

No. 25-365

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,

Petitioners,

v.

BARBARA, *et al.*,

Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the First Circuit

BRIEF OF SECURE FAMILIES INITIATIVE, THE CHAMBERLAIN NETWORK, BLACK VETERANS PROJECT, AND FOREIGN-BORN MILITARY SPOUSE NETWORK AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*¹

Secure Families Initiative (SFI) is a non-partisan, 501(c)(4) non-profit organization comprised of military spouses and family members. SFI's mission is to mobilize diverse military partners, parents, children, and veterans to vote and advocate for their communities. Recognizing that military families make enormous sacrifices to strengthen and defend our country, SFI seeks to influence issues of foreign policy and national security that especially impact SFI's members. SFI is committed to increasing the political participation of military voters and their families through educating, registering, and turning out a network of diverse and representative military voters in all elections. SFI believes that service members and their families have a deep and direct stake in having a fully representative government that is reflective of and responsive to all communities who make up the country.

The Chamberlain Network is a non-partisan, 501(c)(3) non-profit organization that works to mobilize and empower veterans to protect democracy through organizing, education, and community engagement. Named after Civil War hero Joshua Chamberlain, the Chamberlain Network seeks to honor his legacy of civic engagement and lifelong commitment to defending democracy that spans long beyond his military service. The Chamberlain

¹ No counsel for a party authored this brief in whole or in part and no person or entity other than *amicus*, their members, or their counsel made a monetary contribution to its preparation or submission.

Network builds state and local networks of veterans dedicated to promoting democratic values and human rights.

Black Veterans Project (BVP) is a nonpartisan, 501(c)(3) non-profit organization working to eliminate racial inequities in and out of uniform and to advance a movement for repair for Black veterans and military families. BVP publishes and advances data-driven research and scholarship to further public education on inequities facing Black veterans. BVP's efforts to improve public understanding of the experience of Black veterans in and out of uniform aims to promote bipartisan policy reform to foster greater equity and opportunity for Black veterans and their families.

The Foreign-Born Military Spouse Network (FBMSN) is a non-partisan, 501(c)(3) non-profit organization dedicated to empowering foreign-born military spouses by providing resources, support, and a vibrant community. As part of their mission to support the successful integration of spouses into military and American society, FBMSN connects members with support and access to essential resources that enable lives of stability and purpose.

Amici have a strong interest in ensuring that birthright citizenship, which is a cornerstone of American democratic equality and is vital to the existence of a government that is fully representative of the people, remains the law of the land as required by the Fourteenth Amendment.

SUMMARY OF ARGUMENT

The Fourteenth Amendment to the United States Constitution sets out the defining statement of American citizenship. The Citizenship Clause of the Fourteenth Amendment declares: “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.” U.S. Const. amend. XIV, § 1. The language of the Citizenship Clause, and its guarantee of birthright citizenship, is not qualified based on allegiance, domicile, immigration status, race, or country of origin of a person’s parents. The sweep of the Citizenship Clause is broad by design.

The Executive Order that President Trump has sought to implement, Protecting the Meaning and Value of American Citizenship, Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 20, 2025) (“Citizenship Stripping Order” or “Executive Order”), would deny citizenship to children born within the United States to parents who are undocumented as well as to parents who have lawful but temporary status. As every court to address the question has held, the Citizenship Stripping Order is a gross betrayal of the guarantees of the Fourteenth Amendment.

That betrayal is particularly incompatible with the values that military service embodies. Throughout this country’s history, military service has been a pathway to full participation in the polity, providing a route to citizenship for servicemembers and to lawful status for servicemembers’ close family. But the Citizenship Stripping Order would senselessly and

shamefully bar vast numbers of U.S-born children from serving the only country that has ever been their home.

The harms that the Citizenship Stripping Order would cause will reverberate far beyond the U.S.-born children most immediately impacted. Ending birthright citizenship would deprive millions of Americans of their foundational right to a representative government and would irreparably alter and degrade the democratic equality that all citizens enjoy. The Order further trenches on the rights of states to form and maintain a polity without castes. This Court should reject the Government's invitation to hollow the mandates of the Fourteenth Amendment and instead affirm the judgment below.

