No.

In the Supreme Court of the United States

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

v.

O. DOE, ET AL.

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

v.

NEW HAMPSHIRE INDONESIAN COMMUNITY SUPPORT, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

D. JOHN SAUER
Solicitor General
Counsel of Record
SARAH M. HARRIS
CURTIS E. GANNON
Deputy Solicitors General
VIVEK SURI
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether President Trump's Executive Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025), which identifies circumstances in which a person born in the United States is not "subject to the jurisdiction thereof" and so is not recognized as a citizen of the United States, complies on its face with the Fourteenth Amendment's Citizenship Clause and 8 U.S.C. 1401(a).

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are Donald J. Trump, President of the United States; United States Department of State; Marco Rubio, Secretary of State; U.S. Department of Agriculture; Brooke L. Rollins, Secretary of Agriculture; U.S. Department of Health and Human Services; Robert F. Kennedy, Jr., Secretary of Health and Human Services; U.S. Department of Homeland Security; Kristi Noem, Secretary of Homeland Security; U.S. Social Security Administration; Frank J. Bisignano, Commissioner of Social Security; Centers for Medicare and Medicaid Services; Mehmet Oz, Administrator of the Centers for Medicare and Medicaid Services; and the United States.

Respondents (plaintiffs-appellees below) are O. Doe; Brazilian Worker Center; La Colaborativa; State of New Jersey; Commonwealth of Massachusetts; State of California; State of Colorado; State of Connecticut; State of Delaware; District of Columbia; State of Hawaii; State of Maine; State of Maryland; Dana Nessel, Attorney General for the People of the State of Michigan; State of Minnesota; State of Nevada; State of New Mexico; State of New York; State of North Carolina; State of Rhode Island; State of Vermont; State of Wisconsin; City and County of San Francisco, California; New Hampshire Indonesian Community Support; League of United Latin American Citizens; and Make the Road New York.

RELATED PROCEEDINGS

United States District Court (D. Mass.):

Doe v. *Trump*, No. 25-cv-10135 (Feb. 13, 2025)

New Jersey v. *Trump*, No. 25-cv-10139 (July 25, 2025)

United States District Court (D.N.H.):

New Hampshire Indonesian Community Support v. *Trump*, No. 25-cv-38 (Feb. 11, 2025)

United States Court of Appeals (1st Cir.):

New Jersey v. *Jones*, No. 25-1158 (Apr. 23, 2025)

New Jersey v. *Trump*, No. 25-1200 (Apr. 23, 2025)

Doe v. *Trump*, No. 25-1169 (Oct. 3, 2025)

New Jersey v. *Trump*, No. 25-1170 (Oct. 3, 2025)

New Hampshire Indonesian Community Support v. *Trump*, No. 25-1348 (Oct. 3, 2025)

Supreme Court of the United States:

Trump v. *New Jersey*, No. 24A886 (June 27, 2025)

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OPINIONS BELOW

In *Doe* and *New Jersey* (which were resolved together in both the district court and the court of appeals), the court of appeals' opinion (App., *infra*, 1a-84a) is reported at 157 F.4th 36. The court of appeals' order (App., *infra*, 113a-120a) is reported at 142 F.4th 109. The district court's order on the scope of its preliminary injunction in *New Jersey* (App., *infra*, 85a-112a) is re-

ported at 800 F. Supp. 3d 180. The district court's preliminary injunctions in both cases (App., *infra*, 121a-123a, 124a-126a) are unreported. The district court's memorandum of decision on motions for preliminary injunction in both cases (App., *infra*, 127a-165a) is reported at 766 F. Supp. 3d 266.

In *New Hampshire Indonesian Community Support*, the court of appeals' opinion (App., *infra*, 166a-173a) is reported at 157 F.4th 29. The district court's preliminary injunction (App., *infra*, 174a-175a) is available at 2025 WL 440821. The district court's preliminary injunction order (App., *infra*, 176a-188a) is reported at 765 F. Supp. 3d 102.

JURISDICTION

The court of appeals issued its judgments on October 3, 2025. On December 19, 2025, Justice Jackson extended the time within which to file a petition for a writ of certiorari to and including February 2, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101(e).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. XIV, § 1, provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

2. 8 U.S.C. 1401(a) provides:

> **Nationals and citizens of United States at birth**
>
> The following shall be nationals and citizens of the United States at birth:

> (a) a person born in the United States, and subject to the jurisdiction thereof[.]

STATEMENT

On January 20, 2025, President Trump issued Executive Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, 90 Fed. Reg. 8449 (Jan. 29, 2025) (Citizenship Order). The Citizenship Order "identifies circumstances in which a person born in the United States is not 'subject to the jurisdiction thereof' and is thus not recognized as an American citizen." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 838 (2025).

An individual and two membership organizations filed a suit (*Doe* v. *Trump*) in federal district court in Massachusetts. App., *infra*, 4a. A group of States and others filed another suit (*New Jersey* v. *Trump*) in the same court, which consolidated briefing in that suit with *Doe* and resolved them together. *Id.* at 5a. Finally, three more membership organizations filed a third suit (*NHICS* v. *Trump*) in federal district court in New Hampshire. *Id.* at 167a.

The district court in each case granted a preliminary injunction to respondents. App., *infra*, 127a-165a, 176a-188a. The injunction in *New Jersey* applies nationwide, while the injunctions in *Doe* and *NHICS* are limited to the named individual respondent and the members of the respondent organizations. See *id.* at 121a-123a, 124a-126a, 174a-175a. Each court determined that respondents are likely to succeed on the merits of their claims that the Citizenship Order violates the Fourteenth Amendment's Citizenship Clause and 8 U.S.C. 1401(a), which codifies the Clause. App., *infra*, 143a-157a, 181a-185a.

The First Circuit affirmed the preliminary injunctions in *Doe* and *New Jersey* in part, vacated them in

part, and remanded. App., *infra*, 1a-84a. After rejecting objections to certain respondents' standing, *id.* at 10a-27a, the court concluded that the Citizenship Order likely violates the Citizenship Clause and Section 1401(a), *id.* at 27a-74a. The court also concluded that the equities support preliminary relief, *id.* at 74a-78a, and rejected the government's objections to the scope of the injunctions, *id.* at 78a-83a. The court vacated the district court's injunctions in "one limited respect": It concluded that, "given the nature of the underlying claims, the preliminary injunctions may apply only to agency officials, rather than the agencies themselves." *Id.* at 4a n.2.

The First Circuit affirmed the preliminary injunction in *NHICS* in part, vacated it in part, and remanded. App., *infra*, 166a-173a. Relying on its analysis in *Doe* and *New Jersey*, the court determined that preliminary relief was warranted in *NHICS* as well. *Id.* at 170a-171a. But the court vacated the district court's injunction in part and remanded the case for clarification of the scope of the relief awarded to the organizational respondents' members. *Id.* at 171a-172a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether the Citizenship Order violates the Citizenship Clause of the Fourteenth Amendment and 8 U.S.C. 1401(a). This Court is currently considering the same question in *Trump* v. *Barbara*, cert. granted, No. 25-365 (Dec. 5, 2025). The Court appears to be holding the petition for a writ of certiorari in *Trump* v. *Washington*, petition for cert. pending, No. 25-364 (filed Sept. 26, 2025)—which presents the same question—pending the resolution of *Barbara*. The Court should likewise hold this petition

pending the resolution of *Barbara* and then dispose of the petition as appropriate.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the resolution of *Trump* v. *Barbara*, cert. granted, No. 25-365 (Dec. 5, 2025), and then dispose of the petition as appropriate.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
SARAH M. HARRIS
CURTIS E. GANNON
Deputy Solicitors General
VIVEK SURI
Assistant to the Solicitor General

JANUARY 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1169

O. DOE; BRAZILIAN WORKER CENTER;
LA COLABORATIVA, PLAINTIFFS, APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF STATE; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; US SOCIAL SECURITY ADMINISTRATION; FRANK J. BISIGNANO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF SOCIAL SECURITY, DEFENDANTS, APPELLANTS

No. 25-1170

STATE OF NEW JERSEY; COMMONWEALTH OF MASSACHUSETTS; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF MAINE; STATE OF MARYLAND; DANA NESSEL, ATTORNEY GENERAL FOR THE PEOPLE OF THE STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN; CITY AND COUNTY OF SAN FRANCISCO, CA, PLAINTIFFS, APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF STATE; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS

SECRETARY OF STATE; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., IN HIS OFFICIAL CAPACITY AS SECRETARY OF HEALTH AND HUMAN SERVICES; US SOCIAL SECURITY ADMINISTRATION; FRANK J. BISIGNANO, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF SOCIAL SECURITY; UNITED STATES, DEFENDANTS, APPELLANTS

Oct. 3, 2025

Appeals from the United States District Court
for the District of Massachusetts
[Hon. Leo T. Sorokin, U.S. District Judge]

Before BARRON, Chief Judge, RIKELMAN and AFRAME, Circuit Judges.

BARRON, Chief Judge. In the wake of the Civil War, our nation, in 1868, ratified the Fourteenth Amendment to the U.S. Constitution. The amendment provides, in its first clause, that "[a]ll persons born or naturalized 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. Nearly a century later, after a thorough review of our nationality laws, Congress passed § 301(a)(1) of the Immigration and Nationality Act, codified as 8 U.S.C. § 1401(a). That measure similarly provides that "a person born in the United States, and subject to the jurisdiction thereof" "shall be [a] national[] and citizen[] of

the United States." Pub. L. No. 82-414, § 301(a)(1), 66 Stat. 235, 235 (1952).

Relying on these longstanding guarantees of birthright citizenship, a Massachusetts federal district court, in a pair of consolidated cases, preliminarily enjoined the enforcement and implementation of Executive Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025), "Protecting the Meaning and Value of American Citizenship" (the EO). The EO's "purpose" is to deny birthright citizenship to children born after the EO's effective date if, at the time of their birth, their fathers are not United States citizens or lawful permanent residents (LPR) and their mothers are in this country either (1) unlawfully or (2) temporarily. Id. § 1. The EO "[e]nforce[s]" this "[p]urpose" through directives to various federal agency heads. Id. § 3.

The Government[1] now asks us to reverse the preliminary injunctions in these cases. We see no reason to do so. The Government is right that the Framers of the Citizenship Clause sought to remove the stain of Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857), which shamefully denied United States citizenship to "descendants of Africans who were imported into this country, and sold as slaves," even when the descendants were born here. Id. at 403. But the Framers chose to accomplish that just purpose in broad terms, as both the Supreme Court in United States v. Wong Kim Ark, 169 U.S. 649 (1898), and Congress in passing § 1401(a) have recognized. The Government is therefore wrong to argue that the plaintiffs are not likely to succeed in showing that the children that the EO covers are citizens of

[1] For ease of exposition, we refer to the governmental defendants throughout as "the Government."

this country at birth, just as the Government is wrong to argue that various limits on our remedial power independently require us to reverse the preliminary injunctions.[2]

The analysis that follows is necessarily lengthy, as we must address the parties' numerous arguments in each of the cases involved. But the length of our analysis should not be mistaken for a sign that the fundamental question that these cases raise about the scope of birthright citizenship is a difficult one. It is not, which may explain why it has been more than a century since a branch of our government has made as concerted an effort as the Executive Branch now makes to deny Americans their birthright.

I. Procedural History

On January 20, 2025, O. Doe (a pseudonym) and two immigrant-focused nonprofit organizations—Brazilian Worker Center and La Colaborativa—filed suit in the United States District Court for the District of Massachusetts to challenge the EO. These plaintiffs—collectively the Doe-Plaintiffs—named as defendants the President, the U.S. Department of State (DOS),

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[2] We nonetheless conclude that, given the nature of the underlying claims, the preliminary injunctions may apply only to agency officials, rather than the agencies themselves. See Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327 (2015) ("What our cases demonstrate is that, 'in a proper case, relief may be given in a court of equity . . . to prevent an injurious act by a public officer.'" (alteration in original) (emphasis added) (quoting Carroll v. Safford, 44 U.S. (3 How.) 441, 463 (1845))); cf. FDIC v. Meyer, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." (citing Loeffler v. Frank, 486 U.S. 549, 554 (1988))). The preliminary injunctions are therefore vacated in that one limited respect.

Marco Rubio in his capacity as Secretary of DOS, the U.S. Social Security Administration (SSA), and Michelle King in her capacity as Acting Commissioner of SSA.

The complaint alleges that the EO violates (1) the Citizenship Clause of the Fourteenth Amendment and (2) the equal protection component of the Fifth Amendment. It also alleges that the EO violates (1) § 1401(a) and (2) the Administrative Procedure Act (APA), 5 U.S.C. § 706. For relief, the complaint seeks a declaratory judgment that the EO is unlawful in these respects and a preliminary and permanent injunction barring the defendants from enforcing or "carrying out [the EO's] directive[s]."

A day later, on January 21, 2025, a group of states and others—collectively, the State-Plaintiffs—filed a suit of their own in the same District Court to challenge the EO. They named as defendants the President, Marco Rubio in his capacity as Secretary of DOS, Benjamine Huffman in his capacity as Acting Secretary of the U.S. Department of Homeland Security (DHS), Dorothy Fink in her capacity as Acting Secretary of the U.S. Department of Health and Human Services (HHS), and Michelle King in her capacity as Acting Commissioner of SSA. The State-Plaintiffs also sued DOS, DHS, HHS, SSA, and the "United States of America."

The State-Plaintiffs' complaint alleges that the EO violates the (1) Citizenship Clause of the Fourteenth Amendment and (2) Separation of Powers doctrine. It also alleges that the EO violates (1) § 1401(a) and (2) the APA. The complaint seeks a declaratory judgment that the EO is unlawful in these respects and that "actions taken by Defendant agencies to implement or enforce the [EO] violate the [APA]." It also seeks a prelimi-

nary and permanent injunction barring the Government from enforcing or implementing the EO. Finally, the complaint requests that the District Court "[v]acate any actions taken by Defendant agencies to implement or enforce the [EO]."

The District Court granted both sets of plaintiffs' motions for preliminary injunctions on February 13, 2025. It did so after concluding that the plaintiffs in both cases were "exceedingly likely" to succeed on their Citizenship Clause and § 1401(a) claims.

In the Doe-Plaintiffs' case, the preliminary injunction bars the federal agencies and officials that the plaintiffs named as defendants, but not the President, as well as all "other persons acting in concert with or [on] behalf of any named defendant in this action" from "implementing and enforcing" the EO "against plaintiff O. Doe, or against any member of La Colaborativa or the Brazilian Worker Center." In the State-Plaintiffs' case, the District Court determined that it was necessary to issue a "universal" preliminary injunction to provide "complete relief" to the State-Plaintiffs. That was so, the District Court determined, because some of the harms identified by the State-Plaintiffs—including the administrative burdens that would flow from barring enforcement of the EO only in the Plaintiff-States, given that people move across state lines—would likely arise unless the EO was barred from being enforced nationwide. This order enjoins substantially the same defendants as the other order.

On February 19, 2025, the Government filed a notice of appeal as to each of the preliminary injunctions. That same day, the Government also filed in the State-Plaintiffs' case a motion in the District Court to stay the

preliminary injunction pending resolution of the appeal. The District Court denied the motion on February 26, 2025.

The following day, the Government filed a stay motion in the State-Plaintiffs' case in this Court. See New Jersey v. Trump, 131 F.4th 27 (1st Cir. 2025). The motion argued that the State-Plaintiffs lacked standing under Article III of the U.S. Constitution, see id. at 35-37, and third-party standing to assert the citizenship rights of others, see id. at 35, 38. The motion also argued that a universal injunction was not necessary to provide complete relief to the State-Plaintiffs. See id. at 42-43. We denied the stay. See id. at 33.

The Government then moved in the Supreme Court for a partial stay pending appeal of the preliminary injunction in the State-Plaintiffs' case, as well as in two out-of-circuit cases in which district courts had issued similar preliminary injunctions. See Trump v. CASA, Inc., 606 U.S. 831, 837-38 (2025).

The Government argued that some of the plaintiffs in this group of cases—including the State-Plaintiffs here—lacked Article III and third-party standing. See id. at 838 n.2. It also argued that each of the district courts—and thus the District Court here—erred in issuing a "universal injunction." Id. at 841.

On June 27, 2025, the Supreme Court held that universal injunctions, insofar as they provide relief to nonparties, "likely exceed the equitable authority that Congress has granted to federal courts." Id. at 837. The Supreme Court explained, however, that "the equitable tradition has long embraced the rule that courts generally 'may administer complete relief between the parties.'" Id. at 851 (quoting Kinney-Coastal Oil Co. v.

Kieffer, 277 U.S. 488, 507 (1928)). It further explained that "the complete-relief inquiry is more complicated" in the State-Plaintiffs' case "because the relevant injunction does not purport to directly benefit nonparties." Id. at 853. Indeed, the Supreme Court noted that in the State-Plaintiffs' case, the District Court had specifically "decided that a universal injunction was necessary to provide the States themselves with complete relief." Id.

After summarizing the competing arguments about whether a universal injunction was necessary to provide "complete relief" to the State-Plaintiffs and noting two alternative and narrower preliminary injunctions that the Government proposed, the Supreme Court declined to take up the "arguments in the first instance." Id. at 854. The Court "le[ft] it to" the "lower courts" to "determine whether a narrower injunction is appropriate." Id. Ultimately, the Court granted the "Government's applications to partially stay the preliminary injunctions . . . , but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue." Id. at 861.

Thereafter, in the State-Plaintiffs' case, the Government moved in our Court to be permitted to provide supplemental briefing as to CASA's effect on the pending appeal. Doe v. Trump, 142 F.4th 109 (1st Cir. 2025). We denied the motion. But, while retaining jurisdiction over the appeal, we "remanded to the District Court for the limited purposes" of "enabling the District Court to consider the bearing, if any, of [the Supreme Court's] guidance in CASA on the scope of the preliminary injunction," "to address any arguments that the parties may advance with respect to what grounds may now be

asserted regarding the injunction's scope," and "to act accordingly." Id. at 112.

On July 25, 2025, the District Court determined that "no workable, narrower alternative to the injunction issued originally would provide complete relief to the" State-Plaintiffs. The District Court therefore "decline[d] to modify [its preliminary] injunction."

On August 1, 2025, we heard oral argument in the appeal of the preliminary injunctions in the Doe-Plaintiffs' and State-Plaintiffs' cases. We also heard oral argument, at that time, in the appeal of a similar preliminary injunction that had been issued by the United States District Court for the District of New Hampshire on February 11, 2025, in favor of three other immigrant-focused nonprofit organizations. See N.H. Indon. Cmty. Support v. Trump, 765 F. Supp. 3d 102 (D.N.H. 2025). That appeal was heard with the appeals in the Doe-Plaintiffs' and State-Plaintiffs' cases.[3] We resolve the appeal in that case in a separate opinion that we also issue today. See N.H. Indon. Cmty. Support v. Trump, No. 25-1346 (1st Cir. Oct. 3, 2025).

II. Standard of Review

To be granted a preliminary injunction, a plaintiff "must establish" that: (1) it is "likely to succeed on the

[3] The District Court for the District of New Hampshire separately issued an order provisionally certifying a class of persons covered by the EO and entered a preliminary injunction barring enforcement of the EO against the class. Barbara v. Trump, No. 25-cv-244, 2025 WL 1904338 (D.N.H. July 10, 2025). No party has suggested that Barbara has any bearing on these appeals. The Government filed a petition for a writ of certiorari before judgment in Barbara in the Supreme Court on September 26, 2025. Pet. for Writ of Cert., Trump v. Barbara, No. 25-365 (U.S. Sept. 26, 2025).

merits"; (2) it is "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [its] favor"; and (4) "an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). We review a grant of a preliminary injunction for abuse of discretion. Ashcroft v. ACLU, 542 U.S. 656, 664 (2004). We review legal determinations de novo and findings of fact for clear error. Becky's Broncos, LLC v. Town of Nantucket, 138 F.4th 73, 77-78 (1st Cir. 2025).

III. Standing

The Government does not question the District Court's ruling that, under Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 327 (2015), the plaintiffs have equitable causes of action to challenge the EO, its enforcement, and its implementation for violating § 1401(a) and the Citizenship Clause. The Government contends, however, that under Article III of the Constitution, which provides that "the judicial Power of the United States" extends to "Cases" and "Controversies," U.S. Const. art. III, § 2, cl. 1, the State-Plaintiffs lack standing to bring these claims. The Government contends that, for this reason alone, the State-Plaintiffs cannot satisfy the "likelihood of success" prong of the test for securing preliminary injunctive relief. We are not persuaded. In addition, we conclude that the other plaintiffs also have shown that they likely have Article III standing. See Roe v. Healey, 78 F.4th 11, 21 n.8 (1st Cir. 2023) (noting federal courts' independent obligation to confirm Article III standing).

A. Legal Framework

To have Article III standing, the plaintiff bears the burden of showing that it has "(1) suffered an injury in

fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016). An organization with individual members may establish Article III standing by satisfying the three elements of such standing based on an "injury in fact" of its own. FDA v. All. for Hippocratic Med., 602 U.S. 367, 393-94 (2024). But such an organization also may establish "associational standing" to sue in a "representational capacity." Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343, 345 (1977); see Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181, 199 (2023). To do so, under the test set forth in Hunt, the organization must show that "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." 432 U.S. at 343.

Because these appeals concern preliminary rather than permanent injunctions, the plaintiffs need only make a clear showing that they are likely to succeed in establishing Article III standing. See Murthy v. Missouri, 603 U.S. 43, 58 (2024). We look at the allegations in the plaintiffs' complaints and the evidence from the preliminary injunction proceedings. See Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist., 969 F.3d 12, 14 (1st Cir. 2020); Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992).

B. The Doe-Plaintiffs' Article III Standing

As for O. Doe's Article III standing, the Government does not challenge the District Court's determination

that she likely has it. Nor do we see how the Government could, given the allegations in O. Doe's complaint that she is "an expectant mother" who "is lawfully present in the country through Temporary Protected Status," the father of her child "is not a U.S. citizen or a [LPR]," and "the EO declares that [her child] will not be [a U.S.] citizen[] and instructs federal agencies like Defendants DOS and SSA to refuse to recognize [her child] as such, including by denying [the child a] passport[] and Social Security number[] and card[]." See CASA, 606 U.S. at 838 n.2; see also Doe v. Israel, 482 F.2d 156, 158 (1st Cir. 1973) ("[T]he necessarily short duration of a pregnancy does not, in normal circumstances, create mootness when pregnancy ceases.").

We also agree with the District Court that the two organizations in the Doe-Plaintiffs' case likely have associational standing under Hunt. Each has shown that it has members who "would otherwise have standing to sue in their own right," Hunt, 432 U.S. at 343, by identifying individual members who are pregnant or expecting to become pregnant and whose children, under the EO, would be denied passports and social security numbers (SSNs) through the Enumeration at Birth (EAB) program.[4] See All. for Hippocratic Med., 602 U.S. at

[4] The EAB program enables parents of children born in the United States to apply for SSNs for their children based on their birth certificates, seemingly because "U.S. born children are generally considered to be U.S. citizens and as such, are eligible for SSNs [through the EAB program] without regard to the parents' immigration status." Soc. Sec. Admin., State Processing Guidelines for Enumeration at Birth 5 (2024), https://perma.cc/2JFA-9QLM; see also Soc. Sec. Admin., Pub. No. 05-10023, Social Security Numbers for Children (2024), https://perma.cc/WG9B-K5BD.

381 ("An injury in fact can be a physical injury, a monetary injury, an injury to one's property, or an injury to one's constitutional rights, to take just a few common examples."). Indeed, the Government does not argue otherwise, nor do we see how it could. See CASA, 606 U.S. at 838 n.2 ("The Government does not dispute—nor could it—that the individual plaintiffs have standing to sue.").[5]

In addition, the organizations' § 1401(a) and Citizenship Clause claims relate directly to the organizations' immigrant-focused purposes and work, and so "seek[] to protect" interests "germane" to the organizations' purposes. Hunt, 432 U.S. at 343. The claims also do not, in their nature, require individualized proof. See id. at 344.

C. State-Plaintiffs' Article III Standing

In ruling that the State-Plaintiffs likely have Article III standing, the District Court determined that the State-Plaintiffs had shown that the EO, through its enforcement and implementation, ensures that the children that it covers are denied eligibility for certain federal programs that the State-Plaintiffs administer through agreements with the federal government. The District Court further determined that, because these are programs through which the State-Plaintiffs provide services to United States citizens for which the federal government pays them, the EO's enforcement and im-

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[5] The Government does not dispute the premise of the plaintiffs' claims against the Secretary of DOS and the Commissioner of SSA that the laws governing eligibility to obtain a passport or an SSN through the EAB program do not permit persons to be denied such documents if, under § 1401(a) or the Citizenship Clause, those persons are United States citizens.

plementation would "directly" cause the State-Plaintiffs to lose federal funds that they would otherwise be entitled to receive. The programs at issue are the EAB program, Medicaid, Children's Health Insurance Program (CHIP), special needs education programs under the Individuals with Disabilities in Education Act (IDEA), and child welfare services funded by Title IV-E of the Social Security Act.

The District Court relied in its ruling, in part, on Biden v. Nebraska, 600 U.S. 477 (2023). There, a group of states challenged the Executive Branch's decision to discharge the federal student loan obligations of many borrowers. Id. at 487-90. One of those states, Missouri, premised its Article III standing on a contract that the Missouri Higher Education Loan Authority (MOHELA)—a nonprofit government corporation of the state of Missouri—had with the U.S. Department of Education (DOE) to service federal student loans. Id.

The Court explained that, under MOHELA's contract with DOE, MOHELA received from the federal government "an administrative fee for each of the five million [student loan] accounts it services," yielding it roughly $89 million in revenue in 2022. Id. at 489-90. The Court further explained that the Executive Branch's challenged action would result in the complete discharge of all loans for "roughly half of all federal borrowers," and that because MOHELA "could no longer service those closed accounts," MOHELA stood to lose around $44 million in administrative fees from the federal government each year. Id. at 490. The Court then held that this "financial harm [was] an injury in fact directly traceable to the [challenged Executive Branch action]" and thus sufficed to give Missouri, given its re-

lation to MOHELA, standing under Article III. Id. at 490-92, 494.[6]

In its most sweeping challenge to the State-Plaintiffs' Article III standing, the Government relies on a footnote in United States v. Texas, 599 U.S. 670 (2023). It argues that, in that footnote, the Court established that "indirect effects on state revenues or state spending" arising from a challenged federal action—there, the allegedly unlawful refusal by the Executive Branch to enforce immigration laws against persons within the plaintiffs' states—cannot suffice to secure Article III standing. (Citing id. at 680 n.3.) The Government goes on to contend that the State-Plaintiffs' alleged loss of federal funds is the kind of "indirect" pocketbook injury

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[6] We do not address whether the State-Plaintiffs also likely have Article III standing based on various additional administrative costs that they would incur to, among other things, determine eligibility for the federally funded programs, train staff, and revise guidance. As to the EAB program in particular, the State-Plaintiffs contended below that they would "face increased administrative burdens trying to secure SSNs for newborn children through the EAB program," because "state facilities will no longer be able to count on the fact of the child's birth at their facility" as evidence that the child will qualify for an SSN and so "will incur new costs to verify [the child's] parents' immigration statuses." We note that the District Court observed that, although the State-Plaintiffs had not advanced the theory in any of their submissions to the District Court at that time, they "also probably have standing based on their sovereign interests." The District Court explained that the Citizenship Clause "defines which individuals become birthright citizens . . . of the state in which they reside . . . . [and] [s]tates have general sovereign interests in which persons are their citizens." It then noted that states "very likely also have sovereign interests in which persons are U.S. citizens, as state laws commonly define civic obligations such as jury service using eligibility criteria that include U.S. citizenship."

that Texas deemed insufficient to secure Article III standing. See id.

We do not see how Texas undermines the State-Plaintiffs' Article III standing. The State-Plaintiffs premise that standing on their loss of federal funds to which they would be entitled under various federal programs, not state funds that they would have to expend to cover the costs imposed on them by an allegedly unlawful failure to enforce federal law. See id.

The Government's related contention, based on Florida v. Mellon, 273 U.S. 12 (1927), is also unpersuasive. That precedent does not speak to whether a plaintiff's loss of federal funding to which it is otherwise entitled, resulting directly from a challenged federal action, suffices to secure Article III standing. See id. As the Government acknowledges, Mellon merely rejected a state's claim that it "had standing to challenge federal policy on the basis that [the federal policy] 'induc[ed] potential taxpayers to withdraw property' and thereby diminished the State's tax base, explaining that such harms are 'purely speculative, and, at most, only remote and indirect.'" (Quoting id. at 17-18.)

The Government separately argues that Nebraska does not apply because the "direct link between the challenged federal funding and the action[s] at issue [in that case] is distinct from the attenuated relationship here." We are not convinced.

To the extent that the Government means to argue that the State-Plaintiffs' loss of EAB funds is a less "direct injury" than MOHELA's loss of administrative fees, we cannot see why that would be so. In the preliminary injunction proceedings, the Government did not dispute—and in fact expressly agreed—that the EO

would cause the State-Plaintiffs to lose out on fees under the EAB program precisely because the EO directs that SSNs not be issued under that program to children that the EO covers.[7]

As to the alleged loss of federal funds under Medicaid, CHIP, special needs education programs under IDEA, and child welfare services funded by Title IV-E of the Social Security Act, the Government argues as follows. It does not dispute that the children that the EO describes would be eligible for those programs if they were recognized as United States citizens. See 8 U.S.C. § 1611 (stating that non-qualified aliens as defined under § 1641 are "not eligible for any Federal public benefit"); 42 U.S.C. § 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"). But it contends that, insofar as these children will no longer qualify for Medicaid and CHIP after the EO takes effect, the State-Plaintiffs will be relieved of their obliga-

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[7] The State-Plaintiffs filed a notice of supplemental authority in this Court during the pendency of this appeal that included SSA's guidance on how it intended to implement the EO with respect to the EAB program. The guidance states that, even after the EO was implemented, SSA would "[c]ontinue to receive the data files from the States as [it does] today and reimburse states for records received." (Emphasis added.) It is not evident that this new guidance has any bearing on the preliminary injunction itself, as the Government has not sought to modify the preliminary injunction based on it. But, in any event, SSA's guidance states that, upon receipt of an EAB application, SSA will conduct an inquiry into the citizenship or immigration status of the applicant's parents, thereby evidently making it futile to seek an SSN through the program for a child that the EO covers if the EO is enforced. The Government does not explain why that would not be the case.

tion to provide any Medicaid or CHIP services to these children. It then goes on to argue that "the net effect of the federal action is not an injury when, for example, the reduced obligation on the States to provide care under Medicaid is larger than the reduction in federal reimbursement."[8]

This argument appears to have no bite, however, as to the "early-intervention and special-education services to certain children, including infants and toddlers" under IDEA. 20 U.S.C. §§ 1400(d)(1)(A), (C)(2); 1412(a)(1)(C); 1433. The State-Plaintiffs maintain that they "must provide" those services regardless of a child's immigration status, and the State-Plaintiffs submitted declarations to that effect. Moreover, IDEA does not suggest otherwise on its face, see, e.g., 20 U.S.C. § 1433, and the Government develops no argument that the State-Plaintiffs are not obliged under IDEA to provide the services in question.

More fundamentally, the Government's response fails to grapple with the fact that, as in Nebraska, the challenged governmental action—here, the EO's implementation and enforcement—is alleged to result in the plaintiffs losing out on federal funds by dispensing with their need to carry out their agreement to provide a fed-

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[8] The Government does not dispute the premise of the State-Plaintiffs' claims that, insofar as the EO would bar a child whom the EO covers from receiving federally funded assistance under the programs at issue, then the EO would be unlawful if either § 1401(a) or the Citizenship Clause secures birthright citizenship to the children that the EO describes. For, here too, the Government does not suggest that the laws governing eligibility for these programs permit persons to be denied assistance if they are United States citizens under that constitutional or federal statutory provision.

erally reimbursable service. See 600 U.S. at 490, 494. Indeed, in Singleton v. Wulff, the Court held that "there [was] no doubt" physicians who alleged that "they have performed and will continue to perform operations for which they would be reimbursed under the Medicaid program, were it not for the [challenged] limitation of reimbursable abortions to those that are 'medically indicated,'" had alleged "concrete injury from the operation of the challenged statute." 428 U.S. 106, 112-13 (1976). And nothing in Nebraska, 600 U.S. 477, or Singleton, 428 U.S. 106, indicates that, for there to be injury in fact, the lost federal payment must have been for an amount that would have exceeded (or even equaled) the costs incurred by the plaintiff in providing the federally reimbursable service.

