Nos. 24A884, 24A885, 24A886

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, et al., Applicants,

v.

CASA, INC., et al., Respondents.

DONALD J. TRUMP, et al., Applicants,

v.

WASHINGTON, et al., Respondents.

DONALD J. TRUMP, et al., Applicants,

v.

NEW JERSEY, et al., Respondents.

BRIEF OF WILLIAM T. DICKSON AS *AMICUS CURIAE* IN SUPPORT OF APPLICATIONS FOR STAY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

U.S. Constitution

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus curiae William T. Dickson is an attorney who has researched the issue of "birthright citizenship" and this Court's decision in the case of *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) for several years. He is also a resident of the State of Texas which has borne much of the brunt of the massive wave of illegal immigration into this country over many years, but in particular over the last four years. In the course of his research, he has become convinced that both the meaning of the phrase "subject to the jurisdiction thereof" in the Citizenship Clause of the 14th Amendment to the United States Constitution and this Court's holding in *Wong Kim Ark* have been misunderstood and misapplied for many years. The erroneous understanding of what *Wong Kim Ark* actually holds has permeated the proceedings below, and, to assure the proper adjudication of the three cases before the Court, *Amicus* submits his views to the Court.[1]

INTRODUCTION

8 U.S.C. § 1401 lists eight (8) categories of people who are considered natural born citizens. 8 U.S.C. § 1401(a) states:

> a person born in the United States, and subject to the jurisdiction thereof;

Paragraph (a) merely mirrors the Citizenship Clause of the 14th Amendment which states:

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[1] No counsel for any party authored this brief in whole or in part and no person or entity, other than amicus curiae, has contributed money that was intended to fund preparing or submitting the brief.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. CONST. amend. XIV, § 1

It has long been a widely held view and *the policy* of the executive branch of the federal government that the phrase "subject to the jurisdiction thereof" conveyed universal birthright citizenship, other than to children born to diplomats and members of an invading army. The fundamental issue before the Court in this proceeding is whether *the law* conveys universal birthright citizenship other than to children born to diplomats and members of an invading army.

On January 20, 2025, President Donald J. Trump signed an executive order titled "Protecting the Value of United States Citizenship" *Exec. Order No. 13989*, 85 Fed. Reg. 512 (2025) ("EO"). This EO, on the theory that the people affected were not being "stripped" of their U.S. citizenship because under *the law* they were never U.S. citizens in the first place, reversed the executive branch *policy* of treating both the 14th Amendment and 8 U.S.C. § 1401(a) as creating a right to universal birthright citizenship.

As soon as the President signed the EO, actions were commenced in four separate U.S. District Courts to obtain injunctive relief to enjoin enforcement of the EO. The relief requested was granted by the U.S. District Courts and on appeal the First, Forth, and Ninth Circuit Courts of Appeal declined to stay the Preliminary Injunction Orders pending normal appeals. The Government then sought relief from this Court to stay the Preliminary Injunctions.

All of the claims made in the District Courts were ultimately based on a claim that this Court in *United States v. Wong Kim Ark* held that the 14th Amendment

created a right to universal birthright citizenship. See Appendix to Government Application ("App.") at 11a-14a, 35a-50a, 88a-89a, 90a-91a, 95a.

The Government's application ("Appl.") describes its requested relief as "modest" and further states, "Narrowing the injunctions to their proper scope would not cause any hardship to the only *plaintiffs properly before the Court* and would be in the public interest." (Appl. at 1 and 15. Emphasis added.) Its request is indeed modest, too modest in fact, as the fundamental question to be decided is whether any plaintiffs are properly before the Court?

ARGUMENT

I. STANDING REQUIREMENTS

This court held in *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001) at 110:

> We are obliged to examine standing sua sponte where standing has erroneously been assumed below. See *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 95 (1998) (" '[I]f the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it'") (quoting *United States v. Corrick*, 298 U. S. 435, 440 (1936)).

As the party invoking federal jurisdiction, the plaintiffs bear the burden of demonstrating that they have standing. A plaintiff must demonstrate standing "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Therefore, in a case like this where injunctive relief has been granted, specific facts must have been set forth by the plaintiffs to support standing and must have been "supported adequately by the evidence adduced at trial." Ibid. (internal quotation marks

omitted). And standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek (for example, injunctive relief and damages). *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021).

