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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No. 8:25-cv-00201-DLB

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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INTRODUCTION

The Citizenship Clause of the Fourteenth Amendment provides that "[a]ll 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. On January 20, 2025, President Donald J. Trump issued an Executive Order addressing what it means to be "subject to the jurisdiction" of the United States. *See* Exec. Order No. 14160, "Protecting the Meaning and Value of American Citizenship" (Citizenship EO or EO). That Executive Order recognizes that the Constitution does not grant birthright citizenship to the children of aliens who are unlawfully present in the United States as well as children of aliens whose presence is lawful but temporary. Text, history, and precedent support what common sense compels: the Constitution does not harbor a windfall clause granting American citizenship to, *inter alia*: the children of those who have circumvented (or outright defied) federal immigration laws.

Plaintiffs—two non-profit organizations and five pseudonymously named Plaintiffs—filed suit within a day of the EO's issuance. But their dramatic assertions about the supposed illegality of the EO cannot substitute for a showing that Plaintiffs have established their entitlement to extraordinary emergency relief. And as to each factor of that analysis, Plaintiffs have failed to carry their burden. Plaintiffs' claims are unlikely to succeed because they are wrong on the merits, but they also fail on threshold grounds. Specifically, Plaintiffs lack a cognizable cause of action in their two claims that the Citizenship EO is *ultra vires* under the Citizenship Clause and the Immigration and Nationality Act ("INA"), and any challenge by any individual to their citizenship status is properly channeled under 8 U.S.C. § 1503 and not this lawsuit.

Plaintiffs are also unlikely to succeed on the merits. As was apparent from the time of its enactment, the Citizenship Clause's use of the phrase "subjection to the jurisdiction" of the United

States contemplates something more than being subject to this country's regulatory power. It conveys that persons must be "completely subject to [the] political jurisdiction" of the United States, *i.e.*, that they have a "direct and immediate allegiance" to this country, unqualified by an allegiance to any other foreign power. *Elk v. Wilkins*, 112 U.S. 94, 102 (1884). Just as that does not hold for diplomats or occupying enemies, it similarly does not hold for foreigners admitted temporarily or individuals here illegally.

Although Plaintiffs contend that the Citizenship EO upends well-settled law, it is their maximalist reading which runs headlong into existing law. Not only is it inconsistent with the Supreme Court's holding in *Elk* that the children of Tribal Indians did not fall within the Clause, even though they were subject to the regulatory power of the United States, *id*. at 101-02, but it would render the Civil Rights Act of 1866 (which defined citizenship to cover those born in the United States, not "subject to any foreign power") unconstitutional just two years after it was passed. But the Citizenship Clause was an effort to *constitutionalize* the Civil Rights Act. Plaintiffs rely heavily on the Supreme Court's decision in *Wong Kim Ark*, 169 U.S. 649 (1898). The Court, however, was careful to cabin its actual holding to the children of those with a "permanent domicile and residence in the United States." *Id*. at 652-53. Reading that decision to leave open the question presented here is consistent with contemporary accounts, prior practices of the political branches, and Supreme Court decisions in the years following *Wong Kim Ark*. Finally, the balance of the equities does not favor injunctive relief.

The Court should deny the pending preliminary injunction motion.

BACKGROUND

The Citizenship EO is an integral part of President Trump's broader effort to repair the United States' immigration system and to address the ongoing crisis at the southern border. *See,*

e.g., Exec. Order No. 14165, Securing Our Borders (Jan. 20, 2025); Proclamation No. 10886, "Declaring a National Emergency at the Southern Border of the United States" (Jan. 20, 2025); Exec. Order No. 14159, "Protecting the American People Against Invasion" (Jan. 20, 2025) ("Invasion EO"). As the President has recognized, individuals unlawfully in this country "present significant threats to national security and public safety," Invasion EO, § 1, and the severity of these problems warrants a full panoply of immigration measures. Some of these threats are related to the United States' prior, erroneous policy of recognizing near-universal birthright citizenship. For instance, "the nation's current policy of universally granting birthright citizenship to individuals who lack any meaningful ties to the United States provides substantial opportunities for abuse by motivated enemies." Amy Swearer, Heritage Found., Legal Memorandum No. 250, *The Political Case for Confining Birthright Citizenship to Its Original Meaning* at 8-11 (2019).

The Citizenship EO seeks to correct the Executive Branch's prior misreading of the Citizenship Clause. It recognizes that the Constitution and the INA provide for citizenship for all persons who are born in the United States and subject to the jurisdiction thereof, and identifies two circumstances in which a person born in the United States is not automatically extended the privilege of United States citizenship:

> (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 (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father was not a United States citizen or lawful permanent resident at the time of said person's birth.

Citizenship EO § 1.

Section 2(a) of the EO directs the Executive Branch (1) not to issue documents recognizing U.S. citizenship to persons born in the United States under the conditions described in section 1, and (2) not to accept documents issued by state, local, or other governments purporting to

recognize the U.S. citizenship of such persons. The EO specifies, however, that those directives "apply only to persons who are born within the United States after 30 days from the date of this order," or February 19. Citizenship EO § 2(b). The Citizenship EO makes clear that its provisions do not "affect the entitlement of other individuals, including children of lawful permanent residents, to obtain documentation of their United States citizenship." *Id.* § 2(c).

As for enforcement, the EO directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to take "all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order," and not to "act, or forbear from acting, in any manner inconsistent with this order." Citizenship EO § 3(a). It further directs the heads of all federal agencies to issue public guidance within 30 days (by February 19) "regarding this order's implementation with respect to their operations and activities." *Id.* § 3(b).[1]

STANDARD OF REVIEW

"[P]reliminary injunctions are extraordinary remedies involving the exercise of very farreaching power to be granted only sparingly and in limited circumstances." *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001) (citation omitted). To obtain a preliminary injunction, Plaintiffs must make a "clear showing" of each of the four factors: (1) a likelihood of success on the merits; (2) irreparable harm in the absence of preliminary injunctive relief; (3) that the balance of equities tips in their favor; and (4) that the public interest favors the requested equitable relief. *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

[1] The Citizenship EO has been challenged in several other lawsuits. On January 23, a district judge in the Western District of Washington issued a temporary restraining order "fully" enjoining the Defendants in that case "and all their respective officers, agents, servants, employees, and attorneys," from enforcing or implementing Section 2(a), Section 3(a), or Section 3(b) of the Citizenship EO. *See* TRO, *Washington v. Trump*, No. 2:25-cv-00127-JCC (Jan. 23, 2025), ECF No. 43. That TRO remains in effect "pending further orders from th[e] Court," *id.*, and the court has scheduled a preliminary injunction hearing for February 6. *See Washington*, ECF No. 44 at 1.

ARGUMENT

I. Plaintiffs Lack a Cause of Action to Assert Their *Ultra Vires* Claims.

Plaintiffs' claims fail at the outset because they lack a cause of action. Plaintiffs do not bring a cause of action independently under the Fourteenth Amendment's Citizenship Clause or otherwise invoke the Administrative Procedure Act ("APA"), which permits a Court to "set aside agency action . . . otherwise not in accordance with law; contrary to constitutional right. . . [or] in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A)-(C). Nor could plaintiffs bring such an action because the Citizenship Clause does not, by itself, allow Plaintiffs to bring suit. "Constitutional rights do not typically come with a built-in cause of action to allow private enforcement in courts." *DeVillier v. Texas*, 601 U.S. 285, 291 (2024). "Instead, constitutional rights are generally invoked defensively in cases arising under other sources of law, or asserted offensively pursuant to an independent cause of action designed for that purpose" (such as 42 U.S.C. § 1983). *Id.* at 291. Meanwhile the APA limits judicial review to "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. However, Plaintiffs' claims do not come within the APA as they do not even attempt to "identify the final agency action being challenged." *Elk Run Coal Co., Inc. v. U.S. Dep't of Labor*, 804 F. Supp. 2d 8, 30 (D.D.C. 2011). Nor can they: The EO is not final agency action as it was issued by the President, who is not subject to the APA. *See Dalton v. Specter*, 511 U.S. 462, 469 (1994). Until such time as an agency named in the Complaint takes action, determines rights or obligations, or otherwise causes legal consequences, *see, e.g.*, *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590, 597 (2016), Plaintiffs have no APA claims.

Instead, Plaintiffs assert that the Citizenship EO is *ultra vires* under the Fourteenth Amendment and/or the Immigration and Nationality Act ("INA"). *See* Compl. ¶¶ 101-114. These

claims are questionable at best. The decision suggesting the existence of *ultra vires* claims against federal officials, *Larson v. Domestic & Foreign Commerce Corp.,* 337 U.S. 682 (1949), predates amendments to the APA that clarified what agency action can and cannot be subject to judicial review. *See Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, 2006 WL 581260, at *8 (D. Md. Jan. 10, 2006) ("While *Larson* created an exception to sovereign immunity when federal officers acted *ultra vires*, Section 702 of the APA provides a general waiver of sovereign immunity for all unconstitutional acts where injunctive relief is requested."). Moreover, the Supreme Court has otherwise rejected actions in equity, like *ultra vires* claims, where Congress has provided for a specific remedial scheme as is the case here, *see infra* Sec. II. *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 327-28 (2015). Nonetheless, some courts have recognized *ultra vires* claims, stating that "[e]ven if a statute does not provide for judicial review, [w]hen an executive acts *ultra vires,* courts are normally available to reestablish the limits on his authority." *Ancient Coin Collectors Guild v. CBP, DHS*, 801 F. Supp. 2d 383, 405 (D. Md. 2011) (quotation omitted).

These claims—even when recognized—are circumscribed. "[*U*]*ltra vires* review is limited to whether the President has violated the Constitution, the statute under which the challenged action was taken, or other statutes, or did not have statutory authority to take a particular action." *Id.* at 406. Indeed, the "modern cases make clear" that an officer may be said to act *ultra vires* "only when he acts 'without any authority whatever.'" *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 n.11 (1984) (citation omitted). And more recent cases indicate that such claims are inappropriate against non-officers, such as the United States and agencies. *See Taylor Energy Co., LLC v. United States*, 2021 WL 1876845, at *3 (E.D. La. May 10, 2021) (finding *Larson* inapplicable against "the United States and its agencies"); *see also Int'l Fed'n of Pro. & Tech. Eng'rs v. United States*, 934 F. Supp. 2d 816, 821 (D. Md. 2013). Plaintiffs' claims

against the United States, *see* Compl. ¶ 56, are improperly brought as *ultra vires* claims.

Plaintiffs' remaining claims against the President and various agency heads fail as *ultra vires* claims. Regardless of the underlying merits of Plaintiffs' claims, it cannot be said that in issuing an EO in the field of immigration law, the President failed to act "without any authority whatever." To the contrary, immigration law and foreign relations—the subjects of the Citizenship EO—are areas where the Executive Branch's authority is particularly broad, even when those actions implicate constitutional questions and questions under the INA. *See, e.g.*, *Trump v. Hawaii*, 585 U.S. 667, 702 (2018) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." (quotation omitted)). Thus, even if Plaintiffs were correct regarding their interpretation of the Citizenship Clause and the INA, they cannot bring any challenge based on those disputes as *ultra vires* claims.

II. Plaintiffs' Claims Are Properly Channeled Through Other Means Under the INA.

Rather than bring *ultra vires* claims and a pre-enforcement challenge to the EO, Plaintiffs have an available and exclusive mechanism to challenge disputes about citizenship under the INA. Pursuant to the INA's comprehensive statutory framework for judicial review, disputes regarding an individual's citizenship are resolved by the individual filing an action for declaratory relief once he is denied a right or privilege as a U.S. national. 8 U.S.C. § 1503. Thus, "[i]f any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States," then that person may institute an action under 8 U.S.C. § 1503, in conjunction with 28 U.S.C. § 2201, for a declaratory judgment that he

is a U.S. national. *See id.* § 1503(a).[2] Under section 1503, district courts conduct *de novo* proceedings as to the alien's nationality status. *See Vance v. Terrazas*, 444 U.S. 252, 256 (1980); *Richards v. Sec'y of State, Dep't of State*, 752 F.2d 1413, 1417 (9th Cir. 1985); *Abimbola v. Clinton*, 2012 WL 5420349, at *2 (D. Md. Nov. 6, 2012) (same).

Because "Congress intended § 1503(a) to be the exclusive remedy for a person within the United States to seek a declaration of U.S. nationality following an agency or department's denial of a privilege or right of citizenship upon the ground that the person is not a U.S. national," *Cambranis v. Blinken*, 994 F.3d 457, 466 (5th Cir. 2021), courts have consistently concluded that section 1503(a) offers an adequate alternative remedy to APA review. *See, e.g.*, *Alsaidi v. U.S. Dep't of State*, 292 F. Supp. 3d 320, 326-27 (D.D.C. 2018); *Abuhajeb v. Pompeo*, 531 F. Supp. 3d 447, 455 (D. Mass. 2021).

III. Plaintiffs Are Not Likely to Succeed on the Merits.

The Citizenship Clause provides that "[a]ll 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. And the INA grants U.S. citizenship to any "person born in the United States, and subject to the jurisdiction thereof." 8 U.S.C. § 1401(a). Plaintiffs contend that the EO violates both the Citizenship Clause and the INA, but they are mistaken.[3]

To obtain U.S. citizenship under the Citizenship Clause, a person must be: (1) "born or naturalized in the United States" and (2) "subject to the jurisdiction thereof." U.S. Const. amend XIV, § 1. The Supreme Court has identified multiple categories of persons who, despite birth in

[2] If an individual is placed in removal proceedings, Section 1503 is unavailable and the individual can raise the issue of citizenship in those proceedings. 8 U.S.C. § 1252(b)(5) (if an alien appeals a removal order to a circuit court, that court, upon finding a genuine issue of material fact as to U.S. citizenship, transfers the proceeding to the district court for an evidentiary hearing).

[3] Plaintiffs recognize that their statutory claim rises and falls with their constitutional claim. *See* Br. at 12. Because the two provisions are coterminous, Defendants focus here on the constitutional provision.

the United States, are not constitutionally entitled to citizenship because they are not subject to the jurisdiction of the United States: children of foreign sovereigns or their diplomats, children of alien enemies in hostile occupation, children born on foreign public ships, and certain children of members of Indian tribes.[4] *United States v. Wong Kim Ark*, 169 U.S. 649, 682, 693 (1898). The Citizenship EO an additional category of persons not subject to the jurisdiction of the United States: children born in the United States of foreign parents whose presence is either unlawful or lawful but temporary.

A. The Term "Jurisdiction" in the Citizenship Clause Does Not Refer to Regulatory Power.

"Jurisdiction . . . is a word of many, too many, meanings." *Wilkins v. United States*, 598 U.S. 152, 156 (2023) (citation omitted). Plaintiffs equate "jurisdiction" with something akin to regulatory power, arguing that it means anyone who "must necessarily submit to the rule of U.S. law." Br. at 10. That interpretation is incorrect. It conflicts with both Supreme Court precedent and ample evidence as to the provision's original public meaning.

1. Most importantly, Plaintiffs' understanding of the term "jurisdiction" conflicts with Supreme Court precedents identifying the categories of persons who are not subject to the United States' jurisdiction within the meaning of the Citizenship Clause. For example, the Supreme Court has held that children of members of Indian tribes, "owing immediate allegiance" to those tribes, do not acquire citizenship by birth in the United States. *Elk*, 112 U.S. at 102; *see Wong Kim Ark*, 169 U.S. at 680-82. Yet members of Indian tribes and their children are plainly subject to the United States' regulatory power. "It is thoroughly established that Congress has plenary authority

[4] Although the Citizenship Clause has always been understood to exclude certain children of members of Indian tribes from a constitutional right to citizenship by birth, Congress has by statute extended U.S. citizenship to any "person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe." 8 U.S.C. § 1401(b).

over the Indians and all their tribal relations." *Winton v. Amos*, 255 U.S. 373, 391 (1921); *see Haaland v. Brackeen*, 599 U.S. 255 272-73 (2023). For example, Congress may regulate Indian commercial activities, *see United States v. Holliday*, 70 U.S. (3 Wall.) 407, 416-18 (1866); Indian property, *see Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903); and Indian adoptions, *see Brackeen*, 599 U.S. at 276-280. And the United States may punish Indians for crimes. *See United States v. Kagama*, 118 U.S. 375, 379-385 (1886). If, as Plaintiffs argue, "subject to the jurisdiction thereof" means subject to U.S. law, this longstanding exception for Indians would be inexplicable.

In fact, Plaintiffs' reading cannot even explain the exception to birthright citizenship for "children of foreign sovereigns or their ministers." *Wong Kim Ark*, 169 U.S. at 693. Although foreign leaders and diplomats have traditionally enjoyed immunity as a matter of common law, the Constitution allows Congress to abrogate that immunity or to make exceptions to it. *See Verlinden BV v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983). And to the extent Plaintiffs argue that children of foreign leaders or diplomats are not subject to the United States' jurisdiction because the U.S. *chooses* to extend immunity to them, their theory would allow Congress to turn the Citizenship Clause on and off at will by extending or retracting immunity.

Against the surplusage canon, on Plaintiffs' reading, the phrase "subject to the jurisdiction thereof" adds nothing to the phrase "born . . . in the United States." Because the United States is sovereign over its territory, everyone who is born (and so present) in the United States would necessarily be subject, at least to some extent, to the United States' regulatory authority. *See Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812). But "[i]t cannot be presumed that any clause in the [C]onstitution is intended to be without effect; and, therefore, such a construction is inadmissible." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 174 (1803).

2. Instead of equating "jurisdiction" with regulatory authority, the Supreme Court has

held that a person is "subject to the jurisdiction" of the United States under the Citizenship Clause if he is born "in the allegiance and under the protection of the country." *Wong Kim Ark*, 169 U.S. at 693. That allegiance to the United States, the Court has further held, must be "direct," "immediate," and "complete," unqualified by "allegiance to any alien power." *Elk*, 112 U.S. at 101-02. In other words, a person is subject to the jurisdiction of the United States within the meaning of the Clause only if he is *not* subject to the jurisdiction of a foreign power, and the "nation" has "consent[ed]" to him becoming part of its own "jurisdiction." *Elk*, 112 U.S. at 102-03; *see also Schooner Exchange*, 11 U.S. at 136 (explaining a nation's "jurisdiction . . . must be traced up to the consent of the nation itself").

That reading of the Citizenship Clause reflects its statutory background. Months before Congress proposed the Fourteenth Amendment, it enacted the Civil Rights Act of 1866. That Act served as "the initial blueprint" for the Amendment, *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 389 (1982), and the Amendment in turn "provide[d] a constitutional basis for protecting the rights set out" in the Act, *McDonald v. City of Chicago*, 561 U.S. 742, 775 (2010). The Act stated, as relevant here, 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." Civil Rights Act § 1, 14 Stat. 27 (emphasis added). There is no reason to read the phrase "subject to the jurisdiction thereof" in the Amendment as broader than the phrase "not subject to any foreign power" in the Act—in no small part, because doing so would render the Civil Rights Act unconstitutional. And, as telling, the Act's citizenship language remained on the books until revised by the Nationality Act of 1940, ch. 876, § 201(a), 54 Stat. 1137, 1138—suggesting that Congress regarded the Act's "not subject to any foreign power" requirement as consistent with the Amendment's "subject to the jurisdiction" requirement. The Act thus confirms that, to be subject

to the jurisdiction of the United States under the Clause, a person must owe "no allegiance to any alien power." *Elk*, 112 U.S. at 101.

Debates on the Act and the Amendment show that members of Congress shared that understanding. During debates on the Act, Senator Lyman Trumbull explained that the purpose of the Act was "to make citizens of everybody born in the United States who owe[d] allegiance to the United States." Cong. Globe, 39th Cong., 1st Sess. 572 (1866). Trumbull went on to equate "being subject to our jurisdiction" with "owing allegiance solely to the United States." *Id.* at 2894. And Senator Reverdy Johnson agreed that "all that this amendment provides is, that all persons born in the United States and not subject to some foreign Power . . . shall be considered as citizens." *Id.* at 2893.

The full text of the Citizenship Clause reinforces that reading of the Clause's jurisdictional element. The Clause provides that persons born in the United States and subject to its jurisdiction "are citizens of the United States and of the States wherein they reside." U.S. Const. amend. XIV, § 1. The Clause uses the term "reside[nce]" synonymously with "domicile." *See Robertson v. Cease*, 97 U.S. 646, 650 (1878) (explaining that state citizenship requires "a fixed permanent domicile in that State"). The Clause thus makes clear that citizenship flows from lawful domicile.

Finally, as a decisive cross-check, the government's reading, unlike Plaintiffs' interpretation, is the only one that fully explains the Supreme Court's precedents on citizenship by birth in the United States. It was "never doubted" that "children born of citizen parents" owe allegiance to the United States and are subject to its jurisdiction. *Minor v. Happersett*, 88 U.S. 162, 167 (1874). In *Wong Kim Ark*, the Court held that a child born in the United States "of parents of Chinese descent, who at the time of his birth [were] subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and

are not employed in any diplomatic or official capacity" by China are likewise subject to the jurisdiction of the United States. 169 U.S. at 653. The Court explained that "[e]very citizen or subject of another country, while domiciled here, is within the allegiance . . . of the United States." *Id.* at 693. By contrast, children of diplomats, children of certain alien enemies, and children born on foreign public ships are not subject to the jurisdiction of the United States because they all owe allegiance to foreign sovereigns under background principles of common law. *See id.* at 655. And the Court has held that certain children of members of Indian tribes are not subject to U.S. jurisdiction in the necessary sense because they "owe[] immediate allegiance to their several tribes." *Elk*, 112 U.S. at 99.

B. Children Born of Unlawfully Present Aliens or Lawful But Visitors Fall Outside the Citizenship Clause.

1. To determine which sovereign may properly claim a person's allegiance, the Supreme Court has looked to the background principles of the common law and the law of nations, as understood in the United States at the time of the ratification of the Fourteenth Amendment. *See Wong Kim Ark*, 169 U.S. at 653-55. Under those principles, a child born of foreign parents other than lawful permanent residents is domiciled in, and owes a measure of allegiance to, his parents' home country. As a result, such a child is not subject to the jurisdiction of the United States within the meaning of the Citizenship Clause.

Under the common law, a person owes a form of "allegiance" to the country in which he is "domiciled." *Carlisle v. United States*, 83 U.S. (16 Wall). 147, 155 (1872); *see The Pizarro*, 15 U.S. (2 Wheat.) 227, 246 (1817) (Story, J.) ("[A] person domiciled in a country . . . owes allegiance to the country."). A child's domicile, and thus his allegiance, "follow[s] the independent domicile of [his] parent." *Lamar v. Micou*, 112 U.S. 452, 470 (1884); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989).

Temporary visitors and unlawfully present aliens, however, are not domiciled here but in foreign countries. As touched on above, "[i]n general, the domicile of an individual is his true, fixed and permanent home." *Martinez v. Bynum*, 461 U.S. 321, 331 (1983). Temporary visitors to the United States, by definition, retain permanent homes in foreign countries. And illegal aliens, by definition, have no right even to be present in the United States, much less a right to make *lawful* residence here. Instead, as a matter of law, illegal aliens formally retain their foreign domiciles, because they have not yet been accepted to reside anywhere else. *See*, *e.g.*, *Elkins v. Moreno*, 435 U.S. 647, 665-66 (1978) (recognizing that federal immigration law restricts the ability of foreigners to establish domiciles in the United States). And if a temporary visitor or illegal alien domiciled in a foreign country has a child with another temporary visitor or illegal alien while in the United States, the child's domicile also lies in the foreign country, and the child owes allegiance to that country. That "allegiance to [an] alien power" precludes the child from being "completely subject" to the United States' jurisdiction, as the Fourteenth Amendment requires. *Elk*, 112 U.S. at 101-02.

Indeed, the Citizenship EO follows directly from Supreme Court precedent recognizing that distinction, and the established exception to birthright citizenship for certain "children of members of the Indian tribes." *Wong Kim Ark*, 169 U.S. at 682. Indian tribes form "an intermediate category between foreign and domestic states." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 396 n.7 (2023) (citation omitted). The Supreme Court long ago determined that Indian tribes are not "foreign nations," instead describing them as "domestic dependent nations." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (Marshall, C.J.). Yet the Court has held that "an Indian, born a member of one of the Indian tribes," has no constitutional birthright to U.S. citizenship given his "immediate allegiance" to his tribe.

Elk, 112 U.S. at 99, 101-02; *see Wong Kim Ark*, 169 U.S. at 680-682.

Illegal aliens and temporary visitors have far weaker connections to the United States than do members of Indian tribes. "Our Constitution reserves for the Tribes a place—an enduring place—in the structure of American life." *Brackeen*, 599 U.S. at 333 (Gorsuch, J., concurring). If the United States' link with Indian tribes does not suffice as a constitutional matter for birthright citizenship, its weaker link with illegal aliens and temporary visitors even more obviously does not do so. *See, e.g.*, William Edward Hall, *A Treatise on International Law* 237 n.1 (4th ed. 1895) ("[A] fortiori the children of foreigners in transient residence are not citizens, their fathers being subject to the jurisdiction less completely than Indians.").

2. The Fourteenth Amendment's historical background provides additional support for the conclusion that, while children born here of U.S. citizens and permanent residents are entitled to U.S. citizenship by birth, children born of parents whose presence is either unlawful or lawful but temporary. Under the common law, "[t]wo things usually concur to create citizenship; [f]irst, birth locally within the dominions of the sovereign; and, secondly, birth . . . within the ligeance of the sovereign." *Wong Kim Ark*, 169 U.S. at 659 (citation omitted). The phrase "born . . . in the United States," U.S. Const. amend. XIV, § 1, codifies the traditional requirement of "birth within the territory," *id.* at 693, and the phrase "subject to the jurisdiction thereof," U.S. Const. Amend. XIV, § 1, codifies the traditional requirement of birth "in the allegiance" of the country, *Wong Kim Ark*, 169 U.S. at 693.

Drawing from the same tradition, Emmerich de Vattel—"the founding era's foremost expert on the law of nations," *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 239 (2019)—explained that citizenship under the law of nations depended not only on the child's place of birth, but also on the parents' political status. "[N]atural-born citizens," Vattel wrote, include "those

born in a country, of parents who are citizens." Ememrich de Vattel, *The Law of Nations* § 212, at 101 (London, printed for G.G. and J. Robinson, Paternoster-Row, 1797 ed.). Citizenship by virtue of birth in the country also extends to the children of "perpetual inhabitants" of that country, whom Vattel regarded as "a kind of citize[n]." *Id.*; *see also id.* § 215, at 102. According to Vattel, citizenship does not extend, however, to children of those foreigners who lack "the right of perpetual residence" in the country. *Id.* § 213, at 102.

Justice Story also understood that birthright citizenship required more than mere physical presence. He explained in a judicial opinion later quoted in *Wong Kim Ark* that "children of even aliens born in a country, *while the parents are resident there*," "are subjects by birth." *Inglis v. Trs. of Sailor's Snug Harbor*, 28 U.S. (3 Pet.) 99, 164 (1830) (emphasis added). He also wrote in a treatise:

> Persons, who are born in a country, are generally deemed citizens and subjects of that country. A reasonable qualification of this rule would seem to be, that it should not apply to the children of parents, who were *in itinere* in the country, or abiding there for temporary purposes, as for health, or occasional business.

Joseph Story, *Commentaries on the Conflict of Laws* § 48, at 48 (1834).

3. Congressional debates over the Civil Rights Act and Fourteenth Amendment also confirm that children born in the United States to non-resident aliens lack a right to U.S. citizenship because they are not subject to U.S. jurisdiction. For instance, Representative James Wilson explained during a debate over the Civil Rights Act that, under "the general law relating to subjects and citizens recognized by all nations," a "person born in the United States" ordinarily "is a natural-born citizen." Cong. Globe, 39th Cong., 1st Sess. 1117 (1866). But he recognized "except[ions]" to that general rule for "children born on our soil to *temporary sojourners* or representatives of foreign Governments." *Id.* (emphasis added).

When Congress was considering the Civil Rights Act, Senator Trumbull, "who wrote [the

Act's] citizenship language and managed the Act in the Senate, wrote a letter to President Andrew Johnson summarizing the bill." Mark Shawhan, Comment, *The Significance of Domicile in Lyman Trumbull's Conception of Citizenship*, 119 Yale L. J. 1351, 1352 (2010) (footnotes omitted). The Act, as noted above, 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." Civil Rights Act § 1, 14 Stat. 27 (emphasis added). Senator Trumbull summarized that provision: "The Bill declares 'all persons' *born of parents domiciled in the United States*, except untaxed Indians, to be citizens of the United States." Shawhan, *supra*, at 1352-53 (emphasis added) (quoting Letter from Sen. Lyman Trumbull, Chairman, S. Judiciary Comm., to President Andrew Johnson, (*in* Andrew Johnson Papers, Reel 45, Manuscript Div., Library of Congress)).

During a debate over the Fourteenth Amendment, Senator Benjamin Wade proposed a version of the Amendment that would have referred to "persons born in the United States" (without the additional qualification of being "subject to the jurisdiction"). Cong. Globe, 39th Cong., 1st Sess. 2768 (1866). One of his colleagues objected that "persons may be born in the United States and yet not be citizens," giving the example of "a person [who] is born here of parents from abroad temporarily in this country." *Id.* at 2769. Senator Wade acknowledged that the unadorned phrase "born in the United States" would indeed encompass those individuals, but he argued that the situation would arise so infrequently that "it would be best not to alter the law for that case." *Id.* at 2768-69. That exchange concludes that "a person [who] is born here of parents from abroad temporarily in this country" is not subject to the jurisdiction of the United States, *id.* at 2768, and is accordingly not constitutionally entitled to citizenship by birth.

4. Contemporary understanding following ratification accords with that reading of the Fourteenth Amendment. Perhaps most telling, right on the heels of the Citizenship Clause, the

Supreme Court described its scope as such: "The phrase, 'subject to its jurisdiction,' was intended to exclude from its operation children of ministers, consuls, *and citizens or subjects of foreign States* born within the United States." *The Slaughterhouse Cases*, 83 U.S. 36, 73 (1873) (emphasis added). That is wholly consistent with the Citizenship EO. Contemporary commentators expressed similar views. *See, e.g.*, *Hall*, *supra*, 236-237 ("In the United States it would seem that the children of foreigners in transient residence are not citizens."); Alexander Porter Morse, *A Treatise on Citizenship* 248 (1881) ("The words 'subject to the jurisdiction thereof' exclude the children of foreigners transiently within the United States.").

The Supreme Court of New Jersey similarly linked birthright citizenship with parental domicile in *Benny v. O'Brien*, 32 A. 696 (N.J. 1895). In a passage that was later quoted in *Wong Kim Ark*, the court interpreted the Citizenship Clause to establish "the general rule that, *when the parents are domiciled here*, birth establishes the right of citizenship." *Id.* at 698 (emphasis added). And it explained that the Citizenship Clause's jurisdictional element excludes "those born in this country of foreign parents who are temporarily traveling here" because "[s]uch children are, in theory, born within the allegiance of [a foreign] sovereign." *Id.*

The political branches operated from the same understanding in the years following the Fourteenth Amendment's enactment. For instance, six years after ratification, Representative Ebenezer Hoar proposed a bill "to carry into execution the provisions of the [F]ourteenth [A]mendment . . . concerning citizenship." 2 Cong. Rec. 3279 (1874). The bill would have provided that, as a general matter, "a child born within the United States of parents who are not citizens, and who do not reside within the United States, . . . shall not be regarded as a citizen thereof." *Id.* Although the bill ultimately failed its "parental domicile requirement" generated little meaningful "debate or controversy." Justin Lollman, Note, *The Significance of Parental*

Domicile Under the Citizenship Clause, 101 Va. L. Rev. 455, 475 (2015). The bill thus suggests that, soon after the ratification of the Fourteenth Amendment, members of Congress accepted that children born of non-resident alien parents are not subject to the Citizenship Clause.

The Executive Branch, too, at times took the position that the Citizenship Clause did not confer citizenship upon children born in the United States to non-resident alien parents. In 1885, Secretary of State Frederick T. Frelinghuysen issued an opinion denying a passport to an applicant who was "born of Saxon subjects, temporarily in the United States." 2 *A Digest of the International Law of the United States* § 183, at 397 (Francis Wharton ed., 2d. ed. 1887) (*Wharton's Digest*). Secretary Frelinghuysen explained that the applicant's claim of birthright citizenship was "untenable" because the applicant was "subject to [a] foreign power," and "the fact of birth, under circumstances implying alien subjection, establishes of itself no right of citizenship." *Id.* at 398.

5. Finally, *Wong Kim Ark* recognized an exception to birthright citizenship for "children born of alien enemies in hostile occupation," *Wong Kim Ark*, 169 U.S. at 682. Here, the President has determined that the United States has experienced "an unprecedented flood of illegal immigration" in which "[m]illions of illegal aliens"—many of whom "present significant threats to national security and public safety"—have entered the country in violation of federal law. Invasion EO § 1; *see also id*. (explaining that "[o]thers are engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities"). Plaintiffs' maximalist reading of the Citizenship Clause would require extending birthright citizenship to the children of individuals who present such threats, including even unlawful enemy combatants who enter this country in an effort to create sleeper cells or other hostile networks.

