

No. 25-365

IN THE
Supreme Court of the United States

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

v.

BARBARA, *et al.*,
Respondents.

**On Writ of Certiorari Before Judgment to the
United States Court of Appeals
for the First Circuit**

**BRIEF OF *AMICI CURIAE* LAWYERS'
COMMITTEE FOR CIVIL RIGHTS UNDER
LAW, NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, THE
LEAGUE OF WOMEN VOTERS, THE EQUAL
JUSTICE SOCIETY, THE NATIONAL URBAN
LEAGUE, AND THE LEADERSHIP
CONFERENCE ON CIVIL AND HUMAN
RIGHTS IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

The National Association for the Advancement of Colored People (“NAACP”), founded in 1909, is the nation’s first and foremost civil rights organization. The NAACP’s mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights, eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. Included in its membership are Black non-citizens and other non-citizens of color.

The League of Women Voters (“LWV”) is a non-profit, nonpartisan, grassroots, membership organization committed to protecting voting rights, empowering voters, and defending democracy. LWV empowers voters and defends democracy through advocacy, education, mobilization, and litigation at the local, state, and national levels. Founded in 1920, the League works to ensure that all voters—including those from historically marginalized communities, like Black voters, other voters of color, and new citizens—can use their fundamental right to vote, participate in our democratic system, and be protected equally by our constitution.

The Equal Justice Society (“EJS”) is a national legal organization founded in 2000 to transform the nation’s consciousness on race through law, social science, and the arts. EJS’s focus is to repair the harm of historic racial discrimination and to promote and

¹ Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole; no party’s counsel authored, in whole or in part, this brief; and no person or entity other than *amici* and its counsel contributed monetarily to preparing or submitting this brief.

defend policies that move society toward a true multiracial democracy where race is no longer a barrier to opportunity. The protection and full realization of the anti-discrimination safeguards of the Fourteenth Amendment and the other Reconstruction Amendments are central to EJS's mission.

The National Urban League (“NUL”) is a historic, nonpartisan civil rights and economic empowerment organization founded in 1910 and dedicated to advancing equal opportunity and full civic inclusion for Black Americans and other historically underserved communities. Through a nationwide network of more than 90 affiliates serving over 300 communities, NUL works to dismantle structural barriers to education, employment, housing, and democratic participation through direct service, policy advocacy, and civic engagement initiatives, and for more than a century has played a central role in advancing federal civil rights protections and promoting equal access to democratic institutions, including sustained efforts to protect the right to vote and ensure fair representation for communities of color. Consistent with this mission, NUL regularly participates as *amicus curiae* before the Supreme Court of the United States and other courts in cases involving voting rights, equal protection, and access to the political process. NUL has a strong interest in this case because the issues presented directly affect the communities it serves and implicate foundational principles of equal citizenship, and the consistent enforcement of longstanding civil rights protections remains essential to safeguarding meaningful democratic participation for Black voters and other underrepresented voters nationwide.

The Leadership Conference on Civil and Human Rights is the nation's oldest and largest civil

rights coalition, with a diverse membership of more than 240 national organizations working to build an America as good as its ideals. Since its founding in 1950, The Leadership Conference has helped to secure the passage of every major civil rights law, from the Civil Rights Acts of 1957 and 1964, to the Americans with Disabilities Act, and many more.

SUMMARY OF THE ARGUMENT

1. If this Court upholds Executive Order 14,160 (the “Executive Order”), it risks reviving *Dred Scott’s* abhorrent ruling, creating a permanent underclass in this country and encouraging the race-based suppression of civil rights that the Reconstruction Amendments and subsequent Civil Rights legislation were enacted to eliminate. The Reconstruction Congress enshrined birthright citizenship in the Constitution to place it beyond the reach of future political interference. This Court should honor that intent and strike down the Executive Order as unlawful and repugnant both to the Constitution and to this country’s proud, though imperfect, history of defending the civil rights of our most vulnerable citizens.

The plain language of the Citizenship Clause of the Fourteenth Amendment to the Constitution (the “Citizenship Clause”) granted birthright citizenship both to those newly freed from slavery and to a broader range of persons born in the United States. The breadth of the Clause was apparent even to its opponents, who recognized that it would confer citizenship expansively and opposed it on precisely that basis, often in explicitly racist terms.

2. This Court has consistently reaffirmed birthright citizenship’s wide reach, concluding that it encompasses children even when their parents are merely

temporary visitors on our soil. And, when Congress acted decades later to adopt immigration legislation, it expressly embraced this same expansive scope. This unbroken legal history leaves no doubt that the Citizenship Clause should be read to reach all who are born within the jurisdiction of the United States, regardless of their parents' legal status.

3. The congressional intent of the Citizenship Clause is in harmony with the original intent of foundational civil rights statutes, which apply broadly to groups beyond those the laws were originally enacted to protect. From Section 1981 of the Civil Rights Act of 1866 through Title VII of the Civil Rights Act of 1964, Congress has consistently and intentionally used broad statutory language to widen—not narrow—the coverage of protections afforded under our civil rights statutes. And federal courts across the country have repeatedly affirmed this broad coverage to all people in our country, regardless of race, ethnicity, alienage, or other protected categories.

4. Upholding the Executive Order would result in individuals being forced to prove their lineage, not their birthplace. Those who cannot—even lawful citizens—will be vulnerable to harassment or imprisonment by law enforcement. Those suspected of not being U.S. citizens will be forced to “carry their papers,” echoing a time when newly freed Black people had to keep manumission papers on hand or risk arrest and re-enslavement.

