

Nos. 25-364, 25-365

IN THE
Supreme Court of the United States

DONALD J. TRUMP, President of the United States,
et al., Petitioners,

v.

STATE OF WASHINGTON, *et al.*, Respondents

DONALD J. TRUMP, President of the United States,
et al., Petitioners,

v.

BARBARA, *et al.*, Respondents

On Petition for a Writ of Certiorari to the U.S. Court
of Appeals for the Ninth Circuit and
Petition for a Writ of Certiorari Before Judgment to
the U.S. Court of Appeals for the First Circuit

**Brief *Amicus Curiae* of America's Future, Gun
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Gun Owners of California, Citizens United,
U.S. Constitutional Rights Legal Defense Fund,
and Conservative Legal Defense and
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INTEREST OF THE *AMICI CURIAE*¹

Amici curiae America's Future, Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Citizens United, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income taxation under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, which have filed numerous *amicus curiae* briefs in federal and state courts.

These *amici* have filed many *amicus* briefs in Birthright Citizenship cases this year, including one in this Court in support of President Trump's Application for Stay. See Brief *Amicus Curiae* of America's Future, et al., Trump v. CASA, Inc., No. 24A884 (Mar. 28, 2025).

Earlier, these *amici* filed *amicus* briefs opposing the granting of injunctive relief in two cases before district courts. See Brief *Amicus Curiae* of America's Future, et al., State of Washington v. Trump, W.D. of Wash. No. 2:25-CV-00127 (Jan. 31, 2025) and Brief *Amici Curiae* of America's Future, et al., New Hampshire Indonesian Community Support v. Trump, D. N.H. No. 1:25-cv-00038 (Jan. 31, 2025).

¹ It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Later they filed *amicus* briefs in circuit courts in support of stays. See Brief Amicus Curiae of America’s Future, et al., Washington v. Trump, Ninth Circuit No. 25-807 (Feb. 17, 2025); Brief Amicus Curiae of America’s Future, et al., CASA, Inc. v. Trump, Fourth Circuit No. 25-1153 (Feb. 21, 2025); and Brief Amicus Curiae of America’s Future, et al., New Jersey v. Trump, First Circuit No. 25-1170 (Mar. 4, 2025). And they have filed briefs on the merits. See Brief Amicus Curiae of America’s Future, et al., CASA, Inc. v. Trump, Fourth Circuit No. 25-1153 (Apr. 7, 2025); Brief Amicus Curiae of America’s Future, et al., Doe v. Trump & New Jersey v. Trump, First Circuit No. 25-1169 & 25-1170 (May 12, 2025); and Brief Amicus Curiae of America’s Future, et al., Hampshire Indonesian Community Support v. Trump, First Circuit No. 25-1348 (June 5, 2025). See also Letter regarding Amicus Brief of America’s Future, et al., Washington v. Trump, Ninth Circuit No. 25-807 (Apr. 4, 2025).

STATEMENT OF THE CASE

On January 20, 2025, President Donald Trump issued Executive Order No. 14160 entitled “Protecting the Meaning and Value of American Citizenship”² (hereinafter “the Order” or “EO”). The Order explained that, despite the recent practice, being born on American soil has never properly automatically conferred American citizenship. The Order stated that

² The White House, “Protecting the Meaning and Value of American Citizenship” (Jan. 20, 2025).

“[t]he Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not ‘subject to the jurisdiction thereof.’” *Id.* Accordingly, the Order contained a narrowly defined directive to federal agencies that federal agencies are not to consider a person born on U.S. soil a citizen when, “at the time of said person’s birth,” the **father** “was not a United States citizen or lawful permanent resident...” and “when that person’s **mother**” was:

- (1) ... **unlawfully present** in the United States ... or
- (2) ... when [the mother’s presence] was **lawful but temporary** (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.* (emphasis added).]

Several challenges to the EO were filed around the nation the day after the EO was issued, including by the State of Washington in the Western District of Washington. Various district courts quickly issued nationwide preliminary injunctions, including *Washington v. Trump*, Petition for Certiorari Appendix (“Pet. App.”) at 90a-106a. On appeal, these *amici* filed *amicus* briefs in the First, Fourth, and Ninth Circuits, the last of which being one of the matters subject to this Petition.

The government sought a stay from this Court of the nationwide scope of the injunctions, also supported by these *amici*. This Court so limited the scope of the

nationwide injunctions in its decision in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025).

