No. 24A885

In the Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Applicants,

v.

STATE OF WASHINGTON, ET AL.,

Respondents.

STATES OF WASHINGTON, ARIZONA, ILLINOIS, AND OREGON'S RESPONSE TO THE APPLICATION FOR PARTIAL STAY OF THE INJUNCTION

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APPENDIX

State of Washington, et al. v. Donald Trump, et. al.,
No. 2:25-cv-00127-JCC (W.D. Wash.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF LANE POLOZOLA IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTARAINING ORDER

I, Lane Polozola, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge.

2. I am a Managing Assistant Attorney General with the Wing Luke Civil Rights Division of the Washington State Office of the Attorney General. I am one of the attorneys representing Plaintiff State of Washington in the above-captioned matter.

3. The Plaintiff States in this matter filed this lawsuit today, January 21, 2025, and file their Motion for a Temporary Restraining Order concurrently herewith. The Motion seeks a Temporary Restraining Order to enjoin the President's Executive Order of January 20, 2025, entitled "Protecting the Meaning and Value of American Citizenship."

4. Pursuant to Federal Rule of Civil Procedure 65(b) and Western District of Washington LCR 65(b)(1), counsel for the State of Washington called the office of the United States Attorney for the Western District of Washington in advance of filing at 9:30am on January 21, 2025, to notify the office of the Plaintiffs' intention to file the Complaint and Motion for a Temporary Restraining Order in the near term, and to note it for same-day hearing once filed. Washington's counsel spoke with Joe Fonseca with the United States Attorneys' Office, Western District of Washington. Counsel for Washington also emailed the United States Attorney for the Western District of Washington and the Chief of the Civil Division, at 9:32am on January 21, 2025, to notify the office of Plaintiff States' intention to file the Complaint and Motion for a Temporary Restraining Order in the near term. The Civil Chief let the State know that Brad Rosenberg with the Civil Division's Federal Programs Branch would be the State's contact for the case, and the State committed to send copies of the motion for Temporary Restraining Order and all supporting papers via email once filed.

5. Attached hereto as **Exhibit 1** is a true and correct copy of the President Trump's Executive Order, signed January 20, 2025, entitled "Protecting the Meaning and Value of American Citizenship."

6. Attached hereto as **Exhibit 2** is a true and correct copy of the *Agenda47: Day One Executive Order Ending Citizenship for Children of Illegals and Outlawing Birth Tourism*, DonaldJTrump.com, dated May 30, 2023. This webpage was last accessed on January 21, 2025, at https://www.donaldjtrump.com/agenda47/agenda47-day-one-executive-order-ending-citizenship-for-children-of-illegals-and-outlawing-birth-tourism.

7. Attached hereto as **Exhibit 3** is a true and correct copy of an article by Tarini Parti and Michelle Hackman published in The Wall Street Journal, entitled, *Trump Prepares for Legal Fight Over His 'Birthright Citizenship' Curbs* (Dec. 8, 2024). This article was last accessed on January 21, 2025, at https://www.wsj.com/politics/policy/trump-birthright-citizenship-executive-order-battle-0900a291.

8. Attached hereto as **Exhibit 4** is a true and correct copy of the State Department's Foreign Affairs Manual, 8FAM 301.1. This document was accessed on January 21, 2025, at https://fam.state.gov/FAM/08FAM/08FAM030101.html.

9. Attached hereto as **Exhibit 5** is a true and correct copy of the U.S. Department of State's Application for A U.S. Passport Form, DS-11 04-2022 copy. This document was last accessed on January 21, 2025, at https://eforms.state.gov/Forms/ds11_pdf.pdf.

10. Attached hereto as **Exhibit 6** is a true and correct copy of *I am a U.S. citizen: How do I get proof of my U.S. citizenship?*, U.S. Citizenship and Immigration Services, M-560B (October 2013) N copy. This document was last accessed on January 21, 2025, at https://www.uscis.gov/sites/default/files/document/guides/A4en.pdf.

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at Seattle, Washington.

s/ Lane Polozola
LANE POLOZOLA, WSBA #50138
Assistant Attorney General

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
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POLOZOLA DECLARATION

EXHIBIT 1

PRESIDENTIAL ACTIONS

PROTECTING THE MEANING AND VALUE OF AMERICAN CITIZENSHIP

EXECUTIVE ORDER

January 20, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. The privilege of United States citizenship is a priceless and profound gift. 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." That provision rightly repudiated the Supreme Court of the United States's shameful decision in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), which

misinterpreted the Constitution as permanently excluding people of African descent from eligibility for United States citizenship solely based on their race. But the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States. The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not "subject to the jurisdiction thereof." Consistent with this understanding, the Congress has further specified through legislation that "a person born in the United States, and subject to the jurisdiction thereof" is a national and citizen of the United States at birth, 8 U.S.C. 1401, generally mirroring the Fourteenth Amendment's text. 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.

Sec. 2. Policy. (a) It is the policy of the United States that 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: (1) when that person's mother was unlawfully present in the United States and the person's 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 was lawful but temporary, and the

person's father was not a United States citizen or lawful permanent resident at the time of said person's birth.

(b) Subsection (a) of this section shall apply only to persons who are born within the United States after 30 days from the date of this order.

(c) Nothing in this order shall be construed to affect the entitlement of other individuals, including children of lawful permanent residents, to obtain documentation of their United States citizenship.

Sec. 3. Enforcement. (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security shall 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.

(b) The heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities.

Sec. 4. Definitions. As used in this order:

(a) "Mother" means the immediate female biological progenitor.

(b) "Father" means the immediate male biological progenitor.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against

the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

January 20, 2025.

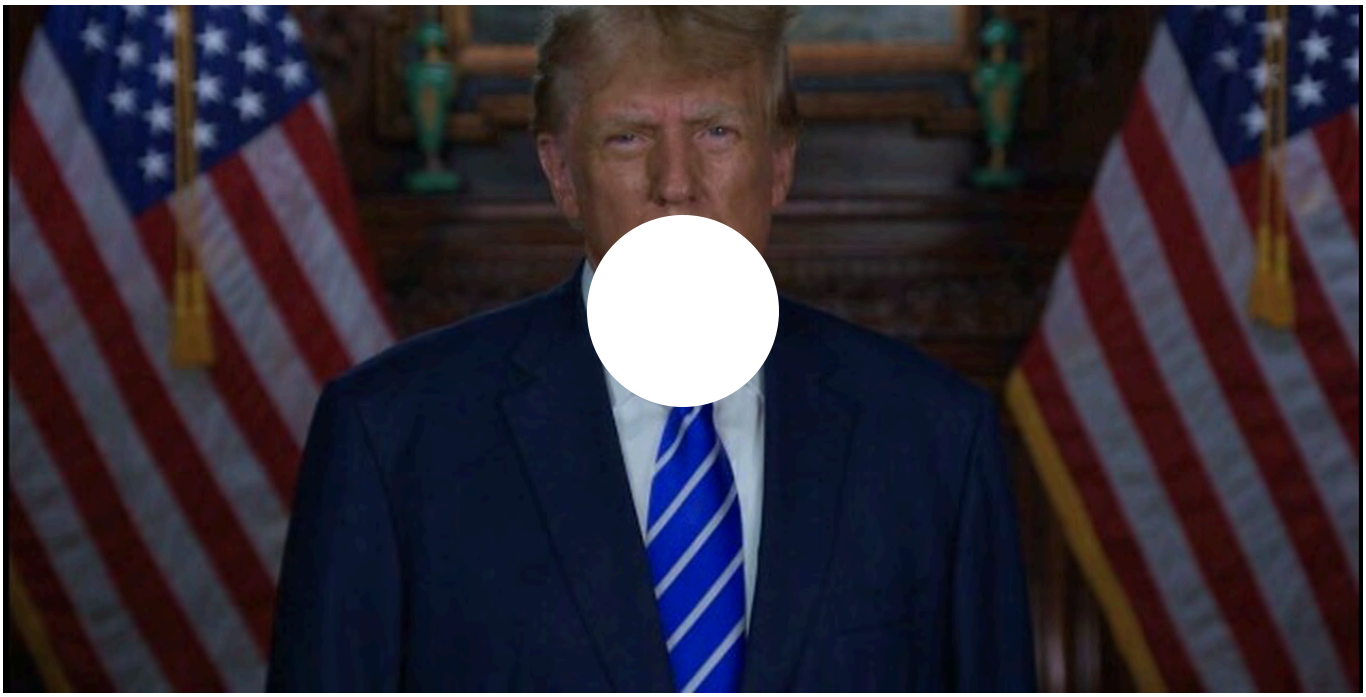
Privacy

POLOZOLA DECLARATION

EXHIBIT 2

Agenda47: Day One Executive Order Ending Citizenship for Children of Illegals and Outlawing Birth Tourism

May 30, 2023



Mar-a-Lago, FL— In a new Agenda47 video, President Donald J. Trump announced his plan to sign an executive order on Day One to end automatic citizenship for

children of illegal aliens.

“As part of my plan to secure the border, on Day One of my new term in office, I will sign an executive order making clear to federal agencies that under the correct interpretation of the law, going forward, the future children of illegal aliens will not receive automatic U.S. citizenship,” President Trump said.

“My policy will choke off a major incentive for continued illegal immigration, deter more migrants from coming, and encourage many of the aliens Joe Biden has unlawfully let into our country to go back to their home countries.”

PRESIDENT TRUMP’S PLAN TO DISCOURAGE ILLEGAL IMMIGRATION BY ENDING AUTOMATIC CITIZENSHIP FOR THE CHILDREN OF ILLEGAL ALIENS AND OUTLAWING BIRTH TOURISM

A DAY-ONE EXECUTIVE ORDER TO SHUT OFF A MAGNET FOR ILLEGAL IMMIGRATION:

- On Day One, President Trump will sign an Executive Order to stop federal agencies from granting automatic U.S. citizenship to the children of illegal aliens.

- It will explain the clear meaning of the 14th Amendment, that U.S. Citizenship extends only to those both born in AND “subject to the jurisdiction” of the United States.

- It will make clear that going forward, the children of illegal aliens will not be granted automatic citizenship, and should not be issued passports, Social Security numbers, or be eligible for certain taxpayer funded welfare benefits.

- It will direct federal agencies to require that at least one parent be a U.S. citizen or lawful permanent resident for their future children to become automatic U.S. citizens.

- This Executive Order ending automatic citizenship for the children of illegal aliens will eliminate a major incentive for illegal immigration, discourage future waves of illegal immigration to exploit this misapplication of citizenship, and encourage illegal aliens in the U.S. to return home.

- The Executive Order will also stop "**Birth Tourism**."

- Through "Birth Tourism," **tens of thousands** of foreign nationals fraudulently enter the U.S. each year during the final weeks of their pregnancies for the sole purpose of obtaining U.S. citizenship for their child.

- Under the current erroneous interpretation, the children of these foreign nationals are then eligible to **receive** a host of government benefits reserved for U.S. citizens, including a myriad of welfare programs and taxpayer funded healthcare, as well as chain migration and the right to vote.

- The Executive Order is part of a larger strategy to fully secure the Southern Border starting on Day One. It will remove a major incentive for illegal aliens and other foreign nationals to come to and remain in the United States in violation of our laws and National sovereignty.

- The announcement of today's Executive Order follows a historical slate of hundreds of executive actions, proclamations, and presidential memorandums on border security and immigration that President Trump implemented while in office to remake the immigration system in the United States for the interest of the American people, including:

- Executive Order Implementing the Travel Ban and Pausing Refugee Admissions

- Executive Order on Border Security and Immigration Enforcement

- Presidential Memorandum on the Extreme Vetting of Foreign Nationals

- Presidential Memorandum to Create a National Vetting Center

- Executive Order to Unleash Interior Immigration Enforcement

- Executive Order to Block Federal Grants to Sanctuary Cities

- Presidential Memorandum Ordering DHS to Train National Guard Troops to Assist with Border Enforcement

- Presidential Memorandum to End "catch and release" at the Border

- Presidential Proclamation Suspending Entry Across Southern Border Outside Ports of Entry to Bar Asylum Access

- Executive Order requiring the U.S. Government to Prioritize the Hiring of U.S. Workers in the Administration of all Immigration Programs

- Executive Order on Aligning Federal Contracting and Hiring Practices with the Interests of American Workers

- Presidential Proclamation Suspending Chain Migration, Visa Lottery, and All Non-Essential Foreign Workers

- Presidential Proclamation on Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System

- Presidential Memorandum to Cut Off Immigrant Access to the Welfare State

PRESIDENT TRUMP'S EXECUTIVE ORDER WILL FINALLY ENSURE THAT THE FEDERAL GOVERNMENT NO LONGER ADHERES TO A PATENTLY INCORRECT INTERPRETATION OF THE 14TH AMENDMENT:

- Constitutional scholars have shown for decades that granting automatic citizenship to the children of illegal aliens born in the United States is based on a patently incorrect interpretation of the 14th Amendment.

- The **14th Amendment** extends federal citizenship to "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof."

- The purpose of the 14th Amendment had nothing to do with the citizenship of immigrants, let alone the citizenship of the children of illegal aliens. Its purpose was to extend citizenship to people newly freed from slavery, whose status was left in question after the infamous case **Dred Scott v. Sandford**.

- The framers of the 14th Amendment made **clear** that "persons born in the United States who are foreigners, aliens [or] who belong to the families of ambassadors or foreign ministers" are not "subject to the jurisdiction" of the U.S.

- For years, open-borders proponents have deliberately misinterpreted "subject to the jurisdiction" in the 14th Amendment to mean merely subject to American law, which is the case for anyone physically present in the United States.

- This twisting of the amendment's meaning and intent has caused America to become one of the few countries in the world to extend citizenship to the children of illegal aliens even if both parents are not citizens nor even legally present in the United States, thus diluting the privileges that Americans are entitled to.

BIDEN'S OPEN BORDER POLICY IS A NATIONAL SECURITY, ECONOMIC, AND HUMANITARIAN DISASTER:

- A record number of illegal aliens crossed the southern border in both 2021 and 2022. In the official numbers alone, there have been over 6.6 million **illegal crossings** since Biden took office—but the true numbers are much higher.

- Biden has deliberately made his border disaster worse by abolishing Title 42 this month, allowing for an additional **400,000** illegal aliens from all corners of the globe to pour across our border each month.

- This invasion is wasting our resources, lowering our citizens' wages, poisoning our communities with lethal drugs, and threatening our national security.

- Illegal immigration **reduces** American workers' wages by $99 to $118 billion each year, with the burden falling most heavily on low-wage workers.

- Thousands of pounds of deadly drugs are pouring across our borders, poisoning over 100,000 of our citizens each year. Fueled in large part by Biden's border disaster, fentanyl poisoning has become the leading cause of death for Americans between the ages of 18 and 45.

- Nearly 100 known or suspected terrorists were **arrested** at the border last year—more than three times the total for the previous five years combined. Border arrests of illegal alien murderers **increased** by over 1,900% and arrests of illegal alien drug traffickers increased by 480% since 2020.

- Biden's open border policy has also created a humanitarian crisis, with migrant deaths reaching a record **high** last year and human smuggling arrests **up** 82% since

2014.

TRANSCRIPT

Joe Biden has launched an illegal foreign invasion of our country allowing a record number of illegal aliens to storm across our borders. From all over the world, they came. Under Biden's current policies even though these millions of illegal border crossers have entered the country unlawfully, all of their future children will become automatic U.S. citizens. Can you imagine?

They'll be eligible for welfare, taxpayer-funded healthcare, the right to vote, chain migration, and countless other government benefits, many of which will also profit the illegal alien parents. This policy is a reward for breaking the laws of the United States and is obviously a magnet, helping draw the flood of illegals across our borders.