C. Applicable Interpretive Principles Support the Government's Reading of the Citizenship Clause.

1. "[A]ny policy toward aliens is vitally and intricately interwoven with . . . the conduct of foreign relations." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). "Any rule of constitutional law that would inhibit the flexibility" of Congress or the President "to respond to changing world conditions should be adopted only with the greatest caution." *Trump v. Hawaii*, 585 U.S. 667, 704 (2018) (citation omitted). The government's reading of the Citizenship Clause respects that principle, while Plaintiffs' reading violates it. The Citizenship Clause sets a constitutional floor, not a constitutional ceiling. Although Congress may not deny citizenship to those protected by the Clause, it may, through its power to "establish an uniform Rule of Naturalization," extend citizenship to those who lack a constitutional right to it. U.S. Const. Art. I, § 8, Cl. 4; *see Wong Kim Ark*, 169 U.S. at 688. The government's reading would thus leave Congress with the ability to extend citizenship to the children of illegal aliens or of temporary visitors, just as it has extended citizenship to the children of members of Indian tribes.

As a "sovereign nation," the United States has the constitutional power "to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). "[O]ver no conceivable subject" is federal power "more complete" than it is over the admission of aliens. *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909). Interpreting the Constitution to require the extension of birthright citizenship to the children of illegal aliens directly undermines that power by holding out a powerful incentive for illegal entry. Contrary to the principle that no wrongdoer should "profit out of his own wrong," *Liu v. SEC*, 591 U.S. 71, 80 (2020) (citation omitted), it also allows foreigners to secure U.S. citizenship for their children (and, potentially, later immigration benefits for themselves) by entering the United States in violation of

its laws.

2. The Supreme Court has resisted reading the Citizenship Clause in a manner that would inhibit the political branches' ability to address "problems attendant on dual nationality." *Rogers v. Bellei*, 401 U.S. 815, 831 (1971). Although the United States tolerates dual citizenship in some circumstances, it has "long recognized the general undesirability of dual allegiances." *Savorgnan v. United States*, 338 U.S. 491, 500 (1950). "One who has a dual nationality will be subject to claims from both nations, claims which at times may be competing or conflicting," and "[c]ircumstances may compel one who has a dual nationality to do acts which otherwise would not be compatible with the obligations of American citizenship." *Kawakita v. United States*, 343 U.S. 717, 733, 736 (1952).

Plaintiffs' reading of the Citizenship Clause invites just such problems. For centuries, countries have extended citizenship to the foreign-born children of their citizens because children born abroad "follow the condition of their fathers," so long as "the father has not entirely quitted his [home] country." Vattel, *supra* § 215, at 102. England has extended citizenship to certain foreign-born children of its subjects since at least the 14th century. *See Wong Kim Ark*, 169 U.S. at 668-71. In 1790, Congress extended citizenship to "children of citizens" born "out of the limits of the United States," with the proviso that "the right of citizenship shall not descend to persons whose fathers have never been resident in the United States." Naturalization Act of 1790, ch. 3, 1 Stat. 103, 104. Today, federal law recognizes as a citizen any "person born outside of the United States . . . of parents both of whom are citizens of the United States and one of whom has had a residence in the United States." 8 U.S.C. § 1401(c). Many other countries have similar laws. *See Miller v. Albright*, 523 U.S. 420, 477 (1998) (Breyer, J., dissenting).

3. Finally, "[c]itizenship is a high privilege, and when doubts exist concerning a grant

of it, generally at least, they should be resolved in favor of the United States and against the claimant." *United States v. Manzi*, 276 U.S. 463, 467 (1928); *see Berenyi v. Dist. Dir., INS*, 385 U.S. 630, 637 (1967). For the reasons discussed above, the Citizenship Clause is best read not to extend citizenship to children born in the U.S. of illegal aliens or of temporary visitors.

D. Plaintiffs' Contrary Arguments Are Unpersuasive.

1. Plaintiffs rely primarily on *Wong Kim Ark*, *see* Br. at 8-10, but they misread that precedent. *Wong Kim Ark* did not concern the status of children born in the United States to parents who were illegal aliens or temporary visitors. To the contrary, the Court precisely identified the specific question presented

> 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 domicile 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.

Wong Kim Ark, at 653 (emphasis added).

In analyzing that question, the Court repeatedly relied on fact that the parents were permanent residents. For example, it quoted an opinion in which Justice Story recognized that "the children, even of aliens, born in a country, *while the parents are resident there* under the protection of the government, . . . are subjects by birth." *Wong Kim Ark*, 169 U.S. at 660 (emphasis added) (quoting *Inglis*, 28 U.S. (3 Pet.) at 164 (Story, J., dissenting)). It quoted the New Jersey Supreme Court's observation that the Fourteenth Amendment codifies "the general rule, that *when the parents are domiciled here* birth establishes the right to citizenship." *Id.* at 692 (emphasis added; citation omitted). It explained that "[e]very 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." *Id.* at 693 (emphasis added). And it noted that "Chinese persons

. . . owe allegiance to the United States, *so long as they are permitted by the United States to reside here*; and are 'subject to the jurisdiction thereof,' in the same sense as all other aliens *residing* in the United States." *Id.* at 694 (emphasis added).

After reviewing the relevant history, the Court reached the following "conclusions": "The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children born of *resident* aliens." *Wong Kim Ark*, 169 U.S. at 693 (emphasis added). Although the Amendment is subject to certain "exceptions" (*e.g.*, for "children of foreign sovereigns or their ministers"), the Amendment extends citizenship to "children born within the territory of the United States, of all other persons, of whatever race or color, *domiciled within the United States*." *Id.* (emphasis added). The Court then summed up its holding as follows:

> [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 domicile and residence in the United States*, . . . 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).

No doubt some statements in *Wong Kim Ark* could be read to support Plaintiffs' position. *Wong Kim Ark* never purported to overrule any part of *Elk*, however, and the Supreme Court has previously (and repeatedly) recognized *Wong Kim Ark*'s limited scope. In one case, the Court stated that:

> [t]he ruling in [*Wong Kim Ark*] was to this effect: "A child born in the United States, of parents . . . who, at the time of his birth, are subjects of the Emperor of China, *but have a permanent domicile and residence in the United States*, becomes at the time of his birth a citizen."

Chin Bak Kan v. United States, 186 U.S. 193, 200 (1902) (emphasis added; citation omitted). In another, the Court cited *Wong Kim Ark* for the proposition that a person is a U.S. citizen by birth

if "he was born to [foreign subjects] *when they were permanently domiciled in the United States*." *Kwock Jan Fat v. White*, 253 U.S. 454, 457 (1920) (citation omitted).

About a decade after *Wong Kim Ark* was decided, the Department of Justice likewise explained that the decision "goes no further" than addressing children of foreigners "domiciled in the United States." Spanish Treaty Claims Comm'n, U.S. Dep't of Justice, *Final Report of William Wallace Brown, Assistant Attorney General* 121 (1910). "[I]t has never been held," the Department continued, "and it is very doubtful whether it will ever be held, that the mere act of birth of a child on American soil, to parents who are accidentally or temporarily in the United States, operates to invest such child with all the rights of American citizenship. It was not so held in the Wong Kim Ark case." *Id.* at 124. Commentators, too, continued to acknowledge the traditional rule denying citizenship to children of non-resident foreigners. *See*, *e.g.*, John Westlake, *International Law* 219-20 (1904) ("[W]hen the father has domiciled himself in the Union . . . his children afterwards born there . . . are citizens; but . . . when the father at the time of the birth is in the Union for a transient purpose his children born within it have his nationality.").

In short, only "those portions of [an] opinion necessary to the result . . . are binding, whereas dicta is not," *Arcam Pharm. Corp. v. Faria*, 513 F.3d 1, 3 (1st Cir. 2007), and the *Wong Kim Ark* Court itself warned that "general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." 169 U.S. at 679 (citation omitted). The only question that was presented, investigated, and resolved in *Wong Kim Ark* concerned children of parents with "a permanent domicile and residence in the United States." *Id.* at 653; *see id.* at 705. The case should not be read as doing anything more than answering yes.

2. Nor do Plaintiffs advance their argument by relying on *Plyler v. Doe*, 457 U.S. 202 (1982), a case they assert "invoked *Wong Kim Ark*'s reasoning in holding that undocumented aliens

are 'within [the] jurisdiction' of any state in which they are physically present." Br. at 12 (quoting *Plyler*, 457 U.S. at 215). But the phrase "*within* its jurisdiction" cited in *Plyler* comes from the Equal Protection Clause which focuses on a person's geographic location and differs from the phrase "*subject to* the jurisdiction thereof" in the Citizenship Clause, which focuses on an individual's personal subjection or allegiance to the United States. As Supreme Court cases illustrate, a person may fall outside the scope of the Citizenship Clause even if the person or his parents falls within the scope of the Equal Protection Clause. For example, certain children of members of Indian tribes lack a constitutional right to U.S. citizenship by birth, *see Elk*, 112 U.S. at 102, but Indians *are* entitled to the equal protection of the laws, *see United States v. Antelope*, 430 U.S. 641, 647-650 (1977). Children of foreign diplomats also are not entitled to birthright citizenship, *see Wong Kim Ark*, 169 U.S. at 682, but Plaintiffs do not offer any authority suggesting such individuals are not subject to the Equal Protection Clause.

Plaintiffs also invoke the "common-law principle of *jus soli*, or the 'right of the soil.'" Br. at 6. But the Supreme Court "has long cautioned that the English common law 'is not to be taken in all respects to be that of America.'" *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 39 (2022) (citation omitted). And that admonition holds particular force here. *Cf. United States v. Rahimi*, 602 U.S. 680, 722 & n.3 (2024) (Kavanaugh, J., concurring). The English *jus soli* tradition was premised on an unalterable allegiance to the King (which was conferred via birth on his soil). But this nation was founded on breaking from that idea, and grounded citizenship in the social contract, premised on mutual consent between person and polity. *See, e.g.*, Cong. Globe, 40th Cong., 2nd Sess. 868 (1868) (statement of Rep. Woodward) (calling the British tradition an "indefensible feudal doctrine of indefeasible allegiance"); *id.* at 967 (statement of Rep. Bailey) (calling it a "slavish" doctrine); *id.* at 1130-31 (statement of Rep. Woodbridge) (saying it conflicts

with "every principle of justice and of sound public law" animating America and its independent identity).

Indeed, the Supreme Court has already held that the Citizenship Clause departs from English common law in important respects. For example, the Clause's exception for certain children of members of Indian tribes has no parallel in English law, *see Wong Kim Ark*, 169 U.S. at 693; and the Clause permits voluntary renunciation of citizenship, even though English common law did not, *see Afroyim v. Rusk*, 387 U.S. 253, 257-262 (1967). This Court should thus interpret the Citizenship Clause in light of *American* common-law principles, and as shown above, those principles do not support birthright citizenship for children of illegal aliens or temporary visitors.

Plaintiffs also point to precedent that accords with their view. *See* Br. at 11. But it is not unusual for the Supreme Court, after fully exploring a legal issue, to reach a conclusion that conflicts with earlier assumptions. *See*, *e.g.*, *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 644-45 (2022) (holding that states may prosecute non-Indians for crimes against Indians in Indian country despite decades of contrary Supreme Court dicta); *District of Columbia v. Heller*, 554 U.S. 570, 624 n.24 (2008) (holding that the Second Amendment protects an individual right even though lower courts had long read it to protect a collective right); *INS v. Chadha*, 462 U.S. 919, 944-45 (1983) (holding the legislative veto unconstitutional even though Congress had enacted, and the President had signed, almost 300 legislative-veto provisions over the preceding 50 years).

IV. Plaintiffs Will Not Suffer Irreparable Harm During the Pendency of this Lawsuit.

Apart from their failure to show a likelihood of success on the merits, Plaintiffs cannot show irreparable harm through non-speculative, non-conclusory allegations. In the Fourth Circuit, a "plaintiff must demonstrate a *likelihood* of irreparable harm without a preliminary injunction; a mere *possibility* of harm will not suffice." *Williams v. Rigg*, 458 F. Supp. 3d 468, 474 (S.D.W. Va.

2020). Plaintiffs have not done that here.

As a first irreparable harm, Plaintiffs assert that the Citizenship EO "will rip away the promise of citizenship for countless babies and leave them without legal status," and argue that "[m]any such newborns will have no other citizenship options available, leaving them stateless." Br. at 18. But Plaintiffs do not support this statement with concrete examples. Instead, Plaintiffs cite to ASAP's declaration that conveys the worries of parents who are expecting children and who believe they will have to seek immigration relief on behalf of their children or otherwise seek consular services from their country of origin. *See id.* at 18-19 (citing ECF No. 2-3 ¶¶ 29-31).

The declaration, apart from failing to provide specific details that Plaintiffs are likely to be harmed, also undercuts Plaintiffs' argument for irreparable harm. In particular, the ASAP declaration notes that, contrary to Plaintiffs' claims that children will not have legal status or a path to citizenship, parents could "help their children apply for other forms of U.S. immigration relief," such as through asylum. ECF No. 2-3 ¶ 29. Plaintiffs' asserted harm of statelessness and being left without status is thus speculative since they have other routes of obtaining status for children and citizenship. For instance, "[a]sylum provides individuals who qualify several distinct benefits: a path to citizenship, eligibility for certain government benefits, and the chance for family members to receive asylum as well." *Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 32 (D.D.C. 2020). Moreover, children can be derivative beneficiaries of their parents' asylum application. *See* 8 U.S.C. § 1158(b)(3)(A). The ASAP declaration cites that these pathways can be "time consuming and stressful" and "also . . . expensive," ECF No. 2-3 ¶ 29, but "financial harm generally does not suffice to establish irreparable harm." *Polk v. Montgomery Cnty. Public Schools*, 2025 WL 240996, at *20 (D. Md. Jan. 17, 2025) (Boardman, J.).

Plaintiffs next assert that they suffer irreparable harm because "[t]he looming threat of

deportation and family separation created by the Executive Order shapes Members' choices about fundamental aspects of their lives and deters them from doing what best serves their families." Br. at 19 (citing ECF No. 2-2 ¶ 29). Yet, Plaintiffs do not say what choices the EO impacts and the declaration, to which Plaintiffs cite, does not elaborate on their harms either—instead recollecting the fears of CASA's members that their children might not obtain birthright citizenship without specifying what choices those members will make in light of the EO. *See* ECF No. 2-2 ¶¶ 30-34.

Finally, Plaintiffs argue that they are irreparably harmed because "[t]he lack of clarity in the [EO] about the status of children born after the Order takes effect and the uncertainty about how the Order will be implemented have engendered widespread confusion and fear." Br. at 19. This lack of clarity further emphasizes that Plaintiffs are speculating as to how the Citizenship EO will impact them as Plaintiffs themselves concede that they do not know what consequences they will face as a result of the EO, which has yet to be implemented.

V. The Public Interest Does Not Favor an Injunction.

Plaintiffs' asserted harms are, in any event, greatly outweighed by the harm to the government and public interest that would result from the extraordinary relief Plaintiffs request. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting that the balancing of harms and public interest requirement for injunctive relief merge when "the Government is the opposing party"). As the Supreme Court has recognized, Executive officials must have "broad discretion" to manage the immigration system. *Arizona v. United States*, 567 U.S. 387, 395-96 (2012). It is the United States, not these Plaintiffs, that has "broad, undoubted power over the subject of immigration and the status of aliens," *id*. at 394, and providing Plaintiffs with their requested relief would mark a severe intrusion into this core executive authority, *see INS v. Legalization Assistance Project*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers) (warning against "intrusion by a federal

court into the workings of a coordinate branch of the Government").

Plaintiffs further argue that an injunction serves the public interest because it "will save the government billions of dollars per year by avoiding the added bureaucratic costs that would be necessary to make citizenship determinations through means other than birth certificates" and the Citizenship EO otherwise will require "substantial changes . . . to be made to a huge variety of complex federal and state programs in order to implement it fully." Br. at 21. However, Plaintiffs provide no support for these conclusory assertions about burdens and costs beyond a citation to their Complaint. Plaintiffs' bare allegations, without more factual support, do not satisfy Plaintiffs' burden in requesting a preliminary injunction. *See J.O.P. v. U.S. Dep't of Homeland Sec.*, 338 F.R.D. 33, 60 (D. Md. 2020) ("Thus, the burden placed upon Plaintiffs to show that each requirement of a preliminary injunction is met is high.") (cleaned up).

VI. Any Relief Should be Limited.

For the reasons above, the Court should deny Plaintiffs' motion in its entirety. But even if the Court determines that a preliminary injunction is appropriate, it should limit its scope in three ways. *First*, the nationwide relief that Plaintiffs appear to seek would be improper. *See* ECF No. 2-9 at 3 (describing Plaintiffs' requested injunction without geographic limitation). Based on the well-established principle that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs," *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted), the Fourth Circuit has repeatedly vacated or stayed nationwide injunctions. *See, e.g.*, *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 262-63 (4th Cir. 2020) (appeal dismissed on other grounds); *Emergency One, Inc. v. Am. Fire Eagle Engine Co., Inc.*, 332 F.3d 264, 270 (4th Cir. 2003). Indeed, as one Fourth Circuit panel has noted: "[a] nationwide injunction is a drastic remedy," and, by their nature, such injunctions "are plainly

inconsistent with th[e] conception of the judicial role and the proper scope of the federal courts' remedial power." *CASA de Maryland*, 971 F.3d at 256-57. Even assuming *arguendo* that a nationwide injunction could issue, Plaintiffs also fail to explain why it should issue in this case. *See Emergency One*, 332 F.3d at 270 ("In any event, there was no factual basis in the record from which the court could conclude that a nationwide injunction was appropriate.").

Second, although Plaintiffs have named the President as a Defendant, *see* Compl. ¶ 50, "courts do not have jurisdiction to enjoin [the President] . . . and have never submitted the President to declaratory relief." *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (citations omitted); *see Franklin v. Massachusetts*, 505 U.S. 788, 802–03 (1992) ("[I]n general 'this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties.'" (citation omitted)). Accordingly, the Court lacks jurisdiction to enter Plaintiffs' requested relief against the President and should dismiss him as a defendant in this case at a minimum.

Third, the Court should reject Plaintiffs' facial challenges to the Citizenship EO so that its lawfulness can be determined in individual as-applied challenges, consistent with the process established by the INA. To mount a successful facial challenge, a plaintiff must show that "no set of circumstances exists" under which the challenged provision "would be valid," *Rahimi*, 602 U.S. at 693 (citation omitted), and as explained in the merits section of the brief, Plaintiffs have failed to do so here. *See supra* Sec. III.[5]

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion for a temporary restraining order and preliminary injunction.

[5] Because Plaintiffs' claims are purely legal and fully addressed in the parties' briefing on the instant motions, Defendants request that the Court consolidate the February 5 preliminary injunction hearing with a trial on the merits, pursuant to Federal Rule of Civil Procedure 65(a)(2).

Dated: January 31, 2025

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CERTIFICATE OF SERVICE

I hereby certify that, on January 31, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

/s/ Yuri S. Fuchs
Yuri S. Fuchs

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASA, INC., et al., Plaintiffs-Appellees, v. DONALD J. TRUMP, et al., Defendants-Appellants.	No. 25-1153

TIME-SENSITIVE MOTION FOR STAY PENDING APPEAL

Defendants-appellants President Donald J. Trump, et al., respectfully move this Court for a partial stay pending appeal of the district court's nationwide preliminary injunction of the President's Executive Order addressing the meaning of the Citizenship Clause of the Fourteenth Amendment. *See* Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025). Just sixteen affected individuals were identified in the district court—five individual plaintiffs and eleven individual members of the two association plaintiffs. Yet the injunction restrains the operation of the Executive Order as to every person in the United States. The government does not seek a stay of the injunction with respect to the sixteen individuals. But the

government respectfully requests that this Court stay the district court's improper nationwide injunction pending appeal to the extent it sweeps beyond those sixteen individuals. *See Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921 (2024) (granting a stay of all nonparty relief). Given the importance of the issues presented and the harms caused by the district court's overbroad relief, the government respectfully requests a ruling by February 27, 2025.

The preliminary injunction enjoins defendants from "implementing and enforcing" (Add. 3) the Executive Order's interpretation of the Citizenship Clause. Under that Clause, "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." U.S. Const. amend. XIV, § 1. The Executive Order explains that the Constitution does not grant birthright citizenship to the children of aliens who are unlawfully present in the United States or whose presence is lawful but temporary. Text, history, and precedent demonstrate that the Executive Order's interpretation of the Citizenship Clause is correct, as the government will explain in its merits brief in this Court.

This motion does not require the Court to address the merits. For the present, the government asks only that the Court stay the preliminary

injunction to the extent it sweeps beyond the sixteen individuals whose claims are identified in the complaint and whose relief is not contested in this motion. The district court reasoned that nationwide injunctive relief was appropriate because the challenge concerns a "categorical policy" regarding citizenship, "a national concern that demands a uniform policy." Add. 35. The district court also believed that, because some of the sixteen individuals had two organizations—CASA, Inc. and Asylum Seeker Advocacy Project (ASAP)—sue on their behalf, more than 175,000 unidentified CASA members and 680,000 unidentified ASAP members were entitled to relief, even though those unnamed members have not been made parties to the suit, never established standing, and never agreed to be bound by a judgment in this case.

Such a broad injunction exceeds the traditional role and powers of a court of equity and upsets other well-established legal doctrines. A nationwide injunction that extends relief to nonparties in a suit involving sixteen individuals alleging concrete injuries is fundamentally inconsistent with Article III and basic principles of equity. And even if courts could issue injunctions protecting all members of the organizational plaintiffs,

regardless of whether they have been identified or established their standing, that still would not justify nationwide relief to nonmembers.

This Court should therefore stay the order as it applies beyond the sixteen individuals identified in the complaint. Pursuant to Local Rule 27(a), plaintiffs informed us they plan to oppose this motion and file a response.

STATEMENT

A. Background

The Citizenship Clause of the Fourteenth Amendment provides that "[a]ll 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. Similarly, 8 U.S.C. § 1401(a) makes citizens of any "person born in the United States, and subject to the jurisdiction thereof."[1]

[1] Plaintiffs assert claims under both the Citizenship Clause and this statute. As the district court noted, "[t]he claims are essentially coterminous because the statute mirrors the Citizenship Clause." Add. 9 n.3. The statutory claim does not affect the propriety of the injunction's scope.

On January 20, 2025, President Trump issued an Executive Order addressing what it means to be "subject to the jurisdiction" of the United States. *See* Executive Order § 1. The Executive Order recognizes that the Constitution and the corresponding statute extend birthright citizenship to most people born in the United States, but they do not automatically extend the privilege when: (1) the child's mother was unlawfully present and the father was not a citizen or lawful permanent resident, or (2) the mother's presence was lawful but temporary and the father was not a citizen or lawful permanent resident. *Id.* The Executive Order also directs the Executive Branch not to issue documents recognizing U.S. citizenship to covered persons born in the United States after February 19, 2025, and not to accept documents issued by state, local, or other governments purporting to recognize the U.S. citizenship of such persons. *Id.* § 2.

The Executive Order directs the Secretary of State, Attorney General, Secretary of Homeland Security, and Commissioner of Social Security to "ensure that the regulations and policies of their respective departments and agencies are consistent with this order" and further directs all federal agencies to issue public guidance by February 19 "regarding this order's implementation with respect to their operations and activities." *Id.* § 3.

B. Procedural History

1. CASA, identifying five of its allegedly injured members; ASAP, identifying six of its members; and five individual plaintiffs filed suit the day after the Executive Order issued. *See* Add. 60–77. The associations' members were identified pseudonymously. Add. 68, ¶ 25; Add. 71–72, ¶ 37. The five individuals moved to proceed pseudonymously. Dkt. 3. The government did not oppose the motion, provided the individuals disclosed their identities if it became necessary. Dkt. 39. The district court granted the motion. Dkt. 68.

CASA asserts that it has more than 175,000 members, and ASAP asserts that it has more than 680,000 members. Add. 67, ¶ 19; Add. 70, ¶ 31. In addition to the specific members identified in the complaint, the organizations alleged that their "membership includes many individuals who are pregnant or planning to give birth, and whose U.S.-born children" would be affected by the Executive Order. Add. 68, ¶ 25; *see* Add. 71–72, ¶ 37. Of its more than 680,000 members, ASAP "know[s] of at least 629 ASAP members who are currently expecting to have children born in the United States in 2025." Add. 54, ¶ 36. The two organizations sought a nationwide, "universal" injunction because it was "the most efficient way

to grant relief to" ASAP's and CASA's "hundreds of thousands of members spread throughout the country." Dkt. 46, at 14–15.

2. On February 5, the district court granted a nationwide preliminary injunction. Add. 1. It reasoned that "[o]nly a nationwide injunction will provide complete relief to the plaintiffs" because the organizations' hundreds of thousands of members "reside in all 50 U.S. states and several U.S. territories." Add. 35 (quotation marks omitted). "Further," the district court continued, a nationwide injunction "may be appropriate when the government relies on a categorical policy," like the Executive Order. *Id.* (quotation marks omitted). Nationwide relief also was appropriate, the district court said, because "the policy concerns citizenship—a national concern that demands a uniform policy." *Id.*

On February 11, the government moved in district court for a stay pending appeal. Add. 98. On February 18, the district court denied the motion. Add. 109.

3. Two other district courts have enjoined the Executive Order nationwide. *Washington v. Trump*, No. C25-0127-JCC, 2025 WL 415165, at *1 (W.D. Wash. Feb. 6, 2025); *New Jersey v. Trump*, No. 25-10139-LTS, 2025 WL 487372, at *1 (D. Mass. Feb. 13, 2025). The defendants appealed the

Washington injunction and sought a partial stay pending appeal as to its nationwide scope on February 11. The defendants appealed and are seeking a stay of the *New Jersey* injunction today. Two narrower injunctions have also been entered, which the defendants have either appealed, *see Doe v. Trump*, No. 25-10135-LTS, 2025 WL 485070 (D. Mass. Feb. 13, 2025), or plan to appeal, *see New Hampshire Indonesian Cmty. Support v. Trump*, No. 25-cv-38-JL-TSM, 2025 WL 457609 (D.N.H. Feb. 11, 2025).

ARGUMENT

This Court should stay the nationwide preliminary injunction with respect to all but the sixteen individuals who are plaintiffs or identified members of the plaintiff organizations. For this stay motion, the government does not contest their right to injunctive relief; our merits briefs in this Court will explain why the district court was wrong to enjoin the Executive Order as to them. As to the more than 800,000 members who were not identified in the complaint, never established standing, and who never agreed to be bound by the judgment, there is no proper basis for equitable relief, and the familiar factors governing the grant of a stay pending appeal—likelihood of success on the merits, irreparable injury, the

balance of the equities, and the public interest—strongly counsel in favor of a stay. *See Nken v. Holder*, 556 U.S. 418, 426 (2009). At a minimum, the district court's nationwide relief to nonmembers was improper.

I. The Injunction Exceeds the District Court's Article III and Equitable Powers.

The district court here imposed a nationwide preliminary injunction based on allegations of harm from sixteen individuals. That was mistaken in multiple respects. Nationwide injunctions that extend relief to nonparties are fundamentally inconsistent with Article III and basic principles of equity. And the district court's view that such relief was necessary to provide relief to hundreds of thousands of unidentified association members fares no better: many of those individuals plainly lack standing to seek relief in their own right, and a narrower injunction could be tailored to provide relief to any members who do have standing.

A. Nonparty Relief Exceeds the District Court's Powers.

Nationwide injunctions exceed "the power of Article III courts," conflict with "longstanding limits on equitable relief," and impose a severe "toll on the federal court system." *Trump v. Hawaii*, 585 U.S. 667, 713 (2018)

(Thomas, J., concurring); *see DHS v. New York*, 140 S. Ct. 599, 599–601 (2020) (Gorsuch, J., concurring in the grant of stay).

Under Article III, "a plaintiff's remedy must be 'limited to the inadequacy that produced his injury.'" *Gill v. Whitford*, 585 U.S. 48, 66 (2018) (alteration omitted); *see Lewis v. Casey*, 518 U.S. 343, 360 (1996) (narrowing an injunction that improperly granted "a remedy beyond what was necessary to provide relief" to the injured parties). Similarly, traditional principles of equity require that an injunction be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

Nationwide injunctions flout these principles. Nationwide injunctions encourage forum shopping. *Arizona v. Biden*, 40 F.4th 375, 396 (6th Cir. 2022) (Sutton, C.J., concurring). They empower a single district court to pretermit meaningful litigation on the same issue in other courts, thereby preventing further percolation of the issues. *See DHS*, 140 S. Ct. at 600 (Gorsuch, J., concurring in the grant of stay). They also operate asymmetrically, granting relief to strangers around the nation if a single plaintiff prevails but not precluding litigation by others if the plaintiff loses. *Cf. United States v. Mendoza*, 464 U.S. 154, 159–60 (1984) (holding that

non-mutual collateral estoppel does not apply against the federal government). And they circumvent the carefully calibrated rules governing class actions, which provide a mechanism for litigating widely shared claims that accounts for many of the well-known drawbacks of nationwide relief. *See* Fed. R. Civ. P. 23.

Moreover, as the Supreme Court has "long held," federal courts sitting in equity must apply "'traditional principles of equity'" and may award only those remedies that were "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999) (quotation marks omitted). Universal injunctions granting relief to nonparties depart from this historical tradition: "[C]ourts of equity" historically "did not provide relief beyond the parties to the case." *Hawaii*, 585 U.S. at 717 (Thomas, J., concurring).

The Supreme Court recently reiterated the problems posed by nationwide injunctions in granting a stay in *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921 (2024). There, the district court had issued a preliminary injunction prohibiting the defendant from enforcing a state law against parties and nonparties, and the court of appeals denied a stay pending appeal. The Supreme Court stayed the district court's order "except as to"

the specific plaintiffs. *Id.* at 921. That stay was premised on five Justices' conclusion that universal injunctions providing relief beyond the parties to the case are likely impermissible. *Id.* at 927 (Gorsuch, J., concurring in the grant of stay); *see id.* (emphasizing that "[l]ower courts would be wise to take heed"); *id.* at 933 n.4 (Kavanaugh, J., concurring in the grant of stay).

These principles apply with full force here, yet the district court brushed them aside, citing cases from this Court holding that courts may, in some circumstances, issue nationwide injunctions. Add. 34–35 (first citing *Roe v. Department of Def.*, 947 F.3d 207, 231 (4th Cir. 2020); and then citing *HIAS, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021)). Those cases did not address any of the points above and were instead based on the mistaken premise that a Supreme Court decision granting only a partial stay of a nationwide injunction established binding precedent on "the equitable power of district courts, in appropriate cases, to issue nationwide injunctions extending relief to those who are similarly situated to the litigants." *Roe*, 947 F.3d at 232 (citing *Trump v. International Refugee Assistance Project*, 582 U.S. 571, 580–81 (2017) (per curiam)). The Supreme Court's grant of a partial stay did not sub silentio repudiate the established principle that injunctive relief should be tailored to remedy a plaintiff's

injury. Indeed, the Supreme Court has since squarely addressed an injunction extending to nonparties and stayed the injunction insofar as it applied beyond the plaintiffs. *Poe*, 144 S. Ct. at 921; *see id.* at 927 (Gorsuch, J., concurring in the grant of stay); *id.* at 933 n.4 (Kavanaugh, J., concurring in the grant of stay).

Moreover, even if district courts may sometimes issue nationwide relief, that does not mean it was appropriate here. The district court suggested that nationwide relief was appropriate because the Executive Order reflects a "categorical policy" and addresses "citizenship," a topic of "national concern" on which "a uniform policy" is necessary. Add. 35. But those considerations would warrant a nationwide injunction in virtually every case in which a uniform federal law or agency action is at issue, "mak[ing] nationwide injunctions the rule rather than the exception." *Arizona*, 40 F.4th at 397 (Sutton, C.J., concurring).

The district court separately suggested that nationwide relief was necessary to "provide complete relief to the plaintiffs" because one plaintiff association has members "in every state" and some of those members "expect to give birth soon." Add. 35. But the point of equitable relief is to

address injury to a plaintiff, who has no cognizable interest in alleged injuries to nonparties. *See Yamasaki*, 442 U.S. at 702; *Gill*, 585 U.S. at 73.

