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Legal Sidebar

Birthright Citizenship: Litigation Status Update

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On April 1, 2026, the Supreme Court heard oral arguments in *Trump v. Barbara* regarding Executive Order 14160, "Protecting the Meaning and Value of American Citizenship" (E.O. 14160 or the E.O.), which purports to limit who may be recognized as having U.S. citizenship based on having been born in the United States. President Trump issued the E.O. on January 20, 2025. The E.O. sets forth the policy that, 30 days after the issuance of the order, a child born to a mother who is either "unlawfully present in the United States" or lawfully present in the United States on a temporary basis, and to a father who is "not a United States citizen or lawful permanent resident at the time of" the child's birth, is not to be recognized as a United States citizen and shall not be issued any federal documentation, such as a passport or Social Security number. Plaintiffs in *Barbara* and other suits challenging the E.O. claim that the order is incompatible with the Citizenship Clause of the Fourteenth Amendment and federal law, and cite long-standing Supreme Court precedent and historical practice as supporting their claim. The government contends that persons covered by the E.O. are not entitled to citizenship at birth under either the Fourteenth Amendment or governing statute, and that the executive branch is accordingly authorized to make such policy as in the E.O.

This Legal Sidebar provides a brief overview of E.O. 14160 and an update on where lawsuits challenging the E.O.'s legality stand following the Supreme Court's decision in *Trump v. CASA, Inc*., in which the Court partially stayed nationwide injunctions that would have prevented E.O. 14160 from taking effect. To date, the district and appellate courts that have considered the merits of the constitutional and statutory challenges to E.O. 14160 have determined

- the parties that filed the suits have standing, which in some cases was not challenged by the government. In *Barbara*, the district court certified a class action and found that the individuals within the class have standing. The government concedes that these class members "plainly have Article III standing";
- the E.O. is unconstitutional as it violates the Fourteenth Amendment Citizenship Clause; and
- the E.O. is unlawful as it violates the Immigration and Nationality Act (INA) (8 U.S.C. § 1401(a)).

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The Supreme Court granted certiorari in *Barbara*, where the parties agree that the plaintiffs have standing and the government does not challenge the district court's certification of a class action. As a result, the Court seems poised to rule on the validity of the E.O. The Supreme Court could either issue a ruling on the statutory question—whether the INA authorizes the policy set forth in the E.O.—or the Court could answer the constitutional question, of whether the E.O. is constitutional within the meaning of the Citizenship Clause.

Executive Order 14160

The first sentence 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." The E.O. purports to interpret the meaning of the Citizenship Clause's use of the phrase "subject to the jurisdiction thereof" when setting forth the Administration's policy on birthright citizenship.

E.O. 14160 states: "It is the policy of the United States that no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship, to persons" whom the executive branch believes are not granted birthright citizenship by the Fourteenth Amendment. The E.O. directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to "take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order."

Specifically, E.O. 14160 asserts that individuals born in the United States who are not "subject to the jurisdiction thereof" are excluded from the Citizenship Clause's grant of birthright citizenship. The E.O. further asserts that two categories of individuals covered by the order are not "subject to the jurisdiction" of the United States at birth and thus are not birthright citizens within the meaning of the Fourteenth Amendment: (1) a child whose mother was not lawfully present in the United States at the time of the child's birth, and whose father was not a U.S. citizen or lawful permanent resident at the child's birth; and (2) a child whose mother was lawfully but temporarily in the United States when the child was born, and whose father was not a U.S. citizen or lawful permanent resident at the child's birth.

Litigation Prior to *Trump v. Casa, Inc.*

Shortly after the President issued E.O. 14160, several organizations, expectant mothers, states, and localities filed lawsuits in district courts throughout the United States challenging the E.O.'s legality (see **Table 1** below). In general, the plaintiffs alleged that the E.O. violates the Citizenship Clause. The plaintiffs also alleged the order violates the INA (8 U.S.C. § 1401(a)) that, like the Citizenship Clause, provides that "a person born in the United States, and subject to the jurisdiction thereof" is a national and citizen of the United States at birth. The plaintiffs sought declaratory and injunctive relief, asking the courts to declare the E.O. unconstitutional and unlawful, and to preliminarily and permanently enjoin the Administration from enforcing the E.O. In considering the requests for an injunction, the various lower courts determined the plaintiffs were likely to succeed on the merits of their claims and, in most cases, granted nationwide injunctions (sometimes called "universal" injunctions) halting the implementation of E.O. 14160. The courts that did not issue nationwide injunctions nevertheless issued injunctions applicable to the parties in each case, and, as a result, the government was barred from enforcing the E.O.

