Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Trump v. Barbara: Supreme Court Considers Birthright Citizenship

April 29, 2026

On April 1, 2026, the Supreme Court heard oral arguments in *Trump v. Barbara*. The question before the Court was whether Executive Order 14160 (E.O. 14160, or the E.O.), "Protecting the Meaning and Value of American Citizenship," is constitutional under the Fourteenth Amendment's Citizenship Clause and authorized by 8 U.S.C. § 1401(a), a provision of the Immigration and Nationality Act (INA) that codifies the Citizenship Clause. This Legal Sidebar provides a brief overview of the arguments made by the parties in this litigation and a summary of the oral argument. For further information on E.O. 14160 and earlier stages of the litigation, see CRS Legal Sidebar LSB11414, *Birthright Citizenship: Litigation Status Update*, by Hannah Solomon-Strauss and Juria L. Jones (2026).

The Citizenship Clause and Executive Order 14160

The Citizenship Clause of the Fourteenth Amendment 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 clause has been interpreted only sparingly by the Supreme Court since the Fourteenth Amendment's ratification in 1868. In those cases, the Court has interpreted the clause to mean that every child born in the United States is a citizen at birth, regardless of their parents' alienage.

On January 20, 2025, President Trump signed E.O. 14160. The E.O. seeks to interpret "subject to the jurisdiction thereof" in the Citizenship Clause to limit who may be considered a U.S. citizen from birth.

The E.O. 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 citizenship under the Fourteenth Amendment solely by being born in the United States.

The E.O. outlines two categories of persons that, in the view of the executive branch, are not "subject to the jurisdiction" of the United States and therefore are excluded from the Fourteenth Amendment's grant of birthright citizenship: (1) a child whose mother was not lawfully present in the United States, and whose father was not a U.S. citizen or lawful permanent resident, at the moment the child was born; and (2) a child whose mother was lawfully but temporarily in the United States, and whose father was not a

Congressional Research Service
https://crsreports.congress.gov
LSB11423

U.S. citizen or lawful permanent resident, at the moment the child was born. The E.O. asserts that children born in the United States to parents in either of these categories are not "subject to the jurisdiction" of the United States within the meaning of 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."

Trump v. Barbara at the Supreme Court

The question before the Court in *Trump v. Barbara* is whether the E.O. is constitutional—because the Citizenship Clause permits such a definition of birthright citizenship—and whether it is authorized by the INA, in which Congress codified the Citizenship Clause. During oral argument held on April 1, 2026, several key themes emerged from the Justices' questions.

Case Law and Precedent

Both plaintiffs and the executive branch argued that one of the Supreme Court's prior cases on the Citizenship Clause supported their arguments, and that the Court should follow that precedent to rule in their favor.

This prior case, *United States v. Wong Kim Ark*, is about the citizenship of a man born in the United States to parents who had emigrated from China. Wong Kim Ark's parents came to the United States and lived in San Francisco for more than twenty years, during which time Wong Kim Ark was born. At the time, the Chinese Exclusion Act barred Wong Kim Ark's parents from becoming citizens. They lived lawfully in the United States, but were ineligible to naturalize: they were, as the Court explains, "subjects of the Emperor of China." In 1890, they returned to China. Several years later, Wong Kim Ark visited his parents in China and, on his return to the United States, was barred at the border. He argued he was a birthright citizen because he was born on U.S. soil even though his parents were not U.S. citizens. As a citizen, he argued, he could not be excluded from the country. The Supreme Court agreed, holding that the Citizenship Clause meant Wong Kim Ark was a birthright citizen notwithstanding that his parents were not citizens, and were ineligible to become citizens, when he was born.

The plaintiffs argue that *Wong Kim Ark* controls *Barbara*, and that the earlier case holds that the Citizenship Clause grants birthright citizenship to every child born on U.S. soil not subject to rare exceptions. In fact, before the Supreme Court agreed to hear this case, plaintiffs argued the Court should decline to do so, because "it has already answered the constitutional question" that *Barbara* poses, in *Wong Kim Ark*. At oral argument, the plaintiffs continued to press their case that *Barbara* is resolved by consulting *Wong Kim Ark*'s holding.

