

No. 25-365

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IN THE  
*Supreme Court of the United States*

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DONALD J. TRUMP, PRESIDENT OF THE UNITED  
STATES, *et al.*,

*Petitioners,*

v.

BARBARA, *et al.*,

*Respondents.*

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

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**BRIEF OF THE EMORY CIVIL RIGHTS  
SOCIETY AS *AMICUS CURIAE* IN SUPPORT  
OF RESPONDENTS**

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**INTERESTS OF *AMICUS CURIAE***<sup>1</sup>

The Emory Civil Rights Society is a student organization at Emory University School of Law. *Amicus*'s members are students at Emory Law School, who seek to promote civil rights law dialogue, practice, policy, and scholarship within the Emory Law School community and beyond. Ensuring adherence to the text of the Fourteenth Amendment, to safeguard birthright citizenship, fits squarely within the Civil Rights Society's purpose.

**INTRODUCTION AND  
SUMMARY OF ARGUMENT**

The Fourteenth Amendment guarantees birthright citizenship, a principle which has been "accepted," "respected," and "confirmed" as the law of the land by "every conceivable source of law."<sup>2</sup> Indeed, more than a century has passed since this Court decided *Wong Kim Ark*. During this time, this Court has had numerous opportunities to reconsider its decision. And each time this Court has consistently treated birthright citizenship as constitutionally established.<sup>3</sup>

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<sup>1</sup> Pursuant to Sup. Ct. R. 37.6, *amicus curiae* affirm that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than *amicus curiae*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

<sup>2</sup> See *Trump v. CASA, Inc.*, 606 U.S. 831, 879, 883 (2025) (Sotomayor J., dissenting).

<sup>3</sup> In *Perkins v. Elg*, this Court reaffirmed that "on her birth in New York, the plaintiff became a citizen of the United States" citing the Civil Rights Act of 1866 and the Fourteenth

To disregard birthright citizenship as a fundamental component of the Fourteenth Amendment would undermine the rule of law.

## ARGUMENT

### I. Upholding the Executive Order would undermine the rule of law

The phrase “rule of law” is often used but difficult to define. Countless perspectives exist on the rule of law, its definition, and its underlying principles.

As noted by the American Bar Association (ABA), “[a] frequently heard saying is that the rule of law means [a] government of law, not [individuals].” But what does this mean? How can the rule of law live separate “from the people who make it, interpret it, and live it?”<sup>4</sup> The ABA explains “[t]he easiest answer

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Amendment, 307 U.S. 325, 328-29 (1939). In *Mandoli v. Acheson*, this Court emphasized that “the dignity of citizenship which the Constitution confers as a birthright upon every person born within its protection is not to be withdrawn or extinguished by the courts except pursuant to a clear statutory mandate.” 344 U.S. 133, 139 (1952). Moreover, in *Miller v. Albright*, 523 U.S. 420 (1998) and *Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53 (2001), which involved statutory requirements for citizenship, this Court treated Fourteenth Amendment birthright citizenship as an unquestionable constitutional doctrine while addressing only the statutory framework for citizenship acquired through parentage.

<sup>4</sup> AMERICAN BAR ASSOCIATION, *What Is the Rule of Law*, <https://www.americanbar.org/advocacy/global-programs/who-we-are/rule-law-initiative/what-is-rule-of-law/> (last visited Feb. 26, 2026).

. . . is that the rule of law cannot ever be entirely separate from the people who make up our government and our society. The rule of law is more of an ideal that we strive to achieve but sometimes fail to live up to.”<sup>5</sup>

Drawing upon this aspirational ideal, the United Nations defines the rule of law to include human rights standards and norms. According to the United Nations, the rule of law is “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>6</sup>

The definition of the rule of law utilized in this brief has been developed by the Holloran Center Rule of Law Working Group.<sup>7</sup> The Holloran Center Rule of Law Working Group has identified various foundational rule of law principles by looking to those

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<sup>5</sup> *Id.*

<sup>6</sup> See UNITED NATIONS, *What Is the Rule of Law*, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/> (last visited Feb. 26, 2026).

