No. 25-364

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.

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

BRIEF OF RESPONDENTS

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QUESTIONS PRESENTED

The Fourteenth Amendment's Citizenship Clause 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." The Clause is broad by design, bestowing citizenship on children born in the United States regardless of race, ethnicity, alienage, or the immigration status of their parents. This Court's precedent confirms that understanding, *see United States v. Wong Kim Ark*, 169 U.S. 649 (1898), and every branch of the federal government has long endorsed it. The Immigration and Nationality Act codified the long-accepted understanding of the Citizenship Clause and provides that "a person born in the United States, and subject to the jurisdiction thereof" is a citizen. 8 U.S.C. § 1401(a).

On January 20, 2025, President Trump issued Executive Order 14,160, entitled "Protecting the Meaning and Value of American Citizenship[.]" The Order declares that citizenship is not conferred to children born to parents who are undocumented or who have a lawful but temporary status, and on that basis, directs federal agencies to deprive those individuals of their rights as citizens.

The questions presented are:

1. Whether Executive Order 14,160 violates the Fourteenth Amendment's Citizenship Clause.

2. Whether Executive Order 14,160 violates 8 U.S.C. § 1401(a).

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are Donald J. Trump, President of the United States; U.S. Department of Homeland Security; Kristi Noem, Secretary of Homeland Security; U.S. Social Security Administration; Frank Bisignano, Commissioner of Social Security; U.S. Department of State; Marco Rubio, Secretary of State; U.S. Department of Health and Human Services; Robert F. Kennedy, Secretary of Health and Human Services; U.S. Department of Justice; Pamela Bondi, Attorney General; U.S. Department of Agriculture; Brooke Rollins, Secretary of Agriculture; and the United States of America.

Respondents (plaintiffs-appellees below) are the States of Washington, Arizona, Illinois, and Oregon. Cherly Norales Castillo and Alicia Chavarria Lopez were plaintiffs-appellees below, but the Ninth Circuit dismissed them on appeal.

TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF THE CASE 4

A. History of Birthright Citizenship in the United States 4

1. The common law rule of *jus soli* 4

2. Adoption of the Citizenship Clause 5

3. Precedent interpreting the Citizenship Clause 7

4. Executive interpretation of the Citizenship Clause 10

5. The statutory guarantee of birthright citizenship 11

B. President Trump Issues Executive Order 14,160 12

C. Procedural History 13

ARGUMENT 16

A. Although this Case Fails the Court's Ordinary Standards for Certiorari, the Respondent States Do Not Oppose Certiorari 16

B. If the Court Grants Certiorari, It Should Affirm the Judgment Below 17

1. The text and original understanding of the Fourteenth Amendment confirm that the Citizenship Clause applies regardless of parental citizenship, immigration status, "primary allegiance," or domicile 18

2. This Court's precedent confirms the text and original understanding 22

3. Petitioners' contrary arguments are meritless 24

a. Petitioners' "primary allegiance" theory lacks support in text, history, or precedent 25

b. Petitioners mischaracterize this Court's precedent and historical sources 26

c. Petitioners' "domicile" argument lacks any textual or historical support 31

d. Petitioners' proposed "domicile" test is unworkable and contrary to the Fourteenth Amendment's purpose 34

4. The Order independently violates the INA 36

CONCLUSION 37

TABLE OF AUTHORITIES

Cases

Afroyim v. Rusk,
387 U.S. 253 (1967).....6, 35

Ah How v. United States,
193 U.S. 65 (1904).....9

Barbara v. Trump,
--- F. Supp. 3d ---, Civ. No. 25-cv-244-JL-AJ,
2025 WL 1904338 (D.N.H. July 10, 2025),
appeal docketed, No. 25-1861
(1st Cir. Sept. 10, 2025),
petition for cert. before judgment filed,
No. 25-365 (Sept. 26, 2025).....16

Benny v. O'Brien,
32 A. 696 (N.J. Sup. Ct. 1895).....32

Bostock v. Clayton County,
590 U.S. 644 (2020).....36

CASA, Inc. v. Trump,
--- F. Supp. 3d ---, Civ. No. DLB-25-201,
2025 WL 2257625 (D. Md. Aug. 7, 2025).....15

CASA, Inc. v. Trump,
763 F. Supp. 3d 723 (D. Md. 2025).....15

Chin Bak Kan v. United States,
186 U.S. 193 (1902).....32

Doe v. Trump,
--- F.4th ---, Nos. 25-1169, 25-1170,
2025 WL 2814730 (1st Cir. Oct. 3, 2025).....15

Dred Scott v. Sandford,
60 U.S. (19 How.) 393 (1857).....5, 27

Elk v. Wilkins,
112 U.S. 94 (1884)..... 5, 7-8, 20-21, 26, 28

INS v. Errico,
385 U.S. 214 (1966).....3, 9

Kawakita v. United States,
343 U.S. 717 (1952).....9

Kwock Jan Fat v. White,
253 U.S. 454 (1920).....33

Lamar, Archer & Cofrin, LLP v. Appling,
584 U.S. 709 (2018).....3, 37

Lynch v. Clarke,
1 Sand. Ch. 583 (N.Y. Ch. 1844).....5

McCreery's Lessee v. Somerville,
22 U.S. (9 Wheat.) 354 (1824).....5

Minor v. Happersett,
88 U.S. (21 Wall.) 162 (1874).....29

Murray v. Schooner Charming Betsy,
6 U.S. (2 Cranch) 64 (1804) 5

N.H. Indonesian Cmty. Support v. Trump,
--- F.4th ---, No. 25-1348,
2025 WL 2814705 (1st Cir. Oct. 3, 2025) 15

Nishikawa v. Dulles,
356 U.S. 129 (1958).....9

Perkins v. Elg,
307 U.S. 325 (1939).....9

Plyler v. Doe,
457 U.S. 202 (1982).....3, 9, 34

Schooner Exch. v. McFaddon,
11 U.S. (7 Cranch) 116 (1812) 20-21, 23

Slaughter-House Cases,
83 U.S. (16 Wall.) 36 (1872)..... 26-27, 33

Texas v. Florida,
306 U.S. 398 (1939).....34

The Venus,
12 U.S. (8 Cranch) 253 (1814) 35

Trump v. CASA, Inc.,
606 U.S. 831 (2025)..... 14-15, 17-18

United States ex rel. Hintopoulos v. Shaughnessy,
353 U.S. 72 (1957).....3, 9

United States v. Wong Kim Ark,
169 U.S. 649 (1898)..... 2, 4, 6, 8-11, 15-16, 20, 22-30, 32-33, 35, 37

Weedin v. Chin Bow,
274 U.S. 657 (1927) 4

Constitutional Provisions

U.S. Const. amend. XIV 1-3, 6-22, 24-27, 29-31, 33-37

Statutes

8 U.S.C. § 1401(a)..... 3, 11-12, 14, 36-37

Civil Rights Act of 1866,
14 Stat. 27 (1866)..... 6-7, 29-30, 35

Nationality Act of 1940,
Pub. L. No. 76-853,
54 Stat. 1137 ..... 3, 11, 15, 36-37

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Pub. L. No. 82-414,
66 Stat. 163 (1952).....12, 15, 36-37