They come by the millions and millions and millions. They come from mental institutions, they come from jails-- prisoners, some of the toughest, meanest people you'll ever see. The United States is among the only countries in the world that says that even if neither parent is a citizen nor even lawfully in the country, their future children are automatic citizens the moment the parents trespass onto our soil. As has been laid out by many scholars, this current policy is based on a historical myth, and a willful misinterpretation of the law by the open borders advocates. There aren't that many of them around.

It's an amazing. Who wants this? Who wants to have prisoners coming into our country? Who wants to have people who are very sick coming into our country? People from mental institutions coming into our country? And come they will, they're coming by the thousands, by the tens of thousands.

As part of my plan to secure the border on Day One of my new term in office, I will sign an executive order making clear to federal agencies that under the correct interpretation of the law, going forward, the future children of illegal aliens will not receive automatic U.S. citizenship. It's things like this that bring millions of people to our country, and they enter our country illegally. My policy will choke off a major incentive for continued illegal immigration, deter more migrants from coming, and encourage many of the aliens Joe Biden has unlawfully let into our country to go back to their home countries.

They must go back. Nobody could afford this. Nobody could do this. And even morally it's so wrong. My order will also end their unfair practice known as birth tourism, where hundreds of thousands of people from all over the planet squat in hotels for their last few weeks of pregnancy to illegitimately and illegally obtain US citizenship for the child, often to later exploit chain migration to jump the line and get green cards for themselves and their family members.

It's a practice that's so horrible, and so egregious, but we let it go forward. At least one parent will have to be a citizen or a legal resident in order to qualify. We will secure our borders and we will restore our sovereignty. Starting on Day One, our country will be great again. Our country will be a country again. We'll have borders, we'll have proper education, and we'll put America First.

Thank you.

Join Our Movement

ENTER YOUR EMAIL

ZIP

Follow Us

POLOZOLA DECLARATION

EXHIBIT 3

https://www.wsj.com/politics/policy/trump-birthright-citizenship-executive-order-battle-0900a291

POLITICS | POLICY

Trump Prepares for Legal Fight Over His 'Birthright Citizenship' Curbs

Many constitutional scholars and civil-rights groups have said a change can't be done through executive action

By Tarini Parti Follow *and Michelle Hackman* Follow

Updated Dec. 8, 2024 9:16 pm ET

People riding the ferry to Ellis Island for a naturalization ceremony pass the Statue of Liberty. PHOTO: ALEX KENT/AFP/GETTY IMAGES

WASHINGTON—President-elect Donald Trump's transition team is drafting several versions of his long-promised executive order to curtail automatic citizenship for anyone born in the U.S., according to people familiar with the matter, as his aides prepare for an expanded legal fight.

Trump, who has railed against so-called birthright citizenship for years, said during his first term that he was planning an executive order that would outright ban it. Such an order was never signed, but the issue remained a focus of Trump's immigration proposals during his re-election campaign. He has said he would tackle the issue in an executive order on day one of his second term.

Weeks before he takes office, Trump's transition team is now considering how far to push the scope of such an order, knowing it would almost immediately be challenged in court, according to a transition official and others familiar with the matter. The eventual order is expected to focus on changing the requirements for documents issued by federal agencies that verify citizenship, such as a passport.

Through an executive order or the agency rule-making process, Trump is also expected to take steps to deter what Trump allies call "birth tourism," in which pregnant women travel to the U.S. to have children, who receive the benefit of citizenship. One option on the table is to tighten the criteria to qualify for a tourist visa, according to people familiar with the Trump team's thinking. Tourist visas are most often issued for a period of 10 years, though the tourist can't stay in the U.S. on each visit for longer than six months.

President-elect Donald Trump has said he would tackle birthright citizenship in an executive order on day one of his second term. PHOTO: OLIVIER TOURON/AFP/GETTY IMAGES

Karoline Leavitt, a spokeswoman for the Trump transition, said the president-elect "will use every lever of power to deliver on his promises, and fix our broken immigration system once and for all."

Some on the right have backed Trump's plans and argued that birthright citizenship is a misinterpretation of the 14th amendment, which dates back to the 19th century and in part granted full citizenship to former slaves. They have also criticized birth tourism. Companies in China have attracted attention in recent years for advertising such services, and airlines in Asia even started turning away some pregnant passengers they suspected of traveling to give birth.

"Because you happen to be in this country when your child is born, is not a reason for that child to be a U.S. citizen. It's just silly, and the reliance on it in law is utterly misplaced," said Ken Cuccinelli, a senior fellow at the Center for Renewing America, a pro-Trump think tank, who previously served as deputy secretary of Homeland Security.

Many constitutional scholars and civil-rights groups have said a change to birthright citizenship can't be done through executive action and would require amending the Constitution—a rare and difficult process. The most recent amendment was ratified in 1992, more than 200 years after it was first proposed.

Trump on the campaign trail this year offered more details on what executive action related to birthright citizenship could include compared with his first term, a change that some backers took as an indication that he is more willing to act on the issue.

Trump said he would sign a "day one" executive order directing federal agencies to require a child to have at least one parent be either a U.S. citizen or legal permanent resident to automatically become a U.S. citizen. It would also stop agencies from issuing passports, Social Security numbers and other welfare benefits to children who don't meet the new requirement for citizenship, the president-elect's campaign had said.

"My policy will choke off a major incentive for continued illegal immigration, deter more migrants from coming, and encourage many of the aliens Joe Biden has unlawfully let into our country to go back to their home countries," Trump said in a campaign video.

But the requirement that at least one parent be a U.S. citizen or legal permanent resident would also affect children born to parents who immigrated legally

through visas, excluding them from automatic citizenship.

"The new piece of it is them talking publicly about the mechanism they might try to use to operationalize this unconstitutional plan," said Omar Jadwat, director of the American Civil Liberties Union's Immigrants' Rights Project. "They just can't do that consistent with the constitution."

Portrait of Wong Kim Ark, whose case affirmed birthright citizenship. PHOTO: NATIONAL ARCHIVES/GETTY IMAGES

"Litigation is definitely going to follow," he added.

The Supreme Court affirmed birthright citizenship in its 1898 ruling in U.S. v. Wong Kim Ark. But critics of automatic citizenship argue Trump's proposed citizenship restrictions would be different from that case, which involved a child born to Chinese parents who were legal permanent residents in the U.S.

Trump's allies say a legal fight that makes its way to the Supreme Court is the point of the executive order.

"Force the issue and see what happens," said Mark Krikorian, executive director for the Center for Immigration Studies, a group favoring immigration restrictions that was close to Trump's first administration. Even with the court's conservative majority, Krikorian isn't optimistic about Trump's chances.

"I think they'll probably uphold the current interpretation of the 14th Amendment," he said. "They're going to want to start that court fight as soon as possible to see if they can see it through to the end before the administration ends," he said.

Write to Tarini Parti at tarini.parti@wsj.com and Michelle Hackman at michelle.hackman@wsj.com

Appeared in the December 9, 2024, print edition as 'Trump Set to Target 'Birthright' Citizens'.

Videos

WSJ Opinion: Hits and Misses of the Week

WSJ Opinion: The Wildfires Reckoning Arrives

WSJ Opinion: Biden Goes Out Kicking

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GIFT GUIDES

26 Thoughtful Valentine's Day Gifts

BANKING

How to Choose the Best High-Yield Savings Account for You

BANKING

Here Are Today's Best CD Rates

BANKING

These Savings Accounts Pay Over 4% and Still Let You Write Checks

BANKING

The Best Savings Accounts Pay More than 5%—12 Times the National Average

PERSONAL LOANS

Best Debt Consolidation Loans

Real Estate Insights

Content provided by realtor.com

Sean Hannity and Ainsley Earhardt are Engaged—See Inside Long-Distance Romance

Richard Gere Spends First Holiday in Spain After Quitting U.S. for Good

Ivanka Trump Says She Moved to $24M Miami Mansion To Protect Kids From 'Darkness' of Politics

Michelle Obama Confirms She Will Skip Inauguration as She Vanishes From Public Life

Melania Trump Hits Out at the Obamas Over 'Challenging' White House Move

Miami Beach Wants To Be the Next 'Blue Zone'—How Will It Get There?

POLOZOLA DECLARATION

EXHIBIT 4

8 FAM 300
U.S. CITIZENSHIP AND NATIONALITY

8 FAM 301
U.S. CITIZENSHIP

8 FAM 301.1
ACQUISITION BY BIRTH IN THE UNITED STATES

(CT:CITZ-50; 01-21-2021)
(Office of Origin: CA/PPT/S/A)

8 FAM 301.1-1 INTRODUCTION

(CT:CITZ-50; 01-21-2021)

a. U.S. citizenship may be acquired either at birth or through naturalization subsequent to birth. U.S. laws governing the acquisition of citizenship at birth embody two legal principles:

(1) Jus soli (the law of the soil) - a rule of common law under which the place of a person's birth determines citizenship. In addition to common law, this principle is embodied in the 14th Amendment to the U.S. Constitution and the various U.S. citizenship and nationality statutes; and

(2) Jus sanguinis (the law of the bloodline) - a concept of Roman or civil law under which a person's citizenship is determined by the citizenship of one or both parents. This rule, frequently called "citizenship by descent" or "derivative citizenship", is not embodied in the U.S. Constitution, but such citizenship is granted through statute. As U.S. laws have changed, the requirements for conferring and retaining derivative citizenship have also changed.

b. National vs. citizen: While most people and countries use the terms "citizenship" and "nationality" interchangeably, U.S. law differentiates between the two. Under current law all U.S. citizens are also U.S. nationals, but not all

U.S. nationals are U.S. citizens. The term "national of the United States", as defined by statute (INA 101 (a)(22) (8 U.S.C. 1101(a)(22)) includes all citizens of the United States, and other persons who owe allegiance to the United States but who have not been granted the privilege of citizenship:

(1) Nationals of the United States who are not citizens owe allegiance to the United States and are entitled to the consular protection of the United States when abroad, and to U.S. documentation, such as U.S. passports with appropriate endorsements. They are not entitled to voting representation in Congress and, under most state laws, are not entitled to vote in Federal, State, or local elections except in their place of birth. (See 7 FAM 012 and 7 FAM 1300 Appendix B Endorsement 09.);

(2) Historically, Congress, through statutes, granted U.S. non-citizen nationality to persons born or inhabiting territory acquired by the United States through conquest or treaty. At one time or other natives and certain other residents of Puerto Rico, the U.S. Virgin Islands, the Philippines, Guam, and the Panama Canal Zone **were** U.S. non-citizen nationals. (See 7 FAM 1120 and 7 FAM 1100 Appendix P.);

(3) Under current law, only persons born in American Samoa and Swains Island are U.S. non-citizen nationals (INA 101(a)(29) (8 U.S.C. 1101(a)(29) and INA 308(1) (8 U.S.C. 1408)). (See 7 FAM 1125.); and

(4) See 7 FAM 1126 regarding the citizenship/nationality status of persons born on the Commonwealth of the Northern Mariana Islands (CNMI).

c. Naturalization – Acquisition of U.S. Citizenship Subsequent to Birth: Naturalization is "the conferring of nationality of a State upon a person after birth, by any means whatsoever" (INA 101(a)(23) (8 U.S.C. 1101(a)(23)) or conferring of citizenship upon a person (see INA 310, 8 U.S.C. 1421 and INA 311, 8 U.S.C. 1422). Naturalization can be granted automatically or pursuant to an application. (See 7 FAM 1140.)

d. "Subject to the Jurisdiction of the United States": All children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S. citizenship at birth even if their parents were in the United States illegally at the time of birth:

(1) The U.S. Supreme Court examined at length the theories and legal precedents on which the U.S. citizenship laws are based in U.S. v. Wong Kim Ark, 169 U.S. 649 (1898). In particular, the Court discussed the types of persons who are subject to U.S. jurisdiction. The Court affirmed that a child born in the United States to Chinese parents acquired U.S. citizenship even though the parents were, at the time, racially ineligible for naturalization;

(2) The Court also concluded that: "The 14th 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 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." Pursuant to this ruling:

(a) Acquisition of U.S. citizenship generally is not affected by the fact that the parents may be in the United States temporarily or illegally; and that; and

(b) A child born in an immigration detention center physically located in the United States is considered to have been born in the United States and be subject to its jurisdiction. This is so even if the child's parents have not been legally admitted to the United States and, for immigration purposes, may be viewed as not being in the United States.

8 FAM 301.1-2 WHAT IS BIRTH "IN THE UNITED STATES"?

(CT:CITZ-45; 12-09-2020)

a. INA 101(a)(38) (8 U.S.C. 1101 (a)(38)) provides that "the term 'United States,' when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States."

b. On November 3, 1986, Public Law 94-241, "approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", (Section 506(c)),took effect. From that point on, the Northern Mariana Islands have been treated as part of the United States for the purposes of INA 301 (8 U.S.C. 1401) and INA 308 (8 U.S.C. 1408) (see 8 FAM 302.1)

c. The Nationality Act of 1940 (NA), Section 101(d) (54 Statutes at Large 1172) (effective January 13, 1941 until December 23, 1952) provided that "the term 'United States' when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States." The 1940 Act did not include Guam or the Northern Mariana Islands as coming within the definition of "United States."

See the text of the 1940 Act on the Intranet, Acquisition of Citizenship, Legal and Regulatory Documents.

d. Prior to January 13, 1941, there was no statutory definition of "the United States" for citizenship purposes. The phrase "in the United States" as used in Section 1993 of the Revised Statues of 1878 clearly includes states that have been admitted to the Union (see 8 FAM 102.2).

e. INA 304 (8 U.S.C. 1404) and INA 305 (8 U.S.C. 1405) provide a basis for citizenship of persons born in Alaska and Hawaii, respectively, while they were territories of the United States.

8 FAM 301.1-3 NOT INCLUDED IN THE MEANING OF "IN THE UNITED STATES"

(CT:CITZ-1; 06-27-2018)

a. Birth on U.S. Registered Vessel On High Seas or in the Exclusive Economic Zone: A U.S.-registered or documented ship on the high seas or in the exclusive economic zone is not considered to be part of the United States. Under the law of the sea, an Exclusive Economic Zone (EEZ) is a maritime zone over which a State has special rights over the exploration and use of natural resources. The EEZ extends up to 200 nautical miles from the coastal baseline. A child born on such a vessel does not acquire U.S. citizenship by reason of the place of birth (Lam Mow v. Nagle, 24 F.2d 316 (9th Cir., 1928)).

> **NOTE**: This concept of allotting nations EEZs to give better control of maritime affairs outside territorial limits gained acceptance in the late 20th century and was given binding international recognition by the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.
>
> Part V, Article 55 of the Convention states:
>
> Specific legal regime of the EEZ:
>
> The EEZ is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this convention.

b. A U.S.-registered aircraft outside U.S. airspace is not considered to be part of U.S. territory. A child born on such an aircraft outside U.S. airspace does not acquire U.S. citizenship by reason of the place of birth.