In the *Trump v. Barbara* case, the district court relied on its prior decision in *New Hampshire Indonesian Community Support v. Trump*, 765 F. Supp. 3d 102 (D.N.H. 2025), a case in which these *amici* had filed an *amicus* brief opposing the plaintiffs' request for an injunction. The Petitioners have filed a petition for certiorari before judgment, asking this Court not to wait for the First Circuit, but rather to grant review now, together with review of the Ninth Circuit's decision in *Washington v. Trump*.

SUMMARY OF ARGUMENT

The Courts below have failed utterly in their grappling with the fact that the Fourteenth Amendment establishes two different requirements to achieve citizenship by birth. First, persons must be “born ... in the United States,” and second, the parents and child must be “subject to the jurisdiction thereof...” when born. Fourteenth Amendment, Sec. 1. For many years, this text was universally understood to deny citizenship to persons born in the United States with allegiance to other nations. Error later crept in, and the “subject to the jurisdiction” requirement was narrowed to exclude only children born to diplomats and certain invaders. Thus, America now gives away citizenship and all the rights that go with it, without obtaining the person's reciprocal duty of allegiance.

The lower courts uniformly have assumed that the issue was resolved by this Court's *Wong Kim Ark*

decision. However, that decision neither addressed nor decided the class of children covered by the President's Executive Order. Making that decision even more unreliable, it was based on the erroneous assumption that the British concept of citizenship governed in America. Unlike America where we have no king, children born in Britain are subjects of their King, where citizenship is forced on them regardless of their allegiance. In our Declaration of Independence, we renounced all "[a]llegiance to the British Crown," transferring allegiance to our new nation of "Free and Independent States." Viewed in the context of other decisions of this Court after the ratification of the Fourteenth Amendment, which understood the different nature of American citizenship, *Wong Kim Ark* is seen to be a poorly reasoned outlier.

The invented doctrine of birthright citizenship simply "gifts" citizenship to children whose parents are citizens of, and have allegiance to, a foreign country. It created a perverse incentive for illegal immigration and the creation of a "birth tourism" industry, cheapening the very nature of citizenship. It is now time for this Court to resolve the issue, and to restore the true and historic method by which American citizenship is acquired.

ARGUMENT

I. THE DECISIONS BELOW WERE PREDICATED ON ERRORS OF LAW.

The decisions of both district and appellate courts below rotely repeated the erroneous view taught to

generations of law students that virtually everyone born on U.S. soil automatically is vested with U.S. citizenship. However, there was a time that *Dred Scott v. Sandford*³ was considered good law, and so also was *Korematsu v. United States*,⁴ and more recently, *Roe v. Wade*.⁵ This has been time not to recall lessons from law school, but for courts to re-examine seriously what had been assumed to be true. Nevertheless, in the main, the lower courts did not engage with the arguments set out by the government or these and other *amici*.

A. The Text Does Not Support Birthright Citizenship.

The Ninth Circuit assumed, without meaningful analysis, that the Fourteenth Amendment’s text resolves the constitutional issue presented by President Trump’s Executive Order. *See Washington v. Trump*, Pet. App. at 19a. The relevant constitutional text states: “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.” Fourteenth Amendment, Sec. 1 (emphasis added).

Under the view of the courts below, with narrow exceptions, a person becomes “subject to the

³ 60 U.S. 383 (1857).

⁴ 323 U.S. 214 (1944).

⁵ 410 U.S. 113 (1973).

jurisdiction thereof” simply by being born in the United States. However, there are two clauses that must be considered, and they must have different meanings. The Amendment begins by setting a rule for persons “born ... in the United States,” and thus the phrase “subject to the jurisdiction thereof” must have separate meaning, but for almost all cases, the courts below treat it as surplusage. This interpretation violates one of the foundational rules of constitutional interpretation, “[i]t cannot be presumed that any clause in the constitution is intended to be without effect...” *Marbury v. Madison*, 5 U.S. 137, 174 (1803). *See also Myers v. United States*, 272 U.S. 52, 151 (1926) (recognizing “the usual canon of interpretation of that instrument, which requires that real effect should be given to all the words it uses”).

