No. 25-365

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT
OF THE UNITED STATES, *et al.*,

PETITIONERS,

v.

BARBARA, *et al.*,

RESPONDENTS.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Executive Order 14,160 would deny birthright citizenship to persons born in the United States whose parents are noncitizens without permanent immigration status. The district court certified a nationwide class of babies subject to the Executive Order and preliminarily enjoined it—joining every court that has reached the questions in holding that the Executive Order violates the Citizenship Clause of the Fourteenth Amendment and 8 U.S.C. § 1401(a).

The questions presented are:

1. Whether the Executive Order violates 8 U.S.C. § 1401(a).

2. Whether the Executive Order violates the Citizenship Clause of the Fourteenth Amendment.

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INTRODUCTION

The Fourteenth Amendment begins with a clear and solemn guarantee: "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." In 1898, this Court held that this provision means what it says, safeguarding U.S. citizenship at birth for all persons born in this country, with only a handful of exceptions not applicable here. *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). In 1940 and again in 1952, Congress codified the language of the Citizenship Clause—incorporating the then-prevailing understanding of those words as construed by this Court's decision in *Wong Kim Ark*.

Executive Order 14,160 purports to strip birthright citizenship from persons born in the United States to parents who lack permanent immigration status. The Order is squarely contrary to the constitutional text, this Court's precedents, Congress's dictates, longstanding Executive Branch practice, scholarly consensus, and well over a century of our nation's everyday practice. Accordingly, the district court below, like every other court that has reached the merits questions, correctly held that the Order violates both the Fourteenth Amendment and, independently, 8 U.S.C. § 1401(a).

The government now petitions for certiorari in this case and *Trump v. Washington*, No. 25-364. Respondents share the government's view that, if the Court is going to grant review, this case presents no vehicle problems, *see* Pet. 6, 32-33, and the Court

should grant certiorari in both this case and *Washington*.

Respondents also recognize that this Court's decision in *Trump v. CASA, Inc.* contemplated that challenges to the Order would eventually "reach this Court" on the merits. 606 U.S. 831, 860 n.18 (2025). And it is not unusual for this Court to review the legality of Executive Branch actions even when, as here, the lower courts are unanimous. Granting review, and affirming the unanimous lower courts, would put Petitioners' countertextual and ahistorical rewriting of the Citizenship Clause to an end, once and for all.

Nevertheless, there are particularly good reasons for the Court to deny certiorari—not only in this case, but in every such challenge to Executive Order 14,160.

First, the statutory issue in this case presents an independent basis to affirm the district court, and Petitioners have no serious response to it.

Petitioners' express goal in this litigation is *constitutional*. They seek to undermine the "pervasive" understanding of the Citizenship Clause, and advance in its place their alternative "original meaning." Pet. 4. Under that meaning, they say, the Clause requires something Petitioners dub "lawful domicile," which in their view incorporates both traditional domicile requirements—residence with intent to remain indefinitely—and also the notion that Congress has by statute excluded undocumented noncitizens from establishing domicile and thereby barred their children from birthright citizenship. *Id.* at 14, 22-23. As explained below, *no* domicile

requirement, much less Petitioners' convoluted one, can be squared with the text and history of the Clause, or the foundational precedent of *Wong Kim Ark*. The further attempt to gerrymander a version of domicile to exclude persons born to parents who have lived in this country for decades is even more baseless.

But even if Petitioners were to persuade this Court to entirely reconsider its understanding of the Clause, to reverse *Wong Kim Ark*, and to adopt their notion of "lawful domicile," such a radical reinterpretation of the Constitution would do Petitioners no good because the district court's injunction rests on an *independent* statutory holding that the Executive Order also violates 8 U.S.C. § 1401(a).

Congress enacted that statute drawing on the text of the Citizenship Clause and therefore incorporated the understanding of the Clause "that prevailed *at the time of [the statute's] enactment*" in 1940 and 1952. *Doe v. Trump*, Nos. 25-1169 & 25-1170, 2025 WL 2814730, at *16 (1st Cir. Oct. 3, 2025) (quoting *United States v. Kozminski*, 487 U.S. 931, 945 (1988)) (emphasis in original). Then, as now, the prevailing understanding was squarely contrary to the rule Petitioners advance today. *See id.* at *16-19 (surveying contemporary evidence).

The petition fails to grapple with this statutory interpretation problem, presenting the constitutional and statutory issues as if they were one and the same. They are not. The statutory meaning, fixed in the *twentieth* century, would not change even if this Court were to agree with Petitioners' revisionist arguments

about the Citizenship Clause's meaning in the *nineteenth* century.

Petitioners cannot prevail on the merits without winning on this independent statutory question—and they offer the Court no reason to think they can do so. There is thus no reason for the Court to take up Petitioners' request to revisit the meaning of the Citizenship Clause: Win or lose on the constitutional issue, the Executive Order remains unlawful on the statutory ground. *See, e.g.*, Stephen M. Shapiro et al., *Supreme Court Practice* ch. 4, § 4.4(f) (11th ed. 2019) (this Court will typically deny review of a question that is "irrelevant to the ultimate outcome of the case before the Court"). And if Petitioners are unsatisfied with the statute, they should seek amendment from Congress—not this Court.

Second, the Court should deny review because it has already answered the constitutional question Petitioners pose. *Wong Kim Ark* held that the Citizenship Clause guarantees citizenship for all persons born in this country, recognizing only the ancient common-law exceptions "of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory," as well as the "*single additional exception* of children of members of the Indian tribes owing direct allegiance to their several tribes." *Wong Kim Ark*, 169 U.S. at 693 (emphasis added).[1]

[1] All Native Americans born in this country are today U.S. citizens by statute. 8 U.S.C. § 1401(b).

In so doing, this Court authoritatively interpreted the words "subject to the jurisdiction" in the Citizenship Clause, explaining those words meant the same thing as "like words" used by Chief Justice Marshall in *The Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812). *Wong Kim Ark*, 169 U.S. at 687. *The Exchange*, as *Wong Kim Ark* went on to explain, made clear that temporary visitors—i.e., non-domiciled noncitizens—owed this country "temporary and local allegiance" and were "amenable to the jurisdiction of the country." *Id.* at 685-86 (quoting *The Exchange*, 11 U.S. at 144). And the same is naturally true of long-term residents (whatever their immigration status), who are likewise obviously amenable to the country's jurisdiction.

