

ALITO, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

---

No. 25–365

---

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS *v.* BARBARA, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 30, 2026]

JUSTICE ALITO, dissenting.

This is one of the most important decisions in the history of the Court, and in my judgment, the Court has made a serious mistake. As interpreted by the Court today, the Fourteenth Amendment confers citizenship on virtually everyone who happens to be born in this country, including the children of “birth tourists,” women who come here solely for the purpose of giving birth to a child and then promptly return home. Careful analysis of the text of the Fourteenth Amendment and the process that led to its adoption shows that it does not degrade the concept of United States citizenship in this way. Instead, the Fourteenth Amendment confers citizenship on only those children who, at birth, owe allegiance solely to this country.

Respecting this interpretation would not require uprooting the millions of children who were born here to mothers who entered or remained in this country illegally. Those children are not responsible for their parents’ violation of our immigration laws, and their plight is the result of a long period during which a coterie of actors—Executive Branch officials, States and cities, and a variety of private groups—sent the message to would-be immigrants that our

ALITO, J., dissenting

immigration laws should not be taken too seriously. This message, coupled with ineffective or unenthusiastic enforcement, spurred massive illegal immigration and the growth of a large contingent of people who were born here to mothers unlawfully present in this country. Some members of this group have lived here for years, and they have a strong moral claim to be able to remain in the land where they grew up.

Congress can and should address their situation. The Fourteenth Amendment dictates who *must* be a citizen, but it does not address who *may* be a citizen by Act of Congress. Congress has conferred citizenship on many people who are not made citizens by the Fourteenth Amendment, including children born abroad to American citizen parents. These people and the millions of immigrants who have been naturalized are no less American than those who are fortunate enough to be born here.

For these reasons, the original meaning of the Fourteenth Amendment does not require inhumane results, and we 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.

Nor should we take the position that our hands are tied by dicta in a sprawling 19th-century opinion that is, to put the point gently, very far from a model of careful judicial craftsmanship. Too much is at stake.

United States citizenship is precious. Anyone who has attended a ceremony where citizens are naturalized can see that message on the faces of those who take the citizenship oath. Before saddling the Nation with a medieval rule, we had better be certain the Constitution requires it.

The Court’s account of the birthright-citizenship rule in American law is roughly as follows. After American independence, the British rule of birthright subjecthood was modified in just one way (to take account of Indians who

ALITO, J., dissenting

lived under tribal governance), but otherwise the rule was transplanted intact to American soil. As modified, the rule was that a child born in this country is automatically an American citizen unless the child is born to tribal Indians or to a diplomat with immunity from legal process. During the period before the Civil War, the rule's status was firm. After the war, Congress codified the rule in §1 of the Fourteenth Amendment. And in *United States v. Wong Kim Ark*, 169 U. S. 649 (1898), this Court issued a binding precedent confirming what Congress had done.

Every step of this story is incorrect. The Declaration of Independence repudiated the foundation on which the British rule was based. See *infra*, at 5. From 1776 until the eve of the Civil War, the status of the rule in this country was unsettled. There is no evidence establishing that the Constitution's references to citizens incorporated the British rule, *infra*, at 5–8, and until the eve of the Civil War, there was little litigation about the meaning of American citizenship, *infra*, at 9–11. After the war, Congress finally adopted a constitutional provision, §1 of the Fourteenth Amendment, making certain persons citizens at birth, but that provision differed substantially from the British rule. It specified that a person born here is not a citizen unless his allegiance to the United States is unimpaired by any obligations to a foreign power. *Infra*, at 11–22. And while *Wong Kim Ark* included dicta suggesting that the Fourteenth Amendment incorporates the British rule, its actual holding was much narrower, *infra*, at 22–28, and under that interpretation, respondents' challenge to Executive Order No. 14160, Protecting the Meaning and Value of American Citizenship, fails, *infra*, at 36–39.

I

A

According to the Court, the Fourteenth Amendment's Citizenship Clause codified the British rule of birthright

ALITO, J., dissenting

subjecthood with only one new exception, which was needed to accommodate the unique status of American Indians. That is a curious claim, and it is ironic that the Court should embrace it only days before we celebrate the 250th anniversary of our Declaration of Independence, which emphatically renounced the foundation on which the British rule rested.

That rule did not concern “citizenship.” There was no such thing as a “citizen” of England, Scotland, or Ireland. The inhabitants of the British Isles were the King’s “subjects.” As Sir Edward Coke explained in *Calvin’s Case*, 7 Co. Rep. 1a, 77 Eng. Rep. 377 (K. B. 1608), they acquired that status automatically at birth, and they retained it, like it or not, until they died. *Id.*, at 4b, 77 Eng. Rep., at 382; see *id.*, at 9b, 77 Eng. Rep., at 388 (even a subject who abjures the realm “oweth the King his ligeance”). This status arose from a feudal understanding of the origin of governmental authority and the relationship between those who govern and those who are governed. The King’s authority was understood to come from God. *Id.*, at 12b–13a, 77 Eng. Rep., at 390–391. As Coke put it, a King ruled by the law of nature. *Ibid.* And birth established the bond between King and subject, *id.*, at 4b, 77 Eng. Rep., at 382, just as birth establishes the bond between parent and child.

In *Calvin’s Case*, the question was whether a man born in Scotland was a subject of King James I of England, who acceded to the thrones of both Scotland and England before the man’s birth. *Id.*, at 2a, 77 Eng. Rep., at 379. In a famous speech to Parliament, James I forcefully explained his views about the source of his authority and his relationship with his subjects. The King, he proclaimed, sits “upon GOD[’]s throne” and is the “father of his people.” March 21, 1609 A Speech to the Lords and Commons of the Parliament at White-Hall, in *The Political Works of James I*, p. 307 (C. McIlwain ed. 1918).

ALITO, J., dissenting

This theory of monarchical power and the status of the people provided the foundation on which the rule of birth-right subjecthood stood. Just as a person automatically acquires at birth all that is entailed by the relationship between parent and child, a person born within the King’s dominion automatically became the King’s subject. *Calvin’s Case*, 7 Co. Rep., at 4b, 77 Eng. Rep., at 382. This meant that the subject acquired a duty of obedience to the King, and the King owed a duty of protection to the subject. *Ibid.* This relationship was not based on consent, and a subject could not shed it. *Ibid.*; see *id.*, at 9b, 77 Eng. Rep., at 388.

In this system of soil and servitude, the Court sees “emancipation.” *Ante*, at 26. But our Founders disagreed. The Declaration of Independence emphatically rejected the British theory of government. It proclaimed that governments “deriv[e] their just powers from the consent of the governed,” not divine right. ¶2. And it “[a]bsolved” the people of the United States “from all Allegiance to the British Crown.” ¶32.

With its foundation blown away, the British rule of birth-right subjecthood was not suited for easy incorporation into American law. Accord, *ante*, at 75–77 (THOMAS, J., dissenting). In addition to the incompatibility of its theoretical foundation, two distinctively American practical problems stood in the way.

The first was the problem of slavery and, more broadly, of race. In England itself, the number of slaves had never approached American dimensions. Just four years before the American Colonies declared independence, Lord Mansfield’s decision in *Somerset v. Stewart*, Lofft. 1, 98 Eng. Rep. 499 (K. B. 1772), denied that slavery had any common-law foundation. See *id.*, at 19, 98 Eng. Rep., at 510 (proclaiming that slavery was “so odious, that nothing can be suffered to

ALITO, J., dissenting

support it, but positive law”). And it would soon disappear.<sup>1</sup> In the United States, on the other hand, nearly 700,000 lived in slavery—roughly one-fifth of the country’s population—according to the first census in 1790. And since the contemporary definition of a citizen was a “freeman of a city; . . . not a slave,” 1 S. Johnson, *A Dictionary of the English Language* (4th rev. ed. 1773), it was obvious that neither the Articles of Confederation nor the Constitution, both of which allowed slavery to continue, recognized the members of this sizeable population as citizens.

Even for the free black population of the United States, there was substantial opposition to application of the British rule. Many States, both in the South and Midwest, restricted the rights traditionally associated with citizenship—such as the ability to settle, vote, and serve as a witness in court—to white residents.<sup>2</sup> And there was some federal support for this understanding of citizenship.<sup>3</sup> In Britain, on the other hand, as the Court notes, the common law did not take account of race. *Ante*, at 5–6.