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Dictionary of Terms and Phrases Used in American or English Jurisprudence (1879) 20

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An Elementary Dictionary of the English Language (1860).....20

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39th Cong., 1st Sess. (1866) 6, 21, 29-31

H.R. Rep. No. 82-1365 (1952), *as reprinted in* 1952 U.S.C.C.A.N. 1653 .....12, 36

To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code: Hearings on H.R. 6127 Superseded by H.R. 9980 Before the H. Comm. on Immigr. & Naturalization, 76th Cong. (Comm. Print 1940) 3, 11-12, 36

Administrative and Executive Materials

Exec. Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, 90 Fed. Reg. 8449 (Jan. 20, 2025) 12-13

Citizenship of Children Born in the United States of Alien Parents, 10 Op. Att'y Gen. 328 (1862) 10

Legislation Denying Citizenship at Birth to Certain Children Born in the United States, 19 Op. O.L.C. 340 (1995) 4-5, 10, 35

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Commentaries on the Conflict of Laws, Foreign and Domestic (1834) 34

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A Treatise on International Law (4th ed. 1895) 33

Periodical Materials

Garrett Epps,
The Citizenship Clause: A "Legislative History," 60 Am. U. L. Rev. 331 (2010)..... 6-7, 29

James C. Ho,
Birthright Citizenship, the Fourteenth Amendment, and State Authority, 42 U. Rich. L. Rev. 969 (2008).....6

James C. Ho,
Defining "American": Birthright Citizenship and the Original Understanding of the 14th Amendment, 9 Green Bag 2d 367 (2006) 1, 19, 27, 31

Matthew Ing,
Birthright Citizenship, Illegal Aliens, and the Original Meaning of the Citizenship Clause, 45 Akron L. Rev. 719 (2012).....30

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Originalism and Birthright Citizenship, 109 Geo. L.J. 405 (2020) 4-5, 12, 19-21, 27, 29, 31

INTRODUCTION

No defensible theory of constitutional or statutory interpretation supports Petitioners in this case. Text, history, and precedent demonstrate that the Fourteenth Amendment's Citizenship Clause was intended to grant citizenship to virtually all babies born in this country, with only narrow, well-defined exceptions. This view has been shared across all branches of government for nearly 150 years. Largely for that reason, this case fails this Court's criteria for certiorari. The court below correctly applied this Court's precedent, and there is not now and likely never will be disagreement in the lower courts. Nonetheless, the Respondent States do not oppose certiorari because this Court has expressed a strong desire to quickly resolve the merits of this issue.

The Citizenship Clause is clear: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States[.]" At the time this language was adopted, and still today, legal scholars and ordinary citizens understood that virtually everyone born in this country is "subject to the jurisdiction" of the United States, i.e., answerable to our country's laws. *See, e.g.*, James C. Ho, *Defining "American": Birthright Citizenship and the Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 368 (2006) ("To be 'subject to the jurisdiction' of the U.S. is simply to be subject to the authority of the U.S. government."). The only historical exceptions were children born to individuals who, at the time of the Amendment, were not understood to be subject to ordinary laws—diplomats, invading armies, and certain Native American tribal members.

Petitioners reject this straightforward reading, instead proposing a convoluted interpretation based on "domicile." But the Citizenship Clause never mentions "domicile," no member of Congress debating the Clause referenced "domicile," and Petitioners do not cite a single dictionary that defines "jurisdiction" as they propose. Their definition is neither originalist nor textualist—it is a post-hoc rationalization for a predetermined policy outcome. And it makes no sense. Babies born to Native Americans were denied citizenship under the Fourteenth Amendment even though their parents were domiciled here. And babies born to many individuals who are not domiciled here obviously become citizens if born here, such as babies born to U.S. citizens who are permanently living abroad but happen to give birth in the United States.

Indeed, this Court rejected Petitioners' approach to the Citizenship Clause in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). The Court canvassed the history and original understanding of the Citizenship Clause and explained that it extended citizenship to all babies born here, with only the exceptions previously recognized: children of ambassadors, invading armies, and certain Native American tribes. Petitioners claim *Wong Kim Ark* addressed only parents domiciled here, but this Court rejected that idea, explaining that individuals within the United States are subject to its jurisdiction "independently of any domiciliation; independently of the taking of any oath of allegiance[.]" *Id.* at 693.

Since *Wong Kim Ark*, this Court has treated it as obvious that children born in this country become citizens regardless of their parents' immigration

status or the duration of their stay. *See, e.g.*, *INS v. Errico*, 385 U.S. 214, 215 (1966); *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957). And the Court has unanimously rejected the idea that undocumented individuals are beyond the "jurisdiction" of the United States. *See Plyler v. Doe*, 457 U.S. 202, 211 n.10 (1982) (rejecting argument that immigration status affects jurisdiction); *id.* at 243 (Burger, C.J., dissenting) (same). This is not an open question.

Finally, even if the constitutional question were debatable, Congress has rejected Petitioners' position in statute. In 1940, long after it was settled that the Fourteenth Amendment guaranteed birthright citizenship to all babies born here regardless of their parents' immigration status, Congress implemented that understanding in the Nationality Act of 1940, now codified at 8 U.S.C. § 1401(a). Congress was "aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018). Indeed, the bill's drafters made clear, in a report shared with every member of Congress, that parental domicile had no impact on citizenship under the Act.[1]

In short, the decision of the court below is correct. If this Court grants certiorari, it should affirm.

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[1] *See To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code: Hearings on H.R. 6127 Superseded by H.R. 9980 Before the H. Comm. on Immigr. & Naturalization*, 76th Cong. 28, 418, 429 (Comm. Print 1940) [hereinafter *Nationality*].

STATEMENT OF THE CASE

A. History of Birthright Citizenship in the United States

1. The common law rule of *jus soli*

Under the English common law rule, "every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born." *Wong Kim Ark*, 169 U.S. at 658. That "same rule was in force in all the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the constitution as originally established." *Id.* This common law rule was known as *jus soli*—citizenship by birthplace. *See, e.g.*, *Weedin v. Chin Bow*, 274 U.S. 657, 660 (1927) (recognizing that "at common law in England and the United States the rule with respect to nationality was that of the jus soli"); Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L.J. 405, 410-12 (2020) (same).

Thus, under the pre-Fourteenth Amendment common law, anyone "born within the sovereignty of the United States, whether children of citizens or of foreigners, excepting only children of ambassadors or public ministers of a foreign government, were native-born citizens of the United States."[2] *Wong Kim Ark*,

[2] Enslaved individuals, "shamefully, not being considered persons at all for many legal purposes, were ignored by the common law analysis." *Legislation Denying Citizenship at*

169 U.S. at 674-75; Frederick Van Dyne, *Citizenship of the United States* 3-7 (1904) (surveying common law and recognizing same); *see also Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 119-20 (1804) (explaining that all persons born in the United States were citizens); *McCreery's Lessee v. Somerville*, 22 U.S. (9 Wheat.) 354 (1824) (recognizing that children born in Maryland to foreign parents were native-born U.S. citizens); *Lynch v. Clarke*, 1 Sand. Ch. 583, 663 (N.Y. Ch. 1844) (holding that child born in the United States to noncitizen parents who were temporary visitors was a citizen by birth).