That, as *Wong Kim Ark* held, is also what "jurisdiction" means in the Clause, 169 U.S. at 687, so Petitioners' effort to create a "domicile" requirement must fail under this Court's precedent. And, sure enough, rather than apply *Wong Kim Ark*, Petitioners instead suggest at every turn that this Court disavow its conclusions in that case and invent rationales to justify their proposed dividing line between "domiciled" and "non-domiciled" noncitizens that are nowhere to be found in *Wong Kim Ark*'s analysis. *See Doe*, 2025 WL 2814730, at *27.

Which brings us to the *third* and final reason to deny certiorari: Petitioners are effectively asking this Court to overrule *Wong Kim Ark*. Given the radical nature of this request, they seemingly cannot bring themselves to make it explicit—and for good reasons. The "traditional *stare decisis* factors," *Barr v. American Association of Political Consultants, Inc.*,

591 U.S. 610, 621 n.5 (2020), including the extraordinary reliance on this Court's settled and eminently workable rule over generations since *Wong Kim Ark*, would doom any such request. But even beyond those considerations, Petitioners offer no substantial reason to doubt *Wong Kim Ark*'s holding or its application to the categories targeted by the Order. Their case amounts to little more than a jumble of historical misstatements, inapposite citations, newly manufactured doctrines, and—more than anything else—policy preferences.

Such makeweight arguments cannot be enough to rewrite the Citizenship Clause, which was included in the Constitution specifically "to provide an insuperable obstacle against every governmental effort to strip" birthright citizenship. *Afroyim v. Rusk*, 387 U.S. 253, 262 (1967). That protection is key to our constitutional order. "Citizenship is no light trifle to be jeopardized any moment Congress"—let alone a President—"decides to do so . . . ." *Id.* at 267-68. "The very nature of our free government" rebuts the notion that those "temporarily in office can deprive another group of citizens of their citizenship." *Id.* at 268.

STATEMENT OF THE CASE

A. Historical Background

1. When the Constitution was first ratified, it referred to the concept of citizenship but did not define how that status was obtained. However, it was widely understood—by Congress, courts, and the public—that on this question, as in so many other areas of early American law, the English common law would supply the relevant rule in America. *See Wong Kim*

Ark, 169 U.S. at 654-55, 659; *Inglis v. Trs. of Sailor's Snug Harbor*, 28 U.S. 99, 120 (1830); *Lynch v. Clarke*, 1 Sand. Ch. 583 (N.Y. Ch. Ct. 1844).

At common law, the rule of citizenship at birth—or *jus soli*—was clear and robust. Virtually all children born within the domains of the King were subjects. *Wong Kim Ark*, 169 U.S. at 655; *Inglis*, 28 U.S. at 155. The only exceptions were likewise clear: children of ambassadors, children born on "public" (i.e. state-controlled) ships, and children of invading armies while those armies occupied the king's territory. *Wong Kim Ark*, 169 U.S. at 693; *Inglis*, 28 U.S. at 155-56. Indeed, it is undisputed here that the English common-law rule was that "children even of transients" were "citizens at birth." Reply Br. for Appellants 12, *N.H. Indonesian Cmty. Support v. Trump*, No. 25-1348 (1st Cir. July 1, 2025); *accord* Pet. 25-26 (acknowledging "Great Britain's uniquely broad policy of birthright citizenship").

The common-law rule was carried over in the courts of the American colonies, and then of the states. *Wong Kim Ark*, 169 U.S. at 658-64 (citing cases from Massachusetts, North Carolina, New York, and Kentucky). It was thus "universally admitted" that *jus soli* supplied the rule of citizenship in this country. *Inglis*, 28 U.S. at 120. Some exceptional cases proved the rule. For example, disputes arose about the citizenship of people born during the period of transition leading to American independence, yielding questions about how to apply *jus soli* to that novel circumstance. *Id.* at 121. And the young Republic grappled with how to address Native American Tribes, which were quasi-foreign Nations that

generally governed themselves but operated within territory at least nominally controlled by the United States. *Wong Kim Ark*, 169 U.S. at 681-82.

Some states unjustifiably failed to afford enslaved people full citizenship rights, despite their birth in the United States. This became a flashpoint in the leadup to the Civil War, with Black Americans increasingly pointing to *jus soli* principles to claim their birthright as citizens under our Constitution. *See generally* Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* (2018).

Infamously, this Court rejected such claims in *Dred Scott v. Sandford*, 60 U.S. 393 (1857). There, the Court held that the descendants of enslaved people born in the United States were "not included, and were not intended to be included, under the word 'citizens' in the Constitution[.]" *Id.* at 404.

That radical break from the principle of *jus soli* helped precipitate a bloody civil war. And in the aftermath of that war, Congress moved swiftly to correct the grave error of *Dred Scott* by guaranteeing the common-law rule of birthright citizenship.

2. Congress first enacted a statutory guarantee of birthright citizenship in 1866. President Johnson vetoed the bill; while Congress overrode the veto, it recognized that a statute alone might be insufficient protection. *See Afroyim*, 387 U.S. at 262.

Accordingly, Congress proposed the Fourteenth Amendment's Citizenship Clause, selecting universal language—"[a]ll persons"—rather than singling out Black Americans for the citizenship guarantee. *See*

Wong Kim Ark, 169 U.S. at 676 (emphasizing that Clause used "general" language).

Consistent with that language, congressional debates reflected consensus, among proponents and opponents of the Clause alike, that—setting aside the constitutionally unique circumstance of Native American Tribes—the amendment would guarantee birthright citizenship to the children of *all* foreign nationals born in the country, with the sole practical exception of children born to ambassadors (keeping with the common-law rule). *See* Cong. Globe, 39th Cong., 1st Sess. 2890 (1866) (statement of Senator Jacob Howard) (only exception was children of ambassadors). Thus, for example, when Senator Cowan, an opponent of the Clause, warned that it would apply to the children of a "flood of immigra[nts]" from China, Senator Conness, a supporter of the Clause, confirmed that understanding. *Id.* at 2890-91. Conness explained that the Clause "declare[s] that the children of all parentage whatever" must "be regarded and treated as citizens of the United States[.]" *Id.* at 2891.

3. Nevertheless, in *Wong Kim Ark*, the government argued that the Clause did not reach the U.S.-born children of Chinese immigrants who were themselves barred by statute from naturalizing. In arguing against Wong Kim Ark's citizenship, the government denied "that the common-law doctrine of England applies and controls in this country," instead urging that our citizenship rules were supplied by "Continental or Roman doctrine." Br. for United States 6, *United States v. Wong Kim Ark*, No. 132 (S. Ct. 1896).

