

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

**BRIEF OF CENTER FOR RENEWING
AMERICA AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

The Center for Renewing America, Inc. (CRA) is a non-profit corporation organized exclusively for charitable, religious, educational, and scientific purposes under Section 501(c)(3) of the Internal Revenue Code.

Amicus is dedicated to renewing the United States as a sovereign constitutional republic grounded in ordered liberty, the rule of law, and self-government. The Center for Renewing America conducts research and publishes scholarship on citizenship, immigration, constitutional structure, and the original public meaning of the Fourteenth Amendment. CRA has a substantial interest in the proper interpretation of the Citizenship Clause's requirement that a person be "subject to the jurisdiction" of the United States at birth. U.S. Const. amend. XIV, § 1, cl. 1. In the Center's view, that requirement reflects a longstanding constitutional distinction between territorial jurisdiction and complete political jurisdiction, the latter of which depends on lawful allegiance and membership in the national political community.

The Center has previously articulated this jurisdictional framework in published analyses addressing both birthright citizenship and constitutional representation. See Ken Cuccinelli, *Primer: Ending Birthright Citizenship Is Imperative for Preserving the United States*, CTR. FOR

¹ No counsel for a party authored this brief in whole or in part. No person or entity, other than the *amicus curiae*, or its counsel, made a monetary contribution to its preparation or submission.

RENEWING AM. (Feb. 11, 2025), <https://americanrenewing.com/issues/primer-ending-birthright-citizenship-is-imperative-for-preserving-the-united-states/>; Benjamin Osborne, *Primer: Fixing the Weaponized Redistricting Process*, CTR. FOR RENEWING AM. (Nov. 24, 2026), <https://americanrenewing.com/issues/primer-fixing-the-weaponized-redistricting-process/>.

Because the meaning of “jurisdiction” bears directly on the constitutional definition of citizenship, political membership, and the integrity of self-government, CRA has a strong interest in ensuring that the Citizenship Clause is interpreted consistently with its text, history, and structure.

SUMMARY OF ARGUMENT

The Fourteenth Amendment confers citizenship only on persons born in the United States who are “subject to the jurisdiction thereof.” U.S. Const. amend. XIV, § 1, cl. 1. That phrase does not refer to mere physical presence within national borders. *See Osborne, supra*. It describes complete political jurisdiction, a relationship of lawful allegiance, obedience, and protection, that defines membership in the sovereign people.

Contemporaneous explanations confirm that “subject to the jurisdiction” referred to complete political jurisdiction rather than mere presence, a distinction recognized in Reconstruction debates and later adopted by this Court. *See Elk v. Wilkins*, 112 U.S. 94, 102 (1884); Cong. Globe, 39th Cong., 1st Sess. (1866). Persons subject only to partial, temporary, or incidental jurisdiction were excluded. This

constitutional distinction between territorial jurisdiction and political jurisdiction has been consistently recognized in citizenship, naturalization, and representation contexts. *See Cuccinelli, supra; Osborne, supra.*

The Executive Order at issue applies this constitutional rule. Exec. Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025). It recognizes that individuals unlawfully present in the United States have not placed themselves within the nation's complete political jurisdiction and therefore cannot satisfy the Citizenship Clause's jurisdictional requirement.

Respondents rely on *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), but that reliance misconstrues both the holding and the methodology of the case. *Wong Kim Ark* did not adopt a purely territorial rule. It held that the Citizenship Clause codified common-law principles grounded in reciprocal allegiance and protection. *Id.* at 654–55. The Court identified specific exceptions for foreign diplomats, hostile forces, and persons in other “peculiar” relations to the sovereign not as an exhaustive list but as illustrations of a broader jurisdictional principle. *Id.* at 682

Illegal aliens fall outside that principle. By definition, they remain in the United States in defiance of the sovereign's lawful terms of admission and presence, and are subject to removal at any time; furthermore, similar to John Elk, they owe first allegiance to sovereigns other than the United States. *Elk*, 112 U.S. at 99. They are not within the nation's complete political jurisdiction and therefore cannot

transmit citizenship at birth. This conclusion is reinforced by constitutional practice in related contexts, including representation and enumeration, where persons lacking political allegiance have historically been excluded. *See Osborne supra.*

Because the Citizenship Clause does not extend to the children of illegal aliens, the judgment below should be reversed.

