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]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

At issue in this case is whether the Constitution guarantees citizenship to children born of parents unlawfully or temporarily present in the United States.

I

The Fourteenth Amendment provides:

> "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."

On January 20, 2025, President Trump issued Executive Order No. 14160, titled Protecting the Meaning and Value of American Citizenship. The Order provides that children born of persons unlawfully or temporarily present in the United States are not "subject to the jurisdiction" of the United States—and thus do not qualify for citizenship under the Fourteenth Amendment or the Immigration and

Nationality Act (INA), which uses the same language. 90 Fed. Reg. 8449.[1]

Several parents filed suit, some on their own behalf, others on behalf of (and in the name of) their children. They argued that the Executive Order violates the Fourteenth Amendment and the INA. The District Court agreed. 790 F. Supp. 3d 80, 101–102 (NH 2025). It provisionally certified a nationwide class of children who would be denied citizenship by the Order and preliminarily enjoined the Order's enforcement. *Id.*, at 105–106. We granted certiorari before judgment. 607 U. S. 1079 (2025).

II

To understand the Citizenship Clause of the Fourteenth Amendment, it is first necessary to understand the context in which it arose—and the opinion of this Court, *Dred Scott* v. *Sandford*, 19 How. 393 (1857), that it rejected.

A

The story of citizenship in the United States begins with the English common law. Before the Revolution, the American colonists—like all in the British Empire—were considered subjects of the sovereign. See *Inglis* v. *Trustees of Sailor's Snug Harbour in City of New York*, 3 Pet. 99, 120–121 (1830). That arose not from royal fiat, but from what the common law conceived as the relationship between the sovereign and the people. The King, Blackstone explained, owes those "born within the dominions" a duty of

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[1] In full, the Executive Order declares that "the privilege of United States citizenship does not automatically extend to persons born in the United States: (1) when that person's mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States at the time of said person's birth was lawful but temporary . . . and the father was not a United States citizen or lawful permanent resident at the time of said person's birth." Exec. Order No. 14160, 90 Fed. Reg. 8449 (2025).

"protection." 1 W. Blackstone, Commentaries on the Laws of England 354 (1765) (Blackstone); see also *id.*, at 358. And "in return for that protection," those "born within the dominions" owe the King a "duty" of "allegiance" (sometimes rendered "ligeance"). *Id.*, at 354, 356. Children born with that allegiance were "natural-born subject[s]." *Doe* v. *Jones*, 4 T. R. 300, 308, 100 Eng. Rep. 1031, 1035 (K. B. 1791) (Kenyon, C. J.). As Lord Coke put it in the celebrated *Calvin's Case*, 7 Co. Rep. 1a, 77 Eng. Rep. 377 (K. B. 1608), a "dual and reciprocal tie" thus connects "the Sovereign and [his] subject[s]." *Id.*, at 4b–5a, 77 Eng. Rep., at 382 (translated from Latin).

Because the sovereign's power (and thus his duty) was limited in various respects, so too was the scope of this rule. He could not demand allegiance from—for he could not protect—those born in lands that he did not control. *Id.*, at 18a, 77 Eng. Rep., at 399. (Among that group were the people born in the King's lost dominions—"France, Aquitain, Normandy, &c."—over which he claimed an "absolute right" but had no actual power to rule. *Ibid.*) The same held true even in discrete areas within his kingdom that were temporarily outside his control. See *id.*, at 18a–18b, 77 Eng. Rep., at 399 (if "enemies" were to "possess" a "castle or fort," their children would not be born "under the King's ligeance"). And the same held true for ambassadors (and their families), who were considered—by a fiction of extraterritoriality—to remain on foreign soil and thus "under the ligeance" of their home country. *Id.*, at 18a, 77 Eng. Rep., at 399; see also *Schooner Exchange* v. *McFaddon*, 7 Cranch 116, 138–139 (1812) (Marshall, C. J., for the Court).

In all other respects, however, the sovereign's power—and his claim to the people's allegiance—was complete. A foreign mother could enter the British Isles, give birth, and leave with her child the very next day, and that child would remain a British subject. Why? Because the child owed an implied allegiance to the sovereign who protected him at his

birth—no matter how "momentary and uncertain" his presence in the King's realms.[2] *Calvin's Case*, 7 Co. Rep., at 6a, 77 Eng. Rep., at 384; see also *Doe*, 4 T. R., at 308, 100 Eng. Rep., at 1035. The same rule applied to children born in the realm of parents subject to expulsion. For example, children of "gypsies" (today, called Romani or Roma people) born in the realm were natural-born subjects, notwithstanding that British law at the time "directed" the Roma people "to avoid the realm" under "pain of imprisonment" or even death. 4 Blackstone 166 (1769); see Brief for Gerard N. Magliocca as *Amicus Curiae* 2–4; cf. H. Hirota, Expelling the Poor 114–115 (2017) (describing outcry in 1855 when Massachusetts deported a pauper Irish mother with her American-born infant, who was acknowledged to be a "native born citizen"). For those children, and all others born in Britain, the rule was the same: With protection came allegiance, and with allegiance came the status of a natural-born subject.

This view crossed the Atlantic with the colonists—and was adopted with little fanfare after the Revolution, as "subject[s]" of the sovereign became "citizens" of the States. See *State* v. *Manuel*, 20 N. C. 144, 152 (1838). This common law of citizenship—known as *jus soli*, or right of the soil—prevailed in "each and all of the states" after American independence, and continued to emphasize reciprocal "allegiance" and "protection." 2 J. Kent, Commentaries on American Law 38–39, n. a, 40 (6th ed. 1848) (Kent). By "the doctrine of natural allegiance," all "who [we]re born within the jurisdiction of a State" were citizens. W. Yates, Rights

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[2] The mother, too, owed the British King allegiance "for so long [a] time as [she] continue[d]" in his territory. 1 Blackstone 358. But her allegiance was just "local and temporary"—the product of her presence in the British realm. J. Wharton, Law Lexicon 40 (E. Hopper ed., 2d Am. ed. 1860). Unlike the lasting allegiance of her natural-born son, the mother's allegiance was extinguished as soon as she left the British dominions.

of Colored Men 36 (1838) (Yates); see W. Rawle, A View of the Constitution of the United States of America 86 (2d ed. 1829).