B. Unidentified Members With No Claim to Standing Are Not Entitled to Relief

The district court's approach also contravenes fundamental premises of associational standing. The associations here have no claims of their own; they instead bring suit to "assert the claims of [their] members." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 342 (1977). Thus, to establish standing, organizations must identify an injured member or members whose claims they press. *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009). The organizations satisfied that burden for the handful of identified members' claims by including the members' claims in the complaint and providing a declaration explaining the claims and alleging those members' standing.[2] *See* Add. 36–59. Rather than resolve these

[2] In addition to its six members whose claims were identified in the complaint, ASAP included information about six more members in its declaration. *Compare* Add. 68–70, *with* Add. 54–59. Several of these appear duplicative with other individuals or appear to lack standing. One is married to one of the individual plaintiffs, with whom he would share a claim. Add. 55, ¶ 39; Add. 77, ¶ 49. Another hopes to have lawful permanent residence before her due date, and would therefore likely lack standing. Add. 58, ¶ 45. Another may lack standing due to ongoing deportation proceedings. Add. 58, ¶ 47. Regardless of whether ASAP

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specific claims, however, the district court granted relief to all of the more than 800,000 members of these organizations, while exempting those members from the typical scrutiny required by Article III standing.

1. The Unidentified Members Lack Article III Standing.

Neither of the organizations here asserts that all of its members have standing to bring this suit. The two organizations collectively claim over 800,000 members. There is no prospect that all or even most of those members are pregnant or have any plans to become pregnant. Similarly, even among members who are pregnant, many may be—or have spouses who are—lawful permanent residents or citizens, and thus their children would not be affected by the Executive Order. Those members thus have no claim the organizations could possibly assert on their behalf.

Indeed, plaintiffs' allegations here put the problem in stark relief: while ASAP seeks relief for more than 680,000 members, its declaration states only that it "kn[e]w of at least 629 ASAP members who are currently expecting to have children born in the United States in 2025"— in other

established standing for 6 of its more than 680,000 members or 7–12 of its more than 680,000 members, ASAP has still failed to establish standing for the vast majority of its members.

words, less than 0.1% of its claimed membership. Add. 54, ¶ 36. And in any event, the declaration does not say whether those 629 members are covered by the terms of the Executive Order. ASAP cannot seek relief on behalf of more than 679,000 members for whom it has made no claim of standing, and relief for all of CASA's membership suffers the same defect.

The presence of an associational plaintiff suing on behalf of its members does not allow individuals who lack standing to seek judicial relief. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975) ("[R]epresentational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy."); *International Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Brock*, 477 U.S. 274, 281 (1986) (holding labor union had standing to represent "those of its members injured by the [challenged] policy"). As this Court has previously recognized, "standing is not a clown car into which all interested parties may pile, provided the driver-cum-plaintiff has met its requirements." *CASA de Md., Inc. v. Trump*, 971 F.3d 220, 258 (4th Cir. 2020), *vacated for reh'g en banc*, 981 F.3d 311 (4th Cir.), *reh'g dismissed* (4th Cir. Mar. 21, 2021).

2. Basic Equitable Principles Preclude Granting Relief to Hundreds of Thousands of Unidentified Members With No Demonstrated Injury

Granting relief to a vast number of unidentified members is also fundamentally inequitable. At the outset, litigation on these terms makes it impossible to tell whether these members are also members of one of the other organizations suing over the Executive Order. *See* Complaint at 4, *New Hampshire Indonesian Cmty. Support v. Trump*, No. 1:25-cv-38 (D.N.H. Jan. 20, 2025) (three organizations with more than 355,000 members); Complaint at 4-5, *Doe v. Trump*, No. 1:25-cv-10135 (D. Mass. filed Jan. 20, 2025) (two organizations with an undisclosed number of members). Overlapping members may have their claims simultaneously litigated in two courts, despite the fundamental rule that duplicative litigation in multiple courts is not permitted. *See, e.g.*, *Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 504 (2d Cir. 2019); *see also* 2 Joseph Story, *Commentaries on Equity Jurisprudence* § 1526 (2d ed. 1839) (noting "the great object of Courts of Equity" was to "put an end to litigation" "in a single suit").

Similarly, the government does not (and cannot) know to whom a judgment would run, rendering it unclear to whom *res judicata* would apply. Moreover, it is unclear how preclusion principles could apply to a suit purportedly litigating the claims of individuals who presently lack

standing. *Cf. Brock*, 477 U.S. at 290 (expressing concern that associational standing could lead to circumstances where preclusion "might not" apply to "subsequent claims by the association's members"). Traditional courts of equity would not suffer such unfair asymmetry. *See West v. Randall*, 29 F. Cas. 718, 721–22 (C.C.D.R.I. 1820) (Story, J.) (holding that equity would not let the defendant be "left under precarious circumstances" of facing the same suit again and being "doubly vexed").

Here, nothing prevents the organizational plaintiffs from proceeding by having members join the complaint, by identifying and asserting each affected member's specific claim, or by seeking to certify a class that includes their claims. But the associations here cannot forgo class action procedures or other mechanisms for litigating claims; assert that they have large, dispersed, and anonymous memberships; make no claim that all such members have standing; and demand nationwide relief because of the gaps in their own showing of standing. *See Koster v. (American) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 522 (1947) ("[A]s in all other petitions for equitable relief, he who seeks equity must do equity, and the court will be alert to see that its peculiar remedial process is in no way abused.").

These principles make clear that any relief for the organizational plaintiffs in this case should be limited to those identified members whose standing is established in the declarations and who undoubtedly would be bound by the judgment. That approach would respect both Article III principles underlying associational standing and basic rules of equity.

Finally, even if such a sweeping injunction was ever permissible, "the attendant practical consequences of this drastic and extraordinary remedy should restrict its use to the most exceptional circumstances." *CASA de Md., Inc.*, 971 F.3d at 259, *vacated for reh'g en banc*, 981 F.3d 311. At an absolute minimum, the district court failed to explain why the geographic spread of the plaintiff organizations' members necessitated a nationwide injunction. Citizenship is about an individual's status, and an order that precludes the denial of citizenship to an individual provides complete relief to that individual. The members of the associations here are no different; an order limited to those members would provide them complete relief (if they are injured at all), as they are not injured by the treatment of nonmembers. If mere geographic dispersal were the metric, every organization with a geographically dispersed membership would be entitled to nationwide relief in every suit.

II. The Remaining Factors Favor a Stay.

The remaining factors—irreparable harm, the balance of harms, and the public interest—likewise favor the requested partial stay. The beneficiaries of the injunction beyond the sixteen identified individuals are not proper parties, and staying relief to those nonparties does not cause any irreparable harm to the sixteen individuals identified in the complaint. *See Ohio v. EPA*, 603 U.S. 279, 291 (2024) (asking "whether the stay will substantially injure *the other parties*") (emphasis added)).

By contrast, allowing the full scope of the injunction to take effect threatens irreparable injuries to the government and the public, whose interests "merge" in this context. *Nken*, 556 U.S. at 435. An injunction that prevents the President from carrying out his broad authority over and responsibility for immigration matters is "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS v. Legalization Assistance Project of the L.A. Cty. Fed'n of Labor*, 510 U.S. 1301, 1305–06 (1993) (O'Connor, J., in chambers).

Those harms are particularly manifest given the breadth of the injunction. The injunction applies nationwide to all implementation and enforcement, preventing the Executive Branch from formulating relevant

policies and guidance for implementing the President's Order.[3] Plaintiffs cannot plausibly claim any injury from those internal operations and delaying advance preparations for the policies of a democratically elected government imposes its own "form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotation marks omitted).

The injunction is especially harmful as the challenged Executive Order is an integral part of President Trump's broader effort to repair the United States' immigration system and to address the ongoing crisis at the southern border. That immigration policy is designed to combat the "significant threats to national security and public safety" posed by unlawful immigration. *See* Exec. Order No. 14,159, § 1, 90 Fed. Reg. 8443, 8443 (Jan. 29, 2025); *see also* Exec. Order No. 14,165, 90 Fed. Reg. 8467 (Jan. 30, 2025); Proclamation No. 10,886, 90 Fed. Reg. 8327 (Jan. 29, 2025).

[3] While two groups of States have also obtained nationwide injunctions against the Executive Order, *see supra* pp. 7–8, both sets of State plaintiffs lack standing. Citizenship is an individual right, and the States' claims violate prohibitions on third-party standing. In any event, the government believes the States in both cases have failed to allege injuries sufficient to establish Article III standing. The government has sought a stay of one of these injunctions because of the States' lack of standing and will be seeking a stay of the other today.

Addressing the Executive Branch's prior misinterpretation of the Citizenship Clause is one component of that broader effort, removing incentives to unlawful immigration and closing exploitable loopholes.

The district court erred in granting nationwide injunctive relief at the behest of just sixteen identified individuals, *see Poe*, 144 S. Ct. at 921, even if some of those individuals had an organization bring their claims on their behalf. This Court should grant a stay pending appeal except as to those sixteen individuals. *See id*.

CONCLUSION

For the foregoing reasons, this Court should stay the district court's nationwide preliminary injunction except as to the sixteen identified individuals.

Respectfully submitted,

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FEBRUARY 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion satisfies the type-volume requirements set out in Rule 27(d)(2)(A) because it contains 4,352 words. This motion was prepared using Microsoft Word in Book Antiqua, 14-point font, a proportionally spaced typeface.

s/ Derek Weiss
Derek Weiss

CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2025, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Derek Weiss
Derek Weiss

ADDENDUM

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Declaration of George Escobar, Chief of Programs and Services for CASA, Inc. (Jan. 21, 2025) (Dkt. 2-2) .... Add. 36

Declaration of Swapna C. Reddy, Co-Executive Director of the Asylum Seeker Advocacy Project, ("ASAP") (Jan. 21, 2025) (Dkt. 2-3) .... Add. 47

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC., *et al.*,	*	
Plaintiffs,	*	
v.	*	**Civ. No. DLB-25-201**
DONALD J. TRUMP, *et al.*,	*	
Defendants.	*	

ORDER

On January 20, 2025, President Donald J. Trump signed Executive Order 14160, "Protecting the Meaning and Value of American Citizenship" ("Executive Order"). CASA, Inc., Asylum Seeker Advocacy Project, and five individuals proceeding under the pseudonyms Maribel, Juana, Trinidad Garcia, Monica, and Liza filed a lawsuit against President Trump, the Secretary of the U.S. Department of State, the U.S. Attorney General, the Secretary of the U.S. Department of Homeland Security, the Director of U.S. Citizenship and Immigration Services, the Commissioner of the Social Security Administration, and the United States of America. The plaintiffs allege that the Executive Order violates the Citizenship Clause of the Fourteenth Amendment to the Constitution and the Immigration and Nationality Act. The plaintiffs moved for a preliminary injunction that enjoins the defendants from implementing and enforcing the Executive Order. Upon consideration of the plaintiffs' motion for a preliminary injunction, the defendants' opposition, the plaintiffs' reply, and the briefs filed by three amici, the Court finds that the plaintiffs have shown they are entitled to a preliminary injunction.

The plaintiffs have established that they are likely to succeed on the merits of their claim that the Executive Order violates the Fourteenth Amendment. The Executive Order contradicts the

plain language of the Citizenship Clause of the Fourteenth Amendment and conflicts with binding Supreme Court precedent, *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

The plaintiffs also have shown that they will suffer irreparable harm without injunctive relief. The unborn children of the individual plaintiffs and the organizational plaintiffs' members will be denied the rights and privileges of U.S. citizenship. The plaintiffs will face uncertainty about their children's citizenship status, and some of their children may be stateless.

The balance of the equities and the public interest weigh in favor of a preliminary injunction. The government will not be harmed because a preliminary injunction will maintain the status quo. Enjoining implementation and enforcement of the Executive Order during litigation will preserve constitutional rights and prevent administrative and financial burdens on local governments.

For the reasons state above and those stated in the memorandum opinion issued today, it is this 5th day of February, 2025 hereby ORDERED that

1. The plaintiffs' motion for a preliminary injunction and temporary restraining order, ECF 2, is GRANTED in part and DENIED in part as follows:
   a. The motion for a preliminary injunction is GRANTED; and
   b. The motion for a temporary restraining order is DENIED as moot;
2. The Secretary of the U.S. Department of State, the U.S. Attorney General, the Secretary of the U.S. Department of Homeland Security, the Director of U.S. Citizenship and Immigration Services, the Commissioner of the Social Security Administration, and their officers, agents, servants, employees, and attorneys, and any other persons who are in active concert or participation with them are

ENJOINED throughout these United States from implementing and enforcing the Executive Order until fmiher order of this Court; and

3. The security requirement is hereby waived because the defendants will not suffer any costs from the preliminary injunction and imposing a security requirement would pose a hardship on the plaintiffs. *See* Fed. R. Civ. P. 65(c).

Deborah L. Boardman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC., *et al.*,	*	
Plaintiffs,	*	
v.	*	**Civ. No. DLB-25-201**
DONALD J. TRUMP, *et al.*,	*	
Defendants.	*	

MEMORANDUM OPINION

In 1868, the United States Congress ratified the Fourteenth Amendment to the United States Constitution. The Citizenship Clause of the Fourteenth Amendment 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.

U.S. Const. amend. XIV, § 1, cl. 1.

More than 150 years after the Fourteenth Amendment was ratified, the newly-sworn-in President of the United States Donald J. Trump signed an Executive Order called "Protecting the Meaning and Value of American Citizenship." *See* Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025) (the "Order" or "Executive Order"). The Executive Order interprets the Citizenship Clause of the Fourteenth Amendment in a manner that the Supreme Court has resoundingly rejected and no court in the country has ever endorsed. If the Order is allowed to take effect, it would deny citizenship by birth to U.S.-born persons whose mothers are in the country unlawfully or temporarily and whose fathers are not citizens or lawful permanent residents at the time of the person's birth.

The day after the Executive Order was issued, CASA, Inc. and Asylum Seeker Advocacy Project, two nonprofit organizations that provide services to immigrants, and five pregnant women

without permanent legal status who expect to give birth in the United States in the coming months filed this lawsuit against President Trump, the Secretary of the U.S. Department of State, the U.S. Attorney General, the Secretary of the U.S. Department of Homeland Security, the Director of U.S. Citizenship and Immigration Services, the Commissioner of the Social Security Administration, and the United States of America. The plaintiffs allege that the Executive Order violates the Fourteenth Amendment to the Constitution and the Immigration and Nationality Act. They request a preliminary injunction that enjoins implementation and enforcement of the Executive Order until the merits of their claims are resolved. The government opposes preliminary injunctive relief.

The plaintiffs easily have met the standard for a preliminary injunction. There is a very strong likelihood of success on the merits. The plaintiffs will face irreparable harm without injunctive relief. And the balance of the equities and the public interest strongly weigh in favor of a preliminary injunction. The motion for a preliminary injunction is granted. The defendants are enjoined from implementing and enforcing the Executive Order.

I. Background

At noon on January 20, 2025, President Trump took the oath of office of the President of the United States. Later that day, President Trump signed an Executive Order called "Protecting the Meaning and Value of American Citizenship." The Executive Order purports to interpret the clause "subject to the jurisdiction thereof" in the Citizenship Clause of the Fourteenth Amendment. In Section 1 of the Order, titled "Purpose," the Order explains that "[t]he Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof.'" Exec. Order § 1. Section 1 continues:

> Among the categories of individuals born in the United States and not subject to the jurisdiction thereof, 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 (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father was not a United States citizen or lawful permanent resident at the time of said person's birth.

Id.

Section 2 of the Order establishes the policy of the United States government. *See id.* § 2. Under Section 2, no federal department or agency "shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship" to a person whose mother was unlawfully present or lawfully present with only temporary status and whose father was neither a United States citizen nor lawful permanent resident at the time of that person's birth. *Id.* § 2(a). The policy applies only to persons who are born in the United States on or after February 19, 2025. *Id.* § 2(b). It does not impact the ability of other people, including children of lawful permanent residents, to get documentation of their American citizenship. *Id.* § 2(c).

Section 3 of the Order discusses enforcement. *Id.* § 3. It instructs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to "take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order" and that their agencies' officers, employees, and agents act in accordance with the Order. *Id.* § 3(a). It also instructs the heads of executive departments and agencies to issue public guidance regarding their implementation of the Order within 30 days of its issuance. *Id.* § 3(b).

On January 21, 2025, the plaintiffs filed this lawsuit against President Trump, the Secretary of the U.S. Department of State, the U.S. Attorney General, the Secretary of the U.S. Department

of Homeland Security, the Director of U.S. Citizenship and Immigration Services, the Commissioner of the Social Security Administration, and the United States of America. ECF 1, ¶¶ 50–56. Each individual defendant is sued in their official capacity. *Id.* The plaintiffs claim that the Executive Order violates the Fourteenth Amendment, *id.* ¶¶ 101–08, and the Immigration and Nationality Act ("INA"), *id.* ¶¶ 109–14. They seek declaratory and injunctive relief. *Id.* at 37–38.

The two organizational plaintiffs are CASA, Inc. ("CASA") and Asylum Seeker Advocacy Project ("ASAP"). CASA is a nonprofit organization headquartered in Prince George's County, Maryland. *Id.* ¶ 19. It "is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 175,000 members." *Id.* Its mission "is to create a more just society by building power and improving the quality of life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and immigrant communities." *Id.* ¶ 20. It helps members apply for public benefits and offers free legal consultations. *Id.* ¶ 22. CASA does not issue formal membership to anyone under the age of 15, though it does provide services to young people and their families. *Id.* ¶ 24. CASA's members include women without lawful status who are pregnant or plan to give birth in the United States. *Id.* ¶ 25. Under the Order, their children born in the United States would no longer be U.S. citizens.

ASAP is a nonprofit organization headquartered in New York, New York. *Id.* ¶ 31. It "is the largest membership-based organization of asylum-seekers in the United States, with over 680,000 members from more than 175 countries who reside in all 50 states and several U.S. territories." *Id.* "ASAP's mission is to help its members—individuals seeking asylum—to build a more welcoming United States." *Id.* ¶ 32. To that end, it provides members with community and legal support. *Id.* ASAP does not extend formal membership to people under the age of 14, but the benefits of ASAP membership may extend to them through their parents' membership. *Id.* ¶ 35.

Most ASAP members have applied for asylum and cannot be deported while their asylum applications are pending. *Id.* ¶ 36. ASAP expects that "[h]undreds or even thousands of [its] members will give birth to children in the United States over the coming weeks and months[.]" *Id.* ¶ 37. Despite being born in the United States, those children would not be U.S. citizens under the Order.

The individual plaintiffs—Maribel, Juana, Trinidad Garcia, Monica, and Liza—are proceeding under pseudonyms.[1] ECF 3. Maribel is a member of CASA. ECF 1, ¶ 45. She is undocumented and has lived in the United States for 18 years. *Id.* She is pregnant and due in July 2025. *Id.* Juana is also a CASA member. *Id.* ¶ 46. She has a pending asylum claim. *Id.* She is two months pregnant. *Id.* Trinidad Garcia is a member of ASAP. *Id.* ¶ 47. She and her partner came to the United States on tourist visas in 2017 and filed affirmative asylum applications. *Id.* They are awaiting their asylum interview. *Id.* Trinidad Garcia is pregnant and due in August 2025. *Id.* She and her partner are citizens of Venezuela. *Id.* Venezuela does not provide consular services in the United States, so she fears that her child would be rendered stateless by the Order. *Id.* Monica is also an ASAP member from Venezuela. *Id.* ¶ 48. She has Temporary Protected Status and has filed an application for asylum. *Id.* She is pregnant and due in August 2025. *Id.* Like Trinidad Garcia, she fears that her child would be rendered stateless by the Order. *Id.* Liza is married to an ASAP member who is seeking asylum. *Id.* ¶ 49. Liza is currently in lawful status on a student visa. *Id.* She is pregnant and due in May 2025. *Id.* She and her husband are Russian citizens who fear

[1] The individual plaintiffs have asked to proceed under pseudonyms because they "fear that the U.S. government and members of the public could retaliate against them or their minor children because of their participation in this lawsuit." ECF 3, at 1. The government does not oppose the motion "provided that [p]laintiffs provide the identities of those individuals on request if necessary to permit [it] to fully defend this case." ECF 39, at 1. The motion to proceed under pseudonyms is granted. If the government needs to know the identities of the individual plaintiffs to defend this case, it may file a request for relief from the Court.

persecution from the Russian government. *Id.* They are afraid to apply for Russian citizenship for their child and are worried their child will be rendered stateless by the Order.[2]

The plaintiffs filed a motion for a temporary restraining order and preliminary injunction. ECF 2. The government opposed the preliminary injunction. ECF 40. The plaintiffs filed a reply. ECF 46. Three amici filed briefs: a group of local governments and local government officials, ECF 37; the Immigration Reform Law Institute, ECF 63; and the State of Tennessee, ECF 50. The Court heard argument on the motion on February 5, 2025.

II. Discussion

The plaintiffs seek a preliminary injunction that enjoins the implementation and enforcement of the Executive Order. The government argues that the plaintiffs do not have a cause of action and that preliminary injunctive relief is unwarranted. The Court finds that the plaintiffs do have a cause of action and that preliminary injuctive relief is warranted.

A. Reviewabilty of the Executive Order

As a threshold matter, the Court must decide if the plaintiffs' constitutional claim is subject to judicial review. *See Am. Forest Res. Council v. United States*, 77 F.4th 787, 796 (D.C. Cir. 2023) ("Before [the court] turn[s] to the merits, [it] must decide whether the plaintiffs' claims are reviewable.").[3]

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[2] Unless otherwise noted, the "plaintiffs" refers to the individual plaintiffs and members of the organizational plaintiffs who are pregnant.

[3] The Court need not decide whether it may review the plaintiffs' statutory claim because the plaintiffs are entitled to a preliminary injunction on their constitutional claim. The claims are essentially coterminous because the statute mirrors the Citizenship Clause. Although the Court has a "duty to avoid deciding constitutional questions presented unless essential to proper disposition of a case," *Harmon v. Brucker*, 355 U.S. 579, 581 (1958), the constitutional question presented here is essential to the proper disposition of the issues before the Court.

The plaintiffs claim the Executive Order violates the Fourteenth Amendment's Citizenship Clause. There is no question that the Court may review the constitutionality of the Executive Order and grant injunctive relief. The Supreme Court consistently has "sustain[ed] the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution." *See Bell v. Hood*, 327 U.S. 678, 684 (1946); *see also Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) ("[I]njunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally."). The Supreme Court has affirmed that "the President's actions may . . . be reviewed for constitutionality." *See Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992); *see also Dalton v. Specter*, 511 U.S. 462, 473–74 (1994). And it is "well established that '[r]eview of the legality of Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President's directive.'" *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1328 (D.C. Cir. 1996) (quoting *Franklin*, 505 U.S. at 815 (Scalia, J., concurring)); *see also id.* at 1326 ("[A]n independent claim of a President's violation of the Constitution would certainly be reviewable."). In *Armstrong v. Exceptional Child Center, Inc.*, the Supreme Court explained that "[t]he ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." 575 U.S. 320, 327 (2015). Pursuant to this authority, the Supreme Court has reviewed constitutional challenges to executive orders. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952); *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 795–96 (1985). During President Trump's first term, the Supreme Court decided a constitutional challenge to one of his proclamations. *See Trump v. Hawaii*, 585 U.S. 667, 697–99 (2018) (reaching the merits of an Establishment Clause challenge to a Presidential Proclamation).

The government insists the plaintiffs have an "available and exclusive mechanism to challenge disputes about citizenship under the INA." ECF 40, at 9. According to the government, the plaintiffs must pursue their claims through a declaratory action under 8 U.S.C. § 1503(a) of the INA. Section 1503(a) allows "any person who is within the United States" and who "claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States" to seek declaratory relief after "the final administrative denial of such right or privilege." 8 U.S.C. § 1503(a).

This INA provision does not prevent the plaintiffs from bringing a facial constitutional challenge to the Executive Order. The text of the INA does not indicate that § 1503(a) is the exclusive remedy for challenging the denial of a right to citizenship under the Fourteenth Amendment. The Supreme Court has cautioned against reading a statutory right to judicial review "as an exclusive route to review" when the text neither "expressly" nor "implicitly" limits the Court's jurisdiction. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010) (statute permitting judicial review of the Securities and Exchange Commission's rules and orders was not the "exclusive route to review" constitutional claims against a government board subject to the Commission's good-cause removal power); *see also Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023) (concluding federal statutes allowing courts of appeal to review an agency order "d[id] not displace district court jurisdiction over . . . far-reaching constitutional claims"). Indeed, judicial review under the INA is not the exclusive mechanism to challenge policies that deny citizenship. *See, e.g.*, *Tuaua v. United States*, 788 F.3d 300, 302–03 (D.C. Cir. 2015).

Further, the plaintiffs cannot pursue their constitutional challenge to the Executive Order under § 1503(a). The statute provides a cause of action to "any person who is within the United

States" who "claims a right or privilege as a national of the United States." 8 U.S.C. § 1503(a). The plaintiffs are not seeking "a judgment declaring [their children] to be [] national[s] of the United States" after the denial of a particular right or privilege, *id.*, such as the denial of a passport, *see, e.g.*, *Cambranis v. Blinken*, 994 F.3d 457, 465 (5th Cir. 2021) (reviewing challenge under § 1503(a) brought after denial of passport application); *Kiviti v. Pompeo*, 467 F. Supp. 3d 293, 303 (D. Md. 2020) (same). Instead, the plaintiffs seek immediate injunctive relief from the Executive Order because the Order is facially unconstitutional and denies citizenship to their unborn children. So the government is incorrect: Section 1503(a) of the INA does not offer the plaintiffs an exclusive and available remedy for their constitutional challenge to the Executive Order.

The plaintiffs can seek protection from unconstitutional executive action in this Court. As the Supreme Court has explained:

> "The very essence of civil liberty . . . certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." Traditionally, therefore, "it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the State to do."

Davis v. Passman, 442 U.S. 228, 242 (1979) (first quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803); and then quoting *Bell*, 327 U.S. at 684). The Court can review the plaintiffs' claim that the Executive Order violates the Fourteenth Amendment.

B. Motion for Preliminary Injunction

To obtain a preliminary injunction, the plaintiffs must establish four factors: (1) that they are likely to succeed on the merits; (2) that they are likely to suffer irreparable harm if preliminary relief is not granted; (3) that the balance of equities favors them; and (4) that an injunction is in the public interest. *See Frazier v. Prince George's County*, 86 F.4th 537, 543 (4th Cir. 2023) (citing

Winter v. Nat. Res. Def Council, Inc., 555 U.S. 7, 20 (2008)). The plaintiffs must satisfy all four factors to obtain a preliminary injunction. *Real Tmth About Obama, Inc. v. FEC,* 575 F.3d 342, 347 (4th Cir. 2009), *vacated on other grounds,* 559 U.S. 1089 (2010). A preliminary injunction is "an extraordina1y remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter,* 555 U.S. at 22.

The plaintiffs have shown they are entitled to this extraordinaiy remedy.

1. Likelihood of Success

The Citizenship Clause of the Fourteenth Amendment 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." U.S. Const. amend. XIV, § 1 cl. 1. The plaintiffs claim the Executive Order violates the Fourteenth Amendment because the order denies citizenship to persons who are born in the United States and are "subject to the jurisdiction thereof." The President sees it differently. On the President's account, "the categories of individuals born in the United States and not subject to the jurisdiction thereof' include any child (i) whose "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 bitih" or (ii) whose "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 pe1manent resident at the time of said person's birth." Exec. Order§ 1. Examples of"lawful but temporary" presence include, "but [are] not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa." *Id.* According to the Executive Order, "the privilege of United States citizenship does not automatically extend to" these U.S.-bom children. *Id.*

The President's novel interpretation of the Citizenship Clause contradicts the plain language of the Fourteenth Amendment and conflicts with 125-year-old binding Supreme Court precedent. At the turn of the twentieth century, the Supreme Court in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), resolved any debate about the scope of the Citizenship Clause and the meaning of "subject to the jurisdiction thereof." *Wong Kim Ark* forecloses the President's interpretation of the Citizenship Clause.

The case arose when Wong Kim Ark, who was born in San Francisco to parents who were Chinese citizens, traveled to China for a temporary visit and was denied re-entry into the United States "upon the sole ground that he was not a citizen of the United States." *Id.* at 653. Wong Kim Ark insisted he was a U.S. citizen because he was born in California. *Id.* If he was a citizen, the "Chinese Exclusion Acts," which prohibited "persons of the Chinese race, and especially Chinese laborers, from coming into the United States," would not apply to him. *Id.*

The Supreme Court framed "the question presented" like this:

> 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 domicile 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, by virtue of the first clause of the fourteenth amendment of the constitution: '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.'

Id.

To answer this question, the Supreme Court began with the text of the Constitution and determined that the "constitution nowhere defines the meaning of these words." *Id.* at 654. It then interpreted the Citizenship Clause "in the light of the common law, the principles and history of which were familiarly known to the framers of the constitution." *Id.* The Court observed that "[t]he language of the constitution . . . could not be understood without reference to [English] common

law." *Id.*; *see id.* at 655 ("The interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history." (quoting *Smith v. Alabama*, 124 U.S. 465, 478 (1888))).

The Court prefaced its review of English common law as follows:

> The fundamental principle of the common law with regard to English nationality was birth within the allegiance—also called 'ligealty,' 'obedience,' 'faith,' or 'power'— of the king. The principle embraced all persons born within the king's allegiance, and subject to his protection. Such allegiance and protection were mutual,—as expressed in the maxim, 'Protectio trahit subjectionem, et subjection protectionem,'—and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were therefore natural-born subjects. But the children, born within the realm, of foreign ambassadors, or the children of alien enemies, born during and within their hostile occupation of part of the king's dominions, were not natural-born subjects, because not born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the king.

Id. at 655. That principle, as the Court explained, pervaded English common law cases. *See id.* at 655–58.

After a lengthy discussion of common law cases, the Court concluded:

> It thus clearly appears that by the law of England for the last three centuries, beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the crown of England, were within the allegiance, the obedience, faith or loyalty, the protection, the power, and the jurisdiction of the English sovereign; and therefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador, or of an alien enemy in a hostile occupation of the place where the child was born.

Id. at 658.

The Court found that this "same rule was in force in all the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the constitution as originally established." *Id.* In cases decided after

the Declaration of Independence, courts in the United States "assumed . . . that all persons born in the United States were citizens of the United States." *Id.* (citing *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 119 (1804)). The Court noted that, in *Levy's Lessee v. McCartee*, 31 U.S. (6 Pet.) 102 (1832), Justice Story "treated it as unquestionable that by [the principles of common law] a child born in England of alien parents was a natural-born subject." 169 U.S. at 662. And in *United States v. Rhodes*, Justice Swayne also relied on English common law:

> All persons born in the allegiance of the king are natural-born subjects, and all persons born in the allegiance of the United States are natural-born citizens. Birth and allegiance go together. Such is the rule of the common law, and it is the common law of this country, as well as of England. We find no warrant for the opinion that this great principle of common law has ever been changed in the United States. It has always obtained here, with the same vigor, and subject only to the same exceptions, since as before the Revolution.

Id. at 662–63 (quoting *United States v. Rhodes*, 27 F. Cas. 785, 790 (C.C.D. Ky. 1866) (Swayne, Cir. J.)). Justice Sewall of the Supreme Court of Massachusetts stated in *Kilham v. Ward*:

> The doctrine of common law is that every man born within its jurisdiction is a subject of the sovereign of the country where he is born; and allegiance is not personal to the sovereign in the extent that it has been contended for; it is due to him in his political capacity of sovereign of the territory where the person owing the allegiance was born.

Id. (quoting *Kilham v. Ward*, 2 Mass. (1 Tyng) 236, 264–65 (Mass. 1806)).

After an extensive review of English common law, decisions of courts in the United States, and recent acts of Congress, the Supreme Court concluded: "Here is nothing to countenance the theory that a general rule of citizenship by blood or descent has displaced in this country the fundamental rule of citizenship by birth within its sovereign." *Id.* at 674. The Court concluded that the Fourteenth Amendment and the Civil Rights Act of 1866, enacted two years before the Fourteenth Amendment, "finally put at rest" any "doubt" that before their enactment, "all white persons, at least, born within the sovereignty of the United States, whether children of citizens or

of foreigners, excepting only children of ambassadors and public ministers of a foreign government, were native-born citizens of the United States." *Id.* at 674–75.

With their enactment, the Fourteenth Amendment and the Civil Rights Act of 1866 "reaffirmed in the most explicit and comprehensive terms . . . the fundamental principle of citizenship by birth within the dominion." *Id.* at 675. Enacted first, the Civil Rights Act of 1866 states, in part: "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." *Id.* (quoting Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27, 27). Soon after Congress enacted the Civil Rights Act of 1866, the "same congress . . . 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 a subsequent congress, framed the fourteenth amendment of the constitution." *Id.* After reciting the text of the Fourteenth Amendment's Citizenship Clause, the Court stated:

> As appears on the face of the amendment, as well as from the history of the times, this was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States, who would thereby have become citizens according to the law existing before its adoption.

Id. at 676. The "main purpose [of the Citizenship Clause] doubtless was . . . to establish the citizenship of free negroes, which had been denied" in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), and "to put it beyond all doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States, are citizens of the United States." *Id.* The amendment's "opening words, 'All persons born,' are general, not to say universal, restricted only by place and jurisdiction, and not by color or race." *Id.*

The Court then interpreted the clause "subject to the jurisdiction thereof." *Id.* at 676–82. At the time, the only case that had decided the meaning of the clause was *Elk v. Wilkins*, 112 U.S.

