

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 THE AOKI CENTER FOR CRITICAL RACE AND
NATION STUDIES AT THE UNIVERSITY OF CALIFORNIA,
DAVIS, SCHOOL OF LAW, AND CONSTITUTIONAL, CIVIL
RIGHTS AND OTHER SCHOLARS AS AMICI CURIAE IN
SUPPORT OF RESPONDENTS**

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INTEREST OF THE *AMICI CURIAE*¹

The Aoki Center for Critical Race and Nation Studies at the University of California, Davis School of Law is a research center dedicated to the study of race, migration, and citizenship in U.S. law and policy. The Center advances research and public engagement concerning race, migration, and citizenship in U.S. law and policy.

Led by Law Professor Evelyn M. Rangel-Medina, the other amici joining this brief are constitutional law, civil rights and other scholars with particular expertise in citizenship law and the Reconstruction Amendments. They teach and write extensively on the Fourteenth Amendment, including the Citizenship Clause, Equal Protection Clause, and the structural transformation of political membership following the Civil War. Their scholarship examines racial formation, intergenerational status transmission, and the constitutional structure of political membership, as well as the historical meaning of birthright citizenship and the role of citizenship doctrine in preventing racialized exclusion. Their research situates the Citizenship Clause within the broader constitutional project of dismantling systems of inherited subordination.

¹ Pursuant to Supreme Court Rule 37, amici respectfully submit this brief amicus curiae in support of respondents. No counsel for a party authored this brief in whole or in part and no person or entity other than amici, its members, or counsel made a monetary contribution to its preparation or submission.

Appended to this brief is a complete list of amici. Amici submit this brief to assist the Court in evaluating the historical, structural, and racial implications of conditioning birthright citizenship on parental immigration status.

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States enacted the Reconstruction Constitution, in part, to end a system in which citizenship was inherited either through a person's enslaved status or their racialization. Under the doctrine of *partus sequitur ventrem*, adopted by colonial principalities and later states, enslaved status followed the condition of the mother, ensuring the indefinite reproduction of hereditary status without any hope of access to citizenship. Moreover, *Dred Scott v. Sandford*, 60 U.S. 393 (1857), constitutionalized ancestry-based exclusion by denying citizenship to Black Americans, free and enslaved alike. The Fourteenth Amendment's Citizenship Clause was designed to dismantle that regime by making territorial birth—rather than lineage—the constitutional rule of membership:

“All persons born ... in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”

U.S. Const. amend. XIV, § 1.

Executive Order 14160 (the “Order”) seeks to undo that settlement. By conditioning territorial

citizenship at birth on parental immigration status, the Order seeks to impose lineage as a determinant of democratic membership in a manner reminiscent of Chief Justice Taney's *Dred Scott* opinion, which was emphatically repudiated by the Civil War and the Reconstruction Constitution. See *United States v. Wong Kim Ark*, 169 U.S. 649, 693-94 (1898) (rejecting parentage-based limitations on birthright citizenship under the Fourteenth Amendment).

Although the Order is framed in race-neutral terms, it seeks to create a structure that mirrors the very system of racially differentiated transmissible status that the Fourteenth Amendment's Citizenship Clause abolished. While the Citizenship Clause was originally ratified primarily in response to *Dred Scott's* restrictions on Black citizenship, the Court extended the protections afforded in the clause to other racialized minorities in providing "birth within the dominion of the United States, notwithstanding alienage of parents," to be a "fundamental rule of citizenship" applicable to all minorities. *Wong Kim Ark*, at 693-94.

This fundamental rule applies today. Specifically, it applies to over forty percent of people of color who reside in the United States and are not considered White/Non-Hispanic. Of particular concern for amici are the protections for the approximately twenty million temporary-status holders and undocumented people who fall outside of

the White/Non-Hispanic categorization, the vast majority of whom are racialized as Latines.²

These demographic realities must be understood in light of how *citizenism* permits formally neutral citizenship classifications to racialize membership by allocating rights through immigration and citizenship categories. The Order conditions citizenship on immigration classifications that are themselves racially structured in application and demographic effect. Children denied citizenship at birth, and their future descendants, would be positioned within a legally subordinate tier of membership. Conditioning citizenship on the status of parents, most of whom are Latine, threatens to replicate forms of racial subordination that the Reconstruction Constitution abolished.

² “Latine” is a genderless term used to reference individuals who live in the United States and have Latin American heritage, including multiracial, Black, Indigenous, and Asian. This population is not a monolith; segments of the population are racialized differently, mainly depending on their race, class, linguistic abilities, languages spoken, immigration and status, and mode of incorporation to the United States. See Raquel E. Aldana, *Contesting Whiteness: Inventing “Hispanic”* (Sept. 25, 2024), Aoki Blog, <https://law.ucdavis.edu/aoki-blog/contesting-whiteness-inventing-hispanic> (providing historical context of different terminology used to describe “Hispanics” and “Latinos.”); see also generally Laura E. Gómez, *Inventing Latinos: A New Story of American Racism* (2020) (summarizing the historical and contemporary racialization of Latines in the United States); Tanya Kererí Hernández, *Racial Innocence: Unmasking Latino Anti-Black Bias and the Struggle for Equality* (2022).

By conditioning territorial citizenship on parental immigration classification, the Order would transmit legal precarity across generations, relegating Latine and children of color and their future descendants to a racially subordinated status. These harms would be especially visible in mixed-status households: families in which parents hold different immigration or citizenship statuses. The Order would deny citizenship to children born to parents who are neither U.S. citizens nor lawful permanent residents, whether both parents lack status or one holds temporary status. In mixed-status families, this would create intrafamilial stratification, assigning divergent constitutional statuses to children born into the same family and thereby reintroducing lineage-based differentiation within the household.

