

No. 25-899

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IN THE  
**Supreme Court of the United States**

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DONALD J. TRUMP, *et al.*,  
*Petitioners,*

v.

O. DOE, *et al.*,  
*Respondents.*

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DONALD J. TRUMP, *et al.*,  
*Petitioners,*

v.

NEW HAMPSHIRE INDONESIAN  
COMMUNITY SUPPORT, *et al.*,  
*Respondents.*

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

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**BRIEF FOR STATE RESPONDENTS**

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## QUESTIONS PRESENTED

The Fourteenth Amendment’s Citizenship Clause guarantees citizenship to “[a]ll persons born ... in the United States, and subject to the jurisdiction thereof.” U.S. Const. amend. XIV, § 1. That constitutional guarantee ensures that every child born on U.S. soil and subject to U.S. law is a U.S. citizen, without regard to their parents’ own immigration statuses. This Court confirmed this rule of birthright citizenship in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), and Congress later codified it in the Immigration and Nationality Act, 8 U.S.C. § 1401(a). Yet on January 20, 2025, President Donald J. Trump signed Executive Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, 90 Fed. Reg. 8449 (2025), to deny citizenship to U.S.-born children subject to U.S. laws based solely on their parents’ temporary or undocumented status. The questions presented are:

1. Whether Executive Order 14,160 violates the Fourteenth Amendment’s Citizenship Clause.
2. Whether Executive Order 14,160 violates the Immigration and Nationality Act, 8 U.S.C. § 1401(a).

**PARTIES TO THE PROCEEDINGS BELOW**

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

The respondents joining this brief (who were plaintiffs-appellees below) are the State of New Jersey; Commonwealth of Massachusetts; State of California; State of Colorado; District of Columbia; State of Connecticut; State of Delaware; State of Hawai'i; State of Maine; State of Maryland; Attorney General Dana Nessel, on behalf of the People 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; and City and County of San Francisco.

Several non-governmental parties—O. Doe; Brazilian Worker Center; La Colaborativa; New Hampshire Indonesian Community Support; League of United Latin American Citizens; and Make the Road New York—were also plaintiffs-appellees below and are also respondents in this Court.

## INTRODUCTION

On December 5, 2025, this Court granted a writ of certiorari in *Trump v. Barbara*, No. 25-365, to determine whether Executive Order 14,160 violates the Fourteenth Amendment’s Citizenship Clause and the Immigration and Nationality Act (INA), 8 U.S.C. § 1401(a). Briefing is underway in that case, and this Court will hear argument on April 1, 2026. Because the two questions presented here are identical to the questions this Court agreed to review in *Barbara*, the respondent States agree with the Federal Government that this petition should be held pending a decision in that appeal.

## STATEMENT OF THE CASE

Children born in the United States and subject to its laws are U.S. citizens. This longstanding rule of birth-right citizenship was enshrined in the Citizenship Clause, confirmed in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), and codified in the INA. Despite this settled rule, President Trump signed an Executive Order on January 20, 2025, the first day of his second Term in office, to exclude U.S.-born children from citizenship based instead on their parents’ temporary lawful or undocumented status.

The next day, 18 States, the District of Columbia, and the City and County of San Francisco (the States) filed suit in the U.S. District Court for the District of Massachusetts, seeking, among other relief, a preliminary and permanent injunction barring the Federal Government from enforcing or implementing the Order. See No. 25-10139 (D. Mass.). Respondents O. Doe, Brazilian Worker Center, and La Colaborativa filed a similar complaint in the same court. See No. 25-10135 (D. Mass.). Respondents New Hampshire Indonesian Community Support, League of United Latin American

Citizens, and Make the Road New York likewise filed suit, pressing the same challenges in the District of New Hampshire. See No. 25-38 (D.N.H.).

The district courts granted preliminary relief in all three cases, concluding it was “exceedingly likely” and “unambiguous” that the Executive Order violates both the Citizenship Clause and INA. Pet. App. 121a–165a, 174a–188a. Specifically, the District of Massachusetts held that the States have “standing to sue, because the uncontested facts establish each would suffer direct injury from the EO’s implementation.” Pet. App. 129a. It then found the States “likely to succeed on the merits” of their constitutional and statutory theories. *Id.* As to the former, the District Court recognized that 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 ... are nearly certain to prevail.” Pet. App. 143a; see also Pet. App. 143a–157a (discussing Citizenship Clause’s plain text, preexisting common-law backdrop, this Court’s decision in *Wong Kim Ark*, subsequent precedents of this Court, and a century-plus of practice). As to the statutes, the District Court held “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.” Pet. App. 151a. The District Court crafted a nationwide injunction to provide “complete relief to the State plaintiffs.” Pet. App. 163a.