As noted above, the claims of every plaintiff, but particularly the private and individual plaintiffs, ultimately rest on their assertion of a claim of birthright citizenship under *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). So what are the facts that must be pled and proven under *Wong Kim Ark*? In *Chin Bak Kan v. United States*, 186 U.S. 193 (1902) this Court stated:

> The ruling in *United States v. Wong Kim Ark,* 169 U. S. 649, was to this effect:
> "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."
> It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine *the various facts on which citizenship depends under that decision*.
> By the law, the *Chinese* person must be adjudged unlawfully within the United States unless he "shall establish by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States." As applied to aliens, there is no question of the validity of that provision, and the treaty, the legislation, and the circumstances considered, compliance with its requirements cannot be avoided by the *mere assertion of citizenship*. The *facts on which such a claim is rested must be made to appear.* And the inestimable heritage of citizenship is not to be conceded to those who seek to avail themselves of it under pressure of a particular exigency, without being able to show that it was ever possessed.
>
> *Chin Bak Kan* at 200. (Emphasis added.)

The "*various facts on which citizenship depends*" under *Wong Kim Ark* that "*must be made to appear"* are that the parents of the child born in the U. S. are:

1. Of Chinese descent;
2. Are subjects of the Emperor of China[2];
3. Have a permanent domicile and residence in the United States;
4. Are there carrying on a business[3];
5. Are not employed in any diplomatic or official capacity under the Emperor of China.

Thus, to have standing to prosecute a claim of birthright citizenship under *Wong Kim Ark*, the Plaintiffs must plead and prove that the parents of the claimants meet these five requirement. Not only have they not done so, but in some cases they have pled facts that defeat a claim of standing. For instance, some of the individual plaintiffs have pled they are in the country either illegally or on a *temporary* protected status and some have pled that they are citizens of Venezuela and another of Russia.[4] None have affirmatively pled, much less proved, that they meet all or even any of the above listed requirements for standing to prosecute their claims.

II. CONGRESS OVERRULED ANY COMMON LAW BASIS FOR CITIZENSHIP

In the case of *Rogers v. Bellei*, 401 U.S. 815 (1971) this Court reviewed the leading cases dealing with birthright citizenship. Beginning with *Wong Kim Ark,* the Court stated:

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[2] The last Emperor of China abdicated on February 12, 1912, thus ending both the Qing dynasty and the imperial tradition altogether, after more than 2100 years.

[3] Under the Chinese Exclusion Act, 22 Stat. 58, laborers and miners were barred from entering the United States. However, teachers, merchants, and professional persons were allowed to enter and establish a permanent domicile. Thus, the fact that Wong Kim Ark's parents were operating a business meant that their presence was not a violation of the Chinese Exclusion Act, which is to say they were in the country legally.

[4] Appl. App. at 29a, 79a, 80a.

> Over 70 years ago, the Court, in an opinion by Mr. Justice Gray, reviewed and discussed early English statutes relating to rights of inheritance and of citizenship of persons born abroad of parents who were British subjects…The Court concluded that "naturalization by descent" was not a common law concept, but was dependent, instead, upon *statutory enactment*. The statutes examined were 25 Edw. 3, Stat. 2 (1350); 29 Car. 2, c. 6 (1677); 7 Anne, c. 5, § 3 (1708); 4 Geo. 2, c. 21 (1731); and 13 Geo. 3, c. 21.
> *Rogers v. Bellei*, 401 U.S. at 828. (Emphasis added.)

Conspicuously missing from the statutes examined and discussed is the Civil Rights Act of 1866, 14 Stat. 27.

The Court then discussed *Weedin v. Chin Bow,* 274 U.S. 657 (1927) stating:

> Later, Mr. Chief Justice Taft, speaking for a unanimous Court, referred to this "very learned and useful opinion of Mr. Justice Gray," and observed "that birth within the limits of the jurisdiction of the Crown, and of the United States, as the successor of the Crown, fixed nationality, and that there could be no change in this rule of law *except by statute*. . . ." *Weedin v. Chin Bow at 660.* (Emphasis added.)