This Court emphatically rejected that proposition. Justice Gray, writing for the Court, surveyed centuries of precedent and practice, tracing the path leading from early English common law up through the Fourteenth Amendment. *Wong Kim Ark*, 169 U.S. at 654-93. The Court's opinion follows a clear and compelling line of reasoning (with this numbering following Justice Gray's structure):

(I) In general, the Constitution must be read against its common-law background, *id.* at 653-55;

(II) At English common law, all persons born in the King's territory were subjects, with only the limited exceptions noted above, *id.* at 655-58;

(III) This rule continued in the United States and was not altered by independence, *id.* at 658-66;

(IV) The government was wrong to suggest that international-law citizenship norms had replaced the common law in America, *id.* at 666-75;

(V) Instead, the Court held, the Fourteenth Amendment reaffirmed the common-law rule, *id.* at 675-94;

(VI) Because the rule is constitutional, later congressional action, and in particular anti-Chinese legislation, was irrelevant, *id.* at 694-704; and

(VII) Finally, Mr. Wong had not renounced his citizenship after birth, *id.* at 704-05.

In his dissent, Justice Fuller understood the Court's holding for what it was: a recognition that the broad English rule of *jus soli* was incorporated into the Citizenship Clause. 169 U.S. at 705-06 (Fuller, J., dissenting). Thus, under the Court's ruling, he wrote disapprovingly, "the children of foreigners, happening to be born to them while passing through the country," are natural-born citizens. *Id.* at 715.

4. In 1940, Congress enacted what became 8 U.S.C. § 1401(a) as a statutory analogue to the Citizenship Clause, guaranteeing citizenship to all persons born in the United States and "subject to the jurisdiction thereof."

The Executive Branch committee that drafted the provision drew this statutory language from the Fourteenth Amendment, and Congress was well aware of *Wong Kim Ark*'s authoritative interpretation of that text—including the Court's enumeration of an exclusive set of exceptions. Indeed, the committee specifically explained in a report submitted to Congress with the draft that domicile was not required for birthright citizenship. *To Revise and Codify the Nat'y Laws of the United States into a Comprehensive Nat'y Code: Hr'gs on H.R. 6127 Superseded by H.R. 9980 Before the H. Comm. on Immigr. & Naturalization*, 76th Cong. 418, 429 (Comm. Print 1940) ("*Hearings*") (birthright citizenship is "not [determined by] the domicile of the parents").

That understanding was in keeping with decades of settled administrative practice. *See, e.g.*, U.S. Dep't of State, *Regulations Prescribed for the Use of the*

Consular Service of the United States 22 ¶ 137 (1896); 22 C.F.R. § 79.137 (1938); *Doe*, 2025 WL 2814730, at *17 & n.12 (collecting sources). Congress reenacted the same statutory text in 1952 without change. *Doe*, 2025 WL 2814730, at *18.

B. The Executive Order and This Litigation

On the first day of his second term, President Trump signed Executive Order 14,160. The Order purports to declare that a person born in the United States is not a citizen if, at the time of their birth: (1) either their mother was "unlawfully present in the United States" or her "presence in the United States was lawful but temporary," and (2) their father was not a U.S. citizen or lawful permanent resident. *Id.* The Order declares that "no department or agency of the United States government shall" issue or accept government documents recognizing the citizenship of such persons, provided that they are born after February 19, 2025. *Id.*

A constellation of families, states, and nonprofit organizations swiftly challenged the Order, and three courts issued universal injunctions prohibiting it from taking effect. *Trump v. CASA, Inc.*, 606 U.S. 831, 838 (2025). The government sought stays pending appeal from this Court in all three cases. *Id.* The government challenged only the scope of those injunctions, declining to seek a stay or certiorari before judgment as to the merits. The Court granted the stay applications in part, limiting the availability of universal injunctions under the Judiciary Act of 1789. *Id.* at 837-38, 861-62.

After the *CASA* decision, Plaintiffs below—two babies subject to the Order and their parents, along with a pregnant woman (who has since given birth)—filed suit under pseudonyms on behalf of a putative nationwide class. *Barbara v. Trump*, No. 25-cv-244 (D.N.H. filed June 27, 2025). The district court, after briefing and oral argument, granted provisional class certification. 2025 WL 1904338, at *4 (D.N.H. July 10, 2025). It had previously entered a preliminary injunction against the Order in another challenge, *New Hampshire Indonesian Community Support v. Trump*, on both statutory and constitutional grounds. 765 F. Supp. 3d 102, 112 (D.N.H. 2025), *aff'd in relevant part*, No. 25-1348, 2025 WL 2814705 (1st Cir. Oct. 3, 2025). Accordingly, on the merits the district court largely incorporated its prior reasoning and issued a classwide preliminary injunction. *Barbara*, 2025 WL 1904338, at *12.

The government did not seek interim relief from the class certification decision or the preliminary injunction, but did eventually appeal. It then petitioned this Court for certiorari before judgment, simultaneously seeking review in *Washington*.

C. The Court of Appeals' Related *Doe* Decision

Shortly after the government filed its petition, the First Circuit issued a published opinion in other cases challenging the Executive Order. The court unanimously held that the Order violates both the

Citizenship Clause and § 1401(a). *Doe*, 2025 WL 2814730, at *12.[2]

The court of appeals concluded that the challengers were likely to succeed on the merits for three reasons: First, "even if *Wong Kim Ark* must be read as the Government urges us to read it," the prevailing understanding of the statutory text at the time it was enacted establishes that children covered by the Order were "entitled to birthright citizenship under § 1401(a)." *Doe*, 2025 WL 2814730, at *15. Second, "*Wong Kim Ark* may not be . . . read" in the way the government asserts; generations of legislators, lawyers, and judges have not misunderstood that decision. *Id.* Because Congress enacted § 1401(a) in light of *Wong Kim Ark*'s interpretation of the Citizenship Clause, the government's misreading of *Wong Kim Ark* further underscores that the Order violates § 1401(a). *Id.* And third, "for the very same reason," people ostensibly covered by the Order were "entitled to birthright citizenship under" *Wong Kim Ark* and "the Citizenship Clause itself." *Id.*

On the statute, the court of appeals noted that the drafters explicitly laid out the reasoning of *Wong Kim Ark* in detail and then explained why its rule would apply equally to "a child born in the United States of parents residing therein temporarily." *Doe*, 2025 WL 2814730, at *17 (quoting *Hearings* at 418). The drafting committee explained, "it is the fact of birth within the territory and jurisdiction, and *not the domicile of the parents*, which determines the

[2] *Doe* would presumably control the pending appeal in *Barbara*.

nationality of the child." *Id.* (quoting *Hearings* at 418) (emphasis in opinion).

