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 *AMICUS CURIAE* AMERICAN BAR ASSOCIATION IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

The American Bar Association (ABA) is the largest voluntary association of attorneys and legal professionals in the world. Its membership spans all fifty States and the District of Columbia. It includes attorneys in private practice, government service, and public interest organizations, as well as judges,[2] law professors, law students, and non-lawyer associates in related fields. These members represent the full spectrum of public and private clients and practice every type of law, including corporate, commercial, criminal, family, and—yes—immigration law.

The ABA has a long history of submitting independent *amicus* briefs, including briefs that this Court has cited. *E.g.*, *Obergefell* v. *Hodges*, 576 U.S. 644, 670 (2015); *Williams-Yulee* v. *Fla. Bar*, 575 U.S. 433, 440 (2015); *Caperton* v. *A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 888 (2009); *Rothergy* v. *Gillespie Cnty.*, 554 U.S. 191, 204–205 (2008).

The ABA is thus well situated to explain how legal systems in the United States function when citizenship rules are clear and administrable—and how those legal systems can unravel when those rules become indeterminate.

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[1] No party's counsel authored this brief in whole or in part; no party's counsel contributed money for this brief's preparation or submission; and no person or entity—other than *amicus* and its counsel—contributed money for this brief's preparation or submission.

[2] Neither this brief nor the decision to file it reflects the views of any judicial members of the ABA. The Judicial Division Council did not participate in the adoption or endorsement of this brief and did not receive a copy of this brief before filing.

The ABA has long supported the conventional view of birthright citizenship, as described nearly 130 years ago in *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898). In 2011, the ABA adopted this accepted, historical position as formal ABA policy in a Resolution in response to proposals to limit or alter birthright citizenship.[3] The ABA urged elected officials at all levels and in all areas of government to reject any effort to alter birthright citizenship. This included possible constitutional amendments; state or local statutes; interstate compacts; and any federal, state, territorial, or local policies that would "impose limits" on a person's "right . . . to claim or prove" U.S. citizenship by keying citizenship to the immigration or citizenship status of the person's parents "at the time of the person's birth."[4]

In 2020, the ABA adopted a policy to support "an interpretation of the Citizenship Clause . . . that recognizes all persons born in the territories, possessions, and commonwealths of the United States, and who are subject to the jurisdiction of the United States, as natural-born citizens of the United States."[5] The ABA urged the judiciary to declare unconstitutional any "statute or regulation that withholds recognition as natural-born citizens" from any such persons.[6]

More recently, in 2025, the ABA adopted a Resolution responding to the attempt, in Executive Order No. 14,160, 90 Fed. Reg. 8449 (2025) (Executive

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[3] See ABA Resolution 11A303, Accompanying Report, at 1 (Aug. 8, 2011), https://perma.cc/9YYU-SF89.

[4] ABA Resolution 11A303.

[5] ABA Resolution 20M10C (Feb. 17, 2020) (on file with ABA).

[6] *Id.*

Order), to limit the categories of persons entitled to birthright citizenship.[7] The ABA's response reaffirmed its adherence to the long-settled definition of birthright citizenship and its commitment to the rule of law, equal access to justice, and the protection of fundamental human rights.[8] In adopting that Resolution, the ABA House of Delegates considered an accompanying report stating that the Executive Order "violate[s]" the "fundamental freedoms and dignity of individuals"—particularly those of already "[m]arginalized and vulnerable communities."[9] The ABA believes it is useful to inform the Court in some detail of the longstanding view among experienced attorneys that the traditional understanding of birthright citizenship protects their clients from many needless burdens and harms.

SUMMARY OF ARGUMENT

1. The proper interpretation of the Fourteenth Amendment's Birthright Citizenship Clause is essential to stability in the law across a multitude of subjects. The ABA's unique perspective, detailed below, is founded on the longstanding construction of this

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[7] Specifically, the Executive Order purports to exclude from birthright citizenship (1) persons born in the United States to a mother who is "unlawfully present in the United States" and to a father who is "not a United States citizen or lawful permanent resident at the time of said person's birth" and (2) persons born to a mother whose "presence in the United States at the time of said person's birth was lawful but temporary" and to a father who "was not a United States citizen or lawful permanent resident at the time of said person's birth." 90 Fed. Reg. at 8449.

[8] See ABA Resolution 25A512 (Aug. 11–12, 2025), https://perma.cc/Q9HC-S3DH.

[9] ABA Resolution 25A512, Accompanying Report, at 2–3.

simple one-sentence constitutional right.

The Birthright Citizenship Clause provides a clear, simple, easily administered rule on which the legal system has relied for more than a century: Birth in the United States confers U.S. citizenship. Courts and policymakers in the political branches have recognized and applied that rule consistently since the adoption of the Fourteenth Amendment.

If any ambiguity exists in the Birthright Citizenship Clause, which is doubtful, it is resolved by looking at this Nation's consistent understanding of the constitutional provision. Disregarding this national consensus and upholding the Executive Order would sow chaos throughout the legal system.

2. Citizenship determinations are essential to the American legal system. The elimination of birthright citizenship would unsettle the law in innumerable areas. It would force attorneys to advise clients under fragmented and indeterminate citizenship-verification regimes. To help clients access a host of societal benefits, attorneys of all types would need to complete a multi-step inquiry to prove that a client is a native-born U.S. citizen.

First, attorneys would need to determine, based on date of birth, whether their clients fall under the traditional rule of birthright citizenship or the Executive Order's brand new standard (a distinction that may be further unsettled with future changes in the law if the clear-cut rule is abandoned).

Second, if the Executive Order were to govern, attorneys would need somehow to determine the citizenship or immigration status of each client's parents when the client was born. The Executive Order, however, provides no guidance on how to perform that

often-daunting task for many categories of parents.