The courts below assume that “subject to the jurisdiction thereof” meant something like the type of presence which would make a person subject to arrest for the commission of a crime, but that still does not rescue it from being a nullity. This type of presence is referred to in the Petition as “regulatory jurisdiction.” *Trump v. Washington*, Pet. for Cert. at 28. The meaning the lower courts give it is drawn from one case that not only addresses very different issues, but is also based on a British, not American, understanding of citizenship.

B. *Wong Kim Ark* Does Not Control.

The Ninth Circuit simply adopted what it thought was this Court’s view, drawn from dicta in *United*

States v. Wong Kim Ark, 169 U.S. 649 (1898), asserting:

The [Supreme] Court stated that “[t]he real object of” the dual requirements of birth in U.S. territory and being subject to the United States jurisdiction was, “to exclude, by the fewest and fittest words ... the two classes of cases, — children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign State...”⁶
[*Washington v. Trump*, Pet. App. at 20a.]

However, the *Wong Kim Ark* decision neither addressed nor decided the issue presented by the Executive Order. Moreover, as to the issues it did address, it was fundamentally flawed. Consider first how significantly it differs from the several cases this Court had decided previously. In 1873, just five years after ratification of the Fourteenth Amendment, this Court interpreted the Citizenship Clause:

That its main purpose was to establish the citizenship of the negro can admit of no doubt.

⁶ Few courts considered the narrowness of the *Wong Kim Ark* exceptions, under which children born to those working in foreign embassies who do not have actual diplomatic status (such as would provide diplomatic immunity) automatically become U.S. citizens at birth. At present, the “in hostile occupation” exception likely bars no one from birthright citizenship. It would give citizenship to children born to a woman who is from (and is a citizen of) a nation on the State Department’s list of State Sponsors of Terrorism (Cuba, North Korea, Iran, and Syria) as well as other countries like Russia or China.

The phrase, “**subject to its jurisdiction**” was intended to **exclude** from its operation children of ministers, consuls, and **citizens or subjects of foreign States born within the United States**. [*Slaughter-House Cases*, 83 U.S. 36, 73 (1873) (emphasis added).]

Two years later, the Court again questioned acquiring citizenship, focusing on British citizenship:

At **common-law**, ... it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners. **Some authorities go further** and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. **As to this class there have been doubts....** [*Minor v. Happersett*, 88 U.S. 162, 167-68 (1875) (emphasis added).]

Just 14 years before *Wong Kim Ark*, writing for the Court, Justice Gray had highlighted the critical difference between the children of citizens and the children of aliens owing allegiance to foreign powers. This Court declared:

[t]he main object of the opening sentence of the Fourteenth Amendment was to settle the question ... as to the citizenship of free Negroes ... and to put it beyond doubt that all persons, white or black, and whether formerly slaves or

not, born or naturalized in the United States, and **owing no allegiance to any alien power**, should be citizens of the United States.... [*Elk v. Wilkins*, 112 U.S. 94, 101 (1884) (emphasis added).]

Because the plaintiff in *Elk* was a member of a Native American tribe to which he owed allegiance, and had never been naturalized, the Court found that he was **not a citizen** despite being born on U.S. soil. Should *Wong Kim Ark* be read to overrule these cases?

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

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

However, if *Wong Kim Ark* viewed that “subject to the jurisdiction” of the United States simply meant to be present “within the jurisdiction” thereof, equating (i) children born to aliens who owe allegiance to foreign

governments to (ii) children of citizens, then that decision was in error, an outlier, inconsistent with this Court's decisions in the *Slaughter-House Cases*, *Minor*, and *Elk*.

C. Subsequent Validation by Courts and Congress.

The Ninth Circuit assumed that *Wong Kim Ark* was later validated, stating: “Congress made clear when enacting [the Immigration and Nationality Act] that it was borrowing the statutory language from the Fourteenth Amendment. *Washington v. Trump*, Pet. App. at 36a.

There is no reason to believe that, when Congress enacted a law such as the Immigration and Nationality Act, which used the same words as the Fourteenth Amendment, it was ratifying this one outlier decision of this Court rather than the language of the Amendment. The Ninth Circuit correctly noted, “[a] statute adopting language from another source generally conveys the original sources’ well-settled meaning” (*Washington v. Trump*, Pet. App. at 36a), which means here that the statute incorporates the Fourteenth Amendment’s meaning, but not the erroneous logic of *Wong Kim Ark*.