Of course, the alleged loss of federal funds must be fairly traceable to the EO. See Spokeo, 578 U.S. at 338. But, insofar as the Government now means to dispute whether the loss of federal funds is so traceable, we note that at the hearing on the motion for preliminary injunction in the State-Plaintiffs' case, the Government confirmed that it shared the State-Plaintiffs' view, which was that the Government did not "dispute that . . . federal funding will be lost."[9]

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[9] The District Court asked the Government's counsel whether "what follows from the [EO] is that Doe's child is not a citizen under the [EO]." The Government's counsel answered, "Yes." The District Court then asked the Government's counsel to confirm its understanding that the State-Plaintiffs, in establishing their Article III standing, "point to . . . various monies they get based on people being citizens." The Government's counsel responded, "Yes." The District Court next asked whether it was true that the State-Plaintiffs would not get "the money they would [otherwise] get for [rendering services to a child covered by the EO] . . . if

It should have come as no surprise to the Government, then, that the District Court explained, with respect to the directness of the link between the EO and the loss of the federal funds, that

> [State-Plaintiffs] receive federal funding to cover portions of services like health insurance, special education, and foster care in amounts that depend on how many "eligible" children receive such services. Citizenship is one component of eligibility for purposes of these programs. Pursuant to the EO, fewer children will be recognized as citizens at birth. That means the number of persons receiving services who are "eligible" under the identified federal programs will fall—and, as a direct result, the reimbursements and grants the [State-Plaintiffs] receive for these services will decrease.

At oral argument in our Court, the Government did assert that the EO "says nothing about who is or is not eligible for federal benefits," and, thus, that the State-Plaintiffs' claimed injuries are not "traceable to the EO itself." But the fact that the EO does not expressly mandate the result that the State-Plaintiffs allege is not inconsistent with the Government's concession below that the loss of federal funds would result from the EO's enforcement and implementation.

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the executive order is in place." The Government's counsel again answered, "Yes." Finally, the District Court expressly attempted to confirm that the Government did not "dispute[]" the State-Plaintiffs' claim that—as a result of the EO—they would not receive certain federal reimbursements for services rendered to the children at issue. The Government's counsel so confirmed and also "conceded" as a "fact" that the State-Plaintiffs "will lose that money."

That concession also lines up with both the EO's "purpose" section—that "the privilege of United States citizenship does not automatically extend to" the children in question—and the EO's enforcement directive—that "[t]he heads of all executive departments and agencies shall issue public guidance within 30 days of the [EO] regarding [the EO's] implementation with respect to their operations and activities." 90 Fed. Reg. at 8449-50, §§ 1, 3(b). That concession also aligns with the State-Plaintiffs' allegations and declarations.

For these reasons, we cannot conclude that the District Court clearly erred in finding—given the Government's concession about how its own actions would unfold under the EO—that the claimed loss of federal funds likely will be a direct result of the EO's enforcement and implementation as in Nebraska, 600 U.S. at 490, 494, rather than an indirect one as in Texas, 599 U.S. at 680 n.3. See Dep't of Com. v. New York, 588 U.S. 752, 767 (2019) (applying clear error review to district court's findings regarding the likely "result" of challenged government conduct and that such conduct would "lead to many of [the plaintiffs'] asserted injuries"); United States v. Gates, 709 F.3d 58, 63 (1st Cir. 2013) ("[A] party cannot concede an issue in the district court and later, on appeal, attempt to repudiate that concession and resurrect the issue."); Nebraska, 600 U.S. at 490 ("This financial harm is an injury in fact directly traceable to the Secretary's plan, as . . . the Government . . . concede[s]."). We therefore conclude that the State-Plaintiffs are likely to succeed in

showing that they have Article III standing as to their claims.[10]

D. State-Plaintiffs and Third-Party Standing

The Government's remaining objection concerning "standing" is different. It relates to whether, even if the State-Plaintiffs have Article III standing to assert their own rights, they lack standing to "assert individual-rights claims of their residents"—and thus to assert the rights under the Citizenship Clause and § 1401(a) of the children that the EO covers. The District Court quite reasonably understood the Government, in pressing this contention, to be arguing only that the State-Plaintiffs could not rely on a parens patriae theory to support their standing to assert the claims at issue. The Government's opposition to the motion for preliminary injunction invited precisely that understanding.

On appeal, the Government now appears to agree that the District Court correctly determined that the State-Plaintiffs are not directly relying on a parens patriae theory. After all, the State-Plaintiffs are claiming their own Article III injuries in asserting their standing to bring the claims at issue, not Article III injuries only to their residents.

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[10] Given the roles that DOS and DHS play in issuing documents—passports and citizenship cards, respectively—that can be proof of eligibility for programs implicated by the State-Plaintiffs' claims, see, e.g., 42 U.S.C. §§ 1396b(x)(3)(A), 1397ee(c)(9)(A), we see no reason to question the District Court's Article III-standing ruling as to the State-Plaintiffs' claims against the Secretary of DOS or the Secretary of DHS. We note, too, that the Government does not itself question the District Court's ruling as to the State-Plaintiffs' Article III standing with respect to those claims apart from its challenges to Article III standing that we have addressed.

Nonetheless, the Government advances the seemingly distinct contention—not clearly advanced in any of the proceedings below—that the State-Plaintiffs still lack "standing" because they are making a "'thinly veiled attempt to circumvent the limits on parens patriae standing,' [Haaland v.] Brackeen, 599 U.S. [255, 295 n.11 (2023)], by asserting derivative injuries from the alleged violations of individuals' rights." Ordinarily, of course, arguments may not be advanced for the first time on appeal. See Eldridge v. Gordon Bros. Grp., 863 F.3d 66, 85 (1st Cir. 2017). But even if we were to assume that the "circumvention" argument relates to our Article III jurisdiction (and so may not be waived) or was sufficiently raised below, it fails.

Neither Brackeen, 599 U.S. at 295 n.11, nor Murthy, 603 U.S. at 75-76, supports the argument. In each of those cases, the State-Plaintiffs had no Article III injury of their own. The Court therefore had no occasion in either case to address when, if ever, a state that has been injured in fact may be barred from asserting a claim on the ground that it is effectively asserting a parens patriae theory. The same is true of South Carolina v. Katzenbach, which addressed the assertion by a state of its rights under the Due Process Clause of the Fifth Amendment and the Bill of Attainder Clause of Article I, not the standing of a state to assert the rights of third parties in seeking redress for its own injury in fact. See 383 U.S. 301, 323-24 (1966).

That leaves only the Government's contention that, independent of its concerns about the State-Plaintiffs circumventing limits on parens patriae standing, they are barred from bringing their claims by generally applicable prudential limits on third-party standing. The

District Court, again understandably, did not perceive the Government to be making this argument in opposing the motion for preliminary injunction, given how the argument was framed at that time. Nor was it made in the Government's stay motion to the District Court in any clear way, given that the argument was framed in a way that tied it to limits on parens patriae standing. As best we can tell, it first appeared in a clearly recognizable form in the Government's motion to our Court to stay the preliminary injunction pending this appeal. For that reason, we are being asked to address this argument even though it was not presented or passed upon below.

On this basis alone, there is reason to reject the argument. B & T Masonry Constr. Co. v. Pub. Serv. Mut. Ins. Co., 382 F.3d 36, 40-41 (1st Cir. 2004) ("[L]egal theories not raised squarely in the lower court cannot be broached for the first time on appeal." (quoting Teamsters Union v. Superline Transp. Co., 953 F.2d 17, 21 (1st Cir. 1992))). True, the argument concerns "standing." But it concerns a prudential form of it that does not implicate the three elements of Article III standing and so is waivable. See June Med. Servs. L.L.C. v. Russo, 591 U.S. 299, 316-17 (2020) (plurality opinion); id. at 354 n.4 (Roberts, C.J., concurring in the judgment) (agreeing "[f]or the reasons the plurality explains" that the plaintiffs "have standing to assert the constitutional rights of their patients"); Craig v. Boren, 429 U.S. 190, 193 (1976); cf. Mata v. Lynch, 576 U.S. 143, 150 (2015) ("[W]hen a federal court has jurisdiction, it also has a 'virtually unflagging obligation . . . to exercise' that authority." (second alteration in original) (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976))).

In any event, we also must reject the argument on the independent ground that we see no basis for crediting it on the record as it exists at this stage of the litigation. As the State-Plaintiffs point out, the Citizenship Clause determines more than whether a person is a citizen of the United States at the time of their birth. It also determines whether that person is a citizen of the state in which they reside. U.S. Const. amend. XIV, § 1. Thus, unlike all the cases that the Government relies on in pressing this third-party standing argument, this is hardly a case in which the plaintiff is seeking to litigate a dispute over a constitutional provision that concerns only the interests of third parties.

In addition, the State-Plaintiffs allege that the EO operates directly against them by preventing them from demonstrating that the children covered by the EO are eligible for the federal programs at issue. The State-Plaintiffs therefore contend that, unlike the case on which the Government primarily relies, Kowalski v. Tesmer, this is a case in which "enforcement of the challenged restriction against the litigant would result indirectly in the violation of third parties' rights." 543 U.S. 125, 131 (2004) (quoting Warth v. Seldin, 422 U.S. 490, 510 (1975)).

The Government disputes that point. But it fails to meaningfully dispute that the EO directs Executive Branch officials not to deem the children that the EO covers as United States citizens at birth. In fact, this effect of the EO is the premise of the Government's concession in the preliminary injunction proceedings that the State-Plaintiffs would lose federal funding if the EO went into effect.

Thus, because those federal programs require the State-Plaintiffs to verify the eligibility of those that they serve under those programs, see, e.g., 42 U.S.C. § 1396a(a)(5), the EO does directly operate against the State-Plaintiffs by precluding the State-Plaintiffs from verifying the children's program eligibility based on their being citizens of this country because they were born here. In so doing, the EO, through its enforcement and implementation, prevents the State-Plaintiffs from extending federally reimbursable services to children covered by the EO who would otherwise be entitled to them. See Dep't of Lab. v. Triplett, 494 U.S. 715, 720 (1990) (holding that third-party standing exists when "enforcement of a restriction against the litigant prevents a third party from entering into a relationship with the litigant . . . to which relationship the third party has a legal entitlement").

By contrast, in Kowalski, the challenged governmental action would not similarly have prevented the litigant from entering into a relationship with a third party "to which relationship the third party has a legal entitlement," Triplett, 494 U.S. at 720. In that case, there was no guarantee that the litigant (an attorney) would have been appointed to represent the rights-bearing third parties (unidentified indigent defendants) even if the challenged governmental measure were struck down. See Kowalski, 543 U.S. at 127-28, 131.

The Government separately argues that the "enforcement against the litigant" basis for asserting third-party standing has no application here because the EO imposes no "sanctions" on the State-Plaintiffs. But a challenged regulation does not need to carry the threat of punishment to sufficiently influence a litigant's be-

havior to the detriment of a third party's rights, such that the litigant may assert those rights in seeking redress for its own injury in fact. See Triplett, 494 U.S. at 720.

In sum, the limitation on third-party standing "assumes that the party with the right has the appropriate incentive to challenge (or not challenge) governmental action." Kowalski, 543 U.S. at 129. At least as the record reveals thus far, this is not a case in which the rationale for the limitation on third-party standing—"to minimize unwarranted intervention into controversies where the applicable constitutional questions are ill-defined and speculative," Craig, 429 U.S. at 193—would apply, see Kozera v. Spirito, 723 F.2d 1003, 1006 (1st Cir. 1983).

IV. § 1401(a), the Citizenship Clause, and Wong Kim Ark

We are now, at last, positioned to take up the Government's challenges to the merits of the plaintiffs' allegations that the EO's enforcement and implementation will unlawfully deny birthright citizenship to the children that the EO describes. Here, the plaintiffs invoke the guarantee of birthright citizenship secured by 8 U.S.C. § 1401(a) and by the Citizenship Clause of the Fourteenth Amendment.

The plaintiffs contend, of course, that they are likely to succeed on the merits of their allegations based on these two provisions. They acknowledge, though, that neither § 1401(a) nor the Citizenship Clause guarantees birthright citizenship to all persons born here. They recognize that these provisions guarantee such citizenship only to those born "in the United States" while they are "subject to the jurisdiction thereof." (Quoting U.S. Const. amend. XIV, § 1; § 1401(a).)

Thus, because all the children that the EO covers are "born . . . in the United States,"[11] the dispute over the merits of the plaintiffs' claims depends, at bottom, on whether the children are "subject to the jurisdiction" of the United States at the time of their birth. We con-

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[11] The Government appears to suggest otherwise based on Kaplan v. Tod, 267 U.S. 228, 230 (1925); United States v. Ju Toy, 198 U.S. 253, 263 (1905); Nishimura Ekiu v. United States, 142 U.S. 651, 661 (1892); and a law review note, Note, The Nationality Act of 1940, 54 Harv. L. Rev. 860, 861 n.8 (1941). But the Government waived this argument by making it for the first time in its reply brief. See United States v. Coviello, 225 F.3d 54, 70 n.10 (1st Cir. 2000). In any event, given the specific facts of those cases, they do not establish that a person born within the territory of the United States is not born "in the United States" within the meaning of the Citizenship Clause just because, at the time of the person's birth, the father was not an LPR or U.S. citizen and the mother was here unlawfully or temporarily. See Kaplan, 267 U.S. at 229 (noting that "[t]he appellant was born in Russia," was brought to the U.S., "was ordered to be excluded" and then "was kept at Ellis Island . . . . until she could be deported safely"); Ju Toy, 198 U.S. at 258, 260 ("[T]he appellee [was] a person of Chinese descent being held for return to China by the steamship company which recently brought him therefrom to a port of the United States, and who . . . was . . . denied admission . . . ."); Nishimura Ekiu, 142 U.S. at 652 ("[A] female subject of the emperor of Japan [was] restrained of her liberty and detained at San Francisco upon the ground that she should not be permitted to land in the United States."). These cases also do not interpret the Citizenship Clause or § 1401(a). See Kaplan, 267 U.S. at 230-31 (affirming a warrant of deportation under various immigration laws that have since been amended, including the "Act of March 26, 1910"); Ju Toy, 198 U.S. at 261-63 (upholding a dismissal of a habeas petition after interpreting Congress's authority over immigration affairs, an 1894 Act, and the Fifth Amendment); Nishimura Ekiu, 142 U.S. at 660-63 (affirming an appellate court order after interpreting "[t]he immigration act of August 3, 1882," "the act of March 3, 1891," and the Appointments Clause).

clude that this dispute clearly must be resolved in favor of the plaintiffs and, therefore, that they clearly are likely to succeed on the merits of their § 1401(a) and Citizenship Clause claims. To explain why, though, it first helps to sketch the parties' basic positions as to the meaning of the key phrase—"subject to the jurisdiction thereof."

A. The Plaintiffs' View

The plaintiffs argue that both in 1952, when § 1401(a) was enacted, and in 1868, when the Citizenship Clause was ratified, the phrase "subject to the jurisdiction thereof" was understood to codify Founding-era understandings of who becomes a United States citizen upon being born here. Those understandings, according to the plaintiffs, were drawn from the "jus soli" principle of the English common law. In contrast to the "jus sanguinis" principle that prevailed in some other countries, the jus soli principle makes birth on the country's soil—rather than birth to a parent with certain ties to that country—the determining factor of nationality. (Quoting Wong Kim Ark, 169 U.S. at 667.)

The plaintiffs acknowledge that this ancient jus soli principle was not absolute. For centuries, English common law deemed those born on English soil to be English subjects at birth only if, at the time of their birth, they were "within the allegiance . . . of the king." (Quoting id. at 655.) But, the plaintiffs assert, it was thought that such allegiance "attached automatically to anyone . . . 'within the kingdom'" so long as the person was "within the jurisdiction[] of the king." (Quoting id.)

The plaintiffs emphasize that the circumstances in which a person born in English territory was not subject

to the Crown's "jurisdiction"—or, as the plaintiffs describe it, "complete authority"—were few and far between. Those circumstances existed only when, notwithstanding the sovereign's otherwise complete and "exclusive sovereign authority" over those within its territory, a person had some kind of immunity or exemption from that authority. And that limitation on the Crown's authority was understood to exist, as to a person born on English soil, at the time of that person's birth, only as to the child born to the family of a foreign ambassador, minister, or consul; to an alien enemy hostilely occupying English territory; or on a foreign public ship. In all other cases, the plaintiffs contend, "allegiance" was "conferred automatically by birth within the sovereign's territory," such that a person born in England was an English subject by that fact alone.

The plaintiffs do acknowledge that one additional limitation on the jus soli principle had been recognized in the United States by 1868. This limitation followed from the quasi-sovereign status of Native American tribes and the accompanying partial waiver of complete authority over tribal members that the United States had made in recognizing their exemption from some generally applicable laws. (Citing Elk v. Wilkins, 112 U.S. 94, 99-100 (1884) (describing Indian tribes as "exempt from taxation by treaty or statute" and noting the default rule that "[g]eneral acts of congress did not apply to Indians").) Thus, the plaintiffs do not dispute that it was understood by 1868 that tribal members were not themselves "subject to the jurisdiction" of the United States any more than were those persons in the classes long thought under English common law to fall outside the jus soli principle.

Based on this historical account of the phrase "subject to the jurisdiction thereof," the plaintiffs contend that they are likely to succeed on the merits of their § 1401(a) and Citizenship Clause claims. After all, the EO does not cover only children who are born members of Native American tribes or who are in any of the circumstances historically excepted from the jus soli principle. And, the plaintiffs contend, the words of the Clause, including the critical phrase "subject to the jurisdiction thereof," easily bear the construction that the plaintiffs contend they were understood to have in 1868.

The plaintiffs add that, if there were any reason to doubt their historically rooted account of that critical phrase's meaning, the Supreme Court's 1898 decision in Wong Kim Ark makes it clear that they are likely to succeed in showing that the children that the EO covers are "subject to the jurisdiction" of the United States at birth. They contend that Wong Kim Ark interpreted the phrase "subject to the jurisdiction thereof" in the Citizenship Clause to track English common law, save for the additional limitation pertaining to Native Americans described above. They thus maintain that, as a matter of binding Supreme Court precedent, the EO violates the Citizenship Clause.

All that said, the plaintiffs separately contend that, no matter how we might now read Wong Kim Ark to have construed the Citizenship Clause or how we might understand the history up to 1868, we must construe § 1401(a) as it was understood when it was passed in 1952. (Quoting United States v. Kozminski, 487 U.S. 931, 944-45 (1988) ("We draw no conclusions from this historical survey about the potential scope of the Thirteenth Amendment," but instead look to "the under-

standing of the Thirteenth Amendment that prevailed at the time of [the relevant statute's] enactment.").) The plaintiffs argue that the relevant materials demonstrate that, as of 1952, § 1401(a)'s words were understood to guarantee birthright citizenship in the broad manner that the plaintiffs contend that those words guarantee it. Section 1401(a), the plaintiffs argue, therefore guarantees birthright citizenship to the children that the EO describes even if the Government is right about what the Supreme Court decided (or did not decide) in Wong Kim Ark.

B. The Government's View

The Government responds that neither the Citizenship Clause nor § 1401(a) imported the English common law jus soli principle into American law. The plaintiffs' contrary view, the Government argues, wrongly equates "jurisdiction" with the mere "power to regulate." The Government therefore contends that the plaintiffs' view impermissibly renders the Citizenship Clause's inclusion of the phrase referencing "jurisdiction" redundant, given that the United States's "regulatory power extends to all persons born on U.S. soil."

In the Government's view, as of 1868, a person was understood to be "subject to the jurisdiction" of the United States only if the person owed the United States "primary allegiance." It explains that this "primary allegiance" view is the same as that adopted by the Supreme Court in Elk. The Government relies on the Court there having stated that "subject to the jurisdiction thereof" means "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance." (Quoting

Elk, 112 U.S. at 102.) And, the Government argues, a person was understood to be "'completely subject' to the [United States's] 'political jurisdiction'" only if they were a U.S. citizen or if they were domiciled in the United States.

Thus, in the Government's view, a child born in the United States to a noncitizen mother who is here only temporarily or unlawfully is not "subject to the jurisdiction" of the United States when their father is a noncitizen who is not himself an LPR. That is because, the Government argues, one must be physically present here both lawfully and while having "an intent to remain indefinitely" to be domiciled in the United States.

The Government also asserts that Wong Kim Ark comports with this understanding. As the Government sees it, the Supreme Court held there only that a child born to a noncitizen parent domiciled in this country is, when born, "subject to the jurisdiction" of the United States. In fact, the Government at times even suggests that Wong Kim Ark must be read to hold that children of noncitizen parents are citizens of this country only if their mother is so domiciled. So, on this view, Wong Kim Ark does not reject—and may even endorse—the domicile-based limitation on the scope of the birthright citizenship guarantee.

Even so, the Government recognizes that we cannot interpret "subject to the jurisdiction thereof" to contradict the Supreme Court's own interpretation of those words. The Government thus does not dispute that, if Wong Kim Ark construed those words as the plaintiffs argue that we must construe them, then its challenge to the merits of the plaintiffs' Citizenship Clause claims necessarily fails. Nor does the Government appear to

dispute that, in such case, its merits-based challenge to the plaintiffs' § 1401(a) claims also fails.

C. Analysis

Against this backdrop, we first zero in on the plaintiffs' contention that their § 1401(a) claims are likely to succeed on the merits even if the Government's view of what Wong Kim Ark decided were correct. Because the plaintiffs are clearly right on this score, we agree that they are likely to succeed for this reason alone on the merits of their § 1401(a) claims. But, as we also will explain, we conclude that Wong Kim Ark construed the Citizenship Clause just as the plaintiffs contend that it did. And so, in the end, we conclude that the plaintiffs are likely to succeed on the merits of their claims three times over—first, in showing that the children that the EO describes are entitled to birthright citizenship under § 1401(a) even if Wong Kim Ark must be read as the Government urges us to read it; second, in showing that those children are entitled to birthright citizenship under that federal statutory provision because Wong Kim Ark may not be so read; and third, in showing that, for the very same reason, those children are entitled to birthright citizenship under the Citizenship Clause itself.

1. § 1401(a)

Section 1401(a) was enacted as part of the Immigration and Nationality Act (INA) in 1952. It provides, in relevant part: "a person born in the United States, and subject to the jurisdiction thereof" is a citizen of this country. 8 U.S.C. § 1401(a).

As a general matter, we treat a statute's words, unless otherwise defined, "as taking their ordinary, con-

temporary, common meaning . . . at the time Congress enacted the statute." Wis. Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018) (alteration in original) (quoting Perrin v. United States, 444 U.S. 37, 42 (1979)). There is a question, though, about whether we should follow that approach in interpreting § 1401(a).

In referring to "person[s] born in the United States, and subject to the jurisdiction thereof," § 1401(a) borrows from the Citizenship Clause of the Fourteenth Amendment. And, in general, "[w]here Congress employs a term of art 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" George v. McDonough, 596 U.S. 740, 746 (2022) (citation modified) (quoting Taggart v. Lorenzen, 587 U.S. 554, 560 (2019)).

Thus, we can see how the old-soil principle might be thought to suggest that what matters in construing § 1401(a) is what the phrase "subject to the jurisdiction thereof" was understood to mean at the time the Citizenship Clause became law in 1868. See id. at 753 ("The point of the old-soil principle is that 'when Congress employs a term of art,' that usage itself suffices to 'adop[t] the cluster of ideas that were attached to each borrowed word' in the absence of indication to the contrary." (alteration in original) (quoting FAA v. Cooper, 566 U.S. 284, 292 (2012))). The old-soil principle, however, is a tool for interpreting statutes, not abstractions. So, even under that principle, "[t]he real question is not what might be" the meaning of the phrase "in the abstract, but what the prevailing understanding" of this phrase was when "Congress . . . codif[ied] it." Id. at 741 (emphasis added); see also Sekhar v. United States, 570 U.S. 729, 735 (2013) (looking to the understanding "[a]t the time of the borrowing").

Consistent with this understanding, the Supreme Court in United States v. Kozminski followed this time-of-enactment approach in interpreting unusual words in another statute that borrowed them directly from an amendment to the U.S. Constitution. See 487 U.S. at 945 ("In the absence of any contrary indications, [it] . . . give[s] effect to congressional intent by construing 'involuntary servitude' in a way consistent with the understanding of the Thirteenth Amendment that prevailed at the time of [the statute's] enactment." (emphasis added)); cf. Dir., Off. of Workers' Comp. Programs, Dep't of Lab. v. Greenwich Collieries, 512 U.S. 267, 272, 275 (1994) ("We interpret Congress'[s] use of the term . . . in light of th[e] history, and presume Congress intended the phrase to have the meaning generally accepted in the legal community at the time of enactment."). At oral argument, the Government—seemingly for the first time—tried to distinguish Kozminski on the ground that the federal statute there was implementing legislation, under the Thirteenth Amendment, that imposed criminal penalties. We are not persuaded.

Even if this argument for distinguishing Kozminski is preserved, cf. Sparkle Hill, Inc. v. Interstate Mat Corp., 788 F.3d 25, 29 (1st Cir. 2015), Kozminski did not rely for its time-of-enactment focus on those features of the statute, 487 U.S. at 945-48. Moreover, § 1401(a) itself seeks to implement a constitutional provision in guaranteeing at least the constitutional minimum that the Citizenship Clause secures. And, although § 1401(a) does not define a crime, it defines who is protected from, among other things, being removed from this country. Cf. Sessions v. Dimaya, 584 U.S. 148, 156-57 (2018) (noting that the "most exacting vagueness standard" typi-

cally reserved for criminal cases applies to removal cases given the "grave" and "drastic" nature of deportation (quoting Jordan v. De George, 341 U.S. 223, 231 (1951))). Finally, the statutory scheme reflects an intent to extend citizenship beyond the constitutional floor. See, e.g., 8 U.S.C. § 1401(b) (extending citizenship to "person[s] born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe"). We therefore see no reason to conclude that Congress meant to hold § 1401(a) hostage to future interpretations of the Citizenship Clause that would narrow its scope from the scope that it was understood to have in 1952.

What matters in construing § 1401(a), then, is what the unusual phrase "subject to the jurisdiction thereof" was understood to mean when § 1401(a) became law in 1952. That said, there is every indication that the phrase was understood to have the same meaning at that time that it had when it appeared twelve years before in the Nationality Act of 1940, ch. 876, § 201, 54 Stat. 1137, 1138 (1940). We therefore begin by reviewing the understanding of the phrase that prevailed in 1940 before then considering the import of Congress's recodification of the phrase in enacting § 1401(a) as part of the INA in 1952. See Kozminski, 487 U.S. at 945-46; id. at 948 (using "legislative history" to help determine the prevailing understanding of "the scope of [a] constitutional provision at the time [a federal statute] was enacted" given that "Congress chose to use . . . language" from that constitutional provision in the statute); cf. Greenwich Collieries, 512 U.S. at 276 (determining that "Congress indicated that it shared [a] settled understanding" of a term of art in the APA).

a. The 1940 Precursor to § 1401(a)

The Nationality Act of 1940 was the product of years of work by an interagency group that President Franklin Roosevelt first convened in 1933 to "review the nationality laws of the United States," "recommend revisions" to those laws, and "codify those laws [and their recommendations] into one comprehensive nationality law for submission to the Congress." Exec. Order No. 6115, "Revision and Codification of the Nationality Laws of the United States" (Apr. 25, 1933). The committee was comprised of thirteen representatives from DOS, the U.S. Department of Labor, and the U.S. Department of Justice (DOJ), who were appointed by their respective agency heads at the direction of the President. See To Revise and Codify the Nationality Laws of the United Sates into a Comprehensive Nationality Code: Hearings on H.R. 6127 Superseded by H.R. 9980 Before the H. Comm. on Immig. & Naturalization, 76th Cong. 407 (Comm. Print. 1940) [hereinafter Hearings].

In 1938, President Roosevelt submitted the committee's draft code and comments to Congress, urging it to give "attentive consideration" to this matter of "great importance." Id. at 406. In its explanatory comments to the draft provision that—word for word—became the corresponding provision of the Nationality Act of 1940, the committee described its thinking.

The committee explained that the proposed legislation, in providing that "[a] person born in the United States and subject to the jurisdiction thereof" "shall be . . . [a] citizen of the United States at birth," was merely expressing "a statement of the common-law rule, which has been in effect in the United States from the beginning of its existence as a sovereign state" and

which itself "accords with the [Citizenship Clause of] the [F]ourteenth [A]mendment." Id. at 418. "The meaning of" the phrase "subject to the jurisdiction thereof" in that Clause, the committee further explained, "was discussed by Mr. Justice Gray[, the author of the Court's opinion,] in United States v. Wong Kim Ark." Id. And "[a]ccording to . . . Wong Kim Ark," the committee noted, "the words in the [F]ourteenth [A]mendment to the Constitution, 'and subject to the jurisdiction thereof,' were meant to except" three exclusive groups: the "children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes." Id. at 429 (emphasis added) (quoting Wong Kim Ark, 169 U.S. at 693).

The committee recognized that Wong Kim Ark "related to a person born to parents who were domiciled in the United States." Id. at 418. It made clear, however, that "according to the reasoning of the [C]ourt . . . the same rule is also applicable to a child born in the United States of parents residing therein temporarily." Id. (emphasis added). The committee further explained that the Court's reasoning in Wong Kim Ark "was in agreement" with the earlier "decision of the Court of Chancery of New York," Lynch v. Clarke, 1 Sand. Ch. 583 (N.Y. Ch. Ct. 1844), that the domicile of a U.S.-born child's parents was simply irrelevant. "In other words," the committee stated, "it is the fact of birth within the territory and jurisdiction, and not the domicile of the parents, which determines the nationality of the child." Hearings, at 418 (emphasis added).

The committee's views about the scope of birthright citizenship under the common law and Wong Kim Ark did not appear out of the blue. For over forty years before, DOS had issued regulations interpreting the Citizenship Clause on the understanding that it was "[t]he circumstance of birth within the United States [that] makes one a citizen thereof, even if his parents were at the time aliens, provided they were not, by reason of diplomatic character or otherwise, exempted from the jurisdiction of its laws." See U.S. Dep't of State, Regulations Prescribed for the Use of the Consular Service of the United States, ¶ 137 (1896); 22 C.F.R. § 79.137 (1938); cf. id. § 79.157 (requiring "[n]ative citizens who apply for passports [to] submit with their applications birth or baptismal certificates or affidavits . . . as to the place and date of their births"—not information regarding their parent's domicile or immigration status). Legal analyses by DOS and DOJ were to the same effect.[12]

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[12] See Memorandum of the Office of the Solicitor for the Department of State (Feb. 6, 1930), in 3 Green Haywood Hackworth, Digest of International Law 10 (1942) (concluding that a child "born in the United States" was "'subject to the jurisdiction thereof[,]'[] within the meaning of the Fourteenth Amendment" based on Wong Kim Ark, because it "d[id] not appear that the mother . . . belonged to any one of the classes of aliens referred to by [the Court] as enjoying immunity from the jurisdiction of the United States," and because "there seem[ed] to be no question but that [the mother] would have been subject to prosecution and punishment under the laws of this country" if "she had committed a murder or any other criminal offense" while present here); Memorandum of the Office of the Legal Adviser of the Department of State (July 17, 1933), in Hackworth, supra, at 13 (explaining "[w]ith reference to the question of the meaning of the phrase 'subject to the jurisdiction of the United States,' the court in the Wong Kim Ark case

There is scant evidence that in considering the committee's proposed legislation members of Congress had a different view than the committee. See, e.g., Hearings, at 49 (statement of Rep. Poage) (responding to testimony that "[i]n the United States, insofar as the question of citizenship is concerned, the doctrine of jus soli applies" by noting that "the Constitution makes that apply"). In fact, there is every indication that the phrase "subject to the jurisdiction thereof" in the Nationality Act was understood at the time of its 1940 enactment just as the committee had understood that phrase. See George, 596 U.S. at 746 (explaining that when Congress "use[s] an unusual term that ha[s] a long regulatory history in [the same] context," and "enact[s] no new 'definition' or other provision indicating any departure from the 'same meaning'" employed by the agency, the "prior agency practice" bears on the meaning of that term).