> **NOTE**: The United States of America is not a party to the U.N. Convention on Reduction of Statelessness (1961). Article 3 of the Convention does not apply to the United States. Article 3 provides
>
> > "For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be."
>
> This is a frequently asked question.

c. Birth on U.S. military base outside of the United States or birth on U.S. embassy or consulate premises abroad:

(1) Despite widespread popular belief, U.S. military installations abroad and U.S. diplomatic or consular facilities abroad are not part of the United

States within the meaning of the 14th Amendment. A child born on the premises of such a facility is not born in the United States and does not acquire U.S. citizenship by reason of birth;

(2) The status of diplomatic and consular premises arises from the rules of law relating to immunity from the prescriptive and enforcement jurisdiction of the receiving State; the premises are not part of the territory of the United States of America. (See Restatement (Third) of Foreign Relations Law, Vol. 1, Sec. 466, Comment a and c (1987). See also, Persinger v. Iran, 729 F.2d 835 (D.C. Cir. 1984).

d. Birth on foreign ships in foreign government non-commercial service:

(1) A child born on a foreign merchant ship or privately owned vessel in U.S. internal waters is considered as having been born subject to the jurisdiction of the United States. (See U.S. v. Wong Kim Ark.); and

(2) Foreign warships, naval auxiliaries, and other vessels or aircraft owned or operated by a State and used for governmental non-commercial service are not subject to jurisdiction of the United States. Persons born on such vessels while in U.S. internal waters (or, of course, anywhere else) do not acquire U.S. citizenship by virtue of place of birth.

e. Alien enemies during hostile occupation:

(1) If part of the United States were occupied by foreign armed forces against the wishes of the United States, children born to enemy aliens in the occupied areas would not be subject to U.S. jurisdiction and would not acquire U.S. citizenship at birth; and

(2) Children born to persons other than enemy aliens in an area temporarily occupied by hostile forces would acquire U.S. citizenship at birth because sovereignty would not have been transferred to the other country. (See U.S. v. Wong Kim Ark.)

8 FAM 301.1-4 BIRTH IN U.S. INTERNAL WATERS AND TERRITORIAL SEA

(CT:CITZ-50; 01-21-2021)

a. Persons born on ships located within U.S. internal waters (except as provided in 8 FAM 301.1-3) are considered to have been born in the United States. Such persons will acquire U.S. citizenship at birth if they are subject to the jurisdiction of the United States. Internal waters include the ports, harbors, bays, and other enclosed areas of the sea along the U.S. coast. As noted above, a child born on a foreign merchant ship or privately owned vessel in U.S. internal waters is considered as having been born subject to the jurisdiction of the United States. (See U.S. v. Wong Kim Ark.)

b. Twelve Nautical Mile Limit: The territorial sea of the United States was formerly three nautical miles. (See, e.g., Cunard S.S. Co. v Mellon, 262 U.S. 100, 122, 43 S. Ct. 504, 67 L. Ed. 894 (1923).) However, the three-mile rule

was changed by a Presidential Proclamation in 1988, implementing the territorial-sea provision of the 1982 U.N. Convention on the Law of the Sea. (Presidential Proclamation 5928, signed December 27, 1988, published at 54 Federal Register 777, January 9, 1989.) As decreed by that Proclamation, the territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law. (The Proclamation also stated that the jurisdiction of the United States extends to the airspace over the territorial sea.) (See Gordon, Immigration Law and Procedure, Part 8 Nationality and Citizenship, 92.03(2)(b) territorial limits.)

c. FAM guidance up until 1995 (7 FAM 1116.1-2 In U.S. Waters TL:CON-64; 11-30-95) advised that persons born within the 3-mile limit of the U.S. territorial sea were born "within the United States" and could be documented as U.S. citizens if they were also born subject to U.S. jurisdiction. Some commentators took this view as well, such as Gordon. Analysis of this issue undertaken in 1994-1995 revealed, however, that there is a substantial legal question whether persons born outside the internal waters of the United States but within the territorial sea are in fact born "within the United States" for purposes of the 14th Amendment and the INA.

d. Cases involving persons born outside the internal waters but within the U.S. territorial sea, must be referred to AskPPTAdjudication@state.gov for coordination with L/CA, L/OES, and other appropriate offices within the United States government.

***NOTE**: This is not a public-facing e-mail address and public inquiries will not be replied to.*

8 FAM 301.1-5 WHAT IS BIRTH IN U.S. AIRSPACE?

(CT:CITZ-45; 12-09-2020)

a. Under international law, the limits of a country's sovereign airspace correspond with the extent of its territorial sea. The outer limit of the territorial sea of the United States is 12 nautical miles from the coastline. Airspace above the land territory, internal waters, and territorial sea is considered to be part of the United States (Presidential Proclamation 5928, signed December 27, 1988, published at 54 Federal Register 777, January 9, 1989).

b. Comments on the applicability of the 14th Amendment to vessels and planes, are found in Gordon, Immigration Law and Procedure, Part 8, Nationality and Citizenship, Chapter 92, 92.03 (New York: Matthew Bender, 2007). This volume states:

> "The rules applicable to vessels obviously apply equally to airplanes. Thus a child born on a plane in the United States or flying over its territory would acquire United States citizenship at birth."

c. Under the 1944 Convention on International Civil Aviation, articles 17–21, all aircraft have the nationality of the State in which they are registered, and may not have multiple nationalities. For births, the nationality law of the aircraft's "nationality" may be applicable, and for births that occur in flight while the aircraft is not within the territory or airspace of any State, it is the only applicable law that may be pertinent regarding acquisition of citizenship by place of birth. However, if the aircraft is in, or flying over the territory of another State, that State may also have concurrent jurisdiction.

d. Cases of citizenship of persons born on planes in airspace above the United States land territory or internal waters may be adjudicated by passport specialists at domestic passport agencies and centers or consular officers at posts abroad in accordance with 8 FAM 301.1-6.

e. Cases of persons born on planes in airspace outside the 12 nautical mile limit would be adjudicated as a birth abroad under INA 301 (8 U.S.C. 1401) or INA 309 (8 U.S.C. 1409) as made applicable by INA 301(g).

f. Cases of persons born on a plane in airspace above the U.S. territorial sea (12 nautical mile limit) must be referred to AskPPTAdjudication@state.gov for consultation with L/CA.

8 FAM 301.1-6 DOCUMENTING BIRTH IN U.S. WATERS AND U.S. AIRSPACE

(CT:CITZ-1; 06-27-2018)

a. Proof of birth in U.S. internal waters or U.S. airspace consists of a U.S. birth certificate certified by the issuing authority in the U.S. jurisdiction.

b. There is no U.S. Federal law governing the report of such births.

c. Generally speaking, U.S. Customs and Border Protection (CBP) would require some documentation of the birth, generally an excerpt of the ship's/aircraft's medical log or master/captain's log, reflecting the time, latitude, and longitude when the birth occurred.

d. For ships/aircraft in-bound for the United States, the parents would then be responsible for reporting the birth to the civil authorities in the U.S. jurisdiction where the vessel put into port. (See the Centers for Disease Control and Prevention (CDC) publication "Where to Write for Birth Certificates.")

(1) The parents will have to contact the state vital records office to determine the exact procedures for report such a birth;

(2) Parents should obtain a certified copy of the ship's medical log, airplane's log, or other statement from the attending physician or other attendant and attempt to obtain information on how to contact attendants in the future should further questions arise;

(3) If the mother and child were immediately taken to a U.S. hospital, authorities there may be of assistance in facilitating contact with the appropriate state authorities; and

(4) It is unlikely that the vital records office in the parents' state of residence will issue such a birth certificate. Parents may be redirected to the vital records office in the state where the ship first put into port after the birth of the child.

8 FAM 301.1-7 NATIVE AMERICANS AND ESKIMOS

(CT:CITZ-1; 06-27-2018)

a. Before U.S. v. Wong Kim Ark, the only occasion on which the Supreme Court had considered the meaning of the 14th Amendment's phrase "subject to the jurisdiction" of the United States was in Elk v. Wilkins, 112 U.S. 94 (1884). That case hinged on whether a Native American who severed ties with the tribe and lived among whites was a U.S. citizen and entitled to vote. The Court held that the plaintiff had been born subject to tribal rather than U.S. jurisdiction and could not become a U.S. citizen merely by leaving the tribe and moving within the jurisdiction of the United States. The Court stated that: "The Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign States; but they were alien nations, distinct political communities, with whom the United States might and habitually did deal through treaties or acts of Congress. They were never deemed citizens of the United States except under explicit provisions of treaty or statute to that effect, either declaring a certain tribe, or such members of it as chose to remain behind on the removal of the tribe westward, to be citizens, or authorizing individuals of particular tribes to become citizens upon application for naturalization."

b. The Act of June 2, 1924 was the first comprehensive law relating to the citizenship of Native Americans. It provided: That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

c. Section 201(b) NA, effective January 13, 1941, declared that persons born in the United States to members of an Indian, Eskimo, Aleutian, or other aboriginal tribe were nationals and citizens of the United States at birth.

d. INA 301(b) (8 U.S.C. 1401(b)) (formerly INA 301(a)(2)), in effect from December 24, 1952, restates this provision.

8 FAM 301.1-8 FOUNDLINGS

(CT:CITZ-1; 06-27-2018)

a. Under INA 301(f) (8 U.S.C. 1401(f)) (formerly Section 301(a)(6)) INA), a child of unknown parents is conclusively presumed to be a U.S. citizen if found in the United States when under 5 years of age, unless foreign birth is established before the child reaches age 21.

b. Under Section 201(f) of the Nationality Act of 1940, a child of unknown parents, found in the United States, was presumed to have been a U.S. citizen at birth until shown not to have been born in the United States no matter at what age this might have been demonstrated.

UNCLASSIFIED (U)

POLOZOLA DECLARATION

EXHIBIT 4

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

OMB Control No. 1405-0004
Expiration Date: 04-30-2025
Estimated Burden: 85 Minutes

Please read all instructions first and type or print in black ink to complete this form.
For information or questions, visit travel.state.gov or contact the National Passport Information Center (NPIC) at 1-877-487-2778 (TDD/TTY: 1-888-874-7793) or NPIC@state.gov**.**

SECTION A. ELIGIBILITY TO USE THIS FORM

This form is used to apply for a U.S. passport book and/or card **in person** at an acceptance facility, a passport agency (by appointment only), or a U.S. embassy, consulate, or consular agency (if abroad). The U.S. passport is a travel document attesting to one's identity and issued to U.S. citizens or non-citizen U.S. nationals. To be eligible to use this form you must **apply in person** if at least one of the following is true:

- ✓ I am applying for my first U.S. passport
- ✓ I am under age 16
- ✓ My previous U.S. passport was either: a) issued under age 16; b) issued more than 15 years ago; c) lost, stolen, or damaged

If none of the above statements apply to you, then you may be eligible to apply using form DS-82 or DS-5504 depending on your circumstances. Visit travel.state.gov for more information.

- **Notice to Applicants Under Age 16:** You must appear in person to apply for a U.S. passport with your parent(s) or legal guardian(s). See Section D of these instructions or travel.state.gov for more details.
- **Notice to Applicants Ages 16 and 17:** At least one of your parent(s) or legal guardian(s) must know that you are applying for a U.S. passport. See Section D of these instructions or travel.state.gov for more details.
- **Notice to Applicants for No-Fee Regular, Service, Official, or Diplomatic Passports:** You may use this application if you meet all provisions listed; however, you must consult your sponsoring agency for instructions on proper routing procedures before forwarding this application. Your completed passport will be released to your sponsoring agency and forwarded to you.

SECTION B. STEPS TO APPLY FOR A U.S. PASSPORT

1. Complete this form (Do not sign until requested to do so by an authorized agent).
2. Attach one color photograph 2x2 inches in size and supporting documents (See Section D of these instructions).
3. Schedule appointment to apply in person by visiting our website or calling NPIC (see contact info at the top page).
4. Arrive for appointment and present completed form and attachments to the authorized agent who will administer the oath, witness you signing your form, and collect your passport fee.
5. Track application status online at Passportstatus.state.gov.
6. Receive new passport and original supporting documents (that you submitted with your application).

SECTION C. HOW TO COMPLETE THIS FORM

Please see the instructions below for items on the form that are not self-explanatory. The numbers match the numbered items of the form.

1. Name (Last, First, Middle): Enter the name to appear in the passport. The name to appear in the passport should be consistent with your proof of citizenship and identification. If you have changed your name and are not eligible to use a DS-82 or DS-5504, you must use this form. Visit travel.state.gov/namechange for more information.

2. Date of Birth: Use the following format: Month, Date, and Year (MM/DD/YYYY).

3. Gender: The gender markers used are "M" (male), "F" (female) and "X" (unspecified or another gender identity). The gender marker that you check on this form will appear in your passport regardless of the gender marker(s) on your previous passport and/or your supporting evidence of citizenship and identity. If changing your gender marker from what was printed on your previous passport, select "Yes" in this field on Application Page 1. If no gender marker is selected, we may print the gender as listed on your supporting evidence or contact you for more information. **Please Note**: We cannot guarantee that other countries you visit or travel through will recognize the gender marker on your passport. Visit travel.state.gov/gender for more information.

4. Place of Birth: Enter the name of the city and state if in the U.S. or city and country as presently known.

5. Social Security Number: You must provide a Social Security number (SSN), if you have been issued one, in accordance with Section 6039E of the Internal Revenue Code (26 U.S.C. 6039E) and 22 U.S.C 2714a(f). If you do not have a Social Security number, you must enter zeros in this field and submit a statement, signed, and dated, that includes the phrase, "*I declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.*" If you reside abroad, you must also provide the name of the foreign country where you reside. The U.S. Department of State must provide your SSN and foreign residence information to the U.S. Department of the Treasury which will use it in connection with debt collection and check against lists of persons ineligible or potentially ineligible to receive a U.S. passport, among other authorized uses. If you fail to provide the information, we may deny your application and the Internal Revenue Service (IRS) may enforce a penalty. Refer all questions on this matter to the nearest IRS office.

6. Email: By providing your email you are consenting to us communicating with you by email about your application.

7. Primary Contact Phone Number: If providing a mobile/cell phone number you are consenting to receive calls and/or text messaging about your application.

8. Mailing Address Line 1 and 2 "In Care Of": For line 1 enter applicant's Street/RFD #, ***or*** P.O. Box ***or*** URB. For line 2, if you do not live at the address listed in this field, put the name of the person who lives at this address and mark it "In Care Of". **If the applicant is a minor child, you must include the "In Care Of" name of the parent or adult registered to receive mail at this address.**

9. List all other names you have used: Enter all legal names previously used to include maiden name, name changes, and previous married names. You can enter up to two names one in item A and one in item B. If only your last name has changed just enter your last name. If you need more space to write additional names, please use a separate sheet of paper and attach it to this form.

⚠ **Blue Section Application Page 1 - Identifying Documents and Signature Blocks: Skip this section and complete Application Page 2. Do not sign this form until requested to do so by the authorized agent who will administer the oath to you.**

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

SECTION D. ATTACHMENTS TO SUBMIT WITH THIS FORM

Once you have completed Application Pages 1 and 2, attach the supporting documents as outlined in this section.

1. **PROOF OF U.S. CITIZENSHIP** Information can be found on travel.state.gov/citizenship.

Applicants Born in the United States

Your evidence will be returned to you if it is not damaged, altered, or forged. Submit an original or certified copy and a photocopy of the front and back if there is printed information on the back, of one of the following documents:

- U.S. Birth Certificate that meets all the following requirements:
  - Issued by the city, county, or state of birth
  - Lists your full name, birthdate, and birthplace
  - Lists your parent(s)' full names
  - Lists date filed with registrar's office (must be within one year of birth)
  - Shows registrar's signature and the seal of the issuing authority
- Fully valid, undamaged U.S. passport (may be expired)
- Consular Report of Birth Abroad or Certification of Birth Abroad
- Certificate of Naturalization or Citizenship

- Secondary documents may be submitted if the U.S. birth certificate was filed more than one year after your birth ***or*** if no birth record exists. For no birth record on file, submit a registrar's letter to that effect. For both scenarios, submit a combination of the evidence listed below, with your first and last name, birthdate and/or birthplace, the seal or other certification of the office (if customary), and the signature of the issuing official.
  - A hospital birth record
  - An early baptismal or circumcision certificate
  - Early census, school, medical, or family Bible records
  - Insurance files or published birth announcements (such as a newspaper article)
  - Notarized affidavits (or DS-10, Birth Affidavit) of older blood relatives having knowledge of your birth may be submitted in addition to some of the records listed above.