The second problem was the unique legal status of Indian tribes in the United States. Under the Clause of the Constitution allocating seats in the House of Representatives and Presidential electors, “Indians not taxed” were excluded from the body politic and thereby denied citizenship. Art. I, §2, cl. 3. This provision did not require census takers to determine whether individual Indians owed or paid taxes. Instead, the phrase referred to those Indians who retained their traditional way of life. They lived in their own communities under tribal law and enjoyed the

---

<sup>1</sup>See W. Cotter, *The Somerset Case and the Abolition of Slavery in England*, 79 *History* 31, 33, and nn. 6–8 (1994).

<sup>2</sup>See, e.g., Ind. Const., Art. XIII (1851); Ill. Const., Art. VI, §1 (1848); Mo. Const., Art. III, §26 (1820); 1783 Md. Acts ch. 23, §3.

<sup>3</sup>Under the Naturalization Act of 1790, only a “free white person” could become a citizen. Ch. 3, 1 Stat. 103; but see 37 *Annals of Cong.* 83 (1820) (Senator Holmes arguing that “[f]ree blacks are citizens”).

ALITO, J., dissenting

“privilege of total immunity from State taxation.” *The Kansas Indians*, 5 Wall. 737, 756 (1867); see also *Worcester v. Georgia*, 6 Pet. 515, 559–561 (1832). It is hard to find estimates of the size of this segment of the population at the end of the 18th century, but it was certainly significant.

The existence of these two big carveouts refutes any argument that the British rule was transplanted without modification to American soil. Accord, *ante*, at 62–63 (THOMAS, J., dissenting). And any attempt to plant some version of that rule here also faced the problem of applying it to a Nation that, unlike Britain, had a written Constitution and a federal system.

In Britain, the rule of birthright subjecthood was part of the common law and thus could be changed by Parliament whenever it chose. If the rule was transplanted across the Atlantic, would it have a similar status here? Would it be part of the common law that state legislatures or courts could alter or abandon? See *Van Ness v. Pacard*, 2 Pet. 137, 144 (1829) (Americans adopted “only that portion [of the common law] which was applicable to their situation”).

Alternatively, did the rule have some status under federal law? Numerous provisions of the Constitution use the term “citizen.” See Art. I, §2, cl. 2 (qualifications of Members of the House of Representatives); Art. I, §3, cl. 3 (qualifications of senators); Art. II, §1, cl. 5 (Presidential eligibility); Art. III, §2, cl. 1 (subjects of jurisdiction); Art. IV, §2, cl. 1 (privileges and immunities). Did all these provisions incorporate the British rule of birthright subjecthood?

In this case, because we are concerned with the meaning of citizenship under the Constitution, it is the second alternative that is important for present purposes. In *Lynch v. Clarke*, 1 Sand. Ch. 583 (N. Y. Ch. 1844), a decision on which the Court, respondents, and many *amici* heavily rely, the assistant vice-chancellor of New York suggested that the Constitution’s references to “citizen” incorporated the

ALITO, J., dissenting

British rule, *id.*, at 647, 655–657, but that is far from obvious.

Nothing in the records of the Constitutional Convention supports that conclusion, and the British rule would be a poor fit as an interpretation of the term “citizen” in the provisions governing the qualifications of Members of Congress and the President. An early draft of the Constitution provided that a Representative must have been a “citizen of the United States” for at least three years, but there was opposition to this provision. 2 Records of the Federal Convention of 1787, p. 216, n. 3 (M. Farrand ed. 1911). One delegate argued that three years was not enough, in part because “a rich foreign Nation, for example Great Britain, might send over her tools who might bribe their way into the Legislature for insidious purposes.” *Id.*, at 216. In response, the delegates voted to require seven years’ citizenship for Representatives and nine years’ citizenship for Senators.

The Presidential Eligibility Clause, Art. II, §1, cl. 5, had a similar aim, but it went even further. Not only does it require 14 years’ residence, it also requires that a President be a citizen from birth. Its purpose was to prevent a person with possible foreign loyalties from becoming President,<sup>4</sup> and the British rule hardly seems consistent with that aim.

---

<sup>4</sup>On July 25, 1787, John Jay sent George Washington a letter suggesting that it would be “wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the american army shall not be given to, nor devolve on, any but a natural *born* Citizen.” Letter from J. Jay to G. Washington (July 25, 1787), in 3 Records of the Federal Convention of 1787, at 61. Shortly thereafter, the phrase was added. In his Commentaries on the Constitution, Joseph Story explained that the purpose of the natural-born citizenship provision was to “cu[t] off all chances for ambitious foreigners, who might otherwise be intriguing for the office; and interpos[e] a barrier against those corrupt interferences of foreign governments in executive elections.” 3 Commentaries on the Constitution of the United States §1473, p. 333 (1833).

ALITO, J., dissenting

## B

No case concerning the meaning of the term “citizen” in any constitutional provision reached the Supreme Court until *Dred Scott v. Sandford*, 19 How. 393 (1857). Before then, the British rule did figure in a handful of antebellum Supreme Court decisions, but none of these addressed any constitutional question, and most appear to have regarded the British rule as part of state law on eligibility to inherit property. See *Inglis v. Trustees of Sailor’s Snug Harbour in City of New York*, 3 Pet. 99, 120–127 (1830); *Shanks v. Dupont*, 3 Pet. 242, 245–250 (1830); *Lessee of Levy v. McCartee*, 6 Pet. 102, 109 (1832).

Not only were there no Supreme Court decisions on the constitutional question, there was not much litigation of any kind on the question of United States citizenship. Both *Lynch* in 1844, 1 Sand. Ch., at 663, and an 1862 opinion by Attorney General Bates, 10 Op. Atty. Gen. 382, 383, expressed surprise at this dearth. And in our time, when the difference between citizenship and alienage is a hot issue, this dearth may seem very strange. But some obvious explanations come readily to mind.

The question of citizenship came up regularly in cases in which the jurisdiction of a federal court was invoked based on diversity of citizenship, but the issue in those cases was whether one or more of the parties were citizens of a particular State, not whether they were citizens at all. A party wishing to challenge federal jurisdiction had no incentive to argue that an adverse party was an alien because both Article III of the Constitution and §11 of the Judiciary Act of 1789, 1 Stat. 78, conferred jurisdiction over cases between citizens and aliens. Therefore, an adverse party who showed that a supposedly diverse citizen was actually not a citizen at all would have confirmed the jurisdiction he sought to oust.

As for the other constitutional provisions that use the term “citizen,” it appears that the question simply did not

ALITO, J., dissenting

come up. A reason why the issue did not arise regarding the qualifications of Members of Congress may be that foreign-born individuals who were interested in holding office could easily become citizens. Under the Naturalization Act of 1790, a foreigner became an American citizen simply by proving two years of residence and good moral character. Act of Mar. 26, 1790, 1 Stat. 103–104.

In the years before the Civil War—and indeed, until many years thereafter—the distinction between citizens and aliens meant less than it does today. During that period, immigration was unrestricted, so aliens could come and stay as long as they wanted. M. LeMay, *An Overview of Immigration to the United States: Founding to 1865*, in 1 *Transforming America: Perspectives on U. S. Immigration* 1 (2013). And in an era when transatlantic travel was slow, unpleasant, expensive, and sometimes perilous, it is likely that the vast majority of those who sailed across the Atlantic intended to remain.

If that was their choice, naturalization, as noted, was easy. And if for whatever reason a person who intended to make a permanent home here did not do what was needed to apply for naturalization, the lack of citizenship did not matter as much as it would in later years. In some places, aliens could even vote and hold elective office. *Id.*, at 17.

Whatever the reasons, the issue of citizenship came up in only a few cases, and except for those involving the question of citizenship for free black people, the cases did not involve questions of much public importance. Legal treatises, to be sure, included comments on birthright citizenship, but those comments were not informed by judicial decisions.