If citizenship again turns on parental status, legal precarity becomes inheritable, akin to *partus sequitur ventrem*. Children born in mixed-status families would begin life with reduced access to full political, social, and economic membership. The Order would predictably lead to multigenerational harms: deeper economic exploitation, widening health and social disparities, and a greater risk of statelessness. Over time, that regime would harden into durable intergenerational stratification, embedding racialized inequality in the constitutional terms of belonging. The Reconstruction Constitution rejected that inherited-status status quo after the Civil War; this Court should not restore it.

Executive Order 14160 thus tests not only the scope of executive power but also the durability of the Constitution and its protections for citizenship, which serve as a foundational guarantee of multiracial democratic belonging. The Fourteenth Amendment’s Citizenship Clause was adopted to prevent precisely this form of inherited subordination. Because the Order purports to restructure citizenship in a manner that reintroduces hereditary exclusion, it is incompatible with the Constitution.

ARGUMENT

I. **The Fourteenth Amendment Safeguards the Promise of a Multiracial Democracy by Foreclosing Lineage-Based Citizenship.**

The Citizenship Clause provides:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States...”

U.S. Const. amend. XIV, § 1.

This Clause was adopted in direct response to *Dred Scott v. Sandford*, 60 U.S. 393 (1857), which held that persons of African descent, whether free or enslaved, could not be citizens of the United States. Chief Justice Taney reasoned that Black people were excluded from the political community at the founding and that citizenship could not extend to them because of their inherited status. *Id.* at 403-05. Taney described them as “beings of an inferior order,” “altogether unfit to associate with the white race,” and therefore outside the constitutional polity. *Id.* at 404-

05, 407. In this way, the decision entrenched a constitutional regime in which political membership flowed through bloodline and race.³

The Fourteenth Amendment was designed not merely to reverse *Dred Scott* as a matter of constitutional law, but to eliminate the principle of hereditary exclusion that underlay that decision.⁴ By rooting citizenship in birth within the sovereign's territory—rather than in parentage—the Citizenship Clause severed political membership from lineage and established a uniform, self-executing rule: birth on U.S. soil confers citizenship, subject only to narrow and historically recognized exceptions.⁵

³ Under the doctrine of *partus sequitur ventrem*, enslaved status was transmitted through maternal lineage, ensuring the indefinite reproduction of caste. Colonial and early state legislatures codified this principle to preserve a race-based system of hereditary bondage. See William Waller Hening, *2 The Statutes at Large; Being a Collection of all the Laws of Virginia, from the First Session of the Legislature, in the Year 1619*, at 170 (New York, NY, R. & W. & G. Bartow, 1823) (reproducing Act XII, passed in 1662, which was the first of many state statutes adopted under the legal doctrine of *partus sequitur ventrem* to maintain a race-based system of enslavement); see also, *e.g.*, Act of Dec. 1740, § 10, 7 Statutes at Large of South Carolina 397 (David J. McCord ed., 1840) (adopting the same maternal-status rule).

⁴ See Eric Foner, *The Second Founding: How The Civil War and Reconstruction Remade the Constitution* 4–8 (2019) (explaining that Reconstruction sought to dismantle the system of inherited status and redefine national citizenship on a universal basis).

⁵ Sandra L. Rierson, *From Dred Scott to Anchor Babies: White Supremacy and the Contemporary Assault on Birthright*

The historical record confirms this understanding.⁶ During the debates over the Fourteenth Amendment, its proponents explained that the Citizenship Clause would ensure that “every person born within the limits of the United States” would be a citizen, except for some limited and well-recognized categories.⁷

This Court confirmed that understanding in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). There, the Court rejected the very parental-allegiance theory the President now advances, holding that birth within the territory, not the parents’ status or allegiance, governs constitutional citizenship. *Id.* at 693-94. The Court explained that the Fourteenth Amendment constitutionalized the common-law rule of *jus soli* and foreclosed attempts to condition citizenship on parental eligibility for naturalization or permanent allegiance. *Id.* at 655–58, 693.

Citizenship, 38 Geo. Immig. L.J. 1, 62–65 (2024) (discussing the long-term impacts of curtailing birthright citizenship).

⁶ See César Cuauhtémoc García Hernández, *Misusing history to limit birthright citizenship*, SCOTUSBLOG (Oct. 21, 2025), <https://www.scotusblog.com/2025/10/misusing-history-to-limit-birthright-citizenship/> (explaining that the government’s arguments against birthright citizenship selectively read Reconstruction-era sources while ignoring the Fourteenth Amendment’s core purpose of abolishing inherited status and racial exclusion).

⁷ Cong. Globe, 39th Cong., 1st Sess. 2890 (1866) (statement of Sen. Jacob Howard) (explaining that the Clause would apply to “every person born within the limits of the United States,” except for “children of ambassadors or foreign ministers”).

Furthermore, this Court has reaffirmed and extended this interpretation of birthright citizenship on at least three occasions. In *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 77 (1957), this Court noted that the child of two Greek sailors who had overstayed their visas, was a U.S. citizen by birth because he was born on U.S. soil. In *INS v. Errico*, 385 U.S. 214, 215-16 (1966), this Court noted in a consolidated case that the children of both parties “acquired United States citizenship at birth” even if the parents entered the U.S. through misrepresentation. Lastly, in *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985), this Court noted that the children of an undocumented Mexican couple were both U.S. citizens at birth.

Executive Order 14160 attempts to revive a parental-allegiance theory of jurisdiction that this Court rejected 128 years ago. The Order provides that:

Among the categories of individuals born in the United States and not subject to the jurisdiction thereof, 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 ... and the father was not a United States citizen or lawful

permanent resident at the time of said person's birth.

Exec. Order No. 14,160, *Protecting the Meaning and Value of American Citizenship* (Jan. 20, 2025), 90 Fed. Reg. 8449 (Jan. 29, 2025).

