

The Honorable Judge John C. Coughenour

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

**STATE OF WASHINGTON, *et al.*,**

Plaintiffs,

v.

**DONALD TRUMP**, in his official capacity  
as President of the United States, *et al.*,

Defendants.

**NO.: 2:25-CV-00127-JCC**

**[PROPOSED] BRIEF *AMICUS CURIAE* OF  
AMERICA’S FUTURE, GUN OWNERS OF  
AMERICA, INC., GUN OWNERS FOUNDATION  
CITIZENS UNITED, U.S. CONSTITUTIONAL  
RIGHTS LEGAL DEFENSE FUND,  
LEADERSHIP INSTITUTE, AND  
CONSERVATIVE LEGAL DEFENSE AND  
EDUCATION FUND IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR PRELIMINARY  
INJUNCTION**

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1 **INTEREST OF THE *AMICI CURIAE*<sup>1</sup>**

2 The interest of these *amici* is set out in the accompanying motion for leave to file the  
3 brief *amicus curiae*.

4 **STATEMENT OF THE CASE**

5 On January 20, 2025, President Trump issued [an executive order](#) entitled,  
6 “Protecting the Meaning and Value of American Citizenship”<sup>2</sup> (“EO”). The Order  
7 contained a narrowly defined directive that federal agencies are not to consider a  
8 person born on U.S. soil to be a citizen of the United States when, “at the time of said  
9 person’s birth,” the **father** “was **not** a United States citizen or lawful permanent  
10 resident...” **and**

11 “when that person’s **mother**” was:

12 (1) “**unlawfully present** in the United States” ... or

13 (2) ... when [the mother’s presence] ... was **lawful but temporary** (such as, but  
14 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.* (emphasis added).]

15 Although the EO would not take effect for 30 days, three groups of plaintiffs  
16 rushed to file suit — on the day the Order was issued and the next day — in federal  
17 district courts for the districts of New Hampshire, Western Washington, and  
18 Massachusetts.<sup>3</sup>

19  
20  
21  
22 <sup>1</sup> No party’s counsel authored the brief in whole or in part. No party or party’s counsel contributed  
money that was intended to fund preparing or submitting the brief. No person other than these amici  
curiae, their members or their counsel contributed money that was intended to fund preparing or  
submitting this brief.

23 <sup>2</sup> The White House, “[Protecting the Meaning and Value of American Citizenship](#),” (Jan. 20, 2025).

24 <sup>3</sup> The challenge brought by New Jersey, *et al.* was not filed in New Jersey, but in Massachusetts,  
thereby ensuring that any appeal would be heard not in the Third Circuit, but in the First Circuit, where an  
25 appeal from the New Hampshire litigation would also be heard. New Jersey may be aware that all of the  
active judges in the First Circuit were appointed by Presidents Obama or Biden, while in the Third Circuit  
half of the judges were appointed by Presidents G.W. Bush or Trump, and half by Presidents Obama or  
Biden.

1 **ARGUMENT**

2 **I. PLAINTIFF STATES' CLAIMS AGAINST AND PRAYER FOR INJUNCTIVE**  
3 **RELIEF AGAINST PRESIDENT TRUMP SHOULD BE DISMISSED OUT OF**  
4 **HAND.**

5 The Plaintiff States name as the lead defendant Donald J. Trump as President of  
6 the United States, in his official capacity. Compl. para. 18. Plaintiffs also sue the  
7 United States of America, several departments of government and the Social Security  
8 Administration, and department and agency heads. Further, in their prayer for relief,  
9 plaintiffs ask that the Court “Temporarily restrain Defendants from implementing or  
10 enforcing this Order.” This effort to name the President of the United States as the lead  
11 defendant, with a request that this court enjoin the President, may generate good press  
12 and be good politics for the Attorneys General of the Plaintiff States, but they should  
13 know better, as this court’s entry of an injunction against the President of the United  
14 States would violate the Separation of Powers.

15 When suits were filed against President Trump’s immigration policies during his  
16 first term as the nation’s 45th President, some of these *amici* objected to this practice of  
17 seeking to enjoin the President, and filed three *amicus* briefs, urging the courts to  
18 dismiss President Trump as a party defendant. (See [IRAP v. Trump](#) in the Fourth  
19 Circuit; [Hawaii v. Trump](#) in the Ninth Circuit; and [DHS v. Regents U. Calif.](#) in the U.S.  
20 Supreme Court.) During that first term, the Justice Department did not routinely act to  
21 protect the Office of the President by seeking his dismissal, but it is encouraging that in  
22 this litigation this argument was raised by the Justice Department in the concluding  
23 paragraph of its Opposition. Docket 36 at 16.  
24  
25

1 In *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992), the Supreme Court  
2 explained that, while a district court could enjoin an executive branch official, it could not  
3 enjoin the President himself. In striking down an injunction against a President, the  
4 Court bluntly stated that “the District Court’s grant of injunctive relief against the  
5 President himself is extraordinary, and should have raised judicial eyebrows.” *Id.* at  
6 802. Concurring in *Franklin*, Justice Scalia went even further, asserting that “[i]t is a  
7 commentary upon the level to which judicial understanding — indeed, even judicial  
8 awareness — of the doctrine of separation of powers has fallen, that the District Court  
9 entered this order against the President without blinking an eye.” *Id.* at 826. Justice  
10 Scalia noted that, up until at least 1984, “[n]o court has ever issued an injunction  
11 against the president himself or held him in contempt of court.” *Id.* at 827.  
12

