

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 RACE LAW SCHOLARS AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

SHERRILYN IFILL
14TH AMENDMENT CENTER
FOR LAW & DEMOCRACY
HOWARD LAW SCHOOL
2900 Van Ness Street, NW
Washington, DC 20008

GUY-URIEL E. CHARLES
MICHELLE L. LEUNG
T. ALORA THOMAS
Counsel of Record
RACE & LAW CLINIC
HARVARD LAW SCHOOL
1607 Massachusetts Avenue,
3rd Floor
Cambridge, MA 02138
(617) 998-1582
tthomaslundborg@law.harvard.edu

Counsel for Amici Curiae

120910



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I. Interest of Amici Curiae¹

*Amici curiae*² are United States lawyers and professors of the law who are experts on constitutional law, civil rights law, the law of democracy, and the intersection of law and race. They submit this brief to articulate why the Executive's action violates the Fourteenth Amendment's Citizenship Clause and impermissibly expands the scope of the Executive's authority, and to provide the Court with insights into the adverse consequences of revoking birthright citizenship through a comparative analysis of other countries without birthright citizenship.

Professor Guy-Uriel E. Charles is the Charles J. Ogletree Jr. Professor of Law and Faculty Director of the Charles Hamilton Houston Institute for Race & Justice at Harvard Law School. He has authored many academic papers, articles, and books on race and the law and civil rights.

Professor Sherrilyn Ifill is the Vernon Jordan Distinguished Professor in Civil Rights and Founding Director of the 14th Amendment Center for Law & Democracy at the Howard University School of Law.

1. No counsel for any party authored this brief in whole or in part. No entity or person other than *amici curiae* or their counsel made any monetary contribution toward the preparation and submission of this brief.

2. University affiliation is provided for identification purposes only. *Amici* are participating in their individual capacities and not on behalf of their institutions. Research assistance was provided by students at Harvard Law School and by 14th Amendment Seminar students at Howard Law School.

From 2013 to 2022, she served as the President and Director-Counsel of the NAACP Legal Defense Fund and Educational Fund, Inc., the nation's first and foremost civil rights law organization dedicated to ensuring the full, fair, and free exercise of constitutional and statutory rights for Black people and other people of color.

II. Introduction and Summary of the Argument

In 1866, Congress was faced with the herculean task of stitching together a nation that had been fractured by slavery and the ravages of the Civil War. The challenges were great. The country was still recovering from the assassination of President Lincoln the prior year. Most of the states of the former Confederate States of America, who had seceded from the Union, had not yet been received back into the Union. Four million Black people had been freed from enslavement by the Emancipation Proclamation and the Thirteenth Amendment. But those Black people, as well as those who were already free, had been declared stateless persons by the Supreme Court's decision in *Dred Scott v. Sandford*, just four years before the opening salvo of the War at Fort Sumter. White supremacist ideology and the spirit of insurrection remained strong throughout the South despite the end of formal armed hostilities.

Tasked with integrating the Black population into the body politic and eliminating the conditions that had planted the seeds of disunion, Congress set about drafting what would become the Fourteenth Amendment. The first line of the Amendment, which guarantees citizenship to all persons born or naturalized in the United States, reflects the primary goals of the Framers: resolving the

fundamental question of who are the citizens of the nation and eliminating a system of citizenship based on race or caste in favor of the guarantee of citizenship to all born on U.S. soil, with the narrow exception of those excluded because of their diplomatic status, from being eligible to swear allegiance to the United States.

Executive Order 14160 (“Executive Order”) unlawfully claims the power to redefine citizenship. The Executive Order purports to redefine who receives the “privilege of United States citizenship” by excluding those whose parents were not lawful permanent residents or citizens at the time of their birth, including children of unlawfully present individuals and lawfully present but non-permanent residents, such as those here on student and tourist visas. Exec. Order No. 14160, § 1 (Jan. 20, 2025).

But the Framers of the Fourteenth Amendment, the centerpiece of the Reconstruction Amendments ratified after the War’s end, intentionally protected this guarantee from the reach of the political branches. This attempt by the Executive to override birthright citizenship defies both the text and intent of the Fourteenth Amendment. The Fourteenth Amendment established citizenship as a constitutional right for a broad category of individuals and sought to end a society divided by caste, with individuals accorded separate privileges and immunities under our constitutional order. Its principles have endured for over 100 years and shaped fundamental understandings of membership and equality in our society. Tens of millions of European immigrants and their children were the primary beneficiaries of this more than 100-year-old unbroken understanding. *See, e.g., United States v. Wong Kim Ark*, 169 U.S. 649, 694 (1898).

Beyond its constitutional infirmity, allowing the Executive to unilaterally manipulate citizenship would threaten this country's careful separation of powers and enable the politicization of citizenship. The Constitution and the Framers did not bestow upon the Executive the right to redefine citizenship with the stroke of a pen. The Amendment was created to remove the question of how to define citizenship from the whims of the Executive or the vagaries of successive Congresses.

Destabilizing the citizenship right itself not only upends conventional and longstanding interpretations of the Fourteenth Amendment and the limits of Executive power but also introduces uncertainty in a context that cannot countenance uncertainty. It would reinstate different tiers of political status among people born in the United States, marginalizing whole communities of people who would face devastating consequences. The contemporary and cautionary examples provided by the Dominican Republic, India, and Myanmar demonstrate the wisdom of the Framers' decision to remove the power to define and redefine citizenship from the political process.

III. Argument

A. The purpose of the Fourteenth Amendment was to remove all doubt around citizenship by conferring citizenship on all people born in the United States.