ARGUMENT**I. The Government's Argument That, at Its Adoption, the Citizenship Clause Narrowly Conferred Citizenship Only on the Formerly Enslaved and Their Children, but Excluded the Children of People Temporarily or Unlawfully Present in the United States, Is Incorrect and Incompatible with the Origin of American Citizenship Law.**

The attack on birthright citizenship in this country cannot be divorced from the historical context and origins of birthright citizenship itself. The Executive Order ignores that history, effectively reviving *Dred Scott's* unconstitutional and exclusionary view that, for some, their parentage renders them unworthy of citizenship.

The Citizenship Clause grants citizenship to children born in the United States, regardless of their parents' legal status. The Government's premise is that because the Citizenship Clause was "adopted to grant citizenship to freed slaves and their children," it was not intended to apply to "children of aliens temporarily visiting the United States or of illegal aliens." Pet'rs Br. at 2. That is incorrect. The plain statutory text, legislative history, and Supreme Court precedent make clear that the reach of the Citizenship Clause is expansive and has never been limited to children of only a certain race or legal status.²

² In full, the text of the Citizenship Clause reads: "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.

A. *Dred Scott* Enforced a Racial Caste System That the Citizenship Clause Was Adopted to Dismantle.

Congressional action to guarantee birthright citizenship during the Reconstruction era was a wholesale, national repudiation of *Dred Scott v. Sandford*, 60 U.S. 393 (1857), and the state court decisions that shared its logic. Any analysis of the Citizenship Clause must account for this history.

In most Northern states before the Civil War, free Black people were considered citizens for most purposes prior to the Reconstruction Amendments. *See, e.g., Dred Scott*, 60 U.S. at 582 (Curtis, J., dissenting) (“[I]n five of the thirteen original States, colored persons then possessed the elective franchise, and were among those by whom the Constitution was ordained and established.”). Although some Southern states denied citizenship even to *freed* Black people born in the United States, *see* Catherine Y. Kim, *Citizenship Outside the Courts*, 57 U.C. Davis L. Rev. 253, 276–78 (2023), this practice contradicted the dominant approach of antebellum American courts, which embraced the English common-law rule granting citizenship at birth to children of virtually all foreign nationals, regardless of their parents’ domicile. *See* Resp’ts Br. at 11–12.

The Court in *Dred Scott* reaffirmed the racist and ahistorical position taken by courts in the South. *See generally Dred Scott*, 60 U.S. 393. The Court announced that Black people “are not included, and were not intended to be included, under the word ‘citizens’ in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.” *Id.* at 404. In doing so, the Court

articulated the belief of that time that Black people were “considered as a subordinate and inferior class of beings . . . and had no rights or privileges but such as those who held the power and the Government might choose to grant them.” *Id.* at 404–05. The holding swept broadly—citizenship included “neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not[.]” *Id.* at 407.

Even after the Thirteenth Amendment abolished slavery in 1865, the reality was that “Black Codes” passed by Southern states following the end of the Civil War reinstated slavery “in all but name” and “restrict[ed] every aspect of freedmen’s lives.” Amanda Frost, *Paradoxical Citizenship*, 65 Wm. & Mary L. Rev. 1177, 1182 (2024).

B. The Civil Rights Act of 1866 Intentionally Conferred Citizenship Broadly.

Republican members of the 39th Congress responded to the legal subordination of newly freed slaves by passing the Civil Rights Act of 1866, the nation’s first civil rights statute. Cong. Globe, 39th Cong., 1st Sess. 475 (1866) (Senator Lyman Trumbull introducing the Act on the Senate floor, explaining “[t]he people of those [slaveholding] States have not regarded the colored race as citizens, and on that principle[,] many of their laws making discriminations between the whites and the colored people are based[.]”).

Among other reforms, the Civil Rights Act of 1866 directly repudiated *Dred Scott* by declaring, “[t]hat *all* persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States” See Act of Apr. 9, 1866, ch. 31, 14 Stat. 27 (codified as

amended at 42 U.S.C. §§ 1981–1982 (1952)) (emphasis added).

The legislative history of the Act confirms its broad scope and makes clear its sponsors intended to confer citizenship on persons born in the United States beyond just the formerly enslaved. Senator Trumbull had originally drafted the clause to extend birthright citizenship only to “persons of African descent born in the United States.” Cong. Globe, 39th Cong., 1st Sess. 497 (1866). A prominent opponent, Senator Peter Van Winkle, objected that citizenship would be extended “not only the negro race, but other inferior races that are now settling on our Pacific coast, and perhaps involves a future immigration to this country of which we have no conception.” *Id.* at 497. Senator Trumbull responded by striking the language limiting citizenship to only those of “African descent” and replacing it with language unambiguously extending citizenship to “*all* persons born in the United States.” *Id.* at 498 (emphasis added). This more sweeping language again drew objections, with Senator Trumbull being asked “whether [the Act] will not have the effect of naturalizing the children of Chinese and Gypsies born in this country?” The Senator’s response was unequivocal: “Undoubtedly. . . . [T]he child of an Asiatic is just as much a citizen as the child of a European.” *Id.* at 498.

Other Senators confirmed the expansive scope of the Act, including Senator Justin Morrill of Vermont who, echoing Senator Trumbull, declared, “the native born is a citizen, and a citizen by virtue of his birth alone,” and described the Act’s citizenship clause as a “declaration” that “[a]ll persons born in this country are citizens.” *Id.* at 570. The original understanding of citizenship as broad in scope—and not narrowly restricted to those formerly enslaved—is also

consistent with the Act's other language that granted citizens "of every race and color" basic personal, economic, and participatory rights, including the right to make and enforce contracts, transact in property, and participate in court proceedings. *See* Act of Apr. 9, 1866, ch. 31, 14 Stat. 27 (codified as amended at 42 U.S.C. §§ 1981–1982 (1952)).