The government sought emergency relief—a stay preventing the nationwide injunctions from taking effect—in the Supreme Court. On June 27, 2025, the Court granted the federal government's application to partially stay the injunctions in *Trump v. Casa, Inc.*, concluding that universal injunctions "likely exceed the equitable authority that Congress has granted to federal courts." The Court explained that its stay applied "only to the extent that the injunctions are broader than necessary to provide complete relief

to each plaintiff with standing to sue" and directed the lower courts to move "expeditiously" to ensure the injunctions complied with the Court's ruling. (For more on *Casa, Inc.*'s effect on nationwide injunctions, see CRS Report R48600, *Trump v. CASA, Inc. and Nationwide Injunctions During the Second Trump Administration*, by Joanna R. Lampe (2025), and CRS Legal Sidebar LSB11331, *Trump v. CASA, Inc.: Supreme Court Limits Nationwide Injunctions*.)

Litigation Following *Trump v. CASA, Inc.*

After the Court's decision in *CASA*, litigation over the legality of E.O. 14160 and plaintiffs' requests to enjoin application of the E.O. continued in the lower courts. The Supreme Court has held that to prevail on a motion for a preliminary injunction, a plaintiff must demonstrate (1) a likelihood of "success on the merits"; (2) a likelihood that the plaintiff "would suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [the plaintiff's] favor"; and (4) "an injunction is in the public interest." Plaintiffs' primary argument to establish their likelihood of success on the merits is that the E.O. violates both the Citizenship Clause of the Fourteenth Amendment and the INA.

The plaintiffs argue that the plain text of the Fourteenth Amendment, as interpreted by the Supreme Court in *United States v. Wong Kim Ark*, confirms that all individuals born in the United States are citizens, subject only to very limited exceptions. The plaintiffs' arguments derived from the English common law rule of *jus soli*: the principle that individuals are citizens of the nation in which they are born. Plaintiffs argue, for example, that the Court recognized in *Wong Kim Ark* that, "in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution," only a limited subset of individuals are not "subject to the jurisdiction" of the United States for purposes of birthright citizenship under the Fourteenth Amendment, such as children born to diplomats serving in the United States. Plaintiffs also cite *Wong Kim Ark* to note that, in that case, the Supreme Court articulated further exceptions from birthright citizenship, based on the law as it stood at the time of the 1898 decision. Then, children born to Indian tribes—together with children born on foreign ships, or to occupying armies—were also excluded from the Citizenship Clause because they were thought to be born *not* "subject to the jurisdiction" of the United States. (Congress changed this by statute in 1924.) Other than these very limited exceptions, plaintiffs assert, children born in the United States are citizens at birth, regardless of their parents' alienage—and therefore, the E.O. is unconstitutional.

A number of plaintiffs also argue that the E.O. violates the INA. In 1940, Congress enacted the Nationality Act of 1940 and included a provision that mirrors the Fourteenth Amendment's Citizenship Clause. Plaintiffs point to legislative history that reveals that the statutory language was "taken of course from the [F]ourteenth Amendment to the Constitution." Plaintiffs note that Congress reenacted this language in 1952 as part of the INA (currently found at 8 U.S.C. § 1401(a)). The plaintiffs assert that this parallel language indicates Congress intended for the INA to be coterminous with—that is, to codify in statute—the Citizenship Clause as the Supreme Court interpreted it in *Wong Kim Ark*.

In response to these arguments, the government contends that the Citizenship Clause of the Fourteenth Amendment, and the parallel language in the INA, should be understood to reference an individual's domicile, rather than place of birth. The government claims that the individuals who would be subject to the E.O. are not entitled to birthright citizenship because "citizenship flows from lawful domicile," and children whose parents have no lawful residence in the United States must fall outside of the Citizenship Clause. The government also argues that the phrase "subject to the jurisdiction thereof" refers to "political jurisdiction" and that "persons are only subject to the political jurisdiction of the United States if they owe primary allegiance to the United States," thus excluding individuals "who owe allegiance to a different sovereign."

The courts that have considered the merits of plaintiffs' claims have held in their favor, finding that the plaintiffs have a strong likelihood of success on the merits of their constitutional and statutory challenges.

For example, in *Barbara v. Trump*, the district court determined that the E.O. likely "contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it." The Ninth Circuit in *Washington v. Trump* held that, "[s]ince *Wong Kim Ark*, . . . the Judiciary, Congress, and the Executive Branch have consistently and uniformly protected the Citizenship Clause's explicit guarantee of birthright citizenship regardless of the immigration status of an individual's parents."