This Court also stated in *Rogers v. Bellei* at 828-830:

> We thus have an acknowledgment that our law in this area follows English concepts with an acceptance of the *jus soli,* that is, that the place of birth governs citizenship status except as *modified by statute…* 3. Apart from the passing reference to the "natural born Citizen" in the Constitution's Art. II, § 1, cl. 5, we have, in the Civil Rights Act of April 9, 1866, 14 Stat. 27, the first *statutory* recognition and concomitant formal definition of the citizenship status of the native born:
>
> > *"[A]ll 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. . . ."*
>
> This, of course, found immediate expression in the Fourteenth Amendment, adopted in 1868… Mr. Justice Gray has observed that the first sentence of the Fourteenth Amendment was "declaratory of existing rights, and affirmative of *existing law*," (Emphasis added.)

Chief Justice Taft may have found Justice Gray's review of English common law and statutes going back to 1350 learned and useful but it was also irrelevant as Congress enacted a statute in 1866, the Civil Rights Act of 1866, 14 Stat. 27, that

over rode the common law in the United States up to that date. This statute was also the "existing law" that was declared and affirmed by the Fourteenth Amendment.

There is one final point to be considered. It is widely acknowledged that an important purpose of the Civil Rights Act of 1866 as well as the Fourteenth Amendment was to overturn the decision of this Court in *Dred Scott v. Sandford*, 60 U.S. 393 (1857). The basis of that decision was an assertion of common law. *U.S. v. Wong Kim Ark*, 169 U.S. 649 at 654 asserted that the Fourteenth and Fifteenth Amendments had to be interpreted in light of the common law. Would anyone seriously argue that those amendments should be interpreted so as be consistent with *Dred Scott*?

The protections of the Civil Rights Act of 1866 and the Fourteenth Amendment were not restricted to former slaves. The Civil Rights Act of 1866 and the Fourteenth Amendment not only overruled the common law relating to the citizenship status of the slaves emancipated by the Thirteenth Amendment, they also overruled the common law with respect to the citizenship status of everyone else.

III. THE FOURTEENTH AMENDMENT

A. Timing

Immediately after the Civil War, the southern states did not have congressional delegations seated in Congress. As a result, the Reconstruction Republicans could do as they pleased, with the veto of President Andrew Johnson the only obstacle in their way. The Civil Rights Act of 1866 was passed over that veto. A concern then arose that once the southern states did have congressional delegations seated, they would be able to put together a coalition and repeal the Act. However, if

it was enshrined as a constitutional amendment, it would be much harder, if not impossible, to undue.

Even this Court in *U.S. v. Wong Kim Ark*, conceded that the purpose of the Fourteenth Amendment was to place the Civil Rights Act of 1866 in the Constitution. This Court stated:

> The Civil Rights Act, passed during the first session of the Thirty-ninth Congress, began by enacting that:
>
> "all persons born in the United States and *not subject to any foreign power*, excluding Indians not taxed…"
>
> The same Congress, shortly afterwards, evidently thinking it unwise, and perhaps unsafe, to leave so important a declaration of rights to depend upon an ordinary act of legislation, which might be repealed by any subsequent Congress, framed the Fourteenth Amendment…
> *U.S. v. Wong Kim Ark* 169 U.S. at 675 (Emphasis added.)

See also *Hurd v. Hodge*, 334 U.S. 24, 32-33 (1948) and *General Bldg. Contractors Assn., Inc. v. Pennsylvania*, 458 U.S. 375, 384-385 (1982).

B. Meaning of Citizenship Clause

The Citizenship Clause of the 14th Amendment says "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." (Emphasis added.) So what precisely does "*subject to the jurisdiction thereof*" mean? Since the whole purpose of the Fourteenth Amendment was to enshrine the Civil Right Act of 1866 in the Constitution, the obvious place to look for an explanation is the Civil Rights Act of 1866. And what does it say? "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;" (Emphasis added.)

In his dissenting opinion in *U.S. v. Wong Kim Ark*, 169 U.S. at 721, 722, Chief Justice Fuller quoted from two of the sponsors of both the Civil Rights Act of 1866 and the Fourteenth Amendment itself about the Fourteenth Amendment:

> Senator Trumbull[5]: "What do we mean by *'subject to the jurisdiction of the United States*?' *Not owing allegiance to anybody else*; that is what it means." (Emphasis added.)
>
> Senator Johnson[6]: "Now, all that this amendment provides is that all persons born within the United States *and not subject to some foreign power*- for that no doubt is the meaning of the committee who have brought this matter before us- shall be considered as citizens of the United States." (Emphasis added.)