The important point for present purposes is that during the antebellum period, there was no settled understanding about the meaning of citizenship under the Constitution. And there certainly was no settled understanding about the citizenship of a child born on United States soil to parents

ALITO, J., dissenting

whose presence in the country was unlawful. That was a situation that could not have occurred.

## II

## A

After the Civil War, Congress faced enormous challenges, and one of these was ensuring that all black Americans, both the newly freed slaves and those who were free before the war, would be treated as citizens of the United States and of the States in which they lived. Congress addressed that issue in the landmark Civil Rights Act of 1866 and then again in the Fourteenth Amendment. For the first time in the Nation’s history, these enactments provided a national rule on citizenship, and the meaning of that rule is the question that the Court now addresses.

In tackling that question, an avowedly textualist Court should start by carefully examining the text of the Citizenship Clause of the Fourteenth Amendment. *FDA v. Alliance for Hippocratic Medicine*, 602 U. S. 367, 378 (2024) (“[W]e begin as always with the precise text of the Constitution”); *Dobbs v. Jackson Women’s Health Organization*, 597 U. S. 215, 235 (2022) (“Constitutional analysis must begin with ‘the language of the instrument’” (quoting *Gibbons v. Ogden*, 9 Wheat. 1, 189 (1824))); see, e.g., *District of Columbia v. Heller*, 554 U. S. 570, 576 (2008) (beginning with an analysis of the Second Amendment’s text).

That Clause states: “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.”

Thus, birthright citizenship has two separate elements. First, a person must be “born in the United States,” and second, he or she must be “subject to the jurisdiction thereof.” It is therefore critical to ascertain the meaning of “subject to the jurisdiction thereof.” And that is no easy task because, as we have often remarked, jurisdiction is a

ALITO, J., dissenting

term of many meanings. *Wilkins v. United States*, 598 U. S. 152, 156 (2023). We must therefore determine which one applies here.

If “subject to the jurisdiction” of the United States had been a term of art during Reconstruction, we would presumably hold that the phrase has that meaning in the Fourteenth Amendment. See, e.g., *George v. McDonough*, 596 U. S. 740, 746 (2022). But that phrase was not a term of art, and the Court does not claim it was.

If the Citizenship Clause set out specifically named exceptions to the general rule of citizenship by birth, our job would be easy; we would follow those exceptions. But the Citizenship Clause is framed differently. It sets out a general rule: Citizenship is not conferred upon a person born in the United States unless that person is also “subject to the jurisdiction” of the United States. By its terms, that rule applies across the board. And when a legislative body chooses to adopt a generally worded rule, we apply it in all circumstances that fall within the rule, not just those that were on the minds of the legislators at the time of adoption. *NLRB v. SW General, Inc.*, 580 U. S. 288, 306 (2017); *Oncale v. Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998); *Brogan v. United States*, 522 U. S. 398, 403 (1998). We approach constitutional interpretation similarly. *Ante*, at 5–7 (KAVANAUGH, J. concurring in judgment and dissenting in part).

So what does the phrase “subject to the jurisdiction thereof” mean? Unfortunately, the text of the Fourteenth Amendment does not provide a definitive answer, but it supplies two valuable clues.

First, §1 of the Fourteenth Amendment uses the word “jurisdiction” twice—once in the Citizenship Clause and once in the Equal Protection Clause—and the wording of the two clauses differs. The Citizenship Clause applies to those “*subject to the jurisdiction*” of the United States, whereas the Equal Protection Clause applies to “any person *within*

ALITO, J., dissenting

[a State’s] jurisdiction.” When Congress uses disparate language (especially in the same provision), we presume that the difference matters. *Pulsifer v. United States*, 601 U. S. 124, 149 (2024); *Southwest Airlines Co. v. Saxon*, 596 U. S. 450, 457–458 (2022); A. Scalia & B. Garner, *Reading Law* 170 (2012). Therefore, we must presume that the scope of the two provisions is different. Accord, *ante*, at 64 (THOMAS, J., dissenting).

Second, the phrase “subject to the jurisdiction” of the United States applies not only to those who are born in this country but also to those who are “naturalized.” After all, Congress would not include both qualifiers unless they were both doing some work. See *Bufkin v. Collins*, 604 U. S. 369, 386 (2025). Accordingly, there must be some people who are naturalized but are not “subject to the jurisdiction” of the United States. In other words, whatever “subject to the jurisdiction” of the United States means, it must mean something that is not inherent in naturalization.

## B

## 1

Although the text of the Fourteenth Amendment provides these clues, we must look beyond *that text* to find a full explanation of the phrase “subject to the jurisdiction” of the United States. The terms of the 1866 Civil Rights Act (CRA) provide that explanation. The CRA includes its own citizenship clause, and the circumstances surrounding Congress’s adoption of the CRA and the Fourteenth Amendment make clear that the two provisions were understood to be substantively the same. Accord, *ante*, at 26–31 (THOMAS, J., dissenting).

The 39th Congress debated the CRA from January to March 1866, when it was passed and sent to President Johnson for his signature.<sup>5</sup> Congress debated the

---

<sup>5</sup>President Johnson vetoed the bill, but Congress overrode the veto in April 1866.

ALITO, J., dissenting

Fourteenth Amendment from April to June 1866, when it was adopted and sent on to the States. Thus, during a 6-month period, the same Congress debated two provisions that addressed the very same question and adopted them both. Those circumstances in themselves make it highly unlikely that the two provisions differed in substance.

In addition, one of the chief reasons for the adoption of the Fourteenth Amendment was to prevent the CRA from being held unconstitutional. (President Johnson had cited the unconstitutionality of the CRA as one of the reasons why he vetoed it. See *Cong. Globe*, 39th Cong., 1st Sess., 1680 (1866).) If the CRA had granted birthright citizenship to persons who were not entitled to citizenship by birth under the Fourteenth Amendment, there would still have been doubts about the CRA's constitutionality. So at a minimum, the Fourteenth Amendment's text had to be at least as generous as its CRA counterpart. Moreover, following the ratification of the Fourteenth Amendment, Congress reenacted the CRA in 1870. 16 Stat. 144. That reenactment would have been pointless if the CRA's test for birthright citizenship were less generous than the Fourteenth Amendment's. For all these reasons, it is abundantly clear that the tests for birthright citizenship in the Fourteenth Amendment and the CRA were substantively identical.

I therefore turn to the text of the CRA's citizenship provision. It provided that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." §1, 14 Stat. 27.

That language preserved two exceptions that were well-known and well-accepted at the time. The first was for the children of diplomats. The second was for Indians who had not left their traditional way of life and continued to live with other members of their tribes under the governance of tribal leaders.

ALITO, J., dissenting

The exclusion of these “tribal Indians” from citizenship followed from Article I’s Apportionment Clause, which says that congressional “Representatives and direct Taxes shall be apportioned among the several States . . . according to their respective Numbers . . . excluding Indians not taxed.” §2, cl. 3. In the Constitution, just as during the Revolution, taxation and representation went hand in hand. Indians who lived apart under tribal rule were not considered part of the political community. As Chief Justice Marshall explained, Indian tribes were “domestic dependent nations.” *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831). Chancellor Kent provided a similar description of Indians’ status in the early Republic: “Though born within our territorial limits, the Indians are considered as born under the dominion of their tribes. They are not our subjects, born within the purview of the law, because they are not born in obedience to us. They belong, by birth, to their own tribes.” *Goodell v. Jackson ex dem. Smith*, 20 Johns. 693, 712 (N. Y. Ct. Corr. Errors 1823) (emphasis deleted). Because Indians who lived apart under tribal rule were not considered part of the political community, they did not receive representation, and they were not taxed. Due to this status, it appears to have been accepted that tribal Indians and their children, although born on U. S. soil, were not citizens.

The other exception—for the children of diplomats—was one that had been recognized under the British rule and was endorsed by leading authorities on the law of nations. E. de Vattel, *The Law of Nations* §217, p. 103 (1797). This was a minuscule category at best, and Congress could have preserved the exception with narrow language applicable only to the members of that group. For example, it could have said something like this: “[A]ll persons born in the United States ~~and not subject to any foreign power~~, excluding Indians not taxed **and the children of foreign diplomats**, are hereby declared to be citizens of the United States.” Congress did not take that approach. It chose

ALITO, J., dissenting

instead to identify what it understood to be the characteristic that called for the exception and to deny birthright citizenship to anyone who shares that characteristic. That characteristic, as Congress saw it, was being “subject to any foreign power.”