94 (1884). *Wong Kim Ark*, 169 U.S. at 680. Justice Gray, the author of *Wong Kim Ark*, authored *Elk* only four years earlier. As Justice Gray stated in *Wong Kim Ark*, the *Elk* Court held that "an Indian born a member of one of the Indian tribes within the United States . . . was not a citizen of the United States, as a person born in the United States, 'and subject to the jurisdiction thereof,' within the meaning of the clause in question." *Id.* The *Wong Kim Ark* Court stated the rationale for the *Elk* holding:

> Indian tribes, being within the territorial limits of the United States were not, strictly speaking, foreign states, but were alien nations, distinct political communities, the members of which owed immediate allegiance to their several tribes, and were not part of the people of the United States . . . Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more "born in the United States, and subject to the jurisdiction thereof," within the meaning of the first section of the fourteenth amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States of ambassadors or other public ministers of foreign nations.

Id. at 681. Justice Gray then explained why *Elk* did not apply to the case at bar: "The decision in *Elk v. Wilkins* concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents of Caucasian, African, or Mongolian descent, not in the diplomatic service of a foreign country." *Id.* at 682.

Having distinguished *Elk* as a unique case that "concerned only members of the Indian tribes within the United States," the *Wong Kim Ark* Court determined that:

> [t]he real object of the fourteenth amendment of the constitution, in qualifying the words 'all persons born in the United States' by the addition 'and subject to the jurisdiction thereof,' would appear to have been to exclude, by the fewest and fittest words (besides children of members of the Indian tribes, standing in a peculiar relation to the national government, unknown to the common law), the two classes of cases—children born of alien enemies of hostile occupation, and children of diplomatic representatives of a foreign state—both of which . . . by the law of England and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country.

Id. at 682.

Ultimately, the *Wong Kim Ark* Court made these "irresistibl[e] . . . conclusions":

> The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The amendment, in clear words and in manifest intent, 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. 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.

Id. at 693. Except in rare instances, the Fourteenth Amendment guarantees U.S. citizenship to any child born on U.S. soil. *See id.*

The *Wong Kim Ark* Court then applied these holdings to the facts before it. Recall that Wong Kim Ark was denied re-entry into the United States because it was believed he was not a citizen, and if he was not a citizen, the Chinese Exclusion Acts barred his entry into the United States. *Id.* at 653. The Court determined that no legislation to exclude Chinese citizens could apply to a person "born in the United States of Chinese parents." *Id.* at 694–99. Yet the United States could "exclude" or "expel from the country persons of the Chinese race, born in China, and continuing to be subjects of the emperor, though having acquired a commercial domicile in the United States ." *Id.* at 699. The Supreme Court had upheld the Acts previously based on "the right to exclude or to expel all aliens," *id.*, including "Chinese persons not born in this country'"—a population of people who had "'never been recognized as citizens of the United States, nor authorized to become such under the naturalization laws," *id.* at 702 (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 716 (1893)). The Acts could lawfully exclude someone born in China "who had acquired a commercial domicile in the United States" but "voluntarily left with the

intention of returning." *See id.* at 700 (citing *Lem Moon Sing v. United States*, 158 U.S. 538 (1895)).

The *Wong Kim Ark* Court acknowledged that Congress could deny naturalization to someone born in China. *Id.* But the Fourteenth Amendment "contemplates two sources of citizenship . . . birth and naturalization." *Id.* Congress's "power of naturalization . . . is a power to confer citizenship, not a power to take it away." *Id.* at 703. The Court affirmed that "citizenship by birth is established by the mere fact of birth under the circumstances defined in the constitution." *Id.* at 702. So although "[a] person born out of the jurisdiction of the United States can only become a citizen by being naturalized," "[e]very person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization." *Id.*

In the end, the Court answered the initial question presented—"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 domicile and residence in the United States . . . 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"—"in the affirmative." *Id.* at 705.

The government does not dispute that *Wong Kim Ark* is binding precedent. Nor does it argue that *Wong Kim Ark* was wrongly decided or should be overturned. Instead, the government claims that, under *Wong Kim Ark*, to be "subject to the jurisdiction" of the United States, a person's parents must, at the time of the person's birth, be lawfully domiciled in the United States, ECF 40, at 14, 24–26, and bear "'direct and immediate allegiance' to this country, unqualified by an allegiance to any other foreign power," *id.* at 4. Nothing in *Wong Kim Ark* remotely supports the government's narrow reading of the decision.

To address the government's arguments, the Court first must clarify *Wong Kim Ark*'s holding. *Wong Kim Ark* held that, under the Fourteenth Amendment, "[e]very person born . . . in the United States" is "subject to the jurisdiction thereof" and thus a citizen by birth, *id.* at 702, unless they fall into one of the recognized exceptions to citizenship by birth, *id.* at 693. *See also id.* at 657–58 (describing exceptions to citizenship by birth for children of hostile occupiers or diplomats under English common law); *id.* at 658 ("[T]herefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born."); *id.* at 682 (finding "subject to the jurisdiction thereof" excludes "by the fewest and fittest words (besides children of members of the Indian tribes . . .), the two classes of cases,—children born of alien enemies of hostile occupation, and children of diplomatic representatives of a foreign state"); *id.* at 693 ("The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory . . . with the exceptions . . . of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and . . . children of members of the Indian tribes owing direct allegiance to their several tribes.").

The government seems to dismiss *Wong Kim Ark*'s holding, and the lengthy analysis that supports it, as dicta. On the government's account, *Wong Kim Ark*'s holding was limited to the specific facts of the case: A person born in the United States whose foreign-born parents were "domiciled" in the United States at the time of his birth is "subject to the jurisdiction of" the United States. ECF 40, at 24–26. *Wong Kim Ark* cannot reasonably be read that narrowly. However, even if not part of the Court's holding, *Wong Kim Ark*'s statements that every person born in the United States is "subject to the jurisdiction thereof" and thus a citizen by birth (with certain exceptions)

certainly are not dicta. "Dictum is a 'statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding—that, being peripheral, may not have received the full and careful consideration of the court that uttered it.'" *Payne v. Taslimi*, 998 F.3d 648, 654–55 (4th Cir. 2021) (quoting *Pittston Co. v. United States*, 199 F.3d 694, 703 (4th Cir. 1999)). If "a precedent's reasoning" is "necessary to the outcome," it "must be followed." *Id.* at 655.

Wong Kim Ark's statement that the "fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth" with certain recognized exceptions, 169 U.S. at 693, could not "have been deleted without seriously impairing the analytical foundations of the holding," *see Payne*, 998 F.3d at 654. Even a cursory review of the decision reveals that this statement and similar statements were not "peripheral" to the holding. They were central to it. And there can be no question that the Court gave them "full and careful consideration." *See id.* at 655. The Court thoroughly discussed the history of citizenship by birth at English common law, the decisions of U.S. courts applying the common law, and the history and text of the Fourteenth Amendment. *See Wong Kim Ark*, 169 U.S at 655–82. A more "full and careful consideration" is hard to imagine. And these statements and the Court's reasoning were "necessary to the outcome" of the case. *See Payne*, 998 F.3d at 655. Without them, the Court could not have determined that Wong Kim Ark was a U.S. citizen under the Fourteenth Amendment and not excludable from the country under the Chinese Exclusion Acts. They "must be followed." *Id.*

Even if they were dicta, this Court is not free to ignore them. "[C]arefully considered language of the Supreme Court, even if technically dictum, generally must be treated as authoritative." *Wynne v. Town of Great Falls*, 376 F.3d 292, 298 n.3 (4th Cir. 2004) (quoting *Sierra Club v. EPA*, 322 F.3d 718, 724 (D.C. Cir. 2003)). This Court "is 'bound by Supreme Court

dicta almost as firmly as by the Court's outright holdings, particularly when the dicta is recent and not enfeebled by later statements.'" *See United States v. Fareed*, 296 F.3d 243, 247 (4th Cir. 2002) (quoting *Gaylor v. United States*, 74 F.3d 214, 217 (10th Cir. 1996)). Though *Wong Kim Ark* can hardly be considered "recent," the Supreme Court's continual recognition that people born in the United States are citizens by birth confirms that this Court must, at the very least, treat *Wong Kim Ark*'s interpretation of the Fourteenth Amendment "as authoritative." *See Wynne*, 376 F.3d at 298 n.3.

Return to the government's arguments. The government argues that, under *Wong Kim Ark*, a person's parents must, at the time of the person's birth, be lawfully domiciled in the country for the person to be "subject to the jurisdiction" of the United States. ECF 40, at 14, 24–26. The government insists *Wong Kim Ark* imposes a parental domicile requirement for citizenship under the Fourteenth Amendment because the Court mentioned "domicile" or "domiciled" throughout the opinion. True, the Court included in the question presented at the beginning of the opinion, and in the answer at the end of the opinion, that Wong Kim Ark's parents "at the time of his birth" had "a permanent domicile and residence in the United States." *Id.* at 653, 705. Also true, the Court stated: "The amendment, in clear words and in manifest intent, 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 (emphasis added). However, the fact that Wong Kim Ark's parents were domiciled and resided in the United States was not essential to the holding or outcome. And even though the Court described the parents of "children born within the territory of the United States" as "domiciled within the United States," the word "domicile" does not appear in the text of the Fourteenth Amendment. And English common law did not impose a parental domicile requirement. In fact, under English common law and the decisions of United States courts that

followed it, the right to citizenship by birth included children of non-citizen parents not domiciled in the country. *Wong Kim Ark*, 169 U.S. at 657 (noting the English common law rule that "every person born within the dominions of the crown" was an English subject—"no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country"); *Calvin's Case*, 77 Eng. Rep. 377, 384 (1608) ("[L]ocal obedience being but momentary and uncertain, is yet strong enough to make a natural subject, for if he hath issue here, that issue is . . . a natural born subject "); *Lynch v. Clarke*, 1 Sand. Ch. 583, 683 (N.Y. Ch. 1844) (applying English common law and holding plaintiff was an American citizen because she was born in the United States even though her parents were only temporarily sojourning in the United States when she was born). These cases were part of the common law that the Fourteenth Amendment affirmed. *Wong Kim Ark*, 169 U.S. at 693. To be a "person[] born . . . in the United States" and "subject to the jurisdiction thereof" does not require the person's parents to be domiciled in the United States at the time of birth.[4]

Next, the government argues that, under *Wong Kim Ark*, a person born in the United States is "subject to the jurisdiction" of the United States only if he is "born 'in the allegiance and under the protection of this country,'" ECF 40, at 13 (quoting *Wong Kim Ark*, 169 U.S. at 693), and his allegiance is "unqualified by 'allegiance to any alien power,'" *id.* (quoting *Elk*, 112 U.S. at 101–02). The government misconstrues the language in *Wong Kim Ark*. As the Court explained: "The fundamental principle of the common law with regard to English nationality was *birth within the*

[4] The government cites *Benny v. O'Brien*, which suggested that the Fourteenth Amendment exempted from citizenship "those born in this country of foreign parents who are temporarily traveling here, and children born of persons resident here in the diplomatic service of foreign governments." 32 A. 696, 698 (N.J. Sup. Ct. 1895). *Benny*, a decision from an intermediary New Jersey court that came down before *Wong Kim Ark*, has no precedential value.

allegiance—also called 'ligealty,' 'obedience,' 'faith,' or 'power'—*of the king*. The principle embraced all persons *born within the king's allegiance* " 169 U.S. at 655 (emphasis added). Put differently, "[a]ll persons born in the allegiance of the king are natural-born subjects, and all persons born in the allegiance of the United States are natural-born citizens." *Id.* at 662 (quoting *Rhodes*, 27 F. Cas. at 790). That is to say, "every man born within its jurisdiction is a subject of the sovereign of the country where he is born." *Id.* at 663 (quoting *Kilham*, 2 Mass. at 265). "[A]llegiance is not personal to the sovereign in the extent that it has been contended for; it is due to him in his political capacity of sovereign of the territory where the person owing the allegiance was born." *Id.* (quoting *Kilham*, 2 Mass. at 265). At common law, the only people born within the kingdom without allegiance to the king were children of diplomatic representatives or hostile occupiers. *Id.* at 659–60. That is because they were not entitled to the king's protection under common law. Children of diplomatic representatives were "born under the actual protection and in the dominions of a foreign prince." *Id.* at 660 (quoting *Inglis v. Trs. of Sailor's Snug Harbor*, 28 U.S. 99, 155 (1830) (opinion of Story, J.)). Children of hostile occupiers certainly were not entitled to any protection of the sovereign. *Id.* All this is to say: if a person is born in the United States and does not belong to one of the traditional classes of excepted persons, the person is born "within the allegiance" of the United States and "subject to the jurisdiction" of the United States. *Wong Kim Ark* did not hold, as the government maintains, that a person born in the United States is only "subject to the jurisdiction of" the United States if the person bears exclusive allegiance to the United States at the time of birth.

Contrary to the government's positions, *Wong Kim Ark* did not interpret "subject to the jurisdiction thereof" in the Citizenship Clause of the Fourteenth Amendment to exclude persons

born in the United States whose parents are not domiciled in the United States or persons who hold allegiance to another country.

The Executive Order directly conflicts with *Wong Kim Ark*. Under *Wong Kim Ark*, a person "born in the United States" and "subject to the jurisdiction thereof" encompasses every person born in this country save specific classes of people. The Executive Order purports to expand the classes of people that are not "subject to the jurisdiction thereof" and thus to deny citizenship by birth to people who are entitled to it under the Constitution. The children targeted by the Executive Order do not fit within any of the limited exceptions to citizenship by birth identified in *Wong Kim Ark*. They are not children of ambassadors, children of enemies in the country during a hostile occupation, children born on foreign seas, or children born into Indian tribes.[5] They are children whose citizenship by birth has been recognized in this country since the ratification of the Fourteenth Amendment. When the children described in the Executive Order are born, they will be United States citizens under the Fourteenth Amendment and long-standing Supreme Court

[5] On the same day the President issued the Executive Order at issue here, he issued another Executive Order that describes "an unprecedented flood of illegal immigration" in which "millions of illegal aliens" who "present significant threats to national security and public safety" have entered the country illegally. Exec. Order § 1 (quoting Exec. Order No. 14159, "Protecting the American People Against Invasion" (Jan. 20, 2025)). In its briefing, the government suggests that a broad, inclusive reading of the Citizenship Clause's "subject to the jurisdiction thereof" will result in citizenship by birth "to the children of individuals who present such threats, including even unlawful enemy combatants who enter this country in an effort to create sleeper cells or other hostile threats." ECF 40, at 21. The government seems to advocate for a broader reading of one of the exceptions to citizenship by birth—"children born of alien enemies in hostile occupation"—to include the children described in the Executive Order. *See id.* (quoting *Wong Kim Ark*, 169 U.S. at 682). The meaning of the clause "subject to the jurisdiction thereof" was explained clearly in *Wong Kim Ark*. It is meant to be expansive. *See Wong Kim Ark*, 169 U.S. at 682. The exception for "children born of alien enemies in hostile occupation" applies during a hostile occupation "of part of the king's dominions." *Id.* A "hostile occupation" entails the "firm possession" of a territory that enables the occupier "to exercise the fullest rights of sovereignty over that place." *United States v. Rice*, 17 U.S. (4 Wheat.) 246, 254 (1819). This exception to citizenship by birth plainly does not apply to the children described in the Executive Order.

precedent. The President does not have the authority to strip them of their constitutional right to citizenship by birth.

The government cites no case decided after *Wong Kim Ark* that supports the President's interpretation of the Fourteenth Amendment. And there is none. Instead, the government relies principally on two cases decided before *Wong Kim Ark*: *Elk v. Wilkins*, 112 U.S. 94 (1884), and *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872). *Elk* and the *The Slaughter-House Cases* are no help to the government. *Wong Kim Ark* discussed both cases at length and distinguished them. *See* 169 U.S. at 676–82. It found that *Elk*'s interpretation of "subject to the jurisdiction thereof" did not apply outside the context of Indian tribes because *Elk* "concerned only members of the Indian tribes within the United States, and had no tendency to deny citizenship to children born in the United States of foreign parents of Caucasian, African, or Mongolian descent, not in the diplomatic service of a foreign country." *Id.* at 682. Thus, *Elk*'s holding is confined to members of Indian tribes. The children identified in the Executive Order are not akin to members of Indian tribes, who, in the nineteenth century, enjoyed a unique political status and quasi-sovereignty.[6] *See Elk*, 112 U.S. at 119–20 (Harlan, J., dissenting) ("[I]t would be obviously inconsistent with the semi-independent character of such a tribe, and with the obedience they are expected to render to their tribal head, that they should be vested with the complete rights—or, on the other, subjected to the full responsibilities—of American citizens."). *Elk* does not apply to this case. Nor do *The Slaughter-House Cases*. The government relies on the following language from *The Slaughter-House Cases*: "The phrase 'subject to its jurisdiction' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states, born within the United States." 83 U.S. at 73. The government argues "subjects of foreign states" includes the children

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[6] Congress gave members of Indian tribes citizenship by birth in 1924. 8 U.S.C. § 1401(b).

described in the Executive Order. ECF 40, at 18. The problem for the government is that *Wong Kim Ark* repudiated this language from *The Slaughter-House Cases* because it was "wholly aside from the question in judgment, and from the course of reasoning bearing upon that case," and "[i]t was unsupported by any argument, or by any reference to authorities." *Id.* at 678.[7] The government has not identified any case that supports the President's interpretation of the Fourteenth Amendment.

In the 125 years since *Wong Kim Ark*, the Supreme Court has never questioned whether a child born in the United States—whose parents did not have lawful status or were in the country temporarily—was an American citizen. In *United States ex rel. Hintopoulos v. Shaughnessy*, the petitioners, who were married to each other, worked as crew members on foreign ships that came into port in the United States. 353 U.S. 72, 73 (1957). They entered the United States lawfully and remained in the country after their 29-day visas expired. *Id.* at 73. The wife gave birth three months after her permission to stay expired and two months after her husband's permission to stay expired. *Id.* Half a year later, deportation proceedings were instituted against both parents, and they asked to suspend deportation "on the ground of the economic detriment that would befall their minor son in the event they were deported." *Id.* at 74. The Court remarked that their child was, "of course, an

[7] The only other cases the government says support its position that parental domicile is necessary to be "subject to the jurisdiction" of the United States are *Chin Bak Kan v. United States*, 186 U.S. 193 (1902), and *Kwock Jan Fat v. White*, 253 U.S. 454 (1920). In *Chin Bak Kan*, the Court stated the ruling in *Wong Kim Ark* and included the fact that Wong Kim Ark's parents "ha[d] a permanent domicil[e] and residence in the United States." 186 U.S. at 200 (quoting *Wong Kim Ark*, 169 U.S. at 649). In *Kwock Jan Fat*, the petitioner claimed to be a U.S. citizen by birth, but a government investigation concluded that he was born in China and entered the United States as a minor. 253 U.S. at 455–56. The parties did not dispute that if the petitioner's parents were who he said they were, he would have been born to them "when they were permanently domiciled in the United States" and would be a U.S. citizen. *Id.* at 457 (citing *Wong Kim Ark*). Both cases reference *Wong Kim Ark* only in passing. Neither case held that a person's parents must be domiciled in the United States for their U.S.-born children to be "subject to the jurisdiction" of the United States.

American citizen by birth." *Id.* at 73; *see also id.* at 79 (Douglas, J., dissenting) ("The citizen is a five-year-old boy who was born here and who, therefore, is entitled to all the rights, privileges, and immunities which the Fourteenth Amendment bestows on every citizen."). Similarly, in *INS v. Errico*, the Supreme Court considered two appeals of deporation orders. 385 U.S. 214, 214 (1966). Both petitioners entered the United States by making fraudulent misrepresentations to immigration officials, and after entry, each had a child in the United States. *Id.* at 215–16. Even though the children's parents had procured entry into the country by fraud, the Court did not question that the children were American citizens by virtue of their birth in the United States. *See id.* (stating first petitioner's child "acquired United States citizenship at birth" and second petitioner's child "became an American citizen at birth"). And in *Hamdi v. Rumsfeld*, the Supreme Court "consider[ed] the legality of the Government's detention of a United States citizen on United States soil as an 'enemy combatant.'" 542 U.S. 507, 509 (2004) (plurality). An amicus brief urged the Court to find that the enemy combatant was not a citizen because his parents were in the United States on temporary visas when he was born. *See* Br. for The Claremont Inst. Ctr. for Constitutional Jurisprudence as Amicus Curiae Supporting Respondents, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (No. 03-6696), 2004 WL 871165. Despite this urging, the Court recognized that the person detained was an American citizen because he was born in the United States. 542 U.S. at 509–10.

In other cases, the Supreme Court never has intimated that the immigration status of parents might affect whether their U.S.-born children are citizens at birth. *See, e.g.*, *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (noting that the undocumented respondent—who had entered the country without permission—"had given birth to a child, who, born in the United States, was a citizen of this country"); *Vance v. Terrazas*, 444 U.S. 252, 255 (1980) ("Appellee . . . was born in this country, the son of a Mexican citizen. He thus acquired at birth both United States and Mexican

citizenship."); *Rogers v. Bellei*, 401 U.S. 815, 828 (1971) (acknowledging that American citizenship law "follows English concepts with an acceptance of the jus soli"); *Nishikawa v. Dulles*, 356 U.S. 129, 131 (1958) ("Petitioner was born in Artesia, California, in 1916. By reason of that fact, he was a citizen of the United States, and because of the citizenship of his parents, he was also considered by Japan to be a citizen of that country."); *Kawakita v. United States*, 343 U.S. 717, 720 (1952) (noting that petitioner was born in the United States to Japanese citizen parents and "was thus a citizen of the United States by birth"); *Hirabayashi v. United States*, 320 U.S. 81, 96 (1943) (confirming that people of Japanese descent were citizens because they were "born in the United States"); *Perkins v. Elg*, 307 U.S. 325, 327, 329 (1939) (citing *Wong Kim Ark* and finding that the plaintiff was still an American citizen because of her birth in the United States, even though she had moved abroad as a minor and acquired Swedish citizenship); *Morrison v. California*, 291 U.S. 82, 85 (1934) ("A person of Japanese race is a citizen of the United States if he was born within the United States."); *Weedin v. Chin Bow*, 274 U.S. 657, 670 (1927) (discussing *Wong Kim Ark* and noting that a child born in the United States "was nevertheless, under the language of the Fourteenth Amendment, a citizen of the United States by virtue of the jus soli embodied in the amendment"); *Ah How v. United States*, 193 U.S. 65, 65 (1904) (stating petitioners offered evidence that they were born in the United States "and therefore each was a citizen").

The government's only response to these Supreme Court cases: "[I]t is not unusual for the Supreme Court, after fully exploring a legal issue, to reach a conclusion that conflicts with earlier assumptions." ECF 40, at 28. That is no response at all.

The Executive Order flouts the plain language of the Fourteenth Amendment to the United States Constitution, conflicts with binding Supreme Court precedent, and runs counter to our

nation's 250-year history of citizenship by birth. The plaintiffs have shown an extremely strong likelihood that they will succeed on the merits of their constitutional claim.

2. Irreparable Harm

"Citizenship is a most precious right[,] . . . expressly guaranteed by the Fourteenth Amendment to the Constitution ." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963); *see also Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, J., dissenting) ("Citizenship is man's basic right for it is nothing less than the right to have rights."). The right to American citizenship is "a right no less precious than life or liberty." *Klapprott v. United States*, 335 U.S. 601, 616 (1949) (Rutledge, J., concurring in result). The "deprivation of a constitutional right, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))); *accord Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc) ("Because there is a likely constitutional violation, the irreparable harm factor is satisfied."); *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987) ("[T]he denial of a constitutional right constitutes irreparable harm for purposes of equitable jurisdiction").

Here, the plaintiffs have established a strong likelihood of success of the merits on their claim that the Executive Order violates the Fourteenth Amendment. The denial of the precious right to citizenship for any period of time will cause them irreparable harm.

The government argues that any harm is "speculative" because the plaintiffs' children will have "other routes of obtaining status," such as seeking asylum. ECF 40, at 29. This argument is callous and wrong. The irreparable harm to the plaintiffs and their unborn children is concrete and imminent. If the Court does not enjoin enforcement of the Executive Order, children born in the United States who are subject to the Order immediately will be denied the benefits and rights of

U.S. citizenship. The benefits of citizenship include access to certain government public benefit programs such as health care through the Children's Health Insurance Program and food assistance through the Supplemental Nutrition Assistance Program. *See* ECF 37, at 10. The rights of citizenship include the right to live in the United States lawfully and without fear of deportation. Without an injunction, all U.S.-born children subject to the Executive Order will have no legal status in this country when they are born. Without legal status at birth, children could be placed in removal proceedings and deported. Many of the plaintiffs have pending asylum applications or temporary legal status and are not subject to removal. If the Order goes into effect, their children will be without legal status and may be subject to removal even if they are not. The Order may cause some plaintiffs to be separated from their children. *See Wanrong Lin v. Nielsen*, 377 F. Supp. 3d 556, 564–65 (D. Md. 2019) (finding plaintiff would be irreparably harmed if deported and separated from his wife and children in the United States).

Additionally, some of the children of the plaintiffs will be stateless if the Order goes into effect. *See* ECF 2-5, ¶ 4 (statement of plaintiff Liza that her child would be stateless without American citizenship as she and her husband cannot safely apply for Russian citizenship for their child); ECF 2-7, ¶¶ 7–9 (statement of plaintiff Monica that her child would be stateless without American citizenship because there is no Venezuelan consulate in the United States where she could apply for her child's Venezuelan citizenship). For stateless newborns, their "very existence [will be] at the sufferance of the country in which [they] happen[] to find [themselves]." *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

Without an injunction, the plaintiffs will face instability and uncertainty about the citizenship status of their newborn babies, and their children born on U.S. soil will be denied the

rights and benefits of U.S. citizenship. The Executive Order, if not enjoined, will cause the plaintiffs and their children grave, irreparable harm.

3. Balance of Equities and Public Interest

The final two factors are the balance of the equities and the public interest. The balance of the equities and the public interest "merge when the Government is the opposing party." *Miranda*, 34 F.4th at 365 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). To balance the equities, the Court considers "the relative harms to the applicant and respondent, as well as the interests of the public at large." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (Scalia, J., in chambers) (quoting *Rostker v. Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers)). The equities and the public interest weigh very strongly in the plaintiffs' favor.

Today, virtually every baby born on U.S. soil is a U.S. citizen upon birth. That is the law and tradition of our country. That law and tradition will remain the status quo pending the resolution of this case. The government will not be harmed if enforcement of the Executive Order is enjoined. "[A] state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013) (quoting *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002)). And "upholding constitutional rights surely serves the public interest." *Id.* (quoting *Giovani*, 303 F.3d at 521); *accord Legend Night Club v. Miller*, 637 F.3d 291, 303 (4th Cir. 2011) ("[U]pholding constitutional rights is in the public interest."). If the Executive Order is not enjoined, local governments will face significant harm. Local governments are responsible for issuing birth certificates, which, under the Order, will no longer automatically prove citizenship. *See* ECF 37,

at 14. The Order would require local governments to either change the information provided on birth certificates or develop an entirely new process to verify citizenship. *Id.* at 15. Additionally, localities will bear a financial burden if the Order takes effect. Currently, local governments receive federal funding for foster care expenses and health care for children who "qualif[y]" for assistance. 8 U.S.C. § 1641(b)–(c). A noncitizen "qualifie[s]" if they are a lawful permanent resident or have received one of several forms of humanitarian relief, such as asylum or refugee status. *Id.* People with only temporary legal status, such as student or work visas, or people without any legal status are generally not considered "qualified" for these programs. *See* 8 U.S.C. § 1611(a). If children born in the U.S. are not citizens upon birth, they will not be entitled to federal benefits, and local governments will bear the financial burden for public services. ECF 37, at 9–12. These collateral consequences on local municipalities and taxpayers surely do not serve the public interest.

The balance of the equities and the public interest strongly weigh in favor of a preliminary injunction that maintains the status quo during litigation.

All four factors weigh in favor of a preliminary injunction.

4. Nationwide Injunction

"District courts have broad discretion to craft remedies based on the circumstances of a case, but likewise must ensure that 'a preliminary injunction is no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" *HIAS, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021) (quoting *Roe v. Dep't of Def.*, 947 F.3d 207, 231 (4th Cir. 2020)). Indeed, "[a] district court may issue a nationwide injunction so long as the court 'mold[s] its decree to meet the exigencies of the particular case.'" *Id.* (alteration in original) (quoting *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 580 (2017)).

Only a nationwide injunction will provide complete relief to the plaintiffs. ASAP has "over 680,000 members ... who reside in all 50 U.S. states and several U.S. territories." ECF 1, ,i 31. ASAP expects that "[h]undreds or even thousands of ASAP members will give birth to children in the United States over the coming weeks and months." *Id.* 38. Because ASAP's members reside in eve1y state and hundreds of them expect to give bi.Iih soon, a nationwide injunction is the only way '"to provide complete relief' to them. *Madsen v. Women's Health Ctr., Inc.,* 512 U.S. 753, 765 (1994) (quoting *Califano v. Yamasaki,* 442 U.S. 682, 702 (1979)).

Further, "a nationwide injunction may be appropriate when the government relies on a 'categorical policy."' *See HIAS,* 985 F.3d at 326. The Executive Order is a categorical policy. A nationwide injunction against the categorical policy in the Executive Order is appropriate. It also is necessmy because the policy concerns citizenship a national concern that demands a unifo1m policy. *See Arizona v. United States,* 567 U.S. 387, 394-95 (2012) (noting that the federal government has "constitutional power to 'establish an *uniform* Rule ofNatmalization"' (emphasis added) (quoting U.S. Const. art. 1, § 8, cl. 4)). A nationwide injunction is approp1iate and necessaiy.

III. **Conclusion**

For the foregoing reasons, the motion for a preliminary injunction is granted. The Comi enjoins the implementation and enforcement of the Janua1y 20, 2025 Executive Order 14160, "Protecting the Meaning and Value of American Citizenship." A sepmate order follows.

Date: February 5, 2025

orah L. B- -rdman
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CASA, INC. *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP *et al.*,

Defendants.

Case No.: ____________________

DECLARATION OF GEORGE ESCOBAR, CHIEF OF PROGRAMS AND SERVICES FOR CASA, INC.

I, George Escobar, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am the Chief of Programs and Services of CASA, Inc. ("CASA"). I have worked at CASA for fourteen years.

2. I make this statement based upon personal knowledge, files and documents of CASA that I have reviewed (such as case files, reports, and collected case metrics), as well as information supplied to me by employees of CASA whom I believe to be reliable. These files, documents, and information are of a type that is generated in the ordinary course of our business and that I would customarily rely upon in conducting CASA business.

3. CASA is a nonprofit membership organization headquartered in Langley Park, Maryland, with offices in Maryland, Virginia, Pennsylvania, and Georgia.

4. Founded in 1985, CASA is the largest membership-based immigrant rights

organization in the mid-Atlantic region, with more than 175,000 lifetime members from across the United States. CASA's members are predominantly noncitizens in a variety of immigration statuses.

5. A CASA member is a person who shares CASA's values, envisions a future where we can achieve full human rights for all, and is convinced that, when united and organized, we can create a more just society by building power in our working-class and immigrant communities. CASA members play an important role in deciding what campaigns we work on and how CASA serves the community.

6. CASA membership is voluntary. In order to become a member, an individual must apply for membership, pay dues, and subscribe to the principles of CASA. CASA members also must self-identify as members of an immigrant or working-class community. Although CASA does not issue formal membership directly to individuals under 15 years of age, we routinely provide services to youth and families in a variety of areas described below.

7. Currently, the annual fee for CASA membership is $35. Alternatively, individuals may pay a recurring membership fee of $5 per month. The membership fee can be waived for individuals who experience financial hardship or are otherwise unable to pay. Members are also offered the opportunity, for an additional $5, to obtain a CASA ID. This is a physical, picture identification card that contains basic information about the member. For many of our immigrant members, this card may be the only type of picture identification they have, other than documents from their home country. In certain jurisdictions, CASA IDs are recognized for the purposes of engaging with certain government agencies, including the police.

8. CASA's mission is to create a more just society by building power and improving the quality of life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and

immigrant communities. From CASA's beginnings in a church basement, we have envisioned a future with diverse and thriving communities living free from discrimination and fear, working together with mutual respect to achieve human rights for all.

9. In furtherance of this mission, CASA offers a wide variety of social, health, job training, employment, and legal services to immigrant communities, with a particular focus in Maryland, Washington, D.C., Virginia, Pennsylvania, and Georgia. CASA also offers a more limited suite of services remotely to our members across the United States. Those individuals who are not geographically close to a physical CASA office are offered the opportunity to join a national organizing committee, whose members are entitled to vote on CASA's organizational priorities and integrated into our member-led system of internal democratic governance. CASA also conducts campaigns to inform members of immigrant communities of their rights and assists individuals in applying a variety of government benefits.