<sup>7</sup> The Holloran Center Rule of Law Working Group “is a joint enterprise of the Holloran Center for Ethical Leadership in the Professions and the ‘Pluralizing’ Legal Professional Identity: Democracy, Equity, Justice, and the Law School Curriculum” project. HOLLORAN CENTER FOR RULE OF LAW WORKING GROUP, RULE OF LAW LEARNING OUTCOME MATERIALS, INTRODUCTION at 1, [https://law.stthomas.edu/\\_media-library/documents/holloran-center/rule-of-law-introduction-definition-and-foundational-principles.pdf](https://law.stthomas.edu/_media-library/documents/holloran-center/rule-of-law-introduction-definition-and-foundational-principles.pdf) (last visited Feb. 26, 2026).

frequently referenced across scholarly discussions and relevant to sustaining the United States' distinct constitutional democracy.<sup>8</sup> These principles include human dignity, transparency, fairness, consistency, judicial independence, and equality.<sup>9</sup>

A decision upholding the Executive Order would undermine each of these rule of law principles.

**A. Upholding the Executive Order would undermine the principle of human dignity**

The protection of human dignity forms the moral foundation of the rule of law.<sup>10</sup> A just legal system must protect the inherent worth and autonomy of every person.<sup>11</sup> The law secures dignity by protecting rights, restraining power, and ensuring that every person—regardless of belief or background—is treated with respect.<sup>12</sup> Dignity

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> HOLLORAN CENTER FOR RULE OF LAW WORKING GROUP, RULE OF LAW LEARNING OUTCOME MATERIALS, SUPPLEMENTAL DESCRIPTION OF FOUNDATIONAL PRINCIPLES OF RULE OF LAW 6 [hereinafter HOLLORAN CENTER RULE OF LAW WORKING GROUP, SUPPLEMENTAL DESCRIPTION], [https://law.stthomas.edu/\\_media-library/documents/holloran-center/supplemental-descriptions.pdf](https://law.stthomas.edu/_media-library/documents/holloran-center/supplemental-descriptions.pdf) (last visited Feb. 26, 2026).

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.*

requires that individuals be treated as ends in themselves, not as means to political or social ends.<sup>13</sup> The concept of human dignity serves as the “lodestar” for the country’s aspirations.<sup>14</sup>

Upholding the Executive Order would be irreconcilable with the principle that the law should be just and protect the fundamental human dignity of all members of society. Dignity is the “moral foundation” for all legal systems and is a “core value” for a foundationally just system built upon the rule of law.<sup>15</sup>

This Court’s decision in *Plyler v. Doe*, which involved undocumented immigrant children, is instructive. There, the Court rejected the creation of a “shadow population of illegal migrants.”<sup>16</sup> The Court further cautioned against establishing a “permanent caste of undocumented resident aliens.”<sup>17</sup> In *Plyler*, the law in question was unconstitutional. And the Court, applying its precedent, ruled it so. In so doing, the Court upheld the rule of law and maintained the human dignity of undocumented individuals.

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<sup>13</sup> Robert Johnson & Adam Cureton, *Kant’s Moral Philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Feb. 23, 2004), <https://plato.stanford.edu/entries/kant-moral/>.

<sup>14</sup> William J. Brennan Jr., *The Constitution of the United States: Contemporary Ratification*, 19 UC. DAVIS L. REV. 2 (Fall 1985).

<sup>15</sup> See Sung Hui Kim, *Reimagining the Lawyer’s Duty to Uphold the Rule of Law*, 2023 U. ILL. L. REV. 781, 796 (2023).

<sup>16</sup> 457 U.S. 202, 218 (1982).

<sup>17</sup> *Id.* at 254.

**B. Upholding the Executive Order would undermine the principles of transparency, fairness, and consistency**

The transparency principle demands, among other things, that the law be predictable.<sup>18</sup> Transparency serves several vital purposes. It ensures that individuals know the law that governs them; it allows them to assert their rights and fulfill their obligations; and it sustains economic and social stability by creating predictable expectations.<sup>19</sup> When laws are obscure, secret, or arbitrarily enforced, the public loses the ability to trust or rely upon them. Transparency, therefore, is the condition that transforms law from a mechanism of control into a shared and knowable guide for conduct.

In the context of the rule of law, fairness centers on actions “free from bias, pressure, or external influence.”<sup>20</sup> It depends on respect for human rights, effective public administration, and a clear separation of powers among the branches of government.<sup>21</sup> It guards against decision-making driven by anger, fear, or favoritism.<sup>22</sup>

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<sup>18</sup> HOLLORAN CENTER RULE OF LAW WORKING GROUP, SUPPLEMENTAL DESCRIPTION, *supra* note 10, at 3.

<sup>19</sup> Tom Bingham, THE RULE OF LAW 37-39 (2010).