With this understanding of the CRA’s citizenship test in mind, we may return to the text of the Fourteenth Amendment. When Congress framed the citizenship test in the Fourteenth Amendment, it consolidated the CRA’s two exceptions to citizenship by birth—for “Indians not taxed” and those “subject to any foreign power.” The Fourteenth Amendment used the phrase “subject to the jurisdiction” of the United States to cover both of those exceptions. Therefore, a person who is “subject to any foreign power” is not “subject to the jurisdiction” of the United States within the meaning of the Fourteenth Amendment. This unique formulation uses the term “jurisdiction” in a very specific sense. It refers to a form of jurisdiction that is exclusive, that is not in any way limited by any power possessed by any foreign country.

The children of diplomats were not subject to this complete jurisdiction because they were citizens or subjects of the countries represented by their fathers and thus bore duties to those countries. Likewise, tribal Indians were not subject to the United States’ exclusive jurisdiction because they were bound to obey tribal law. But they were certainly subject to the jurisdiction of the United States in a different sense of the concept. That is, they were subject to regulation by the Federal Government. After all, their tribes were “domestic *dependent* nations,” *Cherokee Nation*, 5 Pet., at 17 (emphasis added), and even though the Government allowed tribes a large measure of self-government, it consistently asserted its jurisdiction to intervene.

In 1817, for example, federal criminal jurisdiction was extended to many crimes committed within the Indian country, Act of Mar. 3, 1817, ch. 92, 3 Stat. 383, and the Indian

ALITO, J., dissenting

Trade and Intercourse Act of 1834, §25, 4 Stat. 733, extended that jurisdiction. In addition, treaties repeatedly described tribes as within the “jurisdiction” of the United States. *E.g.*, Treaty Between the United States and the Navajo Tribe of Indians, Sept. 9, 1849, 9 Stat. 974 (ratified Sept. 24, 1850); Treaty Between the United States and the Utah Indians, Dec. 30, 1849, 9 Stat. 984 (ratified Sept. 9, 1850); Treaty Between the United States and the Apache Nation of Indians, July 1, 1852, 10 Stat. 979 (ratified Mar. 23, 1853). Likewise, this Court held that Indians were “within our jurisdiction and subject to our laws.” *United States v. Coxe*, 18 How. 100, 104 (1856). Thus, tribal Indians were subject to the jurisdiction of the United States in the sense that they could be and were governed by federal law, but they were not subject exclusively to federal law because they were also governed by tribal law. For that reason, their children did not become citizens at birth.

This understanding of the phrase “subject to the jurisdiction thereof” also explains why naturalized citizens must foreswear all other allegiances when they become United States citizens. From the earliest days of our Republic until now, Congress has required naturalized citizens to “renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen.” 8 U. S. C. §1448(a); see Act of Jan. 29, 1795, ch. 20, 1 Stat. 414 (“he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty . . . whereof he was before a citizen or subject”). Such an oath would not be necessary if the Constitution permitted anything less than exclusive jurisdiction.

In sum, the Fourteenth Amendment confers citizenship on a person who is born in this country or naturalized only if that person is also “not subject to any foreign power.”

The Court interprets “subject to the jurisdiction thereof” differently. In its view, the phrase simply means subject to the laws that apply to everyone who is present within the country’s borders. See *ante*, at 10–11. That interpretation, however, presents fatal problems.

First, it gives the Fourteenth Amendment’s citizenship test a meaning that plainly differs from that in the Civil Rights Act, even though it is beyond any reasonable dispute that Congress did no such thing. Accord, *ante*, at 26–31, 63–64 (THOMAS, J., dissenting). To justify its departure from the Civil Rights Act, the Court argues that the Act “raises more questions than answers” and that the Fourteenth Amendment “‘better’ expresses the views of the Reconstruction Congress.” *Ante*, at 24. But, as I see it, deciding whether someone is “subject to any foreign power” raises far fewer questions than deciding whether that person is “subject to the jurisdiction” of the United States. The Court’s commitment to avoiding the straightforward text of the Civil Rights Act strongly suggests that something is amiss.

Second, the Court cannot explain why the Fourteenth Amendment did not confer citizenship on children born in the United States to tribal Indians. As explained, federal law governed those children and their parents to the extent the Federal Government wished. If the Court were right that the Citizenship Clause applies to anyone who is born here and is subject to our laws, then the Fourteenth Amendment would have conferred citizenship on all tribal Indians. But the exception for tribal Indians was well-established at the time and remained until Congress eliminated it by statute. See Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253 (“That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States”).

ALITO, J., dissenting

Third, the Court cannot explain why the phrase “subject to the jurisdiction” of the United States applies to naturalized citizens. All naturalized citizens, like everyone else who is present in this country, must obey the law, so if that phrase meant what the Court thinks, it is superfluous. By contrast, if it means not being “subject to any foreign power,” it serves an identifiable purpose and explains why the naturalization statutes, both before and after the adoption of the Fourteenth Amendment, required those seeking naturalization to renounce allegiance to any other country.

For these reasons, the Court’s interpretation of the Fourteenth Amendment’s Citizenship Clause fails on textualist grounds.

## 3

The Court does not confront these problems because it pays little attention to the constitutional text. Instead of performing its own textual analysis, the Court leans on precedent that glosses the text. *Ante*, at 10–12. But none of the cases it cites analyzed the text of the Fourteenth Amendment’s Citizenship Clause.

The Court first cites *Lynch*, but as JUSTICE THOMAS comprehensively explains, any reliance on *Lynch* is misplaced. *Ante*, at 78–81 (dissenting opinion).

Next, the Court turns to *Schooner Exchange v. McFaddon*, 7 Cranch 116, 147 (1812), which held that a “ship of war” of a “friendly power” could enter a United States port without the risk of seizure. Neither that holding nor the reasoning in Chief Justice Marshall’s opinion for the Court has any bearing on the meaning of the terms of the Fourteenth Amendment’s Citizenship Clause.

The question in *Schooner Exchange* concerned the circumstances under which a sovereign is deemed under the law of nations to have implicitly waived part of its otherwise complete sovereignty over its territory. The Fourteenth Amendment, however, does not waive any part of the

ALITO, J., dissenting

United States' sovereignty. It is true that the Government has waived its sovereign right to subject covered diplomats and their dependents to legal process, but that is done by a statute, 22 U. S. C. §254a *et seq.*, that implements treaty obligations and respects long-established norms of international law. Neither that statute, nor any treaty into which the United States has entered, nor any international law norm requires the United States to confer birthright citizenship on any child born here to alien parents.

4

The interpretation of the Fourteenth Amendment's Citizenship Clause set out above is based entirely on the text and legal context of that Amendment and the Civil Rights Act of 1866. It does not depend in any way on the record of the debates on those two enactments. But to the extent that congressional debates on the Fourteenth Amendment and the Civil Rights Act are probative, they strongly support my textual interpretation.

The clearest evidence was provided when the Fourteenth Amendment's Citizenship Clause was presented in the Senate. As originally drafted, the Fourteenth Amendment did not define citizenship. See Cong. Globe, 39th Cong., 1st Sess., 2286. Senator Jacob Howard introduced an amendment that remedied that problem. *Id.*, at 2890. Senator Lyman Trumbull, the author of the citizenship clause in the Civil Rights Act, explained just what the new amendment meant: "The provision is, that 'all persons born in the United States, and subject to the jurisdiction thereof, are citizens.' That means 'subject to the complete jurisdiction thereof.' . . . ***What do we mean by 'subject to the jurisdiction of the United States?' Not owing allegiance to anybody else. That is what it means.***" *Id.*, at 2893 (emphasis added). This language, he said, was "better than the language in the civil rights bill," but the "object to be arrived at is the same." *Id.*, at 2894. Senator Howard

ALITO, J., dissenting

“concur[red] entirely” in Senator Trumbull’s interpretation. *Id.*, at 2895. Thus, the authors of the two major provisions defining United States citizenship agreed that birthright citizenship required complete allegiance.