By asserting that children born to undocumented or temporary-status parents are not “subject to the jurisdiction” of the United States, the Order redefines jurisdiction to mean something closer to political membership or permanent allegiance. That interpretation is inconsistent with text, history, and precedent. Undocumented and temporary-status parents are indisputably subject to federal and state law: they may be prosecuted, taxed, regulated, and deported by U.S. authorities. They are not ambassadors or foreign ministers. Their children, born on U.S. soil, are therefore born within the sovereign's territorial and legal authority.

The Executive's attempt to narrow constitutional citizenship through what amounts to an administrative action is incompatible with the structure of the Fourteenth Amendment. The Citizenship Clause was adopted to place the core definition of political membership beyond the reach of ordinary political fluctuation. It operates as a constitutional constraint on all branches of government, including the Executive. An executive order cannot revise the scope of a constitutional guarantee deliberately framed in categorical terms by Congress and ratified by the states.

The Constitution fixes the rule of birthright citizenship. Because Executive Order 14160 conditions the rule on parental status and thereby reintroduces lineage as a determination of membership, it conflicts with the Fourteenth Amendment.

II. Executive Order 14160 Reestablishes A Racially Subordinated Underclass of Latines and People of Color Based on Parental Lineage

Although Executive Order 14160 is framed in formally race-neutral terms, its operation would overwhelmingly affect mixed-status families of color.⁸ The Order conditions citizenship at birth on the immigration status of a newborn's parents. Because the undocumented and temporary-status populations are overwhelmingly Latine, Asian and Pacific Islander, Black, and Caribbean communities, the Order's practical effect would be to produce an inheritable citizenship status that stratifies exclusion or political belonging along racial lines.

⁸ Mixed-status families are household units in which family members have different immigration or citizenship statuses, including undocumented immigrants, Deferred Action for Childhood Arrivals (DACA) recipients, temporary protected status (TPS) holders, asylees, legal permanent residents (LPRs), U.S. Nationals, and U.S. citizens. See Leisy J. Abrego, *Relational Legal Consciousness of U.S. Citizenship: Privilege, Responsibility, Guilt, and Love in Latino Mixed-Status Families*, 53 L. & Soc'y Rev. 641, 646 (2019).

As other amici have explained, earlier citizenship-restrictive regimes disproportionately burdened Asian American communities through denaturalization and expatriation campaigns.⁹ This brief complements that analysis by examining the Order’s present-day demographic structure and its disproportionate impact on Latine mixed-status families. Latines, along with Asian and Pacific Islanders (APIs), have historically been primary targets of racialized immigration law and enforcement and remain so today.¹⁰ For example, President Trump invoked President Eisenhower’s 1954 “Operation Wetback” as a model for his own immigration agenda, stating that his administration would seek “to complete the largest domestic deportation operation in American history, larger even than current record-holder President Dwight D. Eisenhower.”¹¹ Once re-elected, the President pledged to expand militarized

⁹ See, e.g., Brief for The Fred T. Korematsu Center for Law and Equality et al. as Amici Curiae in Support of Plaintiffs-Appellees at 7–16, *State of Washington v. Trump*, 145 F.4th 1013 (9th Cir. Apr. 11, 2025) (describing post-*Thin* denaturalization and expatriation regimes).

¹⁰ See, e.g., Evelyn M. Rangel-Medina, *Citizenism: Racialized Discrimination by Design*, 104 B.U.L. Rev. 831, 866–72 (2024) (providing case studies of how mixed-status Mexican and Japanese communities were targeted through militarized enforcement based on their race).

¹¹ The American Presidency Project, “Donald J. Trump (2nd Term): Address Before a Joint Session of the Congress,” March 4, 2025, (last visited Feb. 25, 2026), <https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-4>; see generally Rangel-Medina, 104 B.U.L. Rev. at 867–69.

immigration enforcement and restrict citizenship in ways that would disproportionately affect Latine families and communities.¹² These policies facilitate racialization and subjugation.¹³

A. Racialized Demographic Impact of the Order

As of mid-2023, approximately 14 million undocumented migrants resided in the United States. In addition, an estimated 5.5 to 6.5 million individuals hold temporary or provisional immigration status, including pending asylum applicants, recipients of Temporary Protected Status (TPS), Deferred Action for Childhood Arrivals (DACA) recipients, and humanitarian parolees.¹⁴ The majority of the

¹² Uriel J. García, *Trump's mass deportation plans have echoes of a 1950s crackdown that swept through Texas*, Tex. Tribune (Feb. 12, 2025), <https://www.texastribune.org/2025/02/12/texas-immigrants-deportation-operation-trump-eisenhower/>.

¹³ See Aaron Flanigan, *The Racist "Great Replacement" Conspiracy Theory Explained*, S. Poverty L. Ctr. (May 17, 2022) (explaining how demographic-threat narratives frame immigrants and their descendants as existential dangers).

¹⁴ Population estimates reflect residents present in the United States at a given time, not annual visa issuances; categories not mutually exclusive. See Jeffrey S. Passel & Jens Manuel Krogstad, *What We Know About Unauthorized Immigrants Living in the U.S.*, Pew Res. Ctr. (July 22, 2024), <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/> (clarifying that estimates reflect the resident unauthorized population at a point in time and include overlapping status categories) (Passel & Krogstad, *What We Know About Unauthorized Immigrants*); see also Jeanne Batalova, *Frequently*

undocumented population in the United States originated from Latin America, Asia, and the Pacific Islands, as well as Africa, as reflected below:

Table 1. National Origin of the Approximate Fourteen Million Undocumented Migrant Population in the United States as of 2023¹⁵

Country or Region of Origin	Approximate Percentage Share
Mexico	40%
Guatemala	10%
Honduras	8%
El Salvador	8%
Venezuela	4%
South American (overall)	12%
Caribbean	4%
Asia and Pacific Islands	6%
Europe/Canada/Oceania	7%
Africa	3%

Requested Statistics on Immigrants and Immigration in the United States, Migration Pol’y Inst. (Mar. 12, 2025), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states> (providing authoritative immigrant and unauthorized immigrant population estimates, including 13.7 million unauthorized immigrants as of mid-2023) (Batalova, *Immigration Statistics*).