The court of appeals also examined extensive additional evidence of the same understanding, including decades of preceding administrative practice; congressional action reflecting the same understanding of birthright citizenship; and congressional consideration leading up to the recodification of the provision in 1952. *Id.* at *17-18. Accordingly, the court concluded, the plaintiffs were likely to succeed on their statutory claim "even if the Government's view of what *Wong Kim Ark* decided were correct." *Doe*, 2025 WL 2814730, at *15; *see id.* at *20 n.15 (this was an "independent basis" to affirm).

But, the court further held, the government was also wrong about *Wong Kim Ark*. "Given the Court's rationale for ruling as it did, we fail to see how we could read *Wong Kim Ark* to reject the plaintiffs' construction . . . or even to leave open the question as to whether that construction is right." *Doe*, 2025 WL 2814730, at *24. Accordingly, the court held that the plaintiffs prevailed based on both the statute, which incorporates *Wong Kim Ark*'s construction, as well as on the Citizenship Clause itself. *Id.* at 31.

REASONS FOR DENYING THE WRIT

Certiorari should be denied for three reasons. *First*, the Executive Order violates § 1401(a) *independently* of Petitioners' various arguments about the meaning of the Citizenship Clause. A wealth of statutory evidence reinforces what Petitioners barely contest—that in 1940 and 1952 everyone understood birthright citizenship to apply universally, with

children of ambassadors as the only practical exception. The Court should not grant review where Petitioners cannot win regardless of the outcome of their constitutional arguments.

Second, the Court *already* decided what the Citizenship Clause means in *Wong Kim Ark*. The petition does not address any question left open in that case; instead, it recycles arguments this Court rejected. The Court need not take up a question that it already answered 127 years ago.

Third, to the extent Petitioners are effectively seeking to overrule *Wong Kim Ark*, the Court should not grant review for that purpose either. Even apart from stare decisis considerations, Petitioners offer nothing persuasive to suggest *Wong Kim Ark* was wrongly decided. Instead, they gather inapposite cases and misleading quotations taken out of context, while ignoring the overwhelming evidence that—just as *Wong Kim Ark* held—the Citizenship Clause enshrined the common-law principle of *jus soli* in our Constitution.

I. PETITIONERS FAIL TO GRAPPLE WITH THE STATUTORY CLAIM, WHICH IS AN INDEPENDENT AND UNCERTWORTHY BASIS FOR AFFIRMANCE.

Petitioners frame their petition as a question of constitutional interpretation. But the court of appeals also offered an exhaustive *statutory* analysis, explaining why § 1401(a) provides an "independent

basis" to enjoin the Order. *Doe*, 2025 WL 2814730, at *20 n.15.

This statutory holding poses a critical obstacle to Petitioners' case for certiorari. Petitioners' explicit goal in issuing the Order and continuing to pursue this litigation, despite losing before every lower court, is to undermine the "pervasive" understanding of constitutional birthright citizenship in favor of "restor[ing]" what the Administration believes to be "the [Citizenship] Clause's original meaning." Pet. 4; *see id.* at 8. They attempt to marshal "historical evidence" to support a wholesale reinterpretation of the scope of the Clause. *Id.* at 3-4. And they seek to rewrite the Court's decision in *Wong Kim Ark* by ignoring the rationale the Court actually gave and instead fashioning a brand new "rule" nowhere to be found in the Court's analysis. *Id.* at 14; *see Doe*, 2025 WL 2814730, at *24. Those arguments are wrong across the board. *See infra*. But even if each and every one of those arguments were accepted, Petitioners would still lose this case. That alone is reason enough to deny certiorari.

1. Petitioners seek to collapse the statutory question into the constitutional question. But that effort fails right out of the gate, because they misapply the governing rules of statutory interpretation. Petitioners agree that the language of § 1401(a) is drawn from the Fourteenth Amendment, and so "brings the old soil with it." Pet. 28 (quoting *George v. McDonough*, 596 U.S. 740, 746 (2022)). But they claim, without citation to a single relevant precedent, that the meaning of the words enacted *in 1940* (and

1952) "depends on how the Clause was understood *in 1868*." Pet. 29 (emphasis added).

That is not how this Court interprets statutes. As the Court recently reiterated, in applying the "old-soil" rule courts must look to the "prevailing understanding" of those words "under the law that Congress looked to when codifying" them. *George*, 596 U.S. at 741, 752 (internal quotation marks omitted). Thus, this Court assesses the "the state of [the relevant] body of law," *id.* at 750 (internal quotation marks omitted), "[a]t the time of the borrowing," *Sekhar v. United States*, 570 U.S. 729, 735 (2013); *see Doe*, 2025 WL 2814730, at *15. This is, of course, just an application of the general principle that in statutory interpretation, terms "must be given the meaning they had when the text was adopted." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 80 (2012) (Scalia & Garner); *see Bostock v. Clayton County*, 590 U.S. 644, 654-55 (2020).

In *United States v. Kozminski*, for example, this Court recognized that the phrase "involuntary servitude" in 18 U.S.C. § 1584 "clearly was borrowed from the Thirteenth Amendment." 487 U.S. 931, 944-45 (1988). As here, Congress "intended the phrase to have the same meaning" in the statute as it had in the constitutional provision. *Id.* at 945. And, critically, this Court then looked to "the understanding of the Thirteenth Amendment that prevailed *at the time of § 1584's enactment*." *Id.* (emphasis added); *see Doe*, 2025 WL 2814730, at *16 (rejecting government's attempt below to distinguish *Kozminski*).

2. In 1940, the prevailing understanding of the Citizenship Clause was the same understanding that Petitioners acknowledge is "pervasive" today, Pet. 4—namely, as a guarantee of universal birthright citizenship, subject only to *Wong Kim Ark*'s exceptions.