The Solicitor General, arguing for the Trump Administration in defense of the E.O., agreed that *Wong Kim Ark* controls *Barbara*, but disagreed with plaintiffs' reading of the precedent. The executive branch argued the fact that Wong Kim Ark's parents were lawfully in San Francisco for twenty years—during which time Wong Kim Ark was born—indicates they were "domiciled" in the United States even though they could not naturalize, and that this mattered to the 1898 decision. The government argued that the Court's repetition of, and focus on, "domicile" in *Wong Kim Ark* suggests this was central to the Court's reasoning. Accordingly, the Trump Administration argued, the Court in *Barbara* should apply this "domicile" analysis to the Citizenship Clause. In response to a question from Justice Sotomayor, the Solicitor General said the executive branch was not asking the Supreme Court to overrule *Wong Kim Ark*, but instead to understand "domicile" as central to both cases and decide *Barbara* accordingly.

Domicile

The Solicitor General's opening remarks staked out a position that the Citizenship Clause was intended to give birthright citizenship to those newly freed from slavery with the end of the Civil War along with those persons' descendants. He argued that the Clause was never intended to grant citizenship to "the children of temporary visitors or illegal aliens" because, "unlike the newly freed slaves, those visitors lack direct and immediate allegiance to the United States. For aliens, lawful domicile is the status that creates the requisite allegiance, and the text of the clause presupposes domicile." The executive branch pointed to *Wong Kim Ark* as evidence that the Supreme Court's precedent also requires a consideration of domicile, because, in that case, the Court repeated the term many times through the opinion.

Plaintiffs disagreed with the Administration's argument that "domicile" was central to the *Wong Kim Ark* analysis. Instead, plaintiffs argued that the repetition of "domicile" in the 1898 case was merely a recitation of stipulated facts—because no one disagreed that Wong's parents were domiciled in the United States—and the holding of the case did not hinge on this fact. Rather than turn on this uncontested, background fact of the case, plaintiffs say, *Wong Kim Ark* squarely held that the Citizenship Clause grants birthright citizenship to every child born on U.S. soil not subject to rare exceptions. Plaintiffs' argument noted that the Fourteenth Amendment uses the word "jurisdiction," not "domicile" or, as the executive branch sometimes offered interchangeably, "allegiance."

The executive branch's arguments about domicile were at times met with questions from the Justices, who wondered how domicile is determined. In response to a question from Justice Thomas, the Solicitor General explained that the Fourteenth Amendment intended to give birthright citizenship to those newly freed from slavery: "the main object of the Citizenship Clause is to overrule *Dred Scott* and establish the citizenship of the freed slaves." Justice Barrett noted, however, that people brought to the United States through the slave trade may not have had an intent to stay—that is, they may not be lawfully domiciled under the government's test for birthright citizenship, even though the Trump Administration argued this population was the intended target of the Citizenship Clause. Justice Gorsuch also had an extended colloquy with the Solicitor General about whose domicile was relevant for determining birthright citizenship: the mother, father, or even the child's. The Justice noted that the language of the Citizenship Clause suggests a focus on the child's place of birth—"all persons born or naturalized in the United States"—whereas the Solicitor General's arguments in defense of the E.O. appeared focused on the parents' allegiance.

Status of Native Americans

Whether enrolled members of Indian tribes are birthright citizens under the Citizenship Clause is a question that dates to the codification of the clause itself. Legislative history indicates that Congress considered this question at length during the debates over the Citizenship Clause, and the Civil Rights Act of 1866, which was passed just before the Fourteenth Amendment. The Supreme Court addressed this question in *Elk v. Wilkins*, concluding that "Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes ... are no more 'born in the United States and subject to the jurisdiction thereof' within [the Citizenship Clause] than the children of subjects of any foreign government born within the domain of that government.... " In this case, the Supreme Court reasoned by analogy: since children born to diplomats serving in the United States were not birthright citizens—because they were subject to a foreign power—neither were children born owing allegiance to Indian tribes, because they, too, were subjects of a different sovereign. (Congress changed this by legislation; since 1924, enrolled members of Indian tribes have been birthright citizens.)