Applicants Born Outside the United States

If we determine that you are a U.S. citizen, your lawful permanent resident card submitted with this application will be forwarded to U.S. Citizenship and Immigration Services.

- Claiming Citizenship through Naturalization of One or Both Parent(s), submit all the following:
  - Your parent(s) Certificate(s) of Naturalization
  - Your parents' marriage/certificate and/or evidence that you were in the legal and physical custody of your U.S. citizen parent, if applicable
  - Your foreign birth certificate (and official translation if the document is not in English)
  - Your evidence of admission to the United States for legal permanent residence and proof you subsequently resided in the United States

- Claiming Citizenship through Birth Abroad to At Least One U.S. Citizen Parent, submit all the following:
  - Your Consular Report of Birth Abroad (Form FS-240), Certification of Birth (Form DS-1350 or FS-545), or your foreign birth certificate (and official translation if the document is not in English)
  - Your parent's proof of U.S. citizenship
  - Your parents' marriage certificate
  - Affidavit showing all your U.S. citizen parents' periods and places of residence and physical presence before your birth (DS-5507)

- Claiming Citizenship Through Adoption by a U.S. Citizen Parent(s), *if your birthdate is on or after October 5, 1978*, submit evidence of all the following:
  - Your permanent residence status
  - Your full and final adoption
  - You were in the legal and physical custody of your U.S. citizen parent(s)
  - You have resided in the United States

2. **PROOF OF IDENTITY** Information can be found at travel.state.gov/identification.

Present your original identification and submit a front and back photocopy with this form. It must show a photograph that is a good likeness of you. Examples include:

- Driver's license (not temporary or learner's permit)
- Previous or current U.S. passport book/card
- Military identification
- Federal, state, or city government employee identification
- Certificate of Naturalization or Citizenship

3. **A RECENT COLOR PHOTOGRAPH** See the full list of photo requirements on travel.state.gov/photos.

Attach one photo, 2x2 inches in size. U.S. passport photo requirements may differ from photo requirements of other countries. To avoid processing delays, be sure your photo meets all the following requirements (Refer to the photo template on Application Page 1):

- Taken less than six months ago
- Head must be 1-1 3/8 inches from the bottom of the chin to the top of the head
- Head must face the camera directly with full face in view
- No eyeglasses and head covering and no uniforms*
- Printed on matte or glossy photo quality paper
- Use a plain white or off-white background

*Head coverings are not acceptable unless you submit a signed statement verifying that it is part of recognized, traditional religious attire that is customarily or required to be worn continuously in public or a signed doctor's statement verifying its daily use for medical purposes. Glasses or other eyewear are not acceptable unless you submit a signed statement from a doctor explaining why you cannot remove them (e.g., during the recovery period from eye surgery). Photos are to be taken in clothing normally worn on a daily basis. You cannot wear a uniform, clothing that looks like a uniform, or camouflage attire.

APPLICATION FOR A U.S. PASSPORT

4. **PROOF OF PARENTAL RELATIONSHIP *(FOR APPLICANTS UNDER AGE 16)***

Parents/guardians must appear in person with the child and submit the following:

- Evidence of the child's relationship to parents/guardian(s) (Example: a birth certificate or Consular Report of Birth Abroad listing the names of the parent(s)/guardian(s) and child)
- Original parental/guardian government-issued photo identification and a photocopy of the front and back (to satisfy proof of identity)

If only one parent/guardian can appear in person with the child, you must also submit one of the following:

- The second parent's notarized written statement or DS-3053 (including the child's full name and date of birth) consenting to the passport issuance for the child. The notarized statement cannot be more than three months old, must be signed and notarized on the same day, and must come with a front and back photocopy of the second parent's government-issued photo identification.
- The second parent's death certificate (if second parent is deceased)
- Evidence of sole authority to apply (Example: a court order granting sole legal custody or a birth certificate listing only one parent)
- A written statement (made under penalty of perjury) or DS-5525 explaining, in detail, why the second parent cannot be reached

OR

PROOF OF PARENTAL AWARENESS *(FOR APPLICANTS AGES 16 AND 17)*

We may request the consent of one legal parent/legal guardian to issue a U.S. passport to you. In many cases, the passport authorizing officer may be able to ascertain parental awareness of the application by virtue of the parent's presence when the minor submits the application or a signed note from the parent or proof the parent is paying the application fees. However, the passport authorizing officer retains discretion to request the legal parent's/legal guardian's notarized statement of consent to issuance (e.g., on Form DS-3053).

5. **FEES** Passport service fees are established by law and regulation (see 22 U.S.C. 214, 22 C.F.R. 22.1, and 22 C.F.R. 51.50-56) and are collected at the time you apply for the passport service. By law, the passport fees are **non-refundable**. Visit travel.state.gov/passportfees for current fees and how fees are used and processed. Payment methods are as follows:

Applicant Applying in the United States At Acceptance Facility

- Passport fees must be made by check (personal, certified, cashier's, travelers) or money order (U.S. Postal, international, currency exchange) with the applicant's full name and date of birth printed on the front and payable to "U.S. Department of State."
- The execution fee **must be paid separately** and made payable to the acceptance facility in the form that they accept.

Applicant Applying at a Passport Agency or Outside the United States

- We accept checks (personal, certified, cashier's, travelers); major credit cards (Visa, Master Card, American Express, Discover); money orders (U.S. Postal, international, currency exchange); or exact cash (no change provided). Make all fees payable to the "U.S. Department of State."
- If applying outside the United States: Please see the website of your embassy, consulate, or consular agency for acceptable payment methods.

Other Services Requiring Additional Fee (Visit travel.state.gov for more details)**:**

- **Expedite Service:** Only available for passports mailed in the United States and Canada.
- **1-2 Day Delivery:** Only available for passport book (and not passport card) mailings in the United States.
- **Verification of a previous U.S. Passport or Consular Report of Birth Abroad:** Upon your request, we verify previously issued U.S. passport or Consular Report of Birth Abroad if you are unable to submit evidence of U.S. citizenship.
- **Special Issuance Passports:** If you apply for a no-fee regular, service, official, or diplomatic passport at a designated acceptance facility, you must pay the execution fee. No other fees are charged when you apply.

SECTION E. HOW TO SUBMIT THIS FORM

Submitting your form depends on your location and how soon you need your passport.

- **Applicant Located Inside the United States:** For the latest information regarding processing times, scheduling appointments, and nearest designated acceptance facilities visit travel.state.gov or contact NPIC.

- **Applicant Located Outside the United States:** In most countries, you must apply in person at a U.S. embassy or consulate for all passport services. Each U.S. embassy and consulate has different procedures for submitting and processing your application. Visit travel.state.gov to check the U.S. embassy or consulate webpage for more information.

SECTION F. RECEIVING YOUR PASSPORT AND SUPPORTING DOCUMENTS

- **Difference Between U.S. Passport Book and Card:** The book is valid for international travel by air, land, and sea. The card is not valid for international air travel, only for entry at land border crossings and seaports of entry when traveling from Canada, Mexico, Bermuda, and the Caribbean. The maximum number of letters provided for your given name (first and middle) on the card is 24 characters. If both your given names are more than 24 characters, you must shorten one of your given names you list on item #1 of Application Page 1.
- **Separate mailings:** You may receive your newly issued U.S. passport book and/or card and your citizenship evidence in two separate mailings. If you are applying for both a book and card, you may receive three separate mailings: one with your returned evidence, one with your newly issued book, and one with your newly issued card. **All documentary evidence that is not damaged, altered, or forged will be returned to you.** Photocopies will not be returned.
- **Passport numbers:** Each newly issued passport book or card will have a different passport number than your previous one.
- **Shipping and Delivery Changes:** If your mailing address changes prior to receipt of your new passport, please contact NPIC. **NOTE:** We will not mail a U.S. passport to a private address outside the United States or Canada.
- **Passport Corrections, Non-Receipt/Undeliverable Passports, and Lost/Stolen Passport:** For more information visit travel.state.gov or contact NPIC.

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

WARNING

False statements made knowingly and willfully in passport applications, including affidavits or other documents submitted to support this application, are punishable by fine and/or imprisonment under U.S. law including the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542, and/or 18 U.S.C. 1621. Alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1543. The use of a passport in violation of the restrictions contained herein or of passport regulations is punishable by fine and/or imprisonment under 18 U.S.C. 1544. All statements and documents are subject to verification.

Failure to provide information requested on this form, including your Social Security number, may result in significant processing delays and/or the denial of your application.

ACTS OR CONDITIONS

If any of the below-mentioned acts or conditions have been performed by or apply to the applicant, a supplementary explanatory statement under oath (or affirmation) by the applicant should be attached and made a part of this application.

I have not been convicted of a federal or state drug offense or convicted of a statutory "sex tourism" crime, and I am not the subject of an outstanding federal, state, or local warrant of arrest for a felony; a criminal court order forbidding my departure from the United States; or a subpoena received from the United States in a matter involving federal prosecution for, or grand jury investigation of, a felony.

PRIVACY ACT STATEMENT

AUTHORITIES: Collection of this information is authorized by 22 U.S.C. 211 a et seq.; 8 U.S.C. 1104; 26 U.S.C. 6039E, 22 U.S.C. 2714a(f), Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; Executive Order 11295 (August 5, 1966); and 22 C.F.R. parts 50 and 51.

PURPOSE: We are requesting this information in order to determine your eligibility to be issued a U.S. passport. Your Social Security number is used to verify your identity.

ROUTINE USES: This information may be disclosed to another domestic government agency, a private contractor, a foreign government agency, or to a private person or private employer in accordance with certain approved routine uses. These routine uses include, but are not limited to, law enforcement activities, employment verification, fraud prevention, border security, counterterrorism, litigation activities, and activities that meet the Secretary of State's responsibility to protect U.S. citizens and non-citizen nationals abroad. Your Social Security number will be provided to the U.S. Department of the Treasury and may be used in connection with debt collection, among other purposes authorized and generally described in this section. More information on the routine uses for the system can be found in System of Records Notices State-05, Overseas Citizen Services Records and Other Overseas Records and State-26, Passport Records.

DISCLOSURE: Providing information on this form is voluntary. Be advised, however, that failure to provide the information requested on this form may cause delays in processing your U.S. passport application and/or could also result in the refusal or denial of your application. Failure to provide your Social Security number may result in the denial of your application (consistent with 22 U.S.C. 2714a(f)) and may subject you to penalty enforced by the Internal Revenue Service, as described in the Federal Tax Law on Instruction Page 1 (Section C) to this form.

PAPERWORK REDUCTION ACT STATEMENT

Public reporting burden for this collection of information is estimated to average 85 minutes per response, including the time required for searching existing data sources, gathering the necessary data, providing the information and/or documents required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: Passport Forms Officer, U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 44132 Mercure Cir, PO Box 1199, Sterling, Virginia 20166-1199.

For more information about your application status, online tools, current fees, and processing times, please visit travel.state.gov.

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

OMB Control No. 1405-0004
Expiration Date: 04/30/2025
Estimated Burden: 85 Minutes

Use black ink only. If you make an error, complete a new form. Do not correct.

Select document(s) for which you are submitting fees:

☐ U.S. Passport Book ☐ U.S. Passport Card ☐ Both

The U.S. passport card is **not** valid for international air travel. See Instruction Page 3

☐ Regular Book (Standard) ☐ Large Book (Non-Standard)

The large book is for frequent international travelers who need more visa pages.

☐ D ☐ O ☐ S ☐ NFR

End. # _____ Exp. _____

1. Name Last

First Middle

2. Date of Birth *(mm/dd/yyyy)*

3. Gender (Read Instruction Page 1) M F X Changing gender marker? Yes ☐

4. Place of Birth *(City & State if in the U.S. or City & Country as it is presently known.)*

5. Social Security Number

6. Email *(See application status at passportstatus.state.gov)*

7. Primary Contact Phone Number

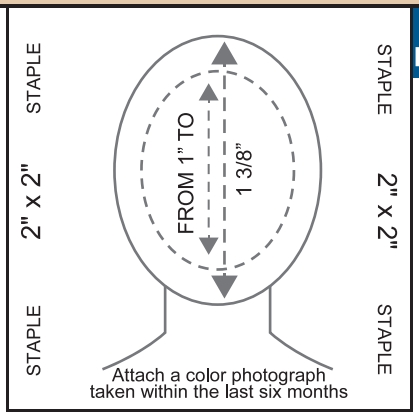
8. Mailing Address Line 1: Street/RFD#, P.O. Box, or URB

Address Line 2: *(Include Apartment, Suite, etc. If applicant is a child, write "In Care Of" of the parent. Example: In Care Of - Jane Doe)*

City **State** **Zip Code** **Country**, *(if outside the United States)*

9. List all other names you have used. *(Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed.)*

A. B.



STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent/Legal Guardian on Second Signature Line (if identifying minor)

☐ Driver's License ☐ State Issued ID Card ☐ Passport ☐ Military ☐ Other _____

Name _____

Issue Date *(mm/dd/yyyy)* Exp. Date *(mm/dd/yyyy)* State of Issuance

ID No Country of Issuance

Identifying Documents - Applicant or Mother/Father/Parent/Legal Guardian on Third Signature Line (if identifying minor)

☐ Driver's License ☐ State Issued ID Card ☐ Passport ☐ Military ☐ Other _____

Name _____

Issue Date *(mm/dd/yyyy)* Exp. Date *(mm/dd/yyyy)* State of Issuance

ID No Country of Issuance

☐ Acceptance Agent ☐ (Vice) Consul USA

☐ Passport Staff Agent

(Seal)

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not performed any of the acts listed under "Acts or Conditions" on page 4 of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page 4 of the instructions to the application form.

x _____
Applicant's Legal Signature - age 16 and older

x _____
Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

x _____
Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

_____ Date
Signature of person authorized to accept applications

By signing this form, I certify that I have provided the verbal oath and witnessed the applicant's/legal guardian's signature.

