U.S. at 693. The Court grounded its interpretation in the common-law principle of *jus soli*—birth within sovereign territory confers allegiance and membership.

The Court identified specific historically recognized exceptions: Children of foreign sovereigns and diplomats; Children born on foreign public ships; Children of enemy occupiers; and Children of tribal sovereigns (as then understood). Each exception derived from the absence of sovereign jurisdiction—not from the immigration status of the parents.

However, the disputed Executive Order that is the subject of this matter states in part, “... the privilege of United States citizenship does not automatically extend to persons born in the United States: (1) when that person’s mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person’s birth, or (2) when that person’s mother’s presence in the United States at the time of said person’s birth was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father was not a

United States citizen or lawful permanent resident at the time of said person’s birth.”

The Court in *Wong Kim Ark* described the Fourteenth Amendment as affirming “the ancient and fundamental rule of citizenship by birth within the territory.” *Ibid.* The holding was territorial. It did not condition citizenship on parental lawful permanent residence. If the Constitution imposed a domicile-based limitation, *Wong Kim Ark* would have said so. It did not.

II. The Government’s Domicile Theory Misreads the Jurisdiction Clause

The Government argues that “subject to the jurisdiction thereof” requires complete political allegiance and that children of temporarily present or unlawfully present aliens lack such allegiance. That argument proves too much. All persons physically present in the United States—other than those historically immune from sovereign authority—are subject to its laws. The narrow historical exceptions recognized in *Wong Kim Ark* were grounded in international law principles of sovereign immunity, not in immigration status.

The proposed domicile limitation would introduce a novel constitutional test: Does temporary lawful presence negate jurisdiction? Does unlawful presence retroactively defeat citizenship? How does visa classification affect constitutional status? The Fourteenth Amendment does not constitutionalize immigration categories.

Moreover, Congress has repeatedly reenacted statutory language mirroring the Citizenship Clause, including 8 U.S.C. § 1401(a), against the backdrop of the

settled territorial understanding. That reenactment reflects constitutional incorporation—not revision.

III. Stare Decisis Strongly Counsels Reaffirmation

Constitutional interpretation requires stability, particularly where the rule at issue defines national membership. The Court has repeatedly recognized that structural provisions of the Constitution safeguard liberty precisely because they prevent unilateral shifts in power. Preserving the territorial rule recognized in *Wong Kim Ark* reinforces that structural equilibrium.

Even if the Court were to consider revisiting *Wong Kim Ark*, modern stare decisis principles overwhelmingly support reaffirmation.

1. Quality of Reasoning

Wong Kim Ark conducted an exhaustive historical analysis of common-law nationality and the framing of the Fourteenth Amendment. Its reasoning has been cited and relied upon for over a century.

2. Consistency with related Doctrine

The territorial understanding of jurisdiction aligns with subsequent Fourteenth Amendment jurisprudence recognizing physical presence as sufficient for constitutional protections, subject to narrow exceptions.

3. Reliance Interests

Citizenship is a foundational legal status. Millions of individuals derive their citizenship from birth within the United States under the territorial rule.

Disruption would affect not only present classifications but historical status. (4) Workability. The territorial rule provides a clear, administrable standard. A domicile-based constitutional test would generate uncertainty at birth and invite ongoing litigation over parental status. (5) Absence of Changed Circumstances. No doctrinal development or historical discovery undermines *Wong Kim Ark*'s core holding. Disagreement with its reasoning does not suffice. As this Court has repeatedly emphasized, precedent may be reconsidered only upon a "special justification"—not mere disagreement.

No such justification exists here.

IV. Executive Disagreement with Precedent Does Not Supply a Basis for Reinterpretation

Article II requires the President to "take Care that the Laws be faithfully executed." It does not authorize unilateral revision of constitutional meaning. The President is bound by this Court's constitutional interpretations unless and until this Court revises them. Executive disagreement with precedent does not itself constitute a doctrinal reason for reconsideration.

Under *Youngstown Sheet & Tube Co. v. Sawyer*, executive power must stem from the Constitution or an act of Congress. 343 U.S. 579 (1952). It does not include authority to disregard binding precedent in order to force reconsideration. Judicial authority to reconsider precedent is structured by doctrine—particularly *stare decisis*—not by executive initiative.

It is the duty of the judiciary to say what the law is, not what it should become. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Neither Congress nor the

Courts, nor the President may change the substance of a constitutional provision under the guise of interpretation. *City of Boerne v. Flores*, 521 U.S. 507 (1997). “Congress may not legislatively supersede our decisions interpreting and applying the Constitution.” *Dickerson v. United States*, 530 U.S. 428 (2000).

This Court may revisit precedent when warranted by text, history and doctrine. But judicial reconsideration must arise from judicial reasoning—not from executive nonconformity with settled law. Executive disagreement with precedent does not itself provide the doctrinal basis required for this Court to reconsider settled constitutional meaning. Nor may executive action inconsistent with binding precedent serve as a mechanism for compelling reconsideration of that precedent. If unilateral executive noncompliance were sufficient to reopen settled constitutional meaning, the stability of constitutional interpretation would depend not on doctrine but on executive preference. The result would invert the separation of powers. The Executive may advocate for constitutional change; it may not effectuate such change through unilateral directive.

Judicial reinterpretation undertaken in response to executive noncompliance, rather than ordinary adjudication, risks unsettling the structural balance reflected in Articles III and V. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

The Constitution vests distinct and exclusive powers in each branch. Article III assigns to this Court the duty to interpret the Constitution; Article II requires the President to execute the laws faithfully. Neither branch may assume the core function of the other. The Executive may advocate for constitutional change, but

the authority to declare what the Constitution means in cases and controversies remains vested in the Judiciary. Executive disagreement does not alter constitutional meaning; only this Court may do so through principled adjudication.

V. Article V Confirms the Structural Caution is Required

Article V establishes the exclusive process for formal constitutional amendment. Judicial reconsideration of precedent is not amendment. But when reinterpretation would alter a structural rule of national membership that has governed for more than a century, the Court must be especially attentive to the distinction between interpretation and revision. Article V reflects the Framers' judgment that certain constitutional transformations require supermajoritarian consensus. The structural safeguard counsels restraint where no compelling justification for departure from precedent exists.

The Fourteenth Amendment was adopted to establish a clear and uniform rule of citizenship insulated from political fluctuation. A departure from that settled understanding requires compelling constitutional justification. Because no such justification exists, adherence to precedent preserves both doctrinal integrity and constitutional stability

* * *

Wong Kim Ark established a territorial rule of birthright citizenship subject only to narrow, historically grounded exceptions tied to sovereign immunity. That rule has governed for more than a century,

generated profound reliance interests and been incorporated into federal statutory law.

Nothing in text, history, doctrine or changed circumstances justifies departing from that settled interpretation. Executive disagreement with precedent does not supply such justification.

CONCLUSION

This Court should reaffirm *Wong Kim Ark* and hold that the Executive Order is unconstitutional.

Respectfully submitted

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