To date, reviewing courts have likewise concluded that the E.O. likely violates 8 U.S.C. § 1401. In *Washington v. Trump*, the Ninth Circuit explained that "a statute adopting language from another source," as Section 1401 adopted the language of the Citizenship Clause, "generally conveys the original source's well-settled meaning." Similarly, the First Circuit held that, unless otherwise defined, statutes should be interpreted "as taking their ordinary, contemporary, common meaning at the time Congress enacted the statute." The First Circuit explained that, according to Supreme Court precedent, "in general, where Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it." The circuit court illustrated that principle by reference to *United States v. Kozminski*, in which the Supreme Court held, when construing a statute meant to give effect to the Thirteenth Amendment's prohibition on involuntary servitude that, "in the absence of any contrary indications, [the Court gives] effect to congressional intent by construing [statutory terms] in a way consistent with the understanding of the [Constitution] that prevailed at the time of [the statute's] enactment."

Trump v. Barbara at the Supreme Court

After CASA, these cases were considered by district and appellate courts, and these courts once again issued injunctions. (For an accounting of some of these cases, see **Table 1**, below). The federal government sought review by the Supreme Court in two cases: *Washington v. Trump* and *Barbara v. Trump*. The government filed identical petitions in both cases, but in *Barbara* it sought a petition for a writ of certiorari before judgment. This type of petition asks the Supreme Court to review a case still pending in a U.S. Court of Appeals before that court has had an opportunity to enter judgment. Under the Supreme Court's rules, a petition for a writ of certiorari before judgment "will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination" by the Supreme Court. On December 5, 2025, the Court granted the petition in *Barbara* on the question "whether the Executive Order complies on its face with the Citizenship Clause and with 8 U.S.C. § 1401(a), which codifies that Clause."

In challenging the injunction against E.O. 14160, the government argues that the Fourteenth Amendment's Citizenship Clause "was adopted to grant citizenship to freed slaves and their children—not to the children of temporarily present aliens or illegal aliens." The government claims that the Clause only extends to children who are subject to the "political jurisdiction" of the United States, which means these children "owe direct and immediate allegiance" to the United States and, therefore, "may claim its protection." The government contends that the view that birth within the United States confers citizenship is a misinterpretation of the Citizenship Clause and that E.O. 14160 "restore[s] the Clause's original meaning."

The government maintains that the Citizenship Clause was originally understood to extend citizenship to children of citizens and to children of aliens who are considered to be permanently domicile in the United States. The government asserts that "a domiciled alien owes allegiance to the country where he lives and may invoke its protection against other nations." The government further argues that plaintiffs' assertion that, under the Citizenship Clause, a person is "subject to the jurisdiction" of the United States if they are subject to U.S. law "is plainly incorrect."

Lastly, the government argues that E.O. 14160 complies with Section 1401(a) and that plaintiffs have incorrectly asserted that the statute's meaning depends on what Congress believed the Citizenship Clause to mean at the time of enactment. The government contends that the statute's scope "depends on what the

Citizenship Clause actually means, not what Congress thought it meant in 1940 or 1952." The plaintiffs continue to press the arguments made in the lower courts.

Oral argument in *Barbara* occurred on April 1, 2026. At argument, the focus of the government's case was its argument that the proper Fourteenth Amendment analysis hinges on "domicile" and "political jurisdiction." The government argued that a parent's immigration status is a bright-line rule that would yield an administrable policy by which to determine each baby's birthright citizenship status. Both sides agreed that *Wong Kim Ark* controls this case, and neither asked for it to be overturned. The government argued that *Wong Kim Ark* also hinged on the plaintiff's "domicile" and this Court should follow that precedent. By contrast, plaintiffs argued that the discussion of "domicile" in *Wong Kim Ark* was dicta—that is, not binding law—and this Court should follow *Wong Kim Ark*'s holding, where the Court articulated that nearly every child born on U.S soil is a birthright citizen, subject to only very limited exceptions. Plaintiffs also argued that the government's focus on "domicile" would be difficult to administer in reality, with some justices asking whether immigration paperwork would be required in delivery rooms. Plaintiffs argued that the Citizenship Clause has only limited exceptions, those "cloaked with a fiction of extraterritoriality"—like the children of diplomats—and otherwise is a universal grant of birthright citizenship.

Notwithstanding the injunctions in place, the U.S. Citizenship and Immigration Services, the Social Security Administration, and the Department of Health and Human Services have issued guidance to implement the E.O. if it is eventually permitted to go into force. Additionally, since the E.O., a range of legislative proposals have been introduced in the 119th Congress to define the term "subject to the jurisdiction thereof," including H.R. 2337, the PARENT Act of 2025; S. 304 and H.R. 569, the Birthright Citizenship Act of 2025; and S. 2274 and H.R. 4741, the Constitutional Citizenship Clarification Act of 2025. Congress may enact statutory provisions to clarify the meaning of the term "subject to the jurisdiction thereof" as used in Section 1401(a), but it may wish to await the Supreme Court's decision of the separate constitutional question regarding what that same term means as used in the Fourteenth Amendment. That decision, and how it impacts the Court's interpretation of Section 1401(a), may aid Congress in determining how it wishes to proceed.