Agent ID Number

_____
Print Facility Name/Location

Facility ID Number

_____
Name of courier company (*if applicable*)

For Issuing Office Only → Bk _____ Card _____ EF _____ Postage _____ Execution _____ Other _____

DS 11 C 03 2022 1

Name of Applicant *(Last, First, & Middle)*

Date of Birth *(mm/dd/yyyy)*

10. Parental Information

Mother/Father/Parent - First & Middle Name *(at Parent's Birth)*

Last Name *(at Parent's Birth)*

Date of Birth *(mm/dd/yyyy)*

Place of Birth *(City & State if in the U.S. or City & Country as it is presently known)*

Gender ☐ M ☐ F ☐ X

U.S. Citizen? ☐ Yes ☐ No

Mother/Father/Parent - First & Middle Name *(at Parent's Birth)*

Last Name *(at Parent's Birth)*

Date of Birth *(mm/dd/yyyy)*

Place of Birth *(City & State if in the U.S. or City & Country as it is presently known)*

Gender ☐ M ☐ F ☐ X

U.S. Citizen? ☐ Yes ☐ No

11. Have you ever been married? ☐ Yes ☐ No *If yes, complete the remaining items in #11.*

Full Name of Current Spouse or Most Recent Spouse *(Last, First & Middle)*

Date of Birth *(mm/dd/yyyy)*

Place of Birth

U.S. Citizen? ☐ Yes ☐ No

Date of Marriage *(mm/dd/yyyy)*

Have you ever been widowed or divorced? ☐ Yes ☐ No

Widow/Divorce Date *(mm/dd/yyyy)*

12. Additional Contact Phone Number

☐ Home ☐ Cell ☐ Work ☐ _____

13. Occupation *(if age 16 or older)*

14. Employer or School *(if applicable)*

15. Height

16. Hair Color

17. Eye Color

18. Travel Plans *(If no travel plans, please write "none")*

Departure Date *(mm/dd/yyyy)*

Return Date *(mm/dd/yyyy)*

Countries to be Visited

19. Permanent Address *(Complete if P.O. Box is listed under Mailing Address **or** if residence is different from Mailing Address. **Do not list a P.O. Box.**)*

Street/RFD # or URB

Apartment/Unit

City

State

Zip Code

20. Your Emergency Contact (*Provide the information of a person not traveling with you to be contacted in the event of an emergency.*)

Name

Address: Street/RFD # or P.O. Box

Apartment/Unit

City

State

Zip Code

Phone Number

Relationship

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? ☐ Yes ☐ No *If yes, complete the remaining items in #21.*

Name as printed on your most recent passport book

Most recent passport book number

Most recent passport book issue date *(mm/dd/yyyy)*

Status of your most recent passport book: ☐ Submitting with application ☐ Stolen ☐ Lost ☐ In my possession *(if expired)*

Name as printed on your most recent passport card

Most recent passport card number

Most recent passport card issue date *(mm/dd/yyyy)*

Status of your most recent passport card: ☐ Submitting with application ☐ Stolen ☐ Lost ☐ In my possession *(if expired)*

PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY

Name as it appears on citizenship evidence _____

☐ Birth Certificate SR CR City Filed: Issued:

☐ Sole Parent

☐ Nat. / Citz. Cert. USCIS USDC Date/Place Acquired: A#

☐ Report of Birth Filed/Place:

☐ Passport C/R S/R See #21 #/DOI:

☐ Other:

☐ Attached:

☐ P/C of Citz ☐ P/C of ID ☐ DS-71 ☐ DS-3053 ☐ DS-64 ☐ DS-5520 ☐ DS-5525 ☐ PAW ☐ NPIC ☐ IRL ☐ Citz W/S

DS 11 C 03 2022 2

DS-11 04-2022

Clear Form

POLOZOLA DECLARATION

EXHIBIT 6

I am a U.S. citizen A4

How do I get proof of my U.S. citizenship?

U.S. Citizenship and Immigration Services

If you were born in the United States, you do not need to apply to USCIS for any evidence of citizenship. Your birth certificate issued where you were born is proof of your citizenship.[1]

If you were born outside the United States, but one or both of your parents were U.S. citizens when you were born, you may still be a U.S. citizen. This is called citizenship through derivation. There are usually additional specific requirements, and sometimes citizenship can be through a combination of a parent and grandparent.

What documents are usually accepted as proof of U.S. citizenship?

The most common documents that establish U.S. citizenship are:

- **Birth Certificate,** issued by a U.S. State (if the person was born in the United States), or by the U.S. Department of State (if the person was born abroad to U.S. citizen parents who registered the child's birth and U.S. citizenship with the U.S. Embassy or consulate);
- **U.S. Passport,** issued by the U.S. Department of State;
- **Certificate of Citizenship,** issued to a person born outside the United States who derived or acquired U.S. citizenship through a U.S. citizen parent; or
- **Naturalization Certificate,** issued to a person who became a U.S. citizen after 18 years of age through the naturalization process.

I was born in the United States. Where can I get a copy of my birth certificate?

Check with the Department of Health (Vital Records) in the U.S. State in which you were born. For more information, visit the National Center for Health Statistics web page at **www.cdc.gov/nchs/births.htm**.

[1]An exception to this rule exists regarding children born in the United States to foreign diplomats.

I am a U.S. citizen. My child will be born abroad or recently was born abroad. How do I register his or her birth and U.S. citizenship?

Please contact the U.S. Department of State or the U.S. Embassy or consulate in the country where your child will be born for more information about eligibility requirements and how to register your child's U.S. citizenship.

I was born overseas. My birth and U.S. citizenship were registered with the U.S. Embassy or consulate. I need a copy of the evidence of my citizenship. Whom should I contact?

Contact the U.S. Department of State. For more information, please see their Web site at **www.state.gov**.

I was born overseas. I believe I was a U.S. citizen at birth because one or both my parents were U.S. citizens when I was born. But my birth and citizenship were not registered with the U.S. Embassy when I was born. Can I apply to have my citizenship recognized?

Whether or not someone born outside the United States to a U.S. citizen parent is a U.S. citizen depends on the law in effect when the person was born. These laws have changed over the years, but usually require a combination of the parent being a U.S. citizen when the child was born, and the parent having lived in the United States or its possessions for a specific period of time. Derivative citizenship can be quite complex and may require careful legal analysis.

I was born overseas. One of my parents was a U.S. citizen but never lived in the United States. One of my grandparents was also a U.S. citizen. Could I have derived U.S. citizenship?

If your parent was a U.S. citizen when you were born but had not lived in the United States for the required amount of time before your birth, but one of your grandparents was also a U.S. citizen and had already met the residence requirements, then you may still

have derived U.S. citizenship. The provisions of immigration law that govern derivative citizenship are quite precise and circumstances in individual cases can be complex. For specific information on how the law applies, please check our Web site at **www.uscis.gov**, or the U.S. Department of State Web site at **www.state.gov,** or call USCIS Customer Service at **1-800-375-5283**.

I was born overseas. After I was born, my parent(s) became naturalized U.S. citizens. Could I have derived U.S. citizenship?

If **one** of your parents naturalized after February 27, 2001, and you were a permanent resident and under 18 years old at the time, then you may have automatically acquired U.S. citizenship. Before that date, you may have automatically acquired U.S. citizenship if you were a permanent resident and under 18 years old when **both** parents naturalized, or if you had only **one** parent when that parent naturalized.

However, if your parent(s) naturalized after you were 18, then you will need to apply for naturalization on your own after you have been a permanent resident for at least 5 years.

How do I apply to have my citizenship recognized?

You have two options:

- You can apply to the U.S. Department of State for a U.S. passport. A passport is evidence of citizenship and also serves as a travel document if you need to travel. For information about applying for a U.S. passport, see the U.S. Department of State Web site at **www.state.gov**.
- If you are already in the United States, you also have the option of applying to USCIS using **Form N-600**, Application for Certificate of Citizenship. However, you may find applying for a passport to be more convenient because it also serves as a travel document and could be a faster process.

How do I replace a lost, stolen, or destroyed Naturalization Certificate or Certificate of Citizenship?

To apply to replace your Naturalization Certificate or Certificate of Citizenship issued by USCIS or by the U.S. Immigration and Naturalization Service, file a **Form N-565**, Application for Replacement Naturalization Citizenship Document. Filing instructions and forms are available on our Web site at **www.uscis.gov**.

Key Information

Key USCIS forms referenced in this guide	Form #
Application for Certificate of Citizenship	N-600
Application for Replacement Naturalization Citizenship Document	N-565

Other U.S. Government Services–Click or Call		
General Information	www.usa.gov	1-800-333-4636
New Immigrants	www.welcometoUSA.gov	
U.S. Dept. of State	www.state.gov	1-202-647-6575
National Center for Health Statistics	www.cdc.gov	1-800-311-3435
	www.cdc.gov/nchs/birth.htm	

For more copies of this guide, or information about other customer guides, please visit **www.uscis.gov/howdoi**.

You can also visit **www.uscis.gov** to download forms, e-file some applications, check the status of an application, and more. It's a great place to start!

If you don't have Internet access at home or work, try your local library.

If you cannot find what you need, please call **Customer Service at: 1-800-375-5283**
Hearing Impaired TDD Customer Service: 1-800-767-1833

Disclaimer: *This guide provides basic information to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, please visit our Web site. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency accredited by the Board of Immigration Appeals.*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF DR. SHELLEY LAPKOFF

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

I, Shelley Lapkoff, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge. If called to testify as a witness, I could and would testify competently to the matters set forth below.

2. I am a Senior Demographer at National Demographics Corporation (NDC), which I joined in 2023. Founded in 1979, NDC is a firm dedicated to providing research and analysis services on demographic, districting, and redistricting issues to a variety of governmental and non-governmental clients. At NDC, as I have for more than 30 years, I specialize in conducting demographic and political redistricting analyses. Within the field of demography, my area of expertise is applied demography, which includes the analysis of client and third-party data, such as Census Bureau counts and estimates, data from state, federal and local governments, and data from other research organizations.

3. Prior to joining NDC, I earned a Ph.D. in Demography in 1988 and an M.A. in Economics from the University of California, Berkeley in 1984. I received a B.A. with Honors in Economics from the University of Maryland, College Park, in 1976. While in graduate school, I founded my own demographic consulting firm, Lapkoff Demographic Research (LDR), in 1985, which provided consulting services and demographic analyses to government and non-governmental clients. In 1992, LDR subsequently became Lapkoff & Gobalet Demographic Research, Inc. (LDGR). And just recently, in 2023, LDGR merged with NDC. Additionally, I have taught Applied Demography and presented seminars in the U.C. Berkeley Demography Department. I have also been active in the Population Association of America (PAA) and have been Chair of the PAA Committee on Applied Demography.

4. I served as one of the principals of LDGR from its inception until joining NDC. As President of LGDR and as a Senior Demographer with NDC, I have conducted and overseen many demographic research projects. As a consultant and practitioner of applied demographics, I help diverse types of clients. The work includes developing new methods (including

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mathematical models) to forecast population and housing occupancy; assembling and analyzing demographic data; evaluating demographic trends; preparing written reports on the findings; and making presentations on a variety of matters.

5. At LGDR and now NDC, I have worked with more than 20 school districts, including the large San Francisco and Oakland Unified School Districts, many cities, special districts, and county boards of supervisors. National-level clients have included non-profits (Girl Scouts of the United States, United Way Worldwide) and the U.S. Department of Justice. These projects have often used client and third-party data, such as Census Bureau American Community Survey data, data from state and federal government (especially birth data from the National Center for Health Statistics), and from research organizations like Pew Research Center.

6. I have worked with dozens of clients providing political redistricting services after the 1990, 2000, 2010, and 2020 decennial Censuses. These types of demographic and redistricting analyses have required expert use of Census data, including the American Community Survey, and Geographic Information Systems (GIS) software.

7. Over the years, I have served as an expert witness in several cases that involved demographic analyses, including issues such as racial and disability discrimination cases, housing discrimination against households with children cases, evaluations of school desegregation plans, political redistricting that conforms to civil rights legislation and court decisions, and developer fee justifications for school districts, among others.

8. Attached as **Exhibit A** is a copy of my curriculum vitae listing my full experience, prior publications, and list of cases where I have submitted a declaration or participated as a consultant.

9. NDC was retained by the State of Washington to determine the possible impact of a revocation of birthright citizenship in Washington and other states. NDC was asked to estimate the annual number of births to women who are unauthorized immigrants in Washington

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Civil Rights Division
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and other states, and if possible, the number of births in which both the mother and father were unauthorized immigrants. Under my direction and supervision, NDC prepared the analysis and report attached as **Exhibit B,** which reflects NDC's estimate of the number of such births nationally and in Washington, Arizona, Illinois, and Oregon. The report details NDC's estimates, the methodology used, and the data sources and additional materials consulted and relied upon. It explains in detail the analysis and calculations for Washington and provides in Appendices C-F the calculations for our nationwide estimates, as well as the estimates for Arizona, Illinois, and Oregon based on the same methodology and data sources.

10. **Nationwide.** As explained in our report, we estimate that in 2022, there were 255,000 births to unauthorized mothers in the United States. We further estimate that there were approximately 153,000 births in which both parents were unauthorized. Our nationwide calculations are detailed in Appendix C.

11. **Washington.** With respect to Washington, as explained in our report, we estimate that in 2022, the last year for which complete data are available, there were approximately 7,000 births to unauthorized mothers in Washington. That represents 30 percent of births to all foreign-born mothers and eight percent of all births to Washington residents. We further estimate that there were approximately 4,000 births in which both parents were unauthorized, representing 17 percent of births to all foreign-born mothers, and five percent of all births to Washington residents. In conducting our analysis, we reviewed data from a variety of independent sources as well as official federal and state government databases in an effort to best estimate using reliable sources the number of births to unauthorized mothers and parents. Our methodology, data sources, and full analysis are explained further in our attached report.

12. NDC has also performed the same analysis for the number of births in Arizona, Illinois, and Oregon. Our analysis for these states used the same methodology and data sources as the Washington calculations.

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13. **Arizona.** As shown in Appendix D to our report, we estimate that in 2022, the last year for which complete data are available, there were approximately 6,000 births to unauthorized mothers in Arizona. We further estimate that there were approximately 3,400 births in which both parents were unauthorized. In conducting our analysis, we reviewed data from a variety of independent sources as well as official federal and state government databases in an effort to best estimate using reliable sources the number of births to unauthorized mothers and parents in Arizona.

14. **Illinois.** Likewise, as shown in Appendix E, we estimate that in 2022, the last year for which complete data are available, there were approximately 9,100 births to unauthorized mothers in Illinois. We further estimate that there were approximately 5,200 births in which both parents were unauthorized. In conducting our analysis, we reviewed data as with other states, including data from a variety of independent sources as well as official federal and state government databases in an effort to best estimate using reliable sources the number of births to unauthorized mothers and parents in Illinois.

15. **Oregon.** We conducted the same analysis for Oregon. As shown in Appendix F, we estimate that in 2022, the last year for which complete data are available, there were approximately 2,500 births to unauthorized mothers in Oregon. We further estimate that there were approximately 1,500 births in which both parents were unauthorized. For our Oregon calculation, like other states, we reviewed data from a variety of independent sources as well as official federal and state government databases in an effort to best estimate using reliable sources the number of births to unauthorized mothers and parents in Oregon.

16. I have reviewed President Trump's Executive Order, "Protecting the Meaning and Value of American Citizenship," which states that birthright citizenship does not extend to children who are born to (1) a mother who is unlawfully present in the United States and a father who is a not a citizen or lawful permanent resident at the time of said person's birth; or (2) a mother lawfully present but here on a temporary basis and a father who is not a citizen or lawful

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permanent resident at the time of said person's birth. The analysis described here and in NDC's report addresses only a subset of children likely covered by the Executive Order. At this time, we do not have an estimate of the number of births from immigrants lawfully present in the United States but here on a "temporary basis," which the Executive Order does not define. The birth estimates provided above and in NDC's report are therefore lower than the full number of children that would be affected by the Executive Order. In other words, our estimates reflect only a conservative baseline of the number of children born in the United States and Washington, Arizona, Illinois, and Oregon, who will be denied citizenship under the Executive Order.

///

///

///

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Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at Oakland, California.

Shelley Lapkoff

DR. SHELLEY LAPKOFF

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF
DR. CHARISSA FOTINOS

ATTORNEY GENERAL OF WASHINGTON
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I, Dr. Charissa Fotinos, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge.

2. I am the State Medicaid Director for the Washington State Health Care Authority (HCA). I have been employed with HCA since October 1, 2013 and held this position since 2022. As State Medicaid Director, I am responsible for executive level oversight and administration of the Washington Apple Health (Medicaid) program, which provides more than two million Washington residents with integrated physical and behavioral health services. In this role I oversee Medicaid and the Children's Health Insurance Program (CHIP) in Washington, which are programs governed by federal rules and supported by federal funding, but administered by the State. I have also served, since 2022, as HCA's Behavioral Health Medical Director.