13 For most of the nation’s history, it had been understood that suits against the  
14 President are improper. In *Marbury v. Madison*, 5 U.S. 137 (1803), it was President  
15 Jefferson who made the decision not to deliver outgoing President John Adams’  
16 appointments, but it was Secretary of State James Madison who was named as the  
17 defendant in the case. In 1838, the High Court again observed that “[t]he executive  
18 power is vested in a President; and as far as his powers are derived from the  
19 constitution, he is beyond the reach of any other department, except in the mode  
20 prescribed by the constitution through the impeaching power.” *Kendall v. United States*,  
21 37 U.S. 524, 610 (1838).  
22

23 The specific issue of an injunction against the President was considered by the  
24 U.S. Supreme Court in *Mississippi v. Johnson*, 71 U.S. 475 (1866), involving  
25 Mississippi’s suit to enjoin President Andrew Johnson from enforcing the Reconstruction

1 Acts. Although leaving open the question of whether the President could be ordered to  
2 perform mere ministerial acts, the Court made clear that “this court has no jurisdiction ...  
3 to enjoin the President in the performance of his official duties....” *Id.* at 501. Thus,  
4 although President Truman made the decision to seize steel mills, suit was filed not  
5 against him, but against Secretary of Commerce Sawyer, and it was the Secretary, not  
6 the President, who was enjoined from enforcing that Presidential decision. *Youngstown*  
7 *Sheet & Tube v. Sawyer*, 343 U.S. 579 (1952).

8  
9 Clearly, President Trump’s issuance and enforcement of his Executive Order was  
10 an act in the performance of his official duties. *See Marbury v. Madison* at 170 (“The  
11 province of the court is, solely, to decide on the rights of individuals, not to enquire how  
12 the executive, or executive officers, perform duties in which they have a  
13 discretion. Questions, in their nature political, or which are, by the constitution and  
14 laws, submitted to the executive, can never be made in this court.”). *See also Nixon v.*  
15 *Fitzgerald*, 457 U.S. 731, 749 (1982) (“The president cannot ... be liable to arrest,  
16 imprisonment, or detention, while he is in the discharge of the duties of his office; and  
17 for this purpose, his person must be deemed, in civil cases at least, to possess an  
18 official inviolability.”) The President’s independence from the judiciary is “[t]he essential  
19 purpose of the separation of powers ... to allow for independent functioning of each  
20 coequal branch of government within its assigned sphere of responsibility, free from risk  
21 of control, interference, or intimidation by other branches.” *Id.* at 760-61.

22  
23 If President Trump cannot be enjoined by a federal judge, and most certainly  
24 cannot be punished for disregarding an injunction, then no federal judge should allow  
25 him even to be named as a party defendant. For his official acts, the President cannot



1 be subjected to the jurisdiction of the judiciary — which is not a superior, but coequal,  
2 branch of government. Accordingly, at the outset of this case, this Court should dismiss  
3 forthwith President Trump from this suit as having been improperly named as a  
4 defendant.

5 **II. PLAINTIFF STATES LACK STANDING TO CHALLENGE THE EXECUTIVE**  
6 **ORDER.**

7 The complaint begins with the erroneous assertion that the Plaintiff States are  
8 entitled to assert the interests of third-party non-citizens against the federal  
9 government. Complaint para. 1 (“The States ... bring this action to protect ... state  
10 residents against the illegal actions of the President...”). The general rule is that each  
11 plaintiff must “assert his own legal rights and interests.” *Warth v. Seldin*, 422 U.S. 490,  
12 499 (1975). While an exception has been regularly made to this rule in order to allow  
13 abortionists to assert the rights of pregnant women, that exception is best understood  
14 as part of the federal judiciary’s abortion jurisprudence. No such exception is applicable  
15 here. Plaintiffs do not claim to file this action to protect citizens as *parens patriae*, but  
16 even if they had, that option is not available under current case law. Although there are  
17 reasons to doubt the correctness of that rule,<sup>4</sup> it has been long established that a state  
18 may not claim standing as *parens patriae* in litigation against the Federal  
19 Government. *See Massachusetts v. Mellon*, 262 U.S. 477, 485-86 (1923). Because  
20 standing was extensively addressed by the government, these *amici* do not address  
21 Plaintiffs’ standing claim based on their purported entitlement of children born to alien  
22  
23  
24

25 <sup>4</sup> *See Mass. v. EPA*, 549 U.S. 497 (2007).

1 fathers and mothers to a massive array of government benefits at the expense of  
2 American citizens.<sup>5</sup>

3 **III. PLAINTIFFS HAVE FAILED TO DEMONSTRATE A LIKELIHOOD OF**  
4 **SUCCESS ON THE MERITS.**

5 **A. Plaintiffs’ View of Birthright Citizenship Is Unsupported by *Wong Kim***  
6 ***Ark.***

7 Plaintiffs take the extreme position that every human being born on American soil  
8 is an American citizen, claiming only two exceptions permitted by the Fourteenth  
9 Amendment’s text “subject to the jurisdiction thereof”: “the children of diplomats  
10 covered by diplomatic immunity and children born to foreign armies at war against the  
11 United States while on United States soil.” Motion for Temporary Restraining Order  
12 (Dkt. 10) (“TRO Mtn.”) at 9-10. There is certainly no support for this policy in the text,  
13 context, or history of the Citizenship Clause.