In *Wong Kim Ark* this Court authoritatively and precisely interpreted "subject to the jurisdiction," holding that those "words . . . must be presumed to have been understood and intended . . . in *the same sense*" as they had been used in *The Exchange*—which had specifically explained why non-domiciled noncitizens "owe temporary and local allegiance" and *are* "amenable to the jurisdiction of the country. 169 U.S. at 685-87 (emphasis added). Applying that understanding, the Court held that the Citizenship Clause "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country." *Id.* at 693. The Court elaborated the narrow list of "exceptions or qualifications (as old as the rule itself)" and noted a "*single additional exception*": the "children of members of the Indian tribes." *Id.* (emphasis added). That rule leaves no space for Petitioners' purported domicile requirement.

"If a statute uses words or phrases that have already received authoritative construction by the jurisdiction's court of last resort . . . they are to be understood according to that construction." Scalia & Garner 322. Thus, *Wong Kim Ark*'s interpretation of the Clause is baked into the statute. That interpretation, settled when carried into the statutory text, persists notwithstanding any potential

revisionist arguments, contrary to that decision, about "how the Clause was understood in 1868." Pet. 29.

That is why *Kozminski*—where this Court looked to the understanding of the Thirteenth Amendment at the time of the *statute's* enactment—made clear that any possible future reinterpretation of the Thirteenth Amendment would be irrelevant to the meaning of a statute that had borrowed from its text in the past. *See* 487 U.S. at 944 ("We draw no conclusions from this historical survey about the potential scope of the Thirteenth Amendment."); *see also Loughrin v. United States*, 573 U.S. 351, 359-60 (2014) (similar, noting "chronological problem" with argument relying on such post-enactment reinterpretations). *Wong Kim Ark*'s interpretation, "having now been enshrined in the statute, can no longer be overruled" for purposes of the statute, "even by [this Court]." Scalia & Garner 322.

3. Petitioners, of course, contest that *Wong Kim Ark* dooms the Executive Order—and even suggest at times that the decision itself imposes a "domicile" requirement for birthright citizenship. *But see infra* Part II. But even if Petitioners were to prevail on this theory, the district court's injunction would still stand on its statutory foundation. *See Doe*, 2025 WL 2814730, at *15-19.

For even if—as Petitioners suggest—generations of judges, lawyers, and government officials had misunderstood *Wong Kim Ark*, and this Court were to reinterpret the Citizenship Clause as Petitioners urge, that is certainly not how anyone involved in enacting § 1401(a) understood the meaning of the

Clause. Indeed, Petitioners acknowledge that "in the first half of the 20th century, the Executive Branch"—which drafted the birthright citizenship provision of the 1940 Act—understood the Citizenship Clause "to confer U.S. citizenship even upon the children of unlawfully or temporarily present aliens." Pet. 29; *see id.* at 7.

For example, decades of administrative practice reflected the widespread understanding that it was "[t]he circumstance of birth within the United States [that] makes one a citizen thereof, even if his parents were at the time aliens, provided they were not, by reason of diplomatic character or otherwise, exempted from the jurisdiction of its laws." U.S. Dep't of State, *Regulations Prescribed for the Use of the Consular Service of the United States* 49 ¶ 137 (1896); *see Doe*, 2025 WL 2814730, at *17 (explaining such regulations were in place "[f]or over forty years" leading up to the statutory enactment).

Consistent with this longstanding practice, the Executive Branch committee that drafted the provision specifically advised Congress 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." *Doe*, 2025 WL 2814730, at *17 (quoting *Hearings*, at 418). The congressional debates reflected precisely the same understanding. *Id.* at *18.

Further, just months before it enacted § 1401(a), Congress passed a private bill predicated on the same shared understanding. *Id.* The bill directed the Secretary of Labor to provide lawful resident status to

two noncitizens and their two foreign-born children. *See id.* The House report recommending passage specifically recognized the citizenship of the couple's third child, who was born in this country while her parents lacked permanent immigration status, *id.*—precisely the kind of person targeted by the Order.

And other provisions of the 1940 Act reinforced the same understanding of birthright citizenship. The Act, for example, provides that when noncitizens naturalize, their children "born outside of the United States" are likewise naturalized. *See* Nationality Act of 1940, ch. 876 § 314, 54 Stat. 1137, 1145-46. However, Congress provided no analogous mechanism for the automatic naturalization of children born to noncitizens *inside* the United States—instead, it limited § 314 to those born abroad. *See id.* Congress could not have intended for children of naturalizing citizens born within the United States to be treated worse than children of naturalizing citizens born abroad. Rather, Congress viewed an automatic naturalization provision for U.S.-born children as *unnecessary*, because it understood those children would already be citizens by birth.

Congress subsequently recodified the text of § 1401(a) in 1952, as part of the still-operative Immigration and Nationality Act. Again, it specifically reinforced the same understanding of the statutory language. *Doe*, 2025 WL 2814730, at *18.

Today, numerous federal statutes are built on the assumption that all persons born in the United States are citizens who do not need to obtain immigration status or naturalize. *See, e.g.*, 8 U.S.C. § 1158(b)(3)(A)

(providing derivative asylum status to children who "accompany[] or follow[] to join" a principal applicant—but omitting mention of those born in the United States after the applicant's arrival). This, too, seriously undermines Petitioners' effort to reinvent § 1401(a) today.

In response, Petitioners point to a single commentator suggesting otherwise in a treatise. Pet. 29-30 (citing Sidney Kansas, *Immigration and Nationality Act Annotated* 183 (4th ed. 1953)). But that single line, advanced by the author "without offering any support for the assertion," *Doe*, 2025 WL 2814730, at *18, is "thin stuff" that "does not come close to moving the mountain of contrary" evidence. *George*, 596 U.S. at 749 (disregarding "[o]ne uncertain outlier").

4. Ordinarily, one would expect the government's petition to address these issues and offer arguments about how it could possibly prevail on the statutory issue. The government has been well aware of these many problems, as they were developed in depth below, and in the plaintiffs' and amici's briefing and at oral argument before the First Circuit in *New Hampshire Indonesian Community Support* (the appeal from the prior decision on which the district court here relied).

But Petitioners have done none of that. They dedicate less than two pages of the petition to the statute, attempting to collapse the statutory and constitutional questions despite the fact that the Fourteenth Amendment and the statute were framed

70 years apart, during which time this Court decided *Wong Kim Ark*. *See* Pet. 28-30.