Other senators quickly agreed. Senator Doolittle called the Civil Rights Act the “forerunner of this constitutional amendment” and said the “civil rights bill undertook to do this same thing” as the Fourteenth Amendment. *Id.*, at 2896. Senator Reverdy Johnson, a member of the Joint Committee on Reconstruction and former Attorney General, pointed out that “all that this amendment provides is that all persons born in the United States *and not subject to some foreign Power*—for that, no doubt, is the meaning of the committee who have brought the matter before us—shall be considered as citizens of the United States.” *Id.*, at 2893 (emphasis added). So too Senator Williams remarked that he understood “the words here, ‘subject to the jurisdiction of the United States,’ to mean fully and completely subject to the jurisdiction of the United States.” *Id.*, at 2897.<sup>6</sup> Public commentary on the Citizenship Clause exhibited a similar understanding. K. Lash, *Prima Facie Citizenship*, 101 *Notre Dame L. Rev.* 101, 161 (forthcoming 2026).

Those who disagree with this interpretation have not found any statement in which another Senator expressly disputed Senator Howard’s and Senator Trumbull’s interpretation of the amendment. They muster a collection of statements that provide some support for their position, but it is a mistake to attribute too much weight to extemporaneous oral statements, which are often phrased in ways that are not precise. And a single member’s interpretation of a provision may not be shared by a majority.

I do not suggest that we should base our decision in this case on statements made during the legislative debates on

---

<sup>6</sup>There was no substantive debate on the Citizenship Clause in the House of Representatives.

ALITO, J., dissenting

the Fourteenth Amendment and the Civil Rights Act. Reliance on any form of legislative history is always problematic for reasons that are familiar. See A. Scalia, *A Matter of Interpretation* 29–37 (1997). “[F]loor statements by individual legislators rank among the least illuminating forms of legislative history.” *SW General*, 580 U. S., at 307. Here, the only form of legislative history we have consists of floor statements.

We should base our decision on the firm ground provided by the constitutional text, but if we look beyond the text, the congressional debates and public commentary confirm that the Citizenship Clause requires complete allegiance.

### III

After the ratification of the Fourteenth Amendment, Supreme Court cases quickly acknowledged the interpretation set out above. *Accord, ante*, at 36–38 (THOMAS, J., dissenting). In the *Slaughter-House Cases*, 16 Wall. 36 (1873), the Court wrote that the Amendment’s Citizenship Clause “was intended to exclude from its operation *children of . . . citizens or subjects of foreign States born within the United States.*” *Id.*, at 73 (emphasis added); see also *Minor v. Happersett*, 21 Wall. 162, 167–168 (1875) (expressing “doubts” about the citizenship of children who are born to non-citizen parents). And in *Elk v. Wilkins*, 112 U. S. 94 (1884), Justice Gray’s opinion for the Court held that the Citizenship Clause requires “not merely” that a person born in the United States be “subject in some respect or degree to the jurisdiction of the United States,” but that he be “*completely subject to [the United States] political jurisdiction*” and owe the country his “*direct and immediate allegiance.*” *Id.*, at 102 (emphasis added). For that reason, John Elk, despite being “born within the territorial limits of the United States,” did not have a valid claim to citizenship by birth because he had been born on a reservation to tribal Indians. *Ibid.* Indian tribes, the opinion explained, “were alien

ALITO, J., dissenting

nations,” and their members “owed immediate allegiance to the several tribes.” *Id.*, at 99. Although Elk had “voluntarily separat[ed] himself from his tribe and tak[en] up his residence” among the general public, he was born “owing immediate allegiance” to the tribe, and as a result, was not entitled to birthright citizenship under the Fourteenth Amendment. *Id.*, at 99, 102.

That was the state of the Court’s case law until *Wong Kim Ark* turned it in a different direction. That case provides the strongest support for today’s decision, but its holding is not controlling, and I would not allow the meaning of American citizenship to be forever dictated by the opinion’s dubious dicta. *Wong Kim Ark* cautioned against assigning too much weight to dicta, 169 U. S., at 679, and it is appropriate to apply that same advice to the opinion in *Wong Kim Ark* itself.

The Court leans heavily on *Wong Kim Ark*, which certainly displayed the fruit of considerable research on a range of subjects. But it showed little respect for precedent. Justice Gray, the author of *Elk*, 112 U. S. 94, also wrote *Wong Kim Ark*, but he brushed *Elk* aside on the flimsy ground that it “concerned only members of the Indian tribes” and thus had no bearing on other children. *Wong Kim Ark*, 169 U. S., at 682.

*Wong Kim Ark*’s treatment of the text of the Fourteenth Amendment and its relationship with the Civil Rights Act’s citizenship test was no better. Indeed, in reading the opinion, it is hard to escape the conclusion that it aimed to divert as much attention as possible from what those provisions actually say. The discussion of those provisions is broken up and interspersed with disquisitions on other matters.

When the opinion finally turns to the text of the Fourteenth Amendment, it summarily concludes that “subject to the jurisdiction thereof” in the Citizenship Clause has the same meaning as the phrase “within its jurisdiction”

ALITO, J., dissenting

in the Equal Protection Clause.” *Id.*, at 687. But the opinion makes no effort to explain why Congress might have chosen to use different language in two places within the same provision to express the same concept. As we have often noted, we usually presume that “differences in language . . . convey differences in meaning.” *Ysleta del Sur Pueblo v. Texas*, 596 U. S. 685, 698 (2022); see, e.g., *Pulsifer*, 601 U. S., at 149; *Saxon*, 596 U. S., at 457–458. Nor does the opinion explain why *Elk* had interpreted “subject to the jurisdiction thereof” very differently.

As for the phrase “not subject to any foreign power” in the Civil Rights Act, *Wong Kim Ark* tries two different tacks. First, it suggests that the phrase means the same thing as “subject to the jurisdiction thereof” in the Fourteenth Amendment. See 169 U. S., at 675. But if, as the opinion maintains, “subject to the jurisdiction thereof” essentially means subject to civil and criminal liability for breaking the law, see *id.*, at 685–687, then “subject to the jurisdiction thereof” does *not* mean the same thing as “not subject to any foreign power.” Everyone within the country’s borders (except those with diplomatic immunity) may be held civilly or criminally liable for violations of the law. But many aliens within our territorial limits are also “subject to [a] foreign power,” *i.e.*, their home country, because they must follow that country’s laws when they are abroad. Some countries—Mexico, for example—even mandate military service by those living abroad.<sup>7</sup> So in ordinary usage, being within the United States and having an obligation to obey U. S. law while here is definitely not the same as not being “subject to any foreign power.”

*Wong Kim Ark*’s fallback argument is no better than the first. The opinion speculates that Congress might have

---

<sup>7</sup>Ley del Servicio Militar, Arts. 11, 26(b), 43 Diario Oficial de la Federación [DOF] 30–08–1940, Últimas reformas DOF 23–01–1998 (Mex. 1998).

ALITO, J., dissenting

thought that “not subject to any foreign power” trimmed the birthright-citizenship rule too much and that this accounts for Congress’s use of different language in the Fourteenth Amendment. *Id.*, at 688. That suggestion flies in the face of all the reasons previously mentioned why the citizenship tests in the Civil Rights Act and the Fourteenth Amendment must be understood to be substantively identical.

That is the extent of *Wong Kim Ark*’s analysis of the terms of the Fourteenth Amendment’s citizenship test, and I would not carve an interpretation of the Citizenship Clause in stone based on such dubious dicta.

And dicta it is. Sometimes it is not easy to determine the exact contours of a decision’s holding, but the opinion in *Wong Kim Ark* obviates that problem. At the end of the opinion, the Court clearly spells out exactly what it held:

“[A] child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but ***have a permanent domicil and residence in the United States***, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States.” *Id.*, at 705 (emphasis added).

Thus, the holding of the case was limited to a child born in the United States to parents who were not citizens but had established “a permanent domicil and residence” here. Many other key passages in the opinion confirm this fact:

- “[W]hen the parents are domiciled here[,] birth establishes the right to citizenship,” *id.*, at 692;
- The Citizenship Clause “includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States,” *id.*, at 693;

ALITO, J., dissenting

- “Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States,” *ibid.*;
- “[S]ubjects of the Emperor of China, but domiciled in the United States, . . . must be held to be subject to the jurisdiction of the United States,” *id.*, at 696.

