

***Trump v. Barbara*: Supreme Court Holds Birthright Citizenship Executive Order 14160 Unconstitutional**

August 13, 2026

On June 30, 2026, the Supreme Court [decided](#) *Trump v. Barbara*, [holding](#) that the [Fourteenth Amendment](#) to the Constitution guarantees citizenship to children born on U.S. soil, including children born of parents temporarily or unlawfully present in the United States. In so concluding, the Court affirmed a lower court’s decision holding invalid [Executive Order 14160](#) (“EO 14160” or “the EO”), which sought to define birthright citizenship for the executive branch, and to determine that children born of persons unlawfully or temporarily present in the United States do not qualify for citizenship under the Fourteenth Amendment or the [Immigration and Nationality Act \(INA\)](#).

The Citizenship Clause and Executive Order 14160

The Citizenship Clause—the first sentence of the Fourteenth Amendment to the U.S. Constitution—[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.” Legal [scholarship](#) indicates that, in part, Congress’s intent in enacting the Citizenship Clause was to abrogate the Supreme Court’s 1857 holding in [Dred Scott v. Sandford](#), in which the Court concluded that individuals formerly enslaved and their descendants were not U.S. citizens and therefore could not bring lawsuits in federal court.

Since the Fourteenth Amendment’s ratification in 1868, it had been [widely held](#) that virtually every child who is born on U.S. soil and who is not subject to narrow exceptions is a U.S. citizen. In 2004, [an amicus brief](#) filed at the Supreme Court urged the Court to revisit this long-standing practice, arguing that persons born to noncitizen parents were not “subject to the jurisdiction” of the United States within the meaning of the Fourteenth Amendment.

On January 20, 2025, President Trump issued [Executive Order 14160](#), “Protecting the Meaning and Value of American Citizenship.” In the EO, President Trump declared that the executive branch would enforce an interpretation of the Fourteenth Amendment under which citizenship is not “universally” extended “to everyone born in within the United States.” The EO [outlines](#) two categories of persons that, in the view of the executive branch, are not “subject to the jurisdiction” of the United States under the Constitution and

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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 U.S. citizen or lawful permanent resident, at the moment the child was born. The EO asserts that U.S. policy forbids any federal department or agency from issuing documents recognizing U.S. citizenship to, or accepting documents issued by state or local governments recognizing U.S. citizenship from, persons excluded by the EO (individuals not “subject to the jurisdiction thereof”).

Plaintiffs—states, nonprofit organizations, and expectant parents whose children would be affected by the EO—sued immediately after the President issued the EO, and the EO was [enjoined](#) by [several federal courts](#). After one such district court enjoined the executive branch from enforcing the EO, the Trump Administration [asked](#) the Supreme Court to consider the case before a federal court of appeals could enter final judgment. The Court granted the government’s request and heard oral argument on April 1, 2026. For background on the oral arguments in *Barbara*, see this [Legal Sidebar](#).

The Opinion of the Court

The Chief Justice wrote the majority opinion for the Court, joined by Justices Sotomayor, Kagan, Barrett, and Jackson. The Court [concluded](#) that the authors of the Fourteenth Amendment sought to grant birthright citizenship to “every free-born person in this land,” and accordingly, the EO violates the Citizenship Clause because the EO sought to enforce a narrower class of birthright citizens than the Constitution requires.

The Court [reviewed](#) the history of the Fourteenth Amendment, and the efforts of the authoring Congress to reject the Supreme Court’s conclusions in *Dred Scott*. The Court [discussed](#) the baseline English common-law rule of citizenship that predated the American Revolution and applied to the American colonists and throughout the British Empire. The Court [explained](#) that the English common-law rule provided that the King owed protection to every person born in his dominions. In exchange for that protection, those “born within the dominions” [owed](#) the king a duty of allegiance. This allegiance-for-protection [rule](#) of citizenship is also known as *jus soli*, or right of the soil, because citizenship was tied to place of birth—the soil over which the ruler had dominion—and not to parentage or blood (*jus sanguinis*). The Court [explained](#) that this principle “crossed the Atlantic with the colonists” and, in a “Nation of immigrants . . . took on particular importance.”