14 Plaintiffs assert that their position is identical to a “longstanding common law  
15 principle” (Compl. at 8), but that common law is completely inapplicable, as it was  
16 developed under the British view that every person born on British soil was both a  
17 British citizen and the subject of a king, lacking even the ability to renounce citizenship  
18 — wholly unlike American citizenship. In *Wong Kim Ark*, Justice Gray accurately  
19 described the English common law’s presumption that everyone born on English soil  
20 was a subject of the King for life, whether he wished to be or not. “By the common law  
21

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22  
23 <sup>5</sup> The Plaintiff States do not mention a possible political consideration. Under prior  
24 Administrations, the U.S. Census Bureau chose to count illegal aliens in the population, by which power  
25 in the U.S. House of Representatives is allocated. Anticipating that this policy may be reversed, Plaintiff  
States could be motivated to maximize the number of babies awarded birthright citizenship, lest states  
heavily populated with illegal aliens lose political power in the House.

1 of England, every person born within the dominions of the Crown, no matter whether of  
2 English or of foreign parents, and, in the latter case, whether the parents were settled,  
3 or merely temporarily sojourning, in the country, was an English subject.” *United States*  
4 *v. Wong Kim Ark*, 169 U.S. 649, 657 (1898). However, Justice Gray incorrectly  
5 assumed the British rule of citizenship that he described also applied in America when it  
6 does not. As Justice Story explained in 1829, “The common law of England is not to be  
7 taken in all respects to be that of America. Our ancestors brought with them its general  
8 principles, and claimed it as their birthright. But they brought with them, and adopted  
9 only that portion which was applicable to their situation.” *Van Ness v. Pacard*, 27 U.S.  
10 137, 145 (1829).  
11

12 This distinction between British and American citizenship was addressed in an  
13 article originally published in January 2001 by a nonprofit organization, U.S. Border  
14 Control. As the authors explain, the legal principle of *jus soli* was based on the idea that  
15 the king owned the land, and thus anyone born on the land, whether to a citizen or an  
16 alien, became by birth a subject of the king, to whom that person now owed allegiance  
17 for life, being permanently a subject by accident of birth on the King’s land.<sup>6</sup>  
18 Constitutional scholar John Eastman explained when that shift occurred. He states that  
19 by declaring their land and persons independent of the King in 1776, the Framers  
20 expressly repudiated the notion of being unalterably subjects by birth: “The Declaration  
21 of Independence is not just a thorough repudiation of that old feudal idea of ‘permanent  
22 allegiance’ [to the king by accident of birth], but perhaps the most eloquent repudiation  
23

24  
25 <sup>6</sup> W. Olson, H. Titus & A. Woll, “[Children Born in the United States to Aliens Should Not, by Constitutional Right, Be U.S. Citizens](#),” *U.S. Border Control* (January 2001; rev’d 2003; rev’d 2005, rev’d 2018).

1 of it ever written.... The notion that the English common law of *jus soli* therefore  
2 continued unabated after the Declaration of Independence could not be more  
3 mistaken.”<sup>7</sup>

4 Plaintiffs next rely on a statement submitted to the House Judiciary Committee in  
5 1995 from the Office of Legal Counsel<sup>8</sup> during the Clinton Administration. See Compl.  
6 at para 38, 54; Motion for Preliminary Injunction (Dkt. 63) (“PI Mtn”) at 13. Although  
7 published together with the official “Opinions of the Office of Legal Counsel,” this was  
8 not such an Opinion, but rather a statement opposing passage of a House bill. The  
9 statement asserted that to: “deny citizenship to certain children born in the United  
10 States based on their parents’ immigration or citizenship status would be ...  
11 unquestionably unconstitutional.” However, it is clear that this statement was based on  
12 the same flawed assumption that the British common law of citizenship is identical to  
13 the American common law. That statement relies on a lower court opinion for the  
14 proposition it assumes to be true that: “We find no warrant for the opinion that this great  
15 principle of the common law has ever been changed in the United States.” *Id.* at 340.

17 Plaintiffs then assert that “[t]he Supreme Court cemented this longstanding and  
18 established understanding of the Citizenship Clause more than 125 years ago” in *Wong*  
19 *Kim Ark*. Compl. para. 36. In essence, plaintiffs take the position: “It’s been done for a  
20 long time, so it is constitutional,” but longevity does not demonstrate constitutionality. In  
21 1896, two years before *Wong Kim Ark*, the Supreme Court decided *Plessy v. Ferguson*,  
22 163 U.S. 537 (1896) by 7 to 1, holding that “separate but equal” did not violate the  
23

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24  
25 <sup>7</sup> J. Eastman, [“The Significance of ‘Domicile’ in \*Wong Kim Ark\*,”](#) 22 Chap. L. Rev. 301, 308-309 (Spring 2019).

<sup>8</sup> See [19 U.S. Op. Off. Legal Counsel 340](#), 1995 WL 1767990, at \*1-2 (1995).

1 Fourteenth Amendment with Justice Gray, the author of *Wong Kim Ark*, in the  
2 majority. The *Plessy* decision stood as “good law” for nearly 60 years, before being  
3 overturned by *Brown v. Board of Education*, 347 U.S. 483 (1954), a Court that did not  
4 subscribe to Plaintiffs’ theory that longevity demonstrates constitutionality.