In short, Petitioners have not made the case that they can succeed on the statutory issue. And if they cannot do so, then the Court cannot reverse the injunction in this case, even if it somehow reached the startling conclusion that it had erred on the constitutional issue in *Wong Kim Ark*, or that *Wong Kim Ark* should now be read to accommodate Petitioners' position here. That being so, the Court should deny certiorari. *See, e.g.*, Shapiro et al., at ch. 4, § 4.4(f); *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 118, 121 (1994) (dismissing writ as improvidently granted, where federal statute rendered constitutional question potentially "entirely hypothetical"); *Escambia County v. McMillan*, 466 U.S. 48, 51 (1984) (declining to address constitutional question where statutory claim might resolve the case, and instead remanding for further consideration).

Denial on this basis is particularly appropriate because the government has a clear path forward. It could take the issue—one of apparently "prime importance" to the Administration, Pet. 5—to Congress and ask that this statutory barrier to a constitutional decision be removed, *see Feliciano v. Department of Transportation*, 145 S. Ct. 1284, 1296 (2025) (where a party disagrees with a statute as written, "its usual recourse lies in Congress").

II. THIS COURT ALREADY ANSWERED THE CONSTITUTIONAL QUESTION IN *WONG KIM ARK*.

In any event, the court should deny review for another reason: It has already answered the constitutional question Petitioners pose, namely whether the Citizenship Clause requires noncitizen parents to have what Petitioners call "lawful domicile" in this country. *See* Pet. 14. While Petitioners frame their position as seeking to clarify and apply *Wong Kim Ark*, the reality is that their arguments were expressly rejected in that case.

As already explained, *Wong Kim Ark* exhaustively analyzed the text and history of the Citizenship Clause and gave it an authoritative interpretation. Its interpretation of the words "subject to the jurisdiction" was, of course, absolutely "central to its reasoning." Pet. 25. Under that interpretation, temporary visitors are "amenable to the jurisdiction of the country." *Wong Kim Ark*, 169 U.S. at 685-86 (quoting *The Exchange*, 11 U.S. at 144); *see id.* at 683 (adopting Chief Justice Marshall's "clear and powerful train of reasoning"). That interpretation forecloses Petitioners' effort to create any kind of domicile requirement.

Petitioners resist that conclusion, suggesting that generations have misunderstood this Court's decision in *Wong Kim Ark*. But all they can offer are recycled arguments and sources that *Wong Kim Ark* itself expressly rejected. For example:

- Petitioners cite the *Slaughter-House Cases*, 83 U.S. 36 (1873), seven times. Pet. 3, 6, 7, 14,

15. They neglect to acknowledge, however, that *Wong Kim Ark* characterized that opinion's discussion of the Citizenship Clause as "wholly aside from the question in judgment," "unsupported by any argument," and "not formulated with the same care and exactness" as the Court normally provides. 169 U.S. at 678.

- Petitioners suggest that the Clause should be read as limited to the purpose of providing citizenship to formerly enslaved people. Pet. 3, 7, 14. *Wong Kim Ark* specifically rejected that idea, too. *See* 169 U.S. at 676 (recognizing Clause's "main purpose" but emphasizing that its terms "are general, not to say universal"); *cf. Slaughter-House Cases*, 83 U.S. at 72 (similar observation regarding Thirteenth Amendment).

- Petitioners attempt to derive from *Elk v. Wilkins*, 112 U.S. 94 (1884), a rule that would restrict the citizenship of children of foreign nationals. Pet. 3, 14, 16, 28. But *Wong Kim Ark* rejected that too, explaining that *Elk* turned on the unique constitutional status of Native American Tribes, 169 U.S. at 680-83, and thus had "*no tendency* to deny citizenship to children born in the United States of foreign parents" who are "not in the diplomatic service of a foreign country," *id.* at 682 (emphasis added). And Justice Gray wrote both opinions, so Petitioners cannot plausibly suggest that *Wong Kim Ark* misunderstood what *Elk* meant.

- Petitioners invoke the Civil Rights Act of 1866 to suggest that its statutory text—which provided citizenship to "all persons born in the United States and *not subject to any foreign power*"—should be read to narrow the scope of the Citizenship Clause. Pet. 16 (emphasis in original). But *Wong Kim Ark* rejected any narrow gloss on the 1866 Act that would exclude the children of noncitizens outside of the common-law exceptions. 169 U.S. at 689. And, in any event, the Court explained that the 1866 Act was of dubious relevance to the Constitution's meaning because that Act used language different from the Citizenship Clause—and the Clause's wording "removed" "any possible doubt" about the principle of *jus soli*. *Id.* at 688.

- More generally, while Petitioners concede that the children of non-domiciled foreigners were subjects under English common law, *see supra*, they deny that "the Citizenship Clause incorporates the British practice." Pet. 26 (suggesting a supposed "American understanding of citizenship as political allegiance, not the *jus soli* of British law"). But that is squarely contrary to the entire analysis of Justice Gray's opinion. The Court traced the *jus soli* rule from England (section II of the opinion), to the colonies and states (section III), and into the text of the Fourteenth Amendment (section V). *See supra* Statement of the Case, § A. Indeed, "two unusually interested readers of [the]

opinion—the dissenters in *Wong Kim Ark*—understood the Court to have adopted the ancient common law rule." *Doe*, 2025 WL 2814730, at *27 (citing *Wong Kim Ark*, 169 U.S. at 705).

- Instead, Petitioners urge the Court to look to commentators on international law, such as Emmerich de Vattel, to derive a meaning for the Fourteenth Amendment different from the one provided by common law. Pet. 17. Such principles of international law were likewise a central focus of the government's argument against Wong Kim Ark's citizenship. *See* 169 U.S. at 660, 666 (summarizing arguments). The Court specifically rejected those arguments in part IV of its opinion, making clear that the American citizenship rule was to be found in the Fourteenth Amendment and English common-law antecedents—not in international-law treatises. *Id.* at 667-68 (explaining that every nation may determine citizenship rules "for itself, and according to its own constitution").
- Likewise, Petitioners assert that English common law is beside the point because "the Constitution was framed in large part to *reject* the British theory of the King's sovereignty over his subjects." Pet. 26. This, again, was a central argument offered to, and rejected by, this Court in *Wong Kim Ark*. 169 U.S. at 666-75 (rejecting argument that America had broken with "the rule of the common law,

depending on birth within the realm, originally founded on feudal considerations").