The Court recounted the history of the Reconstruction Congress, which [sought](#) to undo *Dred Scott*. As the Court [explained](#), the Reconstruction Congress “did not start from scratch” but rather returned to the common-law principle of *jus soli*. The Court explained that although Congress could have legislated birthright citizenship—and did, in the [Civil Rights Act of 1866](#)—there was [concern](#) that Congress could not override *Dred Scott* by statute alone, and the goal was “to put the great question of citizenship beyond the legislative power.” Accordingly, Congress passed and the states ratified the Fourteenth Amendment in 1868, with language that “[mirrored](#) the common law.” The Court [explained](#) that the authors of the Clause understood it to be “declaratory of . . . the law of the land already.”

A [key disagreement](#) between the parties in *Barbara* was the meaning of the word “jurisdiction” in the Citizenship Clause. Plaintiffs argued it referred to the well-established, narrow exceptions to birthright citizenship (e.g., children born to diplomats), while the executive branch urged that it meant something closer to “allegiance.” The Court [explained](#) that this word was “hardly unknown to the drafters and ratifiers of the Fourteenth Amendment.” The Court further reasoned that “Congress chose to use an established legal term and the Clause must be interpreted in that light.” The Court concluded by explaining that “the Citizenship Clause [uses](#) jurisdiction in its ordinary sense—referring to the power of the United States to govern those within its territory.”

The parties [also disagreed](#) about the meaning of Supreme Court precedent on this question. Both parties argued that the Court's holding in *United States v. Wong Kim Ark* supported their arguments, but they offered conflicting interpretations about the scope of that case's holding. In *Barbara*, the Court agreed with the plaintiffs' interpretation: *Wong Kim Ark*'s holding confirms that the Citizenship Clause [grants](#) citizenship to "nearly all children born in the United States" and the Court saw "no reason to depart from that view today."

Concurrence

Justice Jackson wrote a concurrence, joined in part by Justice Sotomayor. Justice Jackson [spoke](#) specifically to the principal dissent authored by Justice Thomas, joined by Justice Gorsuch (discussed below), and rebutted the dissent's argument that the Citizenship Clause extends birthright citizenship only to newly freed slaves and their descendants. Justice Jackson [argued](#) that the Fourteenth Amendment did not bestow citizenship upon freed Blacks "as a reward for their military service" or for having "no other homeland and no allegiance to any foreign power"—as Justice Thomas [argued](#)—but instead "simply and solely by virtue of their having been born on American soil." Justice Jackson, recognizing that the Fourteenth Amendment is *not* colorblind, identified as central to the Fourteenth Amendment the rejection of any racial caste system and [emphasized](#) that the "Citizenship Clause applies universally precisely because such universal application was necessary to achieve the Amendment's own race-conscious remedial purposes."

Concurrence in the Judgment and Dissenting in Part

Justice Kavanaugh also [wrote](#) separately, concurring in the judgment and dissenting in part. Justice Kavanaugh disagreed with the Court's holding that the EO violates the Fourteenth Amendment. Justice Kavanaugh [would have](#) held that the EO violates the INA, 8 U.S.C. § 1401(a), which uses the same language as the Citizenship Clause.

Justice Kavanaugh [argued](#) that the Congress that enacted this provision in 1940 would have been aware of the Court's holding in *Wong Kim Ark* that birthright citizenship was universal but for [certain exceptions](#). He explained that if Congress wanted to create more exceptions—"and [thereby](#) test *Wong Kim Ark*'s statement treating the four exceptions as a closed set"—Congress would have chosen language that did not directly mirror the Citizenship Clause and language that the Court had interpreted as containing only those identified exceptions.

Justice Kavanaugh also observed the persuasive power of the executive branch's understanding of the INA. He explained that, until EO 14160, the executive branch "consistently interpreted § 1401(a) to encompass only those *Wong Kim Ark* exceptions to birthright citizenship." For these reasons, Justice Kavanaugh [would have](#) concluded that the EO violates the INA "unless and until" Congress enacts legislation altering § 1401(a)'s grant of birthright citizenship. In his view such revisions to the statute could be constitutional because, as Justice Kavanaugh [explained](#), the meaning of the Constitution can be interpreted to address developments that would have been unfamiliar to the authors of the text.

Dissents

Justice Thomas, joined by Justice Gorsuch, [dissented](#) because he interpreted the Citizenship Clause as reaching only children born or domiciled in the United States, a category that [does not include](#) children of "foreign temporary visitors." Accordingly, Justice Thomas concluded that "many potential applications of the [EO] are consistent with the public meaning of the Citizenship Clause."