The purpose of the Fourteenth Amendment was to confer citizenship on all people, regardless of color, based on the egalitarian principle of *jus soli* embodied in the Citizenship Clause. In debating and ratifying the

Amendment, the Framers understood it as eradicating a caste system. The birthright citizenship provision was intended to overrule *Dred Scott v. Sandford*, in which the Supreme Court had deemed Black people—both enslaved and free—ineligible for American citizenship. 60 U.S. 393 (1857); *see also* Cristina M. Rodríguez, *The Citizenship Clause, Original Meaning, and the Egalitarian Unity of the Fourteenth Amendment*, 11 U. Pa. J. Const. L. 1363, 1366 (2009); James C. Ho, *Birthright Citizenship, the Fourteenth Amendment, and the Texas Legislature*, 12 Tex. Rev. L. & Pol. 161, 162 (2007). The Framers of the Fourteenth Amendment understood and endorsed the fact that this citizenship guarantee would inure to the benefit of all persons born on U.S. soil, regardless of race.

1. The legislative history of the Civil Rights Act of 1866 supports a finding that the Framers aimed to end caste and maintain a broad conferral of citizenship, including the children of immigrants.

The Framers of the Fourteenth Amendment first attempted to enshrine birthright citizenship for all individuals born in the United States through the provisions of the Civil Rights Act of 1866. The Fourteenth Amendment’s birthright citizenship provision substantially mirrors the guarantee in the Civil Rights Act of 1866 (the “Act”). *Compare* Civil Rights Act of 1866, 14 Stat. 27 (1866) (“That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States[.]”) *with* U.S. Const. amend. XIV, § 1 (“All persons born or naturalized in the United States,

and subject to the jurisdiction thereof, are citizens of the United States[.]”).

The Civil Rights Act of 1866 became law only after Congress overrode President Andrew Johnson’s veto. In light of this, the Framers determined that a constitutional amendment would firmly and more permanently settle the question of birthright citizenship and remove it from interference by both political branches. Given the shared history and language between the Act of and the Fourteenth Amendment, the debates about the meaning of birthright citizenship under the Civil Rights Act of 1866 provide insight into the Framers’ understanding of citizenship. *See* Cong. Globe, 39th Cong., 1st Sess. 2769, 2890 (1866) (“Cong. Globe”).

The debates over the Civil Rights Act of 1866 were robust. Proponents of the Act thought that all persons born on United States soil should have birthright citizenship.³ Opponents of the Act sought to limit its reach and scope. *See, e.g.*, Cong. Globe 524–25. Senator Lyman Trumbull, who voted in favor of the bill, treated birthright citizenship as a natural right that already existed. Cong. Globe 527 (“My own opinion is that all these persons born in the United States and under its authority, owing allegiance to the United States, are citizens without an act of Congress.

3. Among the supporters of birthright citizenship was a debate over whether a constitutional amendment was needed, whether congressional legislation would be sufficient, or whether birthright citizenship already existed as a natural right to all person born in the U.S. *See, e.g.*, Cong. Globe 524–25, 527. The debate was ultimately resolved by the passage of the Fourteenth Amendment.

They are native-born citizens. That is my judgment about it; but there is a difference of opinion upon that subject.”).

The debates demonstrate that the Framers well understood that birthright citizenship would extend to the children of immigrants. The Framers debated whether birthright citizenship would extend to those born on U.S. soil to parents who were not entitled to citizenship in the United States with arguments similar in substance and tone to the arguments raised by the current Administration. Senator Peter Godwin Van Winkle voted against the Act, noting, in derisive terms directed at the children of Chinese laborers on the West Coast, that the language would confer citizenship not only to formerly enslaved persons but also new immigrants. He argued that changes to citizenship could not be done through statute and a constitutional amendment was necessary:

I think it is one of the gravest subjects that ever could be submitted to the people of the United States, and it involves not only the negro race, but other inferior races that are now settling on our Pacific coast, and perhaps involves a future immigration to this country of which we have no conception. . . .

Cong. Globe 497. He expressed a fear of “an influx here of all sorts of people from all countries” which led him to the conclusion that “we have a right to exclude these people and all other people of the inferior races from becoming citizens, if we so choose.” *Id.* at 497–98.

Senator Trumbull, who amended the Act’s language to include its final and more expansive definition of citizenship

that carried over to the Fourteenth Amendment, explicitly acknowledged that citizenship would apply equally to children born to foreigners in the country. He proposed:

All persons born in the United States, and not subject to any foreign Power, are hereby declared to be citizens of the United States, without distinction of color and there shall be no discrimination in civil rights or immunities among the inhabitants of any State or Territory of the United States on account of race, color, or previous condition of slavery. . . .

Cong. Globe 498. To the extent that Senator Trumbull thought there were limitations on who would become citizens, he focused on the children of foreign ministers. *Id.* at 572 (“The Senator [John B. Henderson] from Missouri and myself desire to arrive at the same point precisely, and that is to make citizens of every person born in the United States who owes allegiance to the United States. We cannot make a citizen of the child of a foreign minister who is temporarily residing here.” (quotation modified)).

Everyone else—including the American-born children of immigrants—qualified for birthright citizenship. Congress debated and rejected a definition of natural born citizens that was far more limited in scope and included primarily people of European descent. Senator Edgar Cowan asked whether the proposed language would extend to groups of non-European descent residing in the United States, and Senator Trumbull affirmed it would. Cong. Globe 498. Senator Cowan then argued that while German immigrants’ children born in Pennsylvania should be citizens, Chinese immigrants’ children should

not—because Germans and Chinese “were different.” *Id.* Senator Trumbull emphasized that the law makes no such distinction between these groups. *Id.* Senator Cowan was ultimately unsuccessful in convincing enough senators of his view.