¹⁵ The percentages by national origin shown in Table 1 do not add up to 100% because regional categories overlap with national-origin entries (for example, Venezuela is counted under South America). Additionally, the most recent complete data available on the undocumented population covers only the period until mid-2023. See Migration Pol’y Inst., *Unauthorized*

As Table 1 demonstrates, roughly two-thirds of the undocumented population originated from Mexico and Central America alone, and more than ninety percent come from Latin America, Asia, Africa, and the Caribbean combined. In the United States, immigrants from these regions disproportionately represent racialized and minoritized communities.¹⁶ As a result, the families whose U.S.-born children would be denied U.S. citizenship under the Order are overwhelmingly families of color.

Temporary and provisional-status populations mirror the undocumented population impacted by the

Immigrant Population Profiles (last visited Feb. 26, 2026), <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles> (MPI, *Unauthorized Immigrant Profiles*); Passel & Krogstad, *What We Know About Unauthorized Immigrants*; see also Evin Millet, *A Demographic Profile of Undocumented Immigrants from Asia and the Pacific Islands*, Ctr. Migration Stud. (June 14, 2022), <https://cmsny.org/undocumented-aapi-millet-061322/> (estimating that approximately 1.7 million undocumented immigrants are from Asia and the Pacific Islands) (Millet, *Demographic Profile of Undocumented API Immigrants*).

¹⁶ See Laura E. Gómez, *Inventing Latinos: A New Story of American Racism* 1–18, 45–76 (2020) (explaining how U.S. law and social practice have racialized Latin American national origins as non-White); Tanya K. Hernández, *Racial Subordination in Latin America: The Role of the State, Customary Law, and the New Civil Rights Response* 3–12 (2013) (describing how racialization operates through national origin, ancestry, and legal classification across the Americas); see also Ian F. Haney López, *White by Law* 1–10 (2d ed. 2006) (explaining how U.S. citizenship and immigration law historically constructed racial categories through legal status and national origin).

Order. As of 2023–2024, more than ninety percent of individuals with temporary-status categories originated from Latin America, Asia, Africa, and the Caribbean (see Table 2). The largest national-origin groups include Mexico, Guatemala, Honduras, El Salvador, Venezuela, Haiti, China, India, the Philippines, and several African nations. Migrant populations from these regions were overwhelmingly composed of Latines and Asian and Pacific Islanders.

Table 2. Temporary or Provisional Immigration Statuses Implicated by Executive Order 14160 (Approx. 2023-2024)¹⁷

Status Category	Estimated U.S. Population ¹⁸	Country or Region of Origin (in order of representation)
Pending Asylum Petitions	~2.0-2.5 million	Venezuela, Honduras, Haiti, China, India
Humanitarian Parole	~1.8-2.0 million	Venezuela, Haiti, Cuba, Nicaragua, Afghanistan, Ukraine

¹⁷ Estimates are based on multiple reputable sources reporting data from 2023 to 2024. Note that, as explained in footnote 14, the categories are not mutually exclusive, so the figures are approximate.

¹⁸ The population estimates show the number of residents in the United States at specific times, not the total number of visas issued each year or the visas themselves. Data on Temporary Protected Status (TPS) are from the Department

Temporary Protected Status (TPS)	~1.3 million	Venezuela, Haiti, El Salvador, Honduras, Nicaragua
Deferred Action for Childhood Arrivals (DACA)	~580,000	Mexico, El Salvador, Guatemala, Honduras
Total unique individuals (approx.) ¹⁹	~5.5-6.5 million	Predominant Regions: Latin America, Asia, and Africa

Thus, the Order would disproportionately burden U.S.-born children of Latine, Asian, and Pacific Islander descent. The result would be the

of Homeland Security fact sheets on individuals with TPS protections. Estimates for Deferred Action for Childhood Arrivals (DACA) are based on active beneficiaries reported by U.S. Citizenship and Immigration Services and the Migration Policy Institute (MPI) DACA data tools. Figures for asylum pending cases come from the Executive Office for Immigration Review asylum backlog reports and MPI analyses of asylum trends. Primary countries of origin are based on MPI's nationality breakdowns for these categories where available; the exact shares are approximate, using the most recent public data.

¹⁹ "Total unique individuals" represents an estimated count of different persons holding at least one of the listed temporary or provisional statuses during the relevant period. Since people may move between or hold multiple statuses simultaneously (*e.g.*, humanitarian parole and pending asylum), categories are not mutually exclusive, making the totals approximate.

creation of a subclass of U.S.-born persons—overwhelmingly children of color—excluded from constitutional citizenship at birth. What appears administratively neutral thus functions as a mechanism of racially discriminatory status transmission, which bears peculiar resemblance to the antebellum order that the nation roundly repudiated when the states ratified the Fourteenth Amendment in 1868.

The Latine mixed-status population living in the United States would, in particular, be directly impacted by Executive Order 14160 across generations.²⁰ Latine communities are the fastest-growing and youngest population in this country.²¹

²⁰ See Section II.A, Table 1, *supra*; William H. Frey, *The New American Majority: How Demographic Change Is Reshaping the Nation*, Brookings Inst. 3–12; see also Lucía Félix Beltrán et al., *Born Into Uncertainty: The Health and Social Costs of Ending Birthright Citizenship*, UCLA Latino Pol’y & Pol. Inst. 8 (Feb. 13, 2025) (projecting that “approximately half of Latino children born to noncitizen parents would be affected if this executive order were in effect”).