The question in *Barbara* is how, and whether, the Court's prior analysis of this question bears on the interpretation of the E.O.

The executive branch argued in its briefs before the Supreme Court that *Elk* was a case in its favor because "children of members of the Indian tribes owing direct allegiance to their several tribes" are not citizens at birth under the Fourteenth Amendment and, simultaneously, "Indian tribes residing within the territorial limits of the United States are subject to its authority." This means that, before Congress changed this by statute, children born to Indian tribes were born on U.S. soil but were not birthright citizens. They were not, as the Court reasoned in *Elk*, "completely subject to [the United States'] political jurisdiction and owing [it] direct and immediate allegiance." In the context of E.O. 14160, the Trump Administration argued this analysis authorized restricting birthright citizenship only to children born to parents with analogously "direct and immediate allegiance."

By contrast, the plaintiffs have a different explanation for *Elk*, arguing that the exceptions to the Citizenship Clause are a "closed set of exceptions to an otherwise universal rule." Only those "cloaked with a fiction of extraterritoriality because they are subject to another sovereign's jurisdiction even when they're in the United States" are excluded from the Citizenship Clause's grant of birthright citizenship, according to plaintiffs. This "closed set" includes children born to diplomats, children born to invading armies or aboard warships, and—for a time—children born to Indian tribes.

Bright-Line Rules

Both parties agreed that before the E.O., the status quo in the United States has been a bright-line rule: children born on U.S. soil, and not subject to rare exceptions, are birthright citizens. At oral argument, the Justices pushed both advocates to articulate what the legal standard might look like if the E.O. were to take effect, and how birthright citizenship might be determined if not an administrable bright-line rule.

Some of these questions were prompted by the executive branch's theory of the case, which relies on "domicile" having a subjective intent element. That is, the Trump Administration's argument turns in part on a person's mindset. Justice Barrett asked the Solicitor General squarely, "How would it work? How would you adjudicate these cases? You're not going to know at the time of birth for some people whether they have the intent to stay or not—including U.S. citizens, by the way." The Solicitor General responded that the E.O. turns on "an objectively verifiable thing, which is immigration status" and would not require an examination of subjective intent to remain in the United States.

Justice Jackson, referring back to Justice Barrett's questions, asked, "How does this work? Are you suggesting that when a baby is born, people have to ... present documents? Is this happening in the delivery room?" In response, the Solicitor General explained that the Social Security Administration (SSA) has promulgated guidance about how it will enforce the E.O. if it is permitted to take effect, and parents may contest—"after the fact"—the SSA's determination if they believe it has wrongly determined their child is not a birthright citizen.

Additionally, the Solicitor General noted that the E.O., by its terms, applies only prospectively: that is, only to children born after the E.O. takes effect.

Crafting the Court's Holding

The plaintiffs asked the Court to "reaffirm its decision in *Wong Kim Ark*." Likewise, the Trump Administration agreed that the holding of *Wong Kim Ark* would control this case. In addition to agreeing on the centrality of *Wong Kim Ark*, both parties agreed the Court should address the core merits issue in this case—the constitutionality of the E.O.

Justice Gorsuch asked, "at the end of the day, then, this is a straight-up constitutional ruling you want from this Court?" to which the Solicitor General responded affirmatively, in part because the executive branch's theory of the case rests on the assertion that "the statute and the Constitution mean the same thing."

Justice Kavanaugh noted that the Court sometimes opts to apply a rule of constitutional avoidance—that is, to decide cases on statutory grounds and to avoid constitutional holdings where possible—and asked plaintiffs whether that was one route to resolve this case. Plaintiffs responded, "it would be prudent to go ahead and reaffirm" *Wong Kim Ark*, but, "of course, we're happy to take a win on any ground."

A decision is expected by the end of the Court's term.

Author Information

Hannah Solomon-Strauss
Legislative Attorney

Disclaimer