In the end, the Framers decided that birthright citizenship would not be conferred based on perceptions—racist or otherwise—about particular groups of immigrants, and the Act passed with an expanded conception of citizenship over Senator Cowan’s opposition. *Vote 31*, UCLA Soc. Sci. Div., (Feb. 24, 2026 at 17:22 ET), <https://voteview.com/rollcall/RS0390031>; *Vote 94*, UCLA Soc. Sci. Div., (Feb. 24, 2026 at 17:24 ET), <https://voteview.com/rollcall/RS0390094> .

2. The core aim of the Fourteenth Amendment’s Citizenship Clause and the Reconstruction Amendments was to create and maintain a polity that is not separated by levels or caste.

As with the Civil Rights Act, the Fourteenth Amendment was passed amidst concerns about the United States being “overrun” by immigrants. Cong. Globe 2890–91. The prejudice against Chinese laborers during the time of the Amendment debates mirrors contemporary biases against immigrants from certain countries, lending particular resonance to this historical moment. During the legislative debate over the Amendment, in an exchange between Senators John Conness and Cowan, Senator Conness recognized both that the children of immigrants born on American soil would be American citizens. Senator Conness stated that the Amendment “relates

simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. We have declared that by law; now it is proposed to incorporate the same provision in the fundamental instrument of the nation.” Cong. Globe 2891.

Not only was the conferral of citizenship to children of immigrants, even marginalized immigrants, contemplated, but it was explicitly accepted during the debates surrounding the Fourteenth Amendment.⁴ Senator Conness affirmed that California was “entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others.” Cong. Globe 2892. Despite prejudices against certain racial and ethnic groups

4. Here, relying on “context, including ‘[b]ackground legal conventions,’ ‘common sense,’ and ‘constitutional structure,’ to ascertain a text’s ‘most natural meaning’” subject to the jurisdiction thereof cannot have the definition ascribed to it by the State. *Learning Res., Inc. v. Trump*, 607 U.S. ___, 2026 WL 477534, at *35 (U.S. Feb. 20, 2026) (Barrett, J, concurring) (citations omitted). The phrase “subject to jurisdiction thereof” was never intended to exclude the children of immigrants, despite the Government’s assertions to the contrary. *See* Pet. Br. 21. For example, Senator Howard, who introduced the bill, confirmed that Section 1 would not “include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors [sic] or foreign ministers accredited to the Government of the United States, but will include every other class of persons.” Cong. Globe 2890. He queried whether Native Americans who maintained their tribal relations should be regarded as born to quasi foreign nations. *Id.* at 2890. The legislative history reveals that the primary consideration was allegiance, not alienage.

and concerns about mass immigration, the Fourteenth Amendment was still passed because Reconstruction Framers viewed the abolition of caste as foundational.

Popular understanding—by supporters and opponents alike—mirrored that of the Framers: the purpose and driving force of the Citizenship Clause was to eliminate caste and guarantee equality for all people. In an 1868 article in the *New York Tribune*, jurist George Washington Paschal wrote that the Fourteenth Amendment “makes the definition [of the word citizen] clear, explicit, and organic. . . . There can be no quibble except upon the word person. There are those who believe that it cannot apply to the red man or the black man, the mulatto or the mestizo. But the good sense of the country will accept the word as applying to every human being born under the jurisdiction of the United States, or naturalized by Congress, or according to ‘uniform rule.’” Geo. W. Paschal, *The Fourteenth Article*, *New York Tribune*, Aug. 6, 1868, at p. 2.

Other newspapers and journals similarly explained the Amendment as a means of undoing all social caste distinctions based on race and color. The *New York Times* declared the Amendment meant “[t]he nation has thrown the gates of citizenship wide open to the colored race” and “has in effect declared that distinctions based on color, in their operation affecting political rights and privileges, are unjust and inexpedient.” *Suffrage and the States*, *New York Times*, Nov. 16, 1868, at p. 4. Another publication confirmed that “[t]he [F]ourteenth [A]mendment, now so happily adopted, settles the whole question and places every American citizen on a perfect equality, so far as merely national rights and questions are concerned.” *Article 25—no title*, *The American Annual Cyclopaedia and*

Register of Important Events of the Year (1861-1873), Jan. 1, 1868, at 173, <https://search.proquest.com/magazines/article-25-no-title/docview/88428545/se-2> (on file with *amici*). As Frederick Douglass affirmed, the vision of equal citizenship to all born on U.S. soil was always the Fourteenth Amendment’s promise: “the Constitution of the United States knows no distinction between citizens on account of color.” Frederick Douglass, *Reconstruction*, 18 *Atl. Monthly* 761, 765 (1866).

The core aim of the Fourteenth Amendment’s Citizenship Clause and the Reconstruction Amendments was to create and maintain a polity that is not separated by levels or caste. The Framers foresaw a moment like this where a broad-based citizenship would be unpopular. What makes the Fourteenth Amendment’s passage even more stunning is that it occurred despite the prevailing racism exemplified by figures like Senator Conness. Even within a deeply stratified society, the nation adopted a constitutional guarantee of equality. By restricting citizenship to the children of certain classes of immigrants, this Executive Order would defy the original understanding and purpose of the Fourteenth Amendment.