²¹ See Jie Zong et al., *A Profile of the U.S. Latino Population, 2000-2020*, UCLA Latino Pol’y & Pol. Inst. (Oct. 26, 2022), <https://Latino.ucla.edu/research/Latino-population-2000-2020/> (showing that the Latine population grew from 13% to 19% of the U.S. population between 2000 and 2021 and was the largest contributor to national population growth); U.S. Census Bureau, *Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States: April 1, 2020 to July 1, 2023 (Vintage 2023 Population Estimates)* (June 27, 2024), <https://www.census.gov/newsroom/press-releases/2024/population-estimates-characteristics.html> (reporting that between 2022 and 2023 the Hispanic population accounted for

For decades, Latine communities, as well as other communities of color, have been subjected to racialized immigration law and enforcement practices that mark them as presumptively foreign and deportable, regardless of citizenship status.²²

The Order would compound these harms for mixed-status families. The denial of birthright citizenship threatens to destabilize family unity and transmit legal precarity across generations.²³ Children born into mixed-status Latine families would face diminished access to essential services, such as education, healthcare, and political recognition, reinforcing patterns of racial

approximately 71% of total U.S. population growth, outpacing other racial and ethnic groups).

²² See, e.g., Rangel-Medina, 104 B.U.L. Rev. at 875-882 (discussing the racialization of communities of color through immigration enforcement).

²³ Racialized case studies from Japan and the Dominican Republic, which deny birthright citizenship to Korean and Haitian families demonstrate these outcomes. See Amnesty Int'l, *Dominican Republic: Submission to the UN Human Rights Committee*, Index AMR 27/2978/2015 (Dec. 2015) (describing how thousands of people of Haitian descent born in the Dominican Republic became stateless due to the Dominican Republic's Constitutional Court's 2010 ruling (Judgment 168-13) and the government's enactment of Law 169-14 in 2013); Federica Cidale, *Zainichi Koreans in Japan: Exploring the Ethnic Minority's Challenges*, Cent. Eur. Inst. Asian Stud. (Feb. 26, 2024), <https://ceias.eu/zainichi-koreans-in-japan-exploring-the-ethnic-minoritys-challenges/> (generations of people of Korean descent in Japan have not been eligible for Japanese citizenship since 1910).

subordination that the Fourteenth Amendment was expressly designed to dismantle.²⁴

As other amici explain in greater detail, Asian American communities have historically borne the brunt of citizenship-restrictive regimes.²⁵ This brief does not attempt to duplicate that analysis but notes that the present Order would expose API mixed-status families to parallel forms of intergenerational instability. API mixed-status families would confront parallel forms of instability.²⁶ As reflected in Table 2, API immigrants are disproportionately represented among populations holding temporary statuses, including work visas and pending asylum claims, and are also significantly represented within the undocumented population. The Order would therefore expose API families to the same risk of intergenerational marginalization and statelessness.

²⁴ Joanna Dreby, *Divided by Borders: Mexican Migrants and Their Children* 1–31, 163–66 (2010) (documenting how immigration enforcement and legal status fragmentation undermine family stability and children’s access to social and civic institutions); see generally Lucía Félix Beltrán et al., *Born Into Uncertainty: The Health and Social Costs of Ending Birthright Citizenship*, UCLA Latino Pol’y & Pol. Inst. (Feb. 13, 2025) (identifying the social, health, educational, and political harms of restricting birthright citizenship).

²⁵ Brief of the Fred T. Korematsu Center for Law and Equality et al. as Amici Curiae in Support of Plaintiffs-Appellees at 16, *Washington v. Trump*, 145 F.4th 1013 (9th Cir. Apr. 11, 2025).

²⁶ See Migration Pol’y Inst., *Children in Immigrant Families*, <https://www.migrationpolicy.org/programs/data-hub/charts/children-immigrant-families> (last visited Feb. 26, 2026).

Together, these conditions demonstrate how parentage-based citizenship restrictions would extend legal precarity beyond undocumented populations, rendering the membership of U.S.-born children contingent on parents' status. Such a regime would reproduce a racially stratified system in which citizenship and belonging are inherited or denied based on ancestry, echoing historical periods in which legal status—and the rights that flowed from it—were determined by lineage rather than birth on American soil.

B. The Constitutional Significance of Racialized Exclusion

The racialized impact of the Order follows directly from publicly available demographic data. When a rule predictably produces racialized and intergenerational exclusion from political membership, the constitutional stakes are structural. Such exclusion reshapes who can participate and influence democratic governance. Here, the demographic composition of the affected population is so pronounced that the intergenerational consequences of conditioning citizenship on parental status are foreseeable and systematic.

The Constitution bars the political branches from reconstructing systems of inherited exclusion. The Citizenship Clause was enacted to ensure that birth within the United States confers membership irrespective of ancestry or lineage. Conditioning membership on parental immigration status would convert immigration classification into a racially

patterned regime of constitutional status transmission.

For these reasons, the Order operates as a mechanism that predictably entrenches racialized stratification. The Fourteenth Amendment does not allow the reintroduction of hereditary exclusion through administrative reinterpretation.

C. Parentage as a Mechanism of Racial Stratification

By conditioning citizenship on parental status, the Order transforms immigration classification into an inheritable trait. Legal precarity would be transmitted to the next generation at birth. In this way, parental status becomes the functional equivalent of lineage.

Because undocumented and temporary-status populations are overwhelmingly composed of people of color—and particularly of Latine communities—conditioning citizenship on parental status would disproportionately burden U.S.-born Latine children. Latines constitute the largest share of the undocumented population and represent the youngest and fastest-growing demographic group in the United States. As other amici explain, Asian American communities have also historically borne the brunt of citizenship-stripping regimes. The present Order reproduces those structural dynamics across communities of color.