3. Before beginning my role as State Medicaid Director in 2022, I served in the same role in an acting capacity beginning in 2021. I have served as the Deputy Chief Medical Officer since 2013. Prior to joining HCA, I served as Chief Medical Officer for Public Health-Seattle & King County for 10 years and have served as a physician faculty member at the Providence Family Medicine Residency Program. By way of formal training and medical practice, I am board certified by the American Board of Family Medicine in Family Medicine and by the American Board of Preventive Medicine in Addiction Medicine. I hold a Master of Science in evidence-based health care from Oxford University, Kellogg College, in England, and an M.D. from the University of Colorado Health Sciences Center.

4. HCA is the designated single state agency responsible for administering Washington's Medicaid program and Children's Health Insurance Program (CHIP), federal programs regulated by the U.S. Department of Health and Human Services. Medicaid and CHIP are jointly funded by both state and federal dollars, though at different rates, as explained below. HCA also administers some state funded health care programs, including the Children's Health

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Program (CHP) and the recently launched Apple Health Expansion (which in July 2024 began providing coverage for individuals 19 and older who do not qualify for other Apple Health (Medicaid) programs due to immigration status).

5. As explained below, Washington Apple Health is an umbrella term or "brand name" for all Washington State medical assistance programs, including Medicaid. HCA is Washington's Medicaid authority, its behavioral health authority, and functions as the largest purchaser of health coverage in Washington. It is a leader in ensuring Washington residents have access to services and interventions that support health, and it is committed to whole-person care, integrating physical and behavioral health services for better results and healthier communities in Washington. HCA purchases health care for nearly 2.8 million people through Apple Health (Medicaid) and other programs. Apple Health programs serve approximately 1.9 million individuals per month in Washington.

6. Medicaid is the federally matched medical aid program under Title XIX of the Social Security Act (and Title XXI of the Social Security Act for the Children's Health Insurance Plan) that covers the Alternative Benefit Package (ABP), Categorically Needy (CN) and Medically Needy (MN) programs. The program is a state and federal partnership with states funding a portion of the program (as noted, usually up to 50 precent). In Washington, as noted, Medicaid is provided under the name Apple Health. It provides coverage for a broad array of services, including preventative care and other health care services.

7. The table below illustrates the state fiscal year 2025 forecasted expenditure dollars in the thousands for the physical health, non-behavioral health services, side of HCA's programs. Funds are broken out by federal (GFF) and state (GFS) expenditures. Medicaid[1] includes funds associated with all Title XIX eligibility groups. CHIP[2] includes children covered under Title XXI. State only[3] programs in Washington include Medical Care Services (MCS), Children's Health Plan (CHP), post-partum coverage for non-citizen pregnant women and the Apple Health Expansion (AHE), among others. States, including Washington, use federal

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Medicaid funds for the Alien Emergency Medical (AEM) program, which is also known as Emergency Medicaid.

FY 2025 HCA PH Forecasted Expenditures ($s in Thousands)			
	GFF	**GFS**	**Total**
Medicaid	6,427,949	3,222,626	9,650,575
CHIP (Children)	105,594	55,974	161,569
AEM	31,828	20,527	52,355
Non-Citizen Pregnant Women through post-partum	31,799	50,369	82,168
CHP	4,553	55,514	60,067
MCS	181	18,593	18,774
AHE (includes AEM for AHE clients)	31,738	102,775	134,514
Total	6,633,644	3,526,378	10,160,022

8. Within the Information Technology Innovation and Customer Experience Administration at HCA, roughly 350 state staff are responsible for determining eligibility for Apple Health programs, providing customer service, and managing eligibility policy for the majority of state and federally-backed Apple Health programs serving approximately 1.9 million Washingtonians. In addition to providing direct access to the programs, this administration is responsible for coordinating with the Department of Social and Health Services (DSHS) for administering Supplemental Security Income (SSI)-related and Long-Term Services and Supports Medicaid programs for the aged, blind or disabled populations.

9. Medicaid eligibility is comprised of three income methodologies: Modified Adjusted Gross Income (MAGI) methodology, non-MAGI methodology, and deemed eligibility

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(SSI recipients or Foster Care/Adoption support coverage). Programs under MAGI rules include coverage for adults aged 19-64, pregnant women, families, and children. Programs under non-MAGI rules include aged, blind or disabled populations. Deemed eligibility means that a person is granted coverage based on their categorical relationship to the program. For example, a person receiving SSI automatically receives full scope Medicaid coverage. All programs have the same level of coverage. With our community, state, and national partners, HCA is committed to providing evidence-based, cost-effective services that support the health and well-being of individuals, families, and communities in Washington State.

10. Federal Medicaid rules direct states to look at income and residency rules first and then determine whether someone is a citizen or has a satisfactory immigration status to determine eligibility. Individuals who are undocumented and do not have a lawful, qualifying immigration status, are not eligible for federal Medicaid or other benefits. The limited exception involves the federal program for undocumented or non-qualified individuals to receive emergency medical care coverage if they are otherwise eligible for Medicaid. This is also known as Emergency Medicaid. In Washington, this is available through the limited Alien Emergency Medical (AEM) program. This program covers emergency health care for a limited set of qualifying emergent medical conditions. Individuals must be categorically relatable to an existing Medicaid program—in other words, they must meet the income or other requirements—but not be eligible for a program solely due to immigration status requirements. As part of the Medicaid program, this is a joint federal and state funded program and is available to non-pregnant individuals with emergent medical conditions, including labor and delivery for pregnant clients, breast and cervical cancer, dialysis treatment and some long-term care services. When individuals who are undocumented or non-qualified receive emergency coverage under AEM, the federal matching rate is 50 percent, meaning that federal funds cover 50 percent of the cost and state funds cover 50 percent of the cost.

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11. Coverage programs for children are also provided under the name Apple Health for Kids. From a public-facing standpoint, Washington's Apple Health covers all kids regardless of immigration status up to 317 percent of the Federal Poverty Limit (FPL). Funding for the coverage, though, depends on a child's eligibility for different programs.

12. Below 215 percent of the FPL, for children who are citizens or qualified and authorized immigrants, the funding for this coverage is through Medicaid.

13. Between 215 and 317 percent of the FPL, for children who are citizens or qualified and authorized immigrants, the funding for this coverage comes through CHIP, and households pay a minimal premium for kids coverage. CHIP is a federally matched health coverage program that expands coverage to children above the Medicaid cutoff. Washington's CHIP offers comprehensive healthcare coverage to children through age 18, who reside in households with incomes between 215 percent and 317 percent of the FPL, whereas Medicaid covers eligible children below that range.

14. While provided in Washington under the name Apple Health, coverage provided under the CHIP program operates separately from Medicaid on the funding side. Historically, CHIP federal match has been 65 percent. It was increased as high as 88 percent for a period of time in recent years, but now is at 65 percent. This means that coverage provided to eligible children under the CHIP funding structure results in federal funds covering a higher portion of the expenses. Children who would have been eligible for Washington's CHIP-funded coverage programs had they met immigration status requirements can receive coverage through the state-funded Apple Health for Kids (CHP).

15. Apple Health also covers all pregnant women regardless of immigration status with income at or below 215 percent of the FPL. This is possible because their unborn children are deemed covered at conception, so even though the mother may not have a legal immigration status, the child will be born a U.S. citizen and is therefore eligible under CHIP from conception through birth. After the child is born, the child (as a U.S. citizen) can remain covered under

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Medicaid while the mother is no longer covered under the federal program. Historically, Washington's annual federal CHIP award totals about $250 million. That funding, combined with the appropriate state funds, can be used for many purposes including prenatal health care for immigrants who might not qualify for Medicaid.

16. As of December 2024, HCA administers Medicaid and CHIP funded coverage for more than 860,000 children in Washington. HCA estimates that coverage on a per-child basis costs approximately $2,844 per year on average for physical health care coverage. For this coverage, Washington expended approximately $2.37 billion with approximately $1.3 billion coming from the federal government under Medicaid and CHIP. With respect to the state-only funded CHP, there were approximately 30,000 children covered. Additionally, the State expended approximately $60 million with approximately $4.5 million from the federal government under Medicaid as part of AEM (for emergency medical services).

17. Under federal law, HCA must provide Medicaid and CHIP coverage to citizens and qualified noncitizens whose citizenship or qualifying immigration status is verified and who are otherwise eligible. Applications for coverage are processed either through the Washington Healthplanfinder (administered by the Health Benefit Exchange) where eligibility is based on a MAGI determination or through the Department of Social and Health Services (DSHS) for other eligible individuals. Citizenship or eligibility status is one eligibility factor that HCA must verify for Apple Health (Medicaid and CHIP) coverage. There are multiple ways that HCA verifies citizenship or immigration status to determine eligibility.

18. Generally speaking, for MAGI-based coverage, HCA first uses an individual's Social Security Number (SSN) along with the individual's name and date of birth to automatically check the SSN with the Social Security Administration (SSA) in order to confirm identity and citizenship through what is called the "federal hub." For individuals who declare to be lawfully present and have a SSN, HCA uses the SSN, name, and date of birth to confirm an individual's status with the Department of Homeland Security. For individuals who have an SSN

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and declare to be a citizen, but for whom citizenship cannot be automatically verified, HCA will request verification from the individual of their citizenship. And when an individual is applying for Classic Apple Health/non-MAGI through DSHS, SSN and citizenship are automatically verified through an interface with the SSA.

19. In instances where citizenship is not or cannot be verified by those automatic means (such as where an individual claims to be a citizen or have a qualifying status but HCA cannot verify it through the automatic process because the individual lacks an SSN), an individual can be approved for Medicaid/CHIP coverage based on their attestation and given a reasonable opportunity to provide verification. On that issue, a declaration of citizenship or satisfactory immigration status may be provided in writing, and under penalty of perjury by an adult member of the household, an authorized representative, or someone acting for the applicant. States must provide otherwise eligible individuals with a "reasonable opportunity period" to verify their satisfactory immigration status. Individuals making a declaration of a satisfactory citizenship or immigration status are furnished at least 90 days of coverage in order to resolve any unverified issues. If an individual's status is found to be unsatisfactory before the 90 days, their eligibility is determined and their coverage closed. If at the end of the 90 days, the individual still has not resolved their status, they can have an additional 90 days to continue working towards resolution. This is a manual process in which HCA works to verify an individual's citizenship or status on a case-by-case basis. It is administratively burdensome for both the individual and for HCA staff.

20. HCA's Application for Health Care Coverage is the form individuals can use to apply for Apple Health and is thus one way HCA can determine whether the individual is eligible for free or low-cost health care coverage through Apple Health (Medicaid), Apple Health for Kids and Apple Health for Kids with Premiums (also known as CHIP), or other state-funded programs. As part of that application, individuals must submit their (or if applying for their child, their child's) Social Security Number (SSN), date of birth, immigration information if

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applicable, and income information. As the application explains, HCA uses SSNs and other immigration document numbers to determine eligibility.

21. I understand that the President has issued an Executive Order that will deny birthright citizenship to children born in Washington depending on their parents' citizenship or immigration status. The federal government's policy of ending birthright citizenship for children born in the United States based on their parent(s)' non-citizen/immigration status will have a variety of widespread impacts on Washington's medical benefits programs, including a decrease in receipt of proper medical care for children born in Washington and increased operational and administrative costs for Washington.

22. In addition to impacts on those subject to this new policy will have a direct impact on HCA's administration of its healthcare programs and the amount of federal funding Washington receives to reimburse medical expenses for children in Washington.

23. Washington has made tremendous strides in reducing the number of uninsured individuals. Many immigrants are direct beneficiaries of this progress. In 2007, Washington became one of the first states to adopt a local policy to cover all kids with income up to 312 percent of the federal poverty level regardless of immigration status. Washington has continued to improve and broaden coverage options for children residing in Washington and worked to streamline the application process and make public-facing materials easy to understand for parents seeking coverage for themselves and their children. This is possible using both state and federal Medicaid and CHIP dollars as appropriate. Evidence shows that uninsured individuals suffer significant negative health impacts and the economic impacts of an increase in the uninsured rate could be severe.

24. Washington's current Medicaid and health benefits programs are structured around the significant reimbursements from the federal government, and any loss of funding would have serious consequences for HCA and those individuals it serves. The federal government action of taking away birthright citizenship from children born in Washington will

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result in babies being born as non-citizens with no legal status. That will result in direct loss of federal reimbursements to the State for coverage provided to those children because eligibility for federally matched programs such as Medicaid and CHIP depend on the individual's eligibility under federal law, which necessarily depends on their citizenship or immigration status. In particular, federally matched coverage to many children that would have been provided under Medicaid or CHIP will very likely be lost, since those programs are not available to unauthorized individuals aside from Emergency Medicaid/AEM coverage. This will necessarily result in a shift to the State of funding responsibility for this group of children, which poses a direct threat to the ability of the State to provide meaningful healthcare to all in need without interruption. It will also likely result in a significant number of children who may go uninsured and receive only emergency care when absolutely necessary, leading to worse health outcomes as they grow up and more expensive care through emergency procedures. Indeed, if infants or children go insured, they are not likely to be immunized, which puts them, their families, and the communities at higher risk of infectious disease.

25. Additionally, there will be substantial uncertainty and administrative burdens for HCA in providing coverage to pregnant women and their unborn children. As noted above, Washington is able to provide coverage to all pregnant women, regardless citizenship status, for prenatal care under the CHIP program because the unborn children are covered under CHIP. If the children are no longer to be citizens at birth, HCA will be left in limbo to determine whether coverage to those vulnerable pregnant women will be able to be covered, and if so, under what program. This is likely to pose a significant barrier to HCA providing streamlined coverage to women in need. In particular, HCA will need to do additional outreach to families, make systems changes and dedicate additional employee time to support understanding families' ongoing eligibility based on their child's citizenship at birth. This will put HCA and hospitals in a difficult and complex situation, requiring us to dedicate additional resources to understanding new or

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unclear eligibility requirements and complicating providers' ability to be paid for services provided.

26. The removal of birthright citizenship is also like to cause coverage lapses, or at a minimum, result in direct shifts to the State with respect to the cost of funding healthcare coverage for children who would have otherwise been eligible for Medicaid and/or CHIP. These are not impacts that can be avoided. For example, with respect to emergency care, the State and its providers will be required to absorb costs that would normally be recoverable through federal reimbursements under Medicaid and CHIP. Hospitals must provide emergency medical care under federal law, including EMTALA and the relevant Emergency Medicaid provisions. They cannot turn patients away as a general rule. Such emergency services, if provided to a child otherwise eligible for Medicaid but for their immigration status, will still be covered in part by the federal government at the 50 percent match rate for Medicaid. However, if a child is a citizen and covered under CHIP, such services would be covered and reimbursed at the 65 percent match rate. If that same child is deemed a non-citizen at birth (and thus is ineligible for CHIP), the State will be left to pay for that care. Indeed, Washington's state-funded Children's Health Program (CHP) would provide coverage, as is required under state law. As a result, for each child that would be eligible for CHIP but for their new non-citizen status, the State will lose the 65 percent federal reimbursement for any emergency care provided—solely because the child, now as a non-citizen, would not be eligible for CHIP.

27. This poses an immediate risk to HCA's federal funding stream used to provide healthcare coverage to vulnerable Washington newborns and children. In state fiscal year 2022, there were 4,367 children born to unauthorized and non-qualifying mothers whose labor and delivery was covered by AEM (Emergency Medicaid). Those children, by being born in the United States and deemed citizens, were eligible for Medicaid or CHIP programs. If this number of children became ineligible due to a loss of citizenship and moved to the State-funded CHP coverage, that would result in a loss of $6.9 million in federal reimbursements to Washington

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and a corresponding increase to State expenditures of the same amount, based on the current expenditures for the complete physical and behavioral health package of benefits. Additionally, the state would no longer be able to use the CHIP to pay for pre-natal services/expenses for the non-citizen mother. Those services would presumably shift to state-only funded coverage. Maintaining pre-natal care and services is important for health outcomes for both the mother and child/fetus. Those costs associated with this pre-natal care shifting to a state-only program is not included here.