Finally, if the necessary documentation could be obtained, attorneys would need to submit that documentation to newly expanded citizenship-verification regimes. Complications and uncertainties loom at every step of this process. This uncertainty risks, among other things, rendering certain individuals stateless.

3. The Executive Order's destabilization of citizenship would reverberate far beyond immigration law. It would also adversely affect, at a minimum, civil procedure, criminal defense, the administration of public benefits, elections, eligibility for federally funded school and foster-care programs, and the issuance of government identification. Each of those areas of the legal system governs important rights and benefits for individuals and families. And each relies on the settled rule of birthright citizenship to operate through clear, administrable standards. Replacing that rule with a new, uncertain standard would leave countless clients in doubt about their most basic legal status—vastly complicating the task of advising them for attorneys in a wide range of practice areas. The Executive Order would thus both undermine access to rights and burden the legal system with a constant obligation to adjudicate or otherwise determine citizenship in a wide range of contexts and under indeterminate time frames.

ARGUMENT

I. The Birthright Citizenship Clause Establishes A Simple, Clear, And Easily Administered Rule That Has Been Confirmed By More Than A Century Of Consensus: Birth In The United States Confers U.S. Citizenship.

The Birthright Citizenship Clause of the Fourteenth Amendment provides: "All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1.

In *United States* v. *Wong Kim Ark*, 169 U.S. 675, 688, 703–704 (1898), this Court held that the Birthright Citizenship Clause "reaffirm[s] in the most explicit and comprehensive terms" that "birth within the United States" "constitute[s] a sufficient and complete right to [U.S.] citizenship."

This Court has repeatedly reaffirmed *Wong Kim Ark*'s simple, clear, and easily administered rule. In *Morrison* v. *California*, 291 U.S. 82, 85 (1934), for example, this Court noted that "person[s] of the Japanese race . . . born within the United States" were "citizen[s] of the United States"—notwithstanding legislation purporting to render such individuals "ineligible" for citizenship. See also *Hirabayashi* v. *United States*, 320 U.S. 81, 96–97 (1943) (recognizing rule even in context of upholding wartime restrictions). And in *Perkins* v. *Elg*, 307 U.S. 325, 329–30 (1939), this Court held that children born in the United States but raised abroad by foreign parents do not "lose" their birthright citizenship. The Court reiterated that a child "born here of alien parentage becomes a citizen of the United States." *Id.* at 329 (citing

Wong Kim Ark, 169 U.S. at 668).

This Court has also repeatedly confirmed that birthright citizenship does *not* depend on whether a child's parents were lawfully present in the United States. Children of parents unlawfully present in the United States are, "of course," "American citizen[s] by birth." *United States ex rel. Hintopoulos* v. *Shaughnessy*, 353 U.S. 72, 73 (1957). The same holds true for children whose parents gained admission into the United States by unlawful means, see *INS* v. *Errico*, 385 U.S. 214, 215–16 (1996); *INS* v. *Rios-Pineda*, 471 U.S. 444, 446 (1985), and for children who "acquired at birth" both U.S. and a foreign citizenship, *Vance* v. *Terraza*, 444 U.S. 252, 255 (1980).

These cases apply a straightforward principle: The Fourteenth Amendment "guarantees citizenship to all individuals born" in the United States, *Zelman* v. *Simmons-Harris*, 536 U.S. 639, 678 (2002) (Thomas, J., concurring)—full stop.

Even if the constitutional text or precedent left room for doubt—which they do not—any ambiguity in the Birthright Citizenship Clause is eliminated by this Nation's consistent interpretation of that provision. "When faced with a dispute about the Constitution's meaning or application, '[l]ong settled and established practice is a consideration of great weight.'" *Houston Cmty. Coll. Sys.* v. *Wilson*, 595 U.S. 468, 474 (2022) (quoting *The Pocket Veto Case*, 279 U.S. 655, 689 (1929)). As James Madison put it: "a regular course of practice" by government actors can "liquidate & settle the meaning" of disputed or indeterminate "terms & phrases." Letter to Spencer Roane (Sept. 2, 1819), in 8 Writings of James Madison 450 (G. Hunt ed. 1908).

"[O]ur whole experience as a Nation" supports birthright citizenship. *Chiafalo* v. *Washington*, 591 U.S. 578, 593 (2020) (internal quotation marks omitted). In 1872, the Office of the Attorney General explained that "[a]s a general rule, a person born in this country, though of alien parents who have never been naturalized, is under our law, deemed a citizen of the United States by reason of the place of his birth." 14 Op. Att'y Gen. 154, 155–156 (1872).

In 1895, the Secretary of State explained that "birth in the United States creates citizenship, irrespective of the nationality of the parents." Letter from Alvey A. Adee, U.S. Acting Sec'y of State, to Bartlett Tripp, U.S. Ambassador to Austria (July 23, 1895), in U.S. Dep't of State, Foreign Relations of the United States 22 (Gov't Printing Office 1896).

In 1940, Congress codified the settled understanding of the Birthright Citizenship Clause into § 201 of the Nationality Act. That section provides that all persons "born in the United States, and subject to the jurisdiction thereof," are "citizens of the United States at birth." 8 U.S.C. § 1401(a). Congress re-enacted that provision verbatim in the Immigration and Nationality Act, ch. 477, § 301, 66 Stat. 235–36—a comprehensive "codification" of "existing law on the subject," H.R. Rep. No. 1365, 82d Cong., 2d Sess. 31 (1952) (House Report). Cf. *Taggart* v. *Lorenzen*, 587 U.S. 554, 560 (2019) ("When a statutory term is obviously transplanted from another legal source, it brings the old soil with it." (internal quotation marks omitted)).

And in 1995, the Office of Legal Counsel wrote: "[T]here can be no question that children born in the United States of aliens are subject to the full

jurisdiction of the United States" and are therefore U.S. citizens. 19 Op. O.L.C. 340, 342 (1995).