In addition, Senator Jacob Howard, Republican-Michigan, stated during the Senate debate on the Fourteenth Amendment:

> This amendment which I have offered is simply declaratory of what I regard as *the law of the land already*, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. *This will not, of course, include persons born in the United States who are foreigners, aliens*... (Emphasis added.)[7]

The "law of the land already" was, of course, the Civil Right Act of 1866.

Thus, the legislative record of the drafting and submission of the Fourteenth Amendment is clear as to the meaning of "*subject to the jurisdiction thereof*".

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[5] Senator Lyman Trumbull, Republican-Illinois, Chairman of the Committee on the Judiciary
[6] Senator Reverdy Johnson, Democrat-Maryland
[7] Swearer, Amy (2014),SUBJECT TO THE [COMPLETE] JURISDICTION THEREOF: SALVAGING THE ORIGINAL MEANING OF THE CITIZENSHIP CLAUSE, , 24 Tex. Rev. L. & Pol. 135, page 160, citing CONG. GLOBE, 39th Cong., 1st Sess. 2890 (1866) (statement of Sen. Howard).

One may reasonably ask if "subject to the jurisdiction thereof" was intended to mean "not subject to any foreign power", why was that language not used? The answer has been summarized thusly:

> The difference in the language can be explained, in large part, by the heated debate over how best to ensure that Native Americans with tribal relations were excluded from citizenship. Senators routinely pointed out, both for the Civil Rights Act and the Fourteenth Amendment, that there were possible problems with using either "not subject to any foreign power" or "Indians not taxed" as the phrase for Indian exclusion.[8]

Another important point is that the Constitution must be read and construed so as to give meaning and effect to all the words used. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

The Citizenship Clause imposes two requirements. Birth or naturalization in the United States *and* subject to the jurisdiction thereof. If all that was required to acquire U.S. citizenship was birth in the U.S. the second phrase would be superfluous.

IV. DEFINING THE CITIZENSHIP CLAUSE

A. The *Slaughterhouse Cases*

The first case for this Court to rule on the Fourteenth Amendment was *Slaughterhouse Cases*, 83 U.S. 36 (1872), an Equal Protection case that discussed the Citizenship Clause in *dicta* wherein the Court stated:

> The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of the States…The phrase, "subject to its jurisdiction" was intended to *exclude from its*

[8] Swearer, Amy (2014), SUBJECT TO THE [COMPLETE] JURISDICTION THEREOF: SALVAGING THE ORIGINAL MEANING OF THE CITIZENSHIP CLAUSE, 24 Tex. Rev. L. & Pol. 135, pages 163-166.

> *operation children of* ministers, consuls, and *citizens or subjects of foreign States born within the United States.*
> *Slaughterhouse Cases*, 83 U.S. at 37, 73. (Emphasis added.)

However, that *dicta* was adopted as the *ratio decidendi*, the binding rule of law, in a following case dealing with the Citizenship Clause.

B. *Elk v. Wilkins*

The case of *Elk v. Wilkins*, 112 U.S. 94 (1884) dealt with John Elk who had been born as a member of an Indian tribe, or, as would be said today, as a "Native American." Obviously, Native Americans are native Americans. Having separated from his tribe and taken up residence in Omaha, Nebraska, he now claimed to be a U.S. citizen entitled to vote. This Court held otherwise, stating:

> The main object of the opening sentence of the Fourteenth Amendment was to settle the question…and to put it beyond doubt that all persons, …*owing no allegiance to any alien power*, should be citizens of the United States and of the state in which they reside…The persons declared to be citizens are "all persons born or naturalized in the United States, and subject to the jurisdiction thereof." The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their *political jurisdiction* and owing them direct and immediate allegiance.
> *Elk v. Wilkins*, 112 U.S. at 102. (Emphasis added.)

This holding settled the question of what "subject to the jurisdiction thereof" means as there are different types of jurisdiction. The separate Equal Protection Clause of the 14th Amendment states that, "No state shall…deny to any person within its jurisdiction the equal protection of the laws." In the case of *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) this Court stated:

> These provisions are universal in their application to all persons within the *territorial jurisdiction*, without regard to any differences of race, of

> color, or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws. *Yick Wo* at 369. (Emphasis added.)