5 Plaintiffs claim that their position is supported by the holding of *Wong Kim Ark*,  
6 but Plaintiffs fail to admit that case was an outlier that veered sharply away from all the  
7 Supreme Court cases decided closer to the time of the ratification of the Fourteenth  
8 Amendment. In 1873, just five years after ratification of the Fourteenth Amendment, the  
9 Court interpreted the Citizenship Clause.  
10

11 That its main purpose was to establish the citizenship of the negro can  
12 admit of no doubt. **The phrase, “subject to its jurisdiction” was**  
13 **intended to exclude** from its operation **children of** ministers, consuls,  
14 and **citizens or subjects of foreign States born within the United**  
15 **States.** [*Slaughter-House Cases*, 83 U.S. 36, 73 (1873) (emphasis  
16 added).]

17 Two years later, the Court again questioned acquiring citizenship, focusing on British  
18 citizenship.  
19

20 At **common-law**, ... it was never doubted that all children born in a country  
21 of parents who were its citizens became themselves, upon their birth,  
22 citizens also. These were natives, or natural-born citizens, as  
23 distinguished from aliens or foreigners. **Some authorities go further** and  
24 include as citizens children born within the jurisdiction without reference to  
25 the citizenship of their parents. **As to this class there have been**  
**doubts....** [*Minor v. Happersett*, 88 U.S. 162, 167-168 (1874) (emphasis  
added).]

26 Just 12 years before *Wong Kim Ark*, writing for the Court, Justice Gray again  
27 highlighted the critical difference between the children of citizens, and the children of  
28 aliens owing allegiance to foreign powers. The Court declared:

29 [t]he main object of the opening sentence of the Fourteenth Amendment  
30 was to settle the question ... as to the citizenship of free negroes ... and to

1 put it beyond doubt that all persons, white or black, and whether formerly  
2 slaves or not, born or naturalized in the United States, and **owing no**  
3 **allegiance to any alien power**, should be citizens of the United  
4 States....” [*Elk v. Wilkins*, 112 U.S. 94, 101 (1884) (emphasis added).]

5 Because the Plaintiff in *Elk v. Wilkins* was a member of a Native American tribe to which  
6 he owed allegiance, and had never been naturalized, the Court found that he was **not a**  
7 **citizen** despite being born on U.S. soil.

8 Despite some unduly broad *dicta*, *Wong Kim Ark* **did not even address those**  
9 **specific children covered by the Executive Order** — those born to a mother either  
10 **illegally or temporarily present** in the United States. The question addressed in  
11 *Wong Kim Ark* was:

12 whether a child born in the United States, of parents of [foreign] descent,  
13 who, at the time of his birth, are subjects of [a foreign government], but have  
14 a **permanent domicil** and residence in the United States, and are there  
15 carrying on business, and are not employed in any diplomatic or official  
16 capacity under the [foreign government], becomes at the time of his birth a  
17 citizen of the United States. [*Wong Kim Ark* at 653 (emphasis added).]

18 However, if *Wong Kim Ark* viewed that “subject to the jurisdiction” of the United  
19 States simply meant to be present “within the jurisdiction” thereof, equating (i) children  
20 born to aliens who owe allegiance to foreign governments to (ii) children of citizens, that  
21 decision was in error, an outlier, inconsistent with the Supreme Court’s decisions in the  
22 *Slaughter-House Cases*, *Minor*, and *Elk*.

23 Plaintiffs argue that the Immigration and Nationality Act (“INA”) reaffirms *Wong*  
24 *Kim Ark* and Plaintiffs’ expansive reading of that case. Compl. at 11. While the INA  
25 was enacted after *Wong Kim Ark*, the INA did not incorporate that case, and certainly  
did not equate “the Citizenship Clause’s commandment” with its mistaken reading of  
*Wong Kim Ark*, rather than the Clause itself. As Plaintiffs concede, the language of the

1 INA, “subject to the jurisdiction thereof” was “taken directly from the Fourteenth  
2 Amendment.” Thus, it could be said to incorporate that Amendment, but not Plaintiffs’  
3 mistaken reading of *Wong Kim Ark*.

4 In their motion for a temporary restraining order, Plaintiffs’ hyperbole reaches  
5 new heights. Plaintiffs claim that “President Trump and the federal government now  
6 seek to impose a modern version of *Dred Scott*.” TRO Mtn. at 1. *Dred Scott*, of course,  
7 stood for the proposition that if a person’s ancestors were brought to U.S. soil as slaves  
8 against their will, no matter how many generations passed, their descendants born here  
9 could never be citizens. The challenged Order, on the other hand, says that a father  
10 and mother who are citizens of other countries, who owe their allegiance to a foreign  
11 government, do not magically create an American Citizen by the mother being in the  
12 United States illegally or temporarily. The two situations are different in every respect.