Consistent with this assessment, a private bill that Congress passed just months before the Nationality Act of 1940 became law reflects the same understanding. It "directed" the Secretary of Labor "to cancel the outstanding orders and warrants of deportation," 54 Stat. 1267 (1940), of Canadian citizens by naturalization and

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. . . stated that it meant 'subject to the laws of the United States'"); Letter from the Attorney General, H.R. Doc. No. 77-47, at 82 (1st Sess. 1941) (explaining that the children of an "illegally resident alien" were "native-born citizens of the United States" by virtue of their birth here); see also, e.g., id. at 24-25 (referring to the child "born to" parents who "entered the United States unlawfully" and "were not in possession of immigration visas" as a "citizen minor child"); Facts in Cases of Certain Alien Deportations: Letter from the Attorney General, H.R. Doc. No. 78-92, at 18-19 (1st Sess. 1943) (referring to a "child born in this country" of parents "illegally living in the United States" as a "citizen minor child"); id. at 51-52 (child of stowaways is a "minor citizen child").

their two Canadian-born daughters, H.R. Rep. 76-773 at 1-2 (1939).

The family had come to New York for a wedding and never left or sought immigration visas to remain. See id. Notably, a House Report recommending passage referred to the daughter that the parents had while in the United States as an "American citizen"—notwithstanding the report's explicit recognition that at the time of her birth the parents were unlawfully present in the United States. Id. at 1-2. And the bill itself makes no mention of that daughter, who, if a United States citizen in her own right, would not have needed relief as the other family members did.

b. The Recodification in 1952

There remains to consider whether the phrase "subject to the jurisdiction thereof" was understood the same way when Congress, using those very words, recodified the Nationality Act of 1940 in the Immigration and Nationality Act of 1952. We see no reason to conclude otherwise.

All indications are that the aim of the recodification was to "carr[y] forward substantially those provisions of the Nationality Act of 1940 which prescribe who are citizens by birth." Revision of Immigration and Nationality Laws, S. Rep. No. 1137, 82d Cong. 2d 38 (1952); Revising the Laws Relating to Immigration, Naturalization, and Nationality, H.R. Rep. No. 1365, 82d Cong. 2d 76 (1952) (same). For example, in a House Report, the Committee of the Judiciary described Wong Kim Ark as determining "whether . . . persons born in the United States of alien parents are citizens." Id. at 25. The report continued by noting that the Supreme Court held the Fourteenth Amendment's language to be "but

declaratory of the common-law principle . . . that all persons, regardless of the nationality of their parents born within the territorial limits of a State are ipso facto citizens of that State." Id.; see also Revision of Immigration and Nationality Laws, S. Rep. No. 1137, 82d Cong. 2d 38 (1952) ("The only exceptions are those persons born in the United States to alien diplomats." (emphasis added)). Thus, we see no reason to conclude that the same broad understanding of birthright citizenship that was prevailing in 1940 no longer was prevailing in 1952.

c. The Government's Response

The Government does assert that "at most," the meaning of the Citizenship Clause in 1940 and 1952 was "contested." But it offers no meaningful support for that contention.

The 1912 treatise that the Government relies on to support its position in fact appears to support the plaintiffs' contrary one. See Clement L. Bouvé, A Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States 427 (1912) [hereinafter Bouvé, A Treatise on the Laws Governing Aliens] ("[T]he child born of alien parents who, though under the immigration law they have no right to do so and are subject at any time to deportation thereunder, are nevertheless residing in the United States and owe temporary allegiance thereto, is necessarily born in allegiance to, and, therefore, is a citizen of this country."). The 1953 treatise on which the Government also relies simply concludes that the "children of . . . transients or visitors" count among the "exceptions" to birthright citizenship without offering any support for the assertion. Sidney Kansas, Immigration and Nationality

Act Annotated 188 (4th ed. 1953). That one treatise, thus, cannot suffice to show—given all the competing evidence of prevailing views—that Congress was not acting on a settled and contrary understanding.

The Government does direct our attention to the 1907 regulations implementing the Chinese Exclusion Act. They exempted from exclusion persons "born in the United States, of parents who at the time of his birth have a permanent domicile and residence in the United States." Regulations Governing the Admission of Chinese r. 2 (Feb. 26, 1907), in Bureau of Immigration & Naturalization, Dep't of Com. & Lab., Doc. No. 54, Treaty, Laws, and Regulations Governing the Admission of Chinese 33, 33 (July 1907).

These regulations predate, however, the decades during which, as we noted above, DOS explicitly relied on the Fourteenth Amendment to give effect to the jus soli principle. They predate, too, the report from President Roosevelt's committee. Given the clear evidence of that different understanding directly precursing the Act's passage, these regulations do little more than show what an agency may have thought decades before.

The Government also attempts to show the waters were muddy in 1952 by highlighting a "Brief on the Law of Citizenship" that was included as an appendix to a 1910 report from Assistant Attorney General William Wallace Brown and which stated that Wong Kim Ark, "when limited to its own facts and the law pronounced thereon, . . . goes no further than to determine that the child born to parents who are foreigners[,] but domiciled in the United States and there engaged in business, is a citizen of the United States." E.S. Huston, Brief on the Law of Citizenship, in Spanish Treaty

Claims Comm'n, U.S. Dep't of Just., Final Report of William Wallace Brown, Assistant Attorney-General 121 (1910). That report also precedes, however, the decades in which the plaintiffs' view of the scope of the birthright citizenship guarantee was widely shared.[13]

d. Conclusion

In short, the materials before us make clear that Congress, when enacting § 1401(a), was recognizing the broad scope of birthright citizenship that the plaintiffs identify. Thus, it is quite clear for this reason alone that the plaintiffs are likely to succeed as to the merits of their § 1401(a) claims.

2. The Citizenship Clause and Wong Kim Ark

Because the plaintiffs' § 1401(a) claims suffice on their own to support the preliminary injunctions, see Somerville Pub. Schs. v. McMahon, 139 F.4th 63, 72 (1st Cir. 2025), we could bypass the parties' additional dispute about what Wong Kim Ark decided in 1898 regarding the meaning of "subject to the jurisdiction thereof"

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[13] In their reply brief, the appellants point to additional sources. But, even if we were to consider these late entries, cf. United States v. Eirby, 515 F.3d 31, 36 n.4 (1st Cir. 2008) (stating that arguments raised for the first time in a reply brief are deemed waived), we note that one source predates even Wong Kim Ark, while the rest predate—by decades—the evidence as to what was understood in the run-up to the passage of the Nationality Act of 1940. Finally, for obvious reasons, we do not find persuasive the appellants' reference to failed legislative efforts in the wake of the Fourteenth Amendment. Rapanos v. United States, 547 U.S. 715, 749 (2006) ("Failed legislative proposals are a particularly dangerous ground on which to rest an interpretation of a prior statute." (quoting Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159, 160 (2001))).

in the Citizenship Clause. The Government does not suggest, however, that § 1401(a) is narrower than the Citizenship Clause as construed by Wong Kim Ark. Thus, if—as the plaintiffs contend—Wong Kim Ark construed the phrase "subject to the jurisdiction thereof" in the Citizenship Clause the same way that they contend that the phrase was understood in 1952, then even the Government does not dispute that the plaintiffs are likely to succeed on the merits of their § 1401(a) claims for that reason as well. And, of course, in that event, the plaintiffs also would be likely to succeed as to the merits of their Citizenship Clause claims.

In these circumstances, we think it appropriate to address the parties' thoroughly briefed dispute over the proper way to understand the Court's decision in Wong Kim Ark. As we will explain, that dispute must be resolved in a way that supports the plaintiffs' position. And so, we conclude that the plaintiffs clearly are likely to succeed as to the merits of all the claims before us.

a. The Facts of Wong Kim Ark

Wong Kim Ark involved a challenge to a writ of habeas corpus that had been granted to a young man who was born in San Francisco in 1873 to Chinese nationals who were permanently domiciled in San Francisco until their return to China in 1890. Wong Kim Ark, 169 U.S. at 652-53. At the age of 17, the man, Wong Kim Ark, traveled with his parents to China when they returned there in 1890, before, seemingly without incident, he returned to the United States on his own that same year. See id. at 653. But, in 1895, when he attempted to return to the United States after having made another temporary visit to China beginning the year before, federal authorities denied him entry and detained him pur-

suant to the Chinese Exclusion Act, Act of May 6, 1882, ch. 126, 22 Stat. 58. Id.; see also In re Wong Kim Ark, 71 F. 382, 383 (N.D. Cal. 1896). He then petitioned for a grant of the writ of habeas corpus. Id.[14]

The Supreme Court affirmed the grant of the writ, concluding that Wong Kim Ark was right that, at birth, he was a citizen of the United States under the Citizenship Clause. See Wong Kim Ark, 169 U.S. at 704-05. For that reason, the Court's decision is of obvious significance to the merits of the plaintiffs' claims under both that Clause and § 1401(a).[15]

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[14] Although Wong Kim Ark based his habeas corpus action on the Citizenship Clause, see In re Wong Kim Ark, 71 F. 382, 384 (N.D. Cal. 1896), the question in that case did not turn, strictly speaking, only on whether, under that Clause, he became a United States citizen upon his birth in this country. It turned, ultimately, on whether he was still a citizen when, in 1895, he was denied entry and detained. See Wong Kim Ark, 169 U.S. at 704. Indeed, Wong Kim Ark argued not only that he was a citizen because he was born here, but also that he had never lost his citizenship, as "he ha[d] remained here until twenty-one and ha[d] elected an American nationality." Brief for the Appellee at 40, Wong Kim Ark, 169 U.S. 649. The Court agreed on that ultimate point as well. See Wong Kim Ark, 169 U.S. at 704 ("Whether any act of [Wong Kim Ark], or of his parents, during his minority, could have the . . . effect [of taking away or causing Wong Kim Ark to lose his citizenship], is at least doubtful. But it would be out of place to pursue that inquiry, inasmuch as it is expressly agreed that his residence has always been in the United States, and not elsewhere . . . .").

[15] As noted previously, however, the plaintiffs' § 1401(a) claims provide an independent basis upon which to grant the preliminary injunction.

b. Wong Kim Ark's Rationale

Wong Kim Ark began by explaining that the key words of the Citizenship Clause, having not been defined there or elsewhere in the Constitution, "must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the constitution." Id. at 654. The Court then described the "fundamental principle of the common law with regard to English nationality" as:

> [B]irth within the allegiance—also called 'ligealty,' 'obedience,' 'faith,' or 'power'—of the king. The principle embraced all persons born within the king's allegiance, and subject to his protection. Such allegiance and protection were mutual . . . and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were therefore natural-born subjects. But the children, born within the realm, of foreign ambassadors, or the children of alien enemies, born during and within their hostile occupation of part of the king's dominions, were not natural-born subjects, because not born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the king.

Id. at 655. The Court explained that this "same rule was in force in all the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the constitution as originally established." Id. at 658. It also rejected the suggestion that by 1868—when the Fourteenth Amendment was

ratified—"there was any settled and definite rule of international law generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion." Id. at 667.

Based on this historical account, the Court concluded that "[i]n the forefront . . . of the fourteenth amendment . . . , the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explicit and comprehensive terms." Id. at 675. For, while the Court acknowledged that the Fourteenth Amendment's "main purpose doubtless was . . . to establish the citizenship of free negroes" denied in Dred Scott, it also emphasized that "the opening words, 'All persons born,' are general, not to say universal, restricted only by place and jurisdiction." Id. at 676.

Wong Kim Ark did recognize that, in an earlier case, the Court had held that the Citizenship Clause—through the "subject to the jurisdiction thereof" language—recognized a "single additional exception," id. at 693, to the ancient common law rule of birthright citizenship, id. at 680. That exception pertained to a child "born a member of one of the Indian tribes." See id. (citing Elk, 112 U.S. 94). But Wong Kim Ark did not purport to identify any other exception. See id. at 676 (explaining that the Citizenship Clause, being "declaratory in form, and enabling and extending in effect," "was not intended to impose any new restrictions upon citizenship").[16]

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[16] We note that, independent of the common law-based construction of the phrase "subject to the jurisdiction thereof," the Court recognized the "natural and inherent right" of expatriation. Wong Kim Ark, 169 U.S. at 704 (quoting An Act Concerning the Rights

Moreover, Wong Kim Ark explained that this one additional exception had been recognized because the "meaning of" the phrase "subject to the jurisdiction thereof" was "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance." Id. at 680 (quoting Elk, 112 U.S. at 102). Wong Kim Ark went on to explain that Elk determined that, because "the Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign states, but were alien nations," it followed that those born tribal members here were "no more 'born in the United States, and subject to the jurisdiction thereof,' . . . than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States of ambassadors or other public ministers of foreign nations." Id. at 681 (quoting Elk, 112 U.S. at 102).

Thus, by way of summation, the Court in Wong Kim Ark set forth the following critical conclusion midway through its analysis:

> The real object of the fourteenth amendment of the constitution, in qualifying the words 'all persons born

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of American Citizens in Foreign States, ch. 249, § 1, 15 Stat. 223, 223 (1868)). The dissenters in Wong Kim Ark contended English common law did not recognize that "right," as they contended that the common law considered the ties of allegiance to be "indissoluble." See id. at 711-13 (Fuller, C.J., dissenting). One treatise cited by the Government states, however, that both the United States and England "expressly repudiated" the old rule of indelibility: the United States by statute in 1868 and England by statute in 1870. See Hannis Taylor, A Treatise on International Public Law 217-18 (1901).

> in the United States' by the addition 'and subject to the jurisdiction thereof,' would appear to have been to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases, —children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state,—both of which, as has already been shown, by the law of England and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country.

Id. at 682.

That is not to say that Justice Gray—the author of the Court's opinion in Wong Kim Ark—cut to the chase in reaching this conclusion for the Court. His opinion ran over 50 pages and canvassed the full range of authorities. See id. at 652-705. But it is evident that he engaged in this comprehensive review to support the conclusion, succinctly set forth in the passage above, that "subject to the jurisdiction thereof" was a well-understood and carefully chosen phrase that ensured the Clause mirrored the ancient common law principle for determining nationality, while allowing for a single additional, peculiarly American exception pertaining to members of Native American tribes.

Consistent with this understanding of Wong Kim Ark, Justice Gray, right after his crisp description of the "real object" of the words "subject to the jurisdiction thereof," id. at 682, examined "the well[-]known case of The Exchange," id. at 687 (referencing The Schooner

Exchange v. McFaddon, 11 U.S. (7 Cranch.) 116 (1812)); see also id. at 684-87. He did so because he explained that those words "must be presumed to have been understood and intended by the congress which proposed the amendment, and by the legislatures which adopted it, in the same sense in which the like words had been used by Chief Justice Marshall" in that case. Id. at 687.

Justice Gray proceeded to explain that Chief Justice Marshall's opinion in The Exchange used "like words" in accord with the use that he had just attributed to the words in the Citizenship Clause. Id. Noting that The Exchange concerned "the grounds upon which foreign ministers are, and other aliens are not, exempt from the jurisdiction of this country," Justice Gray explained that Chief Justice Marshall had no occasion to address "the anomalous case of the Indian tribes" or the "suspension of the sovereignty of the United States over part of their territory by reason of a hostile occupation." Id. at 683. But, Justice Gray stated, "in all other respects," Chief Justice Marshall's opinion "covered the whole question of what persons within the territory of the United States are subject to the jurisdiction thereof." Id. And Justice Gray further explained that, in The Exchange, Chief Justice Marshall described "the general principle" that "[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute," id. at 683-84 (quoting The Exchange, 11 U.S. (7 Cranch.) at 136), subject only to those waivers of that jurisdiction that the sovereign itself chooses to make, id. at 684.

Justice Gray thus noted that it was significant for purposes of understanding the Citizenship Clause that Chief Justice Marshall recognized in The Exchange that

there are certain "class[es] of cases in which every sovereign is understood to waive . . . [its] complete exclusive territorial jurisdiction" by recognizing an "immunity" or "exempt[ion] from . . . jurisdiction" derived from the "political fiction" of extraterritoriality or the consent of the sovereign. Id. at 684-85 (quoting The Exchange, 11 U.S. (7 Cranch.) at 137-39, 147). These classes were for "foreign sovereign[s]," "foreign ministers," foreign troops permitted to pass through the territory, and individuals on "public armed ship[s]" serving a friendly foreign state. Id. at 684 (quoting The Exchange, 11 U.S. (7 Cranch.) at 137-39, 147).

Moreover, Justice Gray explained, it was significant that Chief Justice Marshall recognized that no such exemption could be afforded to "other aliens" because:

> When private individuals of one nation spread themselves through another as business or caprice may direct, mingling indiscriminately with the inhabitants of that other, or when merchant vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country.

Id. at 685-86 (emphases added) (quoting The Exchange, 11 U.S. (7 Cranch.) at 144).

In fact, Justice Gray affirmatively endorsed that aspect of temporary allegiance articulated in The Exchange when, in setting forth his understanding of that decision's "conclusions," he stated the following:

> It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides, seeing that, . . . 'independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be . . . .

Id. at 693-94 (quoting 6 The Works of Daniel Webster 526 (1851)); see also Carlisle v. United States, 83 U.S. (16 Wall.) 147, 154-55 (1872) (quoting the same, and stating that "[t]he rights of sovereignty . . . extend to all persons and things not privileged that are within the territory," including "all strangers therein, not only . . . to those who are domiciled therein," "but also to those whose residence is transitory" (citing Richard Wildman, 1 Institutes of International Law 40 (1849))).

Justice Gray made the same point in addressing the import of the Civil Rights Act of 1866, which had granted citizenship to "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed." See Wong Kim Ark, 169 U.S. at 688 (emphasis added) (quoting Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27, 27). He rejected the contention that the phrase "not subject to any foreign power" in the Civil Rights Act was "intended," "for the first time in our history, to deny the right of citizenship to native-born children . . . ." Id. Instead, he explained, the Civil Rights Act "reaffirmed" "the fundamental principle of

citizenship by birth within the dominion . . . in the most explicit and comprehensive terms," id. at 675, and "any possible doubt in th[at] regard was removed when the negative words of the civil rights act, 'not subject to any foreign power,' gave way, in the [Citizenship Clause], to the affirmative words, 'subject to the jurisdiction of the United States,'" id. at 688.

Given the Court's rationale for ruling as it did, we fail to see how we could read Wong Kim Ark to reject the plaintiffs' construction of the phrase "subject to the jurisdiction thereof" in the Citizenship Clause or even to leave open the question as to whether that construction is right. The Court expressly tied the phrase to the similar phrase in "the well[-]known case of The Exchange." Id. at 687. And Justice Gray explained that, in The Exchange, Chief Justice Marshall treated all those present here as having a temporary allegiance to the United States and being subject to the jurisdiction of the United States—"exclusive and absolute" as it is, The Exchange, 11 U.S. (7 Cranch.) at 136—unless they fall into one of the special classes of foreign nationals for which a person is not "subject to" United States jurisdiction because of an immunity or exemption from it owing to sovereign waiver, Wong Kim Ark, 169 U.S. at 686.

Finally, nothing in Wong Kim Ark suggested that the waivers of complete jurisdiction that "every sovereign" has been understood to make for certain classes of people —namely, foreign sovereigns and ministers, foreign troops, and those aboard public armed ships, id. at 684 (quoting The Exchange, 11 U.S. (7 Cranch.) at 137-39, 147)—extend in this country, outside the context of a foreign military occupation, beyond a "single additional exception," see id. at 693. That exception was the one

for children born members of Native American tribes. See id.

We also find it significant, given the Fourteenth Amendment's focus on the child, not the parent, see U.S. Const. amend. XIV, § 1 ("All persons born . . . in the United States . . ."), that The Exchange's waiver-based justification applies not only to the parent, but also to a child at the moment of the child's birth. For example, when the parents are beyond U.S. jurisdiction —as where U.S. sovereignty is "suspended" due to "military occupation," Wong Kim Ark, 169 U.S. at 683 (quoting United States v. Rice, 17 U.S. (4 Wheat.) 246, 254 (1819))—any child would equally be beyond its reach, see Inglis v. Trs. of Sailor's Snug Harbour, 28 U.S. (3 Pet.) 99, 155-56 (1830) (opinion of Story, J.) (explaining that, for a person to acquire "allegiance by birth," he "must be born within a place where the sovereign is at the time in full possession and exercise of his power," and illustrating that "general doctrine" through several exceptions, including when the sovereign's dominion is "occupied . . . by conquest"). Similarly, in the case of Native American tribal members, ambassadors, or those on armed public ships, the justification for each sovereign waiver of complete jurisdiction applies independently to the child as much as to the parent. See Eileen Denza, 4 Diplomatic Law 319 (2016) (explaining that, since the 1700s, it has been "accepted" that "the wife and minor children" of diplomats "[a]re entitled to the same privileges and immunities as the diplomat himself"); McKay v. Campbell, 16 F. Cas. 161, 167 (D. Or. 1871) (stating that a child born to a Native American mother and a Canadian father would not be considered "born subject to the jurisdiction of the United States" if he was "born a member" of the tribe, but suggesting he

would otherwise be "in the allegiance" of the occupying power); Wong Kim Ark, 169 U.S. at 680 ("[A]n Indian born a member of one of the Indian tribes . . . was not a citizen of the United States, as a person born in the United States, 'and subject to the jurisdiction thereof,' within the meaning of the clause in question." (emphasis added));[17] id. at 693 (noting that the Fourteenth Amendment excludes "children . . . born on foreign public ships" (emphasis added)).

c. The Government's Objections

The Government nonetheless argues, for a variety of reasons, that Wong Kim Ark must be read to make "domicile" an independent determinant of citizenship. Those reasons relate either directly to what Wong Kim Ark itself said or, more indirectly, to what the understanding was (in the Government's view) at the time that Wong Kim Ark was decided or to what the Court itself has decided since. These arguments are all without merit.

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[17] Wong Kim Ark described this exception in various ways, each hinging on a tribal member's relationship to the United States as a member of a "distinct political communit[y]." See 169 U.S. at 681; see also id. at 680-81 (explaining tribal members' exclusion from the Citizenship Clause because "Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes" were not "completely subject to [the United States's] political jurisdiction" (emphasis added)); id. at 682 (explaining that the addition of "'subject to the jurisdiction thereof' would appear to have been to exclude . . . children of members of the Indian tribes" because the tribes "stand[] in a peculiar relation to the National Government"); id. at 693 (explaining that the Citizenship Clause does not apply to "children of members of the Indian tribes owing direct allegiance to their several tribes").

i. Coherence of the Exceptions Recognized in Wong Kim Ark

The Government contends that to form "a coherent account" of the exceptions enumerated in Wong Kim Ark—and, in particular, the carve-out for the children born Native American tribal members—we must adopt the view of "political jurisdiction" that makes the domicile of a child's mother of critical import to whether the child is "subject to the jurisdiction" of the United States upon being born here. We disagree.

Wong Kim Ark's discussion of The Exchange, when paired with its discussion of Elk, makes clear what was understood to be the coherent basis for concluding that children born Native American tribal members are not "subject to the jurisdiction" of the United States. Due to the peculiar quasi-sovereign status of tribes, the United States's otherwise "full and absolute territorial jurisdiction" over those present here has been voluntarily waived as to tribal members (albeit in part, rather than in full) just as it has been waived (again, in part, rather than in full) in the special classes of cases—involving "foreign ministers," friendly "sovereigns or their armies," and "public ships of war"—in which "every nation" is understood to have waived "a part of it[]."[18] Id. at 686.

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[18] This understanding was also reflected in the congressional debates on the ratification of the Fourteenth Amendment. For example, Senator Trumbull supposed that the United States "ha[d] the power" to extend its laws over Native American tribes, but that it chose not to do so because it "would be a violation of [the United States's] treaty obligations." Cong. Globe, 39th Cong., 1st Sess., 2887, 2894 (statement of Sen. Trumbull). And given Wong Kim Ark's sovereign-waiver-based understanding of the jurisdictional

This understanding of the phrase "subject to the jurisdiction thereof" also fits comfortably with the Citizenship Clause's text. Even if there is potential ambiguity as to the scope of the words "subject to," there is nothing strange about reading those words so that the Clause refers to those actually subjected to United States law in full when "born . . . in the United States" (as opposed to those, due to a sovereign waiver, merely potentially subjected to it in full, like the members of the aforementioned special classes). U.S. Const. amend. XIV, § 1.

In fact, if anything, the incoherence inheres in the Government's view that "domicile" determines whether a noncitizen's child is "subject to the jurisdiction" of the United States . That view apparently treats a noncitizen who lacks such a domicile as not "subject to the jurisdiction" of the United States for purposes of the Citizenship Clause because that person lacks allegiance to the United States. Yet, that view does not dispute that under The Exchange that same person still "owe[s] temporary and local allegiance" to this nation. Wong Kim Ark, 169 U.S. at 685 (emphasis added) (quoting The Exchange, 11 U.S. (7 Cranch.) at 144).

The Government's apparent view, then, is that such a person is not "subject to the jurisdiction" of the United States for purposes of the Citizenship Clause under Wong Kim Ark, even though that same person is "amenable to the jurisdiction of the country," and so not free to engage in the "continual infraction" of our laws, under The Exchange. Id. at 685-86 (emphasis added) (quot-

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phrase, the Government's contention that the United States departed from English common law in other respects regarding Native Americans is of no consequence.

ing The Exchange, 11 U.S. (7 Cranch.) at 144). The only way to square that circle is to conclude, despite what Wong Kim Ark said, that the phrase "subject to the jurisdiction" in the Citizenship Clause has no relation to the discussion of who is subject to the jurisdiction of the United States in The Exchange.

The Government offers no explanation for how such a conclusion accords with Wong Kim Ark's explicit reliance on The Exchange in construing the "like words" in the Citizenship Clause. So, whatever other defects inhere in the Government's view of the meaning of those words, a leading one is that its view cannot account for the Court's construction of them in Wong Kim Ark. It is worth noting, too, that the text of the Citizenship Clause hardly compels the Government's domiciled-based reading, as it is far from evident why the word "domicile" would not have been used if it were understood to be so critical.[19]

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[19] One amicus advances the textual argument that, because the Citizenship Clause makes a person a "citizen[] of the United States and of the State wherein they reside," that "textual feature" shows that the Clause was intended to incorporate a residency or domicile requirement. See Corrected Amicus Brief of the State of Tennessee in Support of Defendants-Appellants and Reversal 9 (emphasis added). But, textually, that phrase, like the phrase that precedes it, which makes individuals "citizens of the United States," U.S. Const. amend. XIV, § 1, cl. 1, describes the benefit (state citizenship) that flows to those who meet the requirements set forth earlier in the Clause (being "born or naturalized in the United States, and subject to the jurisdiction thereof," id.). And, in any case, we are unable to square this reading of the Citizenship Clause with Wong Kim Ark, which, for the reasons we have already explained, cannot be read to impose a domicile requirement under the Fourteenth Amendment.

ii. References to Domicile in Wong Kim Ark

The Government also seizes on the Court's "precise[] identifi[cation]" of "the narrow question presented"[20] in Wong Kim Ark and subsequent statement of its holding in that case, which referred to Wong Kim Ark's parents having a permanent domicile in this country at the time of his birth. The Government argues that these features of the Court's opinion show that the Court's holding was "carefully cabined" to those facts.

The question "presented," however, appears to simply draw much of its phrasing verbatim from the facts stipulated to by the parties. See id. at 652-53. And, given the potential issues about expatriation during a person's minority that the case presented when filed, the references to domicile in the stipulated facts are not anomalous even if they do not bear on whether Wong Kim Ark was a citizen at birth under the Citizenship Clause. See id. at 704 ("Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth."). Moreover, as we have explained, the answer given to the question presented, which was favorable to

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[20] The question presented by the Court in Wong Kim Ark was as follows: "[W]hether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the fourteenth amendment of the constitution . . . ." 169 U.S. at 653.

Wong Kim Ark, rested on the jus soli-based rationale for defining citizenship that we have described. See id. at 705 ("For the reasons above stated, this court is of opinion that the question must be answered in the affirmative." (emphasis added)).

There also is not a word in Justice Gray's lengthy opinion setting forth its rationale that purports to explain why the fact that Wong Kim Ark's parents had a permanent domicile in San Francisco made Wong Kim Ark "subject to the jurisdiction" of the United States at the time of his birth. By contrast, the opinion begins by stating that the Citizenship Clause must be construed in "light of the common law," id. at 654, and continues by spending page after page explaining the common law in terms that rendered domicile irrelevant to nationality,[21] see id. at 655-75, before then linking that critical phrase to Chief Justice Marshall's reasoning in The Exchange, see id. at 683-87.

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[21] See, e.g., Wong Kim Ark, 169 U.S. at 657 ("By the common law of England, every person born within the dominions of the crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country, was an English subject . . . ." (quoting Alexander Cockburn, Nationality: Or the Law Relating to Subjects and Aliens 7 (1869))); id. at 660 ("Nothing is better settled at the common law than the doctrine that the children, even of aliens, born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto, are subjects by birth." (quoting Inglis v. Trs. of Sailor's Snug Harbour, 28 U.S. (3 Pet.) 99, 164 (1830) (opinion of Story, J.))); id. at 656 ("The question of naturalization and of allegiance is distinct from that of domicile." (quoting Udny v. Udny, [1869] 1 LR (HL) 441, 452 (appeal taken from Scot.))).

We decline to conclude that Justice Gray either decided only what he did not explain or explained only what he did not decide. We note as well that two unusually interested readers of his opinion—the dissenters in Wong Kim Ark—understood the Court to have adopted the ancient common law rule. See id. at 705 (Fuller, C.J., dissenting) ("The [majority's] argument is that . . . [the constitution] must be interpreted in the light of the English common-law rule which made the place of birth the criterion of nationality . . . .").

In suggesting that the dissenters nonetheless misapprehended the majority's decision, the Government points to the references to domicile[22] in the following passage:

> The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever

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[22] The Government also highlights references to those "resident" or "residing in the United States." But the Government fails to develop an argument as to why we must understand Wong Kim Ark to have used "domicile" and "residence" as synonyms, when the opinion repeatedly used the terms in ways that suggested they had distinct meanings. See, e.g., Wong Kim Ark, 169 U.S. at 693 (majority opinion) ("[I]ndependently of a residence with intention to continue such residence; independently of any domiciliation . . . ." (quoting Letter from Daniel Webster, Sec'y of State, to Millard Fillmore, President of the United States, reprinted in 6 The Works of Daniel Webster 526 (1851))); id. at 653, 705 ("domicile and residence"); cf. Brief for Appellants 31 ("Domicile, recall, requires residence and an intent to remain indefinitely."); Frederick A. Cleveland, American Citizenship as Distinguished from Alien Status 39 (1927) ("'Residence' is of a more temporary character than 'domicile.' 'Residence' simply indicates the place of abode, whether permanent or temporary; 'domicile' denotes a fixed, permanent residence . . . .").

> race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

Id. at 693 (majority opinion) (emphases added). This language, however, followed the Court's discussion of several Executive Branch opinions regarding issues that arise from the United States's conferral of United States citizenship on those born abroad. See id. at 689-92.

In that discussion, the Court reviewed circumstances in which domicile was relevant to the naturalization of a person born outside of the United States to a United States citizen. See id. at 689 (citing an 1869 opinion from Attorney General Ebenezer Hoar in which he concluded that "children born and domiciled abroad, whose fathers were native-born citizens of the United States, and had at some time resided therein, were, under the statute . . . citizens of the United States," but cautioning that this statutory conferral of citizenship could not extend to those "who have not come within our territory," lest the conferral of citizenship upon a foreign-born child who remains abroad interfere with the laws of the child's country of birth). And, earlier still in the opinion, Justice Gray observed that while naturalization laws restricted the right of citizenship "conferred upon foreign-born children of American citizens, to those children themselves, unless they became residents of the United States," "nothing," including that restriction, could be understood "to countenance the theory that a general rule of citizenship by blood or descent has dis-

placed in this country the fundamental rule of citizenship by birth within its sovereignty." Id. at 674.