In short, for more than a century, courts and policymakers in the political branches have forged a single "collective understanding": Birth in the United States confers U.S. citizenship. *United States* v. *Rahimi*, 602 U.S. 680, 724 (2024) (Kavanaugh, J., concurring). Discarding this collective understanding would sow chaos throughout the entire legal system. See *infra* Parts II, III. Accordingly, this Nation's "longstanding" consensus regarding birthright citizenship should "bind" this Court. *Vidal* v. *Elster*, 602 U.S. 286, 323 (2024) (Barrett, J., concurring) (recognizing that a "course of deliberate practice might liquidate ambiguous constitutional provisions," such that "[t]he views of preceding generations can persuade, and, in the realm of *stare decisis*, even bind").

II. The Executive Order Would Unsettle And Complicate Citizenship Determinations For Millions Of Americans.

1. The Executive Order would reshape and complicate legal practice for lawyers of all types. It would also throw into persistent doubt their clients' most basic status and level of conferred rights, benefits, and responsibilities in American society.

The rule of birthright citizenship supplies a "definite and knowable" standard for attorneys and clients alike. *Cheek* v. *United States*, 498 U.S. 192, 199 (1991). The rule is objective and "remove[s]" all doubt as to "what persons are or are not citizens of the United States." *Afroyim* v. *Rusk*, 387 U.S. 253, 263 (1967) (quoting Cong. Globe, 39th Cong., 1st Sess., 2890, 2896 (1866) (statement of Sen. Jacob M. Howard)). Indeed, for nearly 130 years since *Wong Kim*

Ark, an attorney could advise a client that he or she is a natural-born "member [of this Nation's] political society" by merely confirming that the client was born in the United States, a point easily proven by a birth certificate. *Luria* v. *United States*, 231 U.S. 9, 22 (1913). The rule of birthright citizenship has thus allowed all types of attorneys to provide quick, sound advice to clients across the legal system.

In contrast, the birthright-citizenship standard announced in the Executive Order is neither "clear" nor "comprehensive." *The Slaughter-House Cases*, 83 U.S. 36, 73 (1872) ("[T]he [Birthright Citizenship Clause] was framed" to "establish a clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States."). It would transform birthright-citizenship determinations from simple, objective, and consistent inquiries into multi-step analyses riddled with head-scratchers. That uncertainty would significantly complicate the work of lawyers and harm many of their clients. Indeed, the Executive Order would—contrary to the intent of the Framers of the Fourteenth Amendment and ratifying States—allow the legal status of countless clients to be "shifted, canceled, or diluted at the will of the Federal Government, the States, [and] other governmental unit[s]." *Afroyim*, 387 U.S. at 262.

2. Consider an example. Suppose a client asks her attorney whether her daughter qualifies for a U.S. passport as a natural-born U.S. citizen. See 22 C.F.R. § 51.2(a) ("A passport may be issued only to a U.S. national."); § 51.1 ("U.S. national means a U.S. citizen or a U.S. non-citizen national."). The client tells the attorney that her daughter was born in New Orleans, Louisiana, and presents a birth certificate that shows

"the full name of the [daughter], the [daughter's] place and date of birth, the full name of [her] parent(s), and . . . a filing date within one year of the date of birth." *Id.* § 51.42(a).

Under the traditional standard of birthright citizenship, the answer is pellucid: The daughter qualifies for a U.S. passport as a U.S. citizen. The attorney can explain that "[t]he applicant" for a U.S. passport must "prov[e] that he or she is a U.S. citizen or noncitizen national." 22 C.F.R. § 51.40. But the client need not worry: The daughter's birth certificate will serve as "[p]rimary evidence of birth in the United States," *id.* § 52.42(a), and, therefore, U.S. citizenship.

Under the Executive Order, however, the answer would be far from clear. It would instead require a four-step inquiry—each step laced with uncertainty.

First, the attorney would need to determine *when* the daughter was born in the United States. The answer to that question may or may not be dispositive depending on several potentially shifting variables. If the client was born *before* the effective date of the Executive Order, she would presumably be governed by the long-settled rule of birthright citizenship. See 90 Fed. Reg. at 8449 (Executive Order applies only to persons born after effective date). If, however, the client was born more than 30 days *after* the issuance of the Executive Order, she would presumably be subject to the Executive Order's new framework if it becomes effective. See *id.*

Second, if the attorney concludes that the client's daughter *is* facially subject to the Executive Order, the attorney would need to determine the citizenship or immigration status of the daughter's parents at the time of her birth. If the parents' citizenship or

immigration statuses match the two categories of individuals listed in the Executive Order,[10] the daughter would not be eligible for birthright citizenship. 90 Fed. Reg. at 8449.

However, the Executive Order provides no guidance on how to determine these dispositive issues in myriad cases. It does not explain, for example, how to determine the citizenship of children of same-sex couples; children whose fathers are unknown, deceased, or not listed on the child's birth certificate; children surrendered for adoption shortly after birth; donor-conceived children; and children conceived through assisted reproductive technologies, such as IVF or surrogacy.

These are not marginal cases. They are commonplace. In 2020, for instance, the U.S. Centers for Disease Control reported that 413,776 assisted-reproductive technology cycles were performed at 453 reporting clinics in the United States, resulting in 97,906 live-born infants.[11] Yet the Executive Order leaves attorneys—and their clients—out at sea to guess how the citizenship status of these individuals should be determined.

Third, if the daughter appears to be eligible for birthright citizenship under the Executive Order, the attorney would need to procure documentary proof detailing her parents' citizenship and immigration statuses at the time of her birth. See 22 C.F.R. § 51.41

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[10] See *supra* note 7.

[11] See *2021 Assisted Reproductive Technology Fertility Clinic Success Rates Report*, Ctrs. for Disease Control & Prevention, U.S. Dep't of Health & Hum. Servs. (2021), https://perma.cc/6N8G-XM7R.