ARGUMENT

The Executive Order at issue in this case essentially limits birthright citizenship to children born in the United States to citizens and lawful permanent residents. Exec. Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025). Citing the Fourteenth Amendment's Citizenship Clause and 8 U.S.C. § 1401(a)'s limitation of birthright citizenship to those who are "subject to the jurisdiction" of the United States at birth, the Executive Order excludes children of nonimmigrants and illegal immigrants from birthright citizenship. *Id.* This amicus brief focuses on the question of whether illegal immigrants are entitled to birthright citizenship and explains why this Court's ruling in *Wong Kim Ark* strongly supports the Petitioner's position regarding illegal immigrants and birthright citizenship in regard to jurisdiction.

The Citizenship Clause confers birthright citizenship only on persons born in the United States who are "subject to the jurisdiction" of the nation in the complete political sense. Even the *Slaughterhouse Cases*, decided shortly after ratification, noted that the Clause defines national political membership and presupposes allegiance to the United States as a

sovereign, not mere presence within its territory, and foreclosed giving citizenship to “citizens or subjects of foreign States born within the United States.” *The Slaughter-House Cases*, 83 U.S. 36, 73 (1873). In *Wong Kim Ark*, the Court held that the Clause ratified common-law principles under which citizenship at birth depended on a reciprocal political relationship of allegiance, obedience, and protection, rather than territorial presence alone, drawing directly from *Calvin’s Case*, 77 Eng. Rep. 377 (1608), which rejected a purely place-bound conception of allegiance. *United States v. Wong Kim Ark*, 169 U.S. 649, 656-59 (1898). Those principles were not confined to the specific illustrations discussed in *Calvin’s Case* or *Wong Kim Ark*, but supply the governing rule for determining when a class of persons stands within the sovereign’s jurisdiction. Because illegal immigrants remain in the United States in defiance of its sovereign authority, owe allegiance elsewhere, and are subject to removal at any time, they do not stand within the nation’s complete political jurisdiction and therefore cannot transmit citizenship at birth under the Fourteenth Amendment.

I. The Citizenship Clause Requires Complete Political Jurisdiction, Not Mere Territorial Presence

The Citizenship Clause’s requirement that a person be “subject to the jurisdiction” of the United States establishes a constitutional threshold for membership in the national political community. U.S. Const. amend. XIV, § 1, cl. 1. That threshold is not satisfied by physical presence alone. Rather, it requires complete political jurisdiction, a relationship of lawful allegiance and sovereign authority.

Reconstruction-era explanations of the Citizenship Clause confirm this understanding. As contemporaries explained, being “subject to the jurisdiction” of the United States meant being subject to its complete political jurisdiction, that is, “not merely subject in some respect or degree,” but “completely subject” to the sovereign authority of the United States and “owing [it] direct and immediate allegiance.” *Elk v. Wilkins*, 112 U.S. 94, 102 (1884); Cong. Globe, 39th Cong., 1st Sess. 2893 (1866) (statement of Sen. Trumbull) (explaining that the Clause applies only to those “subject to the complete jurisdiction of the United States,” meaning persons who “owe allegiance to the United States”).

Modern constitutional analysis continues to reflect this distinction. As the Center for Renewing America has explained, constitutional terms governing membership, representation, and citizenship presuppose lawful presence and political allegiance, because the law must be read on the assumption that other laws are being followed. *See Osborne, supra.* Persons whose very presence contravenes federal law cannot be deemed members of the political community without nullifying the sovereign’s authority to define its own composition. *Id.*

This understanding supplies the proper lens for reading *Wong Kim Ark* and the common-law authorities on which it relied.

II. The Citizenship Clause Ratified English Common-Law Principles of Birthright Subjecthood Grounded in Reciprocal Allegiance and Protection

The Fourteenth Amendment's Citizenship Clause was not enacted to establish a novel doctrine of membership, but rather to constitutionalize centuries-old principles of the English common law governing natural-born subjecthood. In *Wong Kim Ark*, this Court recognized that the Citizenship Clause is "declaratory in form" because it codifies birthright citizenship principles "existing before its adoption." 169 U.S. at 676. The Amendment's primary purpose was to overturn the *Dred Scott* decision and ensure that African Americans, who under common-law principles should have been recognized as citizens at birth, would no longer be excluded from citizenship on racial grounds. 169 U.S. at 676. Yet the Amendment's text requiring persons to be both born in the United States and "subject to the jurisdiction thereof" incorporated the common law's foundational requirement that birthright status arises from a reciprocal relationship of allegiance, obedience, and protection between sovereign and subject, not from territorial presence alone. *Id.* at 656, 676.