D. American vs. British Citizenship.

The Ninth Circuit demonstrated a fundamental misunderstanding of American citizenship when importing British citizenship principles in finding that allegiance and parentage are irrelevant, stating:

“Birthright citizenship is derived from the English common law principle of *jus soli*, or citizenship determined by birthplace.... [T]he common law understanding of jurisdiction within the sovereign’s territory, and the recognized immunities from it, are more consistent with Plaintiffs’ interpretation of the Citizenship Clause.” *Washington v. Trump*, Pet. App. at 26a, 28a. Actually, the common-law principle of *jus soli* is completely inapplicable here, as it was developed under the British view of “subjectship,” not the American view of citizenship. In *Wong Kim Ark*, Justice Gray accurately described the English common law’s presumption that everyone born on English soil was a subject of the King for life, whether he wished to be or not. “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.” *Wong Kim Ark* at 657.

Justice Gray incorrectly assumed the British rule of citizenship that he described also applied in America, when it does not. As Justice Story explained in 1829, “The common law of England is not to be taken in all respects to be that of America. Our ancestors brought with them its general principles, and claimed it as their birthright. But they brought with them, and adopted only that portion which was applicable to their situation.” *Van Ness v. Pacard*, 27 U.S. 137, 144 (1829).

This distinction between British and American citizenship was addressed in an article originally

published in January 2001, now updated and published by *amicus* America's Future. It explained that the legal principle of *jus soli* was based on the idea that the king owned the land, and thus anyone born on the land, whether to a citizen or to an alien, became by birth a subject of the king, to whom that person now owed allegiance for life, being permanently a subject by birth on the king's land.⁷ America has no king.

The shift to the American notion of citizenship occurred when our forefathers declared their land and persons "Absolved from all Allegiance to the British Crown." Thus, in 1776, the Framers expressly rejected the notion of being unalterably subjects by birth:

The Declaration of Independence is not just a thorough repudiation of that old feudal idea of 'permanent allegiance' [to the king by accident of birth], but perhaps the most eloquent repudiation of it ever written.... The notion that the English common law of *jus soli* therefore continued unabated after the Declaration of Independence could not be more mistaken.⁸

⁷ See W. Olson & J. Tuomala, "Citizenship by Accident of Birth: the Bogus Theory of Birthright Citizenship," *America's Future* (Mar. 2025), based on 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 (2001).

⁸ J. Eastman, "The Significance of 'Domicile' in *Wong Kim Ark*," 22 CHAP. L. REV. 301, 308-09 (Spring 2019).

E. The Requirement of Allegiance.

The Ninth Circuit stated:

the [Supreme] Court did not hold or even hint that there was a requirement of “primary allegiance” or exclusive allegiance in ... *Wong Kim Ark*. To the contrary, the *Wong Kim Ark* Court repeatedly equated allegiance merely with obedience to the laws of the sovereign.... [*Washington v. Trump*, Pet. App. at 23a.]

And thus the Ninth Circuit dismissed the critical issue of allegiance. Actually, citizenship is a reciprocal duty of protection. Only those persons who can be expected to have a “**permanent allegiance**” to our country can become citizens, because only on that permanent allegiance does the country’s reciprocal duty of protection arise. No such relationship exists with the two classes of persons addressed by the Executive Order:

By **allegiance** is meant the obligation of **fidelity and obedience** which the individual owes to the government under which he lives, or to his sovereign in return for the protection he receives. It may be an absolute and permanent obligation, or it may be a qualified and temporary one. The citizen or subject owes an **absolute and permanent allegiance** to his government or sovereign, or at least until, by some open and distinct act, he renounces it and becomes a citizen or subject of another government or another

sovereign. The alien, whilst domiciled in the 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).]

These and other flaws with the extreme theory advanced by Respondents, and adopted by courts below, that everyone born on U.S. soil — but for two tiny exceptions which might cover an infinitesimal fraction of 1 percent of births covered by the Executive Order — are U.S. citizens are discussed in the following sections.

II. “BIRTHRIGHT CITIZENSHIP” VIOLATES THE PRINCIPLES OF THE DECLARATION OF INDEPENDENCE AND THE TEXT AND ORIGINAL INTENT OF THE FOURTEENTH AMENDMENT.

A. The Importance of Allegiance.

The Declaration of Independence not only freed the new country from the notion that persons born in America were British citizens with allegiance to England, but it also demonstrated the solemn, binding, and covenantal action undertaken on behalf of the people, which was later confirmed by the People’s ratification of the Constitution, which begins, “We the People.”