The Reconstruction Amendments were designed to prevent precisely this form of hereditary

exclusion.²⁷ The Citizenship Clause replaced bloodline with territorial birth as the constitutional baseline for political membership. See *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898) (holding that the Fourteenth Amendment “affirms the ancient and fundamental rule of citizenship by birth within the territory”); see also *Elk v. Wilkins*, 112 U.S. 94, 101–02 (1884). Executive Order 14160 reintroduces lineage indirectly by tying membership to parental status.

The resulting stratification would be longstanding. Citizenship is foundational; it structures access to voting, federal employment, full participation in civic life, and protection from removal. When citizenship becomes contingent on inherited immigration classification, a legally distinct population emerges within the territory: a population that is physically present and governed by U.S. law yet denied constitutional membership at birth. See cf. *Plyler v. Doe*, 457 U.S. 202, 221–23 (1982) (recognizing that denying undocumented children access to public education would impose a “lifetime hardship” and create a discrete subclass within our society).

Such a regime does more than regulate immigration. It redraws the boundary of the political community in ways that track racial demography. Over time, the predictable effect would be to entrench

²⁷ Cong. Globe, 39th Cong., 1st Sess. 2893 (1866) (statement of Sen. Lyman Trumbull) (explaining that “subject to the jurisdiction” means “not owing allegiance to anybody else”); Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* 68–76 (2019).

a racially identifiable group of U.S.-born persons excluded from citizenship, with consequences that compound across generations. Such an extreme outcome cannot result from the political preferences of a single elected official in our constitutional system.

III. Conditioning Citizenship On Parentage Exacerbates Structural and Multigenerational Harm.

Because the Order reintroduces lineage-based status transmission, its consequences are structural and multigenerational. It alters the baseline of political membership in ways that predictably generate intergenerational instability. The consequences shape family structure, economic opportunity, health outcomes, and the risk of statelessness across time and space.

Accounts from affected persons illustrate how parentage-based citizenship restrictions would operate immediately within mixed-status households already rooted in U.S. communities, translating structural instability into concrete family-level harm.

A. Magnifying Health Disparities

Health harms begin before labor-market exclusion or political disenfranchisement take effect.²⁸ Legal status is a significant social determinant of health, influencing exposure to risk, access to care,

²⁸ Maria-Elena De Trinidad Young et al., *Beyond “Chilling Effects”: Immigration Enforcement and Health Care Access*, 113 Am. J. Pub. Health 596, 599-602 (2023).

and long-term well-being.²⁹ Policies that destabilize citizenship at birth introduce stress and uncertainty at the earliest stages of life, during periods when health trajectories are especially sensitive to environmental and psychological conditions.³⁰

People without secure status experience chronic stress linked to legal uncertainty, fear of detection, and anxiety about separation. This stress permeates daily decisions about work, housing, healthcare, and dealings with public institutions.³¹ Over time, this ongoing stress leads to negative physical and mental health effects, including cardiovascular disease, anxiety, depression, and weakened immune functioning.³² When citizenship

²⁹ Krista M. Perreira & Juan M. Pedroza, *Policies of Exclusion: Implications for the Health of Immigrants and Their Children*, 39 *Ann. Rev. Pub. Health* 147, 148–49 (2019); Luis H. Zayas et al., *The Distress of Citizen-Children with Detained and Deported Parents*, 24 *J. Child & Fam. Stud.* 3213, 3213–23 (2015).

³⁰ See generally Grace Fay Cooper, *Pursuing Medical Sanctuary in Philadelphia: An Ethnography of Care on the Immigration-Status Spectrum* (2023) (Ph.D. dissertation, Temple University), <https://scholarshare.temple.edu/items/3a853ce8-b6cf-4b8f-a655-b6619abe9982>; U.N. High Comm'r for Refugees, *Ending Statelessness* (U.S.), <https://www.unhcr.org/us/what-we-do/protect-human-rights/ending-statelessness> (last visited Feb. 26, 2026) (noting barriers to healthcare access for stateless populations).

³¹ Kathleen R. Page & Sarah Polk, *Chilling Effect? Post-Election Health Care Use by Undocumented and Mixed-Status Families*, 376 *N. Engl. J. Med.* 20, 20–22 (2017) (describing avoidance of healthcare due to immigration fear).

³² Omar Martinez et al., *Evaluating the Impact of Immigration Policies on Health Status Among Undocumented*

insecurity attaches at birth, these stressors are not episodic but structural.

Access to healthcare is also directly shaped by citizenship and immigration status.³³ Undocumented individuals are less likely to receive preventive care, routine screenings, and early treatment for chronic conditions.³⁴ Barriers include eligibility restrictions for public benefits, the lack of employer-sponsored insurance, and concerns that use of healthcare systems may trigger immigration scrutiny.³⁵ Recent reporting has documented how immigration activity near hospitals and clinics has caused patients, including essential health-care workers, to avoid or delay treatment out of fear of detention, even when facing serious medical conditions.³⁶ These chilling

Immigrants: A Systematic Review, 105 Am. J. Pub. Health 864, 867-70 (2015); Perreira & Pedroza, 39 Ann. Rev. Pub. Health at 154-58; Mark L. Hatzenbuehler et al., *Immigration Policies and Mental Health Morbidity Among Latinos*, 111 Soc. Sci. & Med. 1, 4-6 (2017).

³³ Perreira & Pedroza, 39 Ann. Rev. Pub. Health, at 150-52 (explaining how immigration status structures access to healthcare, insurance coverage, and preventive services).

³⁴ Martinez et al., 105 Am. J. Pub. Health at 866-68 (finding undocumented immigrants are less likely to access preventive care and more likely to delay treatment).

³⁵ Abigail S. Friedman & Atheendar Venkataramani, *Chilling Effects: U.S. Immigration Enforcement and Health Care Seeking Among Hispanic Adults*, 112 Am. J. Pub. Health 123, 126-29 (2022); Julia Gelatt, *Immigrant Access to Health Care: A Review of Public Charge and Eligibility Restrictions*, Migration Pol'y Inst. (2016).