Under English common law, birthright subjecthood originated from an exchange that political philosophers of the sixteenth and seventeenth centuries conceptualized as the essence of the social contract: the subject's submission and obedience to the sovereign in return for the sovereign's protection and governance. Jean Bodin, whose theories of sovereignty and citizenship profoundly influenced both *Calvin's Case* and later

Enlightenment thinkers, described this reciprocal bond as fundamental to the definition of citizenship itself. Bodin posited that “anyone who did not wish to abandon part of his liberty, and live under the laws and commands of another, lost it altogether.” Jean Bodin, *Six Books of the Commonwealth* 18 (M.J. Tooley trans., Oxford, 1955). The relationship between citizen and sovereign, Bodin argued, arose from a contractual bargain: subjection for protection. He asserted that “it is the submission and obedience of a free subject to his prince, and the tuition, protection, and jurisdiction exercised by the prince over his subject that makes the citizen.” *Id.* at 21.

Calvin's Case (1608), decided between the publication of Bodin's *Six Books of the Commonwealth* (1576) and Hobbes's *Leviathan* (1651), embedded these emerging social-contract principles into the common law of subjecthood. The case expressly adopted the maxim *protectio trahit subjectionem, et subiectio protectionem*, or “protection draws subjection, and subjection protection,” as the “fundamental principle governing natural-born subjecthood. *Calvin's Case*, 77 Eng. Rep. at 382. *Calvin's Case* held that “ligeance join[s] together the Sovereign and all his subjects ... for as the subject oweth to the King his true and faithful ligeance and obedience, so the Sovereign is to govern and protect his subjects.” *Id.* The Court further observed that “power and protection draweth ligeance,” in a reciprocal bond from sovereign to subject. *Id.* at 388.

This Court in *Wong Kim Ark* recognized this reciprocal principle as the “fundamental principle of the common law with regard” to birthright citizenship, quoting the maxim from *Calvin's Case*:

“expressed in the *maxim protectio trahit subjectionem, et subjectio protectionem.*” 169 U.S. at 655. The Court found that those “born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the King” were natural-born subjects under the common law. *Id.* Critically, this Court concluded that “the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children born here of resident aliens. *Id.* at 693.

When parents are in the United States illegally, they are in defiance of the sovereign rather than in allegiance. When those parents have children, such children are not born within the allegiance to the sovereign, i.e., are not born within the complete jurisdiction of the United States.

A. Calvin's Case Rejected a Place-Based Conception of Allegiance

The reasoning of *Calvin's Case* expressly rejected any conception of allegiance grounded in physical location or soil. The Court declared that “ligeance is a quality of the mind, and not confined within any place.” *Calvin's Case*, 77 Eng. Rep. at 382. It further held that “it is not the soil, but liegancy and obedience that make the subject born.” *Id.* at 384. To underscore this principle, the Court noted that “any place within the King's dominions without obedience can never produce a natural subject.” *Id.* at 399.

Calvin's Case made clear that parental allegiance and obedience, not mere location of birth,

determined whether a child was a natural-born subject. The decision held that it was insufficient that “the place of his birth be within the King's dominion;” rather, “the parents [must] be under the actual obedience of the King.” *Id.* Children “born under the obedience, power, faith, ligealty, or ligeance of the King, are natural subjects, and no aliens.” *Id.* at 383.

Calvin's Case distinguished between local obedience and natural allegiance. When “an alien that is in amity cometh into England,” the Court held, “as long as he is within England, he is within the King's protection; therefore so long as he is here, he oweth unto the King a local obedience or ligeance.” *Id.* This local allegiance arising from temporary presence and protection was sufficient to transmit natural-born subjecthood to children born during that period. Yet the allegiance that created this status was derivative from the parents' submission to the sovereign's authority and acceptance of the sovereign's protection, not from the mere fact of birth on English soil.

William Blackstone later formalized this distinction in his *Commentaries*, explaining that the common law recognized both “natural allegiance,” which “is such as is due from all men born within the king's dominions immediately upon their birth,” and “local allegiance,” which “is such as is due from an alien, or stranger born, for so long time as he continues within the king's dominion and protection.” 1 William Blackstone, *Commentaries on the Laws of England* 357 (1765). Blackstone described allegiance as reciprocal, “a debt due from the subject, upon an implied contract with the prince, that so long as the one affords protection, so long the other will demean himself faithfully.” *Id.* at 358. Natural allegiance was

perpetual because the prince's duty of protection was perpetual; local allegiance was temporary because the prince's protection of the alien was temporary.