The recognized exceptions to this broad rule reflected those not subject to the United States' sovereign authority, or jurisdiction: children of foreign diplomats and foreign military forces on United States soil, and children born to certain Native American tribal members, who were born under the "dominion of their tribes" and were generally not subject to state or federal laws. *See* Ramsey, *Originalism*, *supra* pp. 416, 442-44; *Elk v. Wilkins*, 112 U.S. 94, 99-100 (1884) (explaining that tribal members were not citizens at the time of the Fourteenth Amendment's adoption).

2. Adoption of the Citizenship Clause

The longstanding common law rule of *jus soli* was upended when this Court declared that citizenship did not extend to free descendants of slaves. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404-05 (1857). In response to *Dred Scott* and the Civil

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Birth to Certain Children Born in the United States, 19 Op. O.L.C. 340, 342 n.7 (1995).

War, Congress adopted the Civil Rights Act of 1866, ch. 31, 14 Stat. 27, extending citizenship to "all persons born in the United States and not subject to any foreign power[.]" But after that law was passed over a presidential veto, "[t]he same congress, shortly afterwards, evidently thinking it unwise, and perhaps unsafe, to leave so important a declaration of rights to depend upon an ordinary act of legislation, which might be repealed by any subsequent congress, framed the fourteenth amendment of the constitution[.]" *Wong Kim Ark*, 169 U.S. at 675. *See Afroyim v. Rusk*, 387 U.S. 253, 263 (1967) (explaining that the Fourteenth Amendment put "citizenship beyond the power of any governmental unit to destroy").

The Citizenship Clause was adopted to "guarantee citizenship to virtually everyone born in the United States[,]" with only the narrow exceptions previously recognized for diplomats, invading armies, and certain Native American tribal members. James C. Ho, *Birthright Citizenship, the Fourteenth Amendment, and State Authority*, 42 U. Rich. L. Rev. 969, 971-72 (2008). Its language, including the phrase "subject to the jurisdiction thereof," was proposed by Senator Jacob Howard in May 1866. *See* Garrett Epps, *The Citizenship Clause: A "Legislative History,"* 60 Am. U. L. Rev. 331, 352-59 (2010) (detailing ratification debate). He explained the meaning of the new language as "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." Cong. Globe, 39th Cong., 1st Sess. 2890 (1866).

In response, Senator Cowan objected to conferring citizenship, as he understood the draft language would, to the children of Chinese immigrants and "Gypsies." *Id.* at 2890-91. Senator Conness responded that the proposal would confer citizenship upon "the children of all parentage whatever," who "should be regarded and treated as citizens of the United States[.]" *Id.* at 2891. The remaining debate then focused upon the status of Native American children, with Senators Howard and Trumbull, who had drafted the Civil Rights Act, explaining that the phrase "subject to the jurisdiction thereof" excluded children born to certain Native American tribal members who lived under their own tribal governments or outside the scope of the United States' power. *See* Epps, *The Citizenship Clause*, *supra* pp. 356-62.

3. Precedent interpreting the Citizenship Clause

After the Fourteenth Amendment's adoption, this Court in *Elk v. Wilkins*, addressed the Citizenship Clause's meaning with respect to Native Americans born in the United States. Explaining why the Citizenship Clause was understood to exclude certain Native Americans, Justice Gray reasoned that tribes, despite being within the United States, "were alien nations, distinct political communities," with whom the United States dealt through treaties or specific legislation. *Elk*, 112 U.S. at 99. As a result, tribal members "are no more 'born in the United States and subject to the jurisdiction thereof,' . . . than the children of subjects of any foreign government born

within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations." *Id.* at 102.

Fourteen years later, Justice Gray wrote this Court's decision in *Wong Kim Ark*. The opinion exhaustively canvassed the Fourteenth Amendment's text and history, English and early American common law, and the meaning of birthright citizenship to the drafters of the Fourteenth Amendment. It held that the Citizenship Clause stood for "the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents[.]" *Wong Kim Ark*, 169 U.S. at 688, 692-93. Thus, Wong Kim Ark, a child born in San Francisco to Chinese parents who could not themselves become U.S. citizens, was an American citizen. *Id.* at 704.

This Court's decision hinged on the meaning of the Amendment's phrase "subject to the jurisdiction thereof." The "real object" of that language was "to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases . . . recognized [as] exceptions to the fundamental rule of citizenship by birth within the country." *Id.* at 682. The sole exceptions are "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state[.]" *Id.* This understanding was consistent with *Elk*, Justice Gray concluded, as that decision "concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents . . . not in the diplomatic service of a foreign

country." *Id.* In emphasizing the broad scope of the citizenship grant, this Court explained that it "was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have become citizens according to the law existing before its adoption." *Id.* at 676.

Since *Wong Kim Ark*, this Court has reiterated repeatedly that children born in this country are citizens without regard to their parents' "primary allegiance" or domicile. *See, e.g.*, *Errico*, 385 U.S. at 215 (explaining that a child had "acquired United States citizenship at birth" even though their noncitizen parents had entered the United States unlawfully); *United States ex rel. Hintopoulos*, 353 U.S. at 73 (stating that a child born to two "illegal[ly] presen[t]" noncitizens was "of course, an American citizen by birth"); *see also Nishikawa v. Dulles*, 356 U.S. 129, 131 (1958); *Kawakita v. United States*, 343 U.S. 717, 720 (1952); *Perkins v. Elg*, 307 U.S. 325, 329 (1939); *Ah How v. United States*, 193 U.S. 65, 65 (1904). And in *Plyler v. Doe*, this Court unanimously rejected the argument that undocumented immigrants fall outside the "jurisdiction" of the United States within the meaning of the Fourteenth Amendment. 457 U.S. at 211 n.10 ("[N]o plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful."); *id.* at 243 (Burger, C.J., dissenting) (agreeing with this conclusion).

4. Executive interpretation of the Citizenship Clause

The Executive Branch, too, has long endorsed the *jus soli* understanding of the Citizenship Clause. *See Wong Kim Ark*, 169 U.S. at 664 (recognizing that the *jus soli* doctrine of birthright citizenship "was repeatedly affirmed in the executive departments" in the years surrounding ratification of the Fourteenth Amendment); *Citizenship of Children Born in the United States of Alien Parents*, 10 Op. Att'y Gen. 328 (1862) (Attorney General opinion concluding that a child born in the United States of alien parents who have never been naturalized is, by fact of birth, a native-born citizen).

Most prominently, in 1995 and 1997, the U.S. Department of Justice's Office of Legal Counsel assessed the constitutionality of legislation that, like the Executive Order here, would deny citizenship to children born to parents who were not citizens or permanent residents. It concluded that such legislation would be "unquestionably" and "flatly" unconstitutional based on the Citizenship Clause's text, history, and precedent. 19 Op. O.L.C. 340, 341; *Citizenship Reform Act of 1997; and Voter Eligibility Verification Act: Hearing Before the Subcommittee on Immigration and Claims of the House Committee on the Judiciary*, 105th Cong., 1st Sess., at 19, 21 (June 25, 1997) (Comm. Print 1997).