ARGUMENT

I. Birthright citizenship is central to American democratic equality.

The Citizenship Clause of the Fourteenth Amendment of the U.S. Constitution guarantees birthright citizenship to all persons born in and subject to the laws of this country. In setting out that guarantee, the Fourteenth Amendment cemented the democratic equality that is central to our Republic. Under the Fourteenth Amendment, neither the President nor Congress have the power to create disfavored classes of native-born persons. Birth in the United States—and not parentage or any other class, caste, or distinction—guarantees the rights and duties of citizenship. Equality of all before the law, and under a government that is accountable to all, is the foundational rule that the Fourteenth

Amendment ushered into existence. Today, no less than during Reconstruction, birthright citizenship as guaranteed by the Fourteenth Amendment is the key that unlocks equal membership and participation in the polity for all.

A. Citizenship is fundamental to securing one’s own political freedom, and military service has long been a respected path to such freedom.

“Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry.” *Afroyim v. Rusk*, 387 U.S. 253, 268 (1967). As the district court correctly concluded, the Citizenship Stripping Order is irreconcilable with the Fourteenth Amendment’s grant of broad democratic equality to all born in this country and subject to its laws.

The Fourteenth Amendment is the wellspring of such democratic equality. To start, citizenship brings with it the right and promise of the franchise. The right to vote is essential to our democratic system of government and is “preservative of all rights.” *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667 (1966); see, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The promise of the right to vote, guaranteed through birthright citizenship, found its Reconstruction-era culmination in passage of the Fifteenth Amendment, which wrote into the Constitution the “fundamental principle” that state and federal governments “may not deny or abridge the right to vote on account of race.” *Rice v. Cayetano*, 528 U.S. 495, 512 (2000). The Fifteenth Amendment was to be “the capstone in the

great temple of American freedom,” Cong. Globe, 40th Cong., 3rd Sess. 724 (1869), that would “make every citizen equal in rights and privileges.” *Id.* at 672. There could be no such capstone, of course, without birthright citizenship as enshrined in the Fourteenth Amendment’s Citizenship Clause.

Beyond providing access to the franchise, under the requirements set by the Constitution, birthright citizenship grants to U.S.-born children the possibility of becoming the head of the federal executive branch, as President of the United States. U.S. Const. art. II, § 1, cl. 5. But the rights unlocked by birthright citizenship are not limited to the rights to vote or run for office. As a land of immigrants, noncitizens of course enjoy many of the Constitution’s core protections—including, *inter alia*, free speech and due process. But citizenship opens the door to a wide array of further opportunities for civic participation, from jury service to certain forms of public service employment.

Birthright citizenship also provides opportunities for military service. Undocumented persons generally may not enlist, *see* 10 U.S.C § 504(b)(1), and, thus, under the Citizen Stripping Order many U.S.-born children would never have the opportunity to serve the only country they have ever known. This is contrary to this country’s longstanding encouragement of military service as intertwined with principles of citizenship. Indeed, military service has long provided a pathway to U.S. citizenship for hundreds of thousands of servicemembers and their families. Throughout the country’s history, Congress

has sought to provide incentives to military service through providing expedited paths to citizenship.

Thus, an 1813 law allowed noncitizens to immediately gain citizenship upon entering military service if they declared an intent to naturalize.² During the Civil War, an 1862 Union law allowed noncitizens who enlisted the opportunity to naturalize upon being honorably discharged and waived residency requirements.³ Similar laws were passed during both World War I and II.⁴

When Congress passed the Immigration and Naturalization Act (INA) in 1952, it enacted two provisions that allow noncitizens who serve to naturalize more quickly than others. Section 328 of the INA continues to provide that during peacetime, noncitizens can apply to become U.S. citizens after one year of military service. 8 U.S.C. § 1439. During war or national crisis, Section 329 of the INA allows noncitizens to naturalize immediately upon enlistment. 8 U.S.C. § 1440.

² *An Act Supplementary to the Act Heretofore Passed on the Subject of a Uniform Rule of Naturalization*, U.S. Statutes at Large 3 (1813).

³ *An Act to Define the Pay and Emoluments of Certain Officers of the Army, and for Other Purposes*, U.S. Statutes at Large 12 (1862).

⁴ See Muzaffar Chisti et al., *Noncitizens in the U.S. Military*, Migration Pol’y Inst., 4 n.8 (May 2019), <https://www.migrationpolicy.org/sites/default/files/publications/MPI-Noncitizens-Military-Final.pdf> (collecting statutes).