The Court dismisses these pointed and repeated references to domicile, arguing that domicile was merely an incidental fact and not an element of the holding. *Ante*, at 24–25. But Justice Gray had a good reason for pointing out that *Wong Kim Ark*’s parents had established their domicile here. A person’s domicile is the place where he or she intends to live indefinitely. *E.g.*, *Ennis v. Smith*, 14 How. 400, 422–423 (1853); *Mitchell v. United States*, 21 Wall. 350, 352 (1875). Therefore, the fact that they had established domicile here meant that they wanted to make the United States their home.

It is telling that Justice Gray’s statement of the holding also mentioned that Wong Kim Ark and his parents were Chinese. The British birthright-subjecthood rule did not take account of the race or nationality of the alien to whom a child was born within the King’s domain. See *Calvin’s Case*, 7 Co. Rep., at 5b–6a, 77 Eng. Rep., at 383–384. So if the opinion aimed to adopt the British rule (with the one new exception for tribal Indians), there was no need whatsoever for the holding to say anything about the race of Wong Kim Ark or his parents. Yet it did so. And not only that, the opinion spent many paragraphs describing statutes, court decisions, and debates in Congress about the plight of Chinese immigrants. *Wong Kim Ark*, 169 U. S., at 694–704. The opinion also properly stressed that the fundamental objective of the Fourteenth Amendment was to protect the rights of people of all races. *Id.*, at 676, 692–693.

ALITO, J., dissenting

When we understand the situation Wong Kim Ark and his parents faced, their domicile in the United States takes on a special meaning. If they had been white or black, they could have applied for naturalization.<sup>8</sup> But because they were Chinese, the law forbade their naturalization. *Id.*, at 701. By establishing domicile, they had done everything within their power to express their desire and intent to become Americans. If the Court had not interpreted the Citizenship Clause in the way set out in the holding, the result would have been a population permanently caught in limbo. The Chinese immigrants who were lawfully present before the enactment of the Chinese Exclusion Act in 1882, as well as all their descendants, could never become citizens no matter how much they wanted to be Americans, no matter how deep their roots in this country, and no matter how substantial their contributions to our society.

*Wong Kim Ark* is therefore best understood as holding that people who are lawfully present here, establish the United States as their intended permanent home, and do everything within their power to become United States citizens can be seen as no longer subject to any foreign power.<sup>9</sup> Thus, their children are born citizens under the Fourteenth Amendment. That interpretation of *Wong Kim Ark* is

---

<sup>8</sup>See Naturalization Act of 1870, ch. 254, §7, 16 Stat. 256 (extending naturalization laws to people “of African nativity and to persons of African descent”).

<sup>9</sup>The majority accuses me of creating an ad hoc exception to the rule of complete allegiance for those who have done everything in their power to become United States citizens. *Ante*, at 24, and n. 6. But that is a surprising line of attack for the majority. After all, this exception comes from *Wong Kim Ark*—a decision the majority fully embraces. *Wong Kim Ark*, in turn, had to recognize this exception to effectuate the Fourteenth Amendment’s protections in the face of the discriminatory Chinese Exclusion Act. Regardless, as far as exceptions are concerned, the Court has more to explain than I do. The Court has not offered any satisfactory explanation for how the feudal rule it champions coheres with the new, distinctly American situations regarding Indians, slaves, and free blacks.

ALITO, J., dissenting

consistent with the decision's statement of its holding; it can be reconciled with the language of the Fourteenth Amendment and the Civil Rights Act; and for the Chinese Americans of Wong Kim Ark's time, it was the interpretation that best implemented the Fourteenth Amendment's promise of racial equality.

## IV

*Wong Kim Ark* benefited Chinese Americans, but its impact on other immigrants was limited. For decades after that decision, immigration remained largely unregulated. During World War I, however, the Federal Government began to limit the flow of immigrants. In 1917, Congress passed a law that excluded all Asians, implemented a literacy test, and included a long list of criteria for admission. Ch. 29, 39 Stat. 874–878. Later laws, most notably the discriminatory Immigration Act of 1924, continued this trend by imposing quotas based on immigrants' country of origin. See ch. 190, 43 Stat. 153. From that time until the enactment of the Immigration and Nationality Act of 1965, immigration, both legal and illegal, was light, and the number of Americans born abroad shrank from 13.9 million in 1920 (when the population was just over 100 million) to less than 10 million in the 1960s (when the population grew to over 200 million).<sup>10</sup> After 1965, however, immigration increased dramatically, and the problem of illegal immigration grew.

The story of illegal immigration unfolds in four parts. First, illegal immigration emerged as a notable problem in the 1970s. Second, the Federal Government tried to deal with this problem in 1986 by implementing employer sanctions and amnesty for millions of immigrants, but that attempt failed. Third, the Federal Government—with help

---

<sup>10</sup>Dept. of Commerce, Bureau of Census, S. Azari, V. Jenkins, J. Hahn, & L. Medina, *The Foreign-Born Population in the United States: 2022*, 2 (2024), <https://www2.census.gov/library/publications/2024/demo/acsbr-019.pdf> (archived at <https://perma.cc/FPE7-L546>).

ALITO, J., dissenting

from this Court—blocked border States from implementing their own solutions to a problem that hit them particularly hard. Meanwhile, other States, counties, and cities designated themselves “sanctuary jurisdictions,” thus encouraging illegal immigration. Finally, as a result of these developments, the number of illegal immigrants in this country exploded.

## A

Illegal immigration emerged as a national problem in the 1970s, after Congress passed the Immigration and Nationality Act in 1965. That Act eliminated immigration quotas based on national origin and replaced them with a preference-based immigration system that included an overall cap of 290,000 immigrant visas per year. 79 Stat. 911, 921. But demand for visas vastly outstripped supply, thus encouraging migrants to subvert the legal process. B. Montoya, *Diplomatic History of US Immigration During the 20th Century* 52–53 (2024).

Many immigrants entered or remained illegally for economic reasons. In the United States, opportunities abounded “to pick crops and do other 3D (dirty, dangerous, and demeaning) jobs.” S. Martin, *A Nation of Immigrants* 212 (2d ed. 2021) (Martin). American employers were all too willing to hire employees who would work for less than the minimum wage and without the benefit of laws protecting employee rights. *Id.*, at 210–212. Yet even these poor working conditions surpassed those in the home countries of many immigrants. C. Bon Tempo & H. Diner, *Immigration: An American History* 281–283 (2022) (Bon Tempo). This situation created a strong incentive for immigration—both legal and illegal.

As a result, immigration, both legal and illegal, soared. Demographers generally assumed that the size of the illegal-immigrant population in 1960 was “negligible.” J. Robinson, *Estimating the Approximate Size of the Illegal Alien*

ALITO, J., dissenting

Population in the United States by the Comparative Trend Analysis of Age-Specific Death Rates, 17 *Demography* 159, 170 (1980). By the end of the 1970s, however, a conservative estimate of the number of illegal immigrants was 3 million. *Id.*, at 160.

## B

Early efforts to solve the illegal-immigration problem failed. In 1977, President Carter proposed an immigration overhaul that floundered due to opposition from his own party's core constituencies, including labor unions, Hispanic groups, and environmentalists. *Martin* 215.

In 1986, more than 20 years after passage of its last major immigration bill, Congress agreed to do something about illegal immigration. It passed the Immigration Reform and Control Act of 1986 (IRCA). See 100 Stat. 3359. This Court, in an opinion by Justice Stevens, described IRCA as a “major statutory response to the vast tide of illegal immigration that had produced a ‘shadow population’ of literally millions of undocumented aliens in the United States.” *McNary v. Haitian Refugee Center, Inc.*, 498 U. S. 479, 481 (1991). IRCA made it unlawful “to hire, or to recruit or refer for a fee . . . an alien knowing the alien is an unauthorized alien.” 8 U. S. C. §1324a(a)(1). To implement this program, IRCA required employers to review documents establishing identity (such as a driver's license), employment authorization (such as a Social Security card), or both (such as a U. S. passport). §1324a(b); see also *Kansas v. Garcia*, 589 U. S. 191, 196 (2020) (describing IRCA employment-verification system). IRCA also increased funding for border security and immigration enforcement. See 100 Stat. 3381.