So, in context, the evident purpose of the passage to which the Government directs our attention was to emphasize the breadth of the rule of birthright citizenship applicable to those born within the United States under "our own established rule of citizenship by birth in this country," id. at 692, relative to the more limited scope of United States citizenship conferred on those born outside the United States to a United States citizen. Thus, consistent with the quoted passage's use of the word "includes," we do not read the passage to have been intended to draw, for purposes of defining the Citizenship Clause's scope, a wholly unexplained distinction between those born in the United States to persons domiciled here and those born in the United States to persons not domiciled here. See id. ("The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons . . . domiciled within the United States." (emphasis added)).[23]

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[23] The Government also directs our attention to a passage that reads: "Chinese persons . . . are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here; and are 'subject to the jurisdiction thereof,' in the same sense as all other aliens residing in the United States." (Quoting Wong Kim Ark, 169 U.S. at 694 (emphases added).) But, as noted above, the Government does not explain why references to "residence" support its domicile-based rule, and, in any event, this passage is unpersuasive for the same reasons as those set forth above, as nothing in the opinion's reasoning appears to turn on domicile.

The Government additionally—and seemingly counterintuitively—argues that the following language in Wong Kim Ark supports its position:

> It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides, seeing that, . . . 'independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be . . . .

Id. at 693-94 (quoting 6 The Works of Daniel Webster 526 (1851)).

We do not disagree that this passage expresses the view that a person who is domiciled in a country must owe at least that degree of allegiance that is owed by a person who is merely temporarily present there. We fail to see, though, how this passage thereby supports the Government's view. It instead supports the conclusion that allegiance is a function of having a presence "within the dominion[]" of the sovereign, id. at 694, not of having a domicile within the sovereign's territory, see id. (stating that temporary visitors may even "be punished for treason or other crimes as a native-born subject might be" (emphasis added)).

iii. Understandings at the Time of Wong Kim Ark

At times, the Government appears to argue that Wong Kim Ark must have meant its references to domicile to cabin its decision because of what "subject to the jurisdiction thereof" was understood to mean from the time of ratification up to 1898. But disagreement with Wong Kim Ark's construction of the Citizenship Clause is not itself a basis to disregard that construction. What is more, Wong Kim Ark's construction of the phrase at issue in that Clause was hardly idiosyncratic at the time.

The debates in Congress over the proposed Fourteenth Amendment and the Civil Rights Act of 1866 were rife with statements premised on the same understanding of jurisdiction recognized in The Exchange, reflected in the common law exceptions, and endorsed later by the Court in Wong Kim Ark.[24] That is particularly true of the debates over whether children who were members of Native American tribes were "subject

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[24] See Cong. Globe, 39th Cong., 1st Sess. 1151 (1866) (statement of Rep. Thayer) (describing the Civil Rights Act as "declaring that all men born upon the soil of the United States shall enjoy the fundamental rights of citizenship"); id. at 2891 (statement of Sen. Cowan) (describing the Fourteenth Amendment as "assert[ing] broadly that everybody who shall be born in the United States shall be taken to be a citizen"); id. at 2892 (statement of Sen. Conness) (describing the Fourteenth Amendment as "a simple declaration that . . . human beings born in the United States shall be regarded as citizens"). Notably, one Senator stated that he knew of only "one instance" in which "a person may be born here and not be a citizen"—namely, "in the case of the children of foreign ministers" under "a fiction" of extraterritoriality. Id. at 2769 (statement of Rep. Wade).

to the jurisdiction" of the United States.[25] That the Citizenship Clause, unlike the Civil Rights Act of 1866, makes no express reference to Native American children does not show otherwise.[26]

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[25] See Cong. Globe, 39th Cong., 1st Sess. 2893 (1866) (statement of Sen. Trumbull) ("Can you sue a Navajoe [sic] Indian in court? Are they in any sense subject to the complete jurisdiction of the United States? By no means. . . . If we want to control the . . . Indians . . . , how do we do it? Do we pass a law to control them? Are they subject to our jurisdiction in that sense? Is it not understood that if we want to make arrangements with the Indians . . . we do it by means of a treaty?"); id. at 2895 (statement of Sen. Howard) ("The Indian who is still connected by his tribal relation with the government of his tribe is subject for crimes committed against the laws or usages of the tribe to the tribe itself, and not to any foreign or other tribunal . . . . The United States courts have no power to punish an Indian who is connected with a tribe for a crime committed by him upon another member of the same tribe." (emphases added)); id. at 2893 (statement of Sen. Trumbull) ("Would the Senator from Wisconsin think for a moment of bringing a bill into Congress to subject these wild Indians with whom we have no treaty to [our] laws and regulations . . . ? Would he think of punishing them for instituting among themselves their own tribal regulations? Does the Government of the United States pretend to take jurisdiction of murders and robberies and other crimes committed by one Indian upon another? Are they subject to our jurisdiction in any just sense? They are not subject to our jurisdiction. We do not exercise jurisdiction over them. It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens.").

[26] Senator Trumbull resisted the phrase "Indians not taxed" that was used in that statute out of concern that it might be interpreted literally, stating: "I am not willing to make citizenship in this country depend on taxation. I am not willing . . . that the rich Indian residing in the State of New York shall be a citizen and the

Wong Kim Ark also was hardly out of step with judicial opinions, treatises, and other scholarly works of the era. The case law that the Government identifies shows that domicile was considered sufficient to establish allegiance. See The Pizarro, 15 U.S. (2 Wheat.) 227, 246 (1817) (Story, J.) ("[A] person domiciled in a country, and enjoying the protection of its sovereign . . . owes allegiance to the country . . . ."). That case law does not establish a settled view that domicile was necessary to do so. Cf. Wong Kim Ark, 169 U.S. at 663 ("By th[e] circumstance of his birth, he is subjected to the duty of allegiance . . . and becomes reciprocally entitled to the protection of that sovereign . . . ." (quoting Gardner v. Ward, 2 Mass. 244 (1805))); id. at 685 ("His minister would owe temporary and local allegiance . . . ." (quoting The Exchange, 11 U.S. (7 Cranch.) at 139)); id. at 685-86 (describing merchants as owing "temporary and local allegiance" (quoting The Exchange, 11 U.S. (7 Cranch.) at 144)); Lynch, 1 Sand. Ch. at 638, 664. Indeed, the New Jersey Supreme Court's decision in Benny v. O'Brien, which adopted the Government's domicile-based view and on which the Government relies, 32 A. 696, 698 (N.J. 1895) (describing the Civil Rights Act and Fourteenth Amendment as intending to except persons "born in this country of foreign parents who are temporarily traveling here"), was

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poor Indian residing in the State of New York shall not . . . ." Cong. Globe, 39th Cong., 1st Sess. 2894 (1866) (statement of Sen. Trumbull). For that reason, Senator Trumbull pushed for the adoption of the phrase "subject to the jurisdiction thereof," which in his view excluded Indians—"over [whom the United States] do[es] not pretend to exercise any civil or criminal jurisdiction"—without being susceptible of a reading which would make citizenship "depend on taxation." Id.

described by the United States itself in Wong Kim Ark as an innovation, see Brief for the United States at 25-26, Wong Kim Ark, 169 U.S. 649 (acknowledging that the "element" of "the temporary residence of the parents" had been "introduced for the first time" in that case).

The Government also invokes various treatises of the day in arguing for its reading of Wong Kim Ark. Some of those treatises, however, were relied on by the dissent in Wong Kim Ark. See Wong Kim Ark, 169 U.S. at 708 (Fuller, C.J., dissenting) (quoting 1 Travers Twiss, The Law of Nations Considered as Independent Political Communities 231 (1861); Emmerich de Vattel, The Law of Nations 101, § 212 (1797)). Others relied on arguments that the majority in Wong Kim Ark expressly rejected. Compare id. at 678 (majority opinion) (rejecting as dicta language in the Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872)), with Hannis Taylor, A Treatise on International Public Law 218 (1901) (predicating its view that citizens or subjects of foreign states are not United States citizens on the same language in the Slaughter-House Cases); Alexander Porter Morse, A Treatise on Citizenship 248 (1881) (same). And still others relied on administrative practice that again was relied on by the dissent in Wong Kim Ark, while the majority cited favorably to contrary administrative views. See Wong Kim Ark, 169 U.S. at 691 (Fuller, C.J., dissenting) (citing opinion by Secretary of State Thomas Bayard regarding passport denial); William Edward Hall, A Treatise on International Law 237 n.1 (4th ed. 1895) (interpreting the Citizenship Clause based on an "administrative gloss" that included the same passport denial). More generally, having reviewed the treatises cited by the Government in support of its view, we dis-

cern from them no settled view contrary to the one we understand Wong Kim Ark to have adopted as to the scope of birthright citizenship in the United States.

The Executive Branch practice of the time on which the Government relies, as we have just indicated, similarly fails to show that Wong Kim Ark's references to domicile must have been intended to cabin the ruling. It was the dissenters in that case who relied on that practice. See Wong Kim Ark, 169 U.S. at 719 (Fuller, C.J., dissenting). The majority, by contrast, favorably quoted Secretary of State Hamilton Fish's correspondence stating that "[t]he qualification[,] 'and subject to the jurisdiction thereof[,] was probably intended to exclude the children of foreign ministers, and of other persons who may be within our territory with rights of extraterritoriality.'"[27] See id. at 690 (majority opinion) (quoting Correspondence of Hamilton Fish, Sec'y of State (May 19, 1871), reprinted in 2 A Digest of the International Law of the United States 394 (Francis Wharton ed., 2d ed. 1887)). In any event, there is nothing unusual about a court declining to give weight to isolated instances of Executive Branch opinion and practice in construing the Constitution. See NLRB v. Noel Canning, 573 U.S. 513, 572 (2014) (Scalia, J., concurring in the judgment) (explaining that "open, widespread,

[27] As for congressional practice, the Government points only to a bill, proposed by Representative Ebenezer Hoar six years after the Fourteenth Amendment was ratified, which stated that "a child born within the United States of parents who are not citizens, and who do not reside within the United States . . . shall not be regarded as a citizen thereof." See 2 Cong. Rec. 3279 (1874).

and unchallenged" practice has "guide[d]" courts' interpretation of "ambiguous constitutional provision[s]").[28]

iv. Post-Wong Kim Ark Precedents

Finally, we are not persuaded by the Government's contention that the Supreme Court adopted its domicile-based view in subsequent precedent: Chin Bak Kan v. United States, 186 U.S. 193 (1902), and Kwock Jan Fat v. White, 253 U.S. 454 (1920). Chin Bak Kan does no more than quote the language describing the facts of Wong Kim Ark that we have already addressed above. See 186 U.S. at 200. Kwock Jan Fat simply describes the status of the petitioner's parents without assigning any particular significance to the permanent nature of that status. See 253 U.S. at 457 ("It is not disputed that if petitioner . . . was born to them when they were permanently domiciled in the United States, [he] is a citizen . . . .").

In addition, following Wong Kim Ark, the Supreme Court has itself repeatedly described U.S.-born children, even of unlawfully present individuals, as citizens. See United States ex rel. Hintopoulos v. Shaughnessy, 353 U.S. 72, 73, 75 (1957) (stating that a child, born in the United States to "alien parents illegally residing in the United States" "is, of course, an American citizen by birth"); INS v. Rios-Pineda, 471 U.S. 444, 446 (1985) (stating that a child "who, born in the United States, was a citizen of this country," even though the parents were unlawfully present and the child's father had previously

[28] Insofar as the Government means to suggest that, because the domiciliary status of Chinese nationals in this country was relevant to legal issues in some contexts, that status must have been relevant in the citizenship context as well, the Government does not explain, nor do we see, why that would be so.

been apprehended and failed to voluntarily self-deport as promised); INS v. Errico, 385 U.S. 214, 215 (1966) (noting that a child born to a parent who made a false representation in his visa application nonetheless "acquired United States citizenship at birth").

There also is Plyler v. Doe, 457 U.S. 202 (1982). In that case, the Supreme Court described Wong Kim Ark as "detail[ing] at some length the history of the Citizenship Clause, and the predominantly geographic sense in which the term 'jurisdiction' was used." Id. at 211 n.10 (emphasis added). The Court went on to explain that, "given the historical emphasis on geographic territoriality, bounded only, if at all, by principles of sovereignty and allegiance, no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful." Id. (citing Bouvé, A Treatise on the Laws Governing Aliens 425-27).[29]

This reading of Wong Kim Ark and of the Fourteenth Amendment's jurisdictional provision as primarily focused on territory accords with our independent analysis of Wong Kim Ark. We would be hard-pressed to ig-

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[29] Indeed, the Bouvé treatise cited repeatedly by the Court in Plyler v. Doe, see 457 U.S. 202, 212 n.10, 227 n.22 (1982), concluded that children born to unlawfully present parents would unequivocally be citizens of the United States, see Bouvé, A Treatise on the Laws Governing Aliens 425-27. Bouvé concluded that this was so notwithstanding that such parents in theory "never acquired a lawful domicile in the sense that they were never entitled to enter for the purpose of establishing a home." Id. at 426. The Plyler Court expressly endorsed Bouvé's view, stating that "illegal entry into the country would not, under traditional criteria, bar a person from establishing domicile within a State." 457 U.S. at 227 n.22.

nore the weight of this authority, all of which accords with the plaintiffs' view.

d. Conclusion

When the smoke clears, what remains is the direct statement about the purpose of the words of the Fourteenth Amendment's Citizenship Clause that Wong Kim Ark plainly set forth. That statement follows seamlessly from the rationale that the Court gave for attributing that purpose to those words. And, of course, the words themselves—"subject to the jurisdiction thereof"—easily bear such a construction. As a result, Wong Kim Ark on its own requires us to reject the Government's contention that the plaintiffs are not likely to succeed on the merits of their claims under the Citizenship Clause. And, given that the Government does not dispute that § 1401(a) secures birthright citizenship to at least all those entitled to it under the Constitution, Wong Kim Ark thus shows that the plaintiffs are likely to succeed as to the merits of all the claims at issue.

Nor is it of any consequence that the plaintiffs are bringing a facial challenge. Any denial of citizenship on the grounds set forth in the EO would, in light of Wong Kim Ark, contravene the Citizenship Clause and § 1401(a). See United States v. Salerno, 481 U.S. 739, 745 (1987).

V. Equitable Factors

Even though we conclude that the plaintiffs are, as the District Court concluded, "exceedingly likely" to succeed on the merits of their claims, we are not yet done with our review. The plaintiffs also "must establish," to secure preliminary injunctive relief, (1) that they are "likely to suffer irreparable harm in the ab-

sence of preliminary relief," (2) "that the balance of equities tips in [their] favor," and (3) "that an injunction is in the public interest." Winter, 555 U.S. at 20. We cannot agree with the Government that any of the plaintiffs have failed to do so.

A. Doe-Plaintiffs

The District Court determined that there was "a grave risk of significant and irreparable harm arising from the EO" to the Doe-Plaintiffs. The District Court explained that "[t]he loss of birthright citizenship—even if temporary and later restored at the conclusion of litigation—has cascading effects" that will "very likely leav[e] permanent scars" on the child and their family. That permanence stems from the fact that "children born without a recognized or lawful status face barriers to accessing critical healthcare, among other services, along with the threat of removal to countries they have never lived in and possible family separation."

The Government understandably makes no argument that the District Court erred on this score. See Ortega Cabrera v. Mun. of Bayamón, 562 F.2d 91, 102 n.10 (1st Cir. 1977) (concluding that a party's failure to make an argument "on appeal" means that the party "waived any such claim"). It nonetheless argues that the balance of equities favors it because the preliminary injunction "inflicts irreparable injuries on the government and the public, whose interests 'merge' in this context," (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)), by barring the President from "carrying out his broad authority [over] and constitutional responsibility" for immigration matters.

In support, the Government cites INS v. Legalization Assistance Project of the Los Angeles County Federa-

tion of Labor, 510 U.S. 1301 (1993) (O'Connor, J., in chambers). But there, Justice O'Connor determined that the government was likely to succeed in showing that the plaintiffs, to whom the preliminary injunction had been granted, lacked Article III standing to bring their claims. Id. at 1305-06. By contrast, the Doe-Plaintiffs both have standing and are likely to succeed on the merits in showing that the enforcement and implementation of the EO would be unlawful.

The Government is not irreparably harmed by an injunction issued to parties with Article III standing that bars enforcement of an unlawful executive order. See New Jersey, 131 F.4th at 41. Accordingly, we agree with the District Court that the equitable factors in this case "tip decisively toward the [Doe-Plaintiffs]."

B. State-Plaintiffs

The Government first argues as to the equitable factors that the State-Plaintiffs "have failed to show that any such injuries occurring between now and final judgment would be irreparable" because the State-Plaintiffs have not demonstrated that any loss of federal funds "could not be recovered through submission of claims after final judgment or through the administrative procedures applicable to those programs." But, even assuming post-judgment payments of wrongfully withheld federal funds would remedy part of the State-Plaintiffs' harm, the District Court found that the State-Plaintiffs face "administrative upheaval."[30]

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[30] The Government has not advanced any argument that the irreparable harm inquiry must necessarily be tethered to the injury that gives a party standing. As such, any argument to that effect

Indeed, the State-Plaintiffs point to "irreparable harms" stemming from the "intensive alterations to their eligibility verification systems for these federal programs" that they would need to undertake to determine who is eligible for benefits under the Executive Order. Without a preliminary injunction, the State-Plaintiffs claim that they would face unrecoverable costs that they would have to incur to "overhaul [their verification] systems"—for example, the costs to modify their systems to "incorporate information about the immigration status of a child's parents," to "implement new measures for processing applications and tracking citizenship status," to "train staff . . . on new policies and procedures," and to "revise existing guidance and manuals regarding eligibility."

The Government disputes none of this in any meaningful way. We thus cannot conclude that the District Court has abused its discretion in finding the State-Plaintiffs to have established irreparable harm.

The Government does again argue that the "equities and public interest" weigh in favor of denying injunctive relief because such relief "prevents the President from carrying out his broad authority [over] and constitutional responsibility" for immigration matters. But, again, the Government relies on Legalization Assistance Project of the Los Angeles County Federation of Labor, 510 U.S. at 1305-06, which, as we have explained, has no application here.

Given that the public has a substantial interest in ensuring that those entitled to be recognized as United

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is waived. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

States citizens are not unlawfully deprived of that recognition, the District Court did not abuse its discretion in finding that the public interest and balance of equities factors "tip decisively toward the [State-Plaintiffs]." Cf. New Jersey, 131 F.4th at 41 (finding the same in denying a stay of the preliminary injunction pending appeal). In fact, to say that the public has no interest in ensuring that those who deserve to be counted among its citizenry are so counted, is to misconceive the public's interest. So, we conclude that the District Court did not abuse its discretion in granting preliminary injunctive relief as to the State-Plaintiffs.

VI. Scope of the Relief

The final set of issues that we must address concerns the proper scope of preliminary injunctive relief. We begin with the Doe-Plaintiffs' case.

A. Doe-Plaintiffs

The Government raises no issues with respect to the scope of the preliminary injunction barring the EO's enforcement against

O. Doe herself. But it does contend that the preliminary injunction issued to bar the EO's enforcement against members of the two organizations in the Doe-Plaintiffs' case is overbroad. That is so, according to the Government, because the injunction bars the agency officials subject to it from enforcing the EO as to "any member" of those organizations. As the Government puts it, the injunction is impermissibly broad because it purportedly covers "unidentified" and "uninjured members" of the organizations "for whom they have made no claim of standing."

To the extent that the Government means to argue that the preliminary injunction may bar enforcement of the EO as to only the two members whom the organizations identified in seeking associational standing, we cannot agree. Both organizations set forth allegations in their complaint about the broad number of members "who are undocumented or in the United States on temporary statuses and who are either pregnant or plan to grow their families in the future" and that "[t]hese members will experience severe and immediate harm if the EO is allowed to take effect." After all, we are considering this case in the context of a preliminary injunction, which requires plaintiffs to show—among other things—only that they are "likely to suffer irreparable harm in the absence of preliminary relief." Winter, 555 U.S. at 20 (emphasis added).

To the extent that notice to the Government about the scope of the injunction is the concern, we note that, as the plaintiffs point out, the Government did not raise the concern about unidentified members below. That newly raised issue may be addressed on remand, as consideration may then be given to the proper procedure for ensuring that the Government has requisite notice as to whom it may not enforce the EO against under the preliminary injunction.

B. State-Plaintiffs

As to the injunction in the State-Plaintiffs' case, the District Court did not order relief to any purported nonparty. It instead issued a "universal" injunction to give "complete relief" to the State-Plaintiffs themselves. The District Court explained that the State-Plaintiffs' harms "stem from the EO's impact on the citizenship status—and the ability to discern or verify such status—

for any child located or seeking various services within their jurisdiction." This harm, the District Court found, results not only when "children born and living [in the States] are unlawfully denied citizenship," but also whenever "a family moves to" one of the States "after welcoming a new baby" in a "state that has not joined this lawsuit."

Nothing in CASA provides that, as a categorical matter, it is improper for a district court to impose an injunction of such breadth if it is necessary to do so to provide the plaintiff with complete relief. See 606 U.S. at 853-54. Nor did CASA suggest that it would be improper for the District Court here to order such an injunction as a means of providing the State-Plaintiffs complete relief. See id.

At the same time, CASA did not hold that it would be proper in this case and under these circumstances. See id. It left that question to the "lower courts." Id. at 854.

Accordingly, following CASA, we remanded the case to the District Court for the limited purpose of determining the effects, if any, of the Supreme Court's ruling on the scope of the preliminary injunction. See Doe v. Trump, 142 F.4th at 112. The District Court began by noting that it awarded "universal or nationwide relief" originally, on February 13, 2025, because the "uncontested factual record produced by the plaintiffs" at that time demonstrated that any lesser injunction "would be 'inadequate' protection against the harms [that] the plaintiffs' uncontested declarations described." In other words, in issuing the preliminary injunction, the District Court found that there was no workable, narrower alternative, given the showing that the State-

Plaintiffs had made and the Government's failure to explain why that was not the case. The District Court then determined that nothing in CASA itself called its initial determination about the scope of relief into question. It also noted that the Government, post-CASA, had not advanced any arguments or identified any evidence in the record that sufficed to do so.

Crucially, as the State-Plaintiffs point out, the ground that the Government now presses to us for concluding that the District Court erred in granting relief of this breadth was not a ground that it raised to the District Court in the preliminary injunction proceedings prior to the appeal.[31] So, although the Government contends that we are not to look to the remand proceedings following CASA nor the accompanying record developed in those proceedings, the Government is in no position to object to the State-Plaintiffs' attempt on remand to address the workability of a narrower injunction. That narrower injunction was not claimed by the Government to be workable before the District Court until the remand.

Of course, the Government is right that the defendants "need not 'write' the injunction themselves." United States v. Zenon, 711 F.2d 476, 478 (1st Cir. 1983). But the Government "must state their objections to the injunction . . . so that the district court can consider them and correct the injunction if necessary." Id. The conclusory, single paragraph below in the pre-CASA preliminary injunction proceedings that the Gov-

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[31] The Government proposes in this regard that an injunction "requiring the federal government to determine eligibility for [the State-Plaintiffs'] programs without regard to the Executive Order" would provide complete relief to the State-Plaintiffs.

ernment now points to only argues that "nationwide relief" is not "justif[ied]." Indeed, it was not until its stay motion in this Court that the Government attempted to explain that a narrower injunction was available to provide complete relief to the State-Plaintiffs. But "a party is not at liberty to articulate specific arguments for the first time on appeal simply because the general issue was before the district court." Eldridge, 863 F.3d at 84 (quoting United States v. Slade, 980 F.2d 27, 31 (1st Cir. 1992)).

We note as well that the Government, on remand following CASA, "elected not to develop . . . in [the District Court]" even the "narrower proposals" discussed in CASA, see 606 U.S. at 854. As the District Court noted, "[a]t no point ha[s] the [Government] fleshed out how any narrower injunction would work." The District Court explained that the Government has "never addressed what renders [any narrower injunction] feasible or workable, how the defendant agencies might implement [a narrower injunction] without imposing material administrative or financial burdens on the plaintiffs, or how [any proposal would] square[] with other relevant federal statutes."

Thus, it is no surprise that, when presented with even more uncontroverted evidence by the State-Plaintiffs about the need for an injunction of the current breadth, the District Court again found that a narrower injunction would leave unremedied "administrative and financial harms." We therefore decline to conclude that the District Court has abused its discretion in fashioning relief. See Philip Morris, Inc. v. Harshbarger, 159 F.3d 670, 680 (1st Cir. 1998) (explaining that "[a]s a general rule, a disappointed litigant cannot surface an objection

to a preliminary injunction for the first time in an appellate venue" because doing so deprives the district court of the opportunity to "consider [the objection] and correct the injunction if necessary, without the need for appeal" (quoting Zenon, 711 F.2d at 478)).

VII. Conclusion

Our nation's history of efforts to restrict birthright citizenship—from Dred Scott in the decade before the Civil War to the attempted justification for the enforcement of the Chinese Exclusion Act in Wong Kim Ark—has not been a proud one. Indeed, those efforts each have been rejected, once by the people through constitutional amendment in 1868 and once by the Court relying on that same amendment three decades later, and at a time when tensions over immigration also were high. Even the denial of citizenship to Native American tribal members no longer persists, thanks to a statute passed more than a century ago. See Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b)).

The "lessons of history" thus give us every reason to be wary of now blessing this most recent effort to break with our established tradition of recognizing birthright citizenship and to make citizenship depend on the actions of one's parents rather than—in all but the rarest of circumstances—the simple fact of being born in the United States. United States v. Di Re, 332 U.S. 581, 595 (1948). Nor does the text of the Fourteenth Amendment, which countermanded our most infamous attempt to break with that tradition, permit us to bless this effort, any more than does the Supreme Court's interpretation of that amendment in Wong Kim Ark, the many related precedents that have followed it, or Congress's

1952 statute writing that amendment's words in the U.S. Code.

The District Court's order for entry of the preliminary injunctions is **affirmed** in part, **vacated** in part, and remanded for further consideration consistent with this decision.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil No. 25-10139-LTS

STATE OF NEW JERSEY ET AL., PLAINTIFFS

v.

DONALD J. TRUMP ET AL., DEFENDANTS

Filed: July 25, 2025

ORDER ON SCOPE OF PRELIMINARY INJUNCTION

SOROKIN, J.

I. BACKGROUND

In this case, eighteen states and two municipalities sued President Donald Trump, four federal agencies, and the public officials leading those agencies, alleging that Executive Order 14160, entitled "Protecting the Meaning and Value of American Citizenship" ("the Executive Order"), violates the Fourteenth Amendment to the United States Constitution and a federal statute that incorporates the same language. Doc. No. 1.[1] On February 13, 2025, the Court issued a preliminary injunction

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[1] Citations to "Doc. No. __ at __" reference document and page numbering as it appears in the header appended by the Court's electronic docketing system.

barring the implementation and enforcement of the Executive Order during the pendency of this lawsuit. Doc. No. 145. The Court awarded this relief because its careful review of the uncontested factual record produced by the plaintiffs, viewed in light of binding legal precedent, caused it to render a series of conclusions supporting such an order in the specific circumstances presented by this particular case.

First, the Court found the plaintiff states and municipalities have standing to bring this lawsuit based (at least) on direct pocketbook injuries that they established would arise from implementation of the Executive Order. See Doc. No. 144 at 8-11. Second, the Court found the plaintiffs are "nearly certain to prevail" in their claims that the Executive Order contravenes both the Fourteenth Amendment and a related federal statute. Id. at 14-24. Third, the Court found the plaintiffs had established that, in the absence of injunctive relief, they would face irreparable harm in the form of "unpredictable, continuing losses" of federal funding and reimbursements, "coupled with serious administrative upheaval." Id. at 24-26. Fourth, the Court found that the traditional factors, including a balancing of harms and the public interest, "decisively . . . favor entry of injunctive relief." Id. at 26-27. And fifth, the Court found that, although a narrower order would provide "complete relief" to the individual and association plaintiffs in a companion case, "universal or nationwide relief is necessary" in this case because an injunction "limited to the State plaintiffs" would be "inadequate"

protection against the harms the plaintiffs' uncontested declarations described.[2] Id. at 27-30.

The defendants timely appealed the Court's decision, Doc. No. 154, and sought a stay pending appeal, Doc. No. 157. Both this Court and the First Circuit declined to stay the preliminary injunction. Doc. No. 165; New Jersey v. Trump, 131 F.4th 27, 33 (1st Cir. 2025). A few aspects of the First Circuit's decision denying the defendants' stay request are pertinent here. For one thing, the First Circuit explained at length that the defendants had "failed to make a strong showing that the Plaintiff-States likely lack Article III standing" or that the defendants are "likely to prevail in [their] contention that the Plaintiff-States do not have standing to assert the federal constitutional and statutory rights to United States citizenship of the individuals who would not be recognized as having such citizenship under the" Executive Order.[3] 131 F.4th at 35-40 (citation modified).

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[2] Around the same time as this Court issued its preliminary injunction, federal courts in Washington, Maryland, and New Hampshire evaluated similar challenges to the Executive Order and issued decisions reaching the same conclusions as to the first four of the five findings described in this paragraph. See N.H. Indonesian Cmty. Support v. Trump, 765 F. Supp. 3d 102 (D.N.H. 2025); Washington v. Trump, 765 F. Supp. 3d 1142 (W.D. Wash. 2025); CASA, Inc. v. Trump, 763 F. Supp. 3d 723 (D. Md. 2025). In the Washington and Maryland cases—the former of which featured challenges advanced by a different collection of state plaintiffs—the district judges also found that universal relief was warranted. Washington, 765 F. Supp. 3d at 1153-54; CASA, 763 F. Supp. 3d at 746.

[3] Within its discussion of third-party standing, the First Circuit observed that the Executive Order contains language which "directly operates as to the Plaintiff-States, and not the individual excluded from citizenship." 131 F.4th at 39 (citation modified); see

In addition, the First Circuit "decline[d] to address [a] contention" proposed by the defendants for the first time on appeal regarding a narrower form of relief that they urged should replace the nationwide preliminary injunction this Court issued. Id. at 43. Finally, noting the defendants' suggestion that they were prevented by this Court's decision from planning or developing guidance regarding implementation of the Executive Order, the First Circuit clarified that it did not "read the plain terms of the" injunction "to enjoin internal operations that are preparatory" and "cannot impose any harm on the Plaintiff-States." Id. at 44 (citation modified).

Thereafter, the defendants filed emergency applications in the Supreme Court seeking partial stays of this Court's injunction and similar ones entered by federal courts in Washington and Maryland. See Trump v. CASA, Inc., 606 U.S. ---, 145 S. Ct. 2540, 2548-49 (2025). After hearing oral argument, the Supreme Court held that "universal injunctions"—those that "prohibit enforcement of a law or policy against anyone"—"likely exceed the equitable authority that Congress has granted to federal courts." Id. at 2548 (emphasis in original). Such authority generally empowers courts to "administer complete relief between the parties"; though a "party-specific" injunction "might have the practical effect of benefiting nonparties," it may "do so only incidentally." Id. at 2557 (emphases in original). As the majority opinion observed, "[t]he complete-relief in-

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also id. at 38 n.8 (noting but leaving for later consideration possibility that states' sovereign interests in which persons become birthright United States and state citizens provides separate basis for finding states have Article III standing).

quiry is . . . complicated" where states are the plaintiffs. Id. at 2558. The majority further acknowledged that this Court had specifically "decided that a universal injunction was necessary to provide the States themselves with complete relief," not that such relief was warranted in order "to directly benefit nonparties." Id. (emphasis in original). After summarizing the competing arguments advanced by both sides, and noting the defendants had proposed two narrower alternatives for the Supreme Court to evaluate "in the first instance," the majority left it to "the lower courts" to "consider" the defendants' proposals along with "any related arguments" and "determine whether a narrower injunction is appropriate." Id.