When the newly independent Americans confronted a novel situation, unknown to England—that of the quasi-sovereign Indian tribes—they turned to the principles of the common law. Did the tribes truly govern their people? Or were their people wholly subsumed within the United States? Echoing Coke and Blackstone, Chancellor Kent answered with the common law. "We have purchased the greater part of their lands, destroyed their hunting grounds, . . . and gradually abridged their native independence," Kent acknowledged. *Goodell* v. *Jackson ex dem. Smith*, 20 Johns. 693, 711 (N. Y. Ct. Corr. Errors 1823). Even so, he reasoned, the "*United States* ha[s] never dealt with those people, within our national limits, as if they were extinguished sovereignties." *Id.*, at 714. They were instead "dependent nations" that maintained "dominion[s]" of their own. *Id.*, at 712, 714. Indians born under those dominions, he concluded, were not "citizens or subjects of the *United States*," but members of "alien and sovereign tribes." *Id.*, at 715. Others followed Kent's lead, see J. Kettner, The Development of American Citizenship, 1608–1870, pp. 294–296 (1978) (Kettner), all the while emphasizing that the "very few exceptions" to the sovereign's power were narrow indeed, H. Binney, Alienigenae of the United States 16 (2d ed. 1853) (Binney).

In a Nation of immigrants—an "asylum for mankind," in Thomas Paine's words—*jus soli*'s broad scope took on particular importance. Common Sense (1776), in 1 Writings of Thomas Paine 101 (M. Conway ed. 1894). The young Republic attracted tens of thousands of émigrés from the Old World—Scotch-Irish, French, German, Welsh, and many more, some of whom hoped to stay only a short time, others of whom hoped never to leave. See M. Jones, American Immigration 64–91 (1960). No matter their intentions,

however, they could be assured that their children would be American citizens by birth alone. As Justice Story said, "[n]othing is better settled." *Inglis*, 3 Pet., at 164 (opinion concurring in part and dissenting in part). The very first American legal treatise agreed. See 1 Z. Swift, A System of the Laws of the State of Connecticut 164, 167 (1795) ("children of aliens" are citizens, for they owe a "duty" at birth to the "government, under whose protection [they] came into existence"). As did the antebellum era's foremost case on the topic, *Lynch* v. *Clarke*, 1 Sand. Ch. 583 (N. Y. Ch. 1844). *Lynch* reiterated that "the common law rule was the law of the land" for the children of "citizens" and "foreigners" alike—including those foreigners here merely on a "temporary sojourn." *Id.*, at 638, 663–664. The promise of American citizenship, *Lynch* declared, extends to "all persons born within the jurisdiction of the United States." *Id.*, at 668 (internal quotation marks omitted).

B

The common law "made no distinction on account of race or color." *United States* v. *Rhodes*, 27 F. Cas. 785, 789 (No. 16,151) (CC Ky. 1866) (Swayne, J.). But the slave States did. As the Civil War approached, more and more Southern States sought to deny citizenship to black Americans—and openly rejected the common law to reach that result. See Kettner 320–324. It was "not the place of a man's birth" that made him a citizen, these States said, "but the rights and privileges he may be entitled to enjoy." *Amy* v. *Smith*, 11 Ky. 326, 332 (1822). On that view, "[t]he prejudice . . . of caste" was "unconquerable." *Bryan* v. *Walton*, 14 Ga. 185, 202 (1853). Not even emancipation could "confer *citizenship*," these States held, because free African Americans still suffered from "social and civil degradation" based on "the taint of blood." *Id.*, at 198. With the common law abandoned, almost 500,000 free black Americans in the South were left little more than "strangers." *African Methodist*

Episcopal Church v. *New Orleans*, 15 La. 441, 443 (1860); see I. Berlin, Slaves Without Masters 136–137 (1974).

In the odious decision of *Dred Scott* v. *Sandford*, this Court imposed the Southern States' beliefs onto the Nation. 19 How. 393. Chief Justice Taney, writing for the Court, concluded that "the words 'people of the United States' and 'citizen[s]'" had an unexpressed (and atextual) racial component—one that excluded all those descended from slaves. *Id.*, at 419. Even if Massachusetts or Connecticut chose to grant citizenship to the freedmen, they still could not participate in national affairs. See *id.*, at 422–423. They were "born in the country," Chief Justice Taney acknowledged, and thus "did owe allegiance to the Government"—the precise criteria for citizenship at common law. *Id.*, at 420. But they were "not included, and were not intended to be included, under the word 'citizens' in the Constitution." *Id.,* at 404. For them, blood, not soil, was made the rule.

Dred Scott was met with shock. Ever since "the Declaration of Independence," Justice Curtis wrote, "the received general doctrine has been, in conformity with the common law"—that all "free persons born within" a State are "citizens of the United States." *Id.*, at 576–577 (dissenting opinion). Justice McLean said much the same. "Being born under our Constitution and laws," he explained, "make[s] him a citizen." *Id.*, at 531 (dissenting opinion). Northern newspapers condemned *Dred Scott* as "a wicked and false judgment," "an atrocious doctrine," "a deliberate iniquity," and a "willful perversion." D. Potter, The Impending Crisis, 1848–1861, p. 281 (1976). The decision was, in Lincoln's famous words, an "astonisher in legal history." 3 Writings of Abraham Lincoln 55 (A. Lapsley ed. 1905).