⁵ *Military Naturalization Statistics*, U.S. Citizenship and Immigr. Servs. (Nov. 6, 2024), <https://perma.cc/9QG6-WJK2>.

In the past 100 years, more than 760,000 noncitizens have enlisted and obtained U.S. citizenship through military service.⁵ This pathway to citizenship is not just a phenomenon of the 20th century. Indeed, since 2002, more than 187,000 members of the military have become naturalized U.S. citizens as a result of their service.⁶ This pathway to citizenship recognizes the sacrifices and contributions of immigrant service members and ensures that their essential contributions to the country are equally recognized through full membership in the democratic polity. The military depends on the talents of these service members. “Without the contributions of immigrants, the military could not meet its recruiting goals and could not fill its need for foreign-language translators, interpreters, and cultural experts,” wrote Margaret D. Stock, a retired Lieutenant Colonel in the U.S. Army Reserve. See Margaret D. Stock, *Essential to the Fight: Immigrants in the Military Eight Years After 9/11*, Am. Immigr. Council (Nov. 2009), <https://perma.cc/5B7P-PFGS>.

Military service also plays an important role in mixed-status families—where some family members may be U.S. citizens or lawful residents, but others do not have lawful status. Just as their peers who have roots in the United States that go back centuries, U.S.-born adult-children of undocumented parents routinely join the U.S. armed forces in patriotic

⁶ Chisti et al., *supra* note 4.

service to their country.⁷ The U.S. Department of Homeland Security “recognize[s] the important sacrifices made by U.S. service members, veterans, enlistees, and their families” and, pursuant to authority granted to the Secretary of the U.S. Department of Homeland Security at 8 U.S.C. § 1182(d)(5)(A), may provide pathways for parole in place and deferred action for undocumented family members of active-duty, reserve, and veteran service members.⁸ Parole in place allows family members such as parents, a spouse, or children, who entered the U.S. without inspection, to remain lawfully in the country and potentially adjust their status to lawful permanent residency.⁹ This program, paired with birthright citizenship, provides an opportunity for servicemembers to potentially obtain lawful status for their parents or other family members through military service.

For *amici*, organizations whose members include past and current members of the U.S. military and their families, the rights and duties of U.S. citizenship are not lofty abstractions. In defense of the constitutional values embodied by American citizenship, U.S. servicemembers have regularly put their lives on the line. It is the military’s longstanding

⁷ See Greg Jaffe, *U.S. Citizens Are Joining the Military to Protect Undocumented Parents*, N.Y. Times (Jan. 12, 2026), <https://www.nytimes.com/2026/01/12/us/politics/oregon-guard-undocumented-parents.html>.

⁸ *Discretionary Options for Military Members, Enlistees, and Their Families*, U.S. Citizenship and Immigr. Servs. (Jan. 25, 2025), <https://perma.cc/4B39-95QD>.

⁹ *Id.*

policies of embracing and rewarding immigrant enlistment, and providing pathways to parole for servicemembers' families, that protect "national security and public safety," not the Executive Order. *See* Pet. Br. at 8. Indeed, Congress has repeatedly recognized that the country's democratic values are best served when military service provides paths for deepening ties to this country, including through ensuring that servicemembers' right to vote is afforded special protections. *See, e.g.*, 52 U.S.C. § 20301 *et seq.*

For a vast number of U.S.-born children, the Citizenship Stripping Order would foreclose not only access to the franchise and to military service, but all other rights and privileges of citizenship, simply because their parents are temporary or undocumented residents. To strip citizenship rights from countless persons who know no other home than the United States would degrade the civic equality and political freedoms that we all enjoy. By tying the rights and responsibilities of citizenship to parentage, rather than U.S.-birth, the Government's position undermines democratic equality for all.

B. Citizenship is fundamental to several pillars of civic participation.

Citizenship also determines whether one is eligible to fully participate in democratic society by serving in key civic roles. Again, many of these important civic roles—including jury duty and holding public offices or certain public employment—may be limited to U.S. citizens. Life as a noncitizen thus presents certain inescapable realities. First, you are ineligible to serve

your community in several prominent and impactful capacities. Second, there are no fellow noncitizens representing you or your unique concerns in certain civic institutions.