Table 1. Table of Selected Cases Challenging Executive Order (E.O.) 14160

Case Name	Federal District Court	Post-*CASA* Relief Granted	Status (as of date of Legal Sidebar)
Barbara v. Trump	U.S. District Court for the District of New Hampshire	On July 10, 2025, the district court provisionally certified a nationwide class, consisting of "all current and future persons who are born on or after February 20, 2025," and who would otherwise meet the categories set forth in the E.O.; the court granted a class-wide preliminary injunction, enjoining the administration from enforcing the E.O., after finding, among other things, that the plaintiffs will likely succeed in establishing the E.O. violates the Fourteenth Amendment and 8 U.S.C. § 1401(a).	The government filed a petition for a writ of certiorari before judgment with the Supreme Court, which was granted on December 5, 2025. Oral argument occurred on April 1, 2026.

Case Name	Federal District Court	Post-*CASA* Relief Granted	Status (as of date of Legal Sidebar)
Washington v. Trump	U.S. District Court for the Western District of Washington	On July 23, 2025, the Ninth Circuit held that the E.O. "is invalid because it contradicts the plain language of the Fourteenth Amendment's grant of citizenship." The court also held that plaintiffs are likely to succeed on the merits that the E.O. violates 8 U.S.C. § 1401a. The court affirmed the district court's grant of a nationwide injunction as "necessary to give the States complete relief on their claims."	On September 15, 2025, the Ninth Circuit issued the formal mandate, enjoining the Administration from enforcing the E.O.; the government filed a petition for a writ of certiorari with the Court on September 26, 2025. The matter remains pending before the Court.
New Hampshire Indonesian Community Support v. Trump	U.S. District Court for the District of New Hampshire	The district court granted a preliminary injunction on February 10, 2025; on October 3, 2025, the U.S. Court of Appeals for the First Circuit affirmed in part and vacated in part the district court's order granting the preliminary injunction ("largely for the reasons set forth" in the consolidated cases *Doe v. Trump*, No. 25-1169 and *New Jersey v. Trump*, No. 25-1170).	The First Circuit remanded the case for further consideration; mandate issued on November 25, 2025, enjoining the Administration from enforcing the E.O.
Doe v. Trump	U.S. District Court for the District of Massachusetts	The district court consolidated this case with *New Jersey v. Trump*, and granted a preliminary injunction (in *Doe,* the injunction is "limited to the individuals and the members of the associations"); on October 3, 2025, the First Circuit affirmed in part and vacated in part the district court's preliminary injunction.	The First Circuit remanded the case for further consideration; mandate issued on November 25, 2025, enjoining the Administration from enforcing the E.O. The government filed a petition for a writ of certiorari in the Supreme Court on January 30, 2026, that remains pending as of the date of this Legal Sidebar.
New Jersey v. Trump	U.S. District Court for the District of Massachusetts	The district court consolidated this case with *Doe v. Trump*, and granted a nationwide injunction, finding that a nationwide injunction was necessary to prevent state plaintiffs "from suffering irreparable harm"; on July 25, 2025, the district court declined to narrow the previously-granted injunction after the Supreme Court's ruling in *Trump v. CASA, Inc.*, finding that a "narrower option" would not "feasibly and adequately protect the plaintiffs from the injuries they have shown they are likely to suffer"; on October 3, 2025, the First Circuit affirmed in part and vacated in part the district court's grant of a preliminary injunction.	The First Circuit remanded the case for further consideration; mandate issued on November 25, 2025, enjoining the Administration from enforcing the E.O. The government filed a petition for a writ of certiorari in the Supreme Court on January 30, 2026, that remains pending as of the date of this Legal Sidebar.

CASA, Inc. v. Trump	U.S. District Court for the District of Maryland	On August 7, 2025, the district court granted class certification (i.e., "any child who has been born or will be born in the United States after February 19, 2025" and who would otherwise meet the categories set forth in the E.O.) and granted a class-wide preliminary injunction. The court found that plaintiffs "were extremely likely to succeed on their claim that the Executive Order violates the Fourteenth Amendment."	The government filed an appeal of the district court's decision to the Fourth Circuit. On December 9, 2025, the court granted the government's motion to hold the case in abeyance pending a decision by the Supreme Court in *Trump v. Barbara*.

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