Abolitionists swore to undo what the Court had done. "By birth," Frederick Douglass insisted, "we are American citizens." 2 Life and Writings of Frederick Douglass 259 (P. Foner ed. 1950). "The Constitution knows all the human inhabitants of this country as 'the people,'" he explained, no

matter their "color, class, or clime." *Id.*, at 415, 424. "[A]ll I ask of the American people is, that they live up to the Constitution, adopt its principles, imbibe its spirit, and enforce its provisions." *Id.*, at 424. "When this is done," Douglass predicted, "the glorious birthright of our common humanity" will once again "become the inheritance of all the inhabitants of this highly favored country." *Ibid.*

C

The Court had overruled the common law, but the people—eventually—would overrule the Court. It took more than a decade—and the addition of names such as Antietam, Gettysburg, and Chancellorsville to our national canon—but Douglass's vision of "our common humanity" would be fulfilled.

The Reconstruction Congress did not start from scratch. In the midst of the Civil War, President Lincoln's Attorney General, Edward Bates, had issued a landmark opinion that sought to displace *Dred Scott* in favor of the common law. Citing the key authorities (among them *Calvin's Case* and Kent's Commentaries), Bates rejected the premise that "citizenship is ever hereditary." 10 Op. Atty. Gen. 382, 399 (1862). "[E]very person born in the country," he wrote, "is, at the moment of birth, *prima facie* a citizen . . . without any reference to race or color, or any other accidental circumstances." *Id.*, at 394. He acknowledged that there were some limits—hence "*prima facie*," not "conclusive." See *id.*, at 394, 396–397. But those exceptions were "few," simply "the small and admitted class of the *natural-born* composed of the children of foreign ministers and the like." *Id.*, at 397. To Bates, it was soil—not blood—that "furnishes the rule, both of duty and of right." *Id.*, at 394; see also 10 Op. Atty. Gen. 328, 328–329 (1862) (referring to *Lynch* for its "full and clear statement" of the common law).

A year after General Lee's surrender at Appomattox, Congress sought to turn Bates's opinion into law. The

result was the Civil Rights Act of 1866. The Act declared that "all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby . . . citizens of the United States." §1, 14 Stat. 27. To the Reconstruction Congress, the Act was simply assumed to invoke the common law rule—as Bates had in his "ablest and most exhaustive opinion," Cong. Globe, 39th Cong., 1st Sess., 1116 (1866) (Rep. Wilson), and as the New York Court of Chancery had "[i]n the great case of *Lynch* vs. *Clarke*," *id.*, at 1832 (Rep. Lawrence). Indeed, the bill's sponsor, Senator Lyman Trumbull, enthusiastically agreed with the bill's critics that it would make citizens of "the children of Chinese and Gypsies born in this country." *Id.*, at 498. "[E]ven the infant child of a foreigner born in this land is a citizen" under this bill, Trumbull declared. *Id.*, at 1757.

The specter of *Dred Scott*, however, loomed over Congress's efforts. Opponents of the Act contended that Congress could not grant such expansive citizenship (and set aside this Court's precedent) by statute alone. See, *e.g.*, Cong. Globe, 39th Cong., 1st Sess., at 497–498 (Sen. Van Winkle); *id.*, at 499 (Sen. Cowan). To quiet those concerns—and to permanently enshrine the common law in the Constitution—Congress turned to the Fourteenth Amendment.

III

A

What the Civil Rights Act began, the Fourteenth Amendment would finish. Like the Act, the Fourteenth Amendment was intended to repudiate *Dred Scott*. This time, however, the goal was even grander—to put the "great question of citizenship" "beyond the legislative power" altogether, to settle the issue once and for all. Cong. Globe, 39th Cong., 1st Sess., at 2891, 2896 (Sen. Howard).

The Fourteenth Amendment achieved its aim. The Citizenship Clause mirrored the common law's criteria for

citizenship. The Clause starts, like the common law, with territory—a child must be "born . . . in the United States," not elsewhere (even to American parents). And the Clause ends, again like the common law, with sovereign power—a child must be "subject to the jurisdiction" of the United States, unlike (say) the families of foreign ministers. A child born on American soil and subject to American law was made an American citizen.

Even the *language* of the Clause is that of the common law. *Lynch* held that American citizenship extended to "all persons born within the jurisdiction of the United States." 1 Sand. Ch., at 668. So did Chancellor Kent. See Kent 38, and n. a ("all persons born within the jurisdiction and allegiance of the United states" are citizens). So did the first legal treatise on the rights of free black Americans. See Yates 36 (all "who are born within the jurisdiction of a State" are citizens). And so did the famed antebellum lawyer Horace Binney. See Binney 20 (children "born within the limits and under the jurisdiction of the United States" are citizens). Little wonder, then, that the Citizenship Clause's principal author would explain that its language was "simply declaratory of . . . the law of the land already." Cong. Globe, 39th Cong., 1st Sess., at 2890 (Sen. Howard).

That law was clear. Any child who was born "under the protection of" the United States—that is, any child for whom no extraterritorial fiction applied—was made a citizen, for he owed a natural "allegiance" (and thus "obedience") to the Nation. *Lynch*, 1 Sand. Ch., at 668; see Cong. Globe, 39th Cong., 1st Sess., at 570 (Sen. Morrill) (the "essential elements of citizenship" are "allegiance on the one side and protection on the other").

B

Even putting the common law to one side, the Citizenship Clause's key phrase—"subject to the jurisdiction"—requires the same result. The word "jurisdiction" was hardly

unknown to the drafters and ratifiers of the Fourteenth Amendment. Congress chose to use an established legal term and the Clause must be interpreted in that light.