("The applicant [for a U.S. passport] must provide documentary evidence that he or she is a U.S. citizen or non-citizen national."). Securing this documentation would in many cases prove difficult—if not impossible.

State Department regulations provide that a birth certificate serves as "[p]rimary evidence" in proving eligibility for a U.S. passport. *Id.* § 51.42(a). But the United States does not have a "national (federal) birth registry."[12] It instead relies on States to issue birth certificates.[13] This "decentralized system" has produced "14,000 different birth certificate documents circulating in the United States," which vary widely in the information they collect and record.[14] Few, if any, collect parental immigration or citizenship status.[15] "[A] standard birth certificate" would thus "no longer suffice to prove citizenship—not under the Executive Order, and not for any other purpose." *CASA, Inc.* v. *Trump*, No. 25-1153, 2025 WL 654902, at *2 (4th Cir. Feb. 28, 2025).

The attorney would likely have to look elsewhere

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[12] *Birth Certificates*, Am. Bar Ass'n (Nov. 20, 2018), https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/birth-certificates/.

[13] See *id.*

[14] *Id.*

[15] See *id.* ("[T]he information that is presented [on a state-issued birth certificate] is generally basic. . . . The birth certificate document will show a person's name, birthdate, place of birth, and other vital information. The names, addresses, birthdates, and occupations of both the mother and father are typically listed."); U.S. Standard Certificate of Live Birth, Ctrs. for Disease Control (2023), https://perma.cc/BYH4-4ZMV (including spaces for parents' places of birth, but not their immigration or citizenship status).

for documentary proof of the daughter's parental immigration or citizenship status. In the context of a U.S. passport, this so-called "[s]econdary evidence" includes "hospital birth certificates, baptismal certificates, medical and school records, [and] certificates of circumcision." 22 C.F.R. § 51.42(b). It may also include a parent's naturalization papers (or something equivalent) if the parent was born abroad.

Collecting these documents may be difficult—if not impossible—in many cases. Indeed, "more than 9 percent of American citizens of voting age, or 21.3 million people, don't have proof of citizenship readily available. There are myriad reasons for this—the documents might be in the home of another family member or in a safety deposit box. And at least 3.8 million don't have these documents at all, often because they were lost, destroyed, or stolen."[16]

That leaves "affidavits of persons having personal knowledge of the facts of the [daughter's] birth." 22 C.F.R. § 51.42(b). But again—poor memories or unavailability of relevant persons may render this evidence difficult to secure. And the threat of criminal penalties for even unintentionally inaccurate statements may chill those with knowledge of long-ago facts from coming forward. Federal law makes it a felony to "willfully and knowingly make[] any false statement in an application for [a] passport with [the] intent to induce or secure the issuance of a passport . . ., either for his own use *or the use of another*." 18

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[16] Kevin Morris & Cora Henry, *Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available*, Brennan Ctr. for Justice (June 11, 2024), https://perma.cc/63U7-D23E.

U.S.C. § 1542 (emphasis added).

The upshot: The attorney may be left without an avenue to secure the proof of parental citizenship or immigration status needed to help the client—depriving the client's daughter of citizenship status even though she may be entitled to it.

Finally, if the attorney *does*—at long last—obtain the requisite documentation, the attorney would then need to submit that documentation to the State Department, which would then review and adjudicate the daughter's claim to birthright citizenship.

3. Even the four-step Rube Goldberg process described above understates the problem. It assumes that the Executive Order as currently written stays in effect. If, however, birthright citizenship is neither a constitutional mandate nor codified in 8 U.S.C. § 1401(a), the political branches would have the power to change categories and distinctions going forward. Congress might attempt to extend birthright citizenship to those affected by the Executive Order. Cf. 8 U.S.C. § 1401(b) (extending birthright citizenship to "member[s] of an Indian, Eskimo, Aleutian, or other aboriginal tribe").[17] It might try to render the Executive Order retroactive so that *more* Americans are

[17] Of course, any bill attempting to codify a definition of birthright citizenship may be vetoed. President Andrew Johnson, for example, vetoed the Civil Rights Act of 1866, which purported to extend birthright citizenship to "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed." Civil Rights Act of 1866, § 1, 14 Stat. 27; see Andrew Johnson, *Veto Message* (Mar. 27, 1866), in 6 James D. Richardson, ed., 6 *A Compilation of the Messages & Papers of the Presidents 1789–1897*, at 411 (U.S. Congress 1900) (arguing bill was not necessary to enforce Thirteenth Amendment because no attempts to revive slavery had been made).

subject to its terms. Or it might keep mum.

If the long-settled constitutional understanding of birthright citizenship is overturned and Congress does not codify a clear definition, even being born before the effective date of the Executive Order may not guarantee that a client's citizenship would be recognized. If the Birthright Citizenship Clause *itself* does not confer birthright citizenship, then the effective date of the Executive Order would essentially become an act of executive grace. But that act of grace could be rescinded or modified at any time. It also could be challenged (if anyone has standing) on the ground that the President lacks the power, through such a declaration, to bestow citizenship on people who, under the President's and Solicitor General's constitutional reasoning, are not U.S. citizens under the Birthright Citizenship Clause. See *INS* v. *Pangilinan*, 486 U.S. 875, 884–885 (1988) (only Congress has power to set "terms and conditions" of citizenship (internal quotation marks omitted)); *Muthana* v. *Pompeo*, 985 F.3d 893, 909 & n.12 (D.C. Cir. 2021) ("The Executive cannot unilaterally confer citizenship" "outside of the naturalization rules created by Congress.").