Even—and, perhaps, especially—opponents of the Act understood its extension of birthright citizenship encompassed not just those recently freed from bondage, but also “comprehends the Chinese of the Pacific States, Indians subject to taxation, the people called gypsies, as well as the entire race designated as blacks, people of color. Negroes, mulattoes, and persons of African blood.” U.S. President, Andrew Johnson, Message from the President of the United States Returning Bill (S. No. 61) (March 27, 1866). In vetoing the legislation, President Johnson left no doubt that “[e]very individual of these races born in the United States is by the bill made a citizen of the United States.” *Id.*³

³ President Johnson grounded his veto on the openly racist belief that nonwhites were a lesser subset of humans who might not “possess the requisite qualifications to entitle them to all the privileges and immunities of citizens,” *id.*, a trope that finds echoes in the current administration's own actions and statements regarding certain immigrant groups. *See, e.g.*, Laurie Kellman, *Trump ventures deeper into anti-immigrant language by calling people from Somalia ‘garbage,’* Associated Press (Dec. 5, 2025), <https://apnews.com/article/trump-garbage-somalia-minneapolis-immigrant-omar-03e31bba53519d8a39b419679a3b75d9> (reporting that President Trump called Somali immigrants “garbage” multiple times during a cabinet meeting); Eric Bazail-Eimil, *Trump Administration Slashes Number of Refugees, Prioritizes Afrikaners*, Politico (Oct. 30, 2025), <https://www.politico.com/news/2025/10/30/trump-slashes-refugee-numbers-afrikane>

In overriding President Johnson’s veto, the Reconstruction Congress confirmed that the expansive view of citizenship that had so recently been rejected by the Chief Executive was intended to be—and indeed was—the law of the nation. *See* Cong. Globe, 39th Cong., 1st Sess. 1809 (Apr. 6, 1866) (Senate), 1861 (Apr. 10, 1866) (House).

C. The Expansive Reach of Citizenship in the Civil Rights Act of 1866 Was Enshrined in the Fourteenth Amendment.

The 39th Congress recognized that birthright citizenship required constitutional protection to place it beyond the reach of future administrations and shifting political winds. The Reconstruction Congress accordingly added the Citizenship Clause to the Fourteenth Amendment in 1866, guaranteeing that “[a]ll 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.” (emphasis added).

The architects of this Clause sought to reaffirm the existing scope of citizenship conferred by the Civil Rights Act of 1866. When proposing the language that would become the Citizenship Clause, Senator Jacob Howard of Michigan explained: “This amendment which I have offered is simply declaratory of what I regard as the law of the land *already*, that *every* person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States.” Cong. Globe, 39th Cong., 1st Sess. 2890 (1866) (emphasis added).

rs-00630038 (reporting on the Trump administration giving priority to Afrikaner refugees in the 2026 fiscal year).

As with the Civil Rights Act of 1866, both supporters and opponents of the Clause readily acknowledged its broad reach. Opponents echoed many of the same themes that appear in today's heated rhetoric over immigration. Senator Edgar Cowan of Pennsylvania, who opposed both the citizenship clause in the Civil Rights Act and the Fourteenth Amendment's Citizenship Clause, attacked the Clause in debates by asking, "Is the child of the Chinese immigrant in California a citizen? Is the child of a Gypsy born in Pennsylvania a citizen? . . . Is it proposed that the people of California are to remain quiescent while they are overrun by a flood of immigration of the Mongol race? Are they to be immigrated out of house and home by Chinese?" *Id.*

A proponent of the Clause, Senator John Conness of California (who naturalized after being born in Ireland), responded unequivocally: "[T]he children begotten of Chinese parents in California . . . shall be citizens. . . . I voted for the proposition to declare that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States, entitled to equal civil rights with other citizens of the United States." *Id.*

By placing birthright citizenship beyond the reach of administrations that might otherwise be hostile to the principle, the Reconstruction Congress anticipated precisely the threat our country now faces from the Executive Order. As Senator Howard explained during debates over the bill, he and other proponents of the Citizenship Clause "desired to put this question of citizenship and the rights of citizens and freedmen under the civil rights bill beyond the legislative power of [politicians] who would . . . expose the freedmen again to the oppressions of their old masters." Cong. Globe, 39th Cong., 1st Sess. 2896 (1866); *see also id.* at

2768 (Senator Benjamin Wade (Ohio) arguing that the principle of birthright citizenship was susceptible to changes by future governments “unless we fortify and make it very strong and clear”). Allowing the Executive Order to stand would permit precisely what the Reconstruction Congress sought to prevent—the denial of citizenship to those born on American soil at the discretion of an administration hostile to that concept.

II. Supreme Court Precedent, as Codified by Congress, Confirms the Citizenship Clause’s Broad Scope.

This Court’s precedent and Congress’s subsequent and knowing codification of that precedent confirm that the plain language of the Citizenship Clause guarantees birthright citizenship to persons born in the United States, regardless of their parents’ immigration status. The Government’s attempt to narrow this guarantee contradicts over a century of settled law.