13  
14 **B. Plaintiffs’ Reliance on Other Supreme Court Cases Is Unpersuasive.**

15 Plaintiffs cite several other Supreme Court cases they incorrectly assert undercut  
16 the legality of the challenged Order. Plaintiffs cite to *dicta* in *Plyler v. Doe*, 457 U.S. 202  
17 (1982). Motion for Preliminary Injunction (Dkt. 63) at 10-12. *Plyler* involved a Texas  
18 statute denying state funds for public education for children of illegal  
19 immigrants. Writing for a bare 5-4 majority, Justice Brennan’s opinion for the Court  
20 stated that “[i]n appellants’ view, persons who have entered the United States illegally  
21 are not ‘within the jurisdiction’ of a State even if they are present within a State’s  
22 boundaries and subject to its laws. Neither our cases nor the logic of the Fourteenth  
23 Amendment supports that constricting construction of the phrase ‘within its  
24 jurisdiction.’” *Id.* at 211. As shown in an accompanying footnote, for this proposition the  
25

1 Court relied on Justice Gray’s *dicta* in *Wong Kim Ark*, that “it was ‘impossible to  
2 construe the words “subject to the jurisdiction thereof,” in the opening sentence [of the  
3 Fourteenth Amendment], as less comprehensive than the words “within its jurisdiction,”  
4 in the concluding sentence of the same section; or to hold that persons “within the  
5 jurisdiction” of one of the States of the Union are not “subject to the jurisdiction of the  
6 United States.’”” *Id.* at 211, n.10.

7  
8 Justice Gray utterly ignored the legislative history of the Citizenship Clause, in  
9 which numerous Senators, including the author of the Clause, expressly differentiated  
10 the meaning of the phrases “within the jurisdiction” and “subject to the jurisdiction” within  
11 the Clause, in order to reach the opinion in his *dicta*. See Section IV, *infra*.

12 If Justice Gray’s *dicta* from *Wong Kim Ark* had been the case’s holding, it would  
13 have effectively overturned other cases, including Justice Gray’s own opinion in *Elk*,  
14 that were decided closer to the ratification of the Fourteenth Amendment, and he had to  
15 ignore the plain statements in the legislative history. In addition, neither the *dicta* in  
16 *Wong Kim Ark* or that in *Plyler* controls the outcome here. Rather, the text and history  
17 of the Citizenship Clause control, and these utterly fail to support Plaintiffs’ novel  
18 proposition that children of diplomats and occupying forces are the only exceptions to its  
19 claimed right birthright citizenship. For that matter, nothing in *Plyler* would exclude even  
20 children born to occupying forces from citizenship. The error in *Plyler’s dicta* simply  
21 follows from the error in *Wong Kim Ark’s dicta* upon which it rests. Neither undercuts  
22 the legality of the Order.

23  
24 Plaintiffs point to *INS v. Rios-Pineda*, 471 U.S. 444 (1985). PI Mtn. at 12. The  
25 holding of the case was that the Board of Immigration Appeals did not abuse its



1 discretion by refusing to reopen a case ordering the deportation of the illegal alien  
2 parents. Although the Court did state that two children born here of illegal aliens were  
3 citizens, that was purely *dicta*, tangential to the issue in the case, which had nothing to  
4 do with the citizenship of children of illegal aliens.

5 Finally, Plaintiffs point to *Perkins v. Elg*, 307 U.S. 325, 328 (1939). PI Mtn. at  
6 12. Plaintiffs cite the language, “[o]n her birth in New York, the plaintiff became a citizen  
7 of the United States.” They fail to point out that at the time of her birth, Ms. Elg’s father  
8 was a naturalized citizen, and her mother was not an illegal alien. As a child born in the  
9 United States to a naturalized citizen, Ms. Elg would not be covered by the challenged  
10 Executive Order in any way. The *Perkins* Court’s apparent assumption that birth equals  
11 citizenship would of course, in a case like Ms. Elg’s, a child born to a naturalized parent,  
12 be entirely accurate. *Perkins* provides no support for Plaintiffs’ position. Plaintiffs’  
13 convenient failure to advise this Court of Elg’s status as a native-born child of a citizen  
14 is highly misleading, and that case does nothing to undercut the legality of the  
15 challenged Executive Order.  
16

17 **IV. “BIRTHRIGHT CITIZENSHIP” VIOLATES THE TEXT AND THE ORIGINAL**  
18 **INTENT OF THE FOURTEENTH AMENDMENT.**

19 As discussed *supra*, Plaintiffs’ case rests almost entirely on the Supreme Court’s  
20 decision in *Wong Kim Ark*. That decision limited the category of persons not “subject to  
21 the jurisdiction” of the United States under the Fourteenth Amendment to children of  
22 diplomats, of native Americans, and of foreign invaders born within the territory of the  
23 United States. *Wong Kim Ark* at 682. That Court’s rationale for this limitation is that  
24 children who fall into these three categories do not, and are not expected to, form an  
25 allegiance to the United States that would qualify them for citizenship merely by virtue of

1 physical birth on U.S. territory. While the Court’s focus on allegiance was correct, it did  
2 not apply that principle thoughtfully as did the Framers of the Fourteenth Amendment.  
3 A review of Congress’s Fourteenth Amendment deliberations demonstrates that  
4 children of foreign nationals are generally not entitled to citizenship.