The threat of administrative nightmares looms large as well. The State Department—like all executive agencies—would need to redesign its current "simple" approval system "based on birth certificates." Jacob Hamburger, *The Consequences of Ending Birthright Citizenship*, 103 Wash. U.L. Rev. 209, 233 (2025). It would need to hire and train civil servants to assess and adjudicate claims of U.S. citizenship. Those unelected bureaucrats, unaccountable to the American people, would wield great power over the "priceless treasure" that is U.S. citizenship. *Fedorenko* v. *United States*, 449 U.S. 490, 507 (1981)

(internal quotation marks omitted).

History suggests that entrusting citizenship decisions to case-by-case administrative adjudication rather than bright-line rules opens the door to discrimination against disfavored groups (including racial and ethnic minorities). See*, e.g.*, *Dred Scott* v. *Sanford*, 60 U.S. 393, 421 (1857) (stating that a Secretary of State had "refused to grant passports" to "free persons of color" because they were not "'citizens of the United States'").[18] Administrators may "mak[e] up new exceptions to birthright citizenship nowhere" in the Executive Order to deny disfavored individuals or groups citizenship. Amanda Frost, *"By Accident of Birth": The Battle over Birthright Citizenship After* United States v. Wong Kim Ark, 32 Yale J.L. & Humanities 1, 63 (2021).

The treatment of Chinese Americans entitled to citizenship under the Fourteenth Amendment in the early Twentieth Century provides a cautionary tale. In 1904, for example, the Secretary of the Department of Commerce and Labor refused native-born Yee Ching Ton admission to the United States on the ground that a person could not wait "until he is 26 years of age . . . to claim his birthright [citizenship]." *Id.* (quoting *Decision Makes Precedent*, San Francisco Chronicle, July 19, 1904, at A5).

During the same period, U.S. officials often

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[18] Cf. ABA Resolution 22M610 at 1 (Feb. 14, 2022), https://perma.cc/HK3T-QF87 (urging the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services to "identify and eradicate actual and perceived racial bias, discrimination, and xenophobia in the enforcement of the Immigration and Nationality Act").

employed other tactics to limit recognition of Chinese-American birthright citizenship that could be used today against other groups deemed undesirable by the governing authorities. Agency officials hostile to particular groups may, for example, attempt to set "the standard of proof" under the Executive Order "so high as to be nearly impossible to meet." *Id.* They may "routinely" hold weeks-long citizenship hearings, discredit a claimant's witnesses, force claimants to recall "minute details of their lives" (*e.g.*, "the number of steps or rooms in the house in which [an applicant] had been born"), or subject a claimant to "invasive physical examinations"—all to try to stop the claimant from proving U.S. citizenship. *Id.* at 64–65.

Even short of such extreme examples, overturning more than a century of shared understanding would transform what was literally an automatic American birthright into a context-dependent determination made by unaccountable bureaucrats. And among the detriments that might be suffered by native-born individuals is the prospect of being rendered stateless—that is, being unable to establish citizenship in any country whatsoever.

* * *

The Framers of the Fourteenth Amendment and the States that ratified it knew that citizenship is "a most precious right," *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 159 (1963), which "carries with it the privilege of full participation in the affairs of our society," *Knauer* v. *United States*, 328 U.S. 654, 658 (1946). Accordingly, the Framers codified the rule of birthright citizenship in the Birthright Citizenship Clause to offer a "clear and comprehensive" standard. *Slaughter-House Cases*, 83 U.S. at 73. They did not

want native-born Americans getting "caught in a tangle" of laws and regulations that only bureaucrats "can resolve." *McNeal* v. *Culver*, 365 U.S. 109, 118 (1961) (Douglas, J., concurring).

The Executive Order disregards the Framers' clear intent to bring certainty to citizenship questions. It promises to transform U.S. citizenship into a "fleeting" status, *Afroyim*, 387 U.S. at 262, that can be "blown around by every passing political wind," *Rogers* v. *Bellei*, 401 U.S. 815, 837 (1971) (Black, J., dissenting). This uncertainty would complicate the job of attorneys seeking to protect the citizenship status of their clients, shrouding their clients' status in American society in persistent doubt. That impact would be felt across a wide range of legal contexts and unduly burden administrative agencies.

III. The Executive Order Would Adversely Affect Nearly Every Area Of The Law.

Citizenship determinations are "woven into the great fabric of our" law. *Ullmann* v. *United States*, 350 U.S. 422, 428 n.3 (1956) (internal quotation marks omitted). They play a role in, among other things, civil litigation, criminal defense, employment verification, access to education, foster-care programs, public-benefits determinations, the obtaining of state-issued identification documents, taxation, and voting.

The rule of birthright citizenship offers public and private decisionmakers a "predictable, workable framework" to determine citizenship across these fields of law. *Richlin Sec. Serv. Co.* v. *Chertoff*, 553 U.S. 571, 589 (2008). Agency employees at both the state and federal level, election officials, employers, judicial officers, school officials, and many others rely on the clear birthright citizenship rule to produce

predictable, certain, and stable results.

Enforcing the Executive Order would destroy this dynamic. It would create significant "instability" in "so many areas of law, all in one blow." *Kisor* v. *Wilkie*, 588 U.S. 558, 587 (2019). Attorneys who today rarely encounter citizenship or immigration issues in their practices would routinely be asked by clients to resolve difficult citizenship issues made relevant by the Executive Order, including the issues outlined above in Part II. Working to resolve those issues would increase delay, cost, and litigation—ultimately undermining an attorney's ability to give clients sound advice and to further their interests.

This problem would play out across widely disparate areas of law.

A. Immigration Law

The most obvious impact would be on immigration law, where citizenship status dramatically alters an individual's rights.