IRCA balanced harsher enforcement with a plan to legalize the status of millions who were living in the United States illegally. See 8 U. S. C. §§1160, 1255a. Immigrants could obtain legal status in two ways. First, they could file an application showing that they had resided in this

ALITO, J., dissenting

country continuously since before 1982, had been physically present here since the date IRCA became law (November 6, 1986), and would be admissible if they were coming legally. §1255a(a). Second, they could certify that they had resided in the United States for at least a year, had worked in agriculture for at least 90 days, and were admissible. §1160(a). Given the less stringent criteria for the latter legalization pathway, it proved much more popular. The number of applications under the agricultural pathway “far exceeded estimates,” at least in part because of fraud. *Martin* 225–226. Ultimately, almost 2.7 million illegal immigrants obtained legal status under the two pathways. P. Orrenius & M. Zavadny, Do Amnesty Programs Reduce Undocumented Immigration? Evidence from IRCA, 40 *Demography* 437 (2003) (Orrenius).

Despite IRCA’s ambitious aims, it failed to curb illegal immigration. The work-verification and employer-sanction system did not eliminate the strong economic incentive for illegal immigration. E. Cohen, *Illegal* 157 (2020). Immigrants easily forged, stole, or shared documents, like photoless driver’s licenses and Social Security cards, to provide “verification” of identity and employment authorization to their employers. *Martin* 266–267. And the law supplied little reason for employers to smoke out these fraudulent documents. On the contrary, “if an employer requested additional documentation, he or she faced penalties imposed to ensure that employers did not discriminate against foreign-looking or -sounding workers.” *Id.*, at 267. Under-enforcement of IRCA rendered its employer sanctions “nearly toothless.” *Bon Tempo* 306. IRCA’s increased border enforcement did not help either. Although IRCA may have caused a short-term decrease in migration, the law “failed to discourage undocumented immigration in the long run.” Orrenius 448.

Congress has not passed comprehensive immigration legislation since 1986, in large part because voices across the

ALITO, J., dissenting

political spectrum have criticized any attempts at serious reform. For example, President George W. Bush’s immigration-reform proposal met with skepticism from conservatives who argued that it amounted to amnesty for illegal immigrants. Martin 293. Meanwhile, liberals and labor unions criticized the plan for not going far enough to address illegal immigrants’ plight. *Id.*, at 293–294.

## C

When Congress failed to solve the illegal-immigration problem, States stepped in. California led the way in 1994 with Proposition 187. That law stated “[e]very law enforcement agency in California shall fully cooperate with the United States . . . regarding any person who is arrested if he or she is suspected of being present in the United States in violation of federal immigration laws.” §4. Proposition 187 also excluded illegal immigrants from public social services, publicly funded healthcare services, and—most controversially—public education from elementary school through university. §§6–8. Although California voters overwhelmingly approved Proposition 187, the measure never went into effect. A Federal District Court enjoined the law, and then a new Governor settled the lawsuit. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (CD Cal. 1995); P. Gulasekaram & S. Karthick Ramakrishnan, *The New Immigration Federalism* 51–53 (2015).

As illegal immigration continued to climb, States tried to lessen its effects. For example, Arizona passed a law in 2007 that allowed courts to suspend or revoke business licenses for those who employed illegal immigrants. *Chamber of Commerce of United States of America v. Whiting*, 563 U. S. 582, 591 (2011). The Chamber of Commerce sued, arguing the law was preempted, but this Court disagreed. *Id.*, at 587, 593.

ALITO, J., dissenting

Following that victory in this Court, States worked to ameliorate the illegal-immigration problem. In 2008 alone, 13 States passed laws punishing employers for hiring unauthorized workers. *Martin* 298. Arizona went further in 2010 with a law that punished illegal immigrants for working or failing to register. *Arizona v. United States*, 567 U. S. 387, 392–394 (2012). The law also gave law enforcement the ability to arrest, based on probable cause, those suspected of violating the immigration laws, and required verification of individuals’ immigration status during stops, detentions, and arrests. *Id.*, at 394. At the United States’ urging, the Court held that federal law largely preempted Arizona’s efforts. *Id.*, at 400–415; but see *id.*, at 440–441 (ALITO, J., concurring in part and dissenting in part) (arguing that the Arizona law was largely consistent with federal law).

The litigation between Arizona and the United States inaugurated an era in which the Federal Government and States resisted each other’s efforts to address illegal immigration. Texas, in particular, repeatedly challenged federal immigration policies that the State alleged increased illegal immigration. But the State met with little success in this Court. The trouble began when Texas unsuccessfully challenged the 2021 termination of an earlier administration’s border-enforcement policies. *Biden v. Texas*, 597 U. S. 785, 801–807 (2022). The State also lost in this Court when it tried to stop the Government’s de-prioritization of immigration enforcement against some criminal aliens. *United States v. Texas*, 599 U. S. 670, 673–674 (2023). This Court thus greenlighted a policy that prohibited immigration officials from making enforcement decisions based solely on criminal convictions “no matter how serious.” *Texas v. United States*, 40 F. 4th 205, 214 (CA5 2022) (*per curiam*).

For its part, the Federal Government sued to stop Texas from implementing its own solutions to illegal immigration. When illegal entrants overran Texas border towns, the

ALITO, J., dissenting

State erected barbed wire fencing, but Border Patrol officers cut or displaced the fencing. As the lower courts found and a video confirms, the federal officers installed a climbing rope on the Texas side of the river and made no effort to turn back a stream of migrants who were wading across the Rio Grande. Instead of processing the entrants, border officers simply told them to walk a mile or more without supervision to the nearest immigration processing center.<sup>11</sup> Then, from the comfort of chambers more than 1,000 miles from the southern border, this Court sided with the Federal Government, allowing immigrants to pour into the State. See *Department of Homeland Security v. Texas*, 601 U. S. \_\_\_\_ (2024). Likewise, the Government sought to stop Texas from criminalizing illegal entry or reentry into the State. See *United States v. Texas*, 601 U. S. \_\_\_\_ (2023). Although the Court denied that application, the Federal Government’s message was clear: Even in the midst of a crisis, self-help is not an option. In short, the Executive Branch and this Court left border States—the ones that bear the “brunt of the country’s illegal immigration problem,” *Arizona*, 567 U. S., at 436 (Scalia, J., concurring in part and dissenting in part)—practically defenseless against illegal immigration.

Meanwhile, other States, counties, and cities encouraged illegal immigration by becoming sanctuary jurisdictions. These jurisdictions prohibit their law-enforcement officers from cooperating with federal immigration officials. M. Delgado, *Sanctuary Cities, Communities, and Organizations* 106 (2018) (Delgado). They often refuse to share information with federal immigration officers or to honor the Federal Government’s requests to briefly extend the detention of those suspected of being in the country illegally. L. Collingwood & P. Gonzalez O’Brien, *Sanctuary Cities* 6–7

---

<sup>11</sup>Application to Vacate Injunction Pending Appeal in *Department of Homeland Security v. Texas*, O. T. 2023, No. 23A607, p. 5a.

ALITO, J., dissenting

(2019) (Collingwood); see *United States v. Texas*, 599 U. S., at 715 (ALITO, J., dissenting). Many also prohibit police officers from asking about immigration status. Collingwood 6. San Francisco passed some of the first such ordinances in the 1980s. Martin 310. After 2008, the number of jurisdictions with sanctuary policies increased significantly. *Ibid.* According to a list published by the Department of Justice, 11 States and the District of Columbia, 3 counties, and 18 cities are sanctuary jurisdictions.<sup>12</sup> But the number is likely significantly higher. See, e.g., Delgado 129–131 (listing over 150 sanctuary jurisdictions); J. Vaughan & B. Griffith, Map: Sanctuary Cities, Counties, and States, Center for Immigration Studies (Mar. 10, 2026), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States> (archived at <https://perma.cc/TM8N-HNSF>) (listing over 200 sanctuary jurisdictions); Collingwood 167–168 (listing 54 sanctuary cities).