In general, only U.S. citizens are eligible to serve on state and federal juries. *See, e.g.*, 28 U.S.C. § 1865. Jurors are a pillar of the criminal justice system, and service on a jury is regarded by most adults as “part of what it means to be a good citizen.”¹⁰ As a form of community service, noncitizens are unable to contribute through jury duty. Thus, when faced with criminal charges, noncitizens are not tried by any other noncitizens. Under the Citizenship Stripping Order, this lack of a jury of their peers would become the case not only for immigrants who have chosen to enter the United States despite these limitations but for hundreds of thousands of individuals who made no such free choice.

Most major elected public offices—including governors, state legislators, members of Congress, and U.S. Senators—can only be held by U.S. citizens. *See, e.g.*, U.S. Const. art. I, § 3, cl. 3. Similarly, the Supreme Court has upheld laws that limit the employment of noncitizens in the police force, as peace officers, and as public school teachers because such public functions “go to the heart of community governance.” Karen Nelson Moore, *Aliens and the Constitution*, 88 N.Y.U. L. Rev. 801, 811-12 (2013); *see also Cabell v. Chavez-Salido*, 454 U.S. 432, 439 (1982);

¹⁰ John Gramlich, *Jury duty is rare, but most Americans see it as part of good citizenship*, Pew Rsch. Ctr. (Aug. 24, 2017), <https://perma.cc/V978-ZSJY>.

Ambach v. Norwick, 441 U.S. 68, 75-76 (1979); *Foley v. Connelie*, 435 U.S. 291, 295 (1978). As a result, noncitizens are both foreclosed from many of the most impactful avenues for public service and are unrepresented among certain political and community leaders.

Of course, civic participation is enabled by the bedrock freedom of movement that is another of the core rights of citizenship. “This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land[.]” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). “And it is clear that the freedom to travel includes the freedom to enter and abide in any State in the Union,” *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972) (citation omitted). The recognition of the freedom to travel served to remedy the restriction of movement of enslaved people, including those who would go on to fight and die on behalf of the United States during the Civil War. See *Plessy v. Ferguson*, 163 U.S. 537, 562 (1896) (Harlan, J., dissenting) (noting that “[t]he arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution”).

Today, that freedom of movement and residency is essential to the freedom to communicate, to engage in commerce, and to enjoy other benefits of economic and political liberty in the United States. These protected liberties include the ability of military families to

move freely about this country and establish residence where their servicemember parent, child, or spouse is stationed. *See e.g., Carrington v. Rash*, 380 U.S. 89, 94 (1965) (holding that states cannot ban military personnel from establishing actual residence for voting purposes merely because of “transient nature of service in the Armed Forces”).

Likewise, the right to citizenship guarantees the privileges and immunities of all other rights flowing therefrom, including the general protection from the abridgment of those rights. The Fourteenth Amendment expressly provides that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” U.S. Const. amend. XIV, § 1. Federal law guarantees that “any person” who deprives “any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws” will be held civilly or criminal liable. 42 U.S.C. § 1983. In other words, the protection from material deprivation of civil rights is the primary obligation of the United States to its citizens, and that obligation has been the cornerstone of the American constitutional order for more than 150 years. All of that constitutional bedrock would be swept away by the Citizenship Stripping Order for the hundreds of thousands of U.S.-born individuals who know no other home.

C. Citizenship status determines access to critical public programs.

Citizenship determines far more than one's ability to participate in democratic life. Various aspects of society are reserved for, or easier to access with, citizenship. Guarded by the imprimatur of citizenship, federal (and state) public social programs are a hallmark of American society. Petitioners, through the Citizenship Stripping Order, would create a new "permanent caste of undocumented resident aliens" and deprive them of the ability to participate in such programs. *Plyler v. Doe*, 457 U.S. 202, 218-19 (1982).

Citizenship determines eligibility for a staggeringly long list of critical federal (and state) programs. At the federal level, aside from a narrow category of "qualified aliens," *see* 8 U.S.C. § 1641(b), Congress has long barred noncitizens from accessing federal public benefits. 8 U.S.C. § 1611(a). The list of programs from which noncitizens are excluded spans the spectrum of necessities of daily life, including: "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, [and] unemployment benefit[.]" 8 U.S.C. § 1611(c)(1).