For example, the Immigration & Nationality Act provides a "unified procedure, known as a 'removal proceeding,'" for determining whether an individual is deportable. *Judulang* v. *Holder*, 565 U.S. 42, 46 (2011). The Act provides that only noncitizens may be deported. See 8 U.S.C. § 1227(a) (listing classes of "deportable aliens"). The Government carries "the burden of establishing by clear and convincing evidence that . . . [a noncitizen] is deportable." 8 U.S.C. § 1229a(c)(3)(A); see also *Berenyi* v. *District Director, INC*, 385 U.S. 630, 636 (1967) ("When the Government seeks to . . . deport a resident alien and send him from our shores, it carries the heavy burden of proving its case by clear, unequivocal, and convincing evidence." (footnotes and internal quotation marks

omitted)). Said differently: "[A] claim of [U.S.] citizenship" by an individual in deportation proceedings is "a denial of an essential jurisdictional fact" that the Government must overcome. *Ng Fung Ho* v. *White*, 259 U.S. 276, 284 (1922).

The Executive Order would disrupt removal proceedings. It would—for the first time ever—subject children to removal proceedings at any point in their lives if they were born in the United States to certain noncitizen parents, based on issues and circumstances that would be irrelevant if they were citizens, and with the risk that these issues would be erroneously determined. These children would be "forced to navigate childhood under the shadow of potential family separation."[19] And if they are unable to prove U.S. citizenship, they may end up "deported to foreign countries where they have never lived and where their welfare would be endangered."[20]

The effects of the Executive Order would extend beyond deportation proceedings. Other "lawful but temporary" immigration statuses would be affected. 90 Fed. Reg. at 8449. The Executive Order could, for example, deny citizenship to children born to Deferred Action for Childhood Arrivals recipients who, by definition, themselves came to the United States as young children and have lived here continuously since

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[19] Austin Kocher, *Collateral Damage: How Immigration Policy Harms U.S. Citizens in Mixed-Status Marriages*, Am. Families United 7 (Dec. 15, 2025), https://perma.cc/XH3F-VFPY.

[20] Samuel Bredibart & Maryjane Johnson, *Birthright Citizenship Under the U.S. Constitution*, Brennan Center for Justice (updated Feb. 23, 2026), https://perma.cc/2XHX-B6NX.

then.[21]

Similarly, the Executive Order could deny citizenship to children of residents who have been granted asylum or are awaiting an asylum determination, and to asylees and refugees who may apply for legal permanent residence after being physically present in the United States for one year after gaining asylum or refugee status. See 8 U.S.C. § 1159(a), (b).

Finally, the Executive Order could affect immediate-relative petitions submitted by U.S. citizens. One way that an immigrant visa may be "immediately available" to a noncitizen is through a familial relationship to a citizen (*e.g.* a spousal relationship). See 8 U.S.C. §§ 1151(b)(2)(A)(i) (defining "immediate relatives"), 1154(a)(1)(A) (explaining petitioning process for immediate relatives). Under § 1154(a)(1)(A)(i), the immediate relative of the noncitizen must file a petition on behalf of the noncitizen. The Government then investigates that petition and approves it if it establishes that the noncitizen is an immediate relative of a citizen. The Executive Order would complicate these proceedings for both attorneys and adjudicators.

The Executive Order may also complicate citizenship determinations for children born to parents who were, for example, legal permanent residents or asylees at the time of their birth, but who are now naturalized citizens. These children may find themselves determined to be noncitizens despite their parents' subsequently acquired citizenship statuses.

In short, the Executive Order would disrupt large swaths of the immigration system and significantly

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[21] For details of this program, see *Department of Homeland Security* v. *Regents of the University of California*, 591 U.S. 1 (2020).

complicate practice for immigration lawyers.

B. Criminal Defense

Citizenship status plays a critical role in certain criminal proceedings. Most notably, criminal defense counsel must advise non-citizen defendants about the immigration consequences of guilty pleas. See *Padilla* v. *Kentucky*, 559 U.S. 356, 360 (2010). That obligation rests on the premise that counsel can reliably determine whether a defendant is a citizen.[22]

Eliminating the historical bright-line rule of birthright citizenship would require criminal counsel to factor potential deportation into plea advice in a much larger number of cases, materially complicating representation. See *id*. at 385 (Alito, J., concurring in judgment) ("[T]horough understanding of the intricacies of immigration law is not within the range of competence demanded of attorneys *in criminal cases*." (internal quotation marks omitted)).

Citizenship status also determines eligibility for jury service. A central foundation of our criminal legal system is the basic right to trial by a jury of one's peers. See U.S. Const. amend. VI. Federal law limits jury service to U.S. citizens. 28 U.S.C. § 1865(b)(1). Clear administrable eligibility criteria provide for efficient selection of a jury, which gives practical meaning to defendants' constitutional guarantees. Altering the rules would make jury selection inefficient and contested, risking erosion of defendants' Sixth

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[22] Cf. Brief for Am. Bar Ass'n at 26, *Padilla* v. *Kentucky*, 559 U.S. 356 (2010) (No. 08-651) ("The requirement under the ABA standards to advise about immigration consequences is not an unreasonable burden on criminal defense lawyers: they have *ready access to the information needed to advise their non-citizen clients competently*[.]" (emphasis added)).

Amendment rights.

C. Civil Procedure

Citizenship determinations play a gatekeeping role in federal civil litigation too. Article III of the Constitution grants federal courts authority to resolve disputes "between Citizens of different States." U.S. Const. art. III, § 2. Similarly, the principal federal statute governing diversity jurisdiction, 28 U.S.C. § 1332, gives federal district courts original jurisdiction of all civil actions "between . . . citizens of different States" where the amount in controversy exceeds $75,000. See § 1332(a)(1).

Those unable to plead citizenship of any State—domestic or foreign—may be unable to invoke diversity jurisdiction in federal court. See 13E C. Wright & A. Miller, *Federal Practice & Procedure* §§ 3612, 3621 (3d ed. 2008) (discussing difficulties in applying diversity jurisdiction rules to "the 'homeless wanderer'"—*i.e.* a person without any nationality). Moreover, litigants from disfavored groups may find themselves increasingly in the middle of citizenship-based jurisdictional challenges simply based on their perceived citizenship status.