5. The statutory guarantee of birthright citizenship

Congress has independently protected the Citizenship Clause's promise of birthright citizenship. Like the Citizenship Clause, the Immigration and Nationality Act (INA) provides that "a person born in the United States, and subject to the jurisdiction thereof" is a citizen. 8 U.S.C. § 1401(a).

Congress first codified this language through the Nationality Act of 1940. That law originated from a multi-agency committee, assembled by President Roosevelt at Congress's request, that proposed a comprehensive set of nationality laws. *See Nationality*, *supra* pp. 28, 207-41, 333-34, 405-10, 418; *id.* at 691 (Exec. Order No. 6115 of April 25, 1933, *Revision and Codification of the Nationality Laws of the United States*). The report accompanying the proposed statutory text was drafted jointly by the Departments of State, Labor, and Justice, and explained that including the guarantee of birthright citizenship "is in effect a statement of the common-law rule, which has been in effect in the United States from the beginning of its existence as a sovereign state[.]" *Id.* at 418.

The report explained that the guarantee "accords with the provision in the fourteenth amendment['s]" Citizenship Clause, as explained in *Wong Kim Ark*. *Id.*; *accord id.* at 429 (further discussing *Wong Kim Ark*). The committee understood that *Wong Kim Ark* is "applicable to a child born in the United States of parents residing therein temporarily." *Id.* at 418. The committee explicitly

rejected a domicile requirement: "[I]t is the fact of birth within the territory and jurisdiction, and not the domicile of the parents, which determines the nationality of the child." *Id.* All members of Congress received the report. *Id.* at 28. No member disavowed the language's meaning when Representative Rees explained that the clause reflects the Fourteenth Amendment's guarantee "that all persons born in the United States are citizens." *Id.* at 298; *see also id.* at 38.

Twelve years later, Congress re-codified the same language through the Immigration and Nationality Act of 1952. In doing so, Congress used the same language to "carr[y] forward substantially those provisions of the Nationality Act of 1940 which prescribe who are citizens by birth." *See* H.R. Rep. No. 82-1365 (1952), *as reprinted in* 1952 U.S.C.C.A.N. 1653, 1734. While Congress has subsequently amended the INA, the statute's guarantee of birthright citizenship has retained the same definition since 1940.

B. President Trump Issues Executive Order 14,160

Against this backdrop, on January 20, 2025, President Trump issued an Executive Order entitled "Protecting the Meaning and Value of American Citizenship." Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 20, 2025).

Section 1 declares that U.S. citizenship "does not automatically extend to persons born in the United States" if, at the time of birth, the child's

father is not a U.S. citizen or lawful permanent resident and the mother's presence in the United States is (1) unlawful or (2) lawful but temporary. *Id.*

Section 2 states that it is the "policy of the United States" that no federal department or agency shall issue documents recognizing such persons as U.S. citizens or accept documents issued by State governments recognizing such persons as U.S. citizens if they are born after February 19, 2025. *Id.*

Section 3 directs the Secretary of State, Attorney General, Secretary of Homeland Security, and Social Security Commissioner to "take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order" and mandates that officials cannot "act, or forbear from acting, in any manner inconsistent with this order." *Id.* at 8449-50.

C. Procedural History

The day after President Trump signed the Executive Order, the Respondent States filed suit and sought a temporary restraining order. The district court granted the TRO. Pet. App. 107a. Soon thereafter, a group of expectant mothers filed a putative class action. The district court consolidated the cases and each group of plaintiffs moved for a preliminary injunction.

The district court preliminarily enjoined the Executive Order. Pet. App. 90a-106a. It examined the Citizenship Clause's text and history, as well as this Court's precedent, and concluded that the

Order was contrary to these sources of authority. Pet. App. 97a. It held that the Order also likely violates the INA. Pet. App. 96a. With respect to the remaining *Winter* factors, the court concluded that the Respondent States would suffer "irreparable economic harm in the absence of preliminary relief," and that the balance of equities and public interest strongly weighed in favor of an injunction. *See* Pet. App. 102a-06a.

Petitioners appealed and sought an emergency partial stay of the injunction. After the Ninth Circuit denied their request, this Court in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), addressed the scope of the injunctions in this and two other cases. The Court granted the federal government's applications "only to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue." *Id.* at 861. The Court left it to the lower courts to determine whether the injunctions comport with that standard. *Id.* at 853-54.

On remand, the Ninth Circuit held that the Respondent States had standing and affirmed the injunction. The court concluded that Petitioners' reading of the Citizenship Clause is a "strained and novel interpretation" that "relies on a network of inferences that are unmoored from the accepted legal principles of 1868," and that is "contrary to the express language of the Citizenship Clause, the reasoning of *Wong Kim Ark*, Executive Branch practice for the past 125 years, [and] the legislative history to the extent that should be considered[.]" Pet. App. 44a. The court also held that the Executive Order likely violates Section 1401(a) of the INA because the

established understanding of the phrase "subject to the jurisdiction" in 1940 and 1952 was tethered to the meaning of the Citizenship Clause's language as set forth in *Wong Kim Ark* and longstanding Executive Branch construction. Pet. App. 36a-37a.

The Ninth Circuit affirmed that all remaining preliminary injunction factors strongly favored issuance of the injunction, and held that the district court's injunction was consistent with this Court's decision in *CASA*. Pet. App. 37a-44a. Judge Bumatay dissented on the ground that he believed the Respondent States lacked standing. Pet. App. 49a-71a. He adopted no portion of Petitioners' arguments on the merits. *See id.*

Petitioners requested certiorari to seek review of the Ninth Circuit's conclusion that the Respondent States are likely to succeed on the merits of their Citizenship Clause and INA claims. Petitioners no longer contest the States' standing or the scope of the injunction. They have petitioned simultaneously for certiorari before judgment in *Barbara*, *see* No. 25-365.

Many other cases were filed challenging the Executive Order, and every court to address the merits has concluded that it violates the Citizenship Clause, the INA, or both. *See Doe v. Trump*, --- F.4th ---, Nos. 25-1169, 25-1170, 2025 WL 2814730 (1st Cir. Oct. 3, 2025); *N.H. Indonesian Cmty. Support v. Trump*, --- F.4th ---, No. 25-1348, 2025 WL 2814705 (1st Cir. Oct. 3, 2025); *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723 (D. Md. 2025); *CASA, Inc. v. Trump*, --- F. Supp. 3d ---, Civ. No. DLB-25-201, 2025 WL 2257625 (D. Md. Aug. 7, 2025); *Barbara v. Trump*,

--- F. Supp. 3d ---, Civ. No. 25-cv-244-JL-AJ, 2025 WL 1904338 (D.N.H. July 10, 2025), *appeal docketed*, No. 25-1861 (1st Cir. Sept. 10, 2025), *petition for cert. before judgment filed*, No. 25-365 (Sept. 26, 2025).

ARGUMENT

A. Although this Case Fails the Court's Ordinary Standards for Certiorari, the Respondent States Do Not Oppose Certiorari

Under this Court's ordinary rules for certiorari, this case falls far short. Nonetheless, because of the unique circumstances here, the Respondent States do not oppose the Court granting the petition. And because Petitioners do not challenge the Respondent States' standing, this case provides a clean vehicle to consider the merits.