In 1868, as today, "jurisdiction" (in the context of a sovereign) refers to the "[p]ower of governing or legislating." N. Webster, An American Dictionary of the English Language 732 (C. Goodrich & N. Porter eds. 1865); see also, *e.g.*, 1 B. Abbott, Dictionary of Terms and Phrases Used in American or English Jurisprudence 671 (1879) ("The authority of government; the sway of a sovereign power"). To be "subject to" the jurisdiction of the United States, then, is to "liv[e] under" its "dominion," J. Worcester, Dictionary of the English Language 1435 (1860), a meaning reinforced by the Clause's territorial focus on those born "in" the United States. The Citizenship Clause uses jurisdiction in its ordinary sense—referring to the power of the United States to govern those within its territory.

The scope of that power was well settled in 1868, largely by "the celebrated case" of *Schooner Exchange* v. *McFaddon*, 7 Cranch 116. See H. Wheaton, Elements of International Law §96, p. 154 (8th ed. 1866). Expounding on "general principles," Chief Justice Marshall explained that "jurisdiction" referred to "the full and complete power of a nation within its own territories." 7 Cranch, at 136. That "absolute" power was "susceptible of no limitation not imposed" by the nation itself. *Ibid.* All sovereigns, however, were understood to have impliedly waived their jurisdiction in "certain peculiar circumstances"—in essence, where exercising jurisdiction would "degrade the dignity" of "foreign sovereigns." *Id.*, at 136–137. As in the context of *jus soli*, those peculiar circumstances arose most frequently in the case of "foreign ministers." See *id.*, at 138–139. "[E]very sovereign would hazard his own dignity," after all, if his officials abroad were made to "owe temporary and local allegiance to a foreign prince." *Id.*, at 139.

The limits of that exception were carefully defined. Still within the United States' power were the "private individuals" of a foreign nation who had "spread themselves through [our territory] as business or caprice may direct." *Id.*, at 144. "[I]t would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction," Chief Justice Marshall explained, "if such individuals or merchants . . . were not amenable to the jurisdiction of the country." *Ibid.* "Nor can the foreign sovereign have any motive for wishing such exemption," he continued, with respect to its sojourning subjects who were "not employed by" the sovereign or "engaged in national pursuits." *Ibid.* Just like *jus soli*, a sovereign's jurisdiction made no exception for those only temporarily present within the sovereign's territory. Instead, nearly everyone within the territorial boundaries of the United States was "amenable to" the Nation's jurisdiction. *Ibid.*

The ordinary legal meaning of the text of the Clause thus neatly captures the common law rule, with its broad reach and narrow exceptions. The same groups included (and excluded) by *jus soli* were included (and excluded) by the conventional understanding of jurisdiction. Excluded by both were the children of foreign ministers and members of 19th-century Indian tribes over whom the United States had ceded a part of its territorial jurisdiction to preserve its relationship with a foreign sovereign (or quasi-sovereign).

No such intersovereign concerns apply to children born of parents unlawfully or temporarily present in the United States; no foreign sovereign would "have any motive for wishing" them outside this Nation's authority. *Ibid.* Those children are thus subject to the jurisdiction of the United States. They satisfy both elements of the Citizenship Clause: they are "born . . . in the United States" and "subject to the jurisdiction thereof." Under the Constitution, they are citizens at birth.

IV

Our precedent—the seminal case of *United States* v. *Wong Kim Ark*, 169 U. S. 649 (1898)—confirms this rule.

A

For nearly two decades after the Fourteenth Amendment's ratification, the Executive Branch viewed the Citizenship Clause as "simply an affirmance of the common law of England and of this country." Memorandum of Secretary of State H. Fish to Mr. Marsh (May 19, 1871), in 2 Digest of the International Law of the United States §183, p. 394 (F. Wharton ed. 2d ed. 1887) (Digest). Under that view, "the status of citizenship" was "fixed by the place of nativity, irrespective of parentage"—with the limited exception of "the children of foreign ministers, and of other persons who may be within our territory with rights of extraterritoriality." *Ibid.*

In 1872, for instance, Attorney General George Williams was called upon to determine the citizenship of a child born of Austrian parents only "temporarily residing" in New York City. 14 Op. Atty. Gen. 154. Citing the Citizenship Clause (and Bates's 1862 opinion), Williams explained that "a person born in this country, though of alien parents who have never been naturalized, is, under our law, deemed a citizen of the United States by reason of the place of his birth." *Id.*, at 155. Thus the child "is a native of this country," Williams concluded, "and as such was originally clothed with American nationality." *Ibid.* Secretary of State Hamilton Fish agreed. See Memorandum to Baron Lederer (Dec. 24, 1872), in 2 Digest 395–396. So did federal courts. Like the Executive Branch, they saw the Clause as merely "declaratory of the rule of the common law." *McKay* v. *Campbell*, 16 F. Cas. 161, 165 (No. 8,840) (DC Ore. 1871); see also *In re Look Tin Sing*, 21 F. 905, 908–910 (CC Cal. 1884) (Field, J.); *Ex parte Chin King*, 35 F. 354, 355–356 (CC Ore. 1888).

As the era of Reconstruction faded, however, so too did the promise of birthright citizenship. Uncertainty came with the first Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, and the election of President Cleveland, the first Democrat to hold the office since the Civil War. See F. Douglass, Speech (Apr. 16, 1885), in 4 Life and Writings of Frederick Douglass 413 (1955). It was around this time that the State Department began to deny citizenship to those with "dual or doubtful allegiance," 2 Digest 402; and it was around this time that several scholars proposed a new theory of the Clause, one based on "international law," F. Wharton, Conflict of Laws §10, p. 35 (2d ed. 1881) (Wharton).