A. Precedent Confirms the Citizenship Clause Is Far-Reaching and Is Not Confined to Any One Motivating Purpose.

This Court in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), definitively confirmed that the Fourteenth Amendment must be read expansively, and in doing so, rejected efforts to narrow birthright citizenship based on parentage or political status. Thirty years after ratification, the Court explained “[i]n the forefront both of the Fourteenth Amendment of the Constitution and of the Civil Rights Act of 1866, the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explicit and comprehensive terms.” *Wong Kim Ark*, 169 U.S. at 675. The Court traced the Citizenship Clause to its roots in English common law’s birthright

subjecthood or “citizenship by birth within the territory,” and concluded that the Amendment adopted a broad territorial rule of citizenship, excluding only narrow categories of persons—namely, “children born of alien enemies in hostile occupations,” “children of diplomatic representatives of a foreign state,” and “children of members of the Indian tribes owing direct allegiance to their several tribes.” *Id.* at 657, 682, 693.

The Court further emphasized that “any possible doubt” regarding the scope of birthright citizenship “was removed when the negative language of the Civil Rights Act, ‘not subject to any foreign power,’ gave way, in the Fourteenth Amendment of the Constitution, to the affirmative language, ‘subject to the jurisdiction of the United States.’” *Id.* at 688. The Citizenship Clause was drafted to be “affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and not to impose any new restrictions on citizenship.” *Id.* at 688. In other words, recognizing Congress’s clear aim to act beyond any one motivating purpose, *Wong Kim Ark* confirmed that birthright citizenship in the United States is a maximally encompassing and constitutionally protected right that must endure through—and in spite of—changes in prevailing political sentiment.

This Court’s earlier decision in the *Slaughter-House Cases* is consistent with that broad understanding insofar as it recognized that the Fourteenth Amendment “is not confined to the population that had been servile, or to that which had any of the disabilities or disqualifications arising from race or from contract.” *Slaughter-House Cases*, 83 U.S. 36, 54 (1872). Rather, and expressly without “depend[ing] upon parentage,” the Amendment made “*all persons* born within the United States and subject to its jurisdiction citizens of

the United States.” *Id.* at 53, 73. The Court concluded that “[c]itizenship is assigned to nativity in any portion of the United States, and every person so born is a citizen.” *Id.* at 53.

To the extent that the *Slaughter-House Cases* suggested “subject to its jurisdiction” was intended to exclude children of “citizens or subjects of foreign States born within the United States,” *id.* at 73, that suggestion was later rejected as dicta that is, in any event, inconsistent with the Fourteenth Amendment’s broad sweep and the intent of the Reconstruction Congress. *Wong Kim Ark*, 169 U.S. at 678–82.

Read together, these decisions confirm that the Citizenship Clause establishes a broad rule of territorial birthright citizenship that extends beyond any particular racial group and does not fluctuate with changing political judgments about who should belong in this country. That black-letter law has not changed in the past 127 years, and should not change now.

B. The Citizenship Clause’s Expansive Scope Was Reaffirmed and Codified by the Nationality Act of 1940 and the Immigration and Nationality Act of 1952.

More than 70 years after the ratification of the Fourteenth Amendment, Congress codified the Supreme Court’s interpretation of the Citizenship Clause from *Wong Kim Ark*—first in the Nationality Act of 1940 and then again in the Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified at 8 U.S.C. § 1401(a)). Nationality Act of 1940, § 201(a), Pub. L. No. 76-853, 54 Stat. 1137; 8 U.S.C. § 1401(a) (tracking the Fourteenth Amendment’s language that any person “born in the United States, and subject to the jurisdiction thereof,” is a citizen of the United

States). This deliberate congressional action, taken with full awareness of the Court's operative interpretation of the Citizenship Clause, recognized the existing scope of birthright citizenship as including children whose parents lacked permanent immigration status. In doing so, Congress did not merely restate constitutional text; it enacted binding statutory law that independently guarantees birthright citizenship.

As was the case in passing the Civil Rights Act of 1866 and the Fourteenth Amendment, those drafting and debating the provisions of the Nationality Act of 1940 were aligned on the intent and the broad scope of the birthright citizenship guarantees in the Act. In proposing the Nationality Act of 1940, several executive agencies, at the request of President Roosevelt, supplied Congress with a draft version of the Act and explanatory commentary on its provisions (collectively, the "Revision"). The Revision intentionally aligned the Act with the Court's articulation of the Fourteenth Amendment's Citizenship Clause in *Wong Kim Ark*. See H.R. Comm. on Immigr. and Naturalization, 76th Cong., *Nationality Laws of the United States: Message from the President of the United States* 418 (June 13, 1938) (Comm. Print). In fact, the Revision's authors explicitly stated that the common law rule of birthright citizenship "is also applicable to a child born in the United States of parents residing therein temporarily," and concluding 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." *Id.* (emphasis added).

Exchanges before the House Committee on Immigration and Naturalization regarding the proposed Nationality Act of 1940 further demonstrate this congressional understanding. For example,

multiple congressmen readily agreed that a child born to parents on a visitor's visa would be a citizen under the Act. *See To Revise and Codify the Nationality Laws: Hearings Before the Comm. on Immigr. and Naturalization*, 76th Cong. 246 (May 2, 1940). In the same hearings, the State Department expressed its view of the "present law" regarding dual citizenship of children born in the United States to foreign parents and then taken back to and raised in the parents' country of origin, stating that the child "remains an American citizen." *Id.* at 248. In a further exchange querying the legal implications of American citizens moving abroad and acquiring foreign citizenship, multiple other congressmen presented hypothetical situations involving American-born children in which it was treated as axiomatic that, because a child had been born in the United States, that child was a citizen of this nation by birth. *Id.* at 271–73. It is clear that the 76th Congress, as well as certain executive branch witnesses testifying before it, understood that the Nationality Act's draft provision on birthright citizenship reflected the contemporaneous understanding that birthright citizenship encompassed the children of temporary visitors lacking "domicile" in the United States. *Contra Pet'rs Br.* at 2–3 (arguing that domicile is required for birthright citizenship by the jurisdictional language of the Citizenship Clause).