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of

the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are **Absolved from all Allegiance to the British Crown**, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved.... [Declaration of Independence (emphasis added).]

The Declaration of Independence declared that Americans were shifting from their previous “[a]llegiance to the British Crown” to allegiance to the new nation formed of “**Free and Independent States.**”

B. The Fourteenth Amendment.

The courts below gave little consideration to the views of the Framers of the Fourteenth Amendment but preferred to rely on later case law. Following the Civil War, Congress took action to overrule *Dred Scott*, which held that slaves and their descendants, even as freedmen, were excluded from U.S. citizenship. Congress first acted to override *Dred Scott* by enacting the **Civil Rights Act of 1866**, which provided that “all persons born in the United States and **not subject to any foreign power**, excluding Indians not taxed, are hereby declared to be **citizens** of the United States.” 14 *Stat.* 27 (emphasis added).

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

Section 1. 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. No State shall ... deny to any person **within its jurisdiction** the equal protection of the laws. [Emphasis added.]

The language “**subject to the jurisdiction thereof**” in the Fourteenth Amendment was understood as conveying the same meaning as the language “**and not subject to any foreign power**” as used in the Civil Rights Act of 1866. Most countries recognize as citizens those children born to parents who are their citizens. Consequently, even if born on American soil, those children born to foreigners are **subjects of a foreign power** and thus **not subject to the jurisdiction of the United States**. Accordingly, children born in the United States of parents who are not U.S. citizens have no lawful claim of citizenship simply because they are born on U.S. soil.

Just as with the Declaration of Independence, the ratification history of the Fourteenth Amendment,

discussed *infra*, demonstrates that “**subject to the jurisdiction**” entails an obligation of 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 of 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. Article IV, Sec. 2, cl. 1. On the other hand, all persons who come “within its jurisdiction” have a duty to obey the law, together with a corresponding right to the equal protection of the law. The meaning of the phrase “subject to the jurisdiction” as used in the Fourteenth Amendment context is very different from the meaning of “within its jurisdiction.”

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

Senator Jacob Howard of Michigan, who authored the Citizenship Clause, explained its meaning:

This ... is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. **This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.** [Congressional Globe, 39th Cong., 1st 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, the **same jurisdiction in extent and quality** as applies to every citizen of the United States now. [*Id.* at 2895 (emphasis added).]

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

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

It is only those persons who are 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. [*Id.* at 2893 (emphasis added).]

Senator George Williams of Oregon concurred:

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

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

If a **traveler** comes here from Ethiopia, from Australia, or from Great Britain, he is entitled

to a certain extent, to the protection of the laws. You cannot murder him with impunity. It is murder to kill him, the same as it is to kill another man. You cannot commit an assault and battery on him, I apprehend. He has a right to the protection of the laws; but he is **not a citizen** in the ordinary acceptation of the word. [*Id.* at 2890 (emphasis added).]

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

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

Allegiance has continued to be at the center of American citizenship. An oath of allegiance was required of most Confederate combatants after the Civil War.⁹ It is at the core of the “**Oath of renunciation and allegiance**” required by persons seeking naturalization:

A person who has applied for naturalization shall, in order to be and before being admitted

⁹ See National Archives and Records Administration, “Presidential Pardons and Congressional Amnesty to Former Confederate Citizens, 1865-1877” (Nov. 2014).

to citizenship, take ... an oath ... to renounce and abjure absolutely and entirely all **allegiance** and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen....; to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic [and] to bear true faith and **allegiance** to the same. [8 U.S.C. § 1448 (emphasis added).]

III. THE VIEW THAT “BIRTHRIGHT CITIZENSHIP” SHOULD BE HANDED OUT IRRESPECTIVE OF ALLEGIANCE HAS BIZARRE RESULTS.

The injunctions issued in these cases omitted discussion of or dismissed the significance of 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 sanguinis* — that a child acquires the citizenship of the child’s natural parents. See Edward J. Erler, The Founders on Citizenship and Immigration (Claremont Inst.: 2007) at 28-29. Thus, children born anywhere in the world to citizens of most other countries acquire the citizenship of their parents at birth. Under Respondents’ notion of “birthright citizenship” — a term of recent origin that cannot be sourced to the Declaration, Constitution, or any statute — almost all such children automatically would be citizens of multiple countries. To which country do these children owe their allegiance?