Against all this (and faced with over a century of public, governmental, and scholarly consensus), Petitioners suggest that *Wong Kim Ark* actually *supports* their reimagining of the Citizenship Clause because the opinion uses the word "domicile" a number of times. Pet. 4 (noting the word "appears more than 20 times" in an opinion of over 20,000 words); *id.* at 23-24. Of course, the stipulated facts of the case were that Mr. Wong's parents were domiciled in this country. But the Court was clear that the children of domiciled noncitizens were covered by the Clause as *one application* of the broader principle that all persons subject to the jurisdiction of the country, including visitors under *The Exchange*, were so included.

As the Court explained, it could "hardly be denied" that resident noncitizens like Mr. Wong's parents were "completely subject to the political jurisdiction" of the United States because—as elaborated in the earlier passage in *Wong Kim Ark* discussing *The Exchange*—"*[i]ndependently of a residence with intention to continue such residence; independently of any domiciliation* . . . an alien, or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be." 169 U.S. at 693-94 (emphasis added); *see Doe*, 2025 WL 2814730, at *28. That is, *Wong Kim Ark* relied on the rule from *The Exchange* that non-domiciled noncitizens were subject to the nation's jurisdiction,

including its punishment, in concluding that of course the same was true of long-term residents.

This analysis was the rationale under which the Court ruled for Mr. Wong. By contrast, there "is not a word in Justice Gray's lengthy opinion setting forth its rationale that purports to explain" *why* domicile would supposedly be required to render a person "subject" to the country's "jurisdiction." *Doe*, 2025 WL 2814730, at *27. As the court of appeals observed, Petitioners are seeking to strip away the Court's stated reasoning and replace it with one found nowhere in the opinion. *Id.* ("We decline to conclude that Justice Gray either decided only what he did not explain or explained only what he did not decide.").

In this way, Petitioners' approach to *Wong Kim Ark* is reminiscent of a 1910 brief it cites, which was included as an appendix to a Justice Department report. Pet. 27. The brief—prepared by a subordinate attorney and not purporting to represent the views of the Department—conceded that *Wong Kim Ark* was "generally taken and considered as settling the rule for the United States, that all children born within the territory of the United States, except Indians and children of foreign ministers, are citizens of the United States." Assistant Attorney E.S. Houston, *Brief on the Law of Citizenship* 147, included as Appendix D to *Final Report of William Wallace Brown, Assistant Attorney General* (1910); *see also id.* at 124 (acknowledging that the Spanish Treaty Claims Commission had that same understanding of *Wong Kim Ark*). The brief, on which Petitioners place significant weight, reflects remarkable hostility to the Citizenship Clause and the holding of *Wong Kim*

Ark—proposing that "we must abandon so much of the fourteenth amendment as by construction may be held to undertake to make an American citizen out of children born to foreign parents on American soil." *Id.* at 124. This is not an interpretation of *Wong Kim Ark*; it is one attorney's renunciation of this Court's foundational holding.

In short, *Wong Kim Ark*'s constitutional analysis is directly on point and dooms the Executive Order. Indeed, since that decision, this Court has "repeatedly described U.S.-born children, even of unlawfully present individuals, as citizens." *Doe*, 2025 WL 2814730, at *31 (collecting cases); *see, e.g.*, *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73, 75 (1957) (recognizing child born in this country to noncitizen "parents illegally residing in the United States" "is, of course, an American citizen by birth"). The Court should decline to re-answer a question that has long since been answered.

III. PETITIONERS OFFER NO CERTWORTHY ARGUMENT THAT *WONG KIM ARK* SHOULD BE OVERRULED.

In attacking *Wong Kim Ark*, the petition is directly at odds with "traditional *stare decisis* factors," which would foreclose reconsideration of precedent settled and relied upon for almost 130 years. *See Barr*, 591 U.S. at 621 n.5. *Wong Kim Ark* is one of the most important decisions in our nation's history, and it stands as a cornerstone of our modern society. Reopening questions of birthright citizenship would cause potentially catastrophic effects, rippling out far past the particular Order at issue here. *Cf. Afroyim*,

387 U.S. at 268 (efforts to deny citizenship strike at "[t]he very nature of our free government"). And it would threaten to replace a long-established and eminently workable rule—around which a multitude of laws, systems, and policies have been shaped for generations—with an unclear, contingent, and chaotic experiment in exclusion from our national community.

Moreover, *Wong Kim Ark* is entirely correct. And Petitioners offer no plausible reason to reconsider it in order to insert a novel "lawful domicile" requirement into the Clause.

The centerpiece of Petitioners' case is a claim that "subject to the jurisdiction" in the Citizenship Clause refers to something they call "primary allegiance to the United States." Pet. 15, 16, 22, 28. But those words do not appear anywhere in the Fourteenth Amendment. And Petitioners cite no cases interpreting the Clause to require "primary allegiance," no treatises discussing what the proffered term is supposed to mean, and no discussion during the framing of the Amendment referring to that concept.

The Citizenship Clause uses the term "jurisdiction." That term's ordinary meaning fits neatly with *Wong Kim Ark*'s analysis drawing on *The Exchange*. *Washington v. Trump*, 145 F.4th 1013, 1027 (9th Cir. 2025) (explaining that the ordinary meaning at the time of ratification was "consistent with Plaintiffs' interpretation of 'subject to the jurisdiction thereof' as subject to the laws and authority of the United States"). By contrast, the government has *never* come forward with any sources

bearing on the interpretation of "jurisdiction" that would support its attempt to distinguish between noncitizens on the basis of citizenship status or domicile. *Id.* ("Defendants point to no contrary dictionary definitions" and "make no arguments about the ordinary meaning").

In their blunderbuss approach, Petitioners at times suggest that the Citizenship Clause excludes the children of *all* noncitizens—including, presumably, lawful permanent residents. *See, e.g.*, Pet. 15 (proposing to exclude "*citizens or subjects of foreign States born within the United States*") (quoting *Slaughter-House*, 83 U.S. at 73) (emphasis in Petition); *id.* at 19 (similar, citing Senator Johnson). That, of course, proves far too much; Petitioners concede that U.S.-born children of domiciled noncitizens are themselves citizens. *See id.* at 7.

Petitioners rely on a treatise written by Justice Story—addressing the citizenship laws of other countries in a work on conflict of laws—to suggest he believed a "reasonable qualification of th[e] rule" of citizenship at birth would be the exclusion of children of temporary visitors. *See id.* at 19. Whether that was his opinion or not, Justice Story did *not* suggest that such a policy preference was *the law* in America. *See Inglis*, 28 U.S. at 155-56 (Story, J.) (laying out general rule of birthright citizenship, and narrow "exceptions" which "confirm the general doctrine," including "children of an ambassador" and children born in an area "occupied . . . by conquest").