<sup>20</sup> HOLLORAN CENTER RULE OF LAW WORKING GROUP, SUPPLEMENTAL DESCRIPTION, *supra* note 10, at 4.

<sup>21</sup> See Paul Daly, UNDERSTANDING ADMINISTRATIVE LAW IN THE COMMON LAW WORLD Chapter 3 (Oxford Univ. Press 2021).

<sup>22</sup> See HOLLORAN CENTER RULE OF LAW WORKING GROUP, SUPPLEMENTAL DESCRIPTION, *supra* note 10, at 3-4.

“Consistency, in turn, refers to the *uniform and predictable application* of laws and standards across similar cases or individuals.”<sup>23</sup> It ensures that justice does not depend on who wields authority at a given moment.<sup>24</sup> Together, fairness and consistency reinforce the legitimacy of the legal system: the former ensures moral integrity, while the latter guarantees reliability.<sup>25</sup> The harmony between the two sustains public trust and reinforces the expectation that the law will operate uniformly and justly.<sup>26</sup>

Upholding the Executive Order would undermine the principles of transparency, fairness, and consistency. Indeed, birthright citizenship has been recognized as the law of land by every conceivable source of law. The courts, Congress, and the public have all consistently accepted, respected, and confirmed this bedrock principle for generations. The Executive Order is an aggressive encroachment of the Executive Branch on the transparency, fairness, and consistency underpinning the country’s constitutional foundations.

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<sup>23</sup> *Id.* at 4.

<sup>24</sup> *See id.*

<sup>25</sup> *See id.*

<sup>26</sup> *See id.*

**C. Upholding the Executive Order would undermine the principle of judicial independence**

An independent judiciary ensures that disputes are resolved according to law rather than the preferences of those in power. Judicial independence does not grant judges unlimited discretion; rather, it obliges them to decide cases without political or popular pressures so that their decisions reflect reasoned judgment, not allegiance or fear.<sup>27</sup>

Chief Justice John Marshall recognized the importance of judicial independence early in this nation's history. He committed himself to an independent and impartial judiciary. He once remarked that judges should not be influenced by anything but "God and [their] conscience."<sup>28</sup>

Upholding the Executive Order would belie the principle that justice and the law should be the same regardless of who wields political power in a given moment. The rule of law requires the judiciary, an institution responsible for administering justice, to operate free from political pressure.<sup>29</sup> A decision in favor of the Government would signal constitutional rights are weakest whenever the Executive Branch is most aggressive.

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<sup>27</sup> Robert Stein, *Rule of Law: What Does it Mean?*, 18 MINN. J. INT'L L. 293, 302 (2009).

<sup>28</sup> PROCEEDINGS AND DEBATES OF THE VIRGINIA STATE CONVENTION OF 1829-30 615-19 (1830).

<sup>29</sup> See HOLLORAN CENTER RULE OF LAW WORKING GROUP, SUPPLEMENTAL DESCRIPTION, *supra* note 10, at 1-2.

**D. Upholding the Executive Order would undermine the principle of equality**

The principle of equality embodies two interrelated ideas: first, that no person or institution stands above the law, and second, that laws must be applied impartially and without favoritism.<sup>30</sup> This dual concept of vertical and horizontal equality seeks to ensure that the same legal standards govern all persons—regardless of race, status, or wealth—and that similar cases receive similar treatment.<sup>31</sup>

Equality under law presupposes that the law is worthy of obedience—that it embodies justice rather than oppression. When law departs from this moral foundation, blind adherence risks perpetuating inequality instead of restraining it. The rule of law, therefore, is not merely procedural; it is substantive. It requires that laws reflect the inherent dignity and equal worth of all persons. It demands constant vigilance, insisting upon a steadfastness to confront injustice.

Historically, the U.S. legal system has not fulfilled the promise of equality. “At points, the rule of law has been interpreted and applied to deprive Indigenous people, African-Americans, people of color, women, members of the LGBTQ+ community, immigrants, and others of equal treatment and rights under the law.”<sup>32</sup> The actions of “many groups

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<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 3.

marginalized by the rule of law have brought changes to the law and helped move the rule of law in American society toward greater recognition of the principle of equality before the law.”<sup>33</sup>

Upholding the Executive Order would undermine the principle of equality. It would undermine the promise that laws reflect the equal worth of *all* persons, regardless of where they were born. It would create a more *unequal* society. It would undermine the rule of law.

### CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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<sup>33</sup> *Id.*