Ultimately, the Supreme Court granted the "applications to partially stay the preliminary injunctions . . . , but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue." Id. at 2562-63.

In their emergency application, the defendants did not ask the Supreme Court to evaluate the legality of the Executive Order, and the CASA majority did not do so. Meanwhile, the defendants' appeal of this Court's preliminary injunction remains pending before the First Circuit, with oral argument scheduled for August 1, 2025. In the wake of the Supreme Court's CASA decision, the First Circuit declined a request by the defendants to permit supplemental briefing on CASA's effect, remanding instead to this Court "for the limited purpose of" considering "the bearing, if any, of" the Supreme Court's "guidance in CASA on the scope of the preliminary injunction" in this case, "to address any argument that the parties may advance with respect to what

grounds may now be asserted regarding the injunction's scope," and "to act accordingly." Doc. No. 188 at 3. The Court turns now to explaining how it has conducted those tasks and what conclusion it has reached.

II. DISCUSSION

A. Post-CASA Factual and Legal Submissions

Endeavoring to "move expeditiously to ensure that" the injunction issued in this case "comport[s] with" the "principles of equity" elucidated in CASA, 145 S. Ct. at 2563, the Court promptly set a schedule to govern submissions from the parties addressing the appropriate scope of the injunction in this case, Doc. No. 186. Because it was the defendants' partially successful application—and the narrower alternatives mentioned therein—that yielded the Supreme Court's direction to revisit this question, the Court permitted the defendants to have both the first and the last word as far as the written submissions were concerned. Id. After receiving those submissions, the Court heard oral argument on July 18, 2025.

As noted, this matter returns to the Court now for only a limited purpose: assessing "the bearing, if any," of "CASA on the scope of the preliminary injunction." Doc. No. 188 at 3. Given this specific task assigned by the First Circuit and the jurisdictional limits arising from the defendants' pending appeal,[4] the Court high-

[4] This Court, pursuant to an "abecedarian principle," "is divested of authority to proceed with respect to any matter touching upon, or involved in," defendants' pending appeal of the preliminary injunction, aside from the specific issue remanded to it for further consideration. United States v. George, 841 F.3d 55, 71 (1st Cir. 2016).

lights two questions that are not presently before this Court. The first is standing. The defendants' post-CASA written submissions reiterate arguments about the plaintiffs' standing to challenge the Executive Order and seek injunctive relief. See Doc. No. 193 at 8-9; Doc. No. 197 at 3. However, this Court already found that the plaintiffs have standing, Doc. No. 144 at 8-11, and the First Circuit explained in detail why the defendants' arguments to the contrary—including as to third-party standing—were unlikely to succeed, 131 F.4th at 35-40. This Court is, of course, bound by the First Circuit's third-party-standing analysis in this case. Though the Supreme Court's majority declined to address the defendants' argument "that the States lack third-party standing," 145 S. Ct. at 2549 n.2, nowhere in CASA did the majority provide guidance that might alter the prior rulings regarding standing here, let alone invite this Court to revisit such rulings. The defendants' suggestion to the contrary is, at best, mistaken. See Doc. No. 193 at 4 (blurring CASA majority's discussion and directives regarding scope of injunction with its separate reference in the margin to defendants' standing challenge). In light of all this, and where the defendants have identified no new factual or legal development concerning standing now, the Court finds this threshold question is not properly reexamined by this Court now.

A second issue raised in the defendants' papers, despite being settled at the district-court level for present purposes by prior rulings in this case, is the plaintiffs' showing of irreparable harm. See id. at 10-11 (arguing "the States assert fundamentally monetary harms" but "have not established that those injuries are irreparable"). The Court already found that the plaintiffs

"have established irreparable harm" via "numerous declarations," "which the defendants have not disputed or rebutted in any way," showing the "unpredictable, continuing losses coupled with serious administrative upheaval" they face if the Executive Order takes effect. Doc. No. 144 at 24-25. That finding is within the scope of the appeal now pending and is not one this Court has been empowered to revise—nor is the Court inclined to revise it, even if so empowered.[5]

Having dispensed with these threshold matters, the Court proceeds to the question that brings this case back before it now: Have the plaintiffs established that an order preliminarily enjoining implementation of the Executive Order nationwide is necessary to afford them complete relief, or will a narrower order suffice? As the Court will explain, the plaintiffs have met their burden.[6] The record does not support a finding that

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[5] This is so because the defendants have submitted no new factual evidence on standing, no new responses to the plaintiffs' evidence, and no additional legal reasons for rejecting the standing of the plaintiffs. Rather, they repeat arguments the Court previously considered and rejected.

[6] The Court does not understand CASA as calling into question its earlier determination that the plaintiffs have satisfied the test for preliminary-injunctive relief as a general matter. That determination and its subsidiary findings—that the plaintiffs are likely to succeed on the merits of their claims, that they face irreparable harm in the absence of relief, and that the public interest and balance of harms favor relief here—are now before the First Circuit for review. In addition, nothing in CASA alters the Court's determination that these plaintiffs, in this case, are entitled to "complete" relief for the injuries they have established. This is so because of the flagrancy with which the Executive Order contravenes both the Constitution and a federal statute, the complete absence of evidence (or argument) establishing countervailing considera-

any narrower option would feasibly and adequately protect the plaintiffs from the injuries they have shown they are likely to suffer if the unlawful policy announced in the Executive Order takes effect during the pendency of this lawsuit.

In making this determination, the Court has proceeded as it did originally. It has evaluated the record as a whole and considered only what relief is necessary to prevent irreparable harm to the plaintiffs themselves. Cf. CASA, 145 S. Ct. at 2558 (noting this Court's focus on party-specific relief); Doc. No. 144 at 28 (explaining that plaintiff-specific analysis did not favor "universal relief" in companion case brought by individual and two associations). This process has both legal and factual components. In addition to the equitable principles identified by the Supreme Court in CASA, two other legal precepts bear on the injunction's scope. Guided by the Federal Rules of Civil Procedure, the Court has considered whether narrower alternatives can be articulated "in reasonable detail" and with the specificity required by the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 65(d)(1); see also Schmidt v. Lessard, 414 U.S. 473, (1974) (per curiam) (describing "specificity provisions of Rule 65(d)" as "no mere technical requirements," but as conditions "designed to prevent uncertainty and confusion" by enjoined parties, to "avoid the possible founding of a contempt citation on a decree too vague to be understood," and to enable "an appellate tribunal to know precisely what it is reviewing"); Axia NetMedia Corp. v. Mass. Tech. Park Corp., 889 F.3d 1, 12-13 (1st Cir. 2018) (discussing specificity requirement

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tions favoring the defendants, and for reasons the plaintiffs ably articulate in their papers. See Doc. No. 196 at 11-16.

and need for injunction to be "framed so that those enjoined will know what conduct the court has prohibited" (quotation marks omitted)). And based on other Supreme Court precedent, the Court also has assessed whether any narrower alternative is feasible, or "workable." New York v. Cathedral Acad., 434 U.S. 125, 129 (1977) (quoting Lemon v. Kurtzman, 411 U.S. 192, 200 (1973)); accord North Carolina v. Covington, 581 U.S. 486, 488 (2017) (per curiam); Ass'n of Am. Univs. v. Dep't of Def., No. 25-11740, 2025 WL 2022628, at *27 (D. Mass. July 18, 2025).[7]

On the facts, the Court confronts a one-sided record. This is a result of the parties' divergent approaches to litigating this case. In their original motion papers and their post-CASA submission concerning the injunction's scope, the plaintiffs supported their legal arguments with dozens of sworn declarations from subject-matter experts and public officials describing harms the Executive Order will visit upon the plaintiffs. See Doc. Nos. 5-2 to -23, 196-2 to -37. The defendants, on the other hand, submitted no evidence to support the positions advanced in their own memoranda. They did not dispute (generally or specifically) the substance of the plaintiffs' factual submissions, nor did they offer their own declarations in rebuttal.[8] Once again, then, "the Court ac-

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[7] To the extent the defendants urged during the most recent hearing that this Court need not concern itself with the details of whether and how any injunction it enters might be implemented, that position is wrong as a matter of law under both Rule 65(d) and the Supreme Court precedent cited in this paragraph.

[8] In their original motion papers, the defendants did not acknowledge the plaintiffs' declarations or urge the Court to reject them for any reason. See generally Doc. No. 92. Post-CASA, but before the plaintiffs' proffered any supplemental evidence, the

cepts and credits" the plaintiffs' "declarations, which the defendants have not disputed or rebutted in any way," and which the Court finds credible and reliable. Doc. No. 144 at 25.

According to the uncontested declarations, several factors contribute to the financial and administrative

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defendants summarily suggested that the record "must be limited to . . . the declarations the States submitted with their motion for a preliminary injunction." Doc. No. 193 at 7. The defendants cited no authority for this position. The Court overrules this unsupported objection. Once the plaintiffs filed their supplemental exhibits—which explicitly address the adequacy and workability of narrower alternatives proposed by the defendants for the first time on appeal—the defendants essentially ignored them. Compare Doc. No. 197 at 5-6 (criticizing as "speculative" plaintiffs' argument in their brief that financial burdens would arise because "fewer individuals would enroll in federal programs" but not engaging with declarations upon which argument was based), with Doc. No. 196-2 ¶¶ 14-21 (citing research and survey support for chilling effect of fear in noncitizen communities, including associated avoidance of necessary public services); see generally Doc. No. 197 (otherwise failing to mention declarations, dispute their substance, or further develop any argument against their submission). In these circumstances, the defendants have waived any challenge to the plaintiffs' declarations and forfeited their opportunity to supply their own evidence concerning the injunction's scope. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (applying "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived," because it is "counsel's work" to "create the ossature for [their] argument, and put flesh on its bones"). In sum, the defendants did not submit their own evidence, offered no legal or factual basis to dispute the plaintiffs' evidence, never suggested the plaintiffs' evidence was not credible or reliable, failed to request an evidentiary hearing, and advanced no reasoned argument for barring the submission of evidence to a federal court considering the proper scope of an injunction.

harms the plaintiffs likely face in the absence of nationwide relief. First, demographic data shows that there is substantial interstate movement among noncitizens parents with their children in tow.[9] The Court finds that a substantial number of children covered by the Executive Order will move into the plaintiff states during the pendency of this action. The Court further finds that the administrative and financial impacts the plaintiffs are likely to experience because of the Executive Order while this lawsuit proceeds, given the movement of children within the Order's reach, are substantial and material, not de minimis or trivial.

Second, in the context of social services provided to young children, the plaintiffs rely on Social Security numbers ("SSNs")[10]—and, in particular, on the enumer-

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[9] See, e.g., Doc. No. 196-3 ¶ 14 (attesting that nearly 27,000 noncitizen adults with at least one child in their household moved from a non-plaintiff state to a plaintiff state in 2023); Doc. No. 196-8 ¶ 13 (estimating that an average of 6,000 children are born out-of-state to New Jersey residents each year); cf. Tara Watson, Enforcement & Immigrant Location Choice (Nat'l Bureau Econ. Rsch., Working Paper No. 19626, Nov. 2013) (examining effect of local immigration enforcement and summarizing data suggesting certain practices incentivize movement within United States from places with harsh enforcement practices to those with more lenient practices).

[10] Presently, children born in the United States are issued Social Security cards that reflect both their SSN and their U.S. citizenship. Two other categories of Social Security cards exist, but it is not clear either would apply to a child born in the United States but lacking birthright citizenship (per the policy set forth in the Executive Order). See Soc. Sec. Admin., Types of Social Security Cards, https://www.ssa.gov/ssnumber/cards.htm (describing alternative types of cards issued to "people lawfully admitted to the United States on a temporary basis" with "authorization to work,"

ation at birth ("EAB") program, through which most parents apply for a newborn's SSN as part of their hospital's birth-registration process—to confirm citizenship and eligibility for such services.[11] The Court finds that citizenship requirements are included in numerous relevant federal statutes and, as a result, are intrinsic components of electronic verification systems run by the United States that are interconnected with state database and other processing systems. Any change impacting these systems—and especially a partial change that varies by location within the United States—will likely trigger immediate confusion and burdens on state administrative processes. Equity does not support imposing on the plaintiffs substantial burdens to accommodate, even temporarily, an unlawful Executive Order.

Third, a patchwork or bifurcated approach to citizenship would generate understandable confusion among state and federal officials administering the various programs described by the plaintiffs, as well as similar confusion and fear among the parents of children within the scope of the Executive Order. The Court finds that various statutes governing social-service programs through which states receive federal reimbursements or

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or "people from other countries" who require a SSN for one of two identified reasons).

[11] See, e.g., Doc. No. 196-7 ¶¶ 5-44 (describing use of SSN to verify citizenship and eligibility for social services and associated federal reimbursements); see also Doc. No. 5-4 ¶¶ 9-16 (describing EAB process and anticipated effects of Executive Order on funding and administrative systems related to that process); Doc. No. 196-5 ¶ 15(c)-(d) (discussing obstacles and confusion that would arise if child was born in non-plaintiff state and not provided a SSN at birth but then moved to plaintiff state and needed to acquire a SSN to enroll in public benefits program like Medicaid).

other funding require training, administrative approvals, and community outreach efforts by states participating in the programs. For example, states must identify and enroll all eligible children for social-service benefits such as the Children's Health Insurance Program.[12] Significant confusion or changes impacting eligibility or administration of such programs will require states to examine and revise existing systems. Shifting citizenship status, depending upon the location of a child or the purpose animating a citizenship determination, is a state of affairs without precedent in this country for at least 150 years. Federal law and state systems are not designed to respond easily to such a regime. The fear and confusion arising from implementation of the Executive Order would thwart states' ability to discharge these obligations under federal law, and likely also would chill enrollment in critical programs impacting children's health and wellbeing, leading to increased and unpredictable costs to the plaintiffs.[13] Principles of eq-

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[12] See, e.g., Doc. No. 196-7 ¶¶ 47-56 (citing, e.g., statutory requirements governing Children's Health Insurance Program, in 42 U.S.C. § 1397bb(a)(2)-(3)).

[13] See, e.g., Doc. No. 196-2 ¶¶ 17-18, 121-23 (summarizing survey regarding noncitizen public engagement, including avoidance of public health services and other interactions by noncitizen families with children, and describing chilling effect and confusion that arise when immigration-related laws are not uniform nationwide); Doc. No. 196-4 ¶¶ 15-19 (expressing opinion that decrease in enrollment in public health programs will result in more uninsured patients and increased costs to state medical facilities); Doc. No. 196-27 ¶¶ 7-8 (describing increased cost of emergent and other medical care required when patients are deterred from accessing nutrition-assistance programs and other routine or preventive clinical care). The defendants complain any increased costs are "speculative." Doc. No. 197 at 5-6. The Court finds they are proven at this stage,

uity do not favor requiring the plaintiffs to shoulder these burdens while this lawsuit proceeds.

This factual record is uncontested by the defendants.[14] The evidence recounted in the preceding paragraphs, along with the corresponding findings by the Court, decisively supports the Court's original finding: The plaintiffs have established by a preponderance of evidence that the scope of Court's original preliminary injunction is necessary to provide them complete relief. Generally, in the Court's view, the parties' lopsided

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though, by the plaintiffs' reliable, thorough, and persuasive evidentiary submissions. Merely labeling the harms or evidence "speculative," without elaboration or support, does nothing to contest the detailed evidence the plaintiffs have submitted. See note 8, supra.

[14] The defendants have not challenged the data, surveys, or research upon which various declarants relied in reaching their conclusions or opinions. They have not offered their own experts or other witnesses offering different opinions. And they have not submitted evidence (or even argument) that the financial impacts and administrative upheaval the plaintiffs cite would not follow from the implementation of the Executive Order because, for example, children within its scope (though not citizens) would remain eligible for services by virtue of being granted a different qualifying immigration status in a manner that would not impact the plaintiffs' present enrollment, verification, and outreach processes. Of course, the defendants at this point have had several opportunities to advance and support such arguments—including during the weeks that have elapsed since the Supreme Court in CASA expressly allowed their planning to begin. Cf. Doc. No. 201 at 61, 67 (reflecting defense counsel at most recent hearing could not confirm having spoken with "anybody in any of these agencies" about feasibility of complying with narrower injunction and offered no specifics about how Executive Order would be implemented despite representing that agencies "are right now working on public guidance").

showing would be reason enough to justify this conclusion. The Executive Order is unconstitutional and contrary to a federal statute. A host of federal and state laws and corresponding administrative systems are built on the principle of birthright citizenship. The defendants are entitled to pursue their interpretation of the Fourteenth Amendment, and no doubt the Supreme Court will ultimately settle the question. But in the meantime, for purposes of this lawsuit at this juncture, the Executive Order is unconstitutional.[15] The injuries flowing directly and promptly from the Executive Order are not neatly cabined by geography or program. In these circumstances, equity does not require these aggrieved plaintiffs to bear the consequences they have shown will arise from this unlawful Executive Order while the parties litigate the dispute.

B. Narrower Alternatives

Sometimes, the adversary process reveals a narrower form of injunction sufficient to avoid, during the pendency of the lawsuit, the injuries supporting the claims of a plaintiff. Not here. This conclusion arises, at least in part, from the defendants' refusal to engage with the parameters or feasibility of even one narrower alternative. Cf. Rodriguez v. Mun. of San Juan, 659 F.3d 168, 175 (1st Cir. 2011) ("Judges are not mind-readers, so parties must spell out their issues clearly, highlighting the relevant facts and analyzing on-point authority. And they must give us the raw materials so that we can do our work, or they may lose as a conse-

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[15] The undersigned is hardly an outlier in reaching this conclusion. As far as the Court is aware, "[e]very court to evaluate the Order has deemed it patently unconstitutional." CASA, 145 S. Ct. at 2573 (Sotomayor, J., dissenting).

quence." (citation modified)). Though the defendants "correctly state that they need not 'write' the injunction themselves," they "must state their objections to the injunction to the district court, so that the district court can consider them and correct the injunction if necessary." United States v. Zenon, 711 F.2d 476, 478 (1st Cir. 1983) (Breyer, J.); see Doc. No. 193 at 7; cf. Philip Morris, Inc. v. Harshbarger, 159 F.3d 670, 680 (1st Cir. 1998) (admonishing that "a disappointed litigant cannot surface an objection to a preliminary injunction" including as to its breadth "for the first time in an appellate venue").

In response to the plaintiffs' original motion, the defendants opposed any form of relief, alternatively objected to an order with nationwide scope, but offered only a vague and somewhat circular alternative. See Doc. No. 92 at 50 (urging the Court to "limit any relief to any party before it that is able to establish an entitlement to preliminary injunctive relief"). When the defendants sought to stay the injunction it issued, they asked the Court to "limit any preliminary injunctive relief to the parties before it," without further explaining what such an order would look like. Doc. No. 158 at 7; cf. 131 F.4th at 43 (reflecting First Circuit's understanding of this proposal as prohibiting enforcement of Executive Order with respect to children born in plaintiff states). Before the First Circuit, the defendants offered a "different" suggestion, proposing an injunction barring enforcement of the Executive Order against any plaintiff state when it administers a service to any child within the scope of that Order. See 131 F.4th at 43 (describing proposal and contrasting it with position advanced in this Court).

The defendants' position evolved again when the case reached the Supreme Court. There, the defendants floated (but did not develop in any detail) two alternatives: an injunction requiring the defendants to treat children covered by the Executive Order "as eligible for purposes of federally funded welfare benefits"; or an injunction forbidding the defendants from applying "the Executive Order within the respondent States, including to children born elsewhere but living in those States." 145 S. Ct. at 2558 (quoting defendants' emergency application).

Notwithstanding the Supreme Court's reliance on the defendants' two narrower proposals and its instruction that the lower courts should "take [them] up . . . in the first instance" when evaluating on remand "whether a narrower injunction is appropriate," id., the defendants elected not to develop those proposals in this Court. Indeed, they have retreated entirely from one of them. See Doc. No. 201 at 53-57 (agreeing second alternative quoted above and in CASA majority opinion is omitted from post-remand briefs because defendants "think it's still overbroad").

Instead, the defendants devoted more than half of their initial post-CASA memorandum to other matters. See Doc. No. 193 at 4-11 (addressing scope of CASA stay, briefing order, assignment of burden, which party should propose alternatives, standing, and irreparable harm).[16] In the few pages touching on the scope of an

[16] The defendants claim the Court "improperly shift[ed]" the burden of proof to them in its briefing order. Doc. No. 193 at 6. Not so. Plainly, the plaintiffs bear the burden to establish by a preponderance of evidence their entitlement to whatever injunction

injunction, the defendants urged the Court to "at most require [them] to continue to reimburse Plaintiffs for services provided to persons covered by the Executive Order as though they were citizens." Id. at 11; accord id. at 12 (suggesting such an order would also permit plaintiffs "to continue to treat individuals born in the United States but covered by the Executive Order as citizens for purposes of" relevant federal programs). In their reply, the defendants reiterated that position—an order "requiring that covered individuals be treated as citizens for [purposes of eligibility for citizen-dependent benefits programs]"—and suggested the Court should "build out" from there to create a bespoke injunction that would "address any remaining injuries." Doc. No. 197 at 6; cf. id. at 4 (characterizing plaintiffs' harms as mostly tied to SSNs but urging that "an injunction requiring the issuance of social security cards nationwide would still be broader than necessary"); id. at 5 (noting "narrower injunction could continue to allow plaintiff States to use existing methods of verifying citizenship, such as birth certificates" (footnote omitted)).

During the post-CASA hearing before this Court, the defendants expressed a general belief that "the Court should consider a lot of alternatives that are narrower than the injunction that it issued," Doc. No. 201 at 55, though they only identified the one alternative toward which they gestured in their recent memoranda. At no point have the defendants fleshed out how any narrower injunction would work. That is, they have never addressed what renders a proposal feasible or workable, how the defendant agencies might implement it without

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might issue. Nothing in the briefing order said otherwise or even addressed the quantum or placement of that burden.

imposing material administrative or financial burdens on the plaintiffs, or how it squares with other relevant federal statutes. In fact, they have characterized such questions as irrelevant to the task the Court is now undertaking. The defendants' position in this regard defies both law and logic. To borrow from an analogy employed by the Supreme Court in CASA, consider a nuisance case "in which one neighbor sues another for blasting loud music at all hours of the night." 145 S. Ct. at 2557. The plaintiff seeks an order requiring "the defendant to turn her music . . . off." Id. Under the law, the defendant must do more than simply oppose such an order or vaguely say it is too broad, and the presiding judge must consider whether any alternatives proposed by the defendant are feasible. If, for example, the defendant proposes the judge order her to build a soundproof wall or limit her music to "a volume that will not bother the plaintiff," the judge would rightly evaluate such alternatives. The judge would consider, based on applicable law and the record the parties produced, whether the proposed wall is permissible given neighborhood zoning rules, and whether it is financially and temporally feasible to construct without generating additional burdens on the plaintiff. The judge would consider whether an order limiting the music's volume would be specific enough to provide the plaintiff complete relief without risking repeated return trips to court for clarification or possible contempt. If the defendant demurred when asked to engage with such questions, she would do so at her own peril.

Of course, the legal, administrative, and workability issues presented in this case are vastly more complicated than those arising when crafting a preliminary injunction to govern a noise-based nuisance claim. Pri-

marily due to the defendants' obduracy in refusing to explore specific alternatives and their workability, all of the possible alternatives before the Court suffer from shortcomings when it comes to the feasibility of implementing them without burdening the plaintiffs. Nevertheless, in light of the Supreme Court's specific guidance in CASA, and because this Court takes seriously its obligation to ensure the relief in this (and any) case is sufficient without exceeding the injuries of the plaintiffs given the circumstances presented, the Court will now address each narrower alternative the defendants have offered throughout their various submissions here and on appeal. It will also address another alternative that occurred to the Court in its independent consideration of this matter post-CASA, and that the defendants in their reply acknowledged but urged the Court to reject. The Court will explain why its review of the record and the harms to the eighteen states and two localities that are plaintiffs in this case has led it to conclude that none of the narrower alternatives provide the complete relief to which these plaintiffs are themselves entitled.

The first alternative discernible in the defendants' submissions in this case was an order enjoining enforcement of the Executive Order within the plaintiff states to children born in a plaintiff state. See Doc. No. 158 at 7; 131 F.4th at 43. The Court finds that this would not provide the plaintiffs with anything close to complete relief and would impose additional burdens on them. The plaintiffs have adduced uncontested evidence (not mere speculation) establishing that pregnant women give birth to children outside their state of residence in annual numbers that are not de minimis, and that families with children likely to need public services move from non-plaintiff states to plaintiff states in an-

nual numbers that also are not de minimis. See note 9, supra. This evidence suffices to establish, and the Court finds for present purposes at least, that substantial pocketbook and administrative injuries flowing from the unconstitutional Executive Order would continue unabated under an order limited in scope to children born within a plaintiff state's borders. Access to a SSN issued through the EAB program and other federal benefits would be impeded or limited for a child born in a non-plaintiff state, generating administrative and financial burdens for a plaintiff once the child returns or moves there.[17]

Perhaps anticipating this obvious problem, the next alternative articulated by the defendants, and the one to which they have most often alluded in one form or another, is an order requiring the defendants to reimburse the plaintiffs for services provided to children covered by the Executive Order. See 131 F.4th at 43; CASA, 145 S. Ct. at 2558; Doc. No. 193 at 11; Doc. No. 197 at 6.[18]

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[17] The record establishes that these are direct, inevitable injuries within the proper scope of relief. Certainly, one can conceive of means by which the defendants might attempt to mitigate these harms. Before entering an order that does not account for these injuries, though, some evidentiary showing is necessary. The defendants made none.

[18] The literal words of the defendants' proposal—that the Court could start by "requiring that covered individuals be treated as citizens" for citizen-dependent benefits programs—could be read as suggesting all such persons in the United States should receive such benefits. In the context of the defendants' general objections and positions in this case, the Court understands the proposal as limited to covered persons seeking benefits from the plaintiff states. Even with this understanding, though, this alternative would indirectly but unavoidably supply a benefit to nonparties (i.e., the children and families receiving the relevant benefits).

A corollary of this alternative is that the plaintiffs would be permitted to treat children covered by the Executive Order as citizens for purposes of eligibility for federal benefits programs they administer. See Doc. No. 197 at 5. This proposal suffers from several fatal shortcomings. The defendants have altogether failed to show that this alternative is workable or feasible and would avoid disrupting the processes presently used by the plaintiffs to administer the relevant federal-benefits programs. See notes 11-12, supra. They have not explained how they (or the plaintiff states) would identify and track, let alone verify eligibility using existing processes and consistent with federal statutory requirements, the children within the scope of such an order. In contrast, the plaintiffs have supplied evidence addressing why this proposal is unworkable and infeasible and would provide them incomplete relief. For example, it fails to account for the confusion and chilling effects, and the resulting administrative and financial harms flowing therefrom, that are identified by the plaintiffs and supported by their declarations. See notes 11-13, supra.

A broader alternative the defendants have disclaimed since mentioning it in their emergency application to the Supreme Court is an order enjoining enforcement of the Executive Order within the plaintiff states to children born or living in a plaintiff state. See 145 S. Ct. at 2558. This option has the benefit of sounding straightforward, but it suffers from the same flaws as the alternative just discussed. That is, it does nothing to avoid the confusion among officials that would arise from a state-by-state approach to citizenship, or the financial and administrative harms flowing from the chilling effect such an approach would have on noncitizens—

including, and most especially, noncitizen parents of covered children living in the plaintiff states who would be eligible for, but less likely to avail themselves of, public health and other social services. See notes 11-13, supra. Nor have the defendants, who now urge the Court to view this alternative as unnecessarily broad, explained how they could feasibly implement an order like this without burdening the plaintiffs administratively or otherwise.

The final alternative the Court has considered is one it devised based on its post-CASA review of the case: an order requiring the defendants to continue issuing SSNs to all children covered by the Executive Order throughout the United States, including by leaving the existing EAB program in place. The defendants alluded to such an alternative in their reply but urged its rejection, Doc. No. 197 at 4, and the Court raised it with the parties during the most recent hearing in this matter. Under such an order, the defendants would be obligated to reimburse the plaintiffs for services provided to children covered by the Executive Order, and the children's eligibility could be verified using existing administrative processes by virtue of their receipt of the same type of SSN that would have issued absent the Executive Order. Evaluating this option alongside the plaintiffs' evidentiary submissions, however, reveals that it does not avoid the defects that the Court identified when addressing the last two alternatives. A regime under which children covered by the Executive Order would be eligible at birth for the full array of social services in a plaintiff state but not a non-plaintiff state would leave intact the confusion and chilling effect already dis-

cussed.[19] Moreover, the record establishes that SSNs issued through the EAB program are used by state agencies to verify citizenship and eligibility for various state- and federal-benefits programs, using federal database(s) and state systems derived from or depending on them.

The Court has serious reservations about the workability, and the potential for unanticipated consequences, of this final alternative in light of the uncertainty that would arise if citizen-specific SSNs were issued to a swath of children whose citizenship is denied by the Executive Order and might be subject to change or question depending on where a person is located. Although one can imagine the foregoing possibly working, imagination is not the stuff of judicial decisions. In contrast, the existing injunction is clear, simple and workable: The defendants may not enforce the Executive Order while this lawsuit proceeds. The plaintiffs have demonstrated myriad defects with any proposal narrower than the injunction originally entered. The defendants have offered nothing beyond the bland assurance they will comply with the Court's order, whatever it may require,

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[19] For example, parents who live in Camden, New Jersey, but welcome a newborn in a hospital a few minutes away in Philadelphia, could apply for their child's SSN through the EAB program at the hospital, but likely (and accurately) would be told that their child is not eligible for Medicaid (because Pennsylvania is not a plaintiff here). It would then fall to New Jersey to reach out to the family, resolve the confusion, and take steps to enroll the child in a program outside of the process that otherwise would have applied at the time of a birth in a New Jersey hospital. See note 11, supra. The foregoing burdens are not "self-inflicted injuries," Doc. No. 197 at 6, but obligations imposed on the plaintiffs by federal law, see note 12, supra.

and the suggestion that any administrability questions could be addressed later. See Doc. No. 201 at 65 ("I can tell you we'll comply, but I can't tell you exactly how we will do that."). They submitted no evidence and provided no detail concerning any narrower alternative for the Court to consider. They did not say any proposal was vetted with any persons responsible for its implementation.

The defendants' approach fails to persuade. The Court must craft an injunction which complies with Rule 65(d) and long-established equitable principles. On the record before the Court, this final possible alternative does not adhere to those requirements. The questions the defendants have not addressed in writing or explored with evidence, and could not answer at the hearing, do not concern minor ministerial issues. They bear on substantial, vague provisions that would govern complex government programs impacting real people's lives—including the real public servants working in innumerable agencies within the plaintiff states and municipalities to serve the needs of their residents. The defendants have done nothing to assure the Court that they fully grasp the potentially sweeping and disruptive effects of any misstep in implementation. With stakes this high, the Court simply cannot adopt the defendants' blasé approach to the details and workability of a more limited injunction.

In sum, the Court declines to adopt any of the narrower proposals discussed by the parties throughout the pendency of this case or identified by the Court in its own review. None of the alternatives would sufficiently protect the twenty plaintiffs before this Court against the harms they have established via uncontested

and detailed factual submissions describing the imminent effects that would arise from implementation of the Executive Order. Cf. Washington v. Trump, --- F.4th ----, 2025 WL 2061447, *16-17 (9th Cir. July 23, 2025) (finding no abuse of discretion by district court determination that universal injunction was necessary to prevent irreparable pocketbook and administrative injuries to other states challenging same Executive Order).

III. CONCLUSION

The Court finds again, as it did before, that the plaintiffs have met their burden of establishing entitlement to "complete" preliminary injunctive relief in a form that protects them against the irreparable financial and administrative burdens that they have shown the facially unlawful Executive Order would visit upon them. The plaintiffs have done so by advancing persuasive legal arguments backed by a formidable evidentiary showing. In other words, they have put in the hard work of marshaling the facts and the law to support the causes of action and requests for relief they articulate in this lawsuit. This is what parties—especially those represented by experienced and capable counsel—are expected to do in litigation occurring in courts across this country each day.