10. In my role as Chief of Programs and Services, I oversee CASA's portfolio of community-facing direct services, including its health, legal, and educational services; employment and workforce development programs; financial literacy and tax programs; and parent engagement programs. An important part of my role is to understand the needs and experiences of our members so that I can work with my staff to design appropriate interventions to address those needs. I therefore speak frequently with community members and receive feedback from my staff regarding CASA members' fears, concerns, and decisions.

11. Noncitizens residing in the United States who have already had children in this country and who plan to have more children while living in this country represent a substantial portion of our membership. We also have many members who have not yet had children born in the United States but who plan to have children while living in this country in the future.

12. Because of the services that we provide our members, we are acutely aware of the harms that ending birthright citizenship will cause to children born in the United States to noncitizen parents and to their entire families. The harm will be especially severe for noncitizen parents who rely on benefits to which their citizen children are entitled.

13. CASA operates a public benefits outreach and enrollment program that assists community members with understanding and enrolling in various government assistance and health insurance programs. CASA offers assistance with registration for government benefits such as the Supplemental Nutrition Assistance Program ("SNAP"), Temporary Assistance for Needy Families ("TANF"), Medicaid, and programs connected to the Affordable Care Act ("ACA"). Between our case management assistance, which connects members with social services to improve physical and mental health; our multilingual health hotline and medical interpreter program; and our comprehensive public benefits outreach and enrollment program, CASA is one of the leading and most trusted organizations providing health support to the immigrant community.

14. Here in Maryland, the CASA health team helps thousands of families and pregnant women navigate the Health and Human Services System each year. CASA also assists pregnant members in Maryland with accessing benefits under the State's Healthy Babies Equity Act, which was passed in 2022 after a CASA member-led campaign. This law mandated the Maryland Department of Health's Medical Assistance Program provide comprehensive prenatal and postpartum coverage to noncitizen pregnant Marylanders with income up to 250 percent of the federal poverty level who would otherwise be eligible for Medicaid but for their immigration status. The law went into effect July 1, 2023, and currently over 15,000 pregnant Marylanders have benefited from the program. Through CASA's advocacy on this particular issue and the

stories shared by our members during the associated campaign and subsequent legislative process, we became extremely familiar with the numerous challenges experienced by immigrant parents with mixed status households. CASA has assisted over 100 expectant parents apply for prenatal coverage, which was made possible by the Heathy Babies Equity Act. CASA has also helped many immigrant parents with follow up assistance postpartum, including helping the family secure their birth certificate, apply for a Social Security Card, US passport, etc. In part due to the availability of our services to expecting families, which aligns with our mission to empower low-income, predominantly immigrant communities, our membership includes many pregnant women who plan to deliver their babies in this country and who expect those babies to be citizens of this country.

15. Other states do not provide the same level of healthcare benefits to some families based on their immigration status. For example, in Virginia, a child without lawful status is not eligible for health care coverage. Therefore, we partner with medical providers like Kaiser and Advanced Ophthalmology to offer free medical services to members in Virginia. We also host vaccine clinics, support the work of local food pantries, and provide clothing vouchers for eligible members through Goodwill's Good Samaritan program.

16. Many of our members who are parents seek our help with enrolling their citizen children in public benefits to which they are entitled. For many of our low-income members, the ability to enroll citizen children in public benefit programs is an essential lifeline that keeps their families afloat.

17. Medicaid and ACA enrollment are of especially great interest to our members. The number one advocacy and service provision priority for our members has always been access to healthcare. Over the last 18 months (July 2023 through December 2024), we have

provided 134, 294 services to 54,031 individuals including assisting: 4,953 CASA members with navigating and enrolling into a public benefit or social service they are eligible to receive; 2,100 members with getting enrolled in an ESOL or accredited vocational training course; 2,174 members in applying for citizenship; and 3,528 members with a legal consult on a housing, employment, or immigration matter. We also provided assistance to 2,354 individuals with navigating the process of enrolling in an ACA Qualified Health Plan, Medicaid, or CHIP coverage option.

18. Eliminating birthright citizenship would cut off access to these programs for the children of many of our members. As citizens by birth, children born in this country are immediately eligible for a Social Security number. That number, in turn, allows them to apply for a host of benefits. If, however, those children born in the United States were instead considered undocumented, they would not be eligible for those same benefits.

19. The 1996 Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") introduced restrictions for federal means-tested benefits programs, including SNAP, TANF, Medicaid, and CHIP, based on immigration status. Under PRWORA, these benefits are available only to citizens and noncitizens with certain immigration statuses, such as lawful permanent residents ("LPRs"), refugees, and asylees. Undocumented noncitizens, those with Temporary Protected Status ("TPS"), Deferred Action for Childhood Arrivals ("DACA") recipients, and those with most visas, including H-1B, U, tourist, and student visas, are generally not eligible.

20. Noncitizens who arrived after PRWORA's enactment must generally wait five years after entering the United States in a qualified status before they are eligible for benefits, with limited exceptions.

21. The Executive Order threatens to undermine the ability of CASA's members to rely on government benefit programs to support their families. For instance, crucial healthcare programs like CHIP, Medicaid, and the ACA provide coverage to citizen children of noncitizen parents, including the children of CASA members. Those programs require disclosure of the citizenship or immigration status *only* of the person for whom the benefits are sought. If a parent is seeking benefits on behalf of only her child, the child is considered the sole applicant and is the only individual who must establish citizenship or eligible immigration status.

22. SNAP provides critical nutrition support for low-income citizen children of CASA's noncitizen members. Although SNAP eligibility is based on the circumstances of all household members, a State may not deny SNAP benefits just because a noncitizen member of the household is ineligible. Instead, the state agency must determine eligibility for any remaining household members seeking assistance. A noncitizen may therefore apply for and receive SNAP benefits on behalf of her minor U.S. citizen children.

23. The same is true of welfare programs like TANF. Although eligibility is based on the circumstances of an entire household, states may elect to have policies that exclude family members who are ineligible because of their immigration status. Some states have adopted "child-only" rules that allow children to receive TANF benefits even if the adults in their household are ineligible.

24. Because of the Executive Order, children born to CASA's noncitizen members will no longer be U.S. citizens and may have no status at all. Many of them will therefore be ineligible for these programs, depriving them and their families of much-needed nutrition and health benefits.

25. CASA provides its members with free remote legal assistance, including free

legal consultations on immigration issues. CASA also operates a comprehensive citizenship initiative, which includes citizenship education, mentoring and interview preparation, application assistance, and post-naturalization support. Among the services provided through this program is eligibility analysis for citizenship, in which CASA members meet with a specialist to complete a prescreening form and discuss their immigration cases. CASA also offers assistance with completing citizenship applications and completing applications for renewing and replacing green cards.

26. If children born to noncitizen parents in the United States cannot obtain American citizenship by birth, they may be left in legal limbo. Other than citizenship by birth, there is no clear path for children born in the United States to noncitizen parents to obtain U.S. citizenship. And such children may not have access to citizenship from any other country.

27. If children born to noncitizen parents in the United States cannot obtain American citizenship by birth, their parents may also face immigration consequences. One basis on which CASA members apply for green cards and eventually for citizenship is that their children are citizens. Eliminating birthright citizenship would also close this pathway to legal immigration status and ultimately citizenship for CASA members. Some CASA members also apply for cancellation of deportation based on a showing that deportation would work an "exceptional and extremely unusual hardship" to their children "who [are] citizen[s] of the United States." 8 U.S.C. § 1229b(b)(1). The end of birthright citizenship would similarly remove this important protection for the parents of children who are no longer considered citizens.

28. CASA has long prioritized the need of its members to obtain proper identification. As mentioned above, CASA's members and their families frequently request CASA's assistance in obtaining a picture identification to prove their identities, which is why CASA members are

offered the opportunity to receive a picture ID when becoming members. Similarly, CASA has long provided assistance to new citizens in obtaining proper government-issued identification. Over the years, we have helped thousands of families with newborns properly secure their birth certificates, apply for a Social Security card or apply for their first US passport. Should this population lose the right to qualify for this type of identification, we anticipate that our members will face many challenges. Foremost among these will be a significant increase in demand for identification documents generated from the consulates and embassies of the countries of origin of those impacted. However, these entities have historically experienced many challenges meeting the existing demand for their services, and some of our most vulnerable members are unwilling or unable to access such services from their countries of origin.

29. Many CASA members have made personal and financial decisions in reliance on the Fourteenth Amendment's guarantee of birthright citizenship. The Executive Order unsettles those expectations. Many CASA members will now have to change their personal goals and will experience anxiety and economic uncertainty about the future of their families. CASA members would be immediately and irreparably harmed. Below are a few illustrative examples of CASA members who face immediate harm from the Executive Order. This declaration describes each member using a pseudonym rather than their legal name.

30. **Marta*** is a CASA member who lives in Maryland and is currently three months pregnant. Both Marta and the father of her unborn child are undocumented. Marta came to the United States from Guatemala seeking a better future and opportunity. When she found out that she was pregnant, she envisioned the life that her unborn child would have, free from the hardships she experienced in Guatemala. Marta deeply understands how important being a citizen of the United State is, and although she is not currently able to adjust her status in this

country, she took solace from the fact that her child would be born a U.S. citizen. She wants her child to be born happy and healthy, and with the opportunity to access a quality education, and believes that the best chance for her child's future is if her child is considered a U.S. citizen upon birth.

31. **Adelina*** is a CASA member living in Maryland who has been in the United States for seven years and is currently six months pregnant. Both Adelina and her partner are currently undocumented. Adelina has one other child, who was born in the United States and is a U.S. citizen. She wants her unborn child to have the same rights and opportunities that she has seen her five-year-old child enjoy in this country. It pains her to think that one of her children will have more benefits than the other, even though they were both born here. She is concerned that if her unborn child is not considered a United States citizen, they will experience significant hardship and not have the same opportunity as their sibling.

32. **Rita*** is a CASA member who lives in Maryland and has been in the United States for five years. Both Rita and her partner are currently undocumented. Rita is seven months pregnant with her first child and she thanks God that her child will be born here. If her child were born in Rita's home country of Guatemala, they would not have access to a good education, adequate healthcare or other basic services. It would be a struggle just to survive, without any realistic prospect of a brighter future. In light of the Executive Order, Rita fears that her first child will face more hardship, unable to access their full rights as a U.S. citizen. Rita herself was deeply impacted by the Coronavirus pandemic and she doesn't want her child to go through the pain and struggles that she has endured. It is important to her that her child is fully recognized as a citizen of the U.S. so they can receive the benefits they deserve.

* These names are pseudonyms.

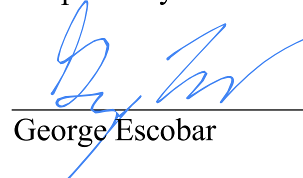
33. **Georgina*** is a CASA member currently living in Maryland and originally from El Salvador. She is two months pregnant. Georgina has lived in the United States for six years, but neither she nor the father of her unborn child have lawful immigration status. She is a single mother, with very limited financial resources and is fearful that if her unborn child isn't granted the benefits of U.S. citizenship she won't be able to support the baby. Georgina fears that her child will not have access to good food and quality education in the same way her two other children born in the United States will. Georgina is also afraid that her child will be subject to discrimination, because she has seen how noncitizens are treated poorly in this country.

34. **Andrea*** is a CASA member originally from Mexico, who lives in Georgia and is currently pregnant, expecting to give birth in late mid-March. Andrea wants her future child to enjoy the full dignity of citizenship in the United States and fears that they will be denied educational opportunities and suffer from a lack of opportunity if they are denied citizenship. Andrea dreams that her children will lead a better life in the United States, a country she has long viewed as a land of opportunity. Andrea is currently in removal proceedings and neither she nor the father of her child have lawful immigration status. As an immigrant, Andrea is looking for a better life for her children, and came here because the United States is a country of opportunity. She is thankful for this country for giving her opportunities that she never would have had in Mexico, and only asks that her children are given the opportunities that they are entitled to by the constitution.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: January 21, 2025

Respectfully submitted,



George Escobar

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC. *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP *et al.*,

Defendants.

Case No.: ____________________

DECLARATION OF SWAPNA C. REDDY, CO-EXECUTIVE DIRECTOR OF THE ASYLUM SEEKER ADVOCACY PROJECT, ("ASAP")

I, Swapna C. Reddy, submit this declaration pursuant to 28 U.S.C. § 1746 and declare under penalty of perjury as follows:

1. I am the Co-Executive Director of the Asylum Seeker Advocacy Project ("ASAP"). I have served in this role since 2019.

2. As Co-Executive Director I oversee much of ASAP's programing, including supervising its membership, technology, and community resource teams. I also oversee the development of all systems for digital communication with ASAP members. I have detailed knowledge about ASAP's membership demographics, membership criteria, member needs and priorities, and the role members play in setting and directing ASAP's mission and advocacy.

3. I make this sworn statement based upon personal knowledge, files and documents of ASAP that I have reviewed (such as case files, reports, and collected case metrics), as well as

information supplied to me by employees of ASAP whom I believe to be reliable, including ASAP's management, attorneys, and administrative staff. These files, documents, and information are of a type that is generated in the ordinary course of our business and that I would customarily rely upon in conducting ASAP business.

Background on ASAP

4. ASAP is a national voluntary membership organization of asylum seekers incorporated as a 501(c)(3) nonprofit organization in New York.

5. As of January 2025, ASAP has over 680,000 members and is the largest membership organization of asylum seekers in the United States.

6. ASAP members come from over 175 countries and reside in all 50 states and several U.S. territories. ASAP provides its members the same benefits and access to resources regardless of where they are located in the United States.

7. ASAP members are in various stages of their immigration proceedings. Some ASAP members have filed an asylum application affirmatively before United States Immigration and Citizenship Services (USCIS), while other ASAP members have filed an asylum application defensively and are in immigration court proceedings. Additionally, some ASAP members are in immigration court proceedings and intend to file an asylum application; some have cases at the Board of Immigration Appeals (BIA) on appeal; some have lost asylum; and some have won asylum and are asylees or even green card holders.

8. We are also aware of ASAP members and their children who have or have had Temporary Protected Status, parole, student visas, tourist visas, and Special Immigrant Juvenile Status.

9. ASAP's mission is to work with our members to build a more welcoming United

States. ASAP provides our membership of asylum seekers with legal and community support. And we work with our members to make great change by standing together. We are creative, collaborative, and nonpartisan. And we believe all asylum seekers deserve to find safe haven in the United States.

10. Our members voluntarily affiliate themselves with ASAP. Asylum seekers apply to join ASAP by filling out a voluntary online membership form. ASAP welcomes new members who are asylum seekers age 14 or over who believe in ASAP's mission.

11. ASAP issues each member a digital membership card and member ID that they can use to identify themselves to ASAP and access the full range of member benefits.

12. ASAP membership is free of charge, and ASAP has never collected any fees or membership dues from its members.

13. Although ASAP does not issue separate membership cards to anyone under the age of 14, the benefits of ASAP membership also extend to the children of ASAP members as derivative of their parents' membership.

14. ASAP is in regular contact with our members through text message and email.

15. ASAP staff produce how-to-guides, frequently asked questions ("FAQs"), and videos that explain how to navigate the immigration system, including how to apply for asylum, how to apply for a work permit, and more. ASAP also produces guidance and FAQs about access to healthcare, food assistance, and other social services that are accessed by members and others online. Because its resources are so frequently accessed online and due to the size of ASAP's membership, our resources on these issues are some of the most influential and widely read by immigrant communities in the United States.

16. While members have continuous access to ASAP-created information and

resources shared online, ASAP also sends members updates by text message and email at least once each month. These updates include immigration news alerts that include information about policy changes of interest to asylum seekers.

17. ASAP answers our members' legal questions through our virtual help desk. ASAP staff and contractors answer members' questions about asylum and the immigration court process, as well as questions related to work authorization, access to health insurance, education, social services, food assistance, and more.

18. ASAP also engages in high-impact advocacy campaigns, utilizing litigation, policy, and communications work.

19. ASAP members determine the organization's advocacy agenda and policy priorities. When members join ASAP, they have the option to write about what they would change in the immigration system. ASAP staff review these answers, code, and then compile them to determine members' collective priorities. These priorities then determine what litigation, policy, and communications work the organization takes on.

20. Additionally, ASAP gathers feedback from members through a combination of surveys and one-on-one member interactions. This feedback is used to help develop responsive how-to-resources, and to help shape the organization's advocacy efforts.

21. ASAP members vote on whether ASAP can bring a lawsuit alleging associational standing as a voluntary membership organization. ASAP will only allege associational standing in a lawsuit if members have voted and agreed to the organization doing so.

The Executive Order Will Impact ASAP's Members

22. ASAP members have expressed to ASAP that protecting birthright citizenship is a priority.

23. When asked in a recent survey of ASAP members, whether ASAP should file a lawsuit defending birthright citizenship, 99% of the ASAP members who responded voted yes and urged ASAP to preserve birthright citizenship for the children of ASAP members and other immigrants.

24. As of today, ASAP serves 686,737 members. According to the National Center for Health Statistics at the Center for Disease Control (CDC), the current U.S. birth rate is 11 births per 1000 people in the United States per year. By a conservative estimate, ASAP members will have 7,529 children in 2025, or an average of more than 20 U.S.-born children per day. This estimate is conservative because our members tend to belong to ethnic groups and come from countries with higher birthrates.

25. A recent survey of members confirms that many members are expecting to have children in 2025. To my knowledge, at least 629 ASAP members are expecting a child or children this year and are worried their future child or children will not be able to claim birthright citizenship despite being born in the United States.

26. ASAP members have already expressed concerns about the threatened action to deny birthright citizenship to children born in the United States to noncitizen parents and have asked questions about how it could impact them as asylum seekers. We have learned from ASAP members that ending birth right citizenship poses unique challenges for asylum seekers and their children.

How the Executive Order Impacts ASAP's Members

27. ASAP is acutely aware of the harms that ending birthright citizenship will cause to children born in the United States to noncitizen parents and to their entire families. The harm will be severe for noncitizen parents, and their U.S.-born children who are denied U.S. citizenship.

28. ASAP members have expressed that the denial of birthright citizenship would create great psychological distress and emotional pain. The denial of this status, which parents assumed would apply to their unborn children, will disrupt plans regarding immigration status, access to education, and benefits programs.

29. Parents who are expecting children who could be denied U.S. citizenship are extremely worried about whether they will have to help their children apply for other forms of U.S. immigration relief, including seeking asylum in the United States. Parents are worried that without a pending immigration application, their children could be subject to deportation - even if they as parents are not. Applying for U.S. immigration status for a U.S.-born child would not only be incredibly time consuming and stressful for parents, but it could also be expensive if they have to pay government filing fees, or if they must hire an attorney in order to navigate this complicated and unprecedented immigration process.

30. Ending birthright citizenship for the children of asylum seekers is particularly concerning because many asylum seekers have been persecuted and tortured by the governments of their home countries, and as such do not have access to or feel safe seeking services from a consular office of their country of origin in the United States. Furthermore, it is common practice for immigration attorneys to advise their clients that availing themselves of consular services from their country of origin could harm their asylum case, because these interactions could be

interpreted as demonstrating a lack of fear of their country of origin. As a result, many asylum-seeking parents will be forced to decide between negatively impacting their own immigration cases or essentially rendering their children stateless, without proof of citizenship from any country.

31. Our members from Venezuela have told us that they cannot access consular services from their country of origin from within the United States - even if they wanted to do so. This is one reason why our members from Venezuela have expressed anxiety around their future U.S.-born children not being able to claim any citizenship, and potentially becoming stateless.

32. ASAP members and other asylum seekers are already facing challenges having to flee their home country due to persecution and coming to a new country where they may not speak the language. ASAP members have communicated that this added concern of obtaining citizenship generally and some type of U.S. immigration status for their U.S.-born children is a sudden shock, and a source of tremendous stress and anxiety.

33. Many ASAP members have reported to ASAP that they are stuck in asylum backlogs, waiting for their cases to be processed for sometimes even more than a decade. This means individuals with pending asylum applications are likely to be in the U.S. for many years to come. As such, the children of asylum seekers will not only be born in the United States, but will go to school in the U.S., learn English, and become part of the fabric of U.S. local communities before their parents' immigration case is decided.

34. If they are denied citizenship, children born to many ASAP members will have no status in the U.S. at all. Many of them will therefore be ineligible for important programs that families rely on for nutrition and health benefits. For example, if denied citizenship, ASAP

members' U.S.-born children will not be able to access crucial healthcare programs like the Children's Health Insurance Program (CHIP), Medicaid, and the Affordable Care Act (ACA), which provide coverage to citizen children of noncitizen parents. This would also place additional stress on parents.

35. Moreover, ASAP members worry about the serious dignitary and status harms to their children who will be denied citizenship status. Children born in the United States, but deprived of its citizenship, may face not only statelessness, but also social exclusion and discrimination by being excluded from U.S. citizenship at birth. In the long run, noncitizen U.S.-born children will also be denied meaningful opportunities to engage in and enrich the civic life of their birth-country, by being deprived of voting rights, educational opportunities, the ability to serve on juries, and other mechanisms to participate in civic institutions as citizens.

ASAP Members Impacted by the Executive Order

36. We know of at least 629 ASAP members who are currently expecting to have children born in the United States in 2025. Below are a few representative examples of ASAP members whose U.S.-born children the Executive Order will unlawfully declare to be non-citizens.

37. **Dina** is an ASAP member living in Washington State.[1] She is pregnant and due in July of 2025. She and her partner are both from Kenya, and they are seeking asylum in the United States. Dina and her partner have been living in the United States since 2018. Dina came to the United States on a student visa, then applied for asylum affirmatively with USCIS. She

[1] Some of the members, including Dina, are identified using a pseudonym rather than the member's real name.

and her partner have been working legally in the United States for more than 5 years. Dina has a degree in cybersecurity and works as an IT manager. Her partner works for the county government as an IT Specialist. She and her partner are worried that their child will not be able to receive U.S. citizenship. Being an immigrant in the United States has been very stressful for Diana and her partner, and they do not want their son to go through the same struggles they have had to go through.

38. **Niurka** is an ASAP member living in Florida. She is pregnant and due in March of 2025. Niurka and her partner are both from Cuba, and they are currently seeking asylum in the United States. They crossed the Mexico-U.S. border, and were placed in deportation proceedings before the U.S. immigration courts. Niurka and her partner have a pending asylum application and a pending lawful permanent residency application under the Cuban Adjustment Act. Niurka was a medical doctor in Cuba, but she is not working at this time. Her partner studied food science and was a biopharmacist in Cuba. He is now a food safety and quality assurance manager in the food production industry. She and her partner are very worried their child will not receive U.S. citizenship when he is born. They want their son to achieve success in the United States and worry about how not receiving citizenship at birth will impact his future. Niurka and her partner have no intention of ever going back to Cuba because of the dictatorship, would never want their child to be a Cuban citizen, and do not want their child to ever have to set foot in Cuba. If he is denied U.S. citizenship, they are worried that their son would be in a state of limbo and would not have citizenship from any country.

39. **Igor** is an ASAP member living in Texas. He and his wife, Liza, are expecting a child in May of 2025. Igor and Liza are from Russia. Igor applied for asylum with the U.S. immigration courts. Liza came to the United States on a student visa, and is receiving her

Master's degree. Igor and Liza want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship. Neither Igor nor Liza feel they can return to Russia without being persecuted, and because of that do not feel they can apply for Russian citizenship for their child. Because of that, Igor and Liza are worried their child will be stateless.

40. **Adriana** is an ASAP member living in New York. She is pregnant and due in March of 2025. Adriana and her partner are both currently seeking asylum in the United States. They came to the United States as tourists, and subsequently applied for asylum with USCIS. Adriana has previously worked as an administrative and finance assistant abroad, but she is not currently working because she has had a difficult pregnancy. Adriana's partner works as a driver for a company that handles transportation for senior citizens and children. Adriana and her partner are worried that their daughter will face discrimination in the United States if she is not made a U.S. citizen at birth.

41. **Nivida** is an ASAP member living in Louisiana. She is pregnant and due in April of 2025. Nivida is from Honduras and sought asylum in the United States in 2020. She had filed her asylum application with the U.S. immigration courts. However, her case was recently dismissed. Nivida's partner is from Mexico, and he has an application pending for a U-visa. Nivida and her partner believe it is very important that their child becomes a U.S. citizen at birth. If their child does not have U.S. citizenship at birth, Nivida and her partner are afraid of him having to live in either Honduras or Mexico because they fear violence and persecution in both countries. Nivida and her partner worry about their son's future if he is not a birthright citizen of the United States, and how it could change his life trajectory, his development, and the educational opportunities afforded to him. Nivida and her partner's daughter has U.S. citizenship

from birth already, which also means their son would have a different status than his sister, despite both of them being born in the United States.

42. **Lesly** is an ASAP member living in New Jersey. She is pregnant and due in July of 2025. She crossed at the Mexico-U.S. border using the CBP One app, and subsequently applied for asylum in the U.S. immigration courts. Her next hearing is not until 2028. Lesly has worked as a cleaner in the U.S. and has a work permit. Neither Lesly nor her partner are U.S. citizens or lawful permanent residents. Lesly and her partner want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship. They are concerned that without birthright citizenship, their child will not have as many opportunities - either educational or professional. Lesly is very stressed because she is not sure if she is going to have to start a U.S. immigration process for her child who will be born in the United States. Lesly is worried because an immigration attorney could cost a lot of money, and she does not know if she would have to hire an immigration attorney or pay application fees.

43. **Esther** is an ASAP member living in Delaware. She is pregnant and due in February of 2025. Esther and her partner are currently seeking asylum in the United States in the U.S. immigration courts. Esther worked as a house cleaner in Delaware until she found out she was pregnant. Her husband works at a local pizza shop. She and her partner want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship.

44. **Nohelimar** is an ASAP member living in California. She is pregnant and due in March of 2025. She and her partner came to the United States seeking safe haven. Nohelimar's partner has applied for asylum, but she has not been able to yet. Nohelimar studied criminalistics abroad, but she is not working because she has not yet received her work permit. Nohelimar and

her partner are worried that their child will not be able to receive U.S. citizenship. Nohelimar believes that if her son becomes a U.S. citizen, he will have a better future. If he is denied U.S. citizenship, she is confused and scared about what the process would be for her to get her son citizenship from any other country, and she would be worried about her son's future in the United States.

45. **Barbara** is an ASAP member living in Kentucky. She is pregnant and due in July of 2025. Barbara and her partner are both from Cuba, and they are currently seeking asylum in the United States. Their green card application under the Cuban Adjustment Act has been pending for more than a year, and they hope to have their lawful permanent residency soon. They have been in the United States since 2022. Barbara was a lawyer in Cuba. She is now working at a school as a school custodian. Her partner is also a school custodian. Barbara and her partner are very worried their child will not receive U.S. citizenship.

46. **Meny** is an ASAP member living in California. She is pregnant and due in July of 2025. She and her partner both have affirmative asylum applications pending at USCIS. Meny's professional background is as an educator for people with disabilities. Meny and her partner want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship. They feel their child should have the citizenship of the country he is born in, especially since it is a constitutional right.

47. **Veronica** is an ASAP member living in Connecticut. She is pregnant and due in June of 2025. She and her partner are both originally from Peru. Veronica and her partner have filed for asylum as a defense to deportation and did so using ASAP's self-help resources and how-to videos. Veronica's professional training in Peru is as an accountant. Veronica and her partner want to apply for their child's U.S. passport as soon as possible, but they are worried

their child will not receive U.S. citizenship.

48. **Carolina** is an ASAP member living in Florida. She is pregnant and due in June of 2025. She and her partner are both from Chile, but her partner is of Haitian and Chilean descent. Neither Carolina nor her partner are U.S. citizens or lawful permanent residents. Carolina came to the United States on a visa, and then subsequently applied for asylum affirmatively with USCIS. Carolina and her partner want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship. They are particularly concerned their child will face discrimination if they are not seen as the same as other children who were born in the United States.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: January 21, 2025

Respectfully submitted,

____
Swapna C. Reddy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

CASA, INC.,
8151 15th Avenue
Hyattsville, MD 20528;

ASYLUM SEEKER ADVOCACY PROJECT, INC.,
228 Park Ave. S #84810
New York, NY 10003-1502;

MARIBEL, *individually and as next friend to her future child*,
c/o CASA, Inc.,
8151 15th Avenue
Hyattsville, MD 20528;

JUANA, *individually and as next friend to her future child*,
c/o CASA, Inc.,
8151 15th Avenue
Hyattsville, MD 20528;

TRINIDAD GARCIA, *individually and as next friend to her future child,*
c/o Asylum Seeker Advocacy Project,
228 Park Ave. S #84810
New York, NY 10003-1502;

MONICA, *individually and as next friend to her future child*,
c/o Asylum Seeker Advocacy Project,
228 Park Ave. S #84810
New York, NY 10003-1502; *and*

Case No.: __________

COMPLAINT

LIZA, *individually and as next friend to her future child*,
c/o Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave NW
Washington, DC 20001;

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States,
c/o Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001;

SECRETARY OF THE UNITED STATES DEPARTMENT OF STATE, in their official capacity,
The Executive Office of the Legal Adviser and Bureau of Legislative Affairs
600 19th Street NW
Suite 5.600
Washington DC 20522;

ATTORNEY GENERAL OF THE UNITED STATES, in their official capacity,
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001;

SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, in their official capacity,
c/o Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485;

DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, in their official capacity,
c/o Office of the Chief Counsel
5900 Capital Gateway Drive
Mail Stop 2120
Camp Springs, MD 20588-0009;

COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION, in their official capacity,
c/o Office of the General Counsel
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235; *and*

UNITED STATES OF AMERICA,
c/o Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001;

Defendants.

INTRODUCTION

1. This complaint challenges the Executive Order entitled "Protecting the Meaning and Value of American Citizenship," which purports to end birthright citizenship in the United States for the children of many immigrants living and working in the United States.

2. The Executive Order is a flagrant violation of the Fourteenth Amendment, a federal statute, and the history underlying the text of those enactments, all of which guarantee the fundamental right to citizenship for all children born in the United States. The President has no unilateral authority to override rights recognized in the Constitution or in federal statutes.

3. Founded as a nation of immigrants, the United States of America has always recognized the common-law principle of *jus soli* (or "right of the soil"), under which children born in the United States, whether to citizen or noncitizen parents, are United States citizens

from birth. The principle of birthright citizenship is a foundation of our national democracy, is woven throughout the laws of our nation, and has shaped a shared sense of national belonging for generation after generation of citizens.

4. Although the nation departed from the principle of *jus soli* in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), denying citizenship to African-Americans born in the United States, the people of this country ratified the Fourteenth Amendment to right that wrong and express the nation's commitment to the principle of birthright citizenship for all. Section 1 of the Fourteenth Amendment therefore begins, "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." By enshrining the guarantee of birthright citizenship in the Constitution, the people of this country ensured that citizenship could not be withheld from disfavored classes of native-born persons by mere legislation or executive action. The President has no power to eliminate a right guaranteed by the Constitution.

5. The 14th Amendment's language is clear. Over a century ago, the U.S. Supreme Court confirmed that the Fourteenth Amendment's Citizenship Clause means that people born in the United States are U.S. citizens at birth without regard to their immigration status, except for children born to foreign diplomats, on foreign ships, to occupying armies, or to Indian tribes.[1] *See United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898). The Court has adhered to that understanding time and again in the ensuing decades.

6. Congress has reaffirmed and implemented the Fourteenth Amendment's guarantee by codifying birthright citizenship into a federal statute, which, in its current form,

[1] Congress has overridden the last of these exceptions by statute, extending territorial birthright citizenship to all Native Americans. *See* Act of June 2, 1924, ch. 233, 43 Stat. 253 (current version at 8 U.S.C. § 1401(b)).

reiterates that everyone "born in the United States and subject to the jurisdiction thereof" "shall be nationals and citizens of the United States at birth." 8 U.S.C. § 1401(a). The President has no power to unilaterally abrogate an Act of Congress.

7. The Executive Order violates this long-settled law. It denies citizenship to children born to mothers whose presence in the country is either "unlawful[]" or "lawful but temporary" and whose father is neither a citizen nor a lawful permanent resident, even though those children are plainly "subject to the jurisdiction" of the United States and entitled to citizenship by birth.

8. Organizational Plaintiffs are two membership-based immigrants-rights organizations, CASA, Inc. ("CASA") and Asylum Seeker Advocacy Project ("ASAP"), whose members include noncitizens who reside in the United States, who have immigration statuses covered by the Executive Order, and who are either pregnant or plan to have children while they are living within the United States (collectively, "Members").

9. Individual Plaintiffs are two members of CASA, Maribel and Juana; two members of ASAP, Trinidad Garcia and Monica; and one additional individual, Liza. All five Individual Plaintiffs are pregnant, reside in the United States, and fear that their children will be denied United States citizenship under the Executive Order based on their immigration status and that of their children's fathers.