³⁶ See, e.g., CNN, *Immigration enforcement actions near health care facilities raise concerns among doctors and patients*

effects compound existing disparities and increase reliance on emergency care, resulting in delayed diagnoses and preventable worsening of illness.³⁷

The health harms associated with restricting birthright citizenship underscore how legal status operates beyond the formal allocation of rights.³⁸ Citizenship law structures access to the conditions necessary for a healthy life. When legal status becomes uncertain at birth, that uncertainty reverberates through bodies, families, and communities over time.³⁹ Health disparities are not collateral effects of such policies; they are foreseeable outcomes of a regime that distributes vulnerability along legally and racially stratified lines.⁴⁰

(Feb. 19, 2026), <https://www.cnn.com/2026/02/19/us/immigration-doctors-ice-health-care> (reporting that immigration enforcement activity has caused some patients, including noncitizens and mixed-status families, to delay or forgo medical treatment out of fear of detention, and that health-care providers have expressed concern about resulting public health consequences).

³⁷ See Friedman & Venkataramani, 39 *Ann. Rev. Pub. Health* 123; Sarah D. Rhodes et al., *The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos*, 105 *Am. J. Pub. Health* 329, 332-34 (2015).

³⁸ De Trinidad Young et al., 113 *Am. J. Pub. Health* at 599-602.

³⁹ See Perreira & Pedroza, 39 *Ann. Rev. Pub. Health* at 148-49; Luis H. Zayas et al., *The Distress of Citizen-Children with Detained and Deported Parents*, 24 *J. Child & Fam. Stud.* at 3213-23.

⁴⁰ See generally Cooper, *Pursuing Medical Sanctuary in Philadelphia: An Ethnography of Care on the Immigration-*

Citizenship insecurity also produces harm anticipatorily, reshaping parental decision-making and psychological well-being before any formal legal determination is made. Marta, a pregnant woman from Guatemala, describes fear and emotional distress over the possibility that her unborn child may be denied citizenship and, with it, access to education, healthcare, and economic opportunities.⁴¹ When she learned she was pregnant, she envisioned her child's future "free from the hardships she experienced in Guatemala," taking solace in the fact that her child would be born a U.S. citizen, an expectation now thrown into doubt by Executive Order 14160.⁴² Even where alternative nationality may exist in theory, the denial of U.S. citizenship at birth exposes children to prolonged legal uncertainty during critical developmental periods.

This anticipatory harm illustrates how citizenship insecurity functions as a social determinant of health. The stress associated with uncertain legal recognition, experienced by parents and transmitted to children, produces tangible mental and physical health effects that compound over time.

Status Spectrum (2023) (Ph.D. dissertation, Temple University), <https://scholarshare.temple.edu/items/3a853ce8-b6cf-4b8f-a655-b6619abe9982>; see U.N. High Comm'r for Refugees, *Ending Statelessness* (U.S.) (noting barriers to healthcare access for stateless populations).

⁴¹ See Am. Compl., *CASA de Maryland, Inc. v. Trump*, No. 8:25-cv-00201 (D. Md. filed Jan. 2025), at ¶¶ 98–108.

⁴² *Id.*

Citizenship restriction thus magnifies existing health disparities and embeds them across generations.

B. Facilitating Economic Exploitation

Legal status plays a central role in structuring labor markets. It determines eligibility for lawful employment, access to professional licensing, mobility across sectors, and the capacity to assert workplace rights.⁴³ When individuals lack secure status, they face restricted job access, diminished bargaining power, and heightened vulnerability to precarious or informal work arrangements.⁴⁴

Children denied citizenship at birth would enter adulthood effectively undocumented. As a result, depending on the state in which they reside, they could lack the ability to obtain government-issued identification, work lawfully, secure professional licenses, obtain a driver's license or car insurance, qualify for in-state tuition or financial aid, rent or purchase housing, or access other routine aspects of civic and economic life.⁴⁵ The absence of lawful status would confine many to sectors where

⁴³ Ruth Milkman, *Immigrant Workers, Precarious Work, and the U.S. Labor Movement*, 8(3) *Globalizations* 361–372 (2011).

⁴⁴ *Id.*

⁴⁵ See Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* 1–14 (Princeton Univ. Press 2004) (tracing how legal exclusion has long functioned to discipline racialized labor while extracting economic value).

labor protections are weakest and enforcement is inconsistent.

Undocumented workers are uniquely vulnerable to exploitation precisely because their legal precarity suppresses their capacity to challenge abuse. Fear of detection, detention, or removal discourages reporting of wage theft, unsafe conditions, or discriminatory treatment. Equally significant is the absence of political power: individuals without citizenship cannot vote, serve on juries, or meaningfully influence the laws that govern their working conditions. Legal vulnerability thus compounds economic vulnerability, producing a labor force whose insecurity is structurally maintained.⁴⁶

Over time, this exclusion produces a stratified labor market in which legal status maps onto economic precarity. Given the demographic composition of the populations affected by the Order, such stratification would not be randomly distributed. It would track racial and national-origin patterns already present in immigration classifications.

The Reconstruction Amendments were enacted in part to prevent the reconstitution of status-based economic subordination following the abolition of slavery. Citizenship was intended to secure the political and civil foundation necessary for meaningful economic participation. Conditioning citizenship on parentage reintroduces a tiered system of

⁴⁶ *Id.*

membership that risks decoupling labor contribution from constitutional protection.