B. Common-Law Examples Apply the Allegiance-Based Jurisdictional Rule

To illustrate the principle that allegiance and obedience, not soil, created natural-born subjecthood, *Calvin's Case* identified two circumstances in which birth within the King's dominions did not confer subject status. First, the Court noted that "if any of the King's ambassadors in foreign nations, have children there of their wives, being English women, by the common laws of England they are natural-born subjects, and yet they are born out of the King's dominions." *Calvin's Case*, 77 Eng. Rep. at 399.² Second, the Court observed that "if enemies should come into any of the King's dominions and surprise any castle or fort, and possess the same by hostility, and have issue there, that issue is no subject to the King, though he be born within his dominions, for that he was not born under the King's liegeance or obedience." *Id.*

² The same principle is reflected in American nationality law, which has never treated territorial birth as the sole determinant of citizenship. Under federal statute, a child born abroad to two United States citizen parents acquires citizenship at birth, provided that at least one parent had a residence in the United States prior to the child's birth. 8 U.S.C. § 1401(c). Like the ambassador exception recognized in *Calvin's Case*, this rule rests on political allegiance and parental subjection to the sovereign rather than the place of birth, confirming that citizenship has long turned on jurisdiction and allegiance, not soil alone.

There is no indication that these examples were intended as an exhaustive catalog of all possible circumstances in which birth within the sovereign's territory would not confer subjecthood. Rather, as Justice Story explained in *Inglis v. Trustees of Sailor's Snug Harbor*, these are "some exceptions which are founded upon peculiar reasons and which indeed illustrate and confirm the general doctrine." 28 U.S. 99, 155 (1830) (Story, J., concurring in part and dissenting in part). The exceptions demonstrate that the governing rule is allegiance-based: children of ambassadors born abroad remain subjects because their parents remain under the sovereign's allegiance and protection; children of invaders born within occupied territory do not become subjects because their parents owe allegiance to a hostile sovereign and are not under the King's protection in the relational, social-compact sense.

In *Wong Kim Ark*, this Court recognized that the Citizenship Clause's jurisdictional language was intended "to exclude, by the fewest and fittest words . . . the two classes of cases" excluded by the common law, children of ambassadors and children of invading enemies. 169 U.S. at 682. But the Court also acknowledged that the Clause excludes persons "standing in a peculiar relation to the National Government, unknown to the common law." *Id.* This Court specifically noted that "children of members of the Indian tribes" are excluded from birthright citizenship under the common law's principle of allegiance, even though the English common law never directly addressed the citizenship status of tribal Indians. *Id.*

The common-law exceptions thus illustrate a broader principle: birthright subjecthood requires that the parents, at the time of the child's birth, stand in the reciprocal relationship of allegiance and protection with the sovereign. Where that relationship is absent—whether because the parents owe allegiance to a foreign sovereign as diplomatic representatives, owe allegiance to an enemy sovereign during hostile occupation, owe primary allegiance to a tribal sovereign rather than to the United States, or have actively and intentionally avoided entering into allegiance to the United States, e.g., by illegally entering or remaining in the United States—the jurisdictional predicate for birthright citizenship does not exist.

C. The Fourteenth Amendment's Original Meaning: Overturning *Dred Scott* and Excluding Those Not Under Complete Jurisdiction

The Fourteenth Amendment was enacted to ensure that the common-law rule of birthright citizenship would apply to all persons born in the United States under its jurisdiction, thereby overturning the *Dred Scott* decision, which had wrongfully held that persons of African descent could never be citizens. *Wong Kim Ark*, 169 U.S. at 676. The Court reasoned that the phrase “All persons born” [is] . . . restricted only by place and jurisdiction.” *Id.* The amendment did not extend birthright citizenship universally to all persons born within the United States. The phrase “subject to the jurisdiction thereof” in the amendment imposed a threshold requirement grounded in the common-law principle of complete political jurisdiction and allegiance.

The Reconstruction Congress's treatment of "Indians not taxed" confirms that "subject to the jurisdiction" was understood to require complete political jurisdiction, not mere territorial presence. See *Elk*, 112 U.S. 94, 102 (1884); Cong. Globe, *supra* (statement of Sen. Trumbull). As originally reported, the *Civil Rights Act* of 1866 contained no express exclusion for tribal Indians, prompting concerns that the bill might improperly confer citizenship on persons who remained members of sovereign tribal communities with their own laws and governments. *Id.* In response, Senator Trumbull explained that such persons could not be deemed citizens because they did not recognize the authority of the United States, were not subject to its laws, and were governed instead by their own political communities. *Id.* To cure that jurisdictional defect, Trumbull amended the bill to exclude "Indians not taxed," employing constitutional language that captured the distinction between persons merely present within United States territory and those who had submitted to the nation's political authority. *Id.* As Trumbull further emphasized, citizenship would attach only when an individual had "submitted to the laws of organized society" and thereby entered the jurisdiction of the United States in the full political sense. *Id.* at 528. This Court later adopted the same understanding, holding that persons born within United States territory but owing allegiance elsewhere are not "subject to the jurisdiction" of the United States unless and until they are "completely subject" to its political authority. *Elk*, 112 U.S. at 102.