The United States has long required naturalized citizens to disavow allegiance to all foreign sovereigns, but not so with those benefitting from “birthright citizenship.” Most children born in the United States to parents with foreign citizenship are recognized as foreign nationals under international law, and not any more “subject to the jurisdiction” of the United States than are the children of diplomats, Native Americans (before the Indian Citizenship Act of 1924), or foreign invaders, whom Respondents concede are not citizens.

The importance of allegiance is most acutely felt during time of war when the obligations of citizenship are most consequential. An American citizen is “subject to the jurisdiction” of the United States and may be drafted into the military even if outside the country. Citizens who take up arms against the United States may be prosecuted for treason. *See* U.S. Constitution, Article III, Sec. 3. Non-citizens who take up arms against the United States are prisoners of war if captured, and they are not subject to prosecution simply for waging war against the United States. A person who is a citizen of two different countries that are at war will be placed in an untenable position. The problems that arise with dual citizenship were acutely felt by U.S. citizens who were impressed into service with the British navy leading up to the War of 1812.

Neither of the two categories of children born to aliens in the United States that are addressed by the Executive Order can be expected to demonstrate allegiance to our nation. First, those children born of parents who are not legally in the United States cannot be expected to be nurtured in the values of

American citizenship by parents who entered the country illegally — being here not “subject to” but rather “in defiance of” our nation’s laws. Second are those children of birth tourists, who travel to the United States for the purpose of giving birth and thereby obtaining cheap and easy citizenship for their children. They too are unlikely to have any allegiance to nurture their children in values of American citizenship.

Indeed, as explained *supra*, only those persons who can be expected to have a “**permanent allegiance**” to our country can become citizens, because based on that permanent allegiance, the country then owes to its citizens a reciprocal duty of protection. But no such relationship can be said to be established with the two classes of persons covered by the Executive Order.

If *Wong Kim Ark* is read to support the preliminary injunctions, it contravenes common sense and our sense of justice. According to the lower courts’ theory, under *Wong Kim Ark*, a person born in the United States of alien parents is constitutionally entitled to American citizenship, whereas a person born outside the United States to American citizens is entitled to such citizenship only by statute. Why should there be an irrebuttable legal presumption of allegiance in the former case, but not in the latter?

Under the Respondents’ theory of the case, and the district courts’ preliminary injunctions, children of the 9/11 hijackers, human traffickers, and enemy combatants captured overseas and held in the United

States who are born on U.S. territory would be entitled to citizenship.¹⁰

Furthermore, Second Amendment rights belong to the People, which is to say, the Citizens, the polity of the nation: “the right of **the people** to keep and bear Arms, shall not be infringed.” (Emphasis added.) Thus, birthright citizenship gives the “right to keep and bear arms” to persons who bear no allegiance to the United States except by accident of birth. This is consistent with “the conception of the militia at the time of the Second Amendment’s ratification was the **body of all citizens** capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty.” *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008) (emphasis added). “‘The people’ seems to have been a term of art employed in select parts of the Constitution’ to ‘refer[] to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.’” *United States v. Carbajal-Flores*, 143 F.4th 877, 881 (7th Cir. 2025).¹¹

¹⁰ See, e.g., DOJ Office of the Inspector General, “A Review of the FBI’s Handling of Intelligence Information Prior to the September 11 Attacks,” ch. 5 (Nov. 2004); U.S. Department of Justice, “Two sent to prison for roles in cartel-linked human smuggling scheme” (Oct. 30, 2024); U.S. Department of Justice, “Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System” (June 9, 2009).

¹¹ Several circuits, properly, have upheld the federal prohibition on firearms by illegal aliens. See *Carbajal-Flores*, *supra*; *United States v. Medina-Cantu*, 113 F.4th 537 (5th Cir. 2024); *United*

The problems associated with the theory of birthright citizenship are exacerbated by statutes that facilitate immigration of family members of lawfully naturalized citizens, known as “chain migration.” Vast birth tourism from Turkey, China, Nigeria, and Mexico unquestionably exists.¹²

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be granted.

States v. Sitladeen, 64 F.4th 978 (8th Cir. 2023); *United States v. Drummond*, 2025 U.S. App. LEXIS 16307 (11th Cir. 2025).

¹² 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).

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