28. In order to respond and update its practices in light of the federal government's new policy, HCA will also need to develop updated comprehensive training for staff, partners, and healthcare providers. For example, HCA will likely need to update its training and guidance around which children are citizens and therefore eligible for Medicaid and CHIP programs, and which must be funneled into state-only programs. This is a significant burden. This will likely require the work of several members of the eligibility policy team (at least 7-8 FTEs) because it would require changes touching several areas of internal expertise. Based on my team's estimation, this would likely take around two to three years to complete given the need to modify internal policies, public guidance, and formal rules; update training; and coordinate with state agencies like DSHS. We estimate that it may require training for up to 2,000 staff and will require coordination with staff in administrative hearings, communications, and for our external community partners. It may also require additional legislative solutions at the state level. Ultimately, this is counterintuitive, puts the health of children at risk, creates unfunded care mandates for already overburdened hospital systems and unwinds all the progress that has been achieved to ensure that all Washingtonians have access to affordable care.

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 21st day of January 2025, at Olympia, Washington.

Charissa Fotinos MD, MSc

CHARISSA FOTINOS, MD, MSC
Medicaid and Behavioral Health Medical Director
Washington State Health Care Authority

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE, GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF JENNY HEDDIN

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I, Jenny Heddin, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge.

2. I am the Deputy Secretary—Chief of Staff for the Washington State Department of Children, Youth, and Families (DCYF). I served as the Finance Director for Children's Administration from 2013 until the creation of DCYF in 2018. I also served as the Chief Financial Officer for DCYF from its creation until serving as DCYF's Director of Strategic Initiatives and Collaboration. I became DCYF's Chief of Staff on October 6, 2023. In these various roles, I oversaw administration of the Title IV-E grant, financial activities for child welfare including foster care and now programmatic functions including foster care. I hold a master's degree in Public Administration and have worked for Washington for 20 years.

3. DCYF is a cabinet-level agency focused on the well-being of children. Its vision is to ensure that Washington state's children and youth grow up safe and healthy—thriving physically, emotionally, and academically, nurtured by family and community. DCYF is the lead agency for child welfare services that support children and families to build resilience and health, and to improve educational outcomes. It partners with state and local agencies, tribes, and other organizations in communities across the state of Washington. It focuses on supporting children and families at their most vulnerable points, giving them the tools they need to succeed. According to brain science, laying a strong foundation early in life critically impacts healthy development. And addressing trauma, especially at critical transition points in the lives of youth, helps ensure successful transition into adulthood. To truly give all children the great start in school and life they deserve, DCYF was created to be a comprehensive agency exclusively dedicated to the social, emotional, and physical well-being of children, youth and families—an agency that prioritizes early learning, prevention, and early intervention at critical points along the age continuum from birth through adolescence.

4. DCYF administers Washington's child welfare system which is funded in part through an annual appropriation based on an open-ended formula grant entitlement operated by the U.S. Department of Health and Human Services (HHS) Federal Foster Care Program under Title IV, Subpart E of the Social Security Act (Title IV-E).

5. Title IV-E reimburses DCYF for a portion of the maintenance, administrative, and legal costs associated with caring for children placed in foster care. The state provides foster care services to children who are in danger of imminent physical harm from abuse or neglect, have been abused or neglected, are abandoned, or who have no parent capable of providing adequate care so that the children are in circumstances that endanger their psychological or physical development. It provides Title IV-E reimbursable services to achieve permanency for the children through family reunification, adoption, guardianship, or another approved living arrangement. Title IV-E also partially reimburses expenses associated with permanent placement of children through guardianship or adoption.

6. While the state provides care for all children in foster care within its jurisdiction, it is only reimbursed through Title IV-E for expenses associated with children who meet Title IV-E eligibility requirements, including being United States citizens or qualifying non-citizens. DCYF receives federal reimbursements for many of the expenses associated with the care of dependent children eligible for Title IV-E. Services provided to individuals who are undocumented or who do not have a qualifying immigration status, are not eligible for federal Title IV-E reimbursement. Those individuals are also not entitled to other federally funded benefits such as Medicaid. DCYF is also entitled to reimbursements for many types of administrative and legal costs incurred in serving Title IV-E children.

7. Title IV-E's "Adoption Assistance Program" is designed to facilitate the timely permanence for children whose special needs or circumstances would otherwise make them difficult to place. Under federal law, DCYF receives Title IV-E funding for the administrative functions of the Adoption Assistance Program, including portion of a monthly stipend paid to

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the adoptive parents to assist with the cost of caring for the child. In addition, Title IV-E also provides for reimbursement for a onetime payment towards the cost of the adoption of a Title IV-E eligible child. The maximum amount a family can receive in Washington is $1500. Title IV-E reimburses the state for a portion of any ongoing legal and administrative expenses including the determination and redetermination of eligibility; fair hearings and appeals; rate setting; and other costs directly related only to the administration of the adoption assistance program. It also includes the administration of any grievance procedures; negotiation and review of adoption agreements; post-placement management of subsidy payments; recruitment of adoptive homes; placement of the child in the adoptive home; case reviews conducted during a specific preadoptive placement for children who are legally free for adoption; case management and supervision prior to a final decree of adoption; a proportionate share of related agency overhead; referral to services; development of the case plan; home studies, and a proportionate share of the development and use of adoption exchanges.

8. Title IV-E's "Guardianship Assistance Program," like the Adoption Assistance Program, assists with the expense of achieving permanency for the dependent child. When a child is placed with a qualifying relative, the agency can receive partial reimbursement for related expenses and the monthly stipend provided to the relative guardian to assist with the cost of caring for the child, as well as for the same kind of legal and administrative services as provided for under the Adoption Assistance Program.

9. Title IV-E's "Foster Care Program," provides partial reimbursement for the regular costs of supervising and providing foster care services to children, including eligible youth up to their twenty-first birthday. This includes payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, it also includes the administration of

providing all the services detailed above. The state can also claim reimbursement for part of the cost establishing eligibility, training of staff and foster parents, and ongoing case management so long as the child remains eligible and requires services.

10. Under the "Foster Care Program," the state can also claim reimbursement for part of the cost of providing legal representation to the child and the parents throughout the dependency process, including any permanency proceedings. In Washington, the Office of Civil Legal Aid is the agency that administers the Children's Representation Program. This program's mission is to underwrite and oversee the delivery of effective standards-based, trauma-informed, and culturally-competent attorney representation for children subject to dependency and termination of parental rights proceedings in Washington State. The Office of Public Defense is the agency that administers the parents' representation program by contracting with attorneys in all thirty-nine counties in Washington to represent indigent parents, custodians, and legal guardians involved in child dependency and termination of parental rights proceedings. The available reimbursement under Title IV-E is used, in part, to fund these programs.

11. The amount of federal funds that Washington is entitled to under Title IV-E depends on the number of Title IV-E eligible children and the type of services they receive. Among the criteria for eligibility is the requirement that the child be a United States citizen or eligible non-citizen. The amount Washington receives is partly based on Washington's "penetration rate," which is then used to determine the amount Washington will be reimbursed for providing services. The penetration rate describes the proportion of Title IV-E eligible children in foster care in relation to the total number of children in foster care, pursuant to the definition of foster care in 45 CFR 1355.20. Certain reimbursable program administration costs are determined using a formula that is calculated on the number of hours spent in reimbursable activities multiplied by the penetration rate percentage. The fewer children that are eligible for Title IV-E, the lower the penetration rate. The lower the penetration rate, the lower the potential reimbursement to the state and the greater the cost to the state.

12. Title IV-E also partially reimburses Washington for the cost of direct care for Title IV-E eligible children placed with fully licensed foster caregivers who receive a payment for the children placed in their care. Again, the exclusion of a child from the pool of reimbursable expenses reduces the amount that Washinton is reimbursed, leaving the state to bear the full cost of caring for the child.

13. Title IV-E also partially reimburses the state for a percentage of the legal and administrative services afforded to children and families involved in dependency, adoption and guardianship proceedings. Legal services include legal representation of the child, the appointment and services of Guardians ad Litem, one time court costs and fees associated with adoption and guardianship. Covered administrative services include case studies, recruitment of foster parents, referral to services, case management, data collection, data storage, and a proportionate share of agency overhead. The reimbursement formulas for these services are also calculated based on the expenses associated with total number of Title IV-E eligible children and a reduction in the total number of eligible children shifts the costs for those children entirely to the State.

14. Notably, in order for Washington to be eligible for the payments under the Foster Care Maintenance Program and the Adoption Assistance Program, Title IV-E requires that DCYF make reasonable efforts to finalize children's permanent plans and that children in foster care have case plans in which DCYF files a petition to terminate the parental rights of the children's parents when children have been in foster care for fifteen of the most recent twenty-two months, unless an exception applies. Many caregivers are only able to adopt children in foster care or serve as their legal guardians because of the financial support provided to defray the costs associated with the adoption proceeding and through the ongoing monthly assistance payment for these high needs children. Washington receives federal money through Title IV-E's Adoption Support Program and Guardianship Support Program to provide this assistance, which contributes to children timely achieving permanency. The exclusion of a child from the pool of

children who are eligible for reimbursement of permanency expenses and assistance payments puts Washington in a no-win situation: it must either suffer the reduced amount that Washington is reimbursed and thereby increase its financial responsibility for children's permanency assistance programs, or avoid the increase in state financial responsibility of permanency assistance by maintaining children in foster care and delaying their permanency, which will also carry financial consequences because the State is not fulfilling Title IV-E's mandate that it make reasonable efforts to finalize children's permanency plans and file petitions to terminate the parental rights of the children's parents when children have been in foster care for the requisite period of time. Moreover, not only is extending children's length of stay in foster care damaging to children, but it will still increase the costs to the state if there is a reduction in the pool of Title IV-E eligible children.

15. Because the penetration rate depends on the number of children eligible for Title IV-E funding, each decrease in the number of children eligible for Title IV-E funding negatively affects the total amount of federal funding that Washington receives under Title IV-E for foster care maintenance, adoption support, and guardianship support, and associated legal, administrative, and training costs. In November 2024, Washington had a penetration rate of 58.6 percent for children in traditional foster care.

16. The median length of stay for a child in out-of-home care that is longer than seven days is nearly two years—727 days. If a child is ineligible for Title IV-E because they are not a citizen, DCYF cannot receive federal reimbursements for any of the services provided to that child.

17. In federal fiscal year 2024, DCYF received approximately $219 million in reimbursable Title IV-E expenses serving eligible children. This includes about $160 million in reimbursements for foster care expenditures, $55 million in adoption support reimbursements, and $4 million in guardianship support reimbursements, all including administrative costs. And many of those who enter DCYF's care are infants and newborns. In 2022, 2,087 children under

the age of 1 entered DCYF's services for out-of-home care. Of those, 1,039 were newborns. In 2023, 1,481 under the age of 1 entered DCYF's services for out-of-home care, and 701 were newborns.

18. I understand that the President has issued an Executive Order directing that individuals born to two unauthorized non-citizen parents are not to be deemed United States citizens. The federal government's policy of ending birthright citizenship for children born in the United States based on their parent(s)' non-citizen/immigration status will have program wide negative impacts on DCYF's administration of childcare subsidies for families, and foster care, adoption assistance guardianship assistance and extended foster care programs and associated legal, administrative, and training functions.

19. The state laws and regulations that govern DCYF's Child Welfare Programs were specifically crafted to comply with the requirements for Title IV-E in anticipation that the financial partnership between the State and Federal government would maximize resources available to ensure that children and families residing in the state have the opportunity to thrive in safe, healthy environments. The federal government's stripping of birthright citizenship from children will result in babies being born in Washington as non-citizens, rendering the cost of their care non-reimbursable under Title IV-E. Washington will continue to provide services to those children, but any resulting reduction in the reimbursement rate will reduce the resources available to serve the entire population of children in foster care, including children who are U.S. citizens. Washington will continue to have administrative, legal, and training costs associated with the children no longer eligible for Title IV-E. Without reimbursement, the resources available to provide for those services for the entire population of children in foster care will be reduced as well.

20. DCYF is required by federal law to verify the citizenship status of all children receiving foster care support under Title IV-E, in order to determine the child's eligibility. DCYF's service to children may begin as soon as they are born, so those determinations must be

made with respect to newborns. Currently, the primary method of citizenship verification is through birth certificates issued by other state agencies. DCYF relies on those birth certificates to determine whether children are eligible under Title IV-E.

21. If DCYF is no longer able to rely on birth certificates to make eligibility determinations, it will need to amend its processes related to Title IV-E eligibility determinations. It will also require DCYF to update or amend existing trainings regarding eligibility determinations to account for the change in birthright citizenship. These necessary process changes will demand staff time that would have been spent on other projects to better serve the children and families of Washington.

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at Olympia, Washington.

JENNY HEDDIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF KATHERINE HUTCHINSON

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
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I, Katherine Hutchinson, declare as follows:

1. I am over the age of 18 and have personal knowledge of the matters herein.

2. I am the State Registrar and Office Director at the Washington Department of Health's (DOH) Center for Health Statistics. I have held this position for 2.5 years, and have been with DOH since 2008. As State Registrar, I oversee Washington's system of vital statistics, including the registration of vital events, such as births, and the issuance of vital records, including birth certificates. I am also familiar with DOH's relationship with the U.S. Social Security Administration, and DOH's role in SSA's "Enumeration at Birth" program for issuance of Social Security Numbers (SSNs) to babies born in Washington.

3. DOH's mission is to protect and improve the health of all people in Washington state. In carrying out that mission, it administers programs and provides services that touch the lives of all Washingtonians and visitors to the State. DOH regulates healthcare facilities and oversees the Center for Health Statistics, among other things. As the office of the State Registrar, the Center is responsible for the registration, preservation, amendment, and release of official state records of all births, deaths, fetal deaths, marriages and divorces that occur in Washington. It also participates in the U.S. Social Security Administration's Enumeration at Birth program, enabling parents to request issuance of an SSN at or shortly after the time a baby is born, as part of completing the standard birth filing forms in Washington.

4. One primary function of the DOH is to oversee registration and release of birth certificates. As background, the U.S. Department of Health and Human Services, National Center for Health Statistics (NCHS) develops standard form certificates for vital events, which it recommends that the States adopt to maintain nationwide uniformity in the system of vital statistics. Washington has adopted the U.S. standard form birth certificate, with few modifications. *See* Wash. Admin. Code § 246-491.

5. The Washington form to register a birth and obtain a birth certificate is called the Washington State Birth Filing Form and is completed upon the birth of a newborn child.

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Generally speaking, it requires entry of information about the child and birthplace, information about the mother and father, and information for hospital use only. The form asks for information about the parents, including place of birth and their SSN if they have one, though they are not required to include that information. The form does not contain fields for immigration or citizenship status of a baby's parents. Thus, Washington birth certificates do not collect parental immigration or citizenship status information.

6. Neither does Washington's form to register a birth contain any field for immigration or citizenship status of the baby. Babies born in Washington have always been considered U.S. citizens, and Washington birth certificates have always been proof of U.S. citizenship sufficient to obtain a U.S. passport or SSN. Thus, Washington birth certificates contain no information or representation about a baby's immigration or citizenship status.

7. As part of the Birth Filing Form, parents are asked whether they wish to get an SSN for their children. They select either a "Yes" or "No" box when completing the form.

8. After the newborn's parents complete the Birth Filing Form, the hospital sends the information electronically to DOH through an electronic birth system called WHALES (Washington Health and Life Event System). DOH and the local public health jurisdiction then use that information to creates and register a birth certificate with the State.