The quotation above from *Elk v. Wilkins* makes it clear that "jurisdiction" in the Citizenship Clause meant that a person was a natural born citizen if they were born in the United States and were subject, not just to its narrow, legal jurisdiction, but to its complete *political jurisdiction* and did not owe allegiance to another sovereign.

With the prior law of the Civil Rights Act of 1866, the legislative record of the drafting of the Fourteenth Amendment, the *dicta* from the *Slaughterhouse Cases* and finally the holding in *Elk v. Wilkins,* this was now settled law that has never been overruled.

In the subsequent case of *U.S. v. Wong Kim Ark,* 169 U.S. at 680-682, Justice Gray, who wrote both opinions, attempted to distinguish the two cases. However, nowhere in *Wong Kim Ark* did he say that *Elk v. Wilkins* was overruled. Moreover, the actual language in *Elk v. Wilkins* related to "all persons", not just members of Native American Indian tribes.

In one of the proceedings below (Appl. App. 12a FN. 8) the U.S. District Court for the Western District of Washington stated:

> Congress has since abrogated *Elk* and expanded citizenship to Native American children via statute. *See* 8 U.S.C. §1401(b) (1924)

What Congress enacted in 1924 was the Indian Citizenship Act of 1924, 43 Stat. 253 that granted citizenship by statute to "all non citizen Indians born within the territorial limits of the United States." It did not just grant citizenship to "Native American children." Moreover, Congress had been gradually extending citizenship

to Native American Indian tribes as the West was settled. See the dissent of Chief Justice Roberts in *McGirt v. Oklahoma*, 591 U.S. ___ ,140 S. Ct. 2452, 2492 (2020):

> Finally, having stripped the Creek Nation of its laws, its powers of self-governance, and its land, Congress incorporated the Nation's members into a new political community. Congress made "every Indian" in the Oklahoma territory a citizen of the United States in 1901—decades before conferring citizenship on all native born Indians elsewhere in the country. Act of Mar. 3, 1901, ch. 868, 31 Stat. 1447.

The Indian Citizenship Act of 1924 was enacted after many Native Americans had served honorable and bravely in the armed forces during World War I. There are no grounds to assert that it was enacted to "abrogate" *Elk v. Wilkins*. It was enacted because Congress understood that under the existing law (Civil Rights Act of 1866 and the Fourteenth Amendment), a statutory enactment was needed to extend citizenship to the Native American population.

C. U.S. v. Wong Kim Ark

Only two years before *Elk v. Wilkins* was handed down, Congress enacted the Chinese Exclusion Act, 22 Stat. 58, that forbade the immigration of Chinese laborers and miners and prevented even lawful Chinese immigrants from becoming naturalized citizens, notwithstanding the Expatriation Act of 1868, 15 Stat 223. However, as originally enacted, the law was only for ten years. Then in 1892 it was strengthened and extended for another ten years until 1902. In 1902 the law was made permanent until it was repealed in 1943. In 1898, the Supreme Court issued *U.S. v. Wong Kim Ark.*

Wong Kim Ark had been born in the United States to parents who were immigrants from China who were lawfully present and permanently domiciled in the

country. However, because of the Chinese Exclusion Act, neither they nor their children could never become naturalized citizens. When returning to the United States from a temporary visit to China, Wong Kim Ark was denied entry. He commenced litigation to be allowed entry on the grounds that he was a U.S. citizen. The ultimate result was the decision of this Court in *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898).

The decision contains a lengthy history of the English common law doctrine of *jus soli*, that held that anyone born in the King's realm was a subject of the King and owed the King perpetual allegiance. That duty of allegiance was permanent and indissoluble and could not be cancelled by any change of time or place or circumstances. The only exceptions to citizenship based on place of birth were children born to foreign diplomats or to the soldiers of invading armies. *U.S. v. Wong Kim Ark*, 169 U.S. 649, 706, 707 (1898) Dissent of Chief Justice Fuller citing Cockburn on Nationality 7 and Hall on Foreign Jurisdiction, etc., § 1.

However, when stating the holding in the case, in the final paragraph of the majority decision, the Court contradicts itself. It nowhere says *Elk v. Wilkens* is overruled and very carefully restricted the holding to "the *single question* stated at the beginning of this opinion, namely, whether 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." *United States v. Wong Kim Ark,* 169 U.S. at 705. (Emphasis added.)