Following a remand and with the additional benefit of the Court’s guidance in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), the District Court in the States’ case

reaffirmed the nationwide scope of its preliminary injunction. Pet. App. 85a–112a. The court held that this relief was necessary to provide the States with “‘complete’ preliminary injunctive relief” redressing the injuries they would otherwise suffer from “the facially unlawful Executive Order.” Pet. App. 111a.

The First Circuit affirmed in two opinions issued on October 3, 2025. See Pet. App. 1a–84a, 166a–173a.<sup>1</sup> The First Circuit, like the District Court, found that the Executive Order contravened both the Citizenship Clause and the INA. See Pet. App. 27a–74a. The First Circuit found the States’ constitutional claim “clearly ... likely to succeed,” Pet. App. 46a, based on constitutional text and history, the holding and rationales of *Wong Kim Ark*, and subsequent decisions and executive practice, Pet. App. 45a–74a. The Court of Appeals likewise found that the States were “clearly right” as to their statutory claims too: Congress’s choice to codify the words of the Citizenship Clause in 1940 and in 1952 brought with it the meanings accepted by those times—namely, the authoritative meanings reflected in *Wong Kim Ark*. Pet. App. 27a–45a. The unanimous panel emphasized that the overwhelming force of the States’ arguments “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.” Pet. App. 4a. The First Circuit also agreed the States had standing to file their challenge, see Pet. App. 13a–27a, and that their independent and unique injuries necessitated a nationwide remedy, Pet. App. 79a–83a.

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<sup>1</sup> The First Circuit vacated the injunctions in “one limited respect”: to make clear that the injunctions “apply only to agency officials.” Pet. App. 4a n.2, 171a–172a.

This petition for a writ of certiorari was filed on January 30, 2026.

### **RESPONSE TO THE PETITION**

Because the questions presented here are identical to those on which this Court already granted review in *Barbara*, the States concur with the request to hold the instant petition pending resolution of that case. Briefing is underway in *Barbara*, and oral argument is scheduled for April 1, 2026. Indeed, this Court is already holding the petition in *Trump v. Washington*, No. 25-364, which presents these same questions, pending its resolution of *Barbara*.

The States have filed an amicus brief in *Barbara* explaining the appropriate resolution of both questions presented. See Amicus Brief of 25 State and Local Governments, *Trump v. Barbara*, No. 25-365 (Feb. 26, 2026). First, the States' brief explains that the Order violates the Citizenship Clause. *Id.*, at 3–23. As the amicus brief lays out, the Citizenship Clause grants citizenship to every child born in the United States and subject to its laws; that is, virtually all U.S.-born babies, with only narrow well-defined exceptions known to the common law prior to the Fourteenth Amendment's enactment. *Id.* This rule reflects the nineteenth-century meaning of “subject to the jurisdiction,” aligns with the preexisting *jus soli* principle from both English and American common law, accords with contemporaneous evidence that the Framers saw “subject to the jurisdiction” as tracking preexisting common law, and comports with extensive evidence from subsequent practice. *Id.*, at 3–18.

Were such compelling text and history not enough, the amicus brief explains, this Court's precedent conclusively resolves the question too. *Id.*, at 18–23.

This Court’s decision in *Wong Kim Ark* already closely examined the text, history, and original understanding of the Citizenship Clause and held that it extends to all U.S.-born children subject only to these narrow exceptions—independent of their parents’ domiciliation or immigration status. *Id.*, at 18–19. And since *Wong Kim Ark*, this Court has treated it as obvious that children born in this country are citizens regardless of parents’ immigration status or the duration of their stay. *Id.*, at 16–17.

Second, the States’ brief explains that the Order independently violates the INA. *Id.*, at 24–28. The INA confers citizenship on anyone born in the United States and “subject to the jurisdiction thereof.” 8 U.S.C. § 1401(a). This Court interprets statutes according to their ordinary public meaning at the time of their enactment. By 1940 and 1952, when § 1401 was enacted and reenacted, the phrase “subject to the jurisdiction thereof” was broadly understood to mean subject to federal laws. *Id.*, at 24–25. So even if this Court were now to overturn the understanding of the Citizenship Clause that has prevailed since *Wong Kim Ark*, that would not change the meaning of § 1401, meaning that the Order would still unlawfully contravene a federal statute. *Id.*, at 25–28.

Because a decision in *Barbara* is likely to resolve the questions presented in this case, this Court should hold this petition pending disposition of that appeal. If this Court ultimately affirms in *Barbara*, it should subsequently deny certiorari in this case.

### CONCLUSION

This Court should hold this petition pending a decision in *Trump v. Barbara*, No. 25-365 (Dec. 5, 2025), and ultimately dispose of this petition consistent with its resolution in that case.

Respectfully submitted,

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