Noncitizens may be permanently or temporarily barred by Congress from accessing: Supplemental Nutrition Assistance Program (SNAP), Medicare, Medicaid, federally subsidized private insurance offered on the Affordable Care Act (ACA) state marketplaces, the Children's Health Insurance Program (CHIP), Supplemental Security Income

(SSI), Temporary Assistance to Needy Families (TANF), Housing and Urban Development (HUD) public housing and Section 8 voucher programs, Social Security, and any other federal benefits programs that are subject to the welfare restrictions imposed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996).¹¹

Even for those noncitizens who are designated “qualified aliens” for the purpose of certain federal programs, there is a five-year waiting period before they are eligible to access many such programs, a significant distinction in program accessibility for citizens and noncitizens. *See* 8 U.S.C. § 1613; 8 U.S.C. § 1612(b)(2)(A)(i)(V); 8 U.S.C. § 1612(a)(2)(L). Congress has likewise barred undocumented immigrants and unqualified lawfully present immigrants from eligibility for a vast number of state and local public benefits programs. 8 U.S.C. § 1621.

Moreover, the programs at issue include not only traditional benefits but many programs central to engaging in commercial enterprise and public life, including certain grants, contracts, loans, professional and commercial licenses provided by a federal agency or funded through federal dollars. 8 U.S.C. § 1611(c)(1). Thus, federal student loan aid—a critical prerequisite for many students’ ability to

¹¹ Unauthorized Immigrants’ Eligibility for Federal and State Benefits: Overview and Resources, Cong. Rsch. Serv., R47318 (2022), *available at* <https://www.congress.gov/crs-product/R47318>.

afford higher education—is not available to undocumented persons or unqualified legally present noncitizens.¹² Likewise, such individuals may be ineligible for small business loans or to compete for public contracts. Blocking U.S.-born children in those families from such programs diminishes the degree of upward mobility that is possible in our society and the benefits we all gain from equal and open social and commercial participation.

This list is, of course, neither exhaustive nor fixed. As recently as last year, Congress stripped certain lawfully present immigrants of the ability to access certain federal programs, such as Medicare, Medicaid, SNAP, and the Children’s Health Insurance Program (CHIP).¹³

Nor would U.S.-born children of undocumented noncitizens be able to rely on certain state-based public programs. Although this Court has prevented states from discriminating based on alienage, *see, e.g., Graham v. Richardson*, 403 U.S. 365 (1971), no similar level of scrutiny applies to the federal government’s decision to condition access to public benefits on citizenship status. Some states may choose to extend certain public benefits to undocumented

¹² See Federal Student Aid, U.S. Dep’t of Educ., *U.S. Citizenship & Eligible Noncitizens*, 2025–2026 FSA Handbook, Vol. 1, Ch. 2 (Dec. 17, 2024), *available at* <https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2025-2026/vol1/ch2-us-citizenship-eligible-noncitizens>.

¹³ See One Big Beautiful Bill Act, Pub. L. No. 119-21, § 10108, 139 Stat. 72, 85 (2025), <https://www.congress.gov/bill/119th-congress/house-bill/1>.

noncitizens, as federal law allows, 8 U.S.C. § 1621(d), while others will not.¹⁴ The Citizenship Stripping Order would, ultimately, subject many U.S.-born children to a patchwork of public benefits accessibility, defined predominantly by the state in which a child’s parents choose to live. In what harkens back to the days after this Court’s decision in *Dred Scott*, some states will provide rights and privileges to this new caste of noncitizens, while others will erect barriers.¹⁵ Unequal access to public programs—which are in part funded through taxes paid by undocumented noncitizens and lawfully present noncitizens alike—threatens a replica of antebellum framework that the Framers of the Fourteenth Amendment and the Citizenship Clause sought to avoid.

The Citizenship Stripping Order’s cumulative impact on potentially millions of children’s access to healthcare, food and nutrition assistance, education assistance, housing assistance, and more cannot be overstated. One recent study estimated that over 250,000 children would be stripped of birthright citizenship each year, leading to the creation of an underclass of millions of children without lawful

¹⁴ Unauthorized Immigrants’ Eligibility for Federal and State Benefits: Overview and Resources, Cong. Rsch. Serv., R47318 (2022), available at <https://www.congress.gov/crs-product/R47318> (discussing states that have extended benefits coverage to undocumented noncitizens).