The defendants opted for a different approach. Initially and again now, they neither challenged nor rebutted the plaintiffs' evidentiary showing. Rather than engaging seriously with the one question as to which they partially prevailed on appeal and which the Supreme Court expressly directed the lower courts to reckon with on remand, the defendants complained about the Court's briefing order, sought to reopen questions that are not properly before this Court now, and quibbled about

whether they should be required to participate meaningfully in the process of devising and evaluating narrower alternatives to the Court's original order. They need not "write their own injunction," but they must do something to help transform an idea into terms the Court can express in a feasible, specific injunction that is consistent with other federal laws.

Despite the defendants' chosen path, the Court—aided substantially by the plaintiffs' meticulous factual and legal submissions—undertook the review required of it by CASA and considered anew whether its original order swept too broadly. After careful consideration of the law and the facts, the Court answers that question in the negative.

For the foregoing reasons, no workable, narrower alternative to the injunction issued originally would provide complete relief to the plaintiffs in this case. The Court therefore declines to modify that injunction.[20] The Clerk shall transmit a copy of this Order to the Clerk of the Court of Appeals for the First Circuit.

SO ORDERED.

/s/ LEO T. SOROKIN
LEO T. SOROKIN
United States District Judge

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[20] Though the defendants have interpreted the original injunction as prohibiting internal planning and preparation for the Executive Order's implementation, this Court did not intend such a restriction, the First Circuit did not read the injunction as containing such a restriction, and the Supreme Court in CASA made abundantly clear that no such restriction survives its decision to grant the defendants a partial stay.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1169

O. DOE; BRAZILIAN WORKER CENTER;
LA COLABORATIVA, PLAINTIFFS, APPELLEES

v.

DONALD J. TRUMP, IN THEIR OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF STATE; MARCO RUBIO, IN THEIR OFFICIAL CAPACITY AS SECRETARY OF STATE; US SOCIAL SECURITY ADMINISTRATION; FRANK J. BISIGNANO, IN THEIR OFFICIAL CAPACITY AS COMMISSIONER OF SOCIAL SECURITY, DEFENDANTS, APPELLANTS

No. 25-1170

STATE OF NEW JERSEY; COMMONWEALTH OF MASSACHUSETTS; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF MAINE; STATE OF MARYLAND; DANA NESSEL, ATTORNEY GENERAL FOR THE PEOPLE OF THE STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN; CITY AND COUNTY OF SAN FRANCISCO, CA, PLAINTIFFS, APPELLEES

v.

DONALD J. TRUMP, IN THEIR OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF STATE; MARCO RUBIO, IN THEIR OFFICIAL CAPACITY

AS SECRETARY OF STATE; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF HOMELAND SECURITY; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., IN THEIR OFFICIAL CAPACITY AS SECRETARY OF HEALTH AND HUMAN SERVICES; US SOCIAL SECURITY ADMINISTRATION; FRANK J. BISIGNANO, IN THEIR OFFICIAL CAPACITY AS COMMISSIONER OF SOCIAL SECURITY; UNITED STATES, DEFENDANTS, APPELLANTS

Entered: July 3, 2025

ORDER OF THE COURT

Before BARRON, Chief Judge, RIKELMAN and AFRAME, Circuit Judges.

The defendants-appellants have filed a Motion for Supplemental Briefing Order (the "Motion") to this court in connection with New Jersey v. Trump, No. 25-1170. That case involves the defendants-appellants' appeal of a February 13, 2025 order by the United States District Court for the District of Massachusetts. The District Court's order granted a "universal" preliminary injunction enjoining the enforcement of Executive Order No. 14,160, titled "Protecting the Meaning and Value of American Citizenship." Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 20, 2025). That appeal is pending in this court, and oral argument is scheduled in this court on August 1, 2025. The Motion asks us to order supplemental briefing on the effect of the United States Supreme Court's order in Trump v. CASA, Inc., 606 U.S. (2025), on this appeal to "allow this Court to 'move expe-

ditiously to ensure that . . . the injunctio[n] comport[s] with' the Supreme Court's decision." They propose a schedule in which the supplemental briefs "would be due on July 11" so that "[t]he Court would then be positioned to rule on whether the nationwide injunction is broader than necessary to provide complete relief to the plaintiffs, an issue this Court declined to consider in initially ruling on the government's stay motion." They further assert that "adopting this course would comport with the Supreme Court's instruction that the lower courts should 'move expeditiously' to resolve outstanding issues about the scope of the injunction." The plaintiffs-appellees oppose the Motion. They do so on the grounds that, "because the core questions prompted by CASA are factual, not legal," the District Court is the "proper forum" for resolving the questions prompted by the Supreme Court's order in CASA.

In CASA, 606 U.S. __, the Supreme Court addressed the defendants-appellants' application to stay the preliminary injunction on appeal in No. 25-1170, which had been consolidated with similar applications in other cases. The Court held that "universal injunctions" -- that is, injunctions that "prohibit enforcement of a law or policy against anyone"—"likely exceed the equitable authority that Congress has granted to federal courts." Id. slip op. at 1-2 (footnote omitted). But it expressly stated that the injunction on appeal in No. 25-1170 "does not purport to directly benefit nonparties." Id. slip op. at 17. The Court noted instead that "the District Court for the District of Massachusetts decided that a universal injunction was necessary to provide the [plaintiffs-appellees] themselves with complete relief." Id. slip op. at 17-18. It further recognized that "the principle that a court of equity may fashion a remedy that awards

complete relief" has "deep roots in equity." Id. slip op. at 15. It also observed that "to say that a court can award complete relief is not to say that it should do so" and that "in equity, the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff's story needs to be." Id. slip op. at 18 (cleaned up). The Court then noted the defendants-appellants' contentions that "narrower relief" was appropriate in this case, but "decline[d] to take up these arguments in the first instance." Id. slip op. at 19. The Court's order stated that "[t]he lower courts should determine whether a narrower injunction is appropriate" and "le[ft] it to them to consider these and any related arguments." Id. Finally, the Court "granted" "[t]he Government's applications to partially stay the preliminary injunctions . . . but only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue." Id. slip op. at 26. It then instructed "[t]he lower courts" to "move expeditiously to ensure that, with respect to each plaintiff, the injunctions comport with this rule and otherwise comply with principles of equity." Id.

In urging us to grant the Motion, the defendants-appellants state that "[i]f the district court's existing decision is insufficient to establish" that the universal injunction entered in this case comports with the complete-relief principle and other principles of equity, "then the universal scope of that injunction is appropriately stayed." There is no motion, however, pending before this court for a stay pending appeal of the preliminary injunction on appeal in No. 25-1170, which injunction the defendants-appellants appear to agree is not stayed at present. To be sure, on February 27, 2025, the defendants-appellants did file a motion in our

court to stay the injunction, as they note in the Motion. But we denied the stay and, in the opinion doing so, we declined to address the "narrower relief" proposed by the defendants-appellants in their stay motion to this court because they had failed to raise it in opposing the grant of a nationwide preliminary injunction in the preliminary injunction proceedings themselves or in requesting a stay of that injunction from the District Court. See New Jersey v. Trump, 131 F.4th 27, 43 (1st Cir. 2025) (citing Philip Morris, Inc. v. Harshbarger, 159 F.3d 670, 680 (1st Cir. 1998), for the proposition that "[a]s a general rule, a disappointed litigant cannot surface an objection to a preliminary injunction for the first time in an appellate venue"). We note, too, that any new motion for interim relief pending appeal would generally have to be filed first in the District Court. See Fed. R. App. P. 8(a)(1). Thus, to the extent the Motion seeks the order of supplemental briefing for the purpose of securing interim relief from us as to the preliminary injunction pending our resolution of the appeal, it provides no basis for the order as it provides no basis for this court to act with respect to the provision of any such relief in the first instance.

Moreover, CASA provides fresh guidance regarding the equitable powers of federal courts. See CASA, 606 U.S. at __, slip op. at 17-18. Thus, in aid of our consideration of the issues on appeal, and consistent with the Supreme Court's instruction that "[t]he lower courts should determine whether a narrower injunction is appropriate" and "move expeditiously" to ensure that the injunction comports with the "principles of equity" described in CASA, id. slip op. at 19, 26 (emphasis added), we conclude that it is prudent to remand to the District Court, while retaining our jurisdiction over the appeal.

The remand is for the limited purpose of enabling the District Court to consider the bearing, if any, of that guidance in CASA on the scope of the preliminary injunction in No. 25-1170 and to act accordingly. In doing so, we expect the District Court to address any arguments that the parties may advance with respect to what grounds may now be asserted regarding the injunction's scope.

For these reasons, the Motion is denied, and the matter is remanded to the District Court for the limited purposes described herein, with this court retaining jurisdiction. We understand the District Court will act promptly in accordance with the briefing schedule that it entered on July 2, 2025.

By the Court:
Anastasia Dubrovsky, Clerk

cc: Hon. Leo T. Sorokin, Robert Farrell, Clerk, United States District Court for the District of Massachusetts, Jeremy Feigenbaum, Shankar Duraiswamy, Elizabeth R. Walsh, Viviana Maria Hanley, Jared B. Cohen, Gerard J. Cedrone, Annabelle Cathryn Wilmott, Delbert Tran, Denise Yesenia Levey, Irina Trasovan, Lorraine Lopez, Marissa Malouff, Christopher David Hu, Michael Louis Newman, Shannon Wells Stevenson, William M. Tong, Janelle Medeiros, Vanessa L. Kassab, Jeremy Girton, Caroline S. Van Zile, Kalikoonalani Diara Fernandes, Sean D. Magenis, Thomas A. Knowlton, Adam D. Kirschner, John C. Keller, Heidi Parry Stern, James Grayson, Ester Murdukhayeva, Matthew William Grieco, Daniel Paul Mosteller, Katherine Connolly Sadeck, Leonard Giarrano IV, Jonathan T. Rose, Gabe Johnson-Karp, David Scott Louk, Sharon Swingle, Donald Campbell Lockhart, Leah Belaire Foley, Eric Dean McArthur, Mark R. Freeman, Brett Allen Shumate, Abraham R. George, Bradley Hinshelwood, Derek Weiss, Jonathan Benjamin Miller, James Matthew Rice, Whitney D. Hermandorfer, George W. Vien, R. Trent McCotter, Pietro Alfredo Conte, Matt A. Crapo, Ryan P. McLane, Rubin Young, Mark Marvin, Melvin Jones Jr., Colleen Connors, Leonard W. Houston, Neil Giovanatti, Stephanie M. Service, Toni L. Harris, William J. Olson, Jeremiah Morgan, Cody C. Coll, Ari Cuenin, Judd E. Stone II, Anna Marks Baldwin, James J. Pastore Jr., Chester S. Dubov, Natalie Tsang, Stephanie De Marisco Thomas, Reena Parikh, Juan Camilo Mendez Guzman, Vincent Levy, Hannah Bartlett, Douglas Edward Lieb, Jonathan Weinberg, Douglas Jensen, Brianne J. Gorod, Indra Neel Chatterjee, Owen Richard Wolfe, Lori Chen, Wendy Mengwen Feng, Steven Ury, Edgar Chen, Richard B. Kendall, Jonathan Hacker, Su-

san McMahon, Robert Seungchul Chang, Bethany Yue Ping Li, Jessica Levin, Melissa Lee, Ivan E. Espinoza-Madrigal, Oren McCleary Sellstrom, Mirian Albert

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil No. 25-10135-LTS

O. DOE ET AL., PLAINTIFFS

v.

DONALD J. TRUMP ET AL., DEFENDANTS

Filed: Feb. 13, 2025

PRELIMINARY INJUNCTION

SOROKIN, J.

For the reasons set forth in the Memorandum of Decision issued today, Doc. No. 46, the plaintiffs' motion for preliminary injunction (Doc. No. 3) is ALLOWED. As explained in the Memorandum, the plaintiffs have advanced valid causes of action seeking equitable relief, and they have standing to pursue such claims. They also have demonstrated that each factor governing their request for preliminary injunctive relief weighs strongly in their favor. The plaintiffs are likely to succeed on the merits of their claims under the Citizenship Clause and 8 U.S.C. § 1401, they are likely to suffer irreparable harm in the absence of relief, the balance of harms tips overwhelmingly in their favor, and the public interest favors an injunction.

Accordingly, pursuant to Federal Rule of Civil Procedure 65(a), this Court ORDERS as follows:

1. The United States Department of State, the Secretary of State, the United States Social Security Administration, the Acting Commissioner of Social Security, and all officers, agents, employees, attorneys, and any other persons acting in concert with or behalf of any named defendant in this action (including agents, employees, and other representatives of President Donald J. Trump), are ENJOINED from implementing and enforcing Executive Order No. 14,160, "Protecting the Meaning and Value of American Citizenship," against plaintiff O. Doe, or against any member of La Colaborativa or the Brazilian Worker Center.

2. No security under Federal Rule of Civil Procedure 65(c) is necessary or warranted in the circumstances of this case, where the plaintiffs are an individual and two local non-profit organizations, they seek to vindicate an important constitutional and federal statutory right, and the injunction will not expose the defendants to financial loss. See da Silva Medeiros v. Martin, 458 F. Supp. 3d 122, 130 (D.R.I. May 1, 2020) (citing Crowley v. Loc. No. 82, 679 F.2d 978, 1000-01 (1st Cir. 1982)).

3. This preliminary injunction shall take effect immediately upon the docketing of this Order and shall remain in effect until the entry of judgment in this matter, unless this Court, the United States Court of Appeals for the First Circuit, or

the United States Supreme Court order otherwise.

SO ORDERED.

/s/ LEO T. SOROKIN
LEO T. SOROKIN
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, ET AL, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

Filed: Feb. 13, 2025

PRELIMINARY INJUNCTION

SOROKIN, J.

For the reasons set forth in the Memorandum of Decision issued today, Doc. No. 144, the plaintiffs' motion for preliminary injunction (Doc. No. 3) is ALLOWED. As explained in the Memorandum, the plaintiffs have advanced valid causes of action seeking equitable relief, and they have standing to pursue such claims. They also have demonstrated that each factor governing their request for preliminary injunctive relief weighs strongly in their favor. The plaintiffs are likely to succeed on the merits of their claims under the Citizenship Clause and 8 U.S.C. § 1401, they are likely to suffer irreparable harm in the absence of relief, the balance of harms tips overwhelmingly in their favor, and the public interest favors an injunction. Additionally, the record establishes that universal relief is required in order to provide

complete relief to the eighteen states and two cities that have brought this case.

Accordingly, pursuant to Federal Rule of Civil Procedure 65(a), this Court ORDERS as follows:

1. The United States Department of State, the Secretary of State, the United States Department of Homeland Security, the Secretary of Homeland Security, the United States Department of Health and Human Services, the Acting Secretary of Health and Human Services, the United States Social Security Administration, the Acting Commissioner of Social Security, and all officers, agents, employees, attorneys, and any other persons acting in concert with or behalf of any named defendant in this action (including agents, employees, and other representatives of President Donald J. Trump), are ENJOINED from implementing and enforcing Executive Order No. 14,160, "Protecting the Meaning and Value of American Citizenship."

2. No security under Federal Rule of Civil Procedure 65(c) is necessary or warranted in the circumstances of this case, where the plaintiffs seek to vindicate an important constitutional and federal statutory right, and the injunction will not expose the defendants to financial loss. See da Silva Medeiros v. Martin, 458 F. Supp. 3d 122, 130 (D.R.I. May 1, 2020) (citing Crowley v. Loc. No. 82, 679 F.2d 978, 1000-01 (1st Cir. 1982)).

3. This preliminary injunction shall take effect immediately upon the docketing of this Order and shall remain in effect until the entry of judgment in this matter, unless this Court, the United States Court of Appeals for the First Circuit, or the United States Supreme Court order otherwise.

SO ORDERED.

/s/ LEO T. SOROKIN
LEO T. SOROKIN
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil No. 25-10135-LTS

O. DOE ET AL., PLAINTIFFS

v.

DONALD J. TRUMP ET AL., DEFENDANTS

STATE OF NEW JERSEY, ET AL, PLAINTIFFS

v.

DONALD J. TRUMP, ET AL., DEFENDANTS

Filed: Feb. 13, 2025

MEMORANDUM OF DECISION ON MOTIONS FOR PRELIMINARY INJUNCTION

SOROKIN, J.

In this pair of lawsuits, two groups of plaintiffs advance similar challenges to the legality of one executive order among many issued by President Donald Trump on January 20, 2025. The executive order is titled "Protecting the Meaning and Value of American Citizenship" ("the EO"). Exec. Order No. 14,160 (Jan. 20,

2025).[1] The EO identifies two "categories of individuals born in the United States" to whom the EO says "the privilege of United States citizenship does not automatically extend," then directs federal departments and agencies to cease issuing or accepting "documents recognizing United States citizenship" for such individuals born after February 19, 2025. Doe, Doc. No. 1-1 §§ 1-3.

Both groups of plaintiffs assert that the EO violates the Citizenship Clause of the Fourteenth Amendment to the United State Constitution, along with other constitutional provisions and federal statutes. Each group seeks a preliminary injunction preventing the EO from taking effect. Doe, Doc. No. 10; New Jersey, Doc. No. 3. The motions are fully briefed and were the subject of a motion hearing.[2]

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[1] Multiple copies of the EO have been made part of the record before the Court. When referencing submissions filed in Doe et al. v. Trump et al., No. 25-cv-10135, the Court will cite to "Doe, Doc. No. __ at __." For submissions filed in New Jersey et al. v. Trump et al., No. 25-cv-10139, the Court will cite to "New Jersey, Doc. No. __ at __." All such citations use the document and page numbering appearing in the ECF header, except where pinpoint citations reference enumerated sections or paragraphs within the document. The EO appears at Doe, Doc. No. 1-1, and New Jersey, Doc. No. 1-1.

[2] The Court has accepted amicus curiae briefs from the following groups: a collection of local governments and officials representing seventy-two jurisdictions in twenty-four states; eighteen members of Congress serving on the House Judiciary Committee; the Immigration Reform Law Institute; the State of Iowa along with seventeen other states; the State of Tennessee; and former U.S. Attorney General Edwin Meese III. Doe, Doc. Nos. 32, 38, 40; New Jersey, Doc. Nos. 88, 118, 120, 122, 127, 129. The Court has considered these submissions only insofar as they concern legal issues and positions advanced by the parties. See United States v. Sturm, Ruger & Co., 84 F.3d 1, 6 (1st Cir. 1996) (explaining "an

In opposing the requests for injunctions, the defendants assert an array of arguments, which the Court addresses briefly here and in detail below. For starters, each plaintiff has standing to sue, because the uncontested facts establish each would suffer direct injury from the EO's implementation. The plaintiffs are also likely to succeed on the merits of their claims. In a lengthy 1898 decision, the Supreme Court examined the Citizenship Clause, adopting the interpretation the plaintiffs advance and rejecting the interpretation expressed in the EO. The rule and reasoning from that decision were reiterated and applied in later decisions, adopted by Congress as a matter of federal statutory law in 1940, and followed consistently by the Executive Branch for the past 100 years, at least. A single district judge would be bound to apply that settled interpretation, even if a party were to present persuasive arguments that the long-established understanding is erroneous.

The defendants, however, have offered no such arguments here. Their three main contentions are flawed. First, allegiance in the United States arises from the fact of birth. It does not depend on the status of a child's parents, nor must it be exclusive, as the defendants contend. Applying the defendants' view of allegiance would mean children of dual citizens and lawful permanent residents would not be birthright citizens—a result even the defendants do not support. Next, the defendants argue birthright citizenship requires the mutual consent of the person and the Nation. This theory disregards the original purpose of the Fourteenth Amendment: to rec-

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amicus cannot introduce a new argument into a case"). While several of these briefs were helpful, the submission by the State of Tennessee was especially well written.

ognize as birthright citizens the children of enslaved persons who did not enter the country consensually, but were brought to our shores in chains. There is no basis to think the drafters imposed a requirement excluding the very people the Amendment aimed to make citizens. Simply put, the Amendment is the Nation's consent to accept and protect as citizens those born here, subject to the few narrow exceptions recognized at the time of enactment, none of which are at issue here. Finally, the Amendment requires states to recognize birthright citizens as citizens of their state of residence. The text includes no domicile requirement at all.

Each of the defendants' theories focuses on the parents, rather than the child whose citizenship is at stake. In so doing, these interpretations stray from the text of the Citizenship Clause. The Fourteenth Amendment says nothing of the birthright citizen's parents, and efforts to import such considerations at the time of enactment and when the Supreme Court construed the text were rejected. This Court is likewise bound to reject such theories now.

The plaintiffs have also satisfied the other preliminary-injunction factors. Each plaintiff faces irreparable harm, the defendants face none, and the public interest favors enjoining the EO. Accordingly, the plaintiffs in each case are entitled to an injunction preventing implementation of the EO. The individual and two associations who are plaintiffs in the earlier-filed action will be fully protected by an injunction limited to the individual and the members of the associations. The later-filed case, brought by eighteen states and two cities, requires a broader, nationwide injunction. Applying traditional equity principles, such relief is neces-

sary because the record establishes that the harms these plaintiffs face arise not only from births within their borders, but also when children born elsewhere return or move to one of the plaintiff jurisdictions.

For these reasons, the plaintiffs' motions are ALLOWED. This ruling, explained further below and memorialized in separate Orders issued concurrently with this Memorandum, is based on straightforward application of settled Supreme Court precedent reiterated and reaffirmed in various ways for more than a century by all three branches of the federal government.

I. BACKGROUND

Within hours of taking office, the President signed the EO, which he describes as "an integral part of [his] broader effort to repair the United States' immigration system and to address the ongoing crises at the southern border." Doe, Doc. No. 22 at 14. The EO, however, does not directly concern immigration; rather, it seeks to define the scope of birthright citizenship in the United States. In the section stating its purpose, the EO acknowledges that the Citizenship Clause and a section of the Immigration and Naturalization Act ("INA"), 8 U.S.C. § 1401, confer citizenship on any person born in the United States and "subject to the jurisdiction thereof." Doe, Doc. No. 1-1 § 1. The EO goes on to identify two "categories of individuals born in the United States" but "not subject to the jurisdiction thereof," to whom birthright citizenship "does not automatically extend." Id. A child falls within one of the identified categories if, at the time of their birth, their father was neither a citizen nor a lawful permanent resident ("LPR") of the United States, and their mother was 1) "unlawfully present in the United States," or 2) lawfully

but temporarily present in the United States "(such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa)." Id.

The second section announces that it is "the policy of the United States that no department or agency" of the federal "government shall issue [or accept] documents recognizing United States citizenship" of children within the identified categories. Id. § 2. The stated policy "shall apply only to persons who are born" after February 19, 2025. Id. The EO expressly does not restrict the ability of U.S.-born children of LPRs to receive or use documents recognizing "their United States citizenship." Id. Next, the EO directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to "take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with" the EO, and that no one within any identified department "act[s], or forbear[s] from acting, in any manner inconsistent with" the EO. Id. § 3(a). The EO further requires "[t]he heads of all executive departments and agencies" to "issue public guidance" by February 19, 2025, regarding implementation of the EO. Id. § 3(b).

In a complaint filed the day the EO issued, an individual plaintiff and two nonprofit associations challenged its legality and sought equitable relief preventing its implementation. See generally Doe, Doc. No. 1. The individual plaintiff, proceeding under the pseudonym "O. Doe," is "an expectant mother" who is lawfully present in the United States "through Temporary Protected Status" ("TPS"). Id. ¶ 13. Doe's husband, the

father of the child due to be born next month, is neither a citizen nor LPR of this country. Id. The baby will be Doe's second child; her first, now seven years old, also was born in the United States. Doe, Doc. No. 11-1 ¶ 3.

Doe's co-plaintiffs are La Colaborativa and the Brazilian Worker Center, two membership organizations located in eastern Massachusetts who provide immigration-related assistance, among other services. Doe, Doc. No. 1 ¶¶ 14-15. Both organizations have members who are unlawfully present in the United States, some of whom "are either pregnant or plan to grow their families in the future." Id.; see Doe, Doc. No. 11-2 ¶ 4; Doe, Doc. No. 11-3 ¶¶ 8-10. Though the present record does not conclusively establish where the organizations' members live, counsel at the motion hearing suggested the Court could view the members as located "primarily" (though perhaps not exclusively) in Massachusetts. Mot. Hr'g Tr. at 10, 76.[3] Doe and the organizations' members have submitted unrebutted declarations describing the harms they allege the EO will cause the children it targets, who will be treated as noncitizens lacking any recognized, lawful immigration status. See generally Doe, Doc. Nos. 11-1 to -3.

The day after Doe and her co-plaintiffs filed suit, New Jersey and a group of seventeen other states, along with the District of Columbia and San Francisco (collectively, "the State plaintiffs"), instituted a separate action also challenging the EO under provisions of the

[3] The transcript of the February 7, 2025, hearing on the motions appears on both dockets. Doe, Doc. No. 44; New Jersey, Doc. No. 142.

Constitution and other federal statutes.[4] New Jersey, Doc. No. 1. Along with their complaint, the State plaintiffs filed a motion for a preliminary injunction supported by a memorandum and more than two dozen exhibits. New Jersey, Doc. Nos. 3, 5, 5-1 to -27. The exhibits include declarations by various representatives of state agencies describing financial and administrative burdens they anticipate will result from the EO. See, e.g., New Jersey, Doc. Nos. 5-2, 5-8, 5-14, 5-18 (describing impacts of EO on federal funding related to state health insurance programs, education, foster care, and hospital-based process for acquiring Social Security numbers at birth).

Both complaints name as defendants the President, the State Department, the Secretary of State, the Social Security Administration, and the Acting Commissioner of Social Security. The State plaintiffs also sued the United States, the Department of Homeland Security, the Secretary of Homeland Security, the Department of Health and Human Services, and the Acting Secretary of Health and Human Services.

On January 23, 2025, the Doe plaintiffs filed their own motion for a preliminary injunction, supporting memorandum, declarations, and other exhibits. Doe, Doc. Nos. 10, 11, 11-1 to -10. After hearing from the

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[4] Besides New Jersey, the plaintiffs in this action are Massachusetts, California, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Michigan (through its Attorney General), Minnesota, Nevada, New Mexico, New York, North Carolina, Rhode Island, Vermont, and Wisconsin. Venue is proper in the District of Massachusetts because the defendants are all officers or agencies of the United States, and at least one plaintiff in each case resides in Massachusetts. See 28 U.S.C. § 1391(e)(1)(C).

parties, the Court deemed the cases related to one another and set a consolidated briefing schedule. New Jersey, Doc. No. 71; Doe, Doc. No. 12. The defendants opposed both motions, challenging the State plaintiffs' standing to sue, arguing no plaintiff has advanced a valid cause of action, and urging that the plaintiffs have not satisfied the test governing preliminary-injunctive relief. See generally Doe, Doc. No. 22. Both sets of plaintiffs replied. Doe, Doc. No. 33; New Jersey, Doc. No. 123. The Court heard argument from all parties on February 7, 2025.

II. DISCUSSION

Before addressing the factors governing requests for injunctive relief, the Court disposes of two preliminary challenges that the defendants suggest foreclose consideration of the merits of the plaintiffs' motions. As the Court will explain, the defendants' opening pair of procedural challenges, like their substantive arguments opposing the motions, wither in the face of settled and binding Supreme Court precedent.

A. Threshold Issues

1. *Standing*

The defendants first argue that the State plaintiffs lack standing to bring the claims alleged in their complaint. See New Jersey, Doc. No. 92 at 18-22. They are wrong.

Article III of the Constitution "confines the federal judicial power to the resolution of 'Cases' and 'Controversies'" in which a plaintiff can "demonstrate [a] personal stake." TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021). To establish standing under Article III, a "plaintiff must have suffered an injury in fact—a

concrete and imminent harm to a legally protected interest, like property or money—that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit." Biden v. Nebraska, 600 U.S. ---, 143 S. Ct. 2355, 2365 (2023). This test is satisfied if state- or local-government plaintiffs show that an allegedly unconstitutional executive action will likely trigger a loss of federal funds to which they otherwise would be entitled. See Dep't of Com. v. New York, 588 U.S. 752, 767 (2019). Such a showing establishes injury that is "sufficiently concrete and imminent" and "fairly traceable" to the challenged action, thereby satisfying Article III. Id.

The State plaintiffs easily meet this standard.[5] Uncontested declarations from officials representing several State plaintiffs articulate various forms of federal funding that will be diminished as a direct result of the EO. States receive federal funding to cover portions of services like health insurance, special education, and foster care in amounts that depend on how many "eligible" children receive such services. Citizenship is one component of eligibility for purposes of these programs. Pursuant to the EO, fewer children will be recognized as citizens at birth. That means the number of persons

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[5] The defendants direct their standing challenge against the State plaintiffs as a group. They have not contested the showing made by any individual State plaintiff or subset of State plaintiffs. Even if the defendants had done so, the result would be the same. The record before the Court includes sworn declarations establishing standing on the part of at least several State plaintiffs. No more is required at this juncture. See Nebraska, 143 S. Ct. at 2365 ("If at least one plaintiff has standing, the suit may proceed."); United States v. Texas, 599 U.S. 670, 709 n.1 (2023) (Alito, J., dissenting) ("In a case with multiple plaintiffs, Article III permits us to reach the merits if any plaintiff has standing.").

receiving services who are "eligible" under the identified federal programs will fall—and, as a direct result, the reimbursements and grants the State plaintiffs receive for these services will decrease. The reduction to such funding is a concrete and imminent injury directly and fairly traceable to the EO, redressable by the injunctive relief the State plaintiffs seek.

This is all the Constitution requires. Two decisions of the Supreme Court, both authored by Chief Justice Roberts, make the point. In 2023, the Chief Justice, joined by five other Justices, explained that Missouri had standing to challenge executive action discharging federal student loans, where a quasi-state agency stood to lose fees it would have collected for servicing the forgiven loans. Nebraska, 143 S. Ct. at 2366. A few years earlier, the Chief Justice conveyed the Supreme Court's unanimous conclusion that "at least some" states had standing to challenge executive action revising the United States census. New York, 588 U.S. at 767-68.[6] The proposed changes at issue raised the likelihood that persons without lawful immigration status would be undercounted, and states faced reductions in federal funds allocated according to population. Id. The State plaintiffs here challenge the EO based on precisely the same sort of direct financial impacts. They have identified federal grants and reimbursements to which they are entitled that will diminish under the EO. As in Nebraska and New York, therefore, the State plaintiffs have Article III standing.[7]

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[6] Though some Justices parted ways as to other issues in the case, all agreed as to standing.

[7] The Court does not consider a *parens patriae* theory of standing, because the State plaintiffs are not pursuing it. The State

The defendants have neither disputed the State plaintiffs' showing of harm nor materially distinguished the Chief Justice's analysis. Their standing challenge hinges on an attempt to analogize this case to United States v. Texas. There, the Supreme Court held state plaintiffs lacked standing to compel the federal government to pursue more "arrests and prosecutions" for violations of immigration laws. 599 U.S. at 678-79. The analogy is inapt.[8] Texas involved "novel" theories of

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plaintiffs also probably have standing based on their sovereign interests. The Citizenship Clause defines which individuals become birthright citizens not only of the United States, but also of the state in which they reside. U.S. Const. amend. XIV, § 1. States have general sovereign interests in which persons are their citizens. They very likely also have sovereign interests in which persons are U.S. citizens, as state laws commonly define civic obligations such as jury service using eligibility criteria that include U.S. citizenship. E.g., N.J. Stat. Ann. § 2B:20-1(c); Mass. Gen. Laws ch. 234A, § 4. The defendants essentially conceded at the motion hearing that the State plaintiffs would have standing under these theories, but suggested the theories were "forfeited," at least "[f]or purposes of deciding [the pending] motion[s]," because they were not advanced in the State plaintiffs' submissions thus far. Mot. Hr'g Tr. at 40, 63. The defendants cited no authority for their forfeiture theory. The plaintiffs generally endorsed the sovereign-interest theories during the hearing. Given the strength of the plaintiffs' showing of direct financial harms, the Court need not resolve whether the State plaintiffs' sovereign interests supply an alternative basis for satisfying Article III.