This new theory focused on the *parents'* status, not the *child's*. It was only if a child's parents were "domiciled in the United States," they argued, that the child was "*internationally* subject to the jurisdiction of the United States," as the Citizenship Clause (they said) required. *Id.*, §12, at 41–42 (emphasis added); see also A. Morse, A Treatise on Citizenship 248 (1881). These writers acknowledged that the common law took a different view, see *id.*, at 238, and n. 1, and acknowledged "that the language of the [F]ourteenth [A]mendment . . . is very broad," A. Morse, Citizenship of Children of Aliens Born in the United States, 30 Albany L. J. 420 (1884). But they insisted that *jus soli* had been "universally" rejected by other nations and had not been made part of the Constitution. *Ibid.*

B

In *Wong Kim Ark*, this Court rejected that view, concluding that no "rule of international law" had qualified "the ancient rule of citizenship by birth within the dominion." 169 U. S., at 667.

At issue was the citizenship of Wong Kim Ark, born in San Francisco to Chinese parents. See *id.*, at 652. In Wong's telling, the case was not close. "[T]here can be no

just doubt," he argued, "that the Amendment was intended to be based upon the doctrine derived from the common law, that the character of a natural born citizen is incidental to birth only." Brief for Appellee in *United States* v. *Wong Kim Ark*, O. T. 1896, No. 132, p. 78 (filed by Counselor Ashton); see also *id.*, at 38 (discussing "the celebrated case of *Lynch vs. Clark*"). The Government disagreed. It admitted that "the opinions of the Attorneys-General, the decisions of the Federal and State courts, and, up to 1885, the rulings of the State Department all concurred in the view that birth in the United States conferred citizenship," based on "the common law doctrine of allegiance" and "the authority of the decision of Chancellor Sandford in *Lynch* v. *Clarke*." Brief for United States in *United States* v. *Wong Kim Ark*, O. T. 1896, No. 132, p. 28. But the Executive no longer endorsed that view. "[T]he common-law doctrine of England," it argued, had in fact never been "the doctrine of the United States," and was not made the law by virtue of the Citizenship Clause. *Id.*, at 6.

In an opinion by Justice Gray, the Court rejected the Government's position. Justice Gray explained that the Fourteenth Amendment was merely "declaratory" of the "fundamental rule of citizenship by birth" that prevailed at common law. 169 U. S., at 688. That "same rule," he wrote, "was in force in all the English Colonies"—"and continued to prevail under the Constitution." *Id.*, at 658. And its contours were clear. It excluded those recognized as exempt "from the jurisdiction of this country"—the "children of ambassadors" and other representatives of foreign sovereigns, as well as those born in the "alien nations" of Indian tribes. *Id.*, at 675, 681–683, 693.

All others were citizens at birth, whether born to permanent residents or temporary visitors. See *id.*, at 676, 687–688. Indeed, Justice Gray noted, no one had even "contested" this conclusion for "more than fifty years after the adoption of the Constitution"—until the matter was

"elaborately argued" before the New York Court of Chancery in *Lynch* v. *Clarke*. 169 U. S., at 664. And there the question was "decided upon full consideration by Vice Chancellor Sandford in favor of their citizenship." *Ibid.* "The same doctrine was repeatedly affirmed in the executive departments," Justice Gray wrote, not to mention by Kent and Binney—each of whom affirmed that "[t]he child of an alien, if born in the country, is as much a citizen as the natural-born child of a citizen." *Id.*, at 664–665. In adopting the common law, Justice Gray explained, the Citizenship Clause adopted this same rule. See *id.*, at 676.

Justice Gray then turned to *Schooner Exchange* to confirm what the common law made clear. "The words . . . 'subject to the jurisdiction thereof,'" he wrote, "must be presumed to have been understood and intended by the Congress . . . in the same sense in which the like words had been used by Chief Justice Marshall in the well known case of *The Exchange*." 169 U. S., at 687. On that understanding, aliens who traveled to the United States for "business or pleasure" received no "exemption from the jurisdiction of the country." *Id.*, at 686. To the contrary, they were subject to that jurisdiction for as long as they remained here—and any children born to them were American citizens under the Fourteenth Amendment. See *id.*, at 682–688.

What the Court held in *Wong Kim Ark* was simple: the Citizenship Clause incorporated the common law and granted citizenship to nearly all children born in the United States. Not surprisingly, then, in the 128 years since, we have repeatedly understood the rule of *Wong Kim Ark* to guarantee citizenship to all children born in the United States and subject to its power. See, *e.g.*, *United States ex rel. Hintopoulos* v. *Shaughnessy*, 353 U. S. 72, 73 (1957); *INS* v. *Rios-Pineda*, 471 U. S. 444, 446 (1985). We see no reason to depart from that view today.

V

The Government and the principal dissent share many of our premises. They agree that the Citizenship Clause was intended to incorporate the "background principles" of the common law. Brief for Petitioners 15–16; see, *e.g.*, *post*, at 2–3, 86 (THOMAS, J., dissenting). They agree that, under the common law, "citizenship turns on allegiance." Brief for Petitioners 40; see, *e.g.*, *post*, at 1, 17–18 (THOMAS, J., dissenting). And they agree that "*Dred Scott* departed from that traditional, allegiance-based view of citizenship"—a departure that Congress "repudiated" in the Clause. Brief for Petitioners 16–17; see, *e.g.*, *post*, at 1–2, 26–27 (THOMAS, J., dissenting).