5 **A. The Text and Context.**

6 Following the Civil War, Congress took action to overrule *Scott v. Sandford*, 60  
7 U.S. 393 (1857) which held that slaves and their descendants, even as freedmen, were  
8 excluded from U.S. citizenship. Congress first moved to override *Dred Scott* by  
9 enacting the **Civil Rights Act of 1866**, which provided that “all persons born in the  
10 United States **and not subject to any foreign power**, excluding Indians not taxed, are  
11 hereby declared to be **citizens** of the United States.” 14 *Stat.* 27. (emphasis added).  
12

13 Due to concerns that the Supreme Court might rule the Civil Rights Act  
14 unconstitutional, or that a subsequent Congress might repeal the Act, Congress initiated  
15 the process required to amend the Constitution. See Raoul Berger, Government by the  
16 Judiciary: The Transformation of the Fourteenth Amendment (Liberty Fund: 1997) at 48.  
17 The resulting Fourteenth Amendment included this language:

18 Section 1. All persons born or naturalized in the United States, and  
19 **subject to the jurisdiction thereof**, are citizens of the United States and  
20 of the State wherein they reside.... No State shall ... deny to any person  
21 **within its jurisdiction** the equal protection of the law.

22 The language “**subject to the jurisdiction thereof**” in the Fourteenth  
23 Amendment is most important, and it is best understood as conveying the same  
24 meaning as the language “**and not subject to any foreign power**” as used in the Civil  
25 Rights Act of 1866. Most countries claim as citizens those children born to parents who  
are their citizens. Consequently, even if born on American soil, those children are

1 **subjects of a foreign power** and thus **not subject to the jurisdiction of the United**  
2 **States**. That being the case, children born in the United States of parents who are not  
3 U.S. citizens have no lawful claim of citizenship simply because they are born in U.S.  
4 territory.

5 The Declaration of Independence not only freed the new country from the notion  
6 that persons born in America were British citizens with allegiance to England, it  
7 demonstrated the solemn, binding, and covenantal action undertaken on behalf of the  
8 people, which was later confirmed by the People's ratification of the Constitution which  
9 begins "We the People."  
10

11 We, therefore, the Representatives of the united States of America,  
12 in General Congress, Assembled, **appealing to the Supreme Judge of**  
13 **the world for the rectitude of our intentions**, do, in the Name, and by  
14 Authority of the good People of these Colonies, solemnly publish and  
15 declare, That these United Colonies are, and of Right ought to be **Free and**  
16 **Independent States**; that they are **Absolved from all Allegiance to the**  
17 **British Crown**, and that all political connection between them and the State  
18 of Great Britain, is and ought to be totally dissolved.... [Declaration of  
19 Independence (emphasis added).  
20

21 The Declaration of Independence declared that Americans were shifting from  
22 their previous "**allegiance to the British Crown**" to allegiance to the new nation formed  
23 of "**Free and Independent States**." Likewise, the ratification history of the Fourteenth  
24 Amendment discussed *infra*, that "**subject to the jurisdiction**" entails an obligation of  
25 allegiance to the United States and not simply an obligation of obedience to the laws of  
the United States. The **obligation of allegiance** signified in the Citizenship Clause is  
different in kind from the **obligation** every person in the territory of the United States **to**  
**obey the laws** of the land. Citizens subject to the jurisdiction of the United States are  
entitled to corresponding privileges and immunities of citizenship. Constitution, Article

1 IV, Sect. 2, cl. 1. On the other hand, all persons who “come within its jurisdiction” have  
2 a duty to obey the law, together with a corresponding right to the equal protection of the  
3 law. The meaning of the phrase “subject to the jurisdiction” as used in the Fourteenth  
4 Amendment context is very different from the meaning of “within its jurisdiction.”

5 **B. Purpose and Drafting History of the Citizenship Clause.**

6 The record of Congress’s deliberations on the Fourteenth Amendment identifies  
7 the limited objective for which the Citizenship Clause was adopted — to reverse *Dred*  
8 *Scott* and to ensure that the citizenship of freedmen was recognized on the same basis  
9 as other Americans born in the United States. The purpose was not to change the law  
10 regarding citizenship, but rather to affirm its proper understanding. The deliberations  
11 specifically addressed the issue of children born in the United States to non-citizens and  
12 assumed that they did not qualify as natural born citizens. It was understood by the  
13 Amendment’s Framers that the best evidence that a person will bear true faith and  
14 allegiance to America is birth in the United States to American parents.

15  
16 Republican Senator Jacob Howard of Michigan, who authored the Citizenship  
17 Clause, explained its meaning:

18 This ... is simply declaratory of what I regard as the law of the land already,  
19 that every person born within the limits of the United States, and subject to  
20 their jurisdiction, is by virtue of natural law and national law a citizen of the  
21 United States. **This will not, of course, include persons born in the**  
22 **United States who are foreigners, aliens**, who belong to the families of  
23 ambassadors or foreign ministers accredited to the Government of the  
24 United States, but will include every other class of persons. [Congressional  
25 Globe, 39<sup>th</sup> Cong, 1<sup>st</sup> Sess, 2890 (emphasis added).]

Senator Howard also explained what he meant by use of the term “jurisdiction”:

“jurisdiction” as here employed, ought to be construed so as to imply a **full**  
**and complete jurisdiction** on the part of the United States ... that is to say,

1 the **same jurisdiction in extent and quality** as applies to every **citizen** of  
2 the United States now. [*Id.* at 2895 (emphasis added).]

3 Senator Lyman Trumbull of Illinois, Chairman of the Senate Judiciary Committee,  
4 concurred with Senator Howard regarding his characterization of the meaning of  
5 “jurisdiction”:

6 That means “subject to the complete jurisdiction thereof”.... **Not owing**  
7 **allegiance to anybody else.** That is what it means.... It cannot be said of  
8 any [person] who owes allegiance, partial allegiance if you please, to some  
9 other Government that he is “subject to the jurisdiction of the United  
10 States....”