The Executive Order's intent to exclude children of parents who are temporarily or unlawfully present in the United States from birthright citizenship contradicts the text and purpose of this foundational immigration legislation. By codifying and then recodifying the Citizenship Clause in the Nationality Act of 1940 and the Immigration and Nationality Act of 1952, Congress repeatedly endorsed the longstanding legal consensus from *Wong Kim Ark* that the Citizenship

Clause encompasses the American-born children of temporary visitors. *See Doe v. Trump*, 157 F.4th 36, 62 (1st Cir. 2025) (“All indications are that the aim of the recodification [of the Nationality Act of 1940] was to carr[y] forward substantially those provisions of the Nationality Act of 1940 which prescribe who are citizens by birth.”) (quotation omitted). The Executive Order’s rejection of this principle plainly violates these federal laws, providing strong, independent grounds for its invalidation. *See Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (“[W]hen ‘the President takes measures incompatible with the expressed or implied will of Congress . . . he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.’”) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring)).

III. The Original Congressional Intent of the Citizenship Clause Is in Harmony with the Original Intent of Contemporaneous and More Recent Civil Rights Laws.

The Administration’s Executive Order wrongly conditions a basic civil right—citizenship—on the immigration status of an individual’s parents. Such a rule is incompatible with America’s tradition of applying civil rights laws to citizens and noncitizens alike. From the Civil Rights Act of 1866 to the Civil Rights Act of 1964, Congress has consistently used broad statutory language to ensure that *all* people are afforded protections under our civil rights statutes. Federal courts across the country have repeatedly affirmed the broad coverage of these statutes, granting relief to anyone who experiences unlawful discrimination, regardless of race, ethnicity, alienage, or other covered protected categories. The Administration’s

departure from this tradition is antithetical to the democratic foundations of the country.

The same 39th Congress drafted the Civil Rights Act of 1866 and the Fourteenth Amendment's Citizenship Clause, both using language that was inclusive of "all" persons. The Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." U.S. Const. amend. XIV, § 1 (emphasis added).

The Civil Rights Act of 1866 used similarly inclusive language. While the Act was intended to actualize the promises of the Thirteenth Amendment to formerly enslaved Black Americans, the Act explicitly granted to citizens of "*every race and color*" basic, personal, economic, and participatory rights, including the right to make and enforce contracts, transact in property, and participate in court proceedings. *See* Act of Apr. 9, 1866, ch. 31, 14 Stat. 27 (codified as amended at 42 U.S.C. §§ 1981–1982 (1952)) (emphasis added). After ratification of the Fourteenth Amendment, Congress amended Section 1981's language to confirm that civil rights protections applied to "all persons." Enforcement Act of 1870, ch. 114, § 16, 16 Stat. 140, 144. Today, Section 1981 continues to provide that:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981 (emphasis added). The shared origins of the Citizenship Clause and Section 1981 verify that Congress intended birthright citizenship to be read broadly in alignment with the civil rights protections that accompanied it.

While Congress intended for Section 1981 to protect Black people from the lingering effects of racially discriminatory economic and social practices, courts have consistently held that Section 1981 applies to “all persons” who experience intentional discrimination in contracting on the basis of their race or ethnicity. *See generally McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 286–87 (1976) (“our examination of the language and history of [Section] 1981 convinces us that [Section] 1981 is applicable to racial discrimination in private employment against white persons [T]he statute explicitly applies to ‘All persons’, including white persons.”); *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 609–13 (1987) (holding that a person of Arabian ancestry may be protected from racial discrimination under Section 1981 and noting legislative history showing that Congress intended to protect all persons who are subjected to intentional discrimination because of their ancestry or ethnic characteristics); *see also MacDissi v. Valmont Indus.*, 856 F. 2d 1054, 1060 (8th Cir. 1988) (Section 1981 extends to people of Lebanese descent); *Village of Freeport v. Barrella*, 814 F.3d 594, 606 (2d Cir. 2016) (holding that Hispanics constitute a distinct race for Section 1981 purposes based on long settled ancestry or ethnic characteristics); *Donaire v. NME Hosp., Inc.*, 27 F.3d 507, 509–10 (11th Cir. 1994) (finding that Section 1981 protects individuals of Filipino ancestry eligible for racial discrimination claims). To read the Citizenship Clause narrowly would disrupt the statutory interpretation of Section 1981 and disregard precedent

finding it applies expansively. *McDonald*, 427 U.S. at 287 (citing *Wong Kim Ark*, 169 U.S. at 675–76).

Indeed, in the years following this Court’s ruling in *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023), there has been an uptick in white litigants bringing Section 1981 cases. *See, e.g., Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765 (11th Cir. 2024) (holding that preliminary injunctive relief was appropriate because capital fund investment competition open only to Black women was “substantially likely to violate § 1981”).