The core issue in this case has been long settled by this Court. Indeed, the Ninth Circuit's ruling in this case closely followed—and was dictated by—this Court's precedent recognizing the original understanding of "jurisdiction." In *Wong Kim Ark*, this Court explained that the text and history of the Citizenship Clause reaffirmed the common law rule of *jus soli* as the law of the United States, imposing no limitations on birthright citizenship based on the parents' race, citizenship, "primary allegiance," or domicile. 169 U.S. at 649, 658, 693. The Ninth Circuit's decision thus creates no conflict with this Court's decisions and presents no unsettled question of federal law for the Court to resolve.

The lower court's decision also creates no conflict with decisions of other courts. Every court to consider the Executive Order has concluded in the strongest possible terms that it violates the Citizenship Clause, the INA, or both. *See supra* pp. 15-16. That pattern is unlikely to change, given how strongly text, history, and precedent contradict the Order.

The Respondent States, however, do not oppose certiorari. The Executive Order and Petitioners' efforts to implement it threaten chaos and strike at our Nation's most solemn promise—equality under the law and full citizenship for those born on American soil. Moreover, in considering the scope of relief earlier in this case, many Justices expressed a desire to reach the merits expeditiously. *See* Transcript of Oral Argument at 34-37, 41-42, 50, *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) (No. 24A884). And the States expressed "no objection to this Court even setting supplemental briefing on the merits and hearing the merits directly." *Id.* at 83. In light of those unique circumstances—and Petitioners' waiver of any challenges to standing—the Respondent States do not oppose certiorari.

B. If the Court Grants Certiorari, It Should Affirm the Judgment Below

The lower courts correctly concluded that the Executive Order illegally attempts to rob Americans of their constitutionally conferred and statutorily protected citizenship. A wall of authority—the Fourteenth Amendment's text and history, over a century of this Court's precedent, Executive Branch interpretations, and Congress's decision to codify

the longstanding interpretation of the Citizenship Clause—makes clear that virtually all children born in the United States are citizens.

Petitioners express political and practical objections to this rule, *see* Pet. 5, 9-11, 30-31, but constitutional text and original understanding do not give way merely because the current President disagrees with where they lead. *See CASA*, 606 U.S. at 856 ("As with most questions of law, the policy pros and cons are beside the point."). In a post-hoc attempt to justify this Order, Petitioners offer a novel, reverse-engineered interpretation of the Fourteenth Amendment's phrase: "subject to the jurisdiction thereof." Though their theory has changed over time, they now contend that "jurisdiction" means what they call "political jurisdiction," which in turn (they say) requires one's parents to owe "primary allegiance" to the United States, which they claim is shown by being domiciled here. But there is no textual, historical, or precedential basis for such requirements. Moreover, their theory is internally inconsistent, makes little sense, and even fails to justify their own Order.

If this Court accepts review, it should affirm in no uncertain terms.

1. The text and original understanding of the Fourteenth Amendment confirm that the Citizenship Clause applies regardless of parental citizenship, immigration status, "primary allegiance," or domicile

The Citizenship Clause states in simple but powerful terms: "All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1. The text contains no qualifiers based on the citizenship, immigration status, "primary allegiance," or domicile of one's parents.

As a matter of text and original understanding, virtually everyone born in the United States is "subject to the jurisdiction thereof," with specific, limited exceptions, such as children of ambassadors. To be "subject to the jurisdiction" of the United States means to be subject to the laws and authority of the United States. *See, e.g.*, Ho, *Defining "American"*, *supra* p. 368 (citing historical sources and explaining that: "To be 'subject to the jurisdiction' of the U.S. is simply to be subject to the authority of the U.S. government."); Daniel Gardner, *Institutes of International Law, Public and Private, as Settled by the Supreme Court of the United States, and by Our Republic* 95 (1860) ("The jurisdiction of a nation, civil and criminal, according to the law of nations, covers its entire territory . . . and extends to all persons and property within the same, with such exceptions as each nation chooses to allow.").

This understanding of "a nation's jurisdiction[] comes from pre-Amendment international law and was also found in ordinary dictionaries of the time." Ramsey, *Originalism*, *supra* p. 437. According to the 1865 edition of Webster's dictionary, for example, "jurisdiction as applied to nations meant the '[p]ower of governing or legislating,' 'the power or right of exercising authority,' the 'limit within which power may be exercised,' or 'extent of power or authority.'" *Id.* (alteration in original) (quoting Noah Webster, *An American Dictionary of the English Language*

732 (1865)); *accord* Noah Webster, *An American Dictionary of the English Language* 476 (1857) (providing similar definition). That definition reflected common usage and widespread understanding that a nation's jurisdiction referred to its sovereign authority. Ramsey, *Originalism*, *supra* pp. 436-58; *see also* Benjamin Vaughan Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 671 (1879) (defining jurisdiction as "[t]he authority of government; the sway of a sovereign power"); Joseph E. Worcester, *An Elementary Dictionary of the English Language* 165 (1860) (defining jurisdiction as "[a]uthority; extent of power"); *Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812) (holding that "[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute," but that "all sovereigns have consented to a relaxation in practice, in cases under certain peculiar circumstances, of that absolute and complete jurisdiction").

The only people born in the United States and not "subject to the jurisdiction thereof" were specific groups already recognized as exempt from the United States' jurisdiction as a matter of fact, comity, or practice. As established at common law, they included children born to diplomats and members of foreign armies at war against the United States. *Wong Kim Ark*, 169 U.S. at 682. They also included certain Native Americans, because at the time the Fourteenth Amendment was adopted, they were generally not considered subject to the ordinary laws of the United States. *Id.*; *see, e.g.*, *Elk*, 112 U.S. at 100 (explaining that tribal members were not considered citizens at common law and that "[g]eneral acts of congress did

not apply to Indians, unless so expressed as to clearly manifest an intention to include them"); *id.* at 102 (explaining that children of Native Americans were akin to children "of ambassadors or other public ministers").

Petitioners dispute this last premise, claiming that "Indians . . . are fully subject to U.S. law." Pet. 28. But this was not the Framers' understanding at the time the Citizenship Clause was adopted. *See, e.g.*, *Elk*, 112 U.S. at 100; Cong. Globe, 39th Cong., 1st Sess. 2893-94 (Senator Trumbull explaining that "[w]e make treaties with [the Indian tribes], and therefore they are not subject to our jurisdiction," and further stating that the United States has "a large region of country . . . over which we do not pretend to exercise any civil or criminal jurisdiction," where Native Americans are "subject to their own laws and regulations, and we do not pretend to interfere with them"); *see also* Ramsey, *Originalism*, *supra* pp. 443-44. Moreover, the relevant question for interpreting what the Framers meant by "subject to the jurisdiction thereof" is not whether the United States *could have* applied its jurisdiction to a certain group in 1865; it is whether the Framers understood those groups to be subject to the United States' jurisdiction at the time. The United States *could have* subjected diplomats to U.S. law in 1865, it simply chose not to do so. *See Schooner Exch.*, 11 U.S. at 136; *see also* Ramsey, *Originalism*, *supra* pp. 436-40.