Illegal aliens by definition have intentionally refused to submit to the laws of the United States, and

have thus held themselves outside that allegiance and jurisdiction of the United States necessary to transmit citizenship to their children born within the territory of the United States.

III. The common law distinguished between territorial jurisdiction and complete political jurisdiction, and the Citizenship Clause incorporates that distinction

Respondents invoke common law to reduce jurisdiction to a territorial fact, but common law itself distinguished territorial jurisdiction from political jurisdiction grounded in allegiance. 1 Blackstone, *supra*, at 369–71. Blackstone distinguished local allegiance, which arises from presence within the realm and is temporary, from natural allegiance, which arises from subjecthood and is perpetual, and he described allegiance as reciprocal, owed so long as the sovereign affords protection. (1 Blackstone, *supra*, at 369–71.) *Calvin's Case* likewise rejected a place-bound view of allegiance, stating that “ligeance is a quality of the mind, and not confined within any place.” 77 Eng. Rep. at 382. This Court later adopted the same common-law distinction when interpreting the Fourteenth Amendment’s jurisdiction requirement. *Elk*, 112 U.S. at 102. The Court held that “subject to the jurisdiction” means not subject “in some respect or degree,” but “completely subject” to the United States’ political jurisdiction and owing it “direct and immediate allegiance.” *Id.* At the same time, this Court has recognized that noncitizens present in the United States are within territorial jurisdiction for many constitutional purposes. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Plyler v. Doe*,

457 U.S. 202, 210 (1982). Those decisions show that territorial jurisdiction by presence is not the Citizenship Clause test, as the Clause requires complete political jurisdiction as a condition of membership. *Elk*, 112 U.S. at 102. Because illegal aliens are, at most, within territorial jurisdiction while present, but not “completely subject” to the nation’s political jurisdiction in the *Elk* and Trumbull sense, they do not satisfy the Fourteenth Amendment’s jurisdiction requirement for transmitting citizenship at birth. *Id.*; Cong. Globe, *supra* (statement of Sen. Trumbull).

IV. Respondents fail to address the Citizenship Clause’s underlying principles

Respondents argue that, because illegal immigrants do not fall within the ambassadors, invaders, or Indians exceptions discussed in *Wong Kim Ark*, they are entitled to birthright citizenship. That argument rests on a fundamental misreading of the decision. It treats *Wong Kim Ark*’s illustrative examples as a closed set of categorical exceptions, rather than as applications of underlying common-law principles. This confuses dicta for doctrine.

Wong Kim Ark did not hold that anyone born on U.S. soil is a citizen unless they fall within one of three enumerated exceptions. To the contrary, the Court emphasized that the Citizenship Clause must be interpreted “in the light of the common law,” and that citizenship at birth turns on principles of allegiance, obedience, and protection. *Wong Kim Ark*, 169 U.S. at 654–55. The Court explained why *Wong Kim Ark* himself satisfied those principles, not merely why he failed to fit within a particular exception. *Id.* at 693.

Respondents' argument fails for an additional and independent reason. It ignores the Clause's threshold requirement that a person be "subject to the jurisdiction" of the United States in the complete political sense. As this Court has explained, that requirement is not satisfied by being subject to the nation's laws "in some respect or degree," but requires being "completely subject" to the United States' political jurisdiction and owing it direct and immediate allegiance. *Elk*, 112 U.S. at 102. The common law likewise distinguished between territorial jurisdiction arising from presence and political jurisdiction arising from allegiance, a distinction the Fourteenth Amendment incorporates.

By collapsing political jurisdiction into mere territorial presence, Respondents avoid engaging with the dispositive question this Court's precedents require. They never explain how illegal immigrants, who entered outside of "amity" and remain in the United States in defiance of its sovereign authority and outside its political community, satisfy the Citizenship Clause's jurisdictional requirement. *Calvin's Case*, 77 Eng. Rep. at 383. Nor do they show how such persons meet the common-law principles of allegiance, obedience, and protection that *Wong Kim Ark* identified as controlling.

In short, Respondents fail to follow *Wong Kim Ark*'s methodology, fail to account for the Citizenship Clause's jurisdictional threshold, and fail to demonstrate entitlement to birthright citizenship under the principles that govern the Clause. Their argument therefore cannot sustain the judgment below.

CONCLUSION

For the foregoing reasons, *Amicus* urges the Court to rule in favor of Petitioners and reverse the judgment of the Court of Appeals.

Respectfully submitted,

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