B. The Executive does not have the power to redefine Constitutional citizenship.

Revoking birthright citizenship by Executive power would vest in one individual the authority to unilaterally determine who belongs in this country and who does not, creating a hierarchy of citizenship based on presidential discretion alone. As this Court recently acknowledged, when the Executive tries to take for itself “extraordinary power,” that must be understood “[i]n light of the breadth,

history, and constitutional context of that asserted authority.” *Learning Res., Inc. v. Trump*, 607 U.S. ____, 2026 WL 477534, at *13 (U.S. Feb. 20, 2026); *see also id.* at *24 (Gorsuch, J., concurring); *id.* at *35 (Barrett, J., concurring). The text of the Fourteenth Amendment, its drafting history, and the public debate of its Framers, along with the traditional role of the Executive in our constitutional structure, cautioned that the Executive has a limited role: “[H]istory dating ‘back to near the Founding,’ does not support the notion that Presidents have traditionally enjoyed so much power. More nearly, history refutes it.” *Id.* at *31 (Gorsuch, J., concurring) (citations omitted). This Court should again reject such an expansion of the Executive role, particularly one at the cost of the sacred constitutional right of citizenship.

1. The Framers of the Fourteenth Amendment intentionally withheld from the President power over citizenship.

To erase all doubt about the role of the political branches in defining citizenship, the Fourteenth Amendment’s Citizenship Clause deliberately divested the President and successive Congresses of power to alter the meaning of birthright citizenship. The Congress that drafted the provision was acutely and persistently aware of the tumultuous political winds that might attempt to undermine the Amendment’s guarantees. Senator Benjamin Franklin Wade warned of the following scenario:

[I]f the Government should fall into the hands of those who are opposed to the views that some of us maintain, those who have been accustomed

to take a different view of it, they may construe the provision in such a way as we do not think it liable to construction at this time, unless we fortify [the Citizenship Clause] and make it very strong and clear.

Cong. Globe 2768.

Senator Wade wanted “to solve that doubt and put the question beyond all cavil for the present and for the future.” Cong. Globe 2768–69. Senator Jacob Merritt Howard similarly stated that the Fourteenth Amendment would “settle[] the great question of citizenship and remove[] all doubt.” *Id.* at 2890. Congressman John Franklin Farnsworth directly asserted in debates about the Fourteenth Amendment: “[T]he President will yet learn that he is not the ‘Government.’” *Id.* at 2540.

To safeguard the integrity of their work, the Framers wisely ratified language that clearly placed the citizenship definition beyond the reach of Congress or the Executive to change at their whim. Cong. Globe 497 (statement of Sen. Van Winkle, arguing that a constitutional amendment, not merely an act of Congress, was required to grant citizenship).

This Court’s precedents underscore the limited authority bestowed upon the Executive. In *Afroyim v. Rusk*, this Court articulated:

The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in

office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race.

387 U.S. 253, 268 (1967). This principle rests on the foundational framework established in *Youngstown Sheet & Tube Co. v. Sawyer*, where this Court held that presidential power “must stem either from an act of Congress or from the Constitution itself.” 343 U.S. 579, 585 (1952). Here, the Executive Order satisfies neither requirement.

The Citizenship Clause itself, as this Court explained in *United States v. Wong Kim Ark*, “reaffirmed in the most explicit and comprehensive terms” that birth within the United States establishes citizenship. 169 U.S. 649, 675 (1898). Citizenship is a right “which a citizen keeps unless he voluntarily relinquishes it,” and which, “[o]nce acquired,” cannot “be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit.” *Afroyim*, 387 U.S. at 262.

Neither the Executive nor Congress can alter this framework, absent a successive and contrary constitutional amendment. To permit the kind of unilateral action contemplated by the Executive Order “would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what

their powers do not authorize, but what they forbid.” The Federalist No. 78, at 237 (Hamilton) (Michael A. Genovese ed., 2009).

2. The Executive’s power is cabined in our constitutional structure.

The Fourteenth Amendment’s limitation on Executive power is consistent with the views of our nation’s original founders on the appropriate limits of presidential power. *See Learning Res., Inc.*, 2026 WL 477534, at *6–7 (acknowledging the role of the Federalist and the Federalist papers in defining executive authority); *see also id.* at *31–*33 (Gorsch, J, concurring) (same). In Federalist 69, Hamilton drew a stark contrast between the President and the monarch’s power, importantly confining the American President’s authority by stating, “[t]he one (the President) can confer no privileges whatever; the other (the King) can make denizens of aliens, noblemen of commoners . . .” The Federalist No. 69, at 197 (Hamilton) (Michael A. Genovese ed., 2009).

That Hamilton specifically enumerated myriad executive powers without identifying any consequential role in immigration or citizenship for the President was not an accident. *See id.*; *see also* The Federalist No. 76, at 227–30 (Hamilton) (Michael A. Genovese ed., 2009). Indeed, the topic of immigration makes an earlier appearance in the Federalist Papers when Madison places the power of naturalization with the Congress of the United States. The Federalist No. 42, at 94 (Madison) (Michael A. Genovese ed., 2009). The President cannot dismantle the carefully devised separation of powers to redefine the Constitution’s text. As James Madison warned, “[t]he accumulation of

all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.” The Federalist No. 47, at 101 (Madison) (Michael A. Genovese ed., 2009).

C. Comparative Examples Demonstrate the Wisdom of the Framers’ Design.

The consequences of revoking birthright citizenship, as observed in other nations that have done so, demonstrate the likelihood that such a policy would lead to mass, and likely intergenerational, statelessness. In *Trop v. Dulles*, this Court denounced the deprivation of citizenship for a natural-born citizen because it would render an individual “a fate of ever-increasing fear and distress.” 356 U.S. 86, 102 (1958). If the Executive Order were allowed to stand, it would create a stateless population along national origin, ethnic, tribal, and racial lines, precisely the consequence the Framers of the Fourteenth Amendment wanted to avoid.