In short, the Citizenship Clause's plain text and ordinary meaning at the time of its enactment make clear that it extends citizenship to virtually all children born on American soil, with the limited exceptions established at common law and for certain

Native American tribal members. In attempting to deny citizenship to classes of individuals who are subject to the United States' jurisdiction, the Executive Order plainly violates the Citizenship Clause's text and foundational promise.

2. This Court's precedent confirms the text and original understanding

Over and over, this Court has confirmed the text and original understanding of the Citizenship Clause. *See supra* pp. 4-9. A straightforward application of those precedents was sufficient for the lower courts to conclude that the Executive Order violates the Citizenship Clause. *See* Pet. App. 20a-26a, 33a.

Most importantly, *Wong Kim Ark* authoritatively reviewed the history and original understanding of the Citizenship Clause and effectively rejected *every* argument Petitioners now make. This Court concluded that the purpose of the Citizenship Clause was to reinstate the *jus soli* common law principle, i.e., "the fundamental rule of citizenship by birth within the dominion of the United States[.]" *Wong Kim Ark*, 169 U.S. at 688, 693. The Court carefully interpreted the phrase "subject to the jurisdiction thereof" and held that the "real object" of that language was to exclude, in addition to certain Native Americans, "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state[.]" *Id.* at 682.

In interpreting the meaning of "jurisdiction" as sovereign authority over virtually all "persons within the territory," this Court relied most heavily upon Chief Justice Marshall's opinion in *Schooner Exchange*. *Id.* at 683-87. The Court started with the foundational principle that "[t]he jurisdiction of the nation within its own territory is necessarily exclusive and absolute." *Id.* at 683-84 (quoting *Schooner Exch.*, 11 U.S. at 136). While jurisdiction is absolute, sovereigns may make limited and recognized exceptions in an exercise of sovereign discretion. *Id.* In this country, those exceptions relate to the presence of other sovereigns and their representatives, such as their ambassadors, ministers, and armed forces. *Id.* at 684-85 (citing *Schooner Exch.*, 11 U.S. at 137-39); *id.* (noting the United States is "understood to waive the exercise of a part of [its] complete exclusive territorial jurisdiction" when permitting foreign sovereigns and their representatives to enter U.S. territory).

No jurisdictional exception extended to noncitizens present in a non-diplomatic capacity within the United States. *Id.* at 685-86. This was consistent with the longstanding rule at common law. "When private individuals of one nation spread themselves through another as business or caprice may direct," this Court recognized, "'it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such individuals or merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country." *Id.* at 685-86 (quoting *Schooner Exch.*, 11 U.S. at 144). Thus, this Court accepted as an

"incontrovertible principle[]" that a noncitizen's presence "can *never* be construed to grant to them an exemption from the jurisdiction of the country[.]" *Id.* at 686 (emphasis added). This understanding was consistent with Congress's persistent usage of the term "jurisdiction" in the early nationality acts, which, "when dealing with the question of citizenship . . . , treated aliens residing in this country as 'under the jurisdiction of the United States'" even "before they had taken an oath to support the constitution of the United States, or had renounced allegiance to a foreign government." *Id.* at 686-87 (collecting authorities).

In short, this Court's interpretation of the phrase "subject to the jurisdiction thereof" could not have been clearer. And following *Wong Kim Ark*, this Court has reiterated many times, without qualification, that children born in this country are citizens subject to its jurisdiction—even if their parents were undocumented or here temporarily. *See supra* p. 9.

3. Petitioners' contrary arguments are meritless

Attempting to justify the Executive Order, Petitioners argue that the Courts, Congress, and the Executive Branch have been mistaken for more than a century about the Fourteenth Amendment's meaning. Not so.

a. Petitioners' "primary allegiance" theory lacks support in text, history, or precedent

Petitioners claim that babies are born "subject to the jurisdiction" of the United States only if their parents have a "primary allegiance" to the United States, but this lacks any basis in text or history. Pet. 15-28. The Citizenship Clause makes no reference to "primary allegiance." And their argument conflicts squarely with *Wong Kim Ark*, which held that a person born in the United States was a citizen at birth even though he and his parents were "subjects of the emperor of China[.]" 169 U.S. at 694. Indeed, this Court recognized that to "exclude[] from citizenship the children born in the United States of citizens or subjects of other countries, would be to deny citizenship to thousands of persons . . . who have always been considered and treated as citizens of the United States." *Id.* It reached this conclusion over the dissent's view that Chinese subjects could never be subject to the United States' jurisdiction because Chinese law and custom prohibited the renunciation of allegiance to the Chinese emperor. *See id.* at 725 & n.2 (Fuller, C.J., dissenting). This alone is sufficient to reject Petitioners' newfound "primary allegiance" requirement.

Petitioners' argument also misreads the meaning of "allegiance" as that term was used in 19th-century discussions of citizenship. As *Wong Kim Ark* confirms, allegiance is not a choice; nearly everyone owes allegiance to and is subject to the Nation's jurisdiction by virtue of their birth or presence in the United States. "The fundamental

principle of the common law with regard to English nationality was birth *within the allegiance*—also called 'ligealty,' 'obedience,' 'faith,' or 'power'—of the king. The principle embraced all persons born within the king's allegiance, and subject to his protection." *Id.* at 655 (emphasis added). "Such allegiance and protection were mutual," this Court explained, "and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; [they] were predicable of aliens in amity, so long as they were within the kingdom." *Id.*; *see also id.* at 659-61 ("Allegiance is nothing more than the tie or duty of obedience of a subject to the sovereign under whose protection he is; and allegiance by birth is that which arises from being born within the dominions and under the protection of a particular sovereign[.]" (quoting *Inglis v. Trs. of Sailors' Snug Harbor*, 28 U.S. (3 Pet.) 99, 155 (1830))); *id.* at 662-64 (collecting additional authorities).

In short, there is no hidden "primary allegiance" requirement in the text, history, or relevant authorities interpreting the Fourteenth Amendment.

b. Petitioners mischaracterize this Court's precedent and historical sources

Petitioners rely on the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), *Elk v. Wilkins*, 112 U.S. 94, and other scattershot authorities to try to force fit their "primary allegiance" and "domicile" requirements into the Citizenship Clause. Pet. 15-16. Their arguments cover widely rejected bases for attempting to impose an exclusionary scheme of

citizenship. *See* Ramsey, *Originalism*, *supra* pp. 436-58; Ho, *Defining "American"*, *supra* pp. 376-77. Indeed, they largely mirror the dissent in *Wong Kim Ark* and depend on ignoring almost all of the majority opinion. Many of their authorities pre-date *Wong Kim Ark*, and none adopts a "primary allegiance" or domicile requirement under the Citizenship Clause.

For example, Petitioners cite the *Slaughter-House Cases* to argue that the Citizenship Clause was meant solely to overrule the specific holding in *Dred Scott*. Pet. 3, 6-7, 14-15. Yet this Court in *Wong Kim Ark* expressly addressed the language Petitioners cite and concluded that the amendment went further than merely overruling *Dred Scott*. "[T]he opening words, 'All persons born,' are general, not to say universal, restricted *only* by place and jurisdiction, and not by color or race[.]" *Wong Kim Ark*, 169 U.S. at 676 (emphasis added).