All told, the Executive Order would create uncertainty and complications for attorneys seeking to represent many individuals in civil matters.

D. Election Law

The Executive Order would also affect election law.

Citizenship is typically a prerequisite for voting in federal and state elections. See 18 U.S.C. § 611(a) (barring noncitizen voting in federal elections, but allowing states and localities to permit noncitizen voting in *non*-federal elections); see also 52 U.S.C.

§ 20504(c)(2)(C) (requiring voter registration forms to include a "statement that . . . states each eligibility requirement [for voting] (including citizenship)"); 18 U.S.C. § 1015(f) (criminalizing "knowingly mak[ing] any false statement or claim that [a person] is a citizen of the United States in order to register to vote . . . in any Federal, State, or local election (including an initiative, recall, or referendum").

In recent years, several States have worked to strengthen prohibitions on noncitizen voting by introducing new proof-of-citizenship requirements.[23] Some bills have been drafted to accept contemporaneous birth certificates as proof of citizenship.[24] But, if this Court upholds the Executive Order, some States might follow its lead and reject contemporaneous birth certificates as sufficient proof of U.S. citizenship.

Should this occur, attorneys may be called to help clients secure other forms of documentation so that they can participate in elections. This may prove to be a herculean task as around "1 in 10 adult citizens, or 21.3 million eligible voters, . . . do not have or [cannot] quickly find" documents typically accepted as

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[23] See, *e.g.*, H.B. 2492, 55th Leg., 2d Reg. Sess. (Ariz. 2022); H.B. 2243, 55th Leg., 2d Reg. Sess. (Ariz. 2022); Proof of Citizenship, Voting Rights Lab, https://perma.cc/X72X-K8TJ (tracking 58 proof of citizenship bills under consideration in 26 states); cf. Nicolae Viorel Butler, *Alabama to Use Federal Immigration Database to Check Voter Citizenship*, Migrant Insider (June 22, 2025), https://perma.cc/TP8R-YBDF (reporting that Alabama has signed a memorandum of understanding with the Department of Homeland Security to use a federal database to identify noncitizen registered voters).

[24] See, *e.g.*, Mo. S.B. 62 § (A)(7)(e)(a), 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025) (listing a U.S. birth certificate as a form of "documentary proof of United States citizenship")

proofs of citizenship (such as birth certificates, passports, naturalization certificates, or certificates of citizenship).[25]

Even if attorneys can secure the requisite citizenship documentation for their clients, they would then need to help clients navigate newly created citizenship-verification regimes in election offices across the Nation. Officials in those offices—many of whom are volunteers with minimal training—would then be tasked with assessing in the first instance claims of citizenship. Adverse citizenship determinations may lead to increased litigation near elections, which may undermine "[c]onfidence in the integrity of our electoral processes," which is "essential to the functioning of our participatory democracy." *Purcell* v. *Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). It could also drive many "honest" native-born Americans "out of the democratic process" altogether and "breed[] distrust of our government." *Id.*

The Executive Order might also affect presidential elections. Article II, § 5 of the Constitution provides that "[n]o person except a natural born Citizen . . . shall be eligible to the Office of President." The Executive Order may inspire attempts to disqualify candidates based on their parents' immigration or citizenship status. These eligibility challenges would be "thrust" into courts of law across the Nation. Eugune D. Mazo, *Rethinking Presidential Eligibility*, 85 Fordham L. Rev. 1045, 1055–1065 (2016) (detailing citizenship-based eligibility challenges lodged against Chester A. Arthur, Charles Evan Hughes, Barry

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[25] Hansi Lo Wang, *1 in 10 Eligible U.S. Voters Say They Can't Easily Show Proof of their Citizenship*, NPR (June 11, 2024), https://perma.cc/NBF8-WTER.

Goldwater, George Romney, Christian Herter, John McCain, Barack Obama, and Ted Cruz). These courts in turn may reach different results until this Court steps in. "Nothing in the Constitution requires that [this Nation] endure such chaos." *Trump* v. *Anderson*, 601 U.S. 100, 116 (2024).

E. Public Benefits Law

Federal law keys most "[f]ederal public benefits" to citizenship or immigration status. 8 U.S.C. § 1611.

Medicaid allows only "citizens of the United States" and certain qualified noncitizens to access the Nation's primary public health insurance program for low-income individuals and families. See 42 U.S.C. § 1396a(b)(3) (Secretary cannot "approve" any state-Medicaid plan that "imposes, as a condition of eligibility for medical assistance under the plan," a "citizenship requirement which excludes any citizen of the United States"); § 1396b(v)(1) (restricting Medicaid funding for "alien[s] who [are] not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law").

The Children's Health Insurance Program allows only citizens and certain qualified noncitizens to access low-cost health coverage for children in families that earn too much to qualify for Medicaid. See 42 U.S.C. § 1397aa(a).

The Affordable Care Act allows only citizens and lawfully present noncitizens to purchase subsidized private health insurance. See 42 U.S.C. § 18032(f)(3); 45 C.F.R. § 155.305(a).

The Supplemental Nutrition Assistance Program, formerly known as food stamps, allows only citizens and certain lawfully present noncitizens to receive monthly benefits to help low-income households purchase food. 7 U.S.C. § 2015(f).

The Women, Infants, and Children program allows only citizens and certain qualified noncitizens to receive supplemental nutrition, healthcare referrals, and nutrition education to pregnant women, new mothers, infants, and young children at nutritional risk. 42 U.S.C. § 1786.

Finally, the Child Tax Credit, which provides tax relief to families with dependent children, requires that the qualifying child be a U.S. citizen, U.S. national, or resident alien. 26 U.S.C. § 24(h)(7).