10. The Executive Order will cause immediate and irreparable harm to Individual Plaintiffs and Members. Every day, babies are being born in the United States whose constitutionally guaranteed citizenship will be called into doubt under the Executive Order. These include many babies whose parents are Members of ASAP or CASA. Indeed, thousands of Members will give birth to children in the United States in the coming months. Those children

will be born in the United States and will be subject to its jurisdiction. They will therefore be entitled to citizenship under the Fourteenth Amendment and 8 U.S.C. § 1401(a) regardless of their parents' immigration status.

11. "Citizenship is a most precious right." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963). "It would be difficult to exaggerate [the] value and importance" of United States citizenship. *Schneiderman v. United States*, 320 U.S. 118, 122 (1943). Citizenship signifies that a person is a full member of the United States community and is entitled to all of the privileges, benefits, and freedoms that citizenship guarantees. As citizens, individuals born in the United States enjoy an unqualified right to enter and remain in their homeland. Moreover, citizens are ensured the opportunity to pursue the American dream and participate fully in the civic and political life of the United States. They are allowed to vote, travel under a United States passport, hold certain public offices, and qualify for many public benefits that noncitizens do not.

12. If allowed to go into effect, the Executive Order would throw into doubt the citizenship status of thousands of children across the country, including the children of Individual Plaintiffs and Members. The Executive Order threatens these newborns' identity as United States citizens and interferes with their enjoyment of the full privileges, rights, and benefits that come with U.S. citizenship, including calling into question their ability to remain in their country of birth.

13. That deprivation of the benefits of citizenship is a grave injury not only to those children but to their entire families, who will be directly harmed by the denial of the benefits of citizenship to their children. The children deprived of citizenship have no status or right to remain in the United States with their family, even as their older siblings will often be United States citizens and as their parents will often be authorized to live in the United States. Indeed,

these children may not have access to citizenship in *any* country, leaving them stateless, living forever at the temporary sufferance of wherever they find themselves.

14. Parents will face significant harm, including increased stress and anxiety that comes from the U.S. government treating their children differently from other U.S.-born children, and from the prospect of their children facing statelessness and an uncertain fate in the land of their birth. Immigrant parents, including those who cannot be deported because of a pending asylum claim or other immigration application, will also face the reality that their U.S. born child could be subject to deportation.

15. This country would, in literal terms, be poorer for the elimination of birthright citizenship to the covered children. Research shows that birthright citizenship has contributed to economic growth and prosperity in the United States.

16. Plaintiffs therefore seek a declaration that the Fourteenth Amendment and 8 U.S.C. § 1401(a) protect the right to birthright citizenship and that the constitutional guarantee of birthright citizenship cannot be eradicated by Executive Order, as well as a preliminary and permanent injunction prohibiting Defendants from implementing the Executive Order to deny any child born in the United States the benefits of their constitutionally guaranteed birthright citizenship.

JURISDICTION AND VENUE

17. The Court has jurisdiction under the United States Constitution and 28 U.S.C. §§ 1331 and 1346.

18. Venue is proper in this District under 28 U.S.C. § 1391(e) and in this division because Defendants are officers and employees of the United States or an agency thereof acting in their official capacities, Plaintiff CASA has its principal place of business in this division and

District, a Defendant resides in this division and District, and a substantial part of the events or omissions giving rise to this action are occurring in this division and District.

PARTIES

19. Plaintiff CASA, Inc. ("CASA") is a nonprofit membership organization headquartered in Prince George's County, Maryland, with offices in Maryland, Virginia, Pennsylvania, and Georgia. Founded in 1985, CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 175,000 members. Many of CASA's members have children who were born in the United States, and many plan to grow their families in the future while living in the United States.

20. CASA's mission is to create a more just society by building power and improving the quality of life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and immigrant communities. In furtherance of this mission, CASA offers a wide variety of social, health, job training, employment, and legal services to immigrant communities in Maryland, Washington, D.C., Virginia, Pennsylvania, and Georgia, as well as a more limited suite of remote services to Members across the United States.

21. In order to become a CASA member, an individual must apply for membership, pay dues (or have the dues requirement waived), and subscribe to the principles of CASA. A CASA member shares CASA's values, envisions a future where we can achieve full human rights for all, and is convinced that, when united and organized, we can create a more just society by building power in working- class and immigrant communities. CASA members play an important role in deciding what campaigns CASA works on and how CASA serves the community.

22. CASA provides comprehensive services to its members, including a public benefits outreach and enrollment program that assists community members with understanding and enrolling in various government aid and health insurance programs. CASA also counsels members who are seeking to become U.S. citizens, including through citizenship education, mentoring and interview preparation, application assistance, and post-naturalization support. And CASA provides free legal consultation to its members regarding, among other topics, immigration matters.

23. CASA members have the opportunity to obtain a CASA ID. This is a physical, picture identification card that contains basic information about the member. For many members, this card may be the only type of picture identification they have, other than documents from their home country. In certain jurisdictions, CASA IDs are recognized for the purposes of engaging with certain government agencies, including the police.

24. Although CASA does not issue formal membership directly to individuals under 15 years of age, CASA routinely provides services to youth and their families.

25. CASA's membership includes many individuals who are pregnant or planning to give birth, and whose U.S.-born children would be denied U.S. Citizenship under the Executive Order. The following are illustrative examples of such CASA members, who are identified in CASA's declaration and in this complaint using pseudonyms.

26. **Marta** is a CASA member who lives in Maryland and is currently three months pregnant. Both Marta and the father of her unborn child are undocumented. Marta came to the United States from Guatemala seeking a better future and opportunity. When she found out that she was pregnant, she envisioned the life that her unborn child would have, free from the hardships she experienced in Guatemala. Marta deeply understands how important being a

citizen of the United State is, and although she is not currently able to adjust her status in this country, she took solace from the fact that her child would be born a U.S. citizen. She wants her child to be born happy and healthy, and with the opportunity to access a quality education, and believes that the best chance for her child's future is if her child is considered a U.S. citizen upon birth.

27. **Adelina** is a CASA member living in Maryland who has been in the United States for seven years and is currently six months pregnant. Both Adelina and her partner are currently undocumented. Adelina has one other child, who was born in the United States and is a U.S. citizen. She wants her unborn child to have the same rights and opportunities that she has seen her five-year-old child enjoy in this country. It pains her to think that one of her children will have more benefits than the other, even though they were both born here. She is concerned that if her unborn child is not considered a United States citizen, they will experience significant hardship and not have the same opportunity as their sibling.

28. **Rita** is a CASA member who lives in Maryland and has been in the United States for five years. Both Rita and her partner are currently undocumented. Rita is seven months pregnant with her first child and she thanks God that her child will be born here. If her child were born in Rita's home country of Guatemala, they would not have access to a good education, adequate healthcare or other basic services. It would be a struggle just to survive, without any realistic prospect of a brighter future. In light of the Executive Order, Rita fears that her first child will face more hardship, unable to access their full rights as a U.S. citizen. Rita herself was deeply impacted by the Coronavirus pandemic and she doesn't want her child to go through the pain and struggles that she has endured. It is important to her that her child is fully recognized as a citizen of the U.S. so they can receive the benefits they deserve.

29. **Georgina** is a CASA member currently living in Maryland and originally from El Salvador. She is two months pregnant. Georgina has lived in the United States for six years, but neither she nor the father of her unborn child have lawful immigration status. She is a single mother, with very limited financial resources and is fearful that if her unborn child isn't granted the benefits of U.S. citizenship she won't be able to support the baby. Georgina fears that her child will not have access to good food and quality education in the same way her two other children born in the United States will. Georgina is also afraid that her child will be subject to discrimination, because she has seen how noncitizens are treated poorly in this country.

30. **Andrea** is a CASA member originally from Mexico, who lives in Georgia and is currently pregnant, expecting to give birth in late mid-March. Andrea wants her future child to enjoy the full dignity of citizenship in the United States and fears that they will be denied educational opportunities and suffer from a lack of opportunity if they are denied citizenship. Andrea dreams that her children will lead a better life in the United States, a country she has long viewed as a land of opportunity. Andrea is currently in removal proceedings and neither she nor the father of her child have lawful immigration status. As an immigrant, Andrea is looking for a better life for her children, and came here because the United States is a country of opportunity. She is thankful for this country for giving her opportunities that she never would have had in Mexico, and only asks that her children are given the opportunities that they are entitled to by the constitution.

31. Plaintiff Asylum Seeker Advocacy Project ("ASAP") is a nonprofit organization headquartered in New York, New York. ASAP is the largest membership organization of asylum seekers in the United States, with over 680,000 members from more than 175 countries who reside in all 50 U.S. states and several U.S. territories.

32. ASAP is a national voluntary membership-based 501(c)(3) nonprofit organization incorporated in New York. ASAP's mission is to help its members—individuals seeking asylum—to build a more welcoming United States. ASAP provides members with community and legal support and advocates for nationwide systemic reform based on the priorities identified by its membership.

33. Asylum seekers apply to join ASAP by filling out a voluntary online membership form. ASAP welcomes new members who are asylum seekers age 14 or over who believe in ASAP's mission.

34. ASAP issues each member a digital membership card and member ID that they can use to identify themselves to ASAP and access the full range of member benefits.

35. Although ASAP does not issue separate membership cards to anyone under the age of 14, the benefits of ASAP membership also extend to the children of ASAP members as derivative of their parents' membership.

36. ASAP's members have fled persecution to seek safe haven in the United States. Most members have applied for asylum in accordance with federal law. Federal law provides that immigrants with a pending asylum application are not subject to removal while their claims are pending. Many ASAP members have access to a Social Security number and are authorized to work, for example, because they are waiting for their asylum application to be processed, have already won asylum, have Temporary Protected Status, have a pending green card application, or have other pending immigration applications.

37. Many of ASAP's members have children who were born in the United States, and many plan to have children while they are living in the United States. Hundreds or even thousands of ASAP members will give birth to children in the United States over the coming

weeks and months, and the Executive Order threatens the citizenship status of these U.S.-born children. The following are a few illustrative examples of members who will be harmed by the Executive Order. ASAP's members are identified using pseudonyms (or using only part of their full names).

38. **Dina** is an ASAP member living in Washington State. She is pregnant and due in July of 2025. She and her partner are both from Kenya, and they are seeking asylum in the United States. Diana and her partner have been living in the United States since 2018. Diana came to the United States on a student visa, then applied for asylum affirmatively with USCIS. She and her partner have been working legally in the United States for more than 5 years. Diana has a degree in cybersecurity and works as an IT manager. Her partner works for the county government as an IT Specialist. She and her partner are worried that their child will not be able to receive U.S. citizenship. Being an immigrant in the United States has been very stressful for Diana and her partner, and they do not want their son to go through the same struggles they have had to go through.

39. **Niurka** is an ASAP member living in Florida. She is pregnant and due in March of 2025. Niurka and her partner are both from Cuba, and they are currently seeking asylum in the United States. They crossed the Mexico-U.S. border, and were placed in deportation proceedings before the U.S. immigration courts. Niurka and her partner have a pending asylum application and a pending lawful permanent residency application under the Cuban Adjustment Act. Niurka was a medical doctor in Cuba, but she is not working at this time. Her partner studied food science and was a biopharmacist in Cuba. He is now a food safety and quality assurance manager in the food production industry. She and her partner are very worried their child will not receive U.S. citizenship when he is born. They want their son to achieve success in the United States and

worry about how not receiving citizenship at birth will impact his future. Niurka and her partner have no intention of ever going back to Cuba because of the dictatorship, would never want their child to be a Cuban citizen, and do not want their child to ever have to set foot in Cuba. If he is denied U.S. citizenship, they are worried that their son would be in a state of limbo and would not have citizenship from any country.

40. **Nivida** is an ASAP member living in Louisiana. She is pregnant and due in April of 2025. Nivida is from Honduras and sought asylum in the United States in 2020. She had filed her asylum application with the U.S. immigration courts. However, her case was recently dismissed. Nivida's partner is from Mexico, and he has an application pending for a U-visa. Nivida and her partner believe it is very important that their child becomes a U.S. citizen at birth. If their child does not have U.S. citizenship at birth, Nivida and her partner are afraid of him having to live in either Honduras or Mexico because they fear violence and persecution in both countries. Nivida and her partner worry about their son's future if he is not a birthright citizen of the United States, and how it could change his life trajectory, his development, and the educational opportunities afforded to him. Nivida and her partner's daughter has U.S. citizenship from birth already, which also means their son would have a different status than his sister, despite both of them being born in the United States.

41. **Lesly** is an ASAP member living in New Jersey. She is pregnant and due in July of 2025. She crossed at the Mexico-U.S. border using the CBP One app, and subsequently applied for asylum in the U.S. immigration courts. Her next hearing is not until 2028. Lesly has worked as a cleaner in the U.S. and has a work permit. Neither Lesly nor her partner are U.S. citizens or lawful permanent residents. Lesly and her partner want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship.

They are concerned that without birthright citizenship, their child will not have as many opportunities—either educational or professional. Lesly is very stressed because she is not sure if she is going to have to start a U.S. immigration process for her child who will be born in the United States. Lesly is worried because an immigration attorney could cost a lot of money, and she does not know if she would have to hire an immigration attorney or pay application fees.

42. **Nohelimar** is an ASAP member living in California. She is pregnant and due in March of 2025. She and her partner came to the United States seeking safe haven. Nohelimar's partner has applied for asylum, but she has not been able to yet. Nohelimar studied criminalistics abroad, but she is not working because she has not yet received her work permit. Nohelimar and her partner are worried that their child will not be able to receive U.S. citizenship. Nohelimar believes that if her son becomes a U.S. citizen, he will have a better future. If he is denied U.S. citizenship, she is confused and scared about what the process would be for her to get her son citizenship from any other country, and she would be worried about her son's future in the United States.

43. **Adriana** is an ASAP member living in New York. She is pregnant and due in March of 2025. Adriana and her partner are both currently seeking asylum in the United States. They came to the United States as tourists, and subsequently applied for asylum with USCIS. Adriana has previously worked as an administrative and finance assistant abroad, but she is not currently working because she had a difficult pregnancy. Adriana's partner works as a driver for a company that handles transportation for senior citizens and children. Adriana and her partner are worried that their daughter will face discrimination in the United States if she is not made a U.S. citizen at birth. Adriana is using a pseudonym. She brings this lawsuit on behalf of herself and her future child.

44. CASA and ASAP bring this suit to vindicate the interests of their members and the U.S.-born children their members will have over the upcoming weeks, months, and years.

45. Plaintiff **Maribel** is a CASA member who has lived in the U.S. for 18 years and resides in Prince George's County, Maryland. She is currently pregnant, expecting to give birth in July of 2025. She lives with her husband and two young U.S. citizen daughters, who are 14 and 10 years old. She is an immigrant from El Salvador who was born in Guatemala. She is undocumented despite having lived in the U.S. for nearly half her life. Her husband is also undocumented. She fears her unborn child will not have the same rights to citizenship as the future child's older sisters, and could even be subject to deportation, separating the family. She is afraid that her child won't have access to healthcare because they won't be eligible for federal benefits. She feels it is deeply wrong to subject an innocent newborn to such cruelty. Maribel is using a pseudonym. She brings this lawsuit on behalf of herself and her future child.

46. Plaintiff **Juana** is a CASA member who resides in Montgomery County, Maryland. She is a native of Colombia. She moved the United States after fleeing from Colombia and has a pending asylum claim. Her 12-year-old daughter is also in the United States and is a derivative on her petition for asylum. She is currently two months pregnant. She is worried that her child will be born without a country as a result of the Executive Order, since she is afraid to return to Colombia. She wants her unborn child to be able to grow up without fear and with a sense of belonging in the United States. The thought that her unborn child could be denied U.S. citizenship and deported to Colombia without her is terrifying. It is important to her that her unborn child be a U.S. citizen so they can have a better quality of life and fully engage with all that the United States has to offer. She wants her child to have educational opportunities and to be a good person who serves their country and community. She does not think it makes

sense for her child to be denied the benefits of citizenship they deserve once they are born in the U.S. Juana is using a pseudonym. She brings this lawsuit on behalf of herself and her future child.

47. Plaintiff **Trinidad Garcia** is an ASAP member living in North Carolina. She is pregnant and due in August of 2025. She and her partner are both from Venezuela, and they have been living in the United States since 2017. She and her partner came to the United States on a tourist visa. They have a pending affirmative asylum application with USCIS, and have not been given an appointment for an interview in their case yet. She and her partner both have work permits, and they have been working in their local community. She graduated with a degree in business administration in Venezuela, and she worked in human resources before coming to the United States. Upon arriving in the United States, Trinidad Garcia began to clean homes. She has since started her own home cleaning business. Her partner was an environmental engineer in Venezuela, but he now works in the U.S. as a technician to restore stone, tile, and grout in home remodels. Trinidad Garcia and her partner are worried that there is no way for them to approach the Venezuelan government regarding their child's citizenship because there are no Venezuelan consular services in the United States. They believe it would be impossible to get their child Venezuelan citizenship. Because of that, both Trinidad Garcia and her partner want to get their child a U.S. passport and proof of U.S. citizenship as soon as possible, but they are worried their child will not be able to receive U.S. citizenship. If their U.S.-born child is not able to get U.S. citizenship at birth, Trinidad Garcia is very stressed that their child will not be a citizen of any country or be able to get important identity documents. She is worried that they will have to apply for asylum for their child, is confused about what the process would like, and is worried that they will have to hire someone to help them pay the government for application fees, which

could cost them a significant amount of money. Trinidad Garcia is using a pseudonym. She brings this lawsuit on behalf of herself and her future child.

48. Plaintiff **Monica** is an ASAP member living in South Carolina. She is pregnant and due in August of 2025. She and her partner are both originally from Venezuela, and they both have Temporary Protected Status (TPS) as well as a pending affirmative asylum application with USCIS. They have been in the United States since 2019. Maria is a trained medical doctor who is seeking to validate her medical degree in the United States. She is worried that it would be next to impossible to get her child Venezuelan citizenship even if she tried. Because of that, both Maria and her partner want to get their child a U.S. passport and proof of U.S. citizenship as soon as possible, but they are worried their child will not be able to receive U.S. citizenship. If that happens, they are very concerned that their child will not be a citizen of any country. Monica is using a pseudonym. She brings this lawsuit on behalf of herself and her future child.

49. Plaintiff **Liza** is married to an ASAP member, Igor, and lives in Texas. Liza is expecting a child in May of 2025. Liza and Igor are from Russia. Igor applied for asylum with the U.S. immigration courts. Liza came to the United States on a student visa and is receiving her master's degree. Liza and Igor want to apply for their child's U.S. passport as soon as possible, but they are worried their child will not receive U.S. citizenship. Neither Liza nor Igor feel they can return to Russia without being persecuted, and they therefore do not feel they can apply for Russian citizenship for their child. Because of that, Liza and Igor are worried their child will be stateless. She brings this lawsuit on behalf of herself and her future child.

50. Defendant Donald J. Trump is the President of the United States. He is sued in his official capacity.

51. Defendant Secretary of the U.S. Department of State ("Secretary of State") is the official exercising the power of the head of the federal agency responsible for, among other things, issuing passports to U.S. citizens. Defendant Secretary of State is sued in their official capacity. The Department of State is an executive department of the United States Government, headquartered in Washington, D.C.

52. Defendant Attorney General of the United States ("Attorney General") is the head of the United States Department of Justice and is the chief law enforcement officer of the federal government. Among other things, Defendant Attorney General is responsible for adjudicating immigration cases. Defendant Attorney General is sued in their official capacity. The Department of Justice is an executive department of the United States Government, headquartered in Washington, D.C.

53. Defendant Secretary of the U.S. Department of Homeland Security ("Secretary of DHS") is the official exercising the power of the head of the federal agency responsible for, among other things, naturalization of potential U.S. citizens and enforcement of immigration laws against those in the country without authorization. Defendant Secretary of DHS is sued in their official capacity. DHS is an executive department of the United States Government, headquartered in Washington, D.C.

54. Defendant Director of the U.S. Citizenship and Immigration Services ("Director of USCIS") is the official exercising the power of the head of the federal sub-agency within DHS responsible for, among other things, granting applications for naturalization. Defendant Director of USCIS is sued in their official capacity. USCIS is a sub-agency of DHS, headquartered in Camp Springs, MD.

55. Defendant Commissioner of the Social Security Administration ("SSA") is the official exercising the power of the head of the federal agency responsible for, among other things, issuing social security numbers. Defendant Commissioner of SSA is sued in their official capacity. SSA is an agency of the United States Government, headquartered in Baltimore, MD.

56. Defendant United States of America is the sovereign whose power is delineated by the United States Constitution. Although in violation of federal law, Defendants' actions as described in this complaint were taken under color of the United States' authority.

FACTS

Legal Background

57. "Citizenship is a most precious right." *Mendoza-Martinez*, 372 U.S. at 159. It is a "cherished status" that "carries with it the privilege of full participation in the affairs of our society." *Knauer v. United States*, 328 U.S. 654, 658 (1946).

58. Under the ancient common-law principle of *jus soli* (or "right of the soil"), "every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign State, or of an alien enemy in hostile occupation of the place where the child was born." *Wong Kim Ark*, 169 U.S. at 658.

59. After the Constitution's adoption, the United States continued to follow "the established rule of citizenship by birth within the United States." *Id.* at 660. This was so regardless of whether a child was born of United States citizens or "of foreign parents." *Id.* at 674. The Supreme Court's decision in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), holding that African-Americans were ineligible to become citizens of the United States, represented a notable and ultimately much-reviled departure from the principle of *jus soli*.

60. Following the Civil War, Congress sought to repudiate forever the logic of *Dred Scott* and guarantee that the citizenship of people born in the United States would never be dependent on political whims. Recognizing that "an ordinary act of legislation" would not be sufficient to ensure that "so important a declaration of rights" be preserved indefinitely, Congress wrote birthright citizenship into the Fourteenth Amendment. *Wong Kim Ark*, 169 U.S. at 675; *see also* James C. Ho, *Defining "American,"* 9 Green Bag 2d 359, 360, 368 (2006) (noting attempts to undermine birthright citizenship and observing "*Dred Scott II* could be coming soon to a federal court near you.").

61. Section 1 of the Fourteenth Amendment opens with the guarantee that "[a]ll persons born . . . in the United States, and subject to the jurisdiction thereof," are U.S. citizens at birth. U.S. Const. amend. XIV, § 1 ("Citizenship Clause"). This Amendment reaffirmed "the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents," *Wong Kim Ark*, 169 U.S. at 688, doing so in "the most explicit and comprehensive terms," *id.* at 675.

62. By enshrining this protection in the Constitution with such clear language, the framers "put citizenship beyond the power of any governmental unit to destroy." *Afroyim v. Rusk*, 387 U.S. 253, 263 (1967). The Fourteenth Amendment recognizes the sanctity of citizenship and acknowledges that "[t]he very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship." *Id.* at 268. In light of the Fourteenth Amendment, the government has "no authority . . . to restrict the effect of birth, declared by the constitution to constitute a sufficient and complete right to citizenship." *Wong Kim Ark*, 169 U.S. at 703. Never again would the government be permitted to discriminate against disfavored

classes in deciding which children born in the United States are entitled to citizenship. Absent a constitutional amendment, *Dred Scott* would never again be the law.

63. The only condition placed on this right of citizenship is that the person be "subject to the jurisdiction" of the United States. At the time the Fourteenth Amendment was adopted, "subject to the jurisdiction" was a commonly used phrase with "a clear meaning and scope." Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L.J. 405, 437-40 (2020) (collecting sources). And nearly everyone present in a sovereign's territory, including noncitizens, is subject to that sovereign's power of "governing or legislating," entitled to that sovereign's protection, and thus "subject to the jurisdiction" of that sovereign. *Id.*; *accord, e.g.*, 1 Blackstone's Commentaries on the Laws of England 357 (1st ed. 1765) ("Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth. For, immediately upon their birth, they are under the king's protection; at a time too, when (during their infancy) they are incapable of protecting themselves.").

64. For centuries before the 14th Amendment was enacted, "beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, and the jurisdiction of the English sovereign; and therefore every child born in England of alien parents was a natural-born subject." *Wong Kim Ark*, 169 U.S. at 658 (collecting sources). The Citizenship Clause preserved this ancient understanding as a constitutional promise.

65. Consistent with this history and language, the U.S. Supreme Court held in *Wong Kim Ark* that all persons born within the territorial United States are citizens of this Nation from the moment of birth—regardless of their parents' citizenship status—unless they fit into a

historically recognized exception: (1) "foreign sovereigns or their ministers," (2) noncitizens serving on a "foreign public ship[]," (3) "enemies within and during a hostile occupation of part of our territory," or (4) "children of members of the Indian tribes owing direct allegiance to their several tribes." *Wong Kim Ark*, 169 U.S. at 693. These children, and these children alone, were not "subject to the jurisdiction" of the United States despite being born within its territory.

66. The Court specifically rejected the view that children must be subject to the jurisdiction *only* of the United States in order to enjoy territorial birthright citizenship. *See id.* at 693 ("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."); *id.* at 694 (denying that the Fourteenth Amendment "excludes from citizenship the children, born in the United States, of citizens or subjects of other countries").

67. In addition to enshrining the principle of birthright citizenship, Section 1 of the Fourteenth Amendment also prohibits each state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Supreme Court has clarified that any person deemed to be "within [the] jurisdiction" of a state for purposes of the Equal Protection Clause is necessarily "subject to the jurisdiction" of the United States for purposes of the Citizenship Clause. *See Wong Kim Ark*, 169 U.S. at 687 ("It is impossible . . . to hold that persons 'within the jurisdiction' of one of the States of the Union are not 'subject to the jurisdiction of the United States.'").

68. In *Plyler v. Doe*, 457 U.S. 202 (1982), the Court held that undocumented aliens are "within [the] jurisdiction" of any state in which they are physically present. "That a person's initial entry into a State, or into the United States, was unlawful . . . cannot negate the simple fact of his presence within the State's territorial perimeter." *Id.* at 215. "Given such presence," the

Court explained, "he is subject to the full range of obligations imposed by the State's civil and criminal laws." *Id.* In short, "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful." *Id.* at 211 n.10; *see also The Japanese Immigrant Case*, 189 U.S. 86, 101 (1903) (explaining that an alien who allegedly entered the United States unlawfully "bec[a]me subject in all respects to its jurisdiction"); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (concluding that the Equal Protection Clause protects "all persons within the territorial jurisdiction" of a state).

69. Regardless of the immigration status of their parents, children born in the United States are undoubtedly "subject to the jurisdiction of the United States" at the moment of their birth. Both federal and state governments today extend to children born in the United States—as well as their parents while physically present in the United States—the equal protection of the laws and assert regulatory authority over them. *E.g.,* 1 U.S.C. § 8 (clarifying that the use of the term "person" in "any Act of Congress, or of any ruling, regulatory, or interpretation of the various administrative bureaus and agencies of the United States" "shall include every infant member of the species homo sapiens who is born alive"); *see also* Executive Order 13952, *Protecting Vulnerable Newborn and Infant Children*, 85 Fed. Reg. 62187 (Sept. 25, 2020) ("Every infant born alive, no matter the circumstances of his or her birth, has the same dignity and the same rights as every other individual and is entitled to the same protections under Federal law."); Md. Code Ann., Health-Gen. § 13-111 (providing for screening of newborns); Md. Code Ann., Fam. Law § 9.5-201 (providing that courts have authority to determine custody of children living in the state); Md. Code Ann., Fam. Law § 5-525 (providing for care of children when parents are unable to do so).

70. Many other Supreme Court decisions have reiterated the understanding of the Fourteenth Amendment that persons born in the United States of noncitizen parents nonetheless attain citizenship at birth. *See, e.g.*, *Weedin v. Chin Bow*, 274 U.S. 657, 670 (1927) (explaining that "one born in the United States" becomes "a citizen of the United States by virtue of the *jus soli* embodied in the [Fourteenth] Amendment"); *Hirabayashi v. United States*, 320 U.S. 81, 96 (1943) (noting tens of thousands of Americans of Japanese descent were "citizens because [they were] born in the United States"); *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (noting that a child born in the United States was "of course, an American citizen by birth," despite his parents' "illegal presence"); *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (noting a "child, who, born in the United States, was a citizen of this country," even though parents had "enter[ed] . . . without inspection").

71. The same is true of Fourth Circuit decisions. *See United States v. Carvalho*, 742 F.2d 146, 148 (4th Cir. 1984) (describing a child as "a United States citizen by virtue of her birth in the United States"); *Herrera v. Finan*, 709 F. App'x 741, 743 (4th Cir. 2017) (explaining that the plaintiff "was born in the United States and, thus, is a United States citizen").

72. A federal statute, 8 U.S.C. § 1401(a), safeguards birthright citizenship in language closely resembling that of Section 1 of the Fourteenth Amendment. Section 1401(a) provides that "a person born in the United States, and subject to the jurisdiction thereof," is a "citizen[] of the United States at birth." This longstanding statutory provision traces its origins to the Civil Rights Act of 1866 and was re-enacted as Section 301(a) of the Immigration and Nationality Act of 1952 (the INA), against the backdrop of *Wong Kim Ark* and the consensus interpretation it engendered. *See, e.g.*, S. Rep. 1137, 82d Cong., 2d Sess. 39 (1952) ("All persons born in the United States, including Alaska, Hawaii, Puerto Rico, the Virgin Islands of the United States,

and Guam, and subject to the jurisdiction of the United States, are citizens at birth. The only exceptions are those persons born in the United States to alien diplomats."). Section 1401(a) therefore incorporates the meaning of Section 1's Citizenship Clause expressed in *Wong Kim Ark* and subsequent decisions.

73. The assumption of birthright citizenship permeates federal regulatory law as well, treating proof of birth in the United States as sufficient to establish United States citizenship. For example, the Social Security Administration assigns social security numbers upon proof of U.S. citizenship, which can be established "by submitting a birth certificate or other evidence . . . that shows a U.S. place of birth." 20 C.F.R. § 422.107(d). The Department of State issues passports to U.S. Citizens, a status that can be proved with evidence that the applicant was born in the United States. 22 C.F.R. § 51.42. An employee can establish their authorization to work in the United States by providing "An original or certified copy of a birth certificate issued by a State, county, municipal authority or outlying possession of the United States bearing an official seal." 8 C.F.R. § 274a.2(c)(3). Numerous other provisions throughout the Code of Federal Regulations similarly provide that proof of birth in the United States is sufficient evidence to establish United States citizenship. *E.g.*, 8 C.F.R. § 322.3(b)((iv) (providing that an United States citizen parent seeking to establish citizenship for a child not born in the United States can establish the parent's citizenship by providing the parent's birth certificate.); 20 C.F.R. § 416.1610(a) ("You can prove that you are a citizen or a national of the United States by giving us (1) A certified copy of your birth certificate which shows that you were born in the United States."); 28 C.F.R. § 105.11(a)(2) (providing that a "birth certificate" that "establish[es] that the person was born in the United States" is "proof of Untied States citizenship or nationality" for purposes of aviation security screening); 33 C.F.R. § 125.23(a) (providing that a birth certificate

is most desirable proof of U.S. citizenship for purposes of obtaining a Coast Guard Port Security Card).

The Executive Order

74. On January 20, 2025, President Trump signed an Executive Order entitled "Protecting the Meaning and Value of American Citizenship."

75. The Executive Order declares that "the privilege of United States citizenship does not automatically extend to persons born in the United States" when the person's mother "was unlawfully present in the United States" or when the mother's presence "was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa)," unless the child's father was a United States citizen or lawful permanent resident at the time of the person's birth. Order § 1.

76. The Executive Order provides that, starting with children born 30 days after the date on which the Order was signed (i.e., starting with children born February 19, 2025), "no department or agency of the United States government shall issue documents recognizing United States citizenship, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship" to persons denied citizenship under the Executive Order. *Id.* § 2.

77. The Executive Order further directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to "take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order, and that no officers, employees, or agents of their respective departments and agencies act, or forbear from acting, in any manner inconsistent with this order." *Id.* § 3. And the Order directs the heads of all executive departments and agencies to

"issue public guidance . . . regarding this order's implementation with respect to their operations and activities." *Id.* § 3.

Effects of the Order

78. The Executive Order will have a devastating and chaotic impact.

79. To begin, the Executive Order calls into question the citizenship of countless babies born every day in the United States, thrusting their entire families into turmoil.

80. As the Executive Order itself notes, "United States citizenship is a priceless and profound gift." Order § 1. Loss of citizenship may represent "the total destruction of the individual's status in organized society," *Trop v. Dulles*, 356 U.S. 86, 102 (1958) (plurality); *see also id.* at 124 (Frankfurter, J., dissenting) ("Loss of citizenship entails undoubtedly severe—and in particular situations even tragic—consequences.").

81. The Supreme Court has observed that "nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men." *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

82. The tangible benefits of United States citizenship are "priceless." *Id.* Denying birthright citizenship to the children of noncitizens and depriving them of their constitutionally guaranteed benefits of citizenship will have immediate and dire consequences for newborn children and their families.