Where the Government and the principal dissent err is with their definition of "allegiance." They concede that *Calvin's Case* and Blackstone state the rule that prevailed before the Declaration of Independence—that a natural "allegiance" arises for all children who are "born here . . . under the protection of the sovereign." Tr. of Oral Arg. 64–65, 136; see *post*, at 75–76 (THOMAS, J., dissenting). Yet according to the Government and the principal dissent, "the United States' conception of allegiance"—at some unspecified point in time—broke "from Great Britain's." Brief for Petitioners 16. (The Government has variously dated this change to the late-18th century, see Tr. of Oral Arg. 137, the early-19th century, see *id.*, at 26, 76, and the Reconstruction era, see *id.*, at 3; the principal dissent declines to offer a date.) Natural allegiance, they contend, was no longer sufficient for citizenship; some greater quantum of allegiance was required.

How much? The Government offers a smorgasbord of formulations: "primary allegiance," "sufficient allegiance," "full allegiance," "requisite allegiance." Brief for Petitioners 12, 14, 15, 17, 19, 21, 23, 29, 32, 42. (The principal dissent, for its part, seems to have settled on "primary allegiance." *Post*, at 17, 22, 25, 29, 58.) What all these formulations

supposedly share is that they turn on domicile—the place of one's permanent home. At some point before the ratification of the Fourteenth Amendment, the argument goes, it became "deeply rooted" in this country that "[d]omicile is the key concept that creates allegiance." Tr. of Oral Arg. 26.

The trouble is that there is scant evidence for this dramatically revisionist view. Certainly no one said that such a change had occurred. Indeed, even as the antebellum Americans hotly debated whether the Declaration of Independence had abrogated one aspect of the British common law—that natural allegiance was indefeasible, no matter a person's desire to expatriate—all agreed that such allegiance was owed in the first place. See *Lynch*, 1 Sand. Ch., at 657 ("perpetual allegiance . . . does not stand upon the same reason or principle as the common law doctrine of allegiance by birth"); *Murray* v. *Schooner Charming Betsy*, 2 Cranch 64, 120 (1804) (noting unsettled question of whether an American citizen "can divest himself absolutely of" his citizenship, but simply presuming that any "person born within the *United States*" was a natural-born citizen).

The only evidence the Government and the principal dissent can muster to show that some alternative ("primary") conception of allegiance displaced the common law is a "funeral oration" for President Lincoln. Brief for Petitioners 23; see *post*, at 22–23. Ahistorical modifiers aside, the Government and the dissent identify no source that defined allegiance at birth as being based on domicile in the period from 1776 to 1868.[3] Sources from that period instead defined "allegiance by birth" just as the British did—as "the tie or duty" owed by one who is "born within the dominions

[3]The principal dissent comes closest with the decision of New York's intermediate appellate court in *Ludlam* v. *Ludlam*, 31 Barb. 486 (N. Y. Gen. Term 1860). When New York's highest court heard the case, however, it did not follow the lower court's reasoning; it relied instead on *Lynch* v. *Clarke*. See *Ludlam* v. *Ludlam*, 26 N. Y. 356, 376 (1863).

and under the protection of a particular sovereign." *Inglis*, 3 Pet., at 155 (opinion of Story, J.); see also, *e.g.*, 1 N. Webster, An American Dictionary of the English Language (1828) ("[e]very native" owes a "*natural* or *implied* allegiance" "to the government under which he is born").

Of course, some wished to change the rule. But even those who wished to limit *jus soli* did not deny that children born of temporary visitors owed *natural allegiance* to the United States. They instead thought that domicile might serve as a "reasonable qualification" to the common law rule (namely, that citizenship derives solely from the "[n]atural allegiance" owed "to the government of the territory of a man's birth"). J. Story, Commentaries on the Conflict of Laws §§21, 48, pp. 22, 48 (1834) (Story).

The principal dissent (but not the Government) at times seems to directly equate domicile and national citizenship. See *post*, at 9–10, 12–14, 40–41. That is wrong. "It is, in fact, a general axiom of international law, that there may be domicil where there is no nationality, and nationality where there is no domicil." F. Wharton, Conflict of Laws §40a, p. 47 (1872); see also A. Cockburn, Nationality 204 (1869). After all, one who establishes a domicile in a new country does not automatically become a citizen thereof. (He has to be naturalized.) Nor does he automatically lose his prior citizenship. (He has to expatriate.) Thus, the principal dissent ultimately acknowledges that domicile alone was insufficient to make someone "formally" a "citizen." *Post*, at 9.

Of course, domicile was relevant to naturalization and expatriation. But that by no means suggests it was a prerequisite to national citizenship at birth. The principal dissent's reliance on cases concerning *changes* to a person's *state* citizenship is thus misplaced. See, *e.g.*, *post*, at 6–7. And the Government's remaining support for the idea that a domicile "qualification" to birthright citizenship was "widely accepted" in the United States before the Civil War,

Brief for Petitioners 22, consists of a single state-court case about citizenship in the Republic of Texas, a proposed (but never adopted) model code for the State of New York, and another treatise that discussed the subject only in terms of "the principles of natural reason," which it expressly distinguished from "[t]he *common law*," 1 H. Tucker, Commentaries on the Laws of Virginia 57–58 (1836).

The congressional debates over the Civil Rights Act of 1866 and the Fourteenth Amendment confirm our view. The principal dissent (and the Government) lean heavily on a handful of ambiguous floor statements referencing "temporary sojourners" and "foreigners." See, *e.g.*, Cong. Globe, 39th Cong., 1st Sess., at 1117 (Rep. Wilson) ("*it may be* that children born on our soil to temporary sojourners" do not fall within the Act's scope (emphasis added)); *id.*, at 2890 (Sen. Howard) (the Citizenship Clause "w[ould] not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of embassadors or foreign ministers"). Far more frequent and explicit, however, were statements embracing the common law. See, *e.g.*, *id.*, at 498 (Sen. Trumbull); *id.*, at 570 (Sen. Morrill); *id.*, at 1124 (Rep. Cook); *id.*, at 1832 (Rep. Lawrence); *id.*, at 2768 (Sen. Wade); *id.*, at 2891 (Sen. Conness); *id.*, at 3032 (Sen. Henderson). And the debates make clear that no member of Congress seriously grappled with a domicile-based carveout to the "fixed, certain, and intelligible rule[]" of the common law. *Lynch*, 1 Sand. Ch., at 658.