1. The Dominican Republic Has Created a Statelessness Crisis By Eliminating Birthright Citizenship.

The Dominican Republic’s over decade-long crisis is a cautionary tale and demonstrates the potential dangers of allowing the Executive to redefine citizenship. In the Dominican Republic, Article 18 of the 2010 Dominican Constitution (maintained in the 2015 revision which governs the country) restricted citizenship acquisition by modifying the *jus soli* principle to exclude children born to parents residing illegally in the country. This change,

combined with the Constitutional Court of the Dominican Republic issuing Ruling TC/0168/3 in September 2013, retroactively denied nationality to thousands born as far back as 1929. By revoking the birthright citizenship of individuals born to “undocumented immigrants” between 1929 and 2010, the court rendered approximately 200,000 formerly Dominican citizens of Haitian descent stateless. See Amarilys Estrella, *Muertos Civiles: Mourning the Casualties of Racism in the Dominican Republic*, 28 *Transforming Anthropology* 1, 41 (2020).

Like the U.S., the Dominican Republic has a long and shameful history of racial discrimination and exclusion based on skin color—with those with dark skin subject to economic oppression, second-class citizenship, and even violence. There too, political actors deliberately framed citizenship restriction as necessary to defend national sovereignty and demographic integrity, using facially neutral legal language to mask fundamentally discriminatory objectives. Ediberto Román & Ernesto Sagás, *Birthright Citizenship Under Attack: How Dominican Nationality Laws May Be the Future of U.S. Exclusion*, 66 *Am. U. L. Rev.* 1383, 1387-90, 1399-1401 (2017). These rationales are similar to those that the Executive cites in support of the Executive Order. Exec. Order No. 14160, § 1 (Jan. 20, 2025) (asserting that birthright citizenship does not “automatically extend to persons born in the United States” under certain conditions).

The 2013 decision of the Dominican Constitutional Court institutionalized a segregated citizenry, creating a racially stratified citizenship regime based on skin color. Román & Sagás, *supra*, at 1389–92, 1400–02. In

doing so, it created the largest stateless population in the Western Hemisphere. Wendy Hunter & Francesca Reece, *Denationalization in the Dominican Republic: Trapping Victims in the State's Administrative Maze*, 57 *Latin Am. Rsch. Rev.* 590, 591 (2022). Across all mechanisms through which birthright citizenship was instituted, Haitian descent operated as the consistent determinative factor for exclusion, functioning as a proxy regardless of actual birthplace, cultural integration, language, generational presence, or genuine connection to Dominican society. Bridget Wooding, *Upholding Birthright Citizenship in the Dominican Republic*, 44 *Nordic J. Latin Am. & Caribbean Stud.* 99, 101-04, 107-09 (2014).

Individuals who were second, third, fourth, or fifth generation residents, who spoke only Spanish, who had never lived in or visited Haiti, who identified culturally as Dominican, and who had extensive family and community ties entirely within the Dominican Republic were nonetheless targeted solely on the basis of ancestry. Wooding, *supra*, at 101–04, 107-09; *see also* Kevin Appleby, *Ten Years After a Fateful Court Decision, the Dominican Republic Still Has a Statelessness Problem*, *The Ctr. for Migration Stud.* (Oct. 23, 2023), <https://cmsny.org/dr-statelessness-problem-appleby-102323/>. The stripping of this identity did not produce a mere administrative inconvenience, but a deep rupture in personal and collective identity, with families frequently split across different legal statuses and individuals unable to participate in civic life, marry legally, or register births of their own children. Román & Sagás, *supra*, at 1419–23.

The consequences of this statelessness are multi-generational and devastating, particularly for children

who are denied the foundational right to a national identity. Because the government refuses to issue birth certificates and national identification cards to those of Haitian descent, families face a compounded intergenerational cycle of documentational denial. *See* Khaled Alrabe, et al., *Left Behind: How Statelessness in the Dominican Republic Limits Children's Access to Education*, Georgetown L. Hum. Rts. Inst. Fact-Finding Report, 8–12 (2014), <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2018/03/left-behind.pdf>. Without these basic documents, children are barred from attending school. *See id.* at 1–3, 36–37. Of those allowed to attend school despite lacking birth certificates, many are denied the ability to take national exams required to graduate. *Id.* at 36–37. Without formal education and documentation, these stateless people are denied access to formal employment and hence become part of a permanent underclass trapped in intergenerational poverty. *See* Román & Sagás, *supra*, at 1391–94.

Under Article 62(10) of the Constitution of the Dominican Republic, “the nationalization of work” and labor rights are tied to nationality status, thus, the constitutional exclusion from citizenship operates as a bar to professional employment. Constitución Política de la República Dominicana [Constitution] July 10, 2015, art. 62 (Dom. Rep.). Individuals rendered stateless cannot attend school, travel abroad, secure professional certifications, or access certain bureaucratic procedures. *See* Román and Sagás, *supra*, at 392. Statistical evidence shows that lack of citizenship documentation correlates with lower wages, even after controlling for education, experience, and sector—demonstrating that legal status independently shapes compensation beyond human

capital or productivity. Catalina Amuedo-Dorantes, et al., *On the Implications of Immigration Policy Restricting Citizenship: Evidence from the Dominican Republic*, IZA Discussion Paper No. 10602, Mar. 2017, at 22–34. Data on workplace violations show higher rates among undocumented workers, who frequently cannot report abuses without risking retaliation, illustrating how citizenship restrictions function as a structural mechanism of economic exploitation. See *Discrimination and Denationalization in the Dominican Republic*, Am. Fed’n of Lab. & Cong. of Indus. Orgs. (Jul. 1, 2015), <https://aflcio.org/reports/discrimination-and-denationalization-dominican-republic>.

The Dominican experience illustrates how easily the withdrawal of birthright citizenship can result in tiers of citizenship based on national origin, ethnicity, and race—a result entirely at odds with the aims of the Fourteenth Amendment. In addition, citizenship based upon ancestry creates legally vulnerable, exploitable populations who lack the power to advocate for their rights or resist subordination, thereby entrenching racial hierarchy, suppressing labor power, and normalizing a permanent caste of constitutional outsiders within a putatively democratic legal order.