[8] In fact, the defendants' discussion of Texas in their papers verges on misleading. The language upon which they most heavily rely appears in a footnote quoted in their opposition memorandum and referenced during the motion hearing. See New Jersey, Doc. No. 92 at 18-19 (quoting Texas, 599 U.S. at 680 n.3). Contrary to the defendants' characterization, that footnote is not a "holding," and it does not "foreclose[]" the State plaintiffs' standing in this case. Id. Rather, it acknowledges that "States some-

standing and a "highly unusual" claim that the Executive Branch was not sufficiently vigorous in exercising its prosecutorial discretion. Id. at 681, 684.

This case, however, concerns the bounds of citizenship guaranteed by the Constitution—not an area typically reserved for executive discretion. The theory of standing advanced by the State plaintiffs—direct financial harm—is ordinary.[9] Texas simply does not aid the defendants here.

The defendants have not challenged the standing of Doe or her co-plaintiffs to sue—nor could they. Doe has plainly established injury, to herself and her unborn child, that is concrete, imminent, traceable to the EO, and redressable by the relief she seeks in this lawsuit. The same is true of the association plaintiffs, which provide services impacted by the EO and have described one or more members facing the same type of injury as Doe. See Summers v. Earth Island Inst., 555 U.S. 488, 498 (2009) (requiring, for associational standing, "specific allegations establishing that at least one identified

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times have standing to sue . . . an executive agency or officer," and though it warns that "standing can become more attenuated" when based on "indirect effects" of federal action, it stops short of saying such effects could never satisfy Article III. Id. This case, in any event, concerns direct effects.

[9] The harms the State plaintiffs have identified are not "indirect" —indeed, when specifically asked, the defendants failed to identify any "extra step" separating the loss of funding identified by the State plaintiffs from the EO's direct effects. Mot. Hr'g Tr. at 37-39. Nor do they arise, as defendants argue, exclusively from services "the states have *voluntarily* chosen to provide." New Jersey, Doc. No. 92 at 20; see Plyler v. Doe, 457 U.S. 202, 230 (1982) (holding states are required by federal law to provide public education services to all children, regardless of immigration status).

member had suffered or would suffer harm"); see also United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc., 517 U.S. 544, 551-53 (1996) (describing test for associational standing).

Accordingly, the defendants' standing challenge fails. All plaintiffs before the Court have satisfied Article III.

2. *Cause of Action*

Next, the defendants assert the Court must deny the pending motions because no plaintiff has a valid cause of action under the Citizenship Clause or the identified federal statutes. This is meritless.

As Justice Scalia observed, "[t]he ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327 (2015). Indeed, the Supreme Court has "long held that federal courts may in some circumstances grant injunctive relief" to prevent "violations of federal law" planned or committed by "state officers" or "by federal officials." Id. at 326-27. The plaintiffs here ask the Court to do just that.[10]

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[10] In fact, the Department of Justice is doing precisely what it says the plaintiffs cannot do. The day before this Court's motion hearing, the United States sued Illinois and various state and local officials, seeking equitable relief via claims brought directly under the Supremacy Clause. See Compl., United States v. Illinois, No. 25-cv-1285 (N.D. Ill. Feb. 6, 2025), ECF No. 1; cf. New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001) (discussing equitable doctrine of "judicial estoppel," which in some circumstances prevents parties that have taken one legal position from reversing course "simply

Limitations that apply where plaintiffs seek damages, rather than equitable relief, have no bearing on the claims pending here. See New Jersey, Doc. No. 92 at 24 (citing DeVillier v. Texas, 601 U.S. 285, 291 (2024)). Nor can the defendants short-circuit this lawsuit by pointing to a narrow provision of the INA providing an avenue for a "national of the United States" to challenge discrete denials of rights or privileges. See id. (invoking 8 U.S.C. § 1503(a)). That statute does not facially create an exclusive remedy for such claims, nor does it offer an adequate alternative to the claims advanced in these actions—including, but not only, because it is not a mechanism through which the State plaintiffs can obtain relief. Cf. Rusk v. Cort, 369 U.S. 367, 375 (1962) (considering related provisions of same statute and concluding they were not exclusive means of asserting rights associated with citizenship).

The defendants' threshold challenges fail under clear Supreme Court precedent. The plaintiffs assert valid causes of action and have standing to pursue them. The Court, therefore, turns to the substance of the pending motions.

B. Preliminary Injunction Analysis[11]

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because [their] interests have changed" (cleaned up)). During the motion hearing, the State plaintiffs raised this issue, and the defendants offered no response.

[11] The defendants proposed, in a footnote, that the Court proceed now to enter or deny a final, permanent injunction. See New Jersey, Doc. No. 92 at 50 n.6. The plaintiffs expressed no objection to this proposal during the motion hearing, agreeing that the Court could now enter a final injunction if it concluded an injunction was warranted. After consideration, the Court resolves now only the plaintiffs' original requests for preliminary relief. The defend-

The familiar standard governs the plaintiffs' requests for interlocutory relief. To secure the "extraordinary remedy" provided by preliminary injunctions, each group of plaintiffs "must establish" that: 1) they are "likely to succeed on the merits," 2) they are "likely to suffer irreparable harm in the absence of preliminary relief," 3) "the balance of equities tips in [their] favor," and 4) "an injunction is in the public interest." Winter v. Nat. Def. Res. Council, Inc., 555 U.S. 7, 20 (2008).

"The first two factors of the traditional standard are the most critical." Nken v. Holder, 556 U.S. 418, 434 (2009). Courts consider them in tandem. See Vaqueria Tres Monjitas, Inc. v. Irizarry, 587 F.3d 464, 485 (1st Cir. 2009) (noting "irreparable harm is not a rigid" factor, but rather "a sliding scale, working in conjunction with" the first factor); EEOC v. Astra U.S.A., Inc., 94 F.3d 738, 743 (1st Cir. 1996) ("[W]hen the likelihood of success on the merits is great, a movant can show somewhat less in the way of irreparable harm and still garner preliminary injunctive relief."). The third and fourth

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ants are correct that the plaintiffs' causes of action "are purely legal," id., but they are wrong to imply that facts are immaterial here. The test for injunctive relief requires the plaintiffs to prove, and the Court to evaluate, questions of harm that bear on the scope of any permanent relief ultimately awarded. Though the defendants have leveled no challenges to the plaintiffs' factual submissions, the Court has an independent duty to ensure that any relief provided is appropriately tailored to address the harms established by the parties before it. Cf. DraftKings Inc. v. Hermalyn, 118 F.4th 416, 423 (1st Cir. 2024) (noting trial judge is "uniquely placed to design" injunctive relief that corresponds to "specific harm" proven based on facts found by judge). To that end, further factual development may be required before the Court crafts a final judgment.

factors of the injunction test "merge when the Government is the opposing party." Nken, 556 U.S. at 435.

Measured against these standards, the plaintiffs' submissions support entry of the injunctions they seek, with only minor adjustments explained below.

1. *Likelihood of Success*

"The sine qua non of th[e] four-part inquiry" governing motions for preliminary injunctions is the first factor: "likelihood of success on the merits." New Comm Wireless Servs., Inc. v. SprintCom, Inc., 287 F.3d 1, 9 (1st Cir. 2002). This factor weighs strongly in the plaintiffs' favor. The plain language of the Citizenship Clause—as interpreted by the Supreme Court more than a century ago and routinely applied by all branches of government since then—compels a finding that the plaintiffs' challenges to the EO are nearly certain to prevail.

The Citizenship Clause speaks in plain and simple terms. "All persons born or naturalized 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. The words chosen by the drafters and ratified by the states, understood "in their normal and ordinary" way, United States v. Sprague, 282 U.S. 716, 731 (1931), bestow birthright citizenship broadly to persons born in the United States. The text is directed at the person born (or naturalized). It does not mention the person's parents at all, let alone expressly condition its grant of citizenship on any characteristic of the parents. So, at the outset, the EO and its focus on the immigration status of a child's parents find no support in the text.

One phrase in the Citizenship Clause is at the heart of the parties' disagreement. The constitutionality of the EO, and the success of the plaintiffs' claims, turns on the meaning of "subject to the jurisdiction thereof." To understand that phrase, however, this Court need look no further than United States v. Wong Kim Ark, 169 U.S. 649 (1898).[12] In that case, the Supreme Court meticulously reviewed the contours of citizenship under English and early American common law, under the 1866 Civil Rights Act and the Fourteenth Amendment, and as reflected in legal scholarship and court decisions in the decades leading up to the turn of the twentieth century. See generally id. at 653-704. From these sources, the Supreme Court concluded that "subject to the jurisdiction thereof" was meant "to exclude, by the fewest and fittest words," the following categories of persons: "children of members of the Indian tribes," "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state."[13] Id. at 682. As to all other persons, "the fun-

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[12] In a line of cases not directly relevant here, courts have considered whether a person born in an unincorporated territory of the United States—such as American Samoa or, for a time, the Philippines—was born "in the United States" for purposes of the Citizenship Clause. E.g., Tuaua v. United States, 788 F.3d 300, 302 (D.C. Cir. 2015). That language is not the focus of the present dispute, nor was it the Supreme Court's focus in Wong Kim Ark.

[13] Neither the EO nor the defendants' brief has suggested that all (or any) persons within the EO's categories are "children born of alien enemies in hostile occupation," specified which portions of the country are presently so occupied, or identified which foreign powers or organizations are the "enemies" presently controlling those areas. See New Jersey, Doc. No. 92 at 38 (quoting another Executive Order and summarily stating that plaintiffs' view might grant citizenship to children of "unlawful enemy combatants who

damental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents," applied. Id. at 689.[14]

Applying this longstanding and "fundamental rule of citizenship," the Supreme Court held that the petitioner—born in the United States to Chinese-citizen parents, who were living and working in the United States at the time of the child's birth, but who were prevented by law from naturalizing and eventually returned to China—was a citizen "by virtue of the [C]onstitution itself." Wong Kim Ark, 169 U.S. at 652-53, 703-05. This holding followed "irresistibly" from the extensive analysis the majority articulated. Id. at 693. Throughout that analysis, the availability of birthright citizenship "irrespective of parentage" was repeatedly emphasized. E.g., id. at 690. The duration of the parents' residency in the United States was not assessed, nor did laws preventing the parents from seeking naturalization influence the Court's determination of the petitioner's status. The question was resolved, for purposes of the Citizenship Clause, by the location of the petitioner's birth, and the inapplicability of the narrow exceptions

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enter this country in an effort to create sleeper cells or other hostile networks"). Accordingly, the Court need not consider this exception to birthright citizenship.

[14] This rule has been reiterated by the Supreme Court. See, e.g., Perkins v. Elg, 307 U.S. 325, 329 (1939) (citing Wong Kim Ark majority's "comprehensive review" supporting "decision . . . that a child born here of alien parentage becomes a citizen of the United States"); Weedin v. Chin Bow, 274 U.S. 657, 660, 670 (1927) (stating "learned and useful opinion" of Wong Kim Ark majority "held that . . . one born in the United States, although . . . of a parentage denied naturalization under the law, was nevertheless . . . a citizen" under Fourteenth Amendment).

to birthright citizenship that had been identified by the Court. Understood this way—indeed, the way all branches of government have understood the decision for 125 years—Wong Kim Ark leaves no room for the defendants' proposed reading of the Citizenship Clause. Of course, the defendants can seek to revisit this long-settled rule of law, but that is a matter for the Supreme Court, not a district judge.

The defendants accept that this Court is bound by the prior holdings of the Supreme Court. See New Jersey, Doc. No. 92 at 44; Mot. Hr'g Tr. at 48. Nevertheless, they urge the Court to essentially ignore all but a handful of sentences from Wong Kim Ark, arguing the bulk of the majority's lengthy opinion is dicta. See New Jersey, Doc. No. 92 at 44 (urging Wong Kim Ark resolved only whether Citizenship Clause extended to "children of parents with 'a permanent domicile and residence in the United States,'" and that "[t]he case should not be read as doing anything more than answering that question" (quoting 169 U.S. at 653)). At the motion hearing, the defendants doubled down on this point, brazenly claiming that "dicta can be disregarded." Mot. Hr'g Tr. at 75. That position reflects a serious misunderstanding at best—and a conscious flouting at worst—of the judicial process and the rule of law.

Lower federal courts are not merely obligated to apply the holdings of Supreme Court decisions; they also "are bound by the Supreme Court's 'considered dicta.'" United Nurses & Allied Prof'ls v. NLRB, 975 F.3d 34, 40 (1st Cir. 2020) (quoting McCoy v. Mass. Inst. of Tech., 950 F.2d 13, 19 (1st Cir. 1991)). "Carefully considered statements of the Supreme Court, even if technically dictum, must be accorded great weight and should be

treated as authoritative when . . . badges of reliability abound." United States v. Santana, 6 F.3d 1, 9 (1st Cir. 1993). If such a statement "bears the earmarks of deliberative thought purposefully expressed," concerns an issue that was "thoroughly debated in the recent past," and "has not been diluted by any subsequent pronouncement" of the Supreme Court, a lower federal court must adhere to it. Id.

To the extent the thorough analysis in Wong Kim Ark of the Fourteenth Amendment's common-law foundations, the purpose and intent of its drafters, and its application during the first thirty years after its ratification can be called "dicta" at all, it is undoubtedly the "considered" and "authoritative" sort that this Court is bound to apply. The sheer detail and length of the discussion by the Court's majority make this plain. Add to that the fact that the opposite view—the one the defendants advance to justify the EO—was rejected by the majority in Wong Kim Ark (in the portions of the decision now labeled "dicta" by the defendants) and endorsed only by the dissent. See 169 U.S. at 705-32. The plaintiffs are not relying on a stray "remark" that lacks "care and exactness," standing "wholly aside from the question in judgment" and "unsupported by any argument, or by any reference to authorities," that might not "control the judgment" of a lower court. 169 U.S. at 678. They are "leaning into" the central reasoning of the Supreme Court in support of its holding. Mot. Hr'g Tr. at 48. The defendants' argument to the contrary invites the Court to commit legal error.

Whether "holding" or "considered dicta," the straightforward rule and limited exceptions identified in Wong Kim Ark and summarized above have been ap-

plied repeatedly and without hesitation, including by the Supreme Court and the First Circuit. For example:

- In Morrison v. California, despite statutes that then rendered Japanese persons "ineligible" for citizenship via naturalization, the Supreme Court stated without qualification: "A person of the Japanese race is a citizen of the United State if he was born within the United States." 291 U.S. 82, 85 (1934).
- In Dos Reis ex rel. Camara v. Nicolls, the First Circuit described a person "born in Massachusetts" as having become "an American citizen, not by gift of Congress, but by force of the constitution," despite his parents' status as foreign nationals "never naturalized in the United States," and despite his own "dual nationality" that led to his "service as a draftee in the Portuguese army." 161 F.2d 860, 861-62 (1st Cir. 1947).
- In Kawakita v. United States, a person "born in this country in 1921 of Japanese parents who were citizens of Japan" was "a citizen of the United States by birth"—a status the person did not lose despite later committing treason by acts of cruelty undertaken while working at a Japanese camp for American prisoners during World War II. 343 U.S. 717, 720 (1952). See also Nishikawa v. Dulles, 356 U.S. 129, 131 (1958) (finding Japanese military service during World War II was basis for expatriation of U.S.-born citizen of Japanese-citizen parents only if service was voluntary); Hirabayashi v. United States, 320 U.S. 81, 96-97 (1943) (noting, in context of World War II, that tens of thousands of "persons of Japanese descent" living

on Pacific coast "are citizens because born in the United States," even though "under many circumstances" they also were citizens of Japan "by Japanese law").

- In United States ex rel. Hintopoulous v. Shaughnessy, all members of the Supreme Court considered a child born to foreigners, both of whom had entered the U.S. with temporary permission but remained after their authorization expired, to be "of course[] an American citizen by birth," despite the parents' "illegal presence." 353 U.S. 72, 73 (1957); see id. at 79 (reflecting dissent's agreement that the child was a citizen).
- In INS v. Errico, two different children "acquired United States citizenship at birth" despite their parents having gained admission to this country by misrepresenting material facts about themselves and thereby evading statutory restrictions on lawful immigration. 385 U.S. 214, 215-16 (1966).
- In INS v. Rios-Pineda, a unanimous Supreme Court viewed a child "born in the United States" as "a citizen of this country," even though the father had entered the country "illegally" on his own and "returned to Mexico . . . under threat of deportation"; both parents had then "paid a professional smuggler . . . to transport them" across the border; and the father, when apprehended again, had failed to depart voluntarily "as promised." 471 U.S. 444, 446 (1985).
- In Hamdi v. Rumsfeld, at least six Justices treated the petitioner as a citizen of the United States based on his birth in Louisiana, without even dis-

cussing his parents' status (they were present lawfully but temporarily), despite the petitioner's active participation in a foreign terrorist organization. 542 U.S. 507, 510 (2004).[15]

- In Mariko v. Holder, a panel of the First Circuit considered a child "born in the United States" to be "a United State citizen" despite the parents' concession that both of them "were here illegally" and therefore removable. 632 F.3d 1, 3, 8 n.4 (1st Cir. 2011).
- In Hasan v. Holder, a different panel of the First Circuit similarly viewed as "a U.S. citizen" a child born in California to foreign-national parents who had overstayed their nonimmigrant visas. 673 F.3d 26, 28 & n.1 (1st Cir. 2012).

This line of decisions—which is not limited to the cases described above—further undermines the defendants' proposed interpretation.[16]

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[15] Justice Scalia, joined by Justice Stevens, referred to Hamdi as a "presumed American citizen." 542 U.S. at 554 (Scalia, J., dissenting); see Hamdi v. Rumsfeld, 243 F. Supp. 2d 527, 534 (E.D. Va. 2002) (noting Hamdi had "identified himself as a Saudi citizen who had been born in the United States" when detained and interrogated by the American military). No justice took up the invitation of one amicus in the case to revisit the meaning of the Citizenship Clause, correct the "erroneous interpretation" adopted in Wong Kim Ark, and conclude Hamdi was not a citizen because his parents, though living in Louisiana lawfully at the time of his birth, had only temporary work visas authorizing their presence in this country. See Br. Amicus Curiae The Claremont Inst. Ctr. Const. Jurisprudence at 2-3, 5, Hamdi v. Rumsfeld, No. 03-6696, 2004 WL 871165 (U.S. Mar. 29, 2004).

[16] So does the fact that the Supreme Court has cited Wong Kim Ark as an example of how to properly assess the original meaning

If that were not enough to find that the plaintiffs are likely to succeed on the merits (and it is), the fact that Congress incorporated the language of the Citizenship Clause into provisions of the INA passed more than forty years after Wong Kim Ark cements the meaning of the disputed phrase and provides the plaintiffs an independent avenue to prevailing here. In the INA, Congress conferred birthright citizenship via statute on several categories of individuals, the first of which is described using language mirroring the Citizenship Clause. 8 U.S.C. § 1401(a) (confirming citizenship of "a person born in the United States, and subject to the jurisdiction thereof"). As the plaintiffs point out, this provision was enacted in 1940 and "re-codified" in 1952. See Doe, Doc. No. 33 at 2; see also Doe, Doc. No. 11 at 15 (raising statutory claim and advancing brief but distinct argument about likelihood of success thereunder). Because it uses the same language chosen by the Fourteenth Amendment's drafters—words that had been studied in Wong Kim Ark decades earlier—the statute must be understood to have incorporated the Supreme Court's interpretation of those words. See Bostock v. Clayton Cnty., 590 U.S. 644, 654 (2020) (explaining statute "normally" is interpreted "in accord with the ordinary public meaning of its terms at the time of its enactment").[17]

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of language in the Constitution or a federal statute. See Standard Oil Co. v. United States, 221 U.S. 1, 59 & n.6 (1911); cf. BNSF Ry. Co. v. Loos, 586 U.S. 310, 329 (2019) (Gorsuch, J., dissenting) (citing Wong Kim Ark majority opinion as authority reflecting "everyone agrees" that "record of *enacted* changes Congress made" to relevant text "over time" is "textual evidence" that "can sometimes shed light on meaning").

[17] Justice Gorsuch went on to explain why this is so: "If judges could add to, remodel, update, or detract from old statutory terms

Here, the fundamental rule conveyed by the Citizenship Clause was clear by the time § 1401 was enacted, and the legislators who chose to include the same phrase the Supreme Court already had examined presumably intended the same words would be accorded the same meaning in both contexts. See Taggart v. Lorenzen, 587 U.S. 554, 560 (2019) (recognizing "longstanding interpretive principle" that if statutory term "is obviously transplanted from another legal source, it brings the old soil with it" (cleaned up)). Thus, the statute supports a related but distinct claim upon which the plaintiffs are likely to succeed.[18]

Beyond sidestepping Wong Kim Ark, the defendants urge the Court to read three specific requirements into the phrase "subject to the jurisdiction thereof." The defendants contend these requirements are necessary to ensure adherence to the phrase's original meaning. None of these requirements, however, find support in the text itself or the cases construing and applying it. And, more importantly, each of them, if applied as ar-

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inspired only by extratextual sources and our own imaginations, . . . we would deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations." Bostock, 590 U.S. at 654-55.

[18] The defendants advance no separate challenge to the plaintiffs' statutory claim, choosing to "focus . . . on the constitutional provision" which is "coterminous" with the statute. New Jersey, Doc. No. 92 at 25 n.4. By opting not to address the statute, or the manner in which its enactment necessarily strengthens the plaintiffs' interpretation of the relevant language, the defendants have waived any discrete argument related to the statutory claim for purposes of the pending motions. Cf. United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (applying "settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed augmentation, are deemed waived").

gued, would prevent the Citizenship Clause from reaching groups of persons to whom even the defendants concede it must apply.

First, the defendants suggest the "jurisdiction" phrase is satisfied only by persons who owe the United States "allegiance" that is "direct," "immediate," "complete," and "unqualified by allegiance to any alien power." New Jersey, Doc. No. 92 at 27-28 (cleaned up). Certainly, allegiance matters. Various sources link the "jurisdiction" phrase and concepts of allegiance, including Wong Kim Ark. See, e.g., 169 U.S. at 654 (noting English common law provided citizenship to those "born within the king's allegiance, and subject to his protection"). The defendants veer off course, however, by suggesting allegiance must be exclusive, and that it derives from the status of a child's parents. If that were so, then the children of dual citizens or LPRs could not receive birthright citizenship via the Fourteenth Amendment. A dual citizen necessarily bears some allegiance to both the United States and the second nation of which they are a citizen. LPRs, unless and until naturalized, remain foreign nationals who are citizens of other countries bearing some allegiance to their places of origin. This principle would also rule out the petitioner in Wong Kim Ark, whose parents resided for years in the United States but remained "subjects of the emperor of China" (and, indeed, returned to China when their U.S.-born son was a teenager). 169 U.S. at 652-53. The defendants, however, agree that children of dual citizens and LPRs are entitled to birthright citizenship, and that the petitioner in Wong Kim Ark was as well.

These anomalies are avoided by focusing on the allegiance of the child, not the parents. As noted earlier, the Citizenship Clause itself speaks only of the child. A child born in the United States necessarily acquires at birth the sort of allegiance that justified birthright citizenship at the common law. That is, they are born "locally within the dominions of" the United States and immediately "derive protection from" the United States. Id. at 659. A child born here is both entitled to the government's protection and bound to adhere to its laws. This is true regardless of the characteristics of the child's parents, subject only to the narrow exceptions identified in Wong Kim Ark. Allegiance, in this context, means nothing more than that. See id. at 662 ("Birth and allegiance go together."). As James Madison explained:

> It is an established maxim that birth is a criterion of allegiance. Birth however derives its force sometimes from place and sometimes from parentage, but in general place is the most certain criterion; it is what applies in the United States; it will be therefore unnecessary to investigate any other.

Founders Online, Citizenship, Nat'l Archives (May 22, 1789), https://founders.archives.gov/documents/Madison/01-12-02-0115 [https://perma.cc/ZC4B-NS9R]. So, "allegiance" does not mean what the defendants think it means, and their first proposed rule founders.[19]

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[19] To the extent the defendants believe temporary, lawful visitors to this country are people who "do not owe an allegiance to the United States," Mot. Hr'g Tr. at 55, the Supreme Court disagrees, see Wong Kim Ark, 169 U.S. at 685 (quoting Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 144 (1812), and its description of the "temporary and local allegiance" private visitors from other

Next, the defendants seek to graft concepts of social-contract theory onto the "jurisdiction" clause of the Fourteenth Amendment by arguing birthright citizenship requires "mutual consent between person and polity." New Jersey, Doc. No. 92 at 45. The defendants again center their argument on the parents at the expense of the child whose birthright is at stake—perhaps, in part, because infants are incapable of consent in the legal sense. In the defendants' view, mutual consent is lacking where a person (the parent) has entered the United States without permission to do so, or without permission to remain here permanently. The absence of "mutual consent" in those circumstances means, according to the defendants, that the children of such parents fall beyond the "jurisdiction" of the United States for Fourteenth Amendment purposes.

This argument fares even worse than the first. The Fourteenth Amendment enshrined in the Constitution language ensuring "the fundamental principle of citizenship by birth" in the United States applied regardless of race—including, and especially, to formerly enslaved persons. 169 U.S. at 675; see Afroyim v. Rusk, 387 U.S. 253, 262-63 (1967). The defendants do not (and could not) deny this. Enslaved persons, of course, did not "consent" to come to the United States or to remain here. They were brought here violently, in chains, without their consent. These conditions persisted after their arrival. Against this backdrop, it verges on frivolous to suggest that Congress drafted, debated, and passed a constitutional amendment, thereafter enacted by the states, that imposed a consent requirement nec-

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countries owe the United States while passing through or doing business here).

essarily excluding the one group of people the legislators and enactors most specifically intended to protect.

Finally, the defendants seek to transform the use of the term "reside" at the end of the Citizenship Clause into a basis for finding that the "jurisdiction" phrase eliminates any person without a lawful "domicile" in the United States. The defendants contend that persons here with temporary visas retain "domiciles" in their native countries, and persons here without lawful status cannot establish a true "domicile." And so, the argument goes, they cannot "reside" in any state, and they remain outside the "jurisdiction" of the United States for Fourteenth Amendment purposes. This, once again, shifts the focus away from the child and the location of birth to the parents and the status and duration of their presence in this country.

The word "reside" appears in the Citizenship Clause only in the phrase specifying that a person entitled to birthright citizenship becomes a citizen not only of the United States, but also of the state where they live. For example, a state within the former Confederacy (or any other state) could not constitutionally deny state citizenship to the child of a formerly enslaved person who lived and gave birth there. The word "reside" does not inject a "domicile" requirement limiting the reach of the Citizenship Clause as a whole and justifying examination of the immigration status of a child's parents. See New Jersey, Doc. No. 123 at 11-12 (articulating the flaws in this theory). In any event, it is not so clear that "illegal entry into the country would . . . , under traditional criteria, bar a person from obtaining domicile within a State." Plyler, 457 U.S. at 227 n.22.

In sum, the defendants invite the Court to adopt a set of rules that work (except when they don't). None of the principles the defendants advance are sturdy enough to overcome the settled interpretation and longstanding application of the Citizenship Clause described above. Each principle, applied uniformly, would lead to unintended results at odds with the text, meaning, and intent of the Fourteenth Amendment—and, in some instances, with the parameters set out in the EO itself.

For all these reasons, the Court finds the plaintiffs are exceedingly likely to prevail on the merits of their constitutional and statutory claims. This conclusion would allow the plaintiffs to "show somewhat less in the way of irreparable harm." Astra U.S.A., 94 F.3d at 743. That relaxed burden, however, is not essential, as the second factor also favors the plaintiffs strongly.

2. *Irreparable Harm*

The plaintiffs have supported their assertions of irreparable harm with numerous declarations detailing the imminent and damaging impacts they anticipate will flow from the EO. See Doe, Doc. Nos. 11-1 to -10; New Jersey, Doc. Nos. 5-2 to -21, -23.[20] Upon review, the Court accepts and credits those declarations, which the

[20] Not every State plaintiff has submitted its own declarations, but the complaint alleges that all face the same categories of harm. E.g., New Jersey, Doc. No. 1 ¶ 122. The record supports that allegation, for example, by reflecting that each official attesting to health-insurance-related impacts describes the same federal programs used the same way and forecasts the loss of the same types of federal reimbursements. See, e.g., Doc. Nos. 5-2, -6, -11, -12, -16, -19. At this stage, that is enough to find that all State plaintiffs would suffer irreparable harm absent injunctive relief. The defendants do not contend otherwise.

defendants have not disputed or rebutted in any way. The declarations establish that the State plaintiffs do not stand to lose discrete amounts of one-time funds; they face unpredictable, continuing losses coupled with serious administrative upheaval. They have established irreparable harm.

As for the Doe plaintiffs, what is at stake is a bedrock constitutional guarantee and all of its attendant privileges. The loss of birthright citizenship—even if temporary, and later restored at the conclusion of litigation—has cascading effects that would cut across a young child's life (and the life of that child's family), very likely leaving permanent scars. The record before the Court establishes that children born without a recognized or lawful status face barriers to accessing critical healthcare, among other services, along with the threat of removal to countries they have never lived in and possible family separation.[21] That is irreparable harm.[22]

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[21] Doe, for example, has a pending asylum petition and an older child who is a U.S. citizen by birthright—assuming the defendants do not later reconsider the effective date contained in the EO and opt to apply their reading of the Citizenship Clause retroactively, a possibility they did not definitively rule out during the motion hearing. Mot. Hr'g Tr. at 45-47. Her family would be placed at a distressing crossroads if her new baby were to face removal from the country.

[22] The defendants' only responses are to suggest that the plaintiffs wait and see how the EO will be implemented, and hope that Doe's asylum application is granted. Or, in the worst case, "if any removal action were initiated against the children of any of the private plaintiffs at issue in this case, the [child] subject of the action could assert their claim to citizenship as defense in that proceeding." New Jersey, Doc. No. 92 at 48. That answer is not persuasive. Cf. Texas v. EEOC, 933 F.3d 433, 448 & n.29 (5th Cir. 2019) (stating "it would strain credulity to find that an agency action tar-

The plaintiffs in both cases have shown they are likely to suffer substantial and irreparable harm in the absence of a preliminary injunction. Thus, the two most important factors strongly favor the plaintiffs.

3. *Balance of Harms and Public Interest*

The final merged factors also support the plaintiffs' requests for relief. On the plaintiffs' side of the scales, there is a grave risk of significant and irreparable harm arising from the EO. Children not yet born will be stripped of birthright citizenship constitutionally guaranteed to them, as confirmed by settled law and practice spanning more than a dozen decades. They will be deprived of a "title" that is, as "Justice Brandeis observed, . . . superior to the title of President." Tuaua, 788 F.3d at 301. And that harm will arise from an EO that is unconstitutional on its face—an assessment that has now been echoed by multiple federal courts in different jurisdictions. E.g., Prelim. Inj. Order at 6, N.H. Indonesian Cmty. Support v. Trump, No. 25-cv-38 (D.N.H. Feb. 11, 2025), ECF No. 79.

It is difficult to imagine a government or public interest that could outweigh the harms established by the plaintiffs here. Perhaps that is why the defendants have identified none. Instead, they point only to the Executive Branch's discretion in matters of immigration. New Jersey, Doc. No. 92 at 49. But this case is not about how "to manage the immigration system." Id. It is about the Constitution's guarantee of citizenship by virtue of birth. When this right was enshrined

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geting" conduct the agency has deemed "presumptively unlawful" would not trigger implementation "immediately enough to constitute" nonspeculative injury).

in the Fourteenth Amendment, it was moved firmly beyond the bounds of the "core executive authority" the defendants invoke. Id.; see Afroyim, 387 U.S. at 263 (noting framers of Fourteenth Amendment "wanted to put citizenship beyond the power of any governmental unit to destroy"). The defendants' only argument, therefore, adds nothing to their side of the scales.

Though the government has waived any other arguments on these final factors by not developing them in their opposition memorandum, see Zannino, 895 F.2d at 17, the Court makes two more observations. First, the government has no legitimate interest in pursuing unconstitutional agency action; "it is always in the public interest to prevent the violation of a party's constitutional rights." Dorce v. Wolf, 506 F. Supp. 3d 142, 145 (D. Mass. 2020) (cleaned up); accord League of Women Voters v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016). Second, an injunction will do no more than maintain a status quo that has been in place for well over a century. The defendants have not even attempted to demonstrate how they or the public will be harmed by continuing, for the duration of this action, to adhere to the interpretation of birthright citizenship that has been consistently applied by the Executive Branch throughout that time period—including under this President during his first term in office.