Among a number of arguments advanced in his dissent, Justice Thomas [would adopt](#) the framework urged by the executive branch [at oral argument](#)—namely that the meaning of "subject to the jurisdiction

thereof” in the Citizenship Clause speaks to the “domicile” of the parents, not their location when the child was born. According to Justice Thomas, domicile and citizenship are so linked as to be “effectively synonymous at times.” On this view, temporary visitors are not citizens, so they cannot be considered domiciled. The dissent argued that everyone has only one legal domicile, an essential ingredient for citizenship, and someone cannot be “subject to the jurisdiction” of a place they are not domiciled.

Justice Thomas also addressed *Dred Scott* and its role in the Citizenship Clause debate. Justice Thomas agreed that the Clause overruled *Dred Scott* and guaranteed citizenship without respect to race—but only as to Black people already in America and their descendants. The majority opinion held that the Citizenship Clause extends birthright citizenship to everyone who is both born on U.S. soil and not subject to rare exceptions; conversely, Justice Thomas argued that the Clause extends only to persons domiciled in the United States and supported this argument by reference to *Dred Scott*. Justice Thomas explained that “Blacks were entitled to citizenship because they were Americans. They had no other homeland, owed no other allegiance to any foreign power, and were subject to no other authority.” Justice Thomas understood *Dred Scott* as rejecting the citizenship of Black Americans notwithstanding their domicile in the United States, and he therefore would interpret the Citizenship Clause’s aim is to only assure the citizenship of persons who could claim such domicile (i.e., Black Americans).

Justice Alito filed a dissent, arguing, among other things, that the Fourteenth Amendment “confers citizenship on only those children who, at birth, owe allegiance solely to this country.” Relying on the companion phrase in the Civil Rights Act of 1866, Justice Alito would have held that someone is “subject to the jurisdiction” within the meaning of the Citizenship Clause when they are not “subject to any foreign power.” In addition, echoing Justice Thomas and Justice Kavanaugh, Justice Alito argued that travel, immigration, and temporary visitors today are on a scale that were unimagined by the framers of the Fourteenth Amendment. He explained that the Court’s interpretation “preserves a powerful incentive to enter or remain in this country illegally.” Justice Alito further argued that “the Fourteenth Amendment dictates who must be a citizen, but it does not address who may be a citizen by Act of Congress” and urged that the Court “should not adopt an erroneous interpretation of the Fourteenth Amendment simply out of fear of the consequences of ‘rocking the boat’ or as a reaction to current immigration policy.”

Justice Gorsuch also dissented, explaining that this case involves “two competing views” of the Fourteenth Amendment, and that he was persuaded by Justice Thomas’s recitation of the original public meaning of the Citizenship Clause to join the principal dissent. Justice Gorsuch indicated that he wrote separately to emphasize this case’s procedural posture. Plaintiffs brought a facial challenge, alleging that there is no set of facts under which the EO could be constitutional. Justice Gorsuch describes this as a “demanding standard” that “is not met here.” Agreeing with Justice Thomas, Justice Gorsuch would likewise conclude that the Citizenship Clause does not extend birthright citizenship to children of parents in the United States only temporarily; accordingly, he asserted that there are circumstances where the EO could lawfully apply. Justice Gorsuch continued and questioned whether the EO’s denial of citizenship to children born to “parents who make their permanent home here, but do so in defiance of federal immigration laws” could survive a legal challenge given the “Court’s longstanding recognition that every person is domiciled somewhere.”

Considerations for Congress

The Court’s constitutional holding in *Barbara* defines the phrase “subject to the jurisdiction thereof” in the Fourteenth Amendment and confirms that the Amendment gives birthright citizenship to every person who is born on U.S. soil and who is not subject to certain exceptions.

Congress could consider legislation amending the INA to codify *Barbara*. The statute uses language identical to the Fourteenth Amendment to grant birthright citizenship, and Congress could amend this text to reflect the Court’s analysis and reasoning interpreting the phrase “subject to the jurisdiction thereof.”

Although it did not attempt to amend § 1401, the [Born in the USA Act](#), introduced in the 119th Congress before *Barbara* was decided, sought to reaffirm *Wong Kim Ark*'s articulation of birthright citizenship and prevent any federal funds from being used to enforce EO 14160.

In addition, as after *Dred Scott*, Congress could also pursue a constitutional amendment either to codify or to override *Barbara*. [As set forth in Article V](#), any amendment proposed by Congress must pass by two-thirds of both the House and the Senate [and then must be ratified](#) by three-fourths of the states.

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