

Explainer: Supreme Court Reaffirms Birthright Citizenship in *Trump v. Barbara*

Introduction

On June 30, 2026, the Supreme Court reaffirmed the [constitutional principle](#) of [birthright citizenship](#), holding that individuals born within the territory of the United States automatically acquire American citizenship at birth, subject to a few narrow exceptions. In *Trump v. Barbara*, the majority held that the [Fourteenth Amendment's Citizenship Clause](#) guarantees U.S. citizenship to nearly all individuals born in the United States, regardless of their parents' immigration status.

The Supreme Court's decision centered on whether the president may, through executive action, limit the scope of birthright citizenship. At issue was President Donald Trump's [Executive Order 14160](#), published on January 20, 2025, which directed federal agencies to deny automatic U.S. citizenship to certain children born in the United States if neither parent was a U.S. citizen or lawful permanent resident at the time of birth. Specifically, the Executive Order aimed to exclude children born to individuals who are unauthorized immigrants in the United States as well as children born to certain nonimmigrants temporarily present in the country, such as those holding [temporary visas](#).

During oral arguments, Solicitor General D. John Sauer [defended](#) the Executive Order, arguing that the [Citizenship Clause](#) has historically been misunderstood and that the phrase "subject to the jurisdiction thereof" requires more than being born on U.S. soil. According to the government's interpretation, the Clause extends citizenship only to children whose parents have established the type of permanent allegiance or lawful domicile that places them fully within the political jurisdiction of the United States.

The respondents, represented by Cecillia Wang, National Legal Director of the American Civil Liberties Union (ACLU), argued that the Executive Order 1) conflicted with the text of the Fourteenth Amendment, 2) is contrary to longstanding interpretation of the Citizenship Clause, and 3) is in direct opposition to the Supreme Court's 1898 decision in [United States v. Wong Kim Ark](#).¹ They contended that the [Citizenship Clause](#) establishes a straightforward constitutional rule: individuals born in the United States are citizens unless they fall within a small number of historically recognized exceptions, namely children born to diplomats, occupying military forces, or – formerly – certain categories of Native Americans.

¹ The case involved [Wong Kim Ark](#), who was born in San Francisco to Chinese parents who were long-term domiciled residents of the U.S. but were themselves ineligible to become naturalized U.S. citizens under federal law. After traveling abroad, Wong Kim Ark was denied reentry on the ground that he was not a U.S. citizen. The Supreme Court ultimately held that he acquired citizenship by birth under the Fourteenth Amendment because he had been born in the United States.

The majority agreed with the respondents. It concluded that the Executive Order conflicts with the Constitution because the [Citizenship Clause](#), enshrined in the first sentence of §1 of the [Fourteenth Amendment](#), provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." According to the Court, this language incorporates the longstanding common-law principle of *jus soli* (which literally means "the right of soil"), under which birth within the territory of the United States generally confers American citizenship, subject only to a few narrow historical exceptions.

This explainer provides an overview of the Supreme Court's decision in *Trump v. Barbara*, including summaries of the majority, concurring, and dissenting opinions, an examination of the constitutional questions presented by the case, and an analysis of the decision's implications for birthright citizenship in the United States.

Majority Opinion

The majority's opinion – authored by Chief Justice Roberts, and joined by Justices Sotomayor, Kagan, Barrett, and Jackson – traced the historical origins of birthright citizenship from English common law through early American jurisprudence. The majority explained that long before the adoption of the Fourteenth Amendment, courts and legal scholars consistently recognized that, under *jus soli*, children born within the United States acquired citizenship at birth, regardless of their parents' nationality. The Court emphasized that this principle was deeply rooted in American law and remained the prevailing understanding until the Supreme Court's infamous decision in [Dred Scott v. Sandford](#) departed from that tradition by denying citizenship to African Americans.

The opinion further noted that the [Reconstruction Congress](#) adopted the Fourteenth Amendment specifically to overturn *Dred Scott* and permanently constitutionalize the common-law rule of birthright citizenship. Referencing statements by the framers and ratifiers of the Fourteenth Amendment, the majority explained that the Citizenship Clause was intended to place the question of citizenship "once and forever [to] rest," beyond the reach of changing political majorities by establishing a fixed constitutional rule applicable to nearly everyone born on U.S. soil.

The Court rejected the government's argument that the phrase "subject to the jurisdiction thereof" requires a child's parents to possess lawful immigration status, permanent residence, or otherwise demonstrate political allegiance to the United States. Instead, the majority concluded that the phrase refers to the United States' sovereign authority over individuals within its territory. Because noncitizens present in the United States — including temporary visitors and individuals without lawful immigration status — remain

subject to U.S. laws and courts, their U.S.-born children satisfy the jurisdiction requirement of the Fourteenth Amendment.²

The Court also reaffirmed its 1898 decision in [*United States v. Wong Kim Ark*](#), describing it as the controlling precedent on birthright citizenship. The majority explained that *Wong Kim Ark* confirmed that the Fourteenth Amendment incorporated the common-law rule of citizenship by birth and recognized only a limited number of historical exceptions, such as children born to accredited foreign diplomats or enemy military forces occupying U.S. territory. The Court concluded that children born in the United States to parents who are temporarily present or unlawfully present do not fall within those exceptions and therefore acquire U.S. citizenship at birth.