Under the English common law doctrine of *jus soli*, it was irrelevant if the parents were in the King's realm temporarily or permanently domiciled there. It was irrelevant where the parents were from. It was irrelevant if the parents were in the King's realm legally or illegally. All that mattered were that the child was born in the King's realm and the parents were not diplomats or members of an invading army. As a result, the narrow, restrictive holding in *U.S. v. Wong Kim Ark* is inconsistent with *jus soli* and that means the 52 pages claiming that the U.S. adopted *jus soli* and incorporated it into the U.S. Constitution is mere *dicta* and not part of the holding or *ratio decidendi* of the decision.

An obvious question is why would the same justice write two apparently conflicting decisions? Throughout the majority opinion is a strong unhappiness with the obvious discrimination that was applied only against immigrants from China, either to keep them out altogether or, with certain categories, allow them to immigrate permanently but never allow them or their descendants to become naturalized citizens.

With its holding in *Elk v. Wilkins*, the Court stated and settled the general law (*legi generali*) under the Fourteenth Amendment's Citizenship Clause. With the Chinese Exclusion Act, Congress created a special law (*Lex specialis*) to keep Chinese immigrants out. With *Wong Kim Ark,* the Court created a special law to keep Chinese

immigrants in, if they were born here to parents lawfully and permanently domiciled here.

In his opinion in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) at 228, Justice Alito quoted from Justice Powell's dissenting description in and of *Roe v. Wade* as an "exercise of raw judicial power," *Roe v. Wade* 410 U.S 173 (1973) at 222. In *Loper Bright Enterprises v. Raimondo,* 603 U.S. ____ (2024), Chief Justice Roberts described the *Chevron Deference Doctrine* as "a judicial invention". The provision for 'birthright citizenship" for the children of parents who were lawful, permanently domiciled immigrants from China was a *judicial invention* created through an exercise of *raw judicial power*.

The *ratio decidendi* of that case clearly falls under the doctrine *Expressio unius est exclusio alterius* ("the express mention of one thing excludes all others" or "the expression of one is the exclusion of others"). Because the Court was so careful to limit the effect of its holding in *Wong Kim Ark* to children of lawful, permanently domiciled immigrants from China who were subjects of the Emperor of China but not his diplomatic representatives, all other people are excluded from the coverage of the ruling. In addition, the decision explicitly stated that it was only deciding the "single question" of the citizenship status of people born to parents who were lawful Chinese immigrants who were permanently domiciled in the United States and not diplomats. This Court has said, "…we reaffirm that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving

to this Court the prerogative of overruling its own decisions…The trial court…was also correct to recognize that the motion had to be denied unless and until this Court reinterpreted the binding precedent." *Agostini* v. *Felton*, 521 U. S. 203 (1997) at 236, 237, 238. (Emphasis added.)[9]

Thus, if a case concerns the citizenship status of children born in the U.S. whose parents are lawful immigrants from China permanently domiciled in the United States, *U.S. v. Wong Kim Ark* directly controls. But if a case concerns the citizenship status of a child or children whose parents are not lawful immigrants, or not from China or not permanently domiciled in the United States, *Elk v. Wilkins,* which has never been overruled, controls. And *Elk v. Wilkins* says:

> The main object of the opening sentence of the Fourteenth Amendment was to settle the question…and to put it beyond doubt that all persons…*owing no allegiance to any alien power*, should be citizens of the United States and of the state in which they reside…
> *Elk v. Wilkins*, 112 U.S. at 102. (Emphasis added.)

[9] See also *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.") and *Loper Bright Enterprises v. Raimondo*. 603 U.S. ___ (2024) ("But *Chevron* remains on the books. So litigants must continue to wrestle with it, and lower courts—bound by even our crumbling precedents…understandably continue to apply it…*Chevron* is overruled.").

CONCLUSION

All of the claims made in the District Courts were ultimately based on a claim that this Court in *United States v. Wong Kim Ark* held that the 14th Amendment created a right to universal birthright citizenship. In fact, that case only held that there was birthright citizenship when the parents:

1. Are of Chinese descent;
2. Are subjects of the Emperor of China;
3. Have a permanent domicile and residence in the United States;
4. Are in the Country legally;
5. Are not employed in any diplomatic or official capacity under the Emperor of China.

Because none of the Plaintiffs have pled or proven that they or the people they represent meet these requirements, they lack standing to prosecute their claims.

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