For a Congress intent on putting the question of citizenship "once and forever [to] rest," Cong. Globe, 42d Cong., 1st Sess. 575 (1871) (Sen. Trumbull), a domicile-based qualification would have introduced significant uncertainty. Unlike the easy-to-apply common law, it would be "difficult, if not impossible, to lay down any general rule" of domicile-based citizenship, as domicile "often depend[s] upon the circumstances of each case, the combinations of which are

infinite." *Inhabitants of Abington* v. *Inhabitants of North Bridgewater*, 40 Mass. 170, 177 (1839).

If Congress intended to hinge citizenship on each individual's domicile—a question that "is sometimes a matter of great difficulty to decide," Story §45, at 43—it is reasonable to expect there would have been at least *some* discussion of the topic. Yet the word "domicile" appears just twice in the discussion of the relevant provision of the Civil Rights Act. See Cong. Globe, 39th Cong., 1st Sess., at 1160 (Rep. Shellabarger); *id.*, at 1117 (Rep. Wilson). And it appears in only one speech from the Citizenship Clause debates—as part of an explanation of why State citizenship is distinct from national citizenship under the Constitution. See *id.*, at 3031–3032 (Sen. Henderson).

Perhaps recognizing the absence of ratification-era support for a domicile-based rule of national citizenship, the Government and principal dissent both emphasize sources from after the ratification of the Fourteenth Amendment. They turn to the same international law treatises that underpinned the Government's attempts to limit birthright citizenship in the 1880s.[4] This fundamentally revisionist scholarship—and the post-1884 Executive Branch actions that relied upon it—do not put in doubt the understanding of the Citizenship Clause at the time of (and after) its ratification. As Senator Trumbull explained in 1871, the

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[4]The principal dissent suggests that any scholar who wanted "to prevent the children of Chinese immigrants from being citizens . . . would not have proposed a domicile requirement," because "many Chinese immigrants were already domiciled here." *Post*, at 72. But several of the scholars upon which the dissent relies (most prominently Francis Wharton) did not agree. In their view, Chinese children born in America were "not citizens" because the Chinese—"as a population"—could not be "domiciled in the United States." Wharton §12, at 41–42. Indeed, the Government made the same argument in *United States* v. *Wong Kim Ark*, 169 U. S. 649 (1898). See Brief for United States in *United States* v. *Wong Kim Ark*, O. T. 1896, No. 132, p. 26 (asserting that "*all* Chinese persons, as a rule, are but temporary residents of this country").

Citizenship Clause recognized that "[e]very person born within the jurisdiction" of the Nation was "a citizen of the United States," as had been true under "the common law of this country as well as of England." Cong. Globe, 1st Sess., 42d Cong., at 575; see also, *e.g.*, Memorandum of Secretary of State H. Fish (1871), in 2 Digest 394; *In re Look Tin Sing*, 21 F., at 906, 909–910.

In any case, postenactment history cannot override the text. If Congress intended to limit American citizenship to the children of those domiciled in the United States, nothing in the succinct language of the Citizenship Clause conveyed that design. Words appearing frequently in the Executive Order—"mother," "father," "lawful," "temporary"—are absent from the Clause. For a simple reason: they did not matter. And while the Clause does ensure *state* citizenship attaches for U. S. citizens in "the State wherein they reside," Amdt. 14, §1, the explicit invocation of residence for *state* citizenship only highlights its absence from the criteria for *U. S.* citizenship. See *Slaughter-House Cases*, 16 Wall. 36, 74 (1873) (a person can "be a citizen of the United States without being a citizen of a State").

When the principal dissent does grapple with the operative legal text—"subject to the jurisdiction" of the United States—it has little to say. It argues only that a person is "subject to the jurisdiction of the government of his domicile." *Post*, at 3. But that is not the question. The question is whether a person is "subject to the jurisdiction" of the government of the country in which he is physically present, even if he is only there temporarily. He is (unless he falls under one of the familiar exceptions, such as for ambassadors). For the reasons given by Chief Justice Marshall in *Schooner Exchange*, the United States exercises

"full and complete power"—its "absolute and complete jurisdiction"—over temporary visitors. 7 Cranch 116, at 136.[5]

To avoid these problems, the principal dissent spends much of its time on the text of the Civil Rights Act. See *post*, at 2–4, 23–31, 35–36, 48–49, 59, 67–68, 87, 88–89. (JUSTICE ALITO does the same—albeit in service of a different result. See *post*, at 13–18, 20–21, 24–25, 36 (dissenting opinion).) The Civil Rights Act made citizens of "all persons born in the United States and not subject to any foreign power." 14 Stat. 27. The principal dissent contends that a person is "not subject to any foreign power" if (and only if) he is "domiciled in" the United States, for it is then (and only then) that "his home nation" is forbidden from regulating his conduct. *Post*, at 3, 13–14. JUSTICE ALITO contends that a person is "not subject to any foreign power" if (and only if) no other country would "automatically" make him a "national[]," whether he is domiciled here or not. *Post*, at 37.