11 It is only those persons who are completely within our jurisdiction, who are  
12 subject to our laws, that we think of making citizens; and there can be no  
13 objection to the proposition that such persons should be citizens. [*Id.* at  
14 2893 (emphasis added).]

15 Senator George Williams of Oregon concurred.

16 In one sense, all persons born within the geographical limits of the United  
17 States, are subject to the jurisdiction of the United States, but **they are not**  
18 **subject to the jurisdiction of the United States in every sense....** I  
19 understand the words here, “subject to the jurisdiction of the United States,”  
20 to mean **fully and completely subject to the jurisdiction** of the United  
21 States. [*Id.* at 2897 (emphasis added).]

22 Senator Edgar Cowan of Pennsylvania specifically expressed concern that the  
23 amendment should not be interpreted to grant citizenship to Chinese immigrant workers  
24 in California and went on to discuss the rights of travelers in the United States from  
25 foreign nations:

26 If a **traveler** comes here from Ethiopia, from Australia, or from Great Britain,  
27 he is entitled to a certain extent, to the protection of the laws. You cannot  
28 murder him with impunity. It is murder to kill him, the same as it is to kill  
29 another man. You cannot commit an assault and battery on him, I  
30 apprehend. He has a right to the protection of the laws; but he is **not a**  
31 **citizen** in the ordinary acceptance of the word. [*Id.* at 2890 (emphasis  
32 added).]

1 Before the debate on Senator Howard’s proposal to add the qualifying phrase  
2 “subject to the jurisdiction thereof,” Senator Saulsbury concisely stated the Senate’s  
3 object with regard to this amendment, and in so doing, removed all doubt as to the  
4 limited purpose of the amendment as drafted.

5 I do not presume that any one will pretend to disguise the fact that the object  
6 of this first section is simply to declare that negroes shall be citizens of the  
7 United States. [*Id.* at 2897.]

8 Justice Peter Daniel, concurring in *Dred Scott*, provided a more complete  
9 explanation of the relationship between place of birth, parentage, and allegiance.

10 “The natives, or natural-born citizens, are those born in the country, of  
11 parents who are citizens. [A]s society cannot perpetuate itself otherwise  
12 than by the children of the citizens, those children naturally follow the  
13 condition of their parents, and succeed to all their rights.” Again: “I say, **to**  
14 **be of the country, it is necessary to be born of a person who is a**  
15 **citizen; for if he be born there of a foreigner, it will be only the place of**  
16 **his birth, and not his country.** The inhabitants, as distinguished from  
17 citizens, are foreigners who are permitted to settle and stay in the country.”  
18 (Vattel, Book 1, cap. 19, p. 101.) [*Scott* at 476-77 (emphasis added).]

19 The legislative history of the Fourteenth Amendment clearly illuminates the  
20 Court’s error in *Wong Kim Ark*, and counsels that this Court should avoid repeating it,  
21 and uphold President Trump’s entirely lawful and constitutional Executive Order. The  
22 English common law, on which *Wong Kim Ark*’s holding was expressly based, does not  
23 apply in the United States of America, and therefore provides no support for Plaintiffs’  
24 position.

25 **V. PLAINTIFFS’ CLAIM THAT BIRTHRIGHT CITIZENSHIP SHOULD BE  
HANDED OUT TO ALL CHILDREN OF ALIENS HAS BIZARRE RESULTS.**

Plaintiffs entirely miss one of the most important aspects of Citizenship --- the  
**allegiance** that a person owes to his own country, sometimes described as loyalty or  
fidelity to the nation. Most countries recognize citizenship based on the principle of *jus*

1 *sanguinis* — that a child acquires the citizenship of the child’s natural parents. See  
2 Edward J. Erler, The Founders on Citizenship and Immigration (Claremont Inst: 2007) at  
3 28-29. Thus, children born anywhere in the world to citizens of most other countries  
4 acquire the citizenship of their parents at birth. Under Plaintiffs’ notion of birthright  
5 citizenship — a term of recent origin that cannot be sourced to the Declaration,  
6 Constitution, or statute — almost all such children automatically would be citizens of  
7 multiple countries. To which country do these children owe their allegiance?  
8

9       The United States has long required naturalized citizens to swear off allegiance  
10 to all foreign sovereigns, but not so with those covered by Plaintiff’s assertion of  
11 birthright citizenship. Because most children born in the United States to parents with  
12 foreign citizenship are recognized as foreign nationals under international law, they are  
13 not any more “subject to the jurisdiction” of the United States than are the children of  
14 diplomats, Native Americans, or foreign invaders, who Plaintiffs concede cannot benefit  
15 from citizenship by birth alone.

16       The importance of allegiance is most acutely felt during time of war when the  
17 obligations of citizenship are most consequential. An American citizen is “subject to the  
18 jurisdiction” of the United States and may be drafted into the military even if outside the  
19 country. Citizens who take up arms against the United States may be prosecuted for  
20 treason. U.S. Constitution Article III, Sect. 3. Non-citizens who take up arms against  
21 the United States are prisoners of war if captured, and they are not subject to  
22 prosecution simply for waging war against the United States. A person who is a citizen  
23 of two different countries that are at war will be placed in an untenable position. The  
24  
25

1 problems that arise with dual citizenship were acutely felt by U.S. citizens who were  
2 impressed into service with the British navy leading up to the War of 1812.