Courts have repeatedly held that Section 1981 also applies to “all persons” including foreign nationals who are not citizens of the United States. *See, e.g., Resendiz v. Exxon Mobil Corp.*, 72 F.4th 623, 627–28 (4th Cir. 2023) (holding that Section 1981 protects aliens and that the private right of action reaches alienage-based discrimination); *Duane v. Geico*, 37 F.3d 1036, 1043 (4th Cir. 1994) (“[Section 1981] draws no such distinction between classes of persons. It logically must be construed either to give ‘all persons’ a right not to be discriminated against by private parties in the making of contracts or to give no persons such a right.”) (quotations omitted); *Anderson v. Conboy*, 156 F.3d 167, 178 (2d Cir. 1998) (holding that Section 1981 prohibits discrimination based on alienage); *Sagana v. Tenorio*, 384 F.3d 731, 737–39 (9th Cir. 2004) (recognizing that Section 1981’s bar on racial discrimination in contracting extends to alienage-based discrimination).

This precedent is consistent with the Supreme Court extending other legal protections to noncitizens, whether legally present or not. *See Wong Wing v. United States*, 163 U.S. 228 (1896) (holding that the imposition of a penalty of imprisonment at hard labor

on noncitizens without a jury trial constituted a violation of the Fifth and Sixth Amendments). It is also consistent with how other core civil rights laws, like Title VII of the Civil Rights Act of 1964, have never attached protection under the statute to one's immigration status. Though the plight of African American workers was clearly Congress's primary impetus for passing Title VII, see *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 202 (1979), courts have repeatedly interpreted the plain language of Title VII to protect all individuals from unlawful discrimination, whether or not they are citizens of the U.S. See *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 95 (1973) ("Title VII was clearly intended to apply with respect to the employment of aliens inside any State."); *Rivera v. NIBCO*, 364 F.3d 1057, 1068–69 (9th Cir. 2004) (noting that Congress did not intend to bar undocumented workers from protections against invidious discrimination in the workplace under Title VII).

The Executive Order departs from this long history of extending civil rights to *all* persons present in the United States, regardless of their race, immigration status, or other protected characteristics. As this history makes clear, it is the presence of the individual in the United States—not their immigration status—that confers civil rights protections upon them.

The Executive Order repudiates that well-settled principle. It conditions the fundamental civil right of citizenship on the immigration status not of the individual, but of the individual's birth parents. To deprive children of this foundational civil right because, through no fault of their own, their parents lacked the correct immigration status would be a cruel and unwarranted departure from the expansive

construction that courts have consistently afforded to civil rights protections.

The Court should reject Petitioners' attempts to weaken our core civil rights protections by selectively wielding them as weapons to conveniently serve their political interests.⁴ Contrary to what Petitioners and their *amici* argue, restoring the original meaning of the Citizenship Clause means leaving untouched the long-standing precedent by which it is anchored.

IV. The Executive Order Would Exacerbate Harms to, and Vulnerabilities Already Present in, the Communities of Color That the Fourteenth Amendment Was Designed to Prevent.

The Fourteenth Amendment was intended to eliminate “laws which imposed upon [Black Americans] onerous disabilities and burdens and curtailed their rights in the pursuit of life, liberty, and property[.]” *Slaughter-House Cases*, 83 U.S. at 70. The Executive Order disregards this foundational principle. If upheld, it will recreate the very legal underclass the Reconstruction Congress sought to abolish—effectively disenfranchising millions of people of color in future generations and further entrenching government-endorsed animus toward vulnerable communities of color.

⁴ Recent public statements by senior enforcement officials illustrate the Administration's current emphasis in deploying federal civil rights laws. *See, e.g.*, Andrea Lucas (@andrealucasEEOC), X (Dec. 17, 2025, 6:47 PM), <https://x.com/andrealucasEEOC/status/2001439099907961012> (urging “white male” employees and applicants who believe they have experienced discrimination to contact the EEOC regarding potential Title VII claims).

A. The Executive Order Would Diminish Meaningful Democratic Participation by Communities of Color.

Without birthright citizenship, U.S.-born children of parents who lack permanent immigration status—much like the children of the formerly enslaved before the Fourteenth Amendment—would become a significant class of children who are “born and raised in the United States but who do not have strong ties to any other nation.” Margaret D. Stock, *Is Birthright Citizenship Good for America?*, 32 *Cato J.* 139, 150 (2012).

Among the various harms already outlined by Respondents and other *amici*, the Executive Order will bar millions of children who would otherwise become eligible voters from the franchise and eliminate their ability to run for political office in most jurisdictions. See U.S. Const. amend. XV (predicating the right to vote in federal elections on citizenship); U.S. Const. art. I, §§ 2, 3 (requiring minimum citizenship periods for elected members of Congress); U.S. Const. art. II, § 1 (restricting eligibility for the presidency to citizens); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (1996), (codified as amended at 18 U.S.C. § 611) (prohibiting noncitizen voting in federal elections); see also *Laws permitting noncitizens to vote in the United States*, Ballotpedia, https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States (last visited Feb. 23, 2025) (noncitizens are allowed to vote in certain local elections in only three states and the District of Columbia, with a trend amongst states to prohibit it). And racial minorities are most likely to bear the brunt of these effects. As a result, the implementation and enforcement of the Executive Order will reshape the electorate and

entrench the racial hierarchy that this country long ago rejected.