83. For example, natural-born citizens are "entitled as of birth to the full protection of the United States, to the absolute right to enter its borders, and to full participation in the political process." *Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53, 67 (2001). Citizens enjoy an unqualified constitutional right to enter, reside, and stay in the United States. *See, e.g., id.*; *Worthy v. United*

States, 328 F.2d 386, 394 (5th Cir. 1964) ("[I]t is inherent in the concept of citizenship that the citizen, when absent from the country to which he owes allegiance, has a right to return, again to set foot on its soil."). Noncitizens do not share that right. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 587 (1952) ("The Government's power to terminate its hospitality [to noncitizens] has been asserted and sustained by this Court since the question first arose.").

84. "[I]n clear words and in manifest intent," *Wong Kim Ark*, 169 U.S. at 693, the Fourteenth Amendment protects those born in the United States from discriminatory and differential treatment, providing everyone the same citizenship regardless of their race, color, or the immigration status or national origin of their parents. Yet the Executive Order defies this constitutional mandate, discriminating against countless children born in the United States based solely on their parents' immigration status. The Executive Order thus purports to impose second-class status on a class of children born in the United States, harming not only them but their entire families.

85. A newborn denied the guarantees of United States citizenship may have no right to stay in or re-enter their native land. Absent citizenship, children born to noncitizens, including the children of Individual Plaintiffs and of Members, may be subject to deportation. These children may therefore be forced to leave the country of their birth to travel to a place where they have never been, where they may have no family ties, and, in the worst cases, where they may face torture, persecution, and death.

86. By denying citizenship—and the accompanying right to remain in the United States—to newborn babies, the Executive Order threatens to tear families apart. Parents (such as those with a pending asylum application) may have a legal basis to reside in the United States, and a newborn's older siblings will often be United States citizens by birth. But under the

Executive Order, the newborn would not have that same status. This could lead to an unconscionable situation in which some members of a family will have a right to remain in the United States while a U.S.-born child will not. Parents could be separated from their children, denied the ability to travel with their newborns, and forced to make life-changing financial and logistical adjustments to protect their children from danger. Ultimately, parents may be forced to make an impossible choice between returning to a country where they face persecution and death, or remaining in the United States while their U.S.-born child is deported.

87. If denied United States citizenship, U.S.-born babies may lack citizenship in *any* country, leaving them stateless, "a condition deplored in the international community of democracies." *Trop*, 356 U.S. at 101 (plurality). Without a homeland, a stateless person's "very existence is at the sufferance of the country in which he happens to find himself." *Id*. at 101.

88. The risk of statelessness is particularly high for children born to parents who are seeking asylum. Many asylum seekers have been persecuted and tortured by the governments of their home countries, and as such do not have access to or feel safe seeking services from a consular office of their country of origin in the United States. Furthermore, it is common practice for immigration attorneys to advise their clients that availing themselves of consular services from their country of origin could harm their asylum case. As a result, many asylum seekers feel they cannot request citizenship for their children from their country of origin. This will have the effect of rendering the children of many asylum seekers stateless, meaning they would not have citizenship from any country. Parents will then have to seek additional immigration representation and support for their children to explore alternative protections. This will increase financial costs, create major logistical burdens, and disrupt their plans to assimilate their families into the United States.

89. Pregnant Individual Plaintiffs and other Members are experiencing stress and anxiety knowing their children may not become U.S. citizens by birth. Immigration insecurity leads mothers and pregnant women to experience significant stress and experience worse physical and mental health outcomes. Such mothers give birth to babies with lower birthweight and poorer health. Elizabeth U. Cascio, Paul Cornell, Ethan G. Lewis, *The Intergenerational Effects of Permanent Legal Status*, NBER Working Paper No. 32635 (2024), https://www.nber.org/system/files/working_papers/w32635/w32635.pdf. The threat of deportation of loved ones also leads to worse mental health outcomes. Amy L. Johnson et al, *Deportation threat predicts Latino US citizens and noncitizens' psychological distress, 2011 to 2018*, 121 PNAS e2306554121 (2024), https://www.pnas.org/doi/10.1073/pnas.2306554121.

90. Beyond potential immigration consequences, the Executive Order will deny children born in the United States to noncitizen parents, including children born to Individual Plaintiffs and Members, other privileges and responsibilities of U.S. citizens. That denial will harm not only the children, but their entire families.

91. Individual Plaintiffs and Members have spent time and energy planning for the birth of their children; but those plans have been thrown into disarray by the Executive Order, which creates legal uncertainty about their children's immigration status. Individual Plaintiffs and Members want their children to be able to pursue the American dream and participate in the full civic and political life of this Nation, but those hopes have been replaced with fear and doubt.

92. Ending birthright citizenship would also disqualify children born in the United States to noncitizen parents, including children born to Individual Plaintiffs and Members, from a host of federal, state, and local benefits provided to ensure that all citizens of this country can

succeed. While noncitizens are often ineligible to obtain such benefits in their own right, *see* 8 U.S.C. § 1611(a), U.S. citizen children are generally eligible for such benefits and noncitizen parents can apply for them on behalf of a citizen child.

93. For instance, the Supplemental Nutrition Assistance Program ("SNAP") provides critical nutrition support for low-income children who are citizens, even if their parents are noncitizens. *See* U.S. Dep't of Agric., *Supplemental Nutrition Assistance Program: Guidance on Non-Citizen Eligibility* 22 (2011), https://perma.cc/LY4H-KUWJ. The same is true of welfare programs like Temporary Assistance for Needy Families ("TANF"). *See* Dep't of Health & Hum. Servs., *Policy Guidance Regarding Inquiries Into Citizenship, Immigration Status, and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits* 5 (2006), https://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/origin/triagencyq&as_pdf.pdf. Crucial healthcare programs like the Children's Health Insurance Program ("CHIP"), the Affordable Care Act ("ACA"), and Medicaid also provide coverage to citizen children of noncitizen parents. *See, e.g., id.* at 2-3 (parent citizenship "irrelevant" to child's eligibility for CHIP or Medicaid); 26 U.S.C. § 5000A(d)(3); 45 C.F.R. § 155.20 (ACA limited to those "lawfully present"). The Executive Order undermines the ability of Individual Plaintiffs and Members to rely on these programs and others to support their families.

94. As they grow up, children deprived of birthright citizenship will be unable to exercise their right to vote and otherwise participate fully in U.S. democracy by, for example, donating to a political campaign or political party whose policies they support. *See* 8 U.S.C.

§ 611; 52 U.S.C. § 30121. And they will not have the opportunity to serve on a jury, removing their voices from the representative community that makes important decisions in the courts.

95. Children denied birthright citizenship may be denied the legal authority to work in the United States or go to certain universities, hampering their productivity and ability to contribute to this country's advances in science, technology, and industry. *See* Sam Fulwood III & Marshall Fitz, Ctr. For Am. Progress, *Less than Citizens: Abolishing Birthright Citizenship Would Create A Permanent Underclass in our Nation* 7 (May 2011), https://www.americanprogress.org/wp-content/uploads/sites/2/2012/12/55174537-Less-than-Citizens.pdf. "Repealing birthright citizenship would severely reduce the ability of the children of immigrants to thrive educationally, and would make the idea of college graduation, let alone job retention in critical fields such as science or engineering, virtually impossible." *Id.; accord, e.g.,* Zachary Liscow and William G. Woolston, *Does Legal Status Matter for Educational Choices? Evidence from Immigrant Teenagers*, 20 Am. L. & Econ. Rev. 318, 318 (2018), (finding non-citizen children are more than twice as likely to drop out of high school as their U.S. citizen siblings); Kalena E. Cortes, *Achieving the DREAM: The Effect of IRCA on Immigrant Youth Postsecondary Educational Access*, 103 Am. Econ. Rev. 428, 432 (2013) (finding children with stable, long-term immigration status are also more likely to attend college). Parents of these children had every expectation and hope that their child will have full access to the American dream, and these parents face psychological harm knowing that their child may be deprived of the opportunities that other U.S.-born children have.

96. Indeed, "Americans whose parents were undocumented immigrants or in temporary immigration status have joined the U.S. military, founded prosperous businesses, served the United States as diplomats, and served in high political office....... [O]ne can fairly say

that the birthright citizenship rule has been one of the factors in the rise of the United States to superpower status, as birthright citizens have been a social and economic asset." Margaret D. Stock, *Is Birthright Citizenship Good for America?*, 32 Cato J. 139, 149 (2012), https://www.cato.org/sites/cato.org/files/serials/files/cato-journal/2012/1/cj32n1-10.pdf.

97. In light of the importance of citizenship to a person's status in both the national and international community, and the many benefits that flow from that status, it is vital that a person's citizenship be clear and unmistakable. Yet the Executive Order purports to cloud the certainty that the Constitution provides, inflicting serious costs of uncertainty on the newborns, their families, and society as a whole. Families will be left fearful that the citizenship guaranteed by federal law will not be honored by federal officers.

98. With its unprecedented departure from the well-settled understanding of birthright citizenship, the Executive Order throws long-established systems into chaos, leaving families to navigate a regime that is not equipped for determining citizenship of children born in the United States. For example, United States citizens have long been able to use their birth certificate as proof of U.S. citizenship, but the Executive Order now raises the specter that something more will be needed—although it is not clear what. And all 50 states participate in the Social Security Administration's Enumeration at Birth program, which allows parents to complete applications for their newborns' Social Security numbers as part of the hospital birth registration process. *See* Social Security Admin., Bur. of Vital Statistics, State Processing Guidelines for Enumeration at Birth (Nov. 2024), https://www.ssa.gov/dataexchange/documents/Updated%20State%20Processing%20Guidelines%20for%20EAB.pdf. These processes are not designed to capture or determine the immigration status of parents.

99. The Executive Order departs from these settled regulatory practices, directing Defendants to adopt "regulations and policies" consistent with the order within 30 days. This requires agencies to disregard their existing regulations without complying with the process required by the Administrative Procedure Act, 5 U.S.C § 553. The Executive Order places these processes in doubt, leaving all new parents and expecting parents—regardless of their immigration status—with an uncertain path for obtaining social security numbers or passports for their newborns and otherwise proving or establishing their child's citizenship status. Further, eliminating the fact of U.S. birth as proof of citizenship will add billions of dollars a year in extra bureaucratic costs as more complicated citizenship-verification methods will need to be designed and followed. Stock, *supra*, at 153 (calculating it will cost an additional $2.4 billion per year).

100. Visiting all of these harms on children simply as a consequence of their birth to noncitizen parents "does not comport with fundamental conceptions of justice." *Plyler*, 457 U.S. at 220.

CAUSES OF ACTION

Count I
Ultra Vires Action Under Fourteenth Amendment

101. Plaintiffs restate and re-allege all preceding paragraphs as if fully set forth herein.

102. Executive actions, including Executive Orders issued by a President, can be challenged as *ultra vires* when they violate the Constitution and the laws of the United States. *See, e.g.*, *Trump v. Hawaii*, 585 U.S. 667 (2018); *Chamber of Commerce v. Reich*, 74 F.3d 1322, 1327-28 (D.C. Cir. 1996).

103. The Constitution guarantees that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

104. By virtue of this constitutional provision, all children who will be born to Individual Plaintiffs and Members in the United States will be United States citizens.

105. The Executive Branch has no power to unilaterally amend or repeal the Fourteenth Amendment and no power to disobey a clear constitutional command.

106. Specifically, Defendants lack the authority to interfere with, deny, or fail to recognize citizenship that is granted by the United States Constitution, and they lack the authority to deny any of the rights, benefits, and privileges that accompany that citizenship. By refusing to recognize constitutionally granted citizenship, and by taking actions that are inconsistent with that citizenship, Defendants' actions described above violate the Constitution and are *ultra vires*.

107. Defendants' violation is causing ongoing, irreparable harm to Individual Plaintiffs and Members, their family members, CASA, and ASAP, for which no other adequate remedy exists.

108. Plaintiffs have no adequate remedy at law.

Count II
***Ultra Vires* Action Under 8 U.S.C. § 1401(a)**

109. Plaintiffs restate and re-allege all preceding paragraphs as if fully set forth herein.

110. Section 1401 of Title 8 of the United States Code provides that every "person born in the United States, and subject to the jurisdiction thereof," "shall be nationals and citizens of the United States at birth."

111. The Executive Branch has no power to unilaterally amend or repeal an Act of Congress and no power to disobey a clear statutory command.

112. This statute reinforces the Fourteenth Amendment and guarantees that all children who will be born to Individual Plaintiffs and Members in the United States will be United States citizens.

113. Defendants lack the authority to disregard an Act of Congress that recognizes citizenship. By refusing to acknowledge citizenship that has been recognized by an Act of Congress, and by taking actions that are inconsistent with that citizenship, Defendants actions described above violate 8 U.S.C. § 1401 and are *ultra vires*.

114. Defendants' violation is causing ongoing, irreparable harm to Plaintiffs, for which no other adequate remedy exists.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and grant the following relief:

a. A declaration that the Executive Order entitled "Protecting the Meaning and Value of American Citizenship," is unconstitutional and invalid on its face;

b. A declaration that the Executive Order is unconstitutional and invalid as applied to Plaintiffs;

c. A declaration that the Executive Order violates 8 U.S.C. § 1401(a) on its face;

d. A declaration that the Executive Order violates 8 U.S.C. § 1401(a) as applied to Plaintiffs;

e. A declaration that all children born in the United States to noncitizen parents covered by the Executive Order are citizens of the United States and are entitled to all of the rights and privileges that such status provides, regardless of the immigration status of their parents;

f. A preliminary and permanent injunction enjoining Defendants from enforcing the Executive Order, or taking any other action that fails to recognize citizenship to individuals born within the United States to noncitizens covered by the Executive Order;

g. An award to Plaintiffs of reasonable costs and attorneys' fees; and

h. Such other and further relief that this Court may deem fit and proper.

January 21, 2025

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**Motion for admission pro hac vice forthcoming.*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CASA, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Defendants.

Case No. 8:25-cv-00201-DLB

MOTION TO STAY INJUNCTION PENDING APPEAL

Pursuant to Federal Rule of Civil Procedure 62, Defendants respectfully move for a partial stay pending appeal of the Court's February 5, 2025 Order, ECF No. 66, which preliminarily enjoins Defendants on a nationwide basis from implementing and enforcing Executive Order No. 14160, Protecting the Meaning and Value of American Citizenship. Defendants request that the Court stay the injunction's nationwide application so the injunction provides relief only to the individual plaintiffs and the members of the organizational plaintiffs who have been identified in Plaintiffs' complaint or preliminary injunction papers. The reasons for this motion are set forth in the accompanying memorandum.

Dated: February 11, 2025

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC., *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No. 8:25-cv-00201-DLB

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 62, Defendants respectfully move for a partial stay pending appeal of the Court's February 5, 2025 Order, ECF No. 66, which preliminarily enjoins Defendants on a nationwide basis from implementing and enforcing Executive Order No. 14160, Protecting the Meaning and Value of American Citizenship (Jan. 20, 2025) ("EO"). In particular, the Court should stay the injunction's nationwide application so the injunction provides relief only to the individual plaintiffs and the members of the organizational plaintiffs who have been identified in Plaintiffs' complaint or preliminary injunction papers.[1]

Defendants' arguments that the Court's injunction is overbroad are likely to succeed on appeal because the extension of relief to individuals across the nation who are not properly before the Court violates the well-established principle that judicial remedies "must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 585 U.S. 48, 73 (2018). The equities similarly weigh in favor of staying application of an injunction that intrudes into internal executive branch affairs, preventing Defendants from even taking preparatory steps to implement the EO in the event that it is eventually permitted to take effect, and extends to non-parties who have not demonstrated a likelihood of irreparable harm or entitlement to injunctive relief.

Defendants respectfully request a ruling by the close of business on February 18, 2025. After that time, if relief has not been granted, Defendants intend to seek relief from the U.S. Court of Appeals for the Fourth Circuit.

[1] This includes individuals who have been identified by pseudonym. Consistent with the Court's Order granting leave for the individual plaintiffs to proceed under pseudonym, ECF No. 68, Defendants are not requesting that the individual plaintiffs or members of the organizational plaintiffs described in Plaintiffs' papers be publicly identified, only that they be identified to the Court and Defendants for purposes of issuing and following a tailored injunction, subject to the terms of an appropriate protective order.

ARGUMENT

Courts consider four factors in assessing a motion for stay pending appeal: (1) the movant's likelihood of prevailing on the merits of the appeal, (2) whether the movant will suffer irreparable harm absent a stay, (3) the harm that other parties will suffer if a stay is granted, and (4) the public interest. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970).

I. Defendants Are Likely To Prevail On The Merits Of Their Argument That The Preliminary Injunction Should Be Limited In Scope.

1. As Defendants have explained, nationwide injunctive relief is inappropriate in this case. *See* Defs.' Opp'n to Pls.' Mot. for TRO and Prelim. Inj. at 29-30, ECF No. 40 ("Defs.' PI Opp'n"). A federal court may entertain a suit only by a plaintiff who has suffered a concrete "injury in fact," and the court may grant relief only to remedy "the inadequacy that produced [the plaintiff's] injury." *Gill*, 585 U.S. at 66 (citation omitted). Principles of equity reinforce those limitations, and "[u]niversal injunctions have little basis in traditional equitable practice." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring). Indeed, nationwide injunctions "take a toll on the federal court system," and "prevent[] legal questions from percolating through the federal courts." *Trump v. Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring).

These general principles apply in challenges to "categorical [government] polic[ies]," Mem. Op. at 32, ECF No. 65 ("PI Opinion"), the same as all other cases. *See, e.g.*, *Arizona v. Biden*, 40 F.4th 375, 397 (6th Cir. 2022) (Sutton, C.J., concurring) (rejecting argument that nationwide injunction was necessary to prevent a "patchwork" national policy because that "would make nationwide injunctions the rule rather than the exception with respect to all actions of federal agencies"). And they foreclose any relief in this case to anyone not properly before the Court, *i.e.*,

anyone but the individual plaintiffs and the members of the organizational plaintiffs who have been pseudonymously identified. As one Fourth Circuit panel explained, nationwide injunctions "are plainly inconsistent with th[e] conception of the judicial role and the proper scope of the federal courts' remedial power." *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 257 (4th Cir. 2020) (Wilkinson, J.), *vacated for reh'g en banc*, 981 F.3d 311; *see also Emergency One, Inc. v. Am. Fire Eagle Engine Co., Inc.*, 332 F.3d 264, 270 (4th Cir. 2003) (vacating nationwide injunction).

The Court nonetheless fashioned nationwide relief because it determined that doing so was necessary to provide "complete relief" because one of the organizational plaintiffs—Asylum Seeker Advocacy Project ("ASAP")—has "over 680,000 members" who "reside in every state." PI Opinion at 32. But that is no basis for nationwide relief: the fact that ASAP has a relatively large and geographically diverse membership does not justify awarding relief to large swaths of individuals across the country who are *not* ASAP members, not parties to this case, and "not the proper object of th[e court's] remediation." *Lewis v. Casey*, 518 U.S. 343, 358 (1996).

Indeed, while the Court should at minimum narrow its injunction to cover only members of ASAP and CASA at the time of its preliminary injunction order, even an injunction that extended to unidentified members would be overbroad. For similar reasons as discussed above, equitable principles preclude granting relief to any member who has not been identified in Plaintiffs' filings and agreed to be bound by the judgment. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 401–02 (2024) (Thomas, J., concurring) (noting that "[u]niversal injunctions" as a means of granting relief to an entire association's members are "legally and historically dubious" (citation omitted)). Restricting this type of broad relief would also promote longstanding equitable principles that a party has one opportunity for relief and that the effect of any judgment should be

bidirectional. *Cf. Arizona*, 40 F.4th at 397 (Sutton, C.J., concurring) (explaining the equitable and historical problems with "asymmetric" suits).

"[H]e who seeks equity must do equity," and courts should "be alert" that equity's "peculiar remedial process is in no way abused." *Koster v. (Am.) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 522 (1947). Allowing organizations to seek injunctive relief for hundreds of thousands of unidentified members who would not be bound by the judgment exposes the Defendants to a multiplicity of suits and is fundamentally inequitable. Because the organizational plaintiffs' unidentified members are unknown, it is entirely possible that some of them also belong to other organizations that are challenging the EO, *see, e.g.*, Compl. ¶ 18, *New Hampshire Indonesian Community Support v. Trump*, No. 1:25-cv-00038 (D.N.H. Jan. 20, 2025), ECF No. 1 (plaintiff organization claiming to have over 325,000 members nationwide), and providing relief to all such unidentified members in these circumstances undermines basic principles of preclusion and claim splitting. *See also Alliance*, 602 U.S. at 402 (Thomas, J., concurring) (noting that broad associational standing "subverts the class-action mechanism" by allowing an organization to "effectively bring a class action without satisfying any of the ordinary requirements").

Finally, the Court justified its nationwide injunction on the ground that the EO concerns citizenship, a "national concern that demands a uniform policy." PI Opinion at 32. But again, the mere fact that Plaintiffs challenge a national policy does not nullify traditional equitable principles that militate against providing relief to non-parties. And while the Court refers to the constitutional provision giving the federal government power to establish a "uniform Rule of Naturalization," *id.*, the EO addresses the government's interpretation of the Fourteenth Amendment's provision of citizenship by birth; it does not provide a rule of naturalization. *See, e.g.*, *Miller v. Albright*, 523 U.S. 420, 423 (1998) (plurality opinion) (distinguishing between citizenship by birth and

citizenship by naturalization).

2. The Court's injunction is also overbroad to the extent it enjoins not only enforcement of the EO, but all implementation. As noted below, that causes harm to the government, and it is inconsistent with the well-established principle that "injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted). At minimum, the Court should limit its injunction to permit the government to implement the EO in ways that cause no harm to Plaintiffs, including by taking internal, preparatory steps regarding the EO's application and formulating relevant policies and guidance.

II. The Balance Of Equities, Including The Irreparable Harm Defendants Will Suffer, Favors a Stay.

The balance of the equities likewise favors limiting injunctive relief to the individual plaintiffs and identified members of the organizational plaintiffs. Providing relief beyond that, particularly to individuals in all 50 states who have not demonstrated their entitlement to such relief, conflicts with the principles articulated above and allows "one district court [to] make a binding judgment for the entire country." *Louisiana v. Becerra*, 20 F.4th 260, 263 (5th Cir. 2021). That is especially inappropriate in the context of this litigation, where multiple states have argued that the EO should not be universally enjoined. *See* ECF No. 50 (Tennessee amicus brief); *see also* ECF No. 89-1, *Washington v. Trump*, No. 2:25-cv-0127-JCC (W.D. Wash. Feb. 3, 2025) (amicus brief filed by 18 states supporting Defendants' position).

In addition, an injunction that interferes with the President's ability to carry out his broad authority over immigration matters is "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS v. Legalization Assistance Project of L.A. County Fed'n of Lab.*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers). Indeed, any injunction

that prevents the President from exercising his core authorities is "itself an irreparable injury." *Doe #1 v. Trump*, 957 F.3d 1050, 1084 (9th Cir. 2020) (Bress, J., dissenting) (citing *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

As noted above, the injunction causes further harm to the Defendants because its breadth—applying to all implementation and enforcement—prevents the executive branch as a whole from even beginning the process of formulating relevant policies and guidance for implementing the EO. If Defendants are successful on their appeal and the EO is eventually allowed to take effect, but the injunction is not stayed in its overbroad applications while that appeal is pending, the Defendants will be unable to make preparations necessary to implement the EO, thus further delaying its implementation.[2] Such a delay in effectuating a policy enacted by a politically accountable branch of the government imposes its own "form of irreparable injury." *King*, 567 U.S. at 1303 (Roberts, C.J., in chambers) (citation omitted). This is especially harmful in this context where, as Defendants have explained, the challenged EO is part of a larger immigration policy designed to combat the "significant threats to national security and public safety" posed by unlawful immigration. *See* Defs.' PI Opp'n at 3.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Defendants' opposition to Plaintiffs' motion for preliminary injunction, Defendants respectfully request that this Court stay its preliminary injunction to the extent it extends beyond the individual plaintiffs and the members

[2] The EO is also subject to a nationwide injunction issued by a district court in the Western District of Washington. *See Washington v. Trump*, No. 2:25-cv-0127-JCC, 2025 WL 415165 (W.D. Wash. Feb. 6, 2025). Defendants have appealed that preliminary injunction and filed a motion to stay its overbroad applications—in particular, as it applies to anyone other than the named individual plaintiffs in that case. *See Washington* ECF Nos. 116 & 122. The EO was also enjoined by a district court in the District of New Hampshire on February 10, 2025, but that injunction applies only to the plaintiffs in that case and within that court's jurisdiction. *See* ECF No. 77, *New Hampshire Indonesian Community Support v. Trump*, No. 1:25-cv-00038 (D.N.H. Feb. 10, 2025). The Acting Solicitor General of the United States is currently considering whether to appeal that preliminary injunction order and whether to seek any stay pending appeal.

of the organizational plaintiffs identified in this action. Defendants respectfully request a ruling on this motion no later than the close of business on February 18, 2025, after which time, if relief has not been granted, Defendants intend to seek relief from the Fourth Circuit.

Dated: February 11, 2025

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC., *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No. 8:25-cv-00201-DLB

[PROPOSED] ORDER

The Court, having reviewed Defendants' Motion to Stay Preliminary Injunction Pending Appeal, hereby ORDERS as follows:

The Motion is GRANTED.

The Court STAYS its Order granting Plaintiffs' motion for preliminary injunction, ECF No. 66, except as that preliminary injunction applies to the individual plaintiffs and the members of the organizational plaintiffs who have been identified in Plaintiffs' complaint or preliminary injunction papers.

Dated:

____
Deborah L. Boardman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA, INC., *et al.*,	*	
Plaintiffs,	*	
v.	*	**Civ. No. DLB-25-0201**
DONALD J. TRUMP, *et al.*,	*	
Defendants.	*	

ORDER

On February 5, 2025, the Court granted a nationwide preliminary injunction enjoining the enforcement and implementation of Executive Order 14160, titled "Protecting the Meaning and Value of American Citizenship" (the "Executive Order"). ECF 66. The defendants appealed the preliminary injunction order to the United States Court of Appeals for the Fourth Circuit. They now move for a partial stay of the order pending appeal, ECF 70. Specifically, they ask the Court to "stay the injunction's nationwide application so the injunction provides relief only to the individual plaintiffs and the members of the organizational plaintiffs who have been identified in Plaintiffs' complaint or preliminary injunction papers." ECF 70-1, at 2. They also ask the Court to enjoin only the enforcement of the Executive Order, not the implementation of it. *Id.* at 7. The plaintiffs oppose the motion. ECF 74. The Court declines to narrow the scope of the preliminary injunction pending appeal. The defendants' motion for a partial stay is denied.

"A request for a stay pending appeal is committed to the exercise of judicial discretion." *Doe #1 v. Trump*, 957 F.3d 1050, 1058 (9th Cir. 2020) (citing *Virginian Ry. v. United States*, 272 U.S. 658, 672 (1926)). Courts consider four factors when determining whether to stay an order pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3)

whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Of these factors, "[t]he first two . . . are the most critical." *Id.* The party seeking the stay bears the burden of showing that the circumstances justify an exercise of judicial discretion. *Id.* at 433–34.

The defendants are not likely to prevail on their argument that the preliminary injunction should provide relief only to the individual plaintiffs and the members of the organizational plaintiffs identified in the complaint and the briefing. The Court issued a nationwide injunction for two reasons.[1] ECF 65, at 32. Both remain valid. First, the 680,000 members of the Asylum Seeker Advocacy Project ("ASAP"), a plaintiff organization, reside in all 50 states and several U.S. territories. Many of those members are pregnant, and their unborn children fall within the scope of the Executive Order. A nationwide injunction is appropriate to give ASAP's members effective relief. The fact that similarly situated people who are not members of ASAP also enjoy the benefit of nationwide injunctive relief is no reason to narrow the scope of the injunction. *See Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579 (2017) (declining to stay nationwide injunction enjoining enforcement of immigration policy "with respect to respondents and those similarly situated"); *Roe v. Dep't of Def.*, 947 F.3d 207, 231 (4th Cir. 2020) (affirming nationwide injunction and noting "the equitable power of district courts, in appropriate cases, to issue nationwide injunctions extending relief to those who are similarly situated to the litigants"). Second, the Court found a nationwide injunction was necessary because the Executive Order is a "categorical policy"

[1] The plaintiffs asked the Court to characterize the injunction as "universal" rather than "nationwide." ECF 74, at 3 n.1. The Court's order granting a preliminary injunction applies "throughout these United States." ECF 66, at 2–3. The Court's intent is to enjoin enforcement and implementation of the Executive Order throughout the United States. The nationwide injunction in this case is a universal injunction.

that addresses the citizenship status of people born anywhere in the United States. *See* ECF 65, at 32 (quoting *HIAS, Inc. v. Trump*, 985 F.3d 309, 326 (4th Cir. 2021)). Were the Court to limit the injunction to the plaintiffs and the members of the plaintiff organizations, a person's citizenship status during the pendency of this case would depend on their parents' decision to bring this lawsuit or their parents' membership in one of two voluntary, private organizations. That would make no sense.[2] Citizenship rules should be uniform and consistent across the country. Uniformity and consistency can be ensured only through a nationwide injunction. The Fourth Circuit and other courts of appeal have approved nationwide (or universal) injunctions when there is a need for a uniform national policy. *See, e.g.*, *HIAS*, 985 F.3d at 326–27 (affirming nationwide injunction because plaintiff refugee resettlement organizations resettled refugees "throughout the country" and a limited injunction would "undermine the very national consistency that the Refugee Act is designed to protect"); *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022) (granting preliminary injunction enjoining enforcement of student loan policy because "an injunction limited to the plaintiff States, or even more broadly to student loans affecting the States, would be impractical and would fail to provide complete relief to the plaintiffs" and because suspension of loan payments and interest was "universal"); *Doe #1*, 957 F.3d at 1069–70 (denying stay of nationwide injunction because the plaintiff class was nationwide, "a nationwide injunction [was] necessary to provide the class members with complete relief," and there is a need "for a 'comprehensive and unified' immigration policy" (quoting *Arizona v. United States*, 567 U.S. 387,

[2] If the Court limited the injunction as the defendants request, the result also would be impractical. *Cf. Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022) (granting nationwide preliminary injunction because injunction limited to plaintiff states would be impractical). If the defendants had their way, localities would have to determine whether a newborn's parent is a member of the plaintiff organizations before they issued a birth certificate or granted the child government benefits, and the federal government would have to make the same determination before it issued the child a social security card or passport.

401 (2012))); *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) ("In immigration matters, we have consistently recognized the authority of district courts to enjoin unlawful policies on a universal basis."); *Texas v. United States*, 809 F.3d 134, 187–88 (5th Cir. 2015) (affirming nationwide injunction enjoining immigration policy because "the immigration laws of the United States should be enforced vigorously and *uniformly*" and "there is a substantial likelihood that a geographically-limited injunction would be ineffective" because beneficiaries of the policy "would be free to move among states" (citation omitted)).

The defendants also ask the Court to enjoin only the enforcement of the Order, not the implementation of it. While this case is on appeal, the defendants apparently want to "tak[e] internal, preparatory steps regarding the EO's application and formulat[e] relevant policies and guidance." ECF 70-1, at 6. This request, too, is denied. The Court has found that the plaintiffs established a strong likelihood of success on the merits of their claim that the Executive Order violates the Fourteenth Amendment to the Constitution. Surely, the government has no valid interest in taking internal, preparatory steps to formulate policies and guidance on an unconstitutional Executive Order.

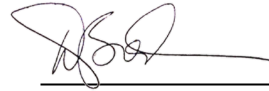
The defendants have not made a strong showing that they are likely to succeed on their claim that the Court erred by granting a nationwide injunction that enjoins the enforcement and the implementation of the Executive Order.

The defendants also have not shown that they will be irreparably injured without a partial stay. They claim that "any injunction that prevents the President from exercising his core authorities is 'itself an irreparable injury.'" ECF 70-1, at 6–7 (quoting *Doe #1*, 957 F.3d at 1084 (Bress, J., dissenting)). The President certainly has the core authority to issue Executive Orders. But the President has no authority to issue an Executive Order that purports to rewrite the

Constitution and that ignores 125 years of Supreme Court precedent. The President may not overrule the Constitution "by executive fiat." *See E. Bay Sanctuary Covenant*, 932 F.3d at 779. The defendants have not shown that they will be irreparably harmed by a nationwide injunction that maintains the status quo of citizenship by birth.

The defendants' motion for a partial stay pending appeal, ECF 70, is DENIED.