## D

Congress’s failure to act, the Executive Branch’s enforcement policies and frequent opposition to state solutions, and some jurisdictions’ policies have resulted in a massive increase in the number of illegal immigrants living in this country. According to leading demographers at Pew Research Center, the illegal-immigrant population grew by more than 2 million between 2022 and 2023, bringing the total number of illegal immigrants in this country to 14 million. J. Passel & J. Krogstad, Pew Research Center, U. S. Unauthorized Immigrant Population Reached a Record 14 Million in 2023, p. 4 (Aug. 21, 2025) (Passel). Demographers estimate that 9% of all births in the United States in

---

<sup>12</sup>Dept. of Justice, Office of Atty. Gen., U. S. Sanctuary Jurisdiction List Following Executive Order 14287: Protecting American Communities from Illegal Aliens (Oct. 31, 2025), <https://www.justice.gov/ag/us-sanctuary-jurisdiction-list-following-executive-order-14287-protecting-american-communities> (archived at <https://perma.cc/8YRU-F6UH>).

ALITO, J., dissenting

2023 were to mothers who were in the country illegally or on a temporary basis.<sup>13</sup>

These numbers are striking, and after 2023 the trend appears to have intensified. Between July 2023 and March 2024, the overall foreign-born population of the United States increased from 48.5 million to 51.6 million—“an unprecedented increase of 3 million immigrants in nine months. Much of this growth was driven by the admission of unauthorized immigrants with temporary deportation protections.” Passel 20.

\* \* \*

As a result of the events of the past 50 years, the United States now has a huge contingent of people who entered or remained in this country illegally, as well as a large group of people who were born here to such parents. The Court’s interpretation of the Fourteenth Amendment makes all the members of this latter group citizens. Many of those who have grown up here now have a strong moral claim to be allowed to remain, but that is a matter that the Fourteenth Amendment, when properly interpreted, leaves to Congress.

## V

As shown in Part II, *supra*, a person who is born in the United States is made a citizen by the Fourteenth Amendment only if that person was also “subject to the jurisdiction” of the United States. And that phrase means subject to the jurisdiction of the United States alone and not “subject to any foreign power.”

---

<sup>13</sup>J. Passel & D. Fahmy, Pew Research Center, About 9% of U. S. Births in 2023 Were to Unauthorized or Temporary Legal Immigrant Mothers (Mar. 31, 2026), <https://www.pewresearch.org/short-reads/2026/03/31/about-9-of-us-births-in-2023-were-to-unauthorized-or-temporary-legal-immigrant-mothers/> (archived at <https://perma.cc/3SFR-4Q97>).

ALITO, J., dissenting

A great many persons who are born here to illegal immigrant parents fail this test because at birth they are automatically made nationals of their parents' native country and, as a result, incur duties to that country. This means that they are "subject to a foreign power" and are thus not "subject to the jurisdiction" of the United States within the meaning of the Fourteenth Amendment.

This is illustrated by the laws of countries on the list of those from which the greatest number of illegal immigrants come.<sup>14</sup> Mexico is at the top of that list, and under Mexico's constitution, the child of a Mexican parent can become a Mexican national at birth and acquires certain duties to the government. See Political Constitution of the United Mexican States, Arts. 30, 31 (1917). Among these are the obligation to receive military training and to join the National Guard. Art. 31.

Guatemala is second on the list, and its constitution also confers Guatemalan nationality on a person born abroad to a Guatemalan parent. Political Constitution of the Republic of Guatemala, Art. 144 (1993). All Guatemalan nationals owe certain duties to the government. Art. 135. At the age of 18, a Guatemalan national automatically becomes a Guatemalan citizen, Art. 147, and thereby acquires additional obligations, Art. 136.

El Salvador is also among the top five, and its constitution provides that "[c]hildren of a Salvadoran father or mother, born in a foreign country," are Salvadorans by birth. Constitution of El Salvador, Art. 90 (2014). Upon reaching the age of 18, these children incur an obligation to

---

<sup>14</sup>See Office of Homeland Security Statistics, U. S. Department of Homeland Security, B. Baker & R. Warren, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018–January 2022*, p. 15 (Apr. 2024), [https://ohss.dhs.gov/sites/default/files/2024-06/2024\\_0418\\_ohss\\_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25E2%2580%2593january-2022.pdf](https://ohss.dhs.gov/sites/default/files/2024-06/2024_0418_ohss_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25E2%2580%2593january-2022.pdf) (archived at <https://perma.cc/VB5R-PU2M>).

ALITO, J., dissenting

serve in the military, Art. 215, as well as other duties, including the duty “[t]o serve the State in conformity with the law.” Art. 73. Many other countries among the top 10 have similar laws. See, *e.g.*, Constitution of Honduras, Arts. 23, 40 (2013); Constitution of the Philippines, Art. II, §4; Art. IV, §1 (1987); Nationality Law of the People’s Republic of China, Art. 5 (1980).

Respondents’ claim in this case is that Executive Order No. 14160 is unconstitutional on its face. To prevail on this facial claim, they must show that “no set of circumstances exists under which the [Executive Order] would be valid.” *United States v. Salerno*, 481 U. S. 739, 745 (1987). And because the order is valid as applied to nationals from the countries discussed above, the claim should fail. In all likelihood, the Executive Order is also constitutional as applied to nationals from a great many other countries, but no such showing is needed here.

Indeed, showing merely that the Executive Order is valid as applied to a child born to a birth tourist would be enough to defeat respondents’ facial claim. That is why the Court goes out of its way to hold that even a child born to a mother who is here for only a brief time is a citizen under the Fourteenth Amendment. *Ante*, at 3–4, 19–20.

The Court’s interpretation is not only contrary to the original meaning of the Fourteenth Amendment, it produces grotesque results. While foreigners who wish to immigrate lawfully must sometimes wait for many years, a child born here to a birth tourist is automatically a citizen.

The Court’s interpretation also has national-security implications. Accord, *ante*, at 56 (THOMAS, J., dissenting). Suppose that a person’s only connection to this country is that he was born here to a mother who was present just long enough to give birth and then quickly returned to her native country. Suppose that country is a strategic adversary or enemy of the United States. Suppose the child never visited the United States while growing up and was

ALITO, J., dissenting

inculcated with hatred of this country. According to the Court, that person is a citizen of the United States. He can enter and leave the country as he pleases. He can travel the world on a United States passport. Even if he plots to harm this country, he cannot be deprived of his status as a citizen, at least under current precedent. See *Vance v. Terrazas*, 444 U. S. 252, 259–260 (1980).

The Court’s interpretation saddles this country with an ancient British rule that even the United Kingdom has abandoned,<sup>15</sup> as have other countries whose legal systems share the same pedigree.<sup>16</sup>

The Court’s interpretation preserves a powerful incentive to enter or remain in this country illegally. Immigrants naturally prefer affluent countries where economic opportunities are available. Other than Canada, the United States will be the only affluent nation where birth alone is enough to establish citizenship.<sup>17</sup>

If the Fourteenth Amendment required these results, the country would have to live with them or amend the Constitution. But the Fourteenth Amendment does not include the rule the Court now imposes on the country. In my judgment, the Court has made a mistake that will seriously affect the country’s future.

For that reason, I respectfully dissent.

---

<sup>15</sup> British Nationality Act of 1981, ch. 61, pt. I, §1.

<sup>16</sup> See Australian Citizenship Act of 2007, No. 20, 2007, pt. 2, div. 1, §12; New Zealand Citizenship Act of 1977, Pub. Act 1977, No. 61, pt. 1, §6.

<sup>17</sup> D. DeSilver, Pew Research Center, U. S.-Style Birthright Citizenship Is Uncommon Around the World (Mar. 31, 2026), <https://www.pewresearch.org/short-reads/2026/03/31/us-style-birthright-citizenship-is-uncommon-around-the-world/> (archived at <https://perma.cc/4DHU-X85D>); International Monetary Fund, GDP Per Capita, Current Prices (2026), <https://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEOWORLD/LUX> (archived at <https://perma.cc/DU7F-7XYW>).