By limiting access to U.S. citizenship, the Executive Order would prevent the U.S. electorate from reflecting our country's increasingly diverse population. A Migration Policy Institute study projects that, if birthright citizenship were eliminated, the United States would lose somewhere between 4.7 and 13.5 million future citizens by 2050. See Stock, *supra*, at 148; Jennifer Van Hook & Michael Fix, *The Demographic Impacts of Repealing Birthright Citizenship*, Migration Pol'y Inst. 3-4 (Feb. 12, 2025), <https://www.migrationpolicy.org/sites/default/files/publications/BirthrightInsight-2010.pdf>. Most of these future citizens would be people of color—especially Latinos, who make up more than half of the total noncitizen population and three-quarters of the unauthorized immigrant population in the United States. Lucía Félix Beltrán et al., *Born into Uncertainty: The Health and Social Costs of Ending Birthright Citizenship*, UCLA Latino Pol'y & Pol. Inst. 9 (Feb. 13, 2025), <https://latino.ucla.edu/research/ending-birthright-citizenship/>; see also Van Hook & Fix, *supra*, at 1–5. Census population projections have indicated that in 2045, the United States will be a majority-minority nation. William H. Frey, *The US will become 'minority white' in 2045*, *Census projects*, Brookings Inst. (Mar. 14, 2018), <https://www.brookings.edu/articles/the-us-will-become-minority-white-in-2045-census-projects/>. If the scope of birthright citizenship is limited, the electorate will not reflect these changing demographics, because people of color will disproportionately be barred from voting in elections.

By placing arbitrary and unconstitutional limits on birthright citizenship, the Executive Order would also

necessarily lead to increased scrutiny of citizenship status that will diminish political participation by people of color and children of immigrants who are citizens, analogous to the impact that voter identification requirements have already had. For example, heightened vetting of citizenship status at the polls would likely discourage Black and Brown citizens from voting. See Spencer Overton et al., *Response to the Report of the 2005 Commission on Federal Election Reform*, Brennan Ctr. for Just. 5 (Sept. 19, 2005), <https://www.brennancenter.org/our-work/research-reports/response-report-2005-commission-federal-election-reform> (explaining that Black Americans in Louisiana were less likely than White Americans to have sufficient photo identification); Shelley de Alth, *ID at the Polls: Assessing the Impact of Recent State Voter ID Laws on Voter Turnout*, 3 Harv. L. & Pol’y Rev. 185, 193 (2009) (showing that racial minority voter turnout decreased in states requiring photo identification); Matt A. Barreto et al., *The Racial Implications of Voter Identification Laws in America*, 47 American Pol. Rsch. 1, 5–6 (2018) (finding that people of color were consistently less likely than Whites to have valid identification for voting). Further, to the extent that the validation of identification and citizenship status will be performed by law enforcement agents, the presence of such agents will chill participation in the franchise by people of color. See Monica Elliott et al., *Overcoming the Unprecedented: Southern Voters’ Battle Against Voter Suppression, Intimidation, and a Virus*, S. Poverty L. Ctr. 21–24 (Mar. 2021), https://www.splcenter.org/wp-content/uploads/files/splc_vr_report_overcoming_the_unprecedented_mar_2021.pdf. The Executive Order will only compound the difficulties already faced by communities of color and further

diminish their collective ability to participate in our democracy.

B. The Executive Order Threatens to Make Immigrants of Color Even More Vulnerable to Civil Rights Abuses.

Not only will the Executive Order re-establish a legally inferior underclass, but it also would constitute a government endorsement of escalating hostility towards immigrants of color.

This Administration’s animus toward immigrants, particularly immigrants of color, is well documented. *See, e.g., Donald Trump on Illegal Immigrants “Poisoning the Blood of Our Country,”* C-SPAN (Dec. 16, 2023), <https://www.c-span.org/clip/campaign-2024/donald-trump-on-illegal-immigrants-poisoning-the-blood-of-our-country/5098439> (President Trump stating that immigrants are “poisoning the blood of our country”); Darran Simon, *President Trump’s other insensitive comments on race and ethnicity*, CNN (Jan. 13, 2018), <https://www.cnn.com/2018/01/11/politics/president-trump-racial-comments-tweets> (President Trump falsely stating that Mexican immigrants were “people that have lots of problems” who are “bringing drugs” and “crime” and are “rapists”); Kathryn Watson & Zak Hudak, *Trump says he’d bring back “travel ban” that’s “even bigger than before,”* CBS News (July 7, 2023), <https://www.cbsnews.com/news/trump-bring-back-travel-ban-muslim-countries/> (President Trump stating that the Muslim travel ban was imposed to prevent people from “blowing up our cities” and “stealing our farms”); Isabella Murray et al., *Trump describes Somali immigrants as ‘garbage’ amid feud with Minnesota congresswoman, governor*, ABC News (Dec. 3, 2025), <https://abcnews.com/Politics/trump-describes-somali-immigrants-garbage-amid-feud-minnesota/story?id=1>

28069199 (President Trump stating that Somali immigrants are “garbage”).

That antipathy cannot be disregarded. Rather, it is consistent with the current Administration’s disregard for the civil rights of nonwhite immigrants, even when those immigrants are U.S. citizens. This administration has followed through on then-candidate Trump’s promise to launch “the largest deportation operation in the history of our country,” by increasing the number of raids involving the detention and questioning of nonwhite persons who have been targeted and detained—often based on the color of their skin. *See* Joel Rose & Sergio Martínez-Beltrán, *Trump touts historic deportation plans, but his own record reveals big obstacles*, KUOW (Aug. 14, 2024), <https://www.kuow.org/stories/trump-touts-historic-deportation-plans-but-his-own-record-reveals-big-obstacles> (reporting then-candidate Trump’s remarks regarding deportations at the 2024 Republican National Convention).