The Executive Order would complicate eligibility determinations under each of those programs, burdening both clients and the lawyers who represent them, often nonprofit legal services. Applicants for benefits would no longer be able to rely on standard birth certificates to prove U.S. citizenship. See, *e.g.*, 42 C.F.R. § 436.407(b)(1) (listing a "U.S. public birth certificate" as "evidence of citizenship"). Instead, they or their counsel would often need to secure additional documentation to prove eligibility, which as discussed above may be difficult or impossible. Attorneys might also need to pursue fact-intensive administrative hearings and challenge adverse citizenship determinations—often across multiple agencies simultaneously.

F. Schooling and Foster Care

Access to certain schooling-related and foster care services that are administered at the local level would also be affected by the Executive Order.

The Individuals with Disabilities in Education Act requires school districts to provide services to students with disabilities; school districts are reimbursed for providing those services to citizens and qualified immigrants. See 34 C.F.R. § 300.154(d) (federal reimbursement under IDEA based on Medicaid eligibility). Similarly, many localities administer foster care programs, supported by federal Title IV-E funds, that are available only for citizen and "qualified alien" children. See 8 U.S.C. § 1641.

School and foster-care program officials may turn to attorneys to help them resolve citizenship disputes so that they may receive funding for these programs. Those attorneys, in turn, would need to determine the citizenship status of countless children. This would be a formidable task. In the 2022–2023 school year alone, there were 70.9 million school-aged children in the U.S.[26] Among them, 15.9 million were "US-born children with one or more immigrant parents."[27] Those children of immigrants live in every U.S. State; indeed, they make "up more than 1 in 5 children in 20 states and DC."[28]

G. Identification

Identification and travel systems also rely on being able to confirm citizenship status readily.

The U.S. passport system, which governs international travel and proof of nationality in a wide variety of contexts, treats birth in the United States as

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[26] See Jennifer M. Haley et al., *Children of Immigrants in 2022–23: National & State Patterns*, Urban Inst. 3 (May 2025), https://perma.cc/D5W4-RR75.

[27] *Id.*

[28] *Id.* at 2.

primary proof of citizenship. State Department regulations provide that a "person born in the United States" may establish that he or she is a U.S. citizen by submitting a birth certificate. 22 C.F.R. § 51.42(a); *id.* § 51.40 ("The applicant has the burden of proving that he or she is a U.S. citizen or non-citizen national."). As discussed above, the Executive Order would vastly complicate this process for attorneys and clients alike.

Abandoning the common understanding of birthright citizenship would even complicate something as basic as obtaining a driver's license. As of May 7, 2025, state-issued driver's licenses and IDs that are not REAL ID compliant are no longer accepted as valid forms of identification at U.S. airports.[29] Under the REAL ID Act and its implementing regulations, state motor vehicle agencies must verify citizenship or lawful immigration status before issuing REAL ID-compliant licenses. 6 C.F.R. §§ 37.11, 37.13. Many Americans affected by the Executive Order would have no readily available way to confirm their status. As a result, attorneys may find themselves participating in and litigating what used to be routine visits to the DMV.

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These examples illustrate that citizenship operates as a threshold legal fact across many parts of our legal system. The long-settled birthright citizenship rule makes the determination of citizenship relatively straightforward for those with access to their own birth certificates. The Executive Order would vastly

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[29] See *Acceptable Identification at the TSA Checkpoint*, TSA, https://perma.cc/KYF5-XW9D (last accessed Feb. 25, 2026).

complicate the citizenship inquiry for many individuals born in the United States, requiring them to enlist an attorney to receive public benefits, access adequate healthcare, obtain a proper ID, and to vote. And in many cases, proving citizenship would prove difficult or impossible even with representation—needlessly complicating the lives of many native-born Americans.

Those unable to afford attorneys, or left in legal limbo even with legal assistance, would subsist as a "shadow population"—a "permanent caste . . . denied the benefits that our society makes available [only] to citizens and lawful residents." *Plyler* v. *Doe*, 457 U.S. 202, 218-219 (1982).[30] Some of these individuals could be left stateless, a status "deplored in the international community" for causing "the total destruction of the individual's status in organized society." *Trop* v. *Dulles*, 356 U.S. 86, 101–102 (1958) (plurality opinion).

This "self-perpetuating, multigenerational underclass" potentially created by the Executive Order could persist for generations.[31] Indeed, "[e]ach year,

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[30] Cf. Karla M. McKanders, *Sustaining Tiered Personhood: Jim Crow & Anti-Immigrant Laws*, 26 Harv. J. Race & Ethnic Just. 163, 172 (2010) ("Juan Crow systems"—*i.e.* legal regimes that "exclude both citizens and non-citizens from the rights of membership as persons within the United States"—"ignor[e] the requirement that, as a minimum, *every person* in the United States is guaranteed basic rights regardless of their citizenship status.").

[31] Jennifer Van Hook et al. *Repealing Birthright Citizenship Would Significantly Increase the Size of the U.S. Unauthorized Population*, Migration Policy Inst., https://www.migrationpolicy.org/news/birthright-citizenship-repeal-projections (last accessed Feb. 25, 2026).

over the next 50 years, an average of about 255,000 children born on U.S. soil would start life without U.S. citizenship based on their parents' legal status" if the Executive Order goes into effect.[32] By 2075, the number of U.S. born residents inheriting the social disadvantage of their ancestors would exceed 1.7 million.[33] That troubled population would be excluded from much of the Nation's social fabric. And attorneys serving that community would do so in an environment riddled with uncertainty and unpredictability.

All told, the "underclass" created by the Executive Order would become a permanent "problem[]" for a legal system "that prides itself on adherence to principles of equality under law." *Plyler*, 457 U.S. at 219.

CONCLUSION

The judgment of the district court should be affirmed.

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[32] *Id.*

[33] See *id.*

Respectfully submitted.

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