3 Neither of the two categories of children born to aliens in the United States that  
4 are addressed by the Executive Order can be expected to demonstrate no allegiance to  
5 our nation. First, those children born of parents who are not legally in the United States  
6 cannot be expected to be nurtured in the values of American citizenship by parents who  
7 entered the country illegally — being here not “subject to” but rather “in defiance of” our  
8 nation’s laws. Second are those children of parents, birth tourists, who travel to the  
9 United States for the purpose of giving birth and thereby obtaining cheap and easy  
10 citizenship for their children. They too are unlikely to have any allegiance nurture their  
11 children in values of American citizenship.  
12

13 Only those persons who can be expected to have a “**permanent allegiance**” to  
14 our country can become citizens, because based on that permanent allegiance, the  
15 country then owes to its citizens a reciprocal duty of protection. No such relationship  
16 exists with the two classes of persons addressed by the EO:

17 By **allegiance** is meant the obligation of **fidelity** and **obedience**  
18 which the **individual owes to the government** under which he lives, or to  
19 his sovereign **in return for the protection he receives**. It may be an  
20 absolute and permanent obligation, or it may be a qualified and temporary  
21 one. **The citizen or subject owes an absolute and permanent**  
22 **allegiance to his government** or sovereign, or at least until, by some open  
23 and distinct act, he renounces it and becomes a citizen or subject of another  
24 government or another sovereign. **The alien, whilst domiciled in the**  
25 **country, owes a local and temporary allegiance**, which continues during  
the period of his residence. [*Carlisle v. United States*, 83 U.S. 147, 154  
(1872) (emphasis added).]

24 If *Wong Kim Ark* is read to support Plaintiffs’ position, it contravenes common  
25 sense and our sense of justice. According to the Plaintiffs’ theory, under *Wong Kim Ark*,



1 a person born in the United States of alien parents is constitutionally entitled to  
2 American citizenship, whereas a person born outside the United States to American  
3 citizens is entitled to such citizenship only by statute. Why should there be an  
4 irrebuttable legal presumption of allegiance in the former case, but not in the latter?

5 Under the Plaintiffs' theory of the case, children of the 9/11 hijackers, WWII  
6 German saboteurs, human traffickers, and imprisoned enemy combatants born on U.S.  
7 territory would be entitled to citizenship.<sup>9</sup> Birth tourism from Turkey, China, Nigeria, and  
8 Mexico has received considerable attention.<sup>10</sup> The problems associated with Plaintiffs'  
9 theory of birthright citizenship are exacerbated by statutes that facilitate immigration of  
10 lawfully naturalized citizens, known as "chain migration."  
11

12 Plaintiffs' advocacy for automatic citizenship for children born to illegal aliens and  
13 birth tourists may further the policy objectives of globalists and the United Nations,  
14 which call for open migration,<sup>11</sup> but it defies common sense and undermines the nation-  
15 state and the concept of borders.  
16  
17  
18  
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20 <sup>9</sup> See, e.g., Office of the Inspector General, "[A Review of the FBI's Handling of Intelligence Information](#)  
21 [Prior to the September 11 Attacks](#)," ch. 5 (Nov. 2004); H. Ardman, "[World War II: German Saboteurs](#)  
22 [Invade America in 1942](#)," *History.net* (June 12, 2006); U.S. Department of Justice, "[Two sent to prison for](#)  
23 [roles in cartel-linked human smuggling scheme](#)," (Oct. 30, 2024); U.S. Department of Justice, "[Fact](#)  
24 [Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System](#)," (June 9, 2009).

25 <sup>10</sup> See e.g., J. Feere, "[Birthright Citizenship in the United States: A Global Comparison](#)," *Center for*  
*Immigration Studies* (Aug. 31, 2010); I. Egrikavuk, "[Birth tourism in U.S. on the rise for Turkish parents](#),"  
*Hurriyet Daily News* (Mar. 12, 2010); K. Richburg, "[For many pregnant Chinese, a U.S. passport for baby](#)  
[remains a powerful lure](#)," *Washington Post* (July 18, 2010); D. Iriekpen, "[Citizenship Rights: American](#)  
[Agitations Threaten a Nigerian Practice](#)," *This Day* (Aug. 16, 2010); N. Nnorom, "[Birthright citizenship:](#)  
[Nigerians in diaspora kick, say Trump's action illegal](#)," *Vanguard* (Jan. 23, 2025).

<sup>11</sup> See [UN's Global Compact for Safe, Orderly and Regular Migration \(GMC\)](#), but even that compact is  
voluntary, and states that it "respects states' sovereign right to determine who enters and stays in their  
territory...."

**CONCLUSION**

Plaintiffs’ Motion for a Preliminary Injunction should be denied, and President Trump should be dismissed as a party defendant.

DATED this 31st day of January, 2025.

Respectfully submitted,

/s/ Richard B. Sanders

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**Certificate of Service**

I hereby certify that I served the foregoing Brief *Amicus Curiae* of America's Future, et al., in Opposition to Plaintiffs' Motion for Preliminary Injunction on counsel for the parties using the Court's Electronic Case Filing system.

January 31, 2025

/s/ Richard B. Sanders  
Richard B. Sanders

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