Similarly, Petitioners rely on dicta in the *Slaughter-House Cases* that '[t]he 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. at 73. Yet here too, Petitioners ignore this Court's explanation of the cited remark in *Wong Kim Ark*, as "wholly aside from the question in judgment, and from the course of reasoning bearing upon that question. It was unsupported by any argument, or by any reference to authorities[.]" *Wong Kim Ark*, 169 U.S. at 678-79. The Court thus repudiated the cited dicta as inconsistent with the text and history of the Fourteenth Amendment. *Id.* at 678-80.

Petitioners' reliance on *Elk v. Wilkins* is equally unavailing. That case recognized the founding-era understanding that certain Native American tribal members were not subject to the United States' jurisdiction at birth, and addressed whether a Native American who was not born a U.S. citizen nonetheless obtained citizenship by virtue of "sever[ing] his tribal relation to the Indian tribes, and ha[ving] fully and completely surrendered himself to the jurisdiction of the United States[.]" *Elk*, 112 U.S. at 95, 98-99.

To be sure, *Elk* remarked that the phrase "subject to the jurisdiction" meant "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction, and owing them direct and immediate allegiance." *Id.* at 102. In this way, *Elk* and *Wong Kim Ark*—written by the same Justice—are *aligned*, not contradictory. Just as Native American children were excluded from jurisdiction as members of "distinct political communities, with whom the United States might and habitually did deal, as they thought fit, either through treaties made by the president and senate, or through acts of congress in the ordinary forms of legislation[,]" *id.* at 99, children of diplomats were excluded as "ambassadors or other public ministers of foreign nations," *Wong Kim Ark*, 169 U.S. at 681 (quoting *Elk*, 112 U.S. at 99-103). And were there any doubt, *Wong Kim Ark* explained that *Elk* "concerned *only* members of the Indian tribes within the United States, and had no tendency to deny

citizenship to children born in the United States of foreign parents . . . not in the diplomatic service of a foreign country." *Id.* at 682 (emphasis added); *accord* Ramsey, *Originalism*, *supra* pp. 419-20.[3]

Lacking precedent to support the Executive Order, Petitioners turn to the Civil Rights Act of 1866 to suggest that the Fourteenth Amendment simply adopted that law's citizenship rule. Pet. 16-18. But the Act's history makes clear that all involved in its passage understood that its language included the children of immigrants. *See* Ramsey, *Originalism*, *supra* pp. 451-54; Epps, *The Citizenship Clause*, *supra* pp. 349-52. In fact, when one senator asked whether the Act would "have the effect of naturalizing the children of Chinese and Gypsies born in this country[,]" Senator Trumbull, the Act's author, responded, "[u]ndoubtedly." Cong. Globe, 39th Cong., 1st Sess. 498. That was so even though, at the time, Chinese immigrants could not become naturalized U.S. citizens and "Gypsies" were, if present, likely viewed as trespassers. *See* Epps, *The Citizenship Clause*, *supra* pp. 350-52.

Petitioners resist this conclusion by citing Senator Trumbull's statement that the Act's purpose was "to make citizens of everybody born in the United

[3] *Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1874), likewise offers Petitioners no support. It did not interpret the phrase "subject to the jurisdiction thereof" and did not espouse anything resembling Petitioners' "primary allegiance" and domicile theory. Indeed, *Wong Kim Ark* discussed *Minor* and nowhere read it to support a narrow reading of the Citizenship Clause. 169 U.S. at 680.

States who owe[d] allegiance to the United States." Pet. 18 (quoting Cong. Globe, 39th Cong., 1st Sess. 572). But the immediately following sentences make clear he was referring to the known exclusion for diplomats. Cong. Globe, 39th Cong., 1st Sess. 572 ("We cannot make a citizen of the child of a foreign minister who is temporarily residing here."); *see* Matthew Ing, *Birthright Citizenship, Illegal Aliens, and the Original Meaning of the Citizenship Clause*, 45 Akron L. Rev. 719, 757 (2012) (discussing Senator Trumbull's allegiance comments in context).

Were there any lingering question, this Court answered it in *Wong Kim Ark*, when it explained that "any possible doubt" regarding the 1866 Act's scope "was removed" with passage of the Fourteenth Amendment. 169 U.S. at 688. Indeed, Senator Cowan argued against passage of the Citizenship Clause because "[i]f the mere fact of being born in the country confers that right" of citizenship, then the children of parents "who have a distinct, independent government of their own[,]" "who owe [the state] no allegiance[,]" and who would "settle as trespassers" would also be citizens. Cong. Globe, 39th Cong., 1st Sess. 2891; *id.* at 2890 (statement of Sen. Cowan) ("Is the child of the Chinese immigrant in California a citizen? Is the child of a Gypsy born in Pennsylvania a citizen?"). All agreed that Senator Cowan properly understood the Citizenship Clause's scope, and the Senate adopted the broad language over his objection. *See, e.g.*, *id.* at 2891 (Senator Conness confirming that the Citizenship Clause as proposed would provide citizenship to "the children of all

parentage whatever"); *see also* Ho, *Defining "American"*, *supra* p. 371 (reviewing the debates and explaining that "[n]o Senator took issue with the consensus interpretation").

With respect to these debates, Petitioners cite another statement from Senator Trumbull in which he said, when discussing the phrase "Indians not taxed," that "[Indians] are not subject to our jurisdiction in the sense of owing allegiance solely to the United States[.]" Cong. Globe, 39th Cong., 1st Sess. 2894; Pet. 18. Here too the context of his statement makes clear that he was explaining why Native American tribes, as politically independent peoples not fully subject to the sovereign authority of the United States, were understood not to be subject to the jurisdiction thereof. *See* Cong. Globe, 39th Cong., 1st Sess. 2894. Read in context, Petitioners' selective quotations fail to support their dramatic reinterpretation of the Constitution. *See* Ramsey, *Originalism*, *supra* p. 450.

c. Petitioners' "domicile" argument lacks any textual or historical support

Petitioners' attempt to redefine "jurisdiction" to mean "domicile" also fails on its own terms. The Fourteenth Amendment's text does not refer to domicile at all. Although the term was well understood at the time of the framing, there is no record that it was ever mentioned during debate over the Citizenship Clause. If the Framers meant to say that "all persons born in the United States whose parents are domiciled here become citizens," they could have simply written that.