The scales tip decisively toward the plaintiffs. Because all factors favor entry of injunctive relief, the Court ends by explaining the appropriate parameters of such relief.

C. Scope of Injunction

Both sets of plaintiffs ask the Court to universally enjoin the defendants from implementing the EO. That

is, they seek an order that prevents the defendants from applying the EO not only to them—to Doe, to members of the plaintiff associations, and to the State plaintiffs—but at all, to anyone, anywhere. Orders like those the plaintiffs seek here have become "increasingly common" over the last twenty years. Dep't of Homeland Sec. v. New York, 140 S. Ct. 599, 600 (2020) (mem.) (Gorsuch, J., concurring in grant of stay); see generally Developments in the Law—District Court Reform: Nationwide Injunctions, 137 Harv. L. Rev. 1701, 1703-15 (2024) (quantifying rise in such injunctions and examining consequences). That trend raises meaningful concerns about the appropriate scope of a single district judge's equitable powers. See Trump v. Hawaii, 585 U.S. 667, 713-21 (2018) (Thomas, J., concurring) (examining reasons to be "skeptical that district courts have the authority to enter universal injunctions").

Alluding to such concerns, the defendants urge the Court to enter relief that is limited in scope. New Jersey, Doc. No. 92 at 49-50. Though the defendants have not proposed specific terms, two of the limitations they urge merit consideration.[23] First, the defendants argue "the Court should limit any relief to any party before it that is able to establish an entitlement to preliminary injunctive relief." Id. at 50. As explained above, the Court has concluded all plaintiffs are so enti-

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[23] The third, which urges the Court to reject any facial challenge to the EO and require "individual as-applied challenges," can be rejected out of hand. The plaintiffs have advanced substantial facial challenges that the Court has deemed likely to succeed. The defendants do not explain how their third proposal, which is supported only by a citation to general language from a criminal case in which injunctive relief was not at issue, has anything to do with the scope of injunctive relief. See New Jersey, Doc. No. 92 at 50.

tled. But that conclusion does not alone justify relief that is universal in scope. The Court still must confront the general principle that injunctive relief should be tailored to the parties before it. Cf. Califano v. Yamasaki, 442 U.S. 682, 702 (1979) (noting "injunctive relief should be no more burdensome . . . than necessary to provide complete relief to the plaintiffs"). Here, the Court finds this principle leads to different results for the two sets of plaintiffs.

For Doe and the members of the two plaintiff organizations, the record before the Court does not demonstrate that universal relief is necessary to "provide complete relief to," and protect the rights of, those parties. An injunction that prevents the defendants and their agents from implementing and applying the EO against Doe or any member of either plaintiff organization suffices to protect them from harm during the pendency of this lawsuit. The record does not establish how awarding similar relief to other persons or organizations that are not parties to this lawsuit is necessary to provide complete relief to the Doe plaintiffs.

Different considerations arise as to the State plaintiffs. They have identified harms that do not hinge on the citizenship status of one child, or even of all children born within their borders. The harms they have established stem from the EO's impact on the citizenship status —and the ability to discern or verify such status—for any child located or seeking various services within their jurisdiction. For example, Massachusetts will suffer the identified harms not only if children born and living there are unlawfully denied citizenship, but also if a pregnant woman living in the northeastern part of the Commonwealth gives birth across the border in a nearby

New Hampshire hospital, or if a family moves to Massachusetts from Pennsylvania (or any other state that has not joined this lawsuit) after welcoming a new baby. These examples illustrate why injunctive relief limited to the State plaintiffs is inadequate. In both, children born in states that are not parties to this lawsuit (such as New Hampshire and Pennsylvania) would theoretically lack birthright citizenship even after returning or moving to—and seeking various services in—a state that is among the plaintiffs here.

That result not only fails in providing complete relief to the State plaintiffs, but also risks creating a new set of constitutional problems. See Saenz v. Roe, 526 U.S. 489, 500-04 (1999) (identifying as component of "right to travel" protected by Fourteenth Amendment "the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State"). For the State plaintiffs, then, universal or nationwide relief is necessary to prevent them from suffering irreparable harm. Cf. Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 579-83 (2017) (narrowing in part but upholding in part injunction that protected nonparties similarly situated to the plaintiffs).

Only one issue remains. The defendants assert the Court may not enjoin the President.[24] New Jersey, Doc. No. 92 at 50. The Doe plaintiffs offer no response to this point, see generally Doe, Doc. No. 33, but the State plaintiffs disagree in a footnote citing instances

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[24] They also suggest the Court should dismiss the President as a defendant, New Jersey, Doc. No. 92 at 50, but a request like that is properly advanced in a motion (not an opposition brief), after conferral and in compliance with the Local Rule governing motion practice in this Court. See generally L.R. 7.1.

where executive orders have been enjoined, see New Jersey, Doc. No. 123 at 15 n.8. Assuming without deciding that this Court is empowered to issue an injunction directly constraining the President's actions in any set of circumstances, nothing in the record suggests such relief is necessary here. The President has signed the EO. No further action by him is described by the EO or predicted by the plaintiffs. Other officers and agencies within the Executive Branch are responsible for implementing the EO, and it is their conduct that the plaintiffs really seek to restrain. Thus, for purposes of the preliminary injunction, the relief will be awarded against all other defendants besides the President, and against any other officers or agents acting on behalf of the President, but not against the President himself.[25]

III. CONCLUSION

"What the Constitution has conferred neither the Congress, nor the Executive, nor the Judiciary, nor all three in concert, may strip away." Nishikawa, 356 U.S. at 138 (Black, J., concurring). Here, the Constitution confers birthright citizenship broadly, including to persons within the categories described in the EO. Under the plain language of the Citizenship Clause and the INA provision that later borrowed its wording, and pursuant to binding Supreme Court precedent, the Court concludes that the plaintiffs' constitutional and statutory challenges to the EO are likely to prevail, the plaintiffs face serious and irreparable harm in the absence of relief, the defendants face no cognizable harm from a preliminary injunction,

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[25] Should circumstances arise that merit reconsideration of this aspect of the injunction, the plaintiffs may bring them to the Court's attention via an appropriate motion.

and the public interest is served by preventing the implementation of a facially unconstitutional policy.

Accordingly, the plaintiffs' motions (Doe, Doc. No. 10, and New Jersey, Doc. No. 3) are ALLOWED as described herein. Separate orders will issue in each case memorializing the preliminary injunctions entered by the Court.

SO ORDERED.

/s/ LEO T. SOROKIN
LEO T. SOROKIN
United States District Judge

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1348

NEW HAMPSHIRE INDONESIAN COMMUNITY SUPPORT; LEAGUE OF UNITED LATIN AMERICAN CITIZENS; MAKE THE ROAD NEW YORK, PLAINTIFFS, APPELLEES

v.

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF STATE; U.S. DEPARTMENT OF AGRICULTURE; BROOKE L. ROLLINS, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF AGRICULTURE; CENTERS FOR MEDICARE AND MEDICAID SERVICES; MEHMET OZ, IN HIS OFFICIAL CAPACITY AS ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, DEFENDANTS, APPELLANTS

Oct. 3, 2025

Appeal from the United States District Court
for the District of New Hampshire
[Hon. Joseph N. Laplante, U.S. District Judge]

Before BARRON, Chief Judge, RIKELMAN and AFRAME, Circuit Judges.

BARRON, Chief Judge. In this appeal, the President of the United States and various federal agency officials, as well as their agencies (collectively, the Government), challenge a preliminary injunction that the United States District Court for the District of New Hampshire issued on February 10, 2025. The injunction bars enforcement of Executive Order No. 14160, titled "Protecting the Meaning and Value of American Citizenship" (the EO). The EO announces as its "purpose" the denial of United States citizenship to children born here whose fathers are neither a United States citizen nor a lawful permanent resident alien and whose mothers are, at the time of birth, in this country either unlawfully or lawfully but only temporarily. 90 Fed. Reg. 8449 (Jan. 20, 2025). In addition, it sets forth various directives to heads of Executive Branch agencies to accomplish this purpose. Id. at 8449-50.

We affirm in part and vacate in part, largely for the reasons set forth in Doe v. Trump, Nos. 25-1169 & 25-1170, slip op. (1st Cir. Oct. 3, 2025).

I.

The plaintiffs in this case are three membership-based nonprofit organizations: New Hampshire Indonesian Community Support, League of United Latin American Citizens, and Make the Road New York. In their complaint, the organizations assert that they all have members whose children will be denied citizenship under the EO. Each organization identified by pseudonym at least one member who is expecting a child that is covered by the EO.

The individual defendants, all of whom are sued in their official capacities, are President Trump, the Secretary of the U.S. Department of Homeland Security (DHS), the Secretary of the U.S. Department of State (DOS), the Secretary of the U.S. Department of Agriculture (USDA), and the Administrator of the Centers for Medicare and Medicaid Services (CMS). The agency defendants are DHS, DOS, USDA, and CMS.

The complaint alleges that the EO violates the Citizenship Clause, U.S. Const. amend. XIV, § 1; the Immigration and Nationality Act, 8 U.S.C. § 1401(a); and the Administrative Procedure Act (APA), 5 U.S.C. § 706(2). It seeks a declaratory judgment that the EO is unconstitutional and unlawful and preliminary and permanent injunctions barring the defendants from enforcing it.

The District Court determined that the plaintiffs had a cause of action to seek injunctive relief, see Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 327 (2015), and were likely to succeed on the merits of their claims that the EO violates the Citizenship Clause and § 1401.[1] The District Court further determined that the equitable factors favored the plaintiffs. It issued a preliminary injunction that enjoined all defendants "from enforcing [the EO] in any manner with respect to the plaintiffs, and with respect to any individual or entity in any matter or instance within the jurisdiction" of that court while the litigation is pending. At a later hearing, the District Court clarified the injunction's scope, explaining that it applies to all members of the plaintiff organizations but not to nonparties.

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[1] The District Court did not assess the plaintiffs' APA claims.

The Government appealed the preliminary injunction on April 10, 2025. We heard oral argument in this appeal together with the appeals of two similar preliminary injunctions that had been issued by the United States District Court of Massachusetts. See Doe v. Trump, 766 F. Supp. 266 (D. Mass. 2025). We have resolved those appeals in a separate opinion that we also issue today. Doe v. Trump, Nos. 25-1169 & 25-1170, slip op. (1st Cir. Oct. 3, 2025).

II.

To obtain a preliminary injunction, a plaintiff must show (1) that it "is likely to succeed on the merits," (2) that it "is likely to suffer irreparable harm in the absence of preliminary relief," (3) "that the balance of equities tips in [its] favor," and (4) "that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). We review the grant of a preliminary injunction for abuse of discretion, although we review the legal issues de novo and the factual findings for clear error. See Ocean State Tactical, LLC v. Rhode Island, 95 F.4th 38, 42 (1st Cir. 2024).

III.

The Government does not challenge the District Court's cause-of-action ruling or the Article III standing of the plaintiffs. Although the District Court did not address Article III standing, we have an independent obligation to make sure that the plaintiffs have met their requisite burden at this stage of the litigation to show such standing exists. Roe v. Healey, 78 F.4th 11, 21 n.8 (1st Cir. 2023). We see no basis for concluding that any of the plaintiffs have failed to do so.

The plaintiffs allege that the EO will injure some of their members, through directives to some of the named defendants, by preventing their children from obtaining official federal documents the issuance of which they are entitled to have as United States citizens. They further allege that the EO will injure some of their members, through directives to other named defendants, by preventing them from receiving assistance under federal programs that they are entitled to receive as United States citizens. The Government does not dispute plaintiffs' allegations that the EO will prevent the organizations' members from receiving the documents or assistance in question. Because that alleged (and uncontested) consequence of the EO's enforcement accords with the EO's express purpose, see 90 Fed. Reg. 8449, we see no reason to conclude that the plaintiffs have failed to make the requisite showing at this stage of the litigation as to the elements of Article III standing for their members, just as we saw no reason to conclude that the plaintiff organizations in Doe failed to make that showing, see slip op. at 18-19. Moreover, each of the organizations has set forth allegations that suffice to establish at this stage of the litigation that they have associational standing to represent their injured members as to their § 1401 and Citizenship Clause claims. See Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977); Doe, slip op. at 18-19.

The question of Article III standing aside, we also see no basis for concluding that the District Court erred in determining that the plaintiffs are likely to succeed on the merits of their claims based on § 1401 and the Citi-

zenship Clause.[2] See Doe, slip op. at 36-37. Nor do we see any basis—again based on our reasoning in Doe—for concluding that they have failed to show what they must with respect to the equitable factors. See id. at 90-91.

That leaves only the issues concerning the scope of the preliminary injunction that the Government raises. The Government points out that the injunction runs against the President directly. Enjoining the President raises significant and distinct issues, see Franklin v. Massachusetts, 505 U.S. 788, 802-03 (1992), and the District Court did not address them or explain why it was necessary for the injunction to run against him, insofar as it also runs against the agency officials. We thus conclude that it was an abuse of discretion to enjoin this

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[2] We note that in arguing that the plaintiffs are not likely to succeed in showing that the EO and its enforcement would be unlawful under § 1401 and the Citizenship Clause, the Government largely makes the same arguments that we conclude in Doe are unpersuasive. See Doe, Nos. 25-1169 & 25-1170, slip op. at 41-89 (1st Cir. Oct. 3, 2025). However, the Government also cites in its briefing to us in this case three nineteenth-century state statutes regarding state citizenship to show that "[s]tates adopted" the understanding that "children of temporarily present aliens were not citizens." (Citing Cal. Pol. Code § 51(1) (1872); N.D. Pol. Code. § 11(1) (1895); Mont. Pol. Code § 71(1) (1895).) These statutes, however, predate United States v. Wong Kim Ark, 169 U.S. 649 (1898), which we explained in Doe construed the Citizenship Clause in a manner that would entitle the children that the EO covers to claim United States citizenship at birth. The Government develops no argument that the fact that these measures were on the books prior to Wong Kim Ark somehow suffices to show that Wong Kim Ark cannot be understood to have decided what we held in Doe it decided. Nor, for that matter, do we see that any such argument could succeed, for the reasons we explained in Doe. See Doe, slip op. at 80-86.

defendant and vacate the injunction in that respect. We note, too, as we did in Doe regarding the injunctions at issue there, that the injunction runs against the agencies themselves, even though the underlying cause of action is an equitable action for injunctive relief against agency officials. See Doe, slip op. at 7 n.2. We thus also conclude that the injunction must be limited to apply only to agency officials. See Armstrong, 575 U.S. at 327 ("[R]elief may be given in a court of equity . . . to prevent an injurious act by a public officer." (second alteration in original) (emphasis added) (quoting Carroll v. Safford 44 U.S. (3 How.) 441, 463 (1845))); cf. FDIC v. Meyer, 510 U.S. 471, 475 (1994) (stating sovereign immunity ordinarily bars suit against federal government and its agencies).

The Government separately takes issue with the preliminary injunction on the ground that it is overbroad because, in the Government's view, it affords relief to the organizations' members who do not have Article III standing. Such relief, it says, is inequitable and beyond federal courts' Article III authority. Therefore, the Government argues, the injunction "should be limited to those identified members whose standing is established and who undoubtedly would be bound by the judgment."

We understand the injunction to apply only to the enforcement of the EO against the children that the EO covers. When an organization establishes Article III standing on its members' behalf, the remedy "inure[s] to the benefit of those members of the association actually injured." Warth v. Seldin, 422 U.S. 490, 515 (1975). In their complaint, each organization alleges that it has "members whose children will be denied citizenship" un-

der the EO and each identified at least one such member. We do not understand the organizations' allegations that they have affected members to refer to solely the specific members identified in their complaint. Nor do we see any reason to, particularly when the Government appears to concede in its brief that the organizations have more members whose children will be covered by the EO than just those specifically identified (by pseudonym) in the complaint. At this stage in the proceedings, the plaintiffs need only make a clear showing that they are "likely to suffer irreparable harm." Winter, 555 U.S. at 20 (emphasis added). We conclude that they have made that showing with respect to their members that were alleged in the complaint to be denied citizenship by the EO and its enforcement. Thus, we do not understand the injunction to apply to any members without Article III standing.

To the extent that the Government's objection is to the practicalities of the injunction's operation, we think such clarification is best addressed in the District Court. While the Government complains that it does not know to whom, precisely, the injunction applies (and therefore to whom, precisely, res judicata applies), we note that the District Court invited the parties to develop a procedure to ensure that all have proper notice of the organizations' members. The Government, however, has yet to do so.

IV.

The District Court's preliminary injunction is **affirmed** in part, **vacated** in part, and remanded for further consideration consistent with this opinion.

APPENDIX H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Case No. 1:25-cv-38-JL-TSM

NEW HAMPSHIRE INDONESIAN COMMUNITY SUPPORT, ET AL., PLAINTIFFS

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, IN HIS OFFICIAL CAPACITY, ET AL., DEFENDANTS

Filed: Feb. 10, 2025

PRELIMINARY INJUNCTION

After careful consideration of the parties' submissions, the supporting declarations, the applicable law, and the filings and record in this case, the court GRANTS Plaintiffs' Motion for Preliminary Injunction.

The court hereby finds that Plaintiffs have demonstrated a likelihood of success on the merits of their claims; that Plaintiffs are likely to suffer irreparable harm if the order is not granted; that the potential harm to the Plaintiffs if the order is not granted outweighs the potential harm to Defendants if the order is granted; and that the issuance of this order is in the public interest.

Pursuant to Federal Rule of Civil Procedure 65(a), this court orders that all Defendants are enjoined from enforcing Executive Order 14160, "Protecting the Meaning and Value of American Citizenship," in any manner with respect to the plaintiffs, and with respect to any individual or entity in any matter or instance within the jurisdiction of this court, during the pendency of this litigation.

No security is warranted or required under Fed. R. Civ. P. 65(c).

This preliminary injunction shall take effect immediately upon entry of this Order and shall remain in effect until the entry of judgment in this matter or by further order of the court.

It is so ordered.

2/10/2025 /s/ JOSEPH N. LAPLANTE
Date JOSEPH N. LAPLANTE
United States District Judge

APPENDIX I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Civil No. 25-cv-38-JL-TSM
Opinion No. 2025 DNH 014 P

NEW HAMPSHIRE INDONESIAN COMMUNITY SUPPORT, ET AL.

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, IN HIS OFFICIAL CAPACITY, ET AL.

Filed: Feb. 11, 2025

PRELIMINARY INJUNCTION ORDER

Plaintiff nonprofit groups—New Hampshire Indonesian Community Support, League of United Latin American Citizens, and Make the Road New York—ask this court to enjoin the enforcement of an executive order that would exclude certain groups of individuals from receiving birthright citizenship. They sue the President, the Secretary and Department of Homeland Security, the Secretary and Department of State, the Secretary and Department of Agriculture, and the Administrator of and Centers for Medicare and Medicaid Services (the persons in their official capacities).[1] The plaintiffs al-

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[1] *See* Compl. (doc. no. 1).

lege that a recent executive order involving birthright citizenship violates the Fourteenth Amendment of the United States Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. *See* U.S. Const. amend. XIV, § 1; Immigration and Nationality Act, 8 U.S.C. § 1401; Administrative Procedure Act, 5 U.S.C. § 706(B).[2]

After reviewing the parties' submissions and holding oral argument, the court grants the preliminary injunction. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

Applicable legal standard. "A preliminary injunction is an extraordinary equitable remedy that is never awarded as of right." *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quotations omitted)).

> "When a party seeks a preliminary injunction, the district court considers four long-established elements: (1) the probability of the movant's success on the merits of their claim(s); (2) the prospect of irreparable harm absent the injunction; (3) the balance of the relevant equities (focusing upon the hardship to the movant if an injunction does not issue as contrasted with the hardship to the nonmovant if it does); and (4) the effect of the court's action on the public interest."

Santiago v. Mun. of Utuado, 114 F.4th 25, 34-35 (1st Cir. 2024) (quoting *Rosario-Urdaz v. Rivera-Hernandez*,

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[2] *Id.* at ¶¶ 86-97.

350 F.3d 219, 221 (1st Cir. 2003) (quotations omitted)). "The movant's likelihood of success on the merits weighs most heavily in the preliminary injunction calculus." *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020). The third and fourth factors "merge when the [g]overnment is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Executive Order. On January 20th, 2025, the President issued Executive Order No. 14160, titled "Protecting the Meaning and Value of American Citizenship."[3] It provides that the Fourteenth Amendment of the Constitution "has never been interpreted to extend citizenship universally to everyone born within the United States" and that it "has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof.'"[4]

It then orders that "no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship, to persons" in two circumstances:

> "(1) when that person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States was lawful but temporary, and the person's father

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[3] Protecting the Meaning and Value of American Citizenship, Executive Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025).

[4] *Id.*

> was not a United States citizen or lawful permanent resident at the time of said person's birth."[5]

By its terms, the Executive Order takes effect on February 19th, 2025.[6]

Procedural history. The plaintiff organizations include pregnant members who will give birth after the Executive Order becomes operative.[7] For various reasons, the plaintiffs' members' children born on or after that date risk deprivation of birthright citizenship under the Executive Order.[8] The parties jointly submitted a briefing and hearing schedule at the outset of the litigation and requested oral argument only, as opposed to an evidentiary hearing. Counsel for both parties confirmed at oral argument that their disputes in the litigation are legal rather than factual.

The plaintiffs allege that the Executive Order violates the Fourteenth Amendment and § 1401 of the INA

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[5] *Id.*

[6] *Id.* In similar suits in other federal district courts, at least two other courts have preliminarily enjoined the order nationwide. *See State v. Trump*, No. C25-0127-JCC, 2025 WL 415165, at *7 (W.D. Wash. Feb. 6, 2025)*; CASA, Inc. v. Trump*, No. CV DLB-25-201, 2025 WL 408636, at *17 (D. Md. Feb. 2, 2025).

[7] *See* Decl. of Rev. Sandra Pontoh, Director of the New Hampshire Indonesian Community Support (doc. no. 24-2) at ¶¶ 8-10; Decl. of Juan Proaño, Chief Executive Officer of League of United Latin American Citizens (doc. no. 24-3) at ¶¶ 11-14; Decl. of Sienna Fontaine, General Counsel, Make the Road New York (doc. no. 24-4) at ¶¶ 10-20.

[8] *Id.* The court uses the term "deprivation" here in the sense that, currently and for many generations leading up to the issuance of the Executive Order, the United States government has conferred birthright citizenship on children born under the same circumstances.

because it "denies citizenship to children of noncitizens who are born in the United States and subject to the jurisdiction of the United States."[9] They also claim that the Executive Order violates the APA.[10]

The defendants disagree. They do not challenge the plaintiffs' standing to sue, but argue that they lack a cause of action.[11] They also argue that the plaintiffs are unlikely to succeed on the merits primarily because the phrase "subject to the jurisdiction of the United States" in the Fourteenth Amendment does not refer to the groups affected by the Executive Order, the plaintiffs have misinterpreted Supreme Court precedent regarding the phrase, and the defendants have offered a better interpretation of the phrase.[12] In addition, the defendants contend that illegal immigration to the United States justifies invoking the exception to birthright citizenship for "children born of alien enemies in hostile occupation."[13] *See United States v. Wong Kim Ark*, 169 U.S. 649, 682 (1898). The defendants finally assert that because § 1401 has the same scope as the same phrase in the Fourteenth Amendment, the plaintiffs' argument based on § 1401 should also fail.[14] As to irreparable harm, the defendants argue that the plaintiffs' claimed harm would be hypothetical and speculative.[15]

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[9] *See* Compl. (doc. no. 1) at ¶¶ 86-93.

[10] *Id.* at ¶¶ 94-97.

[11] *See* Defs.' Obj. to Mot. for Prelim. Inj. (doc. no. 58-1) at 15.

[12] *See generally id.*

[13] *Id.* at 29.

[14] *Id.* at 36-37.

[15] *Id.* at 38-39.

Analysis. The court grants the motion because the plaintiffs have satisfied the requirements for preliminary injunctive relief.

First, the plaintiffs have a cause of action to seek injunctive relief to redress certain governmental actions that contravene the Constitution or a federal statute. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) ("decid[ing] whether the President was acting within his constitutional power when he issued an executive order directing the Secretary of Commerce to take possession of and operate most of the Nation's steel mills"); *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1332 (D.C. Cir. 1996) (adjudicating a "claim that [an] Executive Order is in conflict with the [National Labor Relations Act]").[16] "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).

1. Likelihood of success on the merits

The plaintiffs have demonstrated a likelihood of success on the merits of their constitutional claim and at least one statutory claim. The Fourteenth Amendment and § 1401 both state that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." U.S. Const. amend. XIV, § 1; 8 U.S.C. § 1401. As the statute tracks

[16] Again, the defendants do not challenge the plaintiffs' standing. Much of the defendants' argument about § 1401 refers to challenging the statute under the APA. Because the court does not assess the APA claims for the purpose of this motion, it does not address the defendants' arguments.

the Fourteenth Amendment, the court views the claims as parallel, and the parties agreed as much at oral argument.

The court need not presume the Executive Order's constitutionality. "A legislative enactment carries with it a presumption of constitutionality." *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15, 20 (1st Cir. 2024) (citations and quotations omitted). The defense has not argued, or cited binding or persuasive authority, that executive orders enjoy a similar presumption, and the court does not know of any.

As to plaintiffs' constitutional claim, the Executive Order contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it. The Supreme Court in *United States v. Wong Kim Ark* enumerated specific exceptions to the constitutional grant of birthright citizenship: "children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes." *Wong Kim Ark*, 169 U.S. at 693.[17] The categories of people affected by the Executive Order do not fit into those exceptions.

The Executive Order adds two other groups of people excluded from birthright citizenship, groups not listed in the Fourteenth Amendment or recognized in *Wong Kim Ark*. As the defendants offer no First Circuit

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[17] A "person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe" is now a United States citizen at birth. 8 § U.S.C. 1401(b).

Court of Appeals or Supreme Court authority to support their reasoning, the plaintiffs have a high likelihood of success on the merits. There is no reason to delve into the amendment's enactment history (or as explained below, § 1401's legislative history) or employ other tools of interpretation to discern that "subject to the jurisdiction thereof" refers to all babies born on U.S. soil, aside from the enumerated exceptions because the amendment and statute do so *unambiguously*. Finally, the defendants have not established, and court does not find or rule, that the plaintiffs' members' children born on or after February 19 subject to this Executive Order are "enemies within and during a hostile occupation." *Id.*

The Executive Order also likely violates § 1401, which codified the pertinent language from the Fourteenth Amendment. A court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment" because "only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). Congress passed § 1401 fifty years after *Wong Kim Ark*. *See* 8 U.S.C. § 1401 (original version at ch. 1, § 301, 66 Stat. 235 (1952)). The court interprets the statute to incorporate the public meaning of the reasoning and holding in *Wong Kim Ark*, which provided the public meaning of the same language in the Fourteenth Amendment.

> "Where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was

> taken and the meaning its use will convey to the judicial mind unless otherwise instructed."

Morissette v. United States, 342 U.S. 246, 263 (1952). In other words, "[w]here Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it." *George v. McDonough*, 596 U.S. 740, 746 (2022) (cleaned up).

The plaintiffs advocate for the most natural reading of the phrase "subject to the jurisdiction thereof" employed by the Fourteenth Amendment and § 1401. "[I]t's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (citations and quotations omitted). The amendment and statute are unambiguous, and the plaintiffs argue for the ordinary meaning of the phrase as understood by reasonable American English speakers at the time of enactment.

The defendants advance nonfrivolous arguments in support of a different meaning, primarily focusing on the concepts of "allegiance" and "domicile," the scope of the government's regulatory "jurisdiction," the status of Native Americans under the Fourteenth Amendment, and the precedent of *Elk v. Wilkins*, 112 U.S. 94 (1884), but in the face of an unambiguous constitutional amendment and unambiguous statute, they do not persuade.[18]

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[18] The defendants also argue that courts should determine the Executive Order's constitutionality in individual, as-applied challenges, rather than the facial challenge here. "A facial challenge to a legislative [a]ct is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which [an act] would be valid."

"As our Court of Appeals has stated, 'genuine ambiguity requires more than a possible alternative construction.'" *United States v. Potter*, 610 F. Supp. 3d 402, 415 (D.N.H. 2022), *aff'd*, 78 F.4th 486 (1st Cir. 2023) (quoting *United States v. Jimenez*, 507 F.3d 13, 21 (1st Cir. 2007)).

Nothing in the text, precedent, history, or tradition of the Fourteenth Amendment or § 1401 persuasively suggests any other interpretation than the unambiguous ordinary meaning of "subject to the jurisdiction" of the United States advanced by the plaintiffs.

> "In any event, canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete."

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-54 (1992) (internal citations and quotations omitted). The plaintiffs have demonstrated a likelihood of success on the merits.

2. Irreparable harm

"'Irreparable injury' in the preliminary injunction context means an injury that cannot adequately be compensated for either by a later-issued permanent injunc-

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United States v. Salerno, 481 U.S. 739, 745 (1987). The plaintiffs have demonstrated a likelihood of success, whether the Executive Order is analyzed on its face or as applied to the plaintiffs as alleged in their complaint.

tion, after a full adjudication on the merits, or by a later-issued damages remedy." *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005). The court has little difficulty concluding that the denial of citizenship status to newborns, even temporarily, constitutes irreparable harm. The denial of citizenship to the plaintiffs' members' children would render the children either undocumented noncitizens or stateless entirely.[19] Their families would have more trouble obtaining early-life benefits especially critical for newborns, such as healthcare and food assistance.[20] The children would risk deportation to countries they have never visited.[21] Although the defendants argue that the harm would be hypothetical and speculative, the court disagrees.

3. Equities and public interest

These final merged factors—*see Nken*, 556 U.S. at 435, *supra*—weigh in favor of granting the requested injunction. A preliminary injunction's "purpose 'is merely to preserve the relative positions of the parties until a trial on the merits can be held.'" *Starbucks*, 602 U.S. at 346 (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, (1981)). A continuation of the status quo during the pendency of this litigation will only shortly prolong the longstanding practice and policy of the United States government, while imposition of the Executive Order would impact the plaintiffs and similarly situated individuals and families in numerous ways, some of

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[19] *See* Pontoh Decl. (doc. no. 24-2) at ¶¶ 12-13; Proaño Decl. (doc. no. 24-3) at ¶¶ 14-15; Fontaine Decl. (doc. no. 24-4) at ¶ 27.

[20] *See* Pontoh Decl. (doc. no. 24-2) at ¶¶ 14-16; Proaño Decl. (doc. no. 24-3) at ¶¶ 17-19; Fontaine Decl. (doc. no. 24-4) at ¶¶ 24-26.

[21] *See* Pontoh Decl. (doc. no. 24-2) at ¶¶ 12; Proaño Decl. (doc. no. 24-3) at ¶ 15; Fontaine Decl. (doc. no. 24-4) at ¶ 28.

which—in the context of balancing equities and the public interest—are unnecessarily destabilizing and disruptive.

The defendants have "no interest in enforcing an unconstitutional law, [and] the public interest is harmed by the enforcement of laws repugnant to the United States Constitution." *Tirrell v. Edelblut*, No. 24-CV-251-LM-TSM, 2024 WL 3898544, at *6 (D.N.H. Aug. 22, 2024) (McCafferty, C.J.) (quotations omitted) (quoting *Siembra Finca Carmen, LLC v. Sec'y of Dep't of Agric. of P.R.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020)).

"When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Youngstown*, 343 U.S. at 637-38 (Jackson, J., concurring). The ultimate lawfulness of the Executive Order will surely be determined by the Supreme Court. This is as it should be. As the Executive Order appears to this court to violate both constitutional and statutory law, the defendants have no interest in executing it during the resolution of the litigation.

Conclusion. The motion is granted. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

SO ORDERED.

/s/ JOSEPH N. LAPLANTE
JOSEPH N. LAPLANTE
United States District Judge

Dated: February 11, 2025
cc: Counsel of Record