¹⁵ See Jacob Hamburger, *The Consequences of Ending Birthright Citizenship*, 103 Wash. U. L. Rev. 209, 215-18 (2025).

status.¹⁶ If birthright citizenship were to be eliminated, that study estimated that there would be an additional 2.7 million undocumented immigrants by 2045 and approximately 5.4 million by 2075.¹⁷

Denying access to healthcare, educational programs, nutrition and housing assistance, and other public benefits programs is not just a matter of individualized harm. Disparities in access to healthcare are a shared societal burden and exact a costly toll on our collective economic well-being.¹⁸

¹⁶ Jennifer Van Hook, Michael Fix & Julia Gelatt, *Repealing Birthright Citizenship Would Significantly Increase the Size of the U.S. Unauthorized Population*, Migration Pol’y Inst. (May 2025), [available at https://www.migrationpolicy.org/news/birthright-citizenship-repeal-projections](https://www.migrationpolicy.org/news/birthright-citizenship-repeal-projections).

¹⁷ See also Michael Fix & Jennifer Van Hook, *The Demographic Impacts of Repealing Birthright Citizenship*, Migration Pol’y Inst. (Sep. 2010), [available at https://www.migrationpolicy.org/research/demographic-impacts-repealing-birthright-citizenship](https://www.migrationpolicy.org/research/demographic-impacts-repealing-birthright-citizenship) (earlier study finding that unauthorized population would increase by over 5 million by the year 2050); Jeffrey S. Passel & Jens Manuel Krogstad, *U.S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023*, Pew Rsch. Ctr. (Aug. 21, 2025), [available at https://perma.cc/XK3N-QAR3](https://perma.cc/XK3N-QAR3) (estimating that 4.6 million children under 18 born in the U.S. lived with an unauthorized immigrant parent in 2023, and 1.5 million children under 18 were themselves unauthorized immigrants).

¹⁸ See Thomas A. LaViest et al., *The Economic Burden of Racial, Ethnic, and Educational Health Inequities in the U.S.*, 329 JAMA 1682 (2023), <https://jamanetwork.com/journals/jama/article-abstract/2804818>; see also Drishti Pillai et al., *Health and Health Care Experiences of Immigrants: The 2023 KFF/LA Times Survey of Immigrants*, KFF (Sep. 17, 2023), <https://perma.cc/6YQ5-P2GR>.

Those disparities will cast a pall over entire communities should the Citizenship Stripping Order go into effect.

II. The Citizenship Stripping Order denies the guarantee of a representative government.

Amici's members have served and fought to defend the principles of equality and equal representation embodied in our constitution. The Citizenship Stripping Order mandates the diminishment of the freedoms and liberties that *amici* have worked and sacrificed to protect. One of the starkest consequences of the Citizenship Stripping Order is that it would deprive millions of Americans of the foundational right to a representative government. The Citizenship Stripping Order does so by locking many Americans out of the polity and depriving them of the ability to enforce their basic civil rights. The Citizen Stripping Order also undermines census data that is necessary for reapportionment and allocating government programs. Moreover, it denies each state's right to form a republican polity free of castes.

A. The right to a representative government is a foundational right under our constitution.

The right to a representative government has been a foundational aspect of the social compact between the American people and their political institutions since the founding. The architecture of the federal constitution is designed to ensure that all Americans enjoy a representative government—one that, to quote James Madison, “derives all its powers directly

or indirectly from the great body of the people.” The Federalist No. 39.

At the federal level, Article I, Section 2 establishes that members of the House of Representatives shall be “chosen . . . by the People of the several States”; while the Seventeenth Amendment ensures that Senators “[shall be] elected by the people [of each state].” U.S. Const. art. I, § 2; U.S. Const. amend. XVII. At the state level, the founders drafted Article IV, Section 4 to explicitly promise the American people that “[t]he United States shall guarantee to every State in this Union a Republican Form of Government.” U.S. Const. art. IV, § 4.

The Reconstruction Amendments, together with the Nineteenth and Twenty-Sixth Amendments, further enshrined the core principle that the American political system is one where “the people rule and do so with equal political authority.”¹⁹ The federal judiciary has, in turn, guarded this precious right to representative government. This is most notable in legislative apportionment cases where this Court has consistently upheld the principle of “one person, one vote,” thus guaranteeing that every vote must be given substantially the same weight as that of any other vote in congressional, state, and local elections.

For example, in *Gray v. Sanders*, this Court famously declared: “[t]he conception of political equality from the Declaration of Independence, to

¹⁹ Lyle Denniston, *Constitution Check: What does one-person, one-vote mean now?*, Nat’l Const. Ctr. (Apr. 5, 2016), <https://perma.cc/G55Q-TK9A>.

Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.” 372 U.S. 368, 381 (1963). There, the Court evaluated Georgia’s county unit system which created a voting system that weighed rural votes more heavily than urban votes, and the Court struck down the system as violative of the Equal Protection Clause.

Likewise, in *Reynolds v. Sims*, this Court reaffirmed the right of Americans to representative government based on the conception of one person, one vote. 377 U.S. 533 (1964). In *Reynolds*, the Court ruled that the Alabama state legislature had violated the Equal Protection Clause by failing to apportion its legislative districts on a population basis, noting that “the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators.” *Id.* at 566. As the majority made clear: “As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.” *Id.* at 562.

The Court further affirmed these principles in *Evenwel v. Abbott*, in upholding the constitutionality of Texas’s legislative apportionment based on total population rather than voter-eligible population: “There can be no truer principle than this—that every individual of the community at large has an equal right to the protection of government.” 578 U.S. 54,

65 (2016) (quoting Alexander Hamilton from the Federal Convention of 1787). Moreover, as the framers of the Constitution and the Fourteenth Amendment understood, representatives serve all residents, “not just those eligible or registered to vote. Nonvoters have an important stake in many policy debates . . . and in receiving constituent services By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation.” *Id.* at 74 (citation modified).

Notwithstanding the lessons of *Evenwel v. Abbott* and the long line of one-person, one-vote cases, the Citizen Stripping Order undermines the core premises of representative government. Stripping away the guarantee of birthright citizenship advances “the specter of a permanent caste of undocumented resident aliens [who are] denied the benefits that our society makes available to citizens and lawful residents . . . [and] presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law.” *Plyler*, 457 U.S. at 218-19. The principle of equal representation, and the rights and liberties that such representation enables, are part and parcel of the constitutional tradition that *amici* have served to protect and which would be undermined by the Citizenship Stripping Order.

B. The Executive Order jeopardizes communities' federal representation and funding.

The ill effects of ending birthright citizenship would reverberate throughout a host of governmental duties. Indeed, the Executive Order also threatens to undermine the promise of a representative government in another major way—by compromising Census data that is used for reapportionment, redistricting, and the delivery of government benefits and services. Accurate census data are central to the allocation of congressional seats across the states; are essential for state and local governments to create constitutionally- and statutorily-compliant legislative districts; and are determinative of hundreds of billions of federal dollars that are deployed and monitored through scores of federal, state, and local programs.

1. The Executive Order threatens to undermine equal representation in reapportionment and redistricting.

Even though noncitizens have been counted in every single U.S. Census since the first one in 1790, there have been both legislative and executive attempts to exclude them from the apportionment count. On the same day that he signed the Citizen Stripping Order, President Trump signaled his intent to once again try to illegally exclude undocumented immigrants from the decennial census by rescinding a prior executive order affirming that the constitution

requires all persons, regardless of immigration status, be counted for reapportionment.²⁰

Eliminating birthright citizenship creates a significant risk that those affected by the Citizen Stripping Order will be undercounted in the decennial census. Undocumented immigrants have long been considered a hard-to-count group by the Census Bureau.²¹ A Census Bureau report found that “legal status is a key issue in many communities with larger immigrant populations” because “[n]ot only are these persons difficult to match via administrative records due to lack of social security numbers, but they are also fearful of filling out their census forms because they are afraid of detention and deportation if located by the government.”²² The Executive Order thus creates a real risk that birthright citizens will, at worst, be entirely excluded from the apportionment population or, at best, be significantly undercounted—ultimately depriving them of a representative government in the halls of Congress. The harms of this exclusion would also extend beyond those directly impacted by the Executive Order. Undercounting or outright exclusion of birthright citizens from the census count would also likely cause states to lose

²⁰ See *Initial Rescissions of Harmful Executive Orders and Actions*, The White House (Jan. 20, 2025), <https://perma.cc/QH3F-NHR7>.

²¹ “Final Report: National Advisory Committee on Racial, Ethnic, and Other Populations, Administrative Records, Internet and Hard to Count Population Working Group,” U.S. Census Bureau (2016), available at <https://perma.cc/L474-MC7L>.

²² *Id.* at 10.

congressional seats.²³ When a community has fewer Congressional seats than its population deserves, everyone in that community—citizen and noncitizen alike—suffers from diminished representation.