In an attempt to manufacture such a rule, Petitioners lean heavily on the references to "domicile" in the stipulated facts in *Wong Kim Ark*. But this Court's analysis in no way relied on a parental domicile requirement, and no subsequent court has ever suggested as much. To the contrary, this Court stated that "[i]t can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides[.]" 169 U.S. at 693. And in language explicitly refuting the argument Petitioners now press, this Court explained that being completely subject to the political jurisdiction of the Nation did *not* turn on one's domicile. "Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance," this Court said, "it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government." *Id.* at 693-94 (cleaned up). That is, without regard to "domiciliation," such persons are *subject to the jurisdiction* of the United States. *Id.*

Petitioners also cite a lower court New Jersey case, *Benny v. O'Brien*, 32 A. 696, 697-98 (N.J. Sup. Ct. 1895), which *Wong Kim Ark* quoted. But *Benny* nowhere implemented a parental domicile requirement. Nor did *Wong Kim Ark* read *Benny* as doing so. 169 U.S. at 692-93. Likewise, the other cases Petitioners cite (Pet. 20) were not relied upon in *Wong Kim Ark* to establish a "domicile" requirement. Nor do the post-*Wong Kim Ark* decisions in *Chin Bak Kan v. United States*, 186 U.S. 193 (1902),

and *Kwock Jan Fat v. White*, 253 U.S. 454 (1920), support Petitioners' newfound interpretation of the Fourteenth Amendment. Neither case imposed a domicile requirement under the Citizenship Clause.

Finally, Petitioners cite cherry-picked statements from commentators, including sources that this Court declined to rely upon in *Wong Kim Ark*. *See* Pet. 21. For example, they cite Alexander Porter Morse and Samuel Freeman Miller, but Morse's statement relied upon the same dicta from the *Slaughter-House Cases* that this Court repudiated in *Wong Kim Ark*. Meanwhile, Justice Miller's statement was made with no support or citation to contemporary authorities. *See* Pet. 4, 21 (citing Alexander Porter Morse, *A Treatise on Citizenship* 248 (1881); Samuel Freeman Miller, *Lectures on the Constitution of the United States* 279 (1891)). Likewise, Petitioners quote (Pet. 21) Hannis Taylor's *A Treatise on International Public Law* 220 (1901) and the pre-*Wong Kim Ark* work of William Edward Hall in *A Treatise on International Law* 237 n.1 (4th ed. 1895), but those too, contained short statements without discussion of relevant authorities or support.

Nor do invocations of principles espoused by the Swiss writer Emmerich de Vattel or Justice Story's selectively quoted statements change the settled meaning of "jurisdiction" at the time of the Fourteenth Amendment. On the former, *Wong Kim Ark* rejected the idea that Vattel's view represented United States law. 169 U.S. at 666-68. Likewise, Justice Story's proposal that a "reasonable qualification" to the general rule would be to exclude children of foreigners "abiding there for temporary purposes," does not demonstrate an established "primary

allegiance" or domicile requirement, particularly where he noted in the next sentence that "[i]t would be difficult, however, to assert, that in the present state of public law such a qualification is universally established." Joseph Story, *Commentaries on the Conflict of Laws, Foreign and Domestic* § 48 (1834). Simply put, the sources Petitioners present held the dissenting view of the Citizenship Clause's meaning—*not* its actual, original meaning.

d. Petitioners' proposed "domicile" test is unworkable and contrary to the Fourteenth Amendment's purpose

Finally, reading a new domicile requirement into the Citizenship Clause as Petitioners propose would result in an unworkable test and would undermine the Fourteenth Amendment's core promise of protecting birthright citizenship from the whims of the political branches.

Under the traditional, common-law understanding of domicile, Petitioners' proposal would turn birthright citizenship into a largely subjective test about the parents' intentions. This Court has long recognized that domicile is based on residence and "the purpose to make the place of residence one's home[.]" *Texas v. Florida*, 306 U.S. 398, 424 (1939) (citing *Mitchell v. United States*, 88 U.S. (21 Wall.) 350 (1874)). Crucially, it exists regardless of an individual's immigration status or how long they have resided in a place. *See, e.g.*, *Plyler*, 457 U.S. at 227 n.22 (explaining that "illegal entry into the country would not, under traditional criteria,

bar a person from obtaining domicile within a State" (citing Clement L. Bouvé, *A Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States* 340 (1912))); *The Venus*, 12 U.S. (8 Cranch) 253, 279 (1814) ("If it sufficiently appear[s] that the intention of removing was to make a permanent settlement, or for an indefinite time, the right of domicil is acquired by a residence even of a few days."). Thus, if a "domicile" requirement were the law, birthright citizenship would always have turned on the parents' intentions, which no case has ever suggested. And such a requirement would not support the Executive Order anyway, because it has always been understood that domicile does not turn on immigration status or length of residence.

To the extent Petitioners suggest (Pet. 19-20) that domicile can be defined by the federal government through statute, such a reading would render the Citizenship Clause subject to the whims of the political branches. That would be in *direct* conflict with the Fourteenth Amendment's foundational purpose of establishing birthright citizenship as a constitutional protection and "remov[ing] the right of citizenship by birth from transitory political pressures." 19 Op. O.L.C. 340, 347; *Afroyim*, 387 U.S. at 263. Indeed, this is precisely why the same Congress that passed the Civil Rights Act of 1866 over a presidential veto chose to include the Citizenship Clause in the Fourteenth Amendment. *See Wong Kim Ark*, 169 U.S. at 675.

4. The Order independently violates the INA

On top of contravening the Citizenship Clause, the Executive Order violates the INA's guarantee of birthright citizenship. Section 1401 provides that "person[s] born in the United States, and subject to the jurisdiction thereof," "*shall* be nationals and citizens of the United States at birth." 8 U.S.C. § 1401(a) (emphasis added). The Ninth Circuit correctly interpreted this statutory text in accordance with its meaning when it was enacted. *See Bostock v. Clayton County*, 590 U.S. 644, 654 (2020).

When first passed in 1940 and again in 1952, all branches of government understood what had been settled for decades: Birthright citizenship extends to virtually all children born in the United States, without regard to "domicile" or immigration status. Indeed, the committee that drafted the Nationality Act in 1940 rejected any domicile requirement, explaining that "it is the fact of birth within the territory and jurisdiction, and not the domicile of the parents, which determines the nationality of the child." *Nationality*, *supra* p. 418. The Nationality Act, and then the INA, sought to codify *jus soli* and its narrow exceptions, which had long been the law. *Id.*; H.R. Rep. No. 82-1365.

Petitioners' attempt to collapse the interpretation of the INA into the Citizenship Clause ignores foundational canons of statutory interpretation. They argue, without explanation, that a statute passed in 1940 and again in 1952 depends only on how the Citizenship Clause "was understood in 1868." Pet. 29. While they are wrong about how the

Clause was understood in 1868, their argument would fail even if they were correct, because statutes are interpreted assuming the enacting Congress is "aware of the longstanding judicial interpretation of [a] phrase" that it codifies "and intend[s] for it to retain its established meaning." *Lamar*, 584 U.S. at 721-22.

Consequently, the judiciary's authoritative interpretation of the Citizenship Clause, both in *Wong Kim Ark* and subsequent cases, proves fatal to the Government's attempt to wave the INA away. *See supra* pp. 7-10, 20-34. Even if the Government's rewriting of the Citizenship Clause were accepted now, it is absurd to argue that Congress secretly disagreed with *Wong Kim Ark* and the universal understanding of the Clause in 1940, 1952, or any other year the INA was amended. The Executive Order thus independently violates the INA.

CONCLUSION

This case fails the Court's ordinary certiorari criteria. Nonetheless, the Respondent States do not oppose certiorari. If the Court grants the petition, it should affirm the lower court's judgment.

RESPECTFULLY SUBMITTED.

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