These consequences are not hypothetical. Adelina, an undocumented mother who is currently pregnant, fears that her second child will lack the citizenship status afforded to her first.⁴⁷ Even before birth, this anticipated differentiation shapes family planning and expectations about education, employment, and mobility.⁴⁸ When constitutional status turns on parentage, economic vulnerability becomes inheritable.⁴⁹

Conditioning citizenship on parental classification thus risks creating a tiered system of membership in which labor contribution is decoupled from constitutional protection—a structure the Fourteenth Amendment was designed to foreclose.

C. Heightening Risk of Generational Statelessness

Perhaps most fundamentally, conditioning citizenship on parental immigration status creates a durable risk of statelessness. Nationality regimes operate within a global system in which nationality

⁴⁷ See Am. Compl., *CASA de Maryland, Inc. v. Trump*, ¶ 28.

⁴⁸ *Id.*

⁴⁹ See Joanna Dreby, *Divided by Borders: Mexican Migrants and Their Children* 163–65 (2010) (documenting how legal status insecurity shapes family decision-making, children’s educational trajectories, and mobility).

transmission often depends on documentation, consular access, and functioning state institutions. In contexts of political instability, administrative collapse, or restrictive nationality laws, securing alternative citizenship may be difficult or impossible.⁵⁰

Statelessness entails harms distinct from those associated with undocumented status alone. A stateless person lacks not merely U.S. citizenship, but citizenship in any nation. Without recognized nationality, an individual may have no consular authority to advocate on their behalf, no passport-issuing state, and no sovereign obligated to ensure reentry or protection abroad. Freedom of movement becomes severely constrained, and international travel may be functionally unavailable.⁵¹

Moreover, if ordered removed from the United States, a stateless individual may face prolonged or indefinite detention if no country will accept them. Where removal is not reasonably foreseeable, detention can become extended, leaving the individual in legal limbo without a destination state. In this condition, the absence of nationality produces not simply a disfavored status within a polity, but the absence of recognized political membership in any polity.

⁵⁰ See Hannah Arendt, *The Origins of Totalitarianism*, 296–97 (1951) (describing statelessness as the loss of the “right to have rights”).

⁵¹ *Id.*

The risk of legal indeterminacy is not theoretical. Trinidad Garcia, a Venezuelan asylum seeker, reports that consular services in her home country have collapsed, making nationality documentation unreliable or inaccessible.⁵² If her U.S.-born child were denied citizenship under the Order, she fears that securing an alternative nationality would be practically impossible.⁵³ Monica, who holds Temporary Protected Status, similarly explains that provisional lawful presence offers no assurance that her U.S.-born child would be recognized as a citizen under a parentage-based regime.⁵⁴

If the United States denies citizenship at birth to children born within its territory and their parents are unable to secure nationality elsewhere, those children may be left without recognized membership in any sovereign state. They would remain subject to U.S. law yet lack the reciprocal protection that citizenship provides.⁵⁵

The Fourteenth Amendment was enacted to prevent the creation of a domestically embedded population excluded from political membership by virtue of inherited status. By making citizenship contingent on parental classification, Executive Order 14160 risks recreating a system in which legal

⁵² See Am. Compl., *CASA de Maryland, Inc. v. Trump*, ¶¶ 134–141.

⁵³ *Id.*

⁵⁴ *Id.* at ¶¶ 134–148.

⁵⁵ *Id.*

vulnerability becomes multigenerational and sovereign protection uncertain.

Birthright citizenship operates as a structural safeguard against precisely that form of inherited subordination.

D. Creating Family Fragmentation and Intra-Household Stratification

Under Executive Order 14160, siblings born to the same parents could receive different constitutional statuses based solely on timing. A child born before the Order's effective date would be recognized as a citizen; a sibling born after would not. Constitutional membership would hinge not on place of birth or connection to the United States, but on administrative chronology. Even if temporary in duration, such intra-household stratification would immediately destabilize families, dividing siblings into different legal classes and subjecting them to divergent rights, protections, and vulnerabilities within the same home.⁵⁶

Nividia, a Honduran asylum seeker who is currently pregnant, fears that her unborn child will be denied citizenship solely because of the Order's effective date, even though she already has a U.S.-citizen child.⁵⁷ Under the Order's framework, siblings

⁵⁶ See Carol Nackenoff, *Caste and American Citizenship in the Trump Era*, 85 Md. L. Rev. 178 (2025).

⁵⁷ See Am. Compl., *CASA de Maryland, Inc. v. Trump*, ¶¶ 39, 118–126.

within the same household could be assigned fundamentally different constitutional identities at birth.

Such differentiation embeds legal inequality within the same family. One child would be fully protected from removal and entitled to political participation; another would enter life in a legally precarious situation. This intra-household stratification destabilizes family cohesion and produces long-term consequences for mobility, planning, and security.⁵⁸ The Fourteenth Amendment was adopted to eliminate inherited status distinctions of this kind. By making constitutional standing turn on parental designation rather than birth within the territory, the Order reintroduces the very lineage-based differentiation the Reconstruction Constitution sought to abolish.

CONCLUSION

Executive Order 14160 seeks to condition citizenship at birth on parental immigration status rather than birthplace. In doing so, it reintroduces lineage as a determinant of political membership and revives a system of inherited status that the

⁵⁸ See Ian F. Haney López, *White by Law* 7–10 (2d ed. 2006) (tracing how U.S. naturalization and citizenship law legally constructed whiteness); see also Rangel-Medina, 104 B.U.L. Rev. at 847-864 (2024) (arguing that U.S. citizenship law operates under citizenism, a system that distributes legal belonging and exclusion along status and race).

Fourteenth Amendment was expressly designed to abolish.

Because the Order is incompatible with the text, history, and settled interpretation of the Citizenship Clause, and because it threatens to reintroduce intergenerational status transmission inconsistent with the Fourteenth Amendment's design, the Court should hold the Order unconstitutional.

Respectfully submitted,

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FEBRUARY 26, 2026

APPENDIX

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Appendix A – List of Amici1a

APPENDIX A

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