The racialized consequences of Dominican citizenship restriction provide powerful evidence of how facially neutral legal categories can function as mechanisms for racial exclusion. Although Dominican law restricts citizenship based on parental immigration status rather than explicitly on race or national origin, the overwhelming concentration of impacts on Black populations of Haitian descent demonstrates that immigration status operates

as racial proxy. Even though the Executive Order would apply prospectively to babies born within 30 days of its effective date, the Dominican Republic's experience demonstrates its potential for long-term harm. As the Dominican Republic's decades-long crisis shows, the Executive Order would undermine our country's existing and well-established system of citizenship and cast doubt on many peoples' citizenship status for generations to come. The Order would reintroduce a history of racial hierarchy that the Fourteenth Amendment eradicated.

2. India has also departed from international norms and has a large stateless population.

India's creation of a large stateless population also demonstrates the danger of the United States' eradication of birthright citizenship and a return to tiered citizenship. In a radical departure from international norms, the Indian government in Assam, a multi-ethnic state bordering Bangladesh, implemented the National Register of Citizens (NRC), requiring the verification of ancestral registry for its 32 million residents. *See* Rajini Vaidyanathan, *An Anxious Wait*, BBC (Aug. 30, 2019); *see also Assam NRC: What Next for 1.9 Million "Stateless" Indians?*, BBC (Aug. 31, 2019), <https://www.bbc.com/news/world-asia-india-49520593>. The final NRC excluded approximately 1.9 million people in Assam, creating a humanitarian crisis of mass statelessness. *See UN experts: Risk of statelessness for millions and instability in Assam, India*, Press Release, U.N. Office of the High Comm'r for Hum. Rts., (Jul. 3, 2019), <https://www.ohchr.org/en/press-releases/2019/07/un-experts-risk-statelessness-millions-and-instability-assam-india>; *see also Assam's National Register of Citizens Risks*

Stirring Tensions and Potential Humanitarian Crisis, UN Experts Warn, U.N. Hum. Rts. Off. Of the High Comm'r (Dec. 27, 2018), <https://www.ohchr.org/en/press-releases/2018/12/assams-national-register-citizens-risks-stirring-tensions-and-potential>.

The NRC has disproportionately excluded immigrants from Bangladesh and Bengali-speaking Muslims, who have resided in the state for generations. See Maneeva Suri, *Millions Potentially Excluded From Indian Citizenship in Controversial Registry*, CNN (Jul. 30, 2018 at 20:34 ET), <https://www.cnn.com/2018/07/30/asia/india-citizen-survey-intl>. The legislative shift has further entrenched systemic inequality, as rural, poor, and illiterate populations face the greatest challenges in producing documentation and rectifying failures of the NRC process. See Amrita Hari & Sugandha Nagpal, *The National Register of Citizens (NRC) in India and the potential for statelessness in situ: a cautionary tale from Assam*, 30 *Contemp. S. Asia* 194, 198.

The NRC also strains India's institutions. Indian courts, already overburdened, are legally required to hear appeals from the millions of residents excluded from the NRC. See *Assam NRC: What Next for 1.9 Million "Stateless" Indians?*, BBC (Aug. 31, 2019), <https://www.bbc.com/news/world-asia-india-49520593>. The result is a long, costly appeals process that overwhelms courts while leaving individuals in stateless limbo. *Id.* Implementing the NRC in Assam also necessitated a massive financial investment of more than \$160 million in effective digital systems, security, and staffing. See Kangkan Kalita, *CAG flags soaring project cost of NRC*, *TIMES OF INDIA* (Dec. 25, 2022 at 11:18 IST), <https://timesofindia>.

indiatimes.com/city/guwahati/cag-flags-soaring-project-cost-of-nrc/articleshow/96489889.cms. In light of the controversy and administrative burden surrounding the NRC in Assam, efforts to implement the NRC nationwide have stalled. *See* Status of CAA, NRC and NPR (Aug. 10, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1744502®=3&lang=2>.

3. Myanmar provides another cautionary tale about the end of birthright citizenship.

The crisis in Myanmar serves as a stark warning of the consequences of the United States implementing a strict *jus sanguinis system* and that effectively introduces a system of racial caste. Myanmar's 1982 Citizenship Law established a tiered system that restricts full citizenship at birth to those belonging to the state-recognized "national races" that settled in Myanmar before British arrival. *See* Archana Parashar & Jobair Alam, *The National Laws of Myanmar: Making of Statelessness for the Rohingya*, 57 Int'l Migration 94, 98, 101 (2019) (describing tiered citizenship structure). While lower tiers of citizenship are available to those who meet specific criteria, the application process is lengthy and complicated, and the government retains broad discretion to revoke lower-tier citizenship. *See* Elizabeth L. Rhoads, *Citizenship denied, deferred and assumed: a legal history of racialized citizenship in Myanmar*, 27 Citizenship Stud. 38, 46-47. This racial caste system leaves minority groups legally invisible, without access to educational and employment opportunities or political rights. *See* Reuben Lim Wende, *Stateless Rohingya continue to struggle for survival in Myanmar*, UNHCR (Aug. 25, 2022). The inhumanity of this statelessness crisis most clearly appears in

Myanmar's treatment of children. Myanmar violates the Convention of the Rights of the Child by denying children born to stateless parents any safeguard for nationality, perpetuating the cycle of inequality. See Sean Bain, et al, *Citizenship and Human Rights in Myanmar: Why Law Reform is Urgent and Possible—A Legal Briefing*, Int'l Comm'n of Jurists 13 (2019), <https://www.icj.org/wp-content/uploads/2019/06/Myanmar-Citizenship-law-reform-Advocacy-Analysis-Brief-2019-ENG.pdf>.