Nor can Petitioners rewrite the Fourteenth Amendment based on cases touching on domicile in

the context of disputes under international law, *see, e.g.*, *The Venus*, 12 U.S. 253, 278 (1814); *The Pizarro*, 15 U.S. 227, 246 (1817), or based on statutes outside of the citizenship context, *see, e.g.*, *Lau Ow Bew v. United States*, 144 U.S. 47, 61-62 (1892) (reading statutory exclusion language to apply to first-time arrivals, not those re-entering); *Murray v. The Schooner Charming Betsy*, 6 U.S. 64, 120 (1804) (interpreting neutrality statute to exclude U.S. citizen living abroad). Domicile is relevant in many legal contexts—marriage, taxation, property, and the like. But that does not in the slightest show that it made a difference as to *citizenship*, least of all in the face of the common-law rule to the contrary. *See Wong Kim Ark*, 169 U.S. at 656 (distinguishing "political status," which includes citizenship, from "civil status," governing things like "marriage, succession, testacy, or intestacy," which is "governed by the single principle of domicile") (quoting *Udny v. Udny*, L. R. 1 H. L. Sc. 441(1869)).

Petitioners imply that their proposed domicile rule was accepted at common law before the Citizenship Clause was ratified. Pet. 20. That is simply wrong. *Lynch v. Clarke*, 1 Sand. Ch. 583 (N.Y. Ch. Ct. 1844), which specifically held that the child of temporary visitors was a citizen, was the "leading judicial decision[]" on the issue. Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L.J. 405, 445 (2020). As one indication of its prominence at the time of the Clause's framing, Attorney General Bates relied entirely on *Lynch*'s analysis in concluding, during the Civil War, that "children born in the United States of alien parents" are citizens

apart from "such exceptional cases as the birth of the children of foreign ambassadors and the like." 10 U.S. Op. Atty. Gen. 328, 328-29 (1862); *see also* 9 U.S. Op. Atty. Gen. 373, 373-74 (1859) (opinion of Attorney General Black) (likewise relying entirely on *Lynch*).

By contrast, *Benny v. O'Brien*, 32 A. 696, 698 (N.J. 1895), which post-dates the Fourteenth Amendment by several decades, did not involve the child of visitors. Moreover, its discussion was primarily based on confusion about the meaning of *Elk* among some readers—confusion that Justice Gray dispelled three years later in *Wong Kim Ark*. The same appears to be true of certain treatises published between those two cases—and others that parroted earlier treatises even after *Wong Kim Ark* but without addressing its analysis. *See* Pet. 21. And, of course, it is neither surprising nor probative that the federal government may have sometimes taken a narrow view of the Citizenship Clause in the years leading up to *Wong Kim Ark*—after all, it advocated for such a narrow view before this Court, and lost. *See id.* at 21-22.

In the face of overwhelming evidence to the contrary, Petitioners pluck quotes from the 1866 congressional debates out of context—misrepresenting their meaning in the process. For example, they repeatedly cite a question (as if it were a statement) posed during the debates, which inquired about the citizenship of a person "born here of parents from abroad temporarily in this country." *Id.* at 4, 19. But they omit the *answer* Senator Wade gave, which is entirely consistent with *Wong Kim Ark*: "I know that is so in one instance, in the case the children of foreign

ministers" who "[b]y a fiction of law . . . are not supposed to be residing here." Cong. Globe, 39th Cong., 1st Sess. 2769 (1866).

Petitioners also point to a *private* letter sent by Senator Trumbull to President Johnson summarizing the 1866 Act and mentioning domicile in passing without further explanation. Pet. 18. But Senator Trumbull never endorsed a domicile requirement in Congress. *See* Cong. Globe, 39th Cong., 1st Sess. 600 (1866) ("birth entitles a person to citizenship, that every free-born person in this land, is, by virtue of being born here, a citizen of the United States").

Finally, even apart from all the problems with Petitioners' broader "domicile" argument, their argument specific to people without current immigration status is even weaker. By seeking to apply a restrictive conception of "lawful domicile," Pet. 14, Petitioners tacitly concede that people without status—many of whom have lived here for decades—are domiciled in this country under any ordinary meaning of that term. *See Doe*, 2025 WL 2814730, at *27 n.22; *Plyler v. Doe*, 457 U.S. 202, 227 n.22 (1982). But they posit that Congress has excluded people without lawful status from establishing domicile—and suggest that supposed congressional choice also excludes their children under the Citizenship Clause. Pet. 22. Petitioners offer no support for this novel theory in traditional domicile law (nor any indication Congress has actually barred domicile here).[3]

[3] *Wong Kim Ark* certainly offers no such support. *Contra* Pet. 24. The Court's rationale—that all those subject to the country's full

But in any event, Petitioners' proposed rule cannot be squared with the Citizenship Clause. Their view would allow Congress to decide who is entitled to birthright citizenship, by enacting statutes to manipulate domicile rules. That is obviously untenable, as the whole point of the Clause was to prevent the political branches from stripping away birthright citizenship. *See Afroyim*, 387 U.S. at 262 (framers "expressed fears that the citizenship so recently conferred on Negroes by the Civil Rights Act could be just as easily take[n] away from them by subsequent Congresses").

CONCLUSION

For the foregoing reasons, this Court should deny review. If it grants review, it should do so in both this case and in *Trump v. Washington*.

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legal authority are subject to its jurisdiction for purposes of the Clause—obviously applies to long-term residents even if they stayed or entered in violation of law. *See, e.g.*, *Carlisle v. United States*, 83 U.S. 147, 154-55 (1872) (residents were subject to treason law) (cited in *Wong Kim Ark*). Petitioners quote *Wong Kim Ark*'s passing observation that people "born out of the United States" owe local allegiance "so long as they are permitted by the United States to reside here." 169 U.S. at 694. That language is just a reference to the Court's discussion in earlier cases of people who have been deported, and hence removed from the government's jurisdiction. *See Fong Yue Ting v. United States*, 149 U.S. 698, 724 (1893) (after deportation noncitizens are no longer "permitted by the government of the United States to remain in the country") (cited by *Wong Kim Ark* in support of that observation); *see also Wong Kim Ark*, 169 U.S. at 701 (explaining that a noncitizen who "has voluntarily gone from the country" is likewise "beyond its jurisdiction").

Respectfully submitted,

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