Trump v. Barbara Decision Affirms Birthright Citizenship for Children of Unlawfully or Temporarily Present Parents

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***Trump v. Barbara*, 609 U.S. ___ (June 30, 2026)**

In *Trump v. Barbara*, the U.S. Supreme Court issued a decision affirming that children born in the United States to parents who are unlawfully or temporarily present in the country are in fact "subject to the jurisdiction" of the United States and are therefore citizens of the United States at birth under the Fourteenth Amendment's Citizenship Clause. This question was raised by Executive Order No. 14160, issued by President Trump on January 20, 2025.

The decision was authored by Chief Justice Roberts, who was joined by Justices Sotomayor, Kagan, Barrett, and Jackson. Justice Jackson filed a concurring opinion, joined in part by Justice Sotomayor, elaborating on the historical context of the Citizenship Clause with respect to the ratification of the Fourteenth Amendment. Justice Kavanaugh filed an opinion concurring in the judgment but dissenting in part, disputing the majority's historical and constitutional analysis. Justice Thomas filed a dissenting opinion, joined by Justice Gorsuch, arguing for a narrower reading of the "subject to the jurisdiction" requirement. Justices Alito and Gorsuch also filed separate dissents.

Background

On January 20, 2025, President Trump issued Executive Order No. 14160, titled "Protecting the Meaning and Value of American Citizenship." The order declared that children born in the United States to parents who are unlawfully or temporarily present were not "subject to the jurisdiction" of the United States and thus did not qualify for citizenship under the Fourteenth Amendment or the Immigration and Nationality Act (INA).

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Several parents sued on their own behalf and on behalf of their children. They argued that the executive order violated the Fourteenth Amendment and the INA. The U.S. District Court for the District of New Hampshire agreed, provisionally certified a nationwide class, and entered a preliminary injunction barring enforcement of the order. Given the importance of the question presented, the Supreme Court granted certiorari before judgment in the court of appeals.

Supreme Court's Opinion

The Supreme Court began its opinion by tracing the common law rule of *jus soli*, under which children born within the sovereign's dominions owed natural allegiance regardless of how momentary their presence or what circumstances brought them there. The court explained that the Citizenship Clause of the Fourteenth Amendment mirrors the common law criteria. The phrase "subject to the jurisdiction" refers to the power of the United States to govern those within its territory, citing *Schooner Exchange v. McFaddon,* 11 U.S. 116 (1812), a landmark Supreme Court decision.

The Supreme Court also found its precedent in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), to be dispositive. *Wong Kim Ark* held that the Fourteenth Amendment was "declaratory" of the common law's "fundamental rule of citizenship by birth." All persons born in the United States were citizens. In *Trump v. Barbara*, the Supreme Court ultimately found no basis to depart from this longstanding precedent.

The government argued that natural allegiance alone was no longer sufficient to confer birthright citizenship and that a parent's domicile in the United States should be required. The Supreme Court found "scant evidence" for this view and noted that the words "mother," "father," "lawful," and "temporary" are entirely absent from the text of the Citizenship Clause.

Justice Jackson's Concurrence

Justice Jackson, joined in part by Justice Sotomayor, concurred with the court's opinion but wrote separately to respond to Justice

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Thomas's dissent. She rejected his characterization of the Citizenship Clause as a narrow, race-based remedy, arguing that this reading overlooks the broader purpose of the Reconstruction Amendments.

Justice Kavanaugh's Concurrence/Dissent

Justice Kavanaugh agreed with the result but disagreed with the court's constitutional reasoning. He would have resolved the case on the narrower ground that Trump's executive order contravenes the citizenship statute, 8 U.S.C. Section1401(a), without reaching the Fourteenth Amendment question.

Justices Thomas, Alito, and Gorsuch's Dissents

Justice Thomas, joined by Justice Gorsuch, dissented on the ground that the Citizenship Clause requires not just birth on U.S. soil but also domicile, so that children of temporary visitors or undocumented parents who are not domiciled here are not "subject to the jurisdiction" of the United States. Justice Alito likewise dissented, emphasizing that the Citizenship Clause's "subject to the jurisdiction" language differs from the Equal Protection Clause's "within its jurisdiction" language and requires sole allegiance to the United States. Justice Gorsuch, while joining Justice Thomas's dissent, wrote separately to argue that the executive order is at least lawful as applied to temporary visitors, so the facial challenge should fail regardless of how the order applies to other categories of parents.

Key Takeaways

- **Supreme Court confirmed birthright citizenship.** Children born in the United States to parents who are unlawfully or temporarily present are citizens at birth under the Fourteenth Amendment. The rule applies regardless of the parents' immigration status.
- **Executive power is limited with respect to citizenship requirements.** The decision makes clear that the president cannot redefine the scope of constitutional citizenship by

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executive order. The Citizenship Clause was designed to put the question of citizenship beyond legislative and executive power.

- **Decision relied on precedent.** The Supreme Court relied on the English common law of *jus soli*, the Civil Rights Act of 1866, the Fourteenth Amendment, and *Wong Kim Ark*.

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