Date: February 18, 2025



Deborah L. Boardman
United States District Judge

No. 25-1153

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CASA, INC. et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Maryland, Case No. 8:25-cv-00201
Before the Honorable Deborah L. Boardman

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INTRODUCTION

Birthright citizenship is at the core of this Nation's promise that "each person is born equal, with no curse of infirmity, and with no exalted status, arising from the circumstance of his or her parentage." Walter Dellinger, *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 349 (1995); *see also* The Declaration of Independence (U.S. 1776) (proclaiming, as a "self-evident" "truth," that "all men are created equal"). From the Founding to today, citizenship has been the birthright of nearly everyone born in the United States, regardless of the immigration status of their parents. Birthright citizenship is a "priceless treasure" that fuels the American dream. *Fedorenko v. United States*, 449 U.S. 490, 507 (1981).

The Supreme Court broke that promise in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), denying citizenship to African-Americans born in the United States. As Abraham Lincoln put it, the reasoning of that decision made "a mere wreck" and "mangled ruin" of "our once glorious Declaration." Abraham Lincoln, Address at Springfield, Ill. (June 26, 1857). To correct the shameful *Dred Scott* decision, the people of this country ratified the Fourteenth Amendment. Its Citizenship Clause ensures that children born on our soil are citizens by birth. U.S. Const. amend XIV, § 1. More than 125 years ago, the Supreme Court held that the Citizenship Clause means what it says and guarantees birthright citizenship, subject to narrow common law exceptions, regardless of the immigration status of a child's parents. *United States v. Wong Kim Ark*,

169 U.S. 649 (1898). And in 1940, Congress codified that understanding in a federal statute. 8 U.S.C. § 1401(a).

This case is about President Trump's attempt to break the promise of birthright citizenship again. Shortly after taking office, he issued an Executive Order titled "Protecting the Meaning and Value of American Citizenship," which purports to reinterpret the Citizenship Clause to deny birthright citizenship to many children based on their parents' immigration status. The order is blatantly unlawful. It conflicts with binding Supreme Court precedent, the plain text of the Citizenship Clause, the plain text of a federal statute, and more than a century of executive practice. Plaintiffs brought this lawsuit to prevent the Executive Order from denying newborns the citizenship to which they are legally entitled. Finding that Plaintiffs had "easily" met the standard for a preliminary injunction, the district court enjoined Defendants "from implementing and enforcing the Executive Order" anywhere in the country. Add. 5.

Defendants now move this Court for a "time-sensitive" stay of the district court's nationwide injunction and have set an arbitrary deadline of February 27 for the Court to rule. Mot. 2. But there is no emergency. At this stage, Defendants do not challenge the district court's holding that the Executive Order is likely unconstitutional. And Defendants will not be harmed by continuing to respect the long-settled meaning of the Citizenship Clause, as they have for well over a century, while this litigation proceeds. Their stay motion should be denied on that basis alone.

In any event, Defendants are not likely to succeed on the merits of their arguments for narrowing the preliminary injunction. This Court's binding precedent establishes that nationwide injunctions can be appropriate in certain circumstances. And if any case requires nationwide relief, it is this one.

BACKGROUND

The Citizenship Clause of the Fourteenth Amendment provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States." U.S. Const. amend. XIV, § 1. In *Wong Kim Ark*, the Supreme Court held that the Citizenship Clause "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes." 169 U.S. at 693. In 1940, Congress codified *Wong Kim Ark*'s holding in 8 U.S.C. § 1401(a), which likewise provides that "a person born in the United States, and subject to the jurisdiction thereof" is a "citizen[] of the United States at birth."

On January 20, 2025, President Trump issued his Executive Order. *See* Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025). The Order proclaims that the Citizenship Clause should henceforth be interpreted not to extend birthright citizenship

to (1) children whose mothers are unlawfully present in the United States and whose fathers are neither lawful permanent residents nor citizens, and (2) children whose mothers are lawfully but temporarily present in the United States and whose fathers are neither lawful permanent residents nor citizens. Order § 1. The Order sets no effective date for that new interpretation of the Fourteenth Amendment, and it is unclear that any interpretation of the Constitution could be cabined to apply only prospectively. *Danforth v. Minnesota*, 552 U.S. 264, 286 (2008) ("Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense." (quoting *Am. Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 201 (1990) (Scalia, J., concurring in the judgment)). The Order directs federal agencies to stop recognizing the citizenship of covered children starting February 19, 2025, *id.* § 2, and to issue guidance on implementing the order by the same date, *id.* § 3.

Individual Plaintiffs are Maribel, Juana, Trinidad Garcia, Monica, and Liza. All five Individual Plaintiffs are pregnant, reside in the United States, and fear that their children will be denied United States citizenship under the Executive Order based on their immigration statuses and those of their children's fathers. Plaintiffs CASA and ASAP are immigrant-rights organizations with hundreds of thousands of members. Among those members are thousands of people, in all 50 states, who fall into the

categories of parents covered by the Executive Order and who are likely to give birth to a child in the United States in the near future.

Members of ASAP and CASA, like Individual Plaintiffs, fall into a variety of immigration statuses. Many are in the country legally, including those with pending asylum claims, pending applications for permanent residency, or Temporary Protected Status. Others are undocumented people who have lived in the United States for years. Many have older children who are U.S. citizens. But now the Executive Order threatens to deny their future children the birthright citizenship that the Constitution guarantees.

On January 21, Plaintiffs filed this lawsuit and moved for a preliminary injunction seeking to enjoin implementation and enforcement of the Executive Order. On February 5, following a hearing that same day, the district court issued an order and accompanying opinion granting the preliminary injunction. Add. 1–35.

The district court held that "[t]he plaintiffs easily have met the standard for a preliminary injunction." Add. 5. First, there is "a very strong likelihood of success on the merits." *Id.* The Executive Order's attempt to reinterpret the Citizenship Clause "contradicts the plain language of the Fourteenth Amendment and conflicts with 125-year-old binding Supreme Court precedent." Add. 14. Plaintiffs also demonstrated significant irreparable harm. Absent an injunction, they "will face instability and uncertainty about the citizenship status of their newborn babies, and their children born on U.S. soil will be denied the rights and benefits of U.S. citizenship." Add. 32–33. The balance of equities and the public interest likewise "weigh very strongly" in Plaintiffs'

favor. Add. 33. The district court therefore issued a nationwide injunction against implementation or enforcement of the Executive Order.[1] As to the scope of the injunction, the district court reasoned that "[o]nly a nationwide injunction will provide complete relief to the plaintiffs," given that "ASAP's members reside in every state and hundreds of them expect to give birth soon."[2] Add. 35. A nationwide injunction was also appropriate to maintain the uniformity of United States citizenship. *Id.*

Six days later, on February 11, Defendants filed a motion in the district court seeking to stay the injunction in part. Add. 100–07. Defendants did not contest the district court's grant of a preliminary injunction on the merits. Instead, they challenged only the scope of the injunction. They argued that the injunction should be limited to "the individual plaintiffs and the members of the organizational plaintiffs who have been identified in Plaintiffs' complaint or preliminary injunction papers." Add. 101. On February 18, the district court denied Defendants' stay motion. Add. 109–13. The district court explained that Defendants "have not made a strong showing that they are likely to succeed on their claim that the [district court] erred by granting a nationwide

[1] A proposed amicus brief from several nonprofit organizations incorrectly suggests that the district court enjoined the President. *See* Amicus Br. of America's Future et al., ECF 21, at 2. In fact, the district court entered the preliminary injunction against all Defendants except the President. Add. 2–3.

[2] The district court described the injunction as "nationwide," while also clarifying that it is "universal." *See* Add. 110 n.1. By whatever label, the district court's injunction applies both everywhere in the country and to nonparties who are similarly situated to Plaintiffs. This brief refers to the injunction as "nationwide" in that same sense.

injunction that enjoins the enforcement and the implementation of the Executive Order" and that Defendants "also have not shown that they will be irreparably injured without a partial stay." Add. 112.

On February 19, Defendants filed their stay motion in this Court. They request a decision by February 27. Mot. 2. The Court ordered Plaintiffs to respond on or before February 24. ECF 11.

STANDARD OF REVIEW

A court considers four factors when deciding whether to grant a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (internal quotation marks omitted).

ARGUMENT

I. Defendants Will Suffer No Harm in the Absence of a Stay.

A nationwide injunction preserving the status quo as it has existed for well over a century will further the public interest without harming the government. Stays pending appeal are designed to address "the dilemma" that arises "when there is insufficient time to resolve the merits and irreparable harm may result from delay." *Nken*, 556 U.S. at 432. Accordingly, to obtain a stay, a movant must show they will be irreparably injured absent relief. *Id.* at 434 (explaining that merely showing "some

possibility of irreparable injury fails to satisfy the second factor" (internal quotation marks and citation omitted)). Here, Defendants have shown no harm from the district court's nationwide injunction, so their stay motion necessarily fails. *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 929 (2024) (Kavanaugh, J., concurring) ("If the moving party has not demonstrated irreparable harm, then [courts] can avoid delving into the merits.").

For well over a century, the Executive Branch has consistently recognized and honored the birthright citizenship of the categories of children covered by the Executive Order. Defendants cannot show that they will suffer any harm, much less irreparable harm, from an injunction that merely requires them to continue complying with the settled interpretation of the Citizenship Clause during the pendency of this litigation. Stays that disrupt the status quo are disfavored, and although the status quo may sometimes be difficult to define, it is obvious here in light of the many decades of consistent practice before the Executive Order. *See League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (defining the status quo as "the last uncontested status between the parties which preceded the controversy").

Defendants also cannot show harm from the injunction given the high probability that the Executive Order is unlawful, under both the Citizenship Clause and 8 U.S.C. § 1401(a). Defendants do not directly contest the unlawfulness of the Executive Order in their motion to stay. Mot. 2 (stating that Defendants plan to wait for their merits briefing to defend the constitutionality of the Executive Order). And as the district court concluded, Defendants are not harmed by an injunction preventing

them from "'enforcing restrictions likely to be found unconstitutional.'" Add. 33 (quoting *Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 191 (4th Cir. 2013)).

If anything, the injunction will benefit Defendants and serve the public interest by preventing Defendants from wasting time and taxpayer dollars on implementing, even in part, an Executive Order that plainly violates the Constitution. Indeed, because both the federal government and the states have operated on the assumption of birthright citizenship for so long, implementing the Order would be unworkable, calling into question what sort of documentation would establish citizenship for all Americans, not just children covered by the Order. Allowing the Order to go into effect only in part would cause even more chaos, requiring governments at the local, state, and federal level to ascertain whether a person is part of this or another lawsuit in order to determine whether their children are citizens. This Court should not exercise its equitable powers to reach such an inequitable result.

Defendants suggest that the injunction harms them by "prevent[ing] the President from carrying out his broad authority over and responsibility for immigration matters." Mot. 20. That argument is triply flawed. First, this is not a case about immigration. It concerns the rights of natural-born U.S. citizens. Second, reinterpreting the Fourteenth Amendment in derogation of binding Supreme Court precedent is not among the President's powers over immigration. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Third, it is Congress, not the President, that has "plenary power" to set

immigration rules. *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). Through 8 U.S.C. § 1401(a), Congress adopted the Supreme Court's interpretation of the Citizenship Clause. Like the Constitution, that statute binds the President.

The balance of equities and public interest also support leaving the district court's injunction in place. As the district court explained, in the absence of an injunction, Plaintiffs "will face instability and uncertainty about the citizenship status of their newborn babies, and their children born on U.S. soil will be denied the rights and benefits of U.S. citizenship." Add. 32–33.

Because Defendants cannot show any need for emergency relief, and because the public interest strongly supports the district court's injunction, the Court can deny Defendants' stay motion without reaching the merits of their arguments about the scope of the injunction.

II. Defendants Are Unlikely to Succeed on the Merits of Their Arguments for Narrowing the Injunction.

Like their novel reinterpretation of the Citizenship Clause, which conflicts with more than a century of Supreme Court decisions, Defendants' stay motion has a precedent problem. Defendants contend that nationwide injunctions are categorically barred by Article III and principles of equity, Mot. 9, and that an association with standing to sue on behalf of its members cannot obtain relief for those members without identifying them each individually, Mot. 16. But this Court has affirmed the power of district courts to issue injunctions that extend to nonparties when necessary.

HIAS, Inc. v. Trump, 985 F.3d 309, 326–27 (4th Cir. 2021). And the Supreme Court has recently reaffirmed the ability of associations to sue and obtain relief on behalf of unnamed members. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) ("*SFFA*"). Defendants say that this Court's controlling precedent on nationwide injunctions is "mistaken," Mot. 12, and they do not even cite the Supreme Court's decision on associational standing in *SFFA*. But Defendants' normative musings about the drawbacks of nationwide injunctions and associational standing give this Court no license to depart from controlling authority. The Court should reject Defendants' brazen attempt to rewrite the law.

A. Nationwide Relief Is Appropriate in the Circumstances of This Case.

This Court reviews a district court's decision to grant a preliminary injunction only for an abuse of discretion. *Centro Tepeyac*, 722 F.3d at 188. Defendants therefore can show a likelihood of success on the merits of their arguments for narrowing the injunction only by demonstrating that this Court is likely to hold that the district court abused its "'wide discretion to fashion appropriate injunctive relief in a particular case.'" *Roe v. DOD*, 947 F.3d 207, 231 (4th Cir. 2020) (quoting *Richmond Tenants Org., Inc. v. Kemp*, 956 F.2d 1300, 1308 (4th Cir. 1992)). As the Supreme Court has explained, "[c]rafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents." *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579 (2017) (per curiam)

("*IRAP*"). Because the district court's nationwide injunction fits comfortably within the guidelines set by this Court's precedent, Defendants cannot establish that the district court abused its wide discretion.

Defendants first argue that nationwide injunctions "are fundamentally inconsistent with Article III and basic principles of equity." Mot. 9. But "binding precedent requires this Court to reject the Government's argument" that "an injunction extending relief to those who are similarly situated to the litigants is categorically beyond the equitable power of district courts." *Roe*, 947 F.3d at 232. Both this Court and the Supreme Court have "affirmed the equitable power of district courts, in appropriate cases, to issue nationwide injunctions extending relief to those who are similarly situated to the litigants." *Id.* (citing *IRAP*, 582 U.S. at 580); *see also IRAP*, 582 U.S. at 582–83 (declining to stay injunction that applied "with respect to parties similarly situated" to plaintiffs); *Roe*, 947 F.3d at 232–34 (affirming nationwide injunction that applied to plaintiffs and others similarly situated); *HIAS*, 985 F.3d at 326–27 (affirming injunction that applied to "six non-party resettlement agencies as well as the plaintiffs"). As the district court correctly explained in its opinion, a court "may issue a nationwide injunction so long as the court 'mold[s] its decree to meet the exigencies of the particular case.'" App. 34 (quoting *HIAS*, 985 F.3d at 326).

A broad injunction is appropriate—and, indeed, necessary—given the exigencies of this particular case. *Contra* Mot. 13. Most importantly, "[o]nly a nationwide injunction will provide complete relief to the plaintiffs." Add 35. Generally speaking, "injunctive

relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). But consistent with traditional notions of equity, sometimes a nationwide injunction is in fact necessary to remedy a plaintiff's injury, such as where a court would have "trouble fashioning a remedy that was certain to include all the plaintiffs" because they are "dispersed among the United States." *Florida v. HHS*, 19 F.4th 1271, 1282 (11th Cir. 2021); *see also City of Chicago v. Barr*, 961 F.3d 882, 916 (7th Cir. 2020) (explaining that "universal injunctions can be necessary to provide complete relief to plaintiffs" (internal quotation marks omitted)); *Doe #1 v. Trump*, 957 F.3d 1050, 1069–70 (9th Cir. 2020) (upholding nationwide injunction as necessary to provide complete relief to plaintiffs).

In this case, only a nationwide injunction will prevent irreparable harm to Plaintiffs. An injunction limited to the parties, including all members of ASAP and CASA,[3] would be nearly impossible for the district court and the government to administer and thus "would fail to provide complete relief to the plaintiffs." *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022). Under current law, a birth certificate alone is sufficient proof of United States citizenship, and birth certificates do not list whether a child's parents are members of ASAP or CASA. Requiring children covered by the Executive Order to show that their parents are members of ASAP or CASA in order

[3] Defendants' further argument that the injunction should cover only the pseudonymously identified members of ASAP and CASA conflicts with settled principles of associational standing. Plaintiffs address that argument below. *See infra* Part II.B.

to obtain the benefits of the injunction—and the right to citizenship—would be burdensome, inefficient, and unworkable. Such a system would be especially difficult to manage in the context of birthright citizenship given that ASAP and CASA collectively represent hundreds of thousands of members, with new members joining regularly, "mak[ing] any limits uncertain in their application and effectiveness." *Id.* The stress and confusion that would result from requiring parents to prove that their babies are covered by the injunction would inflict the very harms that the injunction was designed to prevent. Although Plaintiffs raised these issues in opposing Defendants' stay motion in the district court, Defendants offer no response in their motion here.

A nationwide injunction is also appropriate to preserve the equal treatment of newborn babies under the Citizenship Clause. Citizenship is an area where consistency is particularly important, and the injunction preserves nationwide uniformity on this most fundamental right. *See HIAS*, 985 F.3d at 327 (upholding a nationwide injunction because a narrower injunction "would cause inequitable treatment of refugees and undermine the very national consistency that the Refugee Act is designed to protect"). Absent a nationwide injunction, a baby's entitlement to birthright citizenship would depend on whether they had the means to sue. That state of affairs would risk creating a permanent underclass of people deprived of the fundamental right to citizenship, even as similarly situated individuals who came to court obtained that benefit. "To punish babies, much less to proscribe and entirely outlaw them, because of the perceived sins of their parents"—or here, because of whether their parents joined a lawsuit—"is alien

to our moral and ethical tradition." Garrett Epps, *The Citizenship Clause: A "Legislative History"*, 60 Am. U. L. Rev. 331, 371 (2011). Equity cannot countenance that result. The overwhelming weight of authority supports a nationwide injunction in this case.

The Supreme Court's decision granting a partial stay of an injunction in *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921 (2024), is not to the contrary. That case involved a lawsuit by two individuals challenging an Idaho law concerning medical care for minors. The district court enjoined the law entirely, including as to provisions governing forms of care the plaintiffs had not tried to obtain, and the Supreme Court granted a stay limiting the injunction to the plaintiffs and the specific care they sought. *Id.* at 921. Defendants claim the decision "was premised on five Justices' conclusion that universal injunctions providing relief beyond the parties to the case are likely impermissible." Mot. 12. That overstates the import of the separate opinions in *Labrador* and ignores important differences between this case and that one. Although Justice Gorsuch, writing for himself and two other Justices, expressed disapproval of nationwide injunctions generally, *id.* at 927–28 (Gorsuch, J., concurring), Justice Kavanaugh, joined by Justice Barrett, said only that "prohibiting nationwide or statewide injunctions *may* turn out to be the right rule as a matter of law" and that the State was likely to prevail on its arguments about the scope of the injunction in the particular circumstances of that case, *id.* at 931, 933 n.4 (Kavanaugh, J., concurring) (emphasis added).

Factually, this case presents a much stronger basis for a nationwide injunction. It involves a blatantly unconstitutional Executive Order that deprives the children of

many noncitizens across the country of birthright citizenship, and ASAP and CASA represent the interests of hundreds of thousands of members in all 50 states who are affected by that Order. In any event, Justices' predictions about what the Supreme Court might rule in the future with respect to nationwide injunctions do not overrule this Court's precedents holding that nationwide injunctions are in fact permissible.

Defendants' citation to the vacated panel opinion in *CASA de Md., Inc. v. Trump*, 971 F.3d 220 (4th Cir. 2020), carries even less weight. A vacated opinion has "no precedential value." *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1029 n.10 (4th Cir. 1993) (en banc); *see also Hirschfeld v. Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 328 (4th Cir. 2021) (Wynn, J., concurring) ("[V]acated opinions do not even bear the label of dicta.").

Controlling law supports the nationwide injunction entered by the district court here. Defendants offer no basis for staying that relief.

B. At a Minimum, the Injunction Necessarily Applies to All Members of Associational Plaintiffs.

Defendants also attack settled principles of associational standing. They contend that if the injunction is limited to the parties, it should apply only to Individual Plaintiffs and pseudonymously identified members of Associational Plaintiffs—but not their hundreds of thousands of other members. Mot. 14–19. That argument has no basis in law and should be summarily rejected. Any party-specific injunction must cover at least all five Individual Plaintiffs and all members of the two Associational Plaintiffs. But the

Court need not consider this argument because it is clear the district court properly granted nationwide relief.

Although Defendants frame their argument as concerning the scope of relief, it is really an attack on associational standing. As the Supreme Court has recently reaffirmed, an association can "assert 'standing solely as the representative of its members.'" *SFFA*, 600 U.S. at 199 (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)). The association must demonstrate that "just one of the association's members would have standing." *Retail Indus. Leaders Ass'n v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007); *see also, e.g.*, *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (noting the requirement that "at least one identified member had suffered or would suffer harm"). Once that showing is made, the remedy granted to an associational plaintiff is not limited to identified members. Rather, when "the association seeks a declaration, injunction, or some other form of prospective relief," that remedy "will inure to the benefit of those members of the association actually injured." *Warth*, 422 U.S. at 515; *see, e.g., Outdoor Amusement Bus. Ass'n v. DHS*, 983 F.3d 671, 683 (4th Cir. 2020) (explaining that an injunction would "benefit many of" an associational plaintiff's members). No precedent suggests that each injured member must be specifically identified before an injunction can reach them. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 718 (2007) (explaining that plaintiffs sought an injunction "on behalf of Parents Involved members whose elementary and middle school children may be 'denied admission to the high schools of their choice when they apply for those schools in the

future'"); *see also Labrador*, 144 S. Ct. at 932 (Kavanaugh, J., concurring) (noting the "widespread effect" of an injunction issued to "an association that has many members").

Defendants' position is irreconcilable with the Supreme Court's decision in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977). A statewide commission brought that case on behalf of apple growers and producers throughout Washington to challenge the constitutionality of a North Carolina statute. *Id.* at 335. The district court issued a permanent injunction broadly barring enforcement of the statute, and the Supreme Court affirmed in all respects. The Court noted that the plaintiff organization could assert "the claims of the Washington apple growers and dealers who form its constituency." *Id.* at 344–45. At no point did the Supreme Court suggest that the injunction would apply only to specific apple growers who had been identified. Instead, the Court noted that "the request for declaratory and injunctive relief" did not require "individualized proof" and was "properly resolved in a group context." *Id.* at 344. The same is true here.

Accepting Defendants' argument would not just narrow the relief in this case; it would put an end to associational standing—in direct contravention of binding precedent. For an association to have standing in the first place, it must demonstrate that "neither the claim asserted *nor the relief requested* requires the participation of individual members in the lawsuit." *SFFA*, 600 U.S. at 199 (emphasis added) (quoting *Hunt*, 432 U.S. at 343). Plaintiffs made that showing in the court below, as Defendants

do not contest. But Defendants now argue, contrary to *SFFA*, that the Associational Plaintiffs can obtain the relief requested only "by having members join the complaint, by identifying and asserting each affected member's specific claim, or by seeking to certify a class that includes their claims." Mot. 18. That is not an argument about the scope of relief, but rather an argument that associational standing should be eliminated. Again, in light of binding Supreme Court precedent, doing away with associational standing is beyond the powers of this Court.

Defendants' arguments about preclusion principles and class-action procedures are likewise an attack on associational standing, not on the scope of relief. And the Supreme Court, in the very case Defendants cite, aired and rejected similar objections to associational standing. *See Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, 477 U.S. 274, 288–90 (1986) (declining to "abandon settled principles of associational standing" despite arguments about class-action procedures and preclusion). In any event, those objections are wrong. It is ASAP and CASA, not their members, who are parties to this case, and the final judgment here will be res judicata as to ASAP and CASA.[4] *Cf. Taylor v. Sturgell*, 553 U.S. 880, 892–95 (2008) (discussing

[4] Defendants note that not all members of ASAP and CASA are currently pregnant. This is true. But associational standing is premised on the ability of a court to issue an injunction to an entire association, and that injunction will then "inure to the benefit of those members of the association actually injured." *Warth*, 422 U.S. at 515. For that reason, Students for Fair Admissions can obtain relief against Harvard without showing that every single one of its members applied to Harvard. *See SFFA*, 600 U.S. at 199; *see also Parents Involved in Cmty. Schs.*, 551 U.S. at 718–19 (holding that an association had standing even if some members were not injured by the challenged policy).

the "rule against nonparty preclusion" and listing narrow exceptions not applicable here).

At a minimum, any party-specific injunction must apply to all members of ASAP and CASA, including both existing and new members. That is beside the point, however, because the district court properly granted nationwide relief, as explained above.

CONCLUSION

Defendants' motion for a stay pending appeal should be denied.

Respectfully submitted this 24th day of February, 2025.

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I hereby certify that this response complies with the type-volume requirements of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 5,160 words. This response was prepared in 14-point Garamond font, a proportionally spaced typeface, using Microsoft Word.

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I hereby certify that on February 24, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASA, INC., et al., Plaintiffs-Appellees, v. DONALD J. TRUMP, et al., Defendants-Appellants.	No. 25-1153

REPLY IN SUPPORT OF TIME-SENSITIVE MOTION FOR STAY PENDING APPEAL

Plaintiffs here—two associations claiming hundreds of thousands of members nationwide—frankly acknowledge that many of their members lack standing to challenge the Executive Order at issue. They state that their members "fall into a variety of immigration statuses," Opp. 5, and concede that "not all members . . . are currently pregnant," Opp. 19 n.4. But they nevertheless defend as appropriate a nationwide injunction premised on the wide geographic spread of their membership, based on a showing of injuries to sixteen discrete individuals. That injunction is fundamentally inequitable and wholly unnecessary to provide relief to plaintiffs' members.

The injunction should be stayed as it applies beyond the sixteen individuals who established Article III standing, or at a minimum as it applies beyond the individual plaintiffs and the members of the plaintiff associations.

I. The Government is Likely to Succeed on Its Claim that the Nationwide Injunction was Improper.

At the outset, plaintiffs have no persuasive account for why nationwide relief is necessary to provide relief to their members. Plaintiffs acknowledge (Opp. 12-13) the principle that injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). They urge that such nationwide relief is necessary because relief applied to their members would be "unworkable." Opp. 14. But plaintiffs' response outlines a workable approach: requiring the federal government to treat anyone as a citizen who has a birth certificate establishing birth in the United States and who can "show that their parents [were] members of ASAP or CASA" when the suit was filed. *See* Opp. 13. Indeed, that would be the ordinary course in any litigation: individuals covered by an injunction would be identified to the defendants and thus receive the

protection of the injunction. And such claims of unworkability are especially suspect given that plaintiffs acknowledge that out of their purported hundreds of thousands of members, only a tiny fraction could plausibly have any claim to relief—and thus face any harm while this litigation proceeds to final judgment in district court. *See* Opp. 4-5, 19 n.4.

Against this backdrop, there is little substance to plaintiffs' invocation (Opp. 12) of cases from this Court stating that nationwide relief may be appropriate in some circumstances. The question is whether nationwide relief is appropriate *here*, and this Court has not hesitated to reverse injunctions "broader than necessary to afford full relief" to plaintiffs. *Virginia Soc'y for Human Life v. FEC*, 263 F.3d 379, 393 (4th Cir. 2001). And aside from the purported unworkability of a narrower injunction, the only justification plaintiffs offer for the sweeping scope of the injunction is the claim that uniformity of citizenship requires nationwide relief. But as our motion explained (at 13), that rule is overinclusive in multiple respects: on that logic, *any* challenge to a federal policy would warrant a nationwide injunction, as party-specific relief would result in some parties not obtaining relief while "similarly situated

individuals who came to court" receive an injunction. Opp. 14. That, too, is simply the nature of party litigation.

Plaintiffs likewise have no account for why an injunction should reach hundreds of thousands of members nationwide, the overwhelming majority of whom lack Article III standing. Of their "hundreds of thousand of members" for whom they obtained relief, the associations believe "thousands … fall into the categories of parents covered by the Executive Order and who are likely to give birth to a child . . . in the near future." Opp. 4-5; *see* Opp. 19 n.4. They "know" of only a few hundred who are pregnant, Add. 54, ¶ 46, and their complaint identified only sixteen with standing, Mot. 14.

Facing this Article III obstacle, the associations argue (at 16-19) that members who lack standing, and who would be unable to obtain injunctive relief on their own, can be transformed through associational standing into individuals who can obtain injunctive relief. Indeed, they do not stop there: they assert that by bringing suit on behalf of their members, they have created an open-ended entitlement for all *future* members to likewise obtain the benefit of this injunction, insisting that relief must run to "both existing and new members," regardless of whether those individuals are

pregnant or otherwise face any actual injury from the Executive Order. Opp. 19. All this while claiming (at 19-20) that even current members would not be bound by an adverse judgment.

But in any event, plaintiffs cite nothing for the premise that an injunction or other relief can run to individuals who entirely lack standing merely because they are members of an association that includes some other members who do have standing. Indeed, they directly address this issue only in a footnote, *see* Opp. 19 n.4, and the case they cite undermines their position. The Supreme Court in *Warth v. Seldin* explained that associational standing may be appropriate when "it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." 422 U.S. 490, 515 (1975). *Warth* did not suggest that a remedy would be appropriate for members of an association *not* actually injured, and elsewhere made clear that associational standing "does not eliminate or attenuate the constitutional requirement of a case or controversy." *Id.* at 511. Indeed, were it otherwise, associations would be entitled to more injunctive relief than all of their members would collectively be able to obtain on their own. Nothing supports that premise.

Indeed, many of the cases plaintiffs cite are irrelevant or illustrate unremarkable premises about associational standing. In two cases, no injunctive relief was ordered, and in any event those cases stand only for the basic proposition that the presence of one member with standing is sufficient to invoke a court's power to decide the merits. *See Retail Indus. Leaders Ass'n v. Fielder*, 475 F.3d 180, 186 (4th Cir. 2007);[1] *Outdoor Amusement Bus. Ass'n v. Dep't of Homeland Sec.*, 983 F.3d 671, 690 (4th Cir. 2020). Neither suggests that relief for uninjured members is appropriate. Other cases illustrate that sometimes relief affecting non-parties is necessary to give a plaintiff complete relief. In *Parents Involved in Community Schools v. Seattle School District No. 1*, for example, the Supreme Court addressed a challenge to race-based considerations in public school placement, and explained that the possibility that admission to a particular school would not be denied did not "eliminate the injury claimed" and that plaintiffs continued to face the injury of "being forced to compete in a race-based system that may prejudice the plaintiff." 551 U.S. 701, 719 (2007). Similarly, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard*

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[1] *See Retail Indus. Leaders Ass'n v. Fielder*, 435 F. Supp. 2d 481, 484 n.1 (D. Md. 2006) (declining to grant injunctive relief).

College involved issues related to race in college admissions, and at least one member had established standing to challenge the colleges' policies. 600 U.S. 181, 198 (2023). Cases where a remedy for one plaintiff must necessarily affect the entire admissions process do not suggest that an organization can seek or obtain relief on behalf of individuals who entirely lack standing.

Nor do plaintiffs explain why it would be equitable here to apply an injunction to a host of members who plaintiffs themselves cannot identify. They do not claim to know which of their members actually have standing while simultaneously conceding it is only a small fraction of their membership. In other words, the associations do not even know whose claims they purport to press. Plaintiffs attempt to sidestep with the assertion that they—not the members they represent—are the "parties to this case," Opp. 18, but that ignores that the associations themselves have no claims of their own. They can only proceed because they "assert the claims of [their] members." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 342 (1977). Given that plaintiffs themselves do not even know whose claims they "assert"—and thus which of their members they are actually binding to a judgment—it is hardly inappropriate to limit relief to

those members plaintiffs have actually identified with standing. Nor would this require upending associational standing doctrine, as plaintiffs suggest. In many circumstances, all members of an association may be injured, as in *Hunt* itself, or the organization may come forward on behalf of a defined subset of its membership that has standing. But plaintiffs cannot advance no claim of injury on behalf of 99% of their membership and leverage that into relief for all, much less a nationwide injunction premised on the need to protect uninjured members.

II. The Other Factors Warrant a Stay.

As our motion explained (at 20-22), the other stay factors warrant a partial stay. Plaintiffs first claim (at 7) the government has "no harm" from the nationwide injunction. They then go further and claim (at 9) the injunction actually "benefit[s]" the government. Litigants and courts deciding what is best for the Executive Branch would impose its own "form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotation marks omitted). The President is "a representative of the people" and holds "the mandate of the people to exercise his executive power." *Myers v. United States*, 272 U.S. 52, 123 (1926). The government has a substantial interest in carrying out his

policies. Courts play an important role in adjudicating the lawfulness of those policies in justiciable cases, but they irreparably injure our democratic system when they forbid the government from effectuating those policies against anyone anywhere in the Nation.

By contrast, the beneficiaries of the injunction beyond the sixteen identified individuals with standing are not proper parties, and staying relief to those non-parties does not cause any irreparable harm to the sixteen individuals identified in the complaint. *See* Mot. 20.

CONCLUSION

For the foregoing reasons, this Court should stay the district court's nationwide preliminary injunction except as to the sixteen identified individuals.

Respectfully submitted,

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s/ Derek Weiss
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