This legal framework has rendered the Rohingya, a Muslim ethnic minority in Myanmar, the largest stateless population in the world. See USA for UNHCR, *Rohingya Refugee Crisis Explained* (2026). The Rohingya are excluded from the list of “national races,” and few qualify for lower-tier citizenship. See Archana, *supra*, at 101-02. This systemic deprivation of nationality has functioned as a precursor to a campaign of mass violence, forced labor and displacement, and ethnic cleansing of the Rohingya by government and non-government actors. See *id.*; see also Office of the High Comm'r for Hum. Rts., *Investigation of alleged human rights violations and abuses against the Rohingya* (describing violence as a “textbook example of ethnic cleansing”). The pattern of persecution instituted against the Rohingya has resulted in a trial in front of the International Court of Justice for violations of the Genocide Convention of 1948. See David Esposito & Shayna Bauchner, *Rohingya Genocide Case Moves to Judgment*, Hum. Rts. Watch (Jan. 29, 2026).

4. The United Kingdom and other Commonwealth countries are distinguishable from Executive Order 14160 in their treatment of citizenship.

Petitioners wrongly invoke the United Kingdom as justification for dismantling the American constitutional command of birthright citizenship. *See Petr. Br.* 9–10. However, the United Kingdom and other Commonwealth countries, such as Australia, operate within different legal constraints and have—at least nominally—followed international law. While the United Kingdom has indeed narrowed automatic citizenship upon birth, *see* British Nationality Act 1981, c. 61, § 1, the United Kingdom’s administrative shifts do not mirror the more radical attempt here to redefine the Fourteenth Amendment via Executive Order.

The source of the birthright citizenship guarantee in the United States is different from the source of its guarantee in the United Kingdom. In the United Kingdom, birthright citizenship was a common law tradition that evolved into a statutory requirement. *See* Polly Price, *Natural Law and Birthright Citizenship in Calvin’s Case (1608)*, 9 *Yale J.L. & Human.* 73, 74 (1997). In the United States, however, birthright citizenship evolved into a constitutional guarantee that grew out of the distinctive experience of the Civil War and the catastrophic fracture of our country. The Framers of the Citizenship Clause aimed to destroy the racial caste system that led to the Civil War and to remove the divisive temptation to assign levels of citizenship status by enshrining birthright citizenship in the Constitution. Gerald L. Neuman,

Strangers to the Constitution: Immigrants, Borders, and Fundamental Law 165-70 (1996).

Further, the United Kingdom has adopted international law, which prohibits statelessness. The United Kingdom remains constrained by the Conventions on Stateless Persons. Other international documents also constrain statelessness, including the Universal Declaration of Human Rights (UDHR), which states, “Everyone has the right to a nationality,” and “No one shall be arbitrarily deprived of his nationality,” G.A. Res. 217A (III), Universal Declaration of Human Rights (UDHR), at 3 (Dec. 10, 1948); and the International Covenant on Civil and Political Rights in 1992, which mandates that “[e]very child has the right to acquire a nationality.” International Covenant on Civil and Political Rights, art. 24, Dec. 16, 1966, 999 U.N.T.S. 171.⁵ Together, these documents establish the legal definition of a “stateless person” and set the minimum standards to prevent individuals from being stripped of their nationality—including their birthright citizenship.

As a result, the United Kingdom provides a pathway to citizenship for persons who would otherwise be rendered stateless. *See* British Nationality Act 1981, sch. 2; British Nationality (No. 2) Act 1964, c. 54. Further, even when statelessness protections do not apply, a child born in the United Kingdom can become a citizen after 10 years. British Nationality Act 1981, c. 61. Such a child needs to register for citizenship and need not apply to be a citizen. *Id.* at Part I, 3A(4) (“A person born in the United Kingdom

5. The United States has ratified the International Covenant on Civil and Political Rights.

... shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen” if that person hasn’t been absent from the United Kingdom for more than 90 days for their first ten years.).

Similarly, Australia has supplemented its laws to provide protections to children born in Australia and who would otherwise be rendered stateless. The Australian Citizenship Act of 1948 provided that “a person born in Australia after the commencement of this Act shall be an Australian citizen.” Australian Citizenship Act 1948 (Cth) § 10(1). Australia repealed this right in August 1986, limiting citizenship to those born in Australia to a parent who was an Australian citizen or permanent resident at the time of the child’s birth, or after the child has resided in Australia for 10 years. Jan Gothard, *Yes, you can Hold an Australian Passport but not be a Citizen—Here’s how*, The Conversation (Sept. 3, 2019, at 8:49 ET), <https://theconversation.com/yes-you-can-hold-an-australian-passport-but-not-be-a-citizen-heres-how-122632>. Like the United Kingdom, Australia had ratified the 1954 and 1961 Stateless Conventions without reservations, creating international obligations against statelessness prior to its 1986 repeal of birthright citizenship. Peter McMullin Ctr. on Statelessness, *Statelessness in Australia*, Univ. Of Melbourne (Jan. 2026), <https://law.unimelb.edu.au/centres/statelessness/education/factsheet/statelessness-in-australia>. Thus, in 2007, Australia amended the Citizenship Act to require that the government grant citizenship to stateless children born in Australia, fulfilling its legal obligations under international conventions prohibiting statelessness. Australian Citizenship Act 2007 § 21(8).