Finally, the Court concluded that neither the text nor the history of the Fourteenth Amendment supports creating new exceptions based on parental immigration status. Because the Constitution does not distinguish between children born to citizens, lawful permanent residents, temporary visitors, or unauthorized immigrants, the Court held that the Executive Order impermissibly attempted to narrow a constitutional principle that has been recognized for more than a century. In contrast to the contentions of the dissenters, the majority argued that there is “scant evidence” for the “dramatically revisionist view” that birthright citizenship relies upon some notion of allegiance based upon the domicile of the parents, noting the congressional debates surrounding the Civil Rights Act of 1866 and the Fourteenth Amendment barely touched on the concept of domicile. Accordingly, the Court affirmed that, with only a few longstanding historical exceptions, individuals born in the United States are U.S. citizens under the Fourteenth Amendment.

Other Opinions

Five other justices drafted concurring and dissenting opinions, which are summarized as follows:

Jackson Concurrence

In addition to joining the majority opinion in full, Justice Jackson, joined in part by Justice Sotomayor, wrote separately to address arguments made by Justice Thomas in his dissent. In contrast to the Thomas dissent’s contention that the Citizenship Clause was a race-conscious remedial measure merely aimed at providing citizenship to freed slaves and their descendants, Jackson argued that the [Reconstruction Amendments](#) (including the Fourteenth Amendment) advanced larger egalitarian, “anticaste” principles. In presenting this argument, Jackson discussed the post-Civil War context of the Fourteenth

² In contrast, the children of diplomats temporarily stationed in the U.S. and possessing diplomatic immunity, are not afforded birthright citizenship.

Amendment, drawing on historical sources to argue that the Amendment applied universalist principles to advance equality in citizenship.

Kavanaugh Concurrence

Justice Kavanaugh concurred in the result and dissented in part, arguing that the Executive Order was invalid on statutory grounds but not unconstitutional. He believed that the Executive Order contravened the federal statute governing birthright citizenship ([8 U.S.C. §1401\(a\)](#)), but that the Fourteenth Amendment would not prevent Congress from creating new exceptions to birthright citizenship in addition to the traditional exceptions recognized in *Wong Kim Ark*. He contended that changes in circumstances, including the development of the modern immigration system, were unknown to the framers of the Fourteenth Amendment and that the Court should not assume they intended the Citizenship Clause to automatically resolve questions involving individuals who are unlawfully or temporarily present in the United States.

Thomas Dissent

Justice Thomas – joined by Justice Gorsuch – argued in dissent that the majority misinterpreted the original meaning of the Citizenship Clause and improperly expanded the constitutional guarantee of birthright citizenship beyond what the Fourteenth Amendment was intended to provide – affording birthright citizenship to the descendants of freed slaves. He would have upheld the Executive Order as constitutional.

In so arguing, Thomas contended that the phrase "subject to the jurisdiction thereof" requires more than mere physical presence within the United States, referencing a variety of alternative historical sources which would require that parents possess complete or primary allegiance to the United States in order for their children to obtain birthright citizenship.

Thomas also argued that *Wong Kim Ark* resolved only the narrow issue of citizenship of a child born in the United States to parents who had established a permanent domicile in the country and contended that much of the 1898 opinion's discussion of common law and birthright citizenship constituted dicta³ rather than binding precedent.

Alito Dissent

Justice Alito dissented separately, arguing that the majority misinterpreted the original meaning of the Fourteenth Amendment's Citizenship Clause by equating "subject to the jurisdiction thereof" with mere physical presence in the United States. He contended the historical record supports the idea that the framers of the Civil Rights Act of 1866 and the

³ Dicta are comments or observations made by a judge that are not necessary to decide the case. While these statements do not have binding legal effect, courts may consider them persuasive when deciding similar issues in future cases. (See Dicta; Cornell Law School; Legal Information Institute; Available at <https://www.law.cornell.edu/wex/dicta>)

Fourteenth Amendment intended birthright citizenship to extend only to children of individuals who owed complete political allegiance to the United States. He also argued that the majority's opinion would provide a "powerful incentive to enter or remain in this country illegally" and criticized the role of the federal courts in blocking prior state actions aimed at addressing illegal immigration.

Gorsuch Dissent

Justice Gorsuch wrote a brief separate dissent to explain why he joined Justice Thomas's opinion while emphasizing several additional points. Justice Gorsuch criticized the majority for relying heavily on English common law and for treating *Wong Kim Ark* as foreclosing constitutional questions involving modern immigration categories that were not before the Court in 1898. He contended that American birthright citizenship departed from English common law in requiring parents to establish permanent residence and allegiance to the United States. He concluded that the Executive Order could lawfully be applied to reject birthright citizenship for children of temporary visitors.

However, Gorsuch noted that he "harbor[ed] doubts" that the Executive Order could validly be used to deny birthright citizenship to children of undocumented parents who intended to make the U.S. their permanent home, even when in violation of the law.

Relevance of the Ruling

The Supreme Court's majority decision in *Trump v. Barbara* reaffirms a constitutional principle that has shaped the nation's identity for more than 150 years: individuals born in the United States are U.S. citizens under the Fourteenth Amendment, regardless of their parents' immigration status, subject only to a few narrow historical exceptions. By invalidating the Executive Order, the Court preserved a longstanding understanding of birthright citizenship that has provided certainty to generations of American families and reinforced the principle that citizenship is determined by the Constitution—not by changes in executive policy.

The decision also shifts attention from litigation over birthright citizenship to broader questions of immigrant integration and immigration reform. With the constitutional status of U.S.-born children reaffirmed, policymakers and community leaders can focus on helping immigrant families fully participate in American civic and economic life.