Neither theory works. As to the principal dissent, it is simply not true that domicile in a new nation severs one's ties to the old one. See Story §540, at 451 ("Nations

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[5]The Government briefly contends that *Elk* v. *Wilkins*, 112 U. S. 94 (1884) adopted its unconventional understanding of jurisdiction. That is mistaken. *Elk* addressed the citizenship of a child "born a member of one of the Indian tribes." *Id.*, at 99. And *Elk* hewed to the very same common law rule announced by Chancellor Kent in 1823—indeed, it even cited him. See *id.*, at 100. The Court reasoned that tribal members were "no more 'born in the United States and subject to the jurisdiction thereof'" than "children born within the United States, of ambassadors or other public ministers of foreign nations." *Id.*, at 102. In both contexts, after all, the United States had voluntarily "cede[d] . . . a part of its territorial jurisdiction" to another sovereign (or quasi-sovereign). *Wong Kim Ark*, 169 U. S., at 686. As the Court later confirmed, *Elk* "concerned only members of Indian tribes within the United States." *Wong Kim Ark*, 169 U. S., at 682. Beyond that unique intersovereign relationship, the Court's decision "had no tendency to deny citizenship to children born in the United States of foreign parents . . . not in the diplomatic service of a foreign country." *Ibid.*

generally assert a claim to regulate the rights, duties, obligations, and acts of their own citizens, wherever they may be domiciled."). If the test truly is whether a person is "amenable to the laws" of two governments at once, *post*, at 14 (THOMAS, J., dissenting), then it is a test that every child born to a foreign parent fails—a result that even the principal dissent cannot stomach. JUSTICE ALITO seems to recognize this bind, so he would create an ad hoc exception for those whose parents have "done everything within their power . . . to become Americans." *Post*, at 27. He does not explain how that exception can be squared with his view of the text, which (to repeat) is that anyone "automatically" made a "national[]" of his "parents' native country" was not entitled to citizenship under the Civil Rights Act.[6] *Post*, at 37. In our estimation, the Act raises more questions than answers—and was replaced by the Fourteenth Amendment, which "better" expresses the views of the Reconstruction Congress anyway. Cong. Globe, 39th Cong., 1st Sess., at 2894 (Sen. Trumbull). This Court said as much in *Wong Kim Ark*. See 169 U. S., at 675, 688 ("any possible doubt" about the meaning of the Civil Rights Act "was removed" by the change to "the affirmative words" of the Citizenship Clause).

For the dissents and the Government, *Wong Kim Ark* is essentially irrelevant. They attempt to narrow that precedent by noting that the Court's opinion repeatedly referred to the domicile of Wong's parents. That is true. But "the reasoning underlying" the holding of *Wong Kim Ark* cannot

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[6] JUSTICE KAVANAUGH proposes a similar ad hoc exception to his own interpretation of the Citizenship Clause. Under his rule, the Clause generally does not promise citizenship to children whose parents are "not U. S. citizens." See *post*, at 9 (opinion concurring in judgment and dissenting in part). Yet it *must* grant citizenship under the "facts and circumstances" presented in *Wong Kim Ark*—even though Wong's parents were not U. S. citizens. *Post*, at 5, n. 3. Like the exception proposed by JUSTICE ALITO, JUSTICE KAVANAUGH's exception is at war with his supposedly "unifying" principle of the Clause. *Post*, at 9.

be squared with a domicile requirement of the sort the Government envisions. *Bucklew* v. *Precythe*, 587 U. S. 119, 136 (2019). As we have already explained, the Court exhaustively canvassed the text and history of the Citizenship Clause. It traced an unbroken line from the English common law, into the founding and antebellum eras, and through the debates, to the Clause's ratification. Yet at no point did the Court identify any evidence in the historical record that the ratifiers of the Fourteenth Amendment thought themselves to be imposing a domicile limitation.

In the end, it is the *dissent* in *Wong Kim Ark* that makes the strongest case for a domicile-based theory of American citizenship. There, Chief Justice Fuller resisted the application of the English common law rule because it "recognized no exception in the instance of birth during the mere temporary or accidental sojourn of the parents." 169 U. S., at 718. He admitted that, in England, "the question of domicil[e] is entirely distinct from that of allegiance" because "[t]he one relates to the civil, and the other to the political, status." *Ibid.* But he believed that "a different view as to the effect of permanent abode on nationality ha[d] been expressed in this country." *Ibid.* Under this different view, the Fourteenth Amendment "prevent[ed] the acquisition of citizenship by" "the children of aliens, whose parents owed local and temporary allegiance merely, remaining subject to a foreign power." *Id.*, at 721. The Government and today's dissenters agree. But this view commanded only a dissent in 1898, and neither time nor circumstance has changed the fact that it is not the law.

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Again and again, the dissents cast the common law as "feudal," "medieval"—a remnant of "the darkness of the middle ages." *Post*, at 4–5, 45, 54, 64, 75–78 (opinion of THOMAS, J.); see *post*, at 1 (opinion of GORSUCH, J.); *post*, at 2, 4, 27 (opinion of ALITO, J.).

That was not the view of the Reconstruction Congress. Where the dissents see feudalism, the Framers of the Fourteenth Amendment saw emancipation. By the time of the Glorious Revolution in 1688, in fact, the tie created by birth was less a "duty" than a "right"—the foundation of the "ancient liberties" of "free-born subjects." H. Muller, Subjects and Sovereign 16–18, 57–58 (2017). That is why Blackstone described the "privileges" owed to the "natural-born." 1 Blackstone 361–362. That is why the colonists demanded the "rights of Englishmen" more than 250 years ago. B. Bailyn, The Ideological Origins of the American Revolution 192 (1967). And that is why abolitionists lauded the "ancient and universal" rule of citizenship by birth alone as "an ordinance of Heaven." Yates 36–37; see also M. Jones, Birthright Citizens 89–107 (2018).

Citizenship, then and now, was the right to have rights—to freely participate in our political community. The Framers of the Fourteenth Amendment extended that promise to "every free-born person in this land." Cong. Globe, 39th Cong., 1st Sess., at 600 (Sen. Trumbull). We keep that promise today.

The judgment of the District Court for the District of New Hampshire is affirmed.

It is so ordered.