In sum, the United Kingdom and Australia have adopted a system of safeguards to prevent the most egregious cases of statelessness and the United Kingdom provides a pathway for citizenship for all children born in the United Kingdom. British Nationality Act 1981, c. 61, § 1; *see also Apply for citizenship if you were born in the UK*, GOV.UK, <https://www.gov.uk/apply-citizenship-born-uk> (last visited Feb. 16, 2026). Executive Order 14610 provides no such safeguards and imagines a world in which all children of immigrants without permanent legal residency are without American citizenship, and potentially with no citizenship at all. If allowed to stand, this Executive Order would not follow the United Kingdom model but would instead mirror the statelessness crises faced by the Dominican Republic, India, and Myanmar—stripping citizenship from all persons born to undocumented individuals while providing no safeguards for those rendered stateless and no pathway to citizenship.

5. The Executive Order risks creating a new caste system composed of stateless individuals.

There is grave risk of creating a new caste system composed of stateless individuals if birthright citizenship is revoked, and we are already seeing some indication of how this might unfold. One immense risk of statelessness is indefinite detention. Immigration systems are predicated on returning foreign nationals to a country of origin. However, stateless individuals exist in a legal limbo. As held in *Zadvydas v. Davis*, the indefinite detention of an unremovable person raises serious constitutional problems under the Fifth Amendment's Due Process Clause. 533 U.S. 678, 690 (2001). Because the Due Process Clause

applies to all “persons” within the U.S. regardless of citizenship, the creation of a stateless population leaves the government with the unconstitutional choice of indefinite confinement or the release of individuals it refuses to recognize. *Id.* at 695. It is with good reason that international law prohibits this predicament.

We have already seen what happens to individuals in legal limbo in our current system. Children with various immigration statuses are currently being held without access to adequate medical care and education, while their parents have lost jobs and healthcare. Anna Flagg & Shannon Heffernan, Daily Number of Kids in ICE Detention Jumps 6x Under Trump, The Marshall Project (Jan. 29, 2026), <https://www.themarshallproject.org/2026/01/29/ice-kids-in-detention-numbers>. In addition to individuals currently being held in long term custody in the United States, some have been patriated to third countries, such as El Salvador, when they cannot be repatriated to their countries of origin. David Nakamura, *U.S. spending millions to send migrants to third countries, report says*, Washington Post, Feb. 1, 2026 (“Administration officials have said they have no choice but to partner with foreign governments that are willing to accept undocumented immigrants whose native nations are not willing to take them back.”). There are an estimated 2.6 million asylum seekers in the United States, individuals with a credible fear of returning to their country of origin. *What the Data Says About Immigrants in the U.S.*, Pew Rsch. Ctr. (Aug. 21, 2025), <https://www.pewresearch.org/short-reads/2025/08/21/key-findings-about-us-immigrants/>. These individuals along with their American born children are at the highest risk of becoming stateless if birthright citizenship is revoked.

The Administration's recent escalation of immigration enforcement has already demonstrated how citizenship status becomes a proxy for race and can lead to detentions, as it does in the Dominican Republic.⁶ Reports suggest that at least 170 cases through October 2025 in which American citizens were detained by immigration agents at raids and protests, including nearly 20 children, among them two children with cancer, and multiple instances in which citizens were held for weeks alongside undocumented family members without access to counsel until elected officials intervened. Nicole Foy, "*We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged and Detained for Days*," ProPublica (Oct. 25, 2025), <https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will>. Black communities, including U.S. citizens, also face heightened risk of wrongful detention, as immigration operations have historically intersected with racially disparate policing trends and have already resulted in the detention of American citizens in Chicago. *The Vulnerability of Black Immigrants*, The Am. Prospect (Dec. 12, 2025), <https://prospect.org/2025/12/12/vulnerability-of-black-immigrants/>. The Administration's rhetoric makes the racial nature of this immigration enforcement explicit. The President has extended invitations to white immigrants from Norway and South Africa, while announcing a pause on migration from "hellholes like Afghanistan, Haiti, Somalia and many

6. See also PERMANENT S. ON INVESTIGATIONS, COMM. ON HOMELAND SEC. & GOV'T AFFS., *Unchecked Authority: Examining the Trump Administration's Extrajudicial Immigration Detentions of U.S. Citizens*, United States Senate, (Minority Staff Report, Dec. 9, 2025), at 2, https://www.hsgac.senate.gov/wp-content/uploads/2025.12.8_ICE-Report-revised-FINAL.pdf.

other countries.”⁷ The caste system that would result from such a blanket revocation of citizenship protections would take the country back to the dark past of entrenched legal castes that the Framers of the Fourteenth Amendment fought hard to dismantle.

IV. Conclusion

For the foregoing reasons, the district court’s decision should be affirmed.

Respectfully submitted,

<p>SHERRILYN IFILL 14TH AMENDMENT CENTER FOR LAW & DEMOCRACY HOWARD LAW SCHOOL 2900 Van Ness Street, NW Washington, DC 20008</p>	<p>GUY-URIEL E. CHARLES MICHELLE L. LEUNG T. ALORA THOMAS <i>Counsel of Record</i> RACE & LAW CLINIC HARVARD LAW SCHOOL 1607 Massachusetts Avenue, 3rd Floor Cambridge, MA 02138 (617) 998-1582 tthomaslundborg@law.harvard.edu</p>
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Counsel for Amici Curiae

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7. The Associated Press, *Trump’s speech on combating inflation turns to grievances about immigrants*, NPR (Dec. 10, 2025), <https://www.npr.org/2025/12/10/g-s1-101506/trumps-speech-grievances-about-immigrants>; Exec. Order No. 14204, *Addressing Egregious Actions of the Republic of South Africa*, 90 Fed. Reg. 28 (Feb. 12, 2025) (prioritizing immigration of white South African refugees).