2. The Executive Order would undermine accurate census data necessary for the administration and monitoring of governmental programs.

Eliminating birthright citizenship also threatens to undermine representative government by compromising the accuracy of Census data that are used to administer programs across all levels of government. Again, stripping citizenship from hundreds of thousands of children would make them statutorily ineligible for a wide range of federal health, housing, and nutrition assistance programs. *See supra* at 13-17. But their direct exclusion is far from the only impact of the Executive Order on such programs. The Citizenship Stripping Order would also threaten the rights of the remaining citizens who participate in these programs. This would occur through undermining the accuracy of the Census count. Census data across several demographic dimensions—including socioeconomic levels, race and ethnicity, gender, and housing and employment status—are essential to determine eligibility for

²³ Jeffrey S. Passel & D’Vera Cohn, *How removing unauthorized immigrants from census statistics could affect House reapportionment*, Pew Rsch. Ctr. (July 24, 2020), <https://perma.cc/JQY5-7A2S> (projecting that three states (California, Florida, Texas) would lose a congressional seat if unauthorized immigrants were excluded).

federal, state, and local programs. This data will be skewed whenever any sector of the population is not accurately represented.

Representative government would be further compromised because of the impaired ability of Congress and federal agencies to administer and monitor program performance. Assessment and monitoring rely heavily on Census data to ensure that programs function as designed, to encourage and award effective administration of programs, and to explore alternative methods for distributing funds.²⁴ Core government functions would thus be unduly hampered without accurate, census-derived data.

C. The Executive Order denies states the ability to form a polity without castes.

The Citizenship Stripping Order would also harm states' interests in defining their political communities through birthright citizenship. For states, no less than the nation as a whole, citizenship is fundamental to the idea of sovereignty and a republican government. *See, e.g., Minor v. Happersett*, 88 U.S. 162, 166 (1874) (explaining the term "citizen" is considered the term for "one living under a republican government"). The status of citizen "denotes an association with the polity which, in a democratic republic, exercises the powers of governance." *Ambach v. Norwick*, 441 U.S. 68, 75 (1979). And self-government "begins by defining the

²⁴ *See* Marisa Hotchkiss & Jessica Phelan, *Uses of Census Bureau Data in Federal Funds Distribution*, U.S. Census Bureau, (Sep. 2017) at 8, available at <https://www.census.gov/library/working-papers/2017/decennial/census-data-federal-funds.html>.

scope of the community of the governed and thus of the governors as well[.]” *Cabell v. Chavez-Salido*, 454 U.S. 432, 439-40 (1982).

Again, this Court has long recognized the importance of a state’s prerogative to define “the basic conception of a political community.” *Dunn v. Blumstein*, 405 U.S. 330, 343-44 (1972). While this line of cases has often focused on the scope of states’ authority to exclude noncitizens from elections or discretionary public functions, the authority to include and define its polity is a crucial corollary. As this Court recognized, “it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.” *United States v. Wong Kim Ark*, 169 U.S. 649, 668 (1898).

As outlined in Part I, citizenship shapes every aspect of life in the United States, from one’s fundamental rights to participation in and access to civic institutions. One of the promises of birthright citizenship is that the hardship and deprivations of living without citizenship can last, at most, a single generation. Indeed, the various programs of the U.S. military embody this notion of integration across generations: through military service, enlisted members may secure citizenship and/or lawful status for themselves and members of their family. *See supra* at 5-10.

Without broad birthright citizenship, multigenerational castes may emerge where entire segments of the population exist as a permanent

underclass. One of the many issues at stake in this case, then, is whether the Executive Branch can force such a two-tiered society upon each and every state. The answer to that question is no. The Citizenship Clause provides no new federal authority to impose castes or underclasses on the states, as it was not intended to “impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have become citizens according to the law existing before its adoption.” *Wong Kim Ark*, 169 U.S. at 675-76. Instead, its purpose was the opposite: simply to “reaffirm[] in the most explicit and comprehensive terms” the “fundamental principle of citizenship by birth within the dominion.” *Id.* at 675. The constitution protects against caste at the national level and preserves each state’s power to welcome new generations into their polity unencumbered by the caste, class, or status of their parents.

In sum, there is no constitutional tradition in this country that can abide the distinctions and degradations that the Citizenship Stripping Order would mandate into law and civic life.

CONCLUSION

The judgment of the district court should be affirmed.

February 26, 2026

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