For example, at the beginning of 2025, at least fifteen Native Americans in Arizona and New Mexico were “stopped at their homes and workplaces, questioned or detained by federal law enforcement and asked to produce proof of citizenship” within a week of President Trump taking office. Alaa Elassar, *Navajo Nation leaders raise alarm over reports of Indigenous people being questioned and detained during immigration sweeps*, CNN (Jan. 27, 2025), <https://www.cnn.com/2025/01/27/us/navajo-detained-ice-indigenous-immigration-trump> (citing reports from Navajo Nation officials). The unlawful and unjustified arrests of Native Americans have continued through January 2026. Susan Du, *Tribal leaders say ICE is detaining American Indians during immigration sweeps*, Minn. Star Trib. (Jan. 12, 2026), <https://www.startribune.com>.

com/ice-detaining-american-indians-minneapolis-leaders-say/601561760 (discussing members of the Oglala Sioux Tribe detained by ICE). In New Jersey, Immigration and Customs Enforcement (“ICE”) agents led a warrantless raid of a seafood warehouse wholesaler and requested documentation only for the nonwhite employees. Suzanne Gamboa & Nicole Acevedo, *Trump immigration raids snag U.S. citizens, including Native Americans, raising racial profiling fears*, NBC News (Jan. 28, 2025), <https://www.nbcnews.com/news/latino/trump-immigration-raids-citizens-profiling-accusations-native-american-rcna189203>.

More recently, 2,000 federal agents were deployed to the Minneapolis-St. Paul area—home to the largest Somali population in the United States—to carry out what the Department of Homeland Security deemed the “largest immigration operation ever.” Joshua Barajas, *Shooting deaths climb in Trump’s mass deportation effort*, PBS News (Jan. 29, 2026), <https://www.pbs.org/newshour/nation/a-look-at-shootings-by-federal-immigration-officers>; see also *Federal authorities plan operation in Minnesota focusing on Somali immigrants, AP source says*, PBS News (Dec. 2, 2025), <https://www.pbs.org/newshour/nation/federal-authorities-plan-operation-in-minnesota-focusing-on-somali-immigrants-ap-source-says> (reporting that this targeted immigration enforcement operation followed the termination of Temporary Protected Status for Somali migrants living in Minnesota). And hundreds of individuals were arrested in several communities in Maine as part of a federal ICE crackdown. Shrai Popat, *ICE arrests 100 people three days into Maine immigration crackdown, DHS says*, Guardian (Jan. 23, 2026), <https://www.theguardian.com/us-news/2026/jan/23/maine-immigration-crackdown-ice-arrests>. Latinos

were the subjects of 92% of arrests effectuated by ICE between February 2025 and early June 2025. Paul Ong et al., *State Variations in ICE Arrests*, UCLA Ctr. for Neighborhood Knowledge 9 (July 30, 2025), https://knowledge.luskin.ucla.edu/wp-content/uploads/2025/07/UCLA_CNK_State_Variations_in_ICE_Arrests_July2025.pdf.

Such activities hearken back to a time prior to and during Reconstruction, when newly freed Black people had to carry their manumission papers on hand for fear of being abducted and forced back into slavery. *See Free at Last? Slavery in Pittsburgh in the 18th and 19th Centuries*, Univ. of Pittsburgh, <https://exhibit.library.pitt.edu/freetatlast/intro.html> (last visited Feb. 23, 2026). ICE agents regularly ask individuals for proof of citizenship, and the Secretary of Homeland Security has defended such actions. Jennifer Bendery, *Kristi Noem Says ICE Agents ‘Doing Everything Correctly’ In Minneapolis*, HuffPost (Jan. 15, 2026), https://www.huffpost.com/entry/kristi-noem-ice-agents-violate-4th-amendment_n_6967f34de4b0da4905d33f75.

The parallel is worsened by the fact that federal agents have disregarded the very proof of citizenship status that they request and have detained U.S. citizens of color despite having been shown their identification papers. *See, e.g.,* Mekhalo Medina & Helen Jeong, *Report: U.S. citizens detained unlawfully by federal immigration agents*, NBC Los Angeles (Dec. 9, 2025), <https://www.nbclosangeles.com/news/local/report-us-citizen-detained-senate-ice/3813852/>; *see also* Complaint at 17, 20–21, Dkt. No. 2, *Mubashir Khalif Hussen et al. v. Kristi Noem et al.*, No. 26-cv-00324 (D. Minn. Jan. 15, 2026) (describing immigration-related arrests, assaults, and detentions of U.S. citizens of color by the Department of Homeland

Security and ICE, without warrants or probable cause to believe they are removable); *Unchecked Authority: Examining the Trump Administration's Extrajudicial Immigration Detentions of U.S. Citizens*, U.S. S. Permanent Subcomm. on Investigations (Dec. 9, 2025), https://www.hsgac.senate.gov/wp-content/uploads/2025/12/8_ICE-Report-revised-FINAL.pdf (detailing 22 instances of U.S. citizen detentions between June and November 2025 in which federal agents “regularly reject[ed] legitimate proof of citizenship,” including U.S. passports and state STAR IDs, with some detentions exceeding 48 hours).

The Court should reject the Executive Order as unconstitutional. If allowed to stand, it will effectively revive *Dred Scott's* unconstitutional and exclusionary conception of citizenship and once again condemn generations of future, native-born Americans to live as members of a legally inferior underclass. America long ago rejected that abhorrent proposition; this Court should, too.

CONCLUSION

For the foregoing reasons, and those set forth by the Respondents, this Court should hold that the Executive Order is invalid on its face because its distortion of birthright citizenship conflicts with the Citizenship Clause of the Fourteenth Amendment and with 8 U.S.C. § 1401(a).

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