9. The option to request issuance of an SSN at the time of birth is an option on Washington's Birth Filing Form because Washington participates in the U.S. Social Security Administration's Enumeration at Birth program. The EAB program is a process by which babies born in the United States may obtain an SSN based on the submission of information from the State's vital statistics agency (like DOH in Washington) rather than a separate application to the SSA and identity/citizenship confirmation process.

10. The Birth Filing Form asks for the parents' SSNs. Parents born outside the United States can apply for and receive an SSN for their child born in the United States without including their own SSNs. Currently, because children born in the United States are U.S.

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citizens, they are eligible for SSNs regardless of their parents' immigration status. The EAB process facilitates a streamlined application and issuance of SSNs to U.S. Citizen babies born in Washington. To DOH's knowledge, based on its agreement with the SSA, more than 98 percent of parents in the United States voluntarily request an SSN for their newborns through the EAB program.

11. After a healthcare facility receives a completed Birth Filing Form indicating that an SSN is sought for a newborn child, it sends the required information to DOH, and DOH in turn sends the required birth record information to the SSA in the prescribed format for the purpose of SSA issuing an SSN to the newborn child. The information sent must include the child's name, date of birth, place of birth, sex, mother's maiden name, father's name if listed on the birth registration document, the mother's address, the birth certificate number, and the parents' SSNs if available.

12. In exchange for administering this program and formatting and transmitting certain data to the SSA, DOH receives federal funding from the SSA. Through a contract in place with the SSA, the State currently receives $4.19 per SSN assigned through the EAB process, up to nearly $440,000 per year. Under the agreement, DOH only sends EAB records and information to the SSA for enumeration of infants born within the past 12 months, and it receives payment only for records received for births in the current month and the prior two months. Further, the number of records processed and available for reimbursement is reduced by the number of births that are assigned an SSN in SSA Field Offices after the parent has applied for EAB at the hospital. In other words, DOH is only reimbursed for those SSNs assigned through EAB. The annual payment received through the EAB program is approximately 7 percent of the Center's annual budget, and DOH uses those funds to support the payment of administrative and operational costs for the Center.

13. If children born in Washington become ineligible for SSNs because they are no longer citizens, DOH will lose federal funds because there will be a decrease in the number of

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SSN applications sent through the EAB process. For example, if there is an annual decrease of approximately 4,000 newborn children eligible for SSNs in Washington and the SSA declines to issue SSNs for those children, DOH stands to lose approximately $16,000 per year. Based on my experience, I anticipate that DOH would in fact see an even larger decrease in the number of children eligible to obtain an SSN because data quality may decrease, making it hard to provide enough information to SSA to get an SSN assigned.

14. DOH also anticipates additional negative impacts based on the loss of birthright citizenship to newborns in Washington. If it were no longer the case that all children born in the United States are U.S. citizens at birth and the newborn registration process had to be amended to provide for verification of the parents' citizenship or immigration status, Washington's vital records system would have no immediate way to reflect this significant change. It would instead require substantial operational time, manpower resources, and technological resources from the Center and healthcare facilities in Washington to respond to the change. Indeed, the Center endeavors to avoid deviation from the national standard in order to preserve interoperability of data systems. Modifying required birth certificate information would require significant system changes for the Center and additional rulemaking by DOH.

15. Historically, the National Center for Health Statistics within the U.S. Centers for Disease Control and Prevention (NCHS) has reviewed and revised U.S. standard vital form certificates every 10-15 years only, by way of a years-long collaborative process with state vital records officers and public health experts. Even if NCHS were to develop and promulgate a new U.S. standard birth certificate that included fields for immigration or citizenship information, adoption of a new form by DOH would additionally require notice-and-comment rulemaking, which cannot occur overnight. *See* Wash. Admin. Code § 246-491-149(1).

16. It would be chaotic if a change to U.S. citizenship at birth were implemented without sufficient time to prepare. A change of such scale would place significant new burdens on DOH and the Center in particular. DOH would need to determine what changes are required

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to birth certificates and what new information may need to be collected. Once determined, DOH would need to work with NCHS to promulgate a new U.S. standard birth certificate for Washington's adoption. DOH then would have to promulgate a new rule to effectuate the changes.

17. Meanwhile, approximately 80,000 babies are born every year in Washington. That is an average of more than 200 babies per day. It is unclear what would be required or requested of DOH in connection with the registration of births that were to occur prior to the implementation of updated birth certificates, since birth certificates are proof of U.S. citizenship. DOH is not currently equipped to handle those new burdens; for example, it is hard to know how we would go about determining the immigration status or citizenship of every newborn (or their parents) when their immigration status is unclear to us, and whose job it would be to make that determination. Most births are assisted births, and hospitals and midwives are the ones who collect and transmit birth registration information to DOH. Furthermore, all information we receive is self-reported, we have no way to verify it, and we do not receive information concerning the parents' immigration or citizenship status.

18. Furthermore, implementing any changes to the Washington birth certificate—an electronic system comprised of distinct end-user interfaces for medical providers to input data for transmission to DOH, on the one hand, and files DOH can transmit to the SSA, for example, on the other—would require substantial, unbudgeted expenditures by DOH.

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025 at Tumwater, WA.

Katherine Hutchinson

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
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(206) 464-7744

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF BRIAN REED

I, Brian Reed, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge.

2. I am the Service Line Administrator of Women's and Children's Services for UW Medicine. In this role, I oversee strategy, planning, and operations for the provision of women's and children's services across the UW Medicine hospitals and clinics in the greater Seattle area. My Responsibilities include overseeing daily operations, engaging in strategic planning, and ensuring financial stewardship of the programs. I hold a bachelor's degree in Recreation Therapy from Eastern Washington University and a master's degree in Health Administration from the University of Washington. I have accumulated over 10 years of experience in Women's health and possesses 15 years of experience in the healthcare industry.

3. UW Medicine operates UW Medical Center, at its Montlake and Northwest campuses, along with Harborview Medical Center, the only Level 1 Trauma Center in Washington, Alaska, Montana, and Idaho. All three of these facilities care for pregnant mothers and newborns. In 2024, UW Medicine helped deliver 4307 babies and served 890 newborns in its neonatal intensive care units (NICU). Doctors employed and trained by UW Medicine also work at Seattle Children's Hospital to provide pediatric care.

4. I understand that the President of the United States has issued an Executive Order directing that individuals born in the United States to two unauthorized non-citizen parents are not to be deemed United States citizens. The federal government's policy of ending birthright citizenship for children born in the United States based on their parent(s)' non-citizen/immigration status will have a variety of impacts on UW Medicine, including an increase in the operational and administrative costs for UW Medicine's hospital sites.

5. When families do not have insurance coverage for their children born or treated at UW Medicine facilities, UW Medicine tries to work with the family to assess whether the child is eligible for publicly funded forms of health insurance, including federally funded

Medicaid and Children's Health Insurance Program (CHIP), and state-funded programs, including the Children's Health Plan (CHP). The UW admissions team meets with new patients to review their insurance benefits. If the patient has no insurance coverage, then the admissions team contacts UW Medicine's financial counselors. Those financial counselors work with the patients to complete an intake appointment, where the counselors will screen patients for insurance options. And if it appears that the child is eligible for a form of public health insurance coverage, UW Medicine's staff assists the family with submitting applications for this coverage.

6. The current UW Medicine process for screening newborns for health insurance coverage relies on the fact that babies born in a Washington hospital site are citizens and are eligible for federally funded Medicaid and CHIP. Because UW Medicine can no longer rely on newborns being citizens, it will have to build a new pathway in its eligibility screening process to assist the parents of non-citizen newborns in applying for the appropriate public benefits programs. This will also require UW Medicine to revise internal and patient facing materials to account for the loss of birthright citizenship. This work will involve significant staff time and other administrative resources.

7. The disruption to UW Medicine's process for screening newborns for public insurance coverage will most significantly impact the services UW Medicine provides to newborns in the neonatal intensive care unit (NICU). Children in the NICU require around-the-clock care, and many of them are brought to the NICU immediately or shortly after being born in one of UW's hospital sites. Over 95% of admissions to UW Medicine NICUs are from the UWMC High-Risk Perinatal Program, one of the highest risk obstetric services in the nation. In addition, UW Medicine has special expertise in managing the most fragile growth-restricted and premature fetuses and newborns. The change in eligibility for coverage for newborns, and changes in assisting patients in navigating and applying for public coverage, will add additional burdens on UW Medicine staff who are focused on providing top notch care to newborns.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025 at Seattle, Washington.

Brian R Reed

BRIAN REED

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF TOM K WONG

ATTORNEY GENERAL OF WASHINGTON
Civil Rights Division
800 Fifth Avenue, Suite 2000
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(206) 464-7744

I, Tom K. Wong, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge. If called to testify as a witness, I could and would testify competently to the matters set forth below.

2. I am a tenured Associate Professor at the University of California, San Diego (UCSD). I work in the Political Science Department, which U.S. News & World Report consistently ranks as one of the top ten political science departments nationally. I first joined the Department at UCSD in 2012, and became an Associate Professor with tenure in 2016. At UCSD, I am the Director of the U.S. Immigration Policy Center (USIPC), which I founded in 2018, and the Director of the Human Rights and Migration Studies Program Minor.

3. Prior to this, I served as an advisor to the White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI), where I co-led on the immigration portfolio, during the 2015-2016 academic year. I received a Ph.D. in Political Science from the University of California, Riverside in 2011.

4. I am an expert on U.S. immigration policy. I have written two peer-reviewed books and dozens of peer-reviewed journal articles, book chapters, and reports on this subject. My most recent article represents one of the first randomized survey experiments done on a sample of undocumented immigrants that sheds light on how local cooperation with federal immigration enforcement officials affects the day-to-day behaviors of unauthorized immigrants.

5. In my work, I regularly estimate the size and the characteristics of the unauthorized immigrant population using U.S. Census American Community Survey (ACS) microdata. This work has been used in my academic publications, reports that I have written for think tanks, white papers written for Congressional offices, and in sworn testimony that I have given to the Senate Judiciary Committee on immigration-related matters. Substantively, this work involves comparing outcomes between U.S. citizens and those without legal status, which is the core of the analysis I present below.

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6. I have attached a true and complete copy of my curriculum vitae as **Exhibit A** to this Declaration, which includes a list of all of my publications over the past ten years.

7. I have been retained by the State of Washington to analyze data related to possible impacts of denying birthright citizenship to certain children born in the United States. I share my opinions below of how the denial of birthright citizenship will impact children who are born non-citizens, the methodology and analysis I conducted to reach those opinions, and the data used to demonstrate differences across multiple social and economic indicators to compare outcomes for U.S. citizens versus non-citizens.

8. I understand that the federal government has taken action to deny birthright citizenship to certain children born to undocumented parents. In my opinion, denying birthright citizenship to children born in the U.S., but who have undocumented parents, will create a permanent underclass of people whose societal and economic integration will be severely impaired throughout the course of their entire lifetimes. One way to evaluate this impact is to compare outcomes between U.S. citizens and those who live in the U.S. without legal status. Indeed, the status quo gives U.S. citizenship to children born in the U.S., but who have undocumented parents. Denying birthright citizenship to these children would make them unauthorized immigrants just like their parents.

9. In the analysis below, I use the Warren (2014) method[1] to estimate likely unauthorized immigrants in the 2023 American Community Survey (ACS) microdata one-year file.[2] I then compare outcomes between U.S. citizens and those who live in the U.S. without legal status across a range of indicators of societal and economic integration. The data show clear patterns, wherein unauthorized immigrants do worse when compared to U.S. citizens across these indicators of societal and economic integration. This confirms the conclusion that denying birthright citizenship to children born in the U.S. to undocumented parents will create a

[1] Warren, Robert. "Democratizing data about unauthorized residents in the United States: Estimates and public-use data, 2010 to 2013." *Journal on Migration and Human Security* 2, no. 4 (2014): 305-328.

[2] This represents the most recently available ACS microdata.

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permanent underclass of people who are excluded from U.S. citizenship and are thus not able to realize their full potential. Not only would this newly created underclass of people stand to lose, but American society and the economy would also be harmed from their lack of societal and economic integration.

Indicators of Societal and Economic Integration

10. Living in the U.S. without legal status means having to live with the constant fear of deportation and the absence of work authorization. But living "in the shadows," as unauthorized immigrants do, affects societal and economic integration in numerous other ways. One indicator of societal integration is whether a person is in school. Another indicator of societal integration is educational attainment. These two indicators speak to human capital, wherein more people who are in school and more educational attainment mean more human capital accrues to society. Indicators of economic integration are whether a person is employed, income, and poverty. These three indicators speak to economic contributions, wherein higher employment, higher income, and lower poverty, mean higher economic contributions. I discuss each indicator and differences between U.S. citizens and unauthorized immigrants below.

11. **School.** Regarding whether a person is in school, the data show clearly that U.S. citizens are significantly more likely to be in school when compared to likely unauthorized immigrants. For example, for U.S. citizens between the ages of eighteen and twenty-four, 48.2 percent are in school. For likely unauthorized immigrants between the ages of eighteen and twenty-four, only 26.4 percent are in school. This 21.8 percent difference is highly statistically significant. As Table 1 shows, not only are U.S. citizens significantly more likely to be in school when compared to likely unauthorized immigrants, but this pattern holds across all age groups.

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Table 1

Age Group	% In School – U.S. Citizen	% In School – Likely Unauthorized Immigrant	Difference
18-24	48.2%	26.4%	+21.8%
25-34	10.2%	4.6%	+5.6%
35-44	5.1%	2.3%	+2.8%
45-54	3.0%	1.6%	+1.4%
55-64	1.5%	1.0%	+0.5%
65+	0.7%	0.5%	+0.2%

12. **Educational Attainment.** In terms of educational attainment, I analyze differences between U.S. citizens and likely unauthorized immigrants when it comes to whether a person has a high-school diploma. The data show clearly that U.S. citizens are significantly more likely to have a high-school diploma when compared to likely unauthorized immigrants. For example, for U.S. citizens between the ages of eighteen and twenty-four, 77.5 percent have a high-school diploma. For likely unauthorized immigrants between the ages of eighteen and twenty-four, only 59.6 percent have a high-school diploma. This 17.9 percent difference is highly statistically significant. As Table 2 shows, not only are U.S. citizens significantly more likely to have a high-school diploma when compared to likely unauthorized immigrants, but this pattern also holds across all age groups. In fact, the gap between the percentage of U.S citizens who have a high-school diploma and the percentage of likely unauthorized immigrants who have a high-school diploma is widest at the sixty-five an older age group. More specifically, for U.S. citizens who are sixty-five or older, 73.7 percent have a high-school diploma. For likely

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unauthorized immigrants who are sixty-five or older, only 29.7 percent have a high-school diploma. This 44.0 percent difference is highly statistically significant.

Table 2

Age Group	% High-School Diploma – U.S. Citizen	% High-School Diploma – Likely Unauthorized Immigrant	Difference
18-24	77.5%	59.6%	+17.9%
25-34	81.3%	55.0%	+26.3%
35-44	76.5%	43.7%	+32.8%
45-54	75.6%	38.0%	+37.6%
55-64	75.8%	38.9%	+36.9%
65+	73.7%	29.7%	+44.0%

13. **Employment.** When it comes to employment, employment rates are largely similar when comparing U.S. citizens to likely unauthorized immigrants. Table 3 shows employment rates for those who are in the labor force for U.S. citizens and likely unauthorized immigrants by age group.

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Table 3

Age Group	% Employed – U.S. Citizen	% Employed – Likely Unauthorized Immigrant	Difference
18-24	91.1%	92.2%	-1.1%
25-34	95.7%	96.6%	-0.9%
35-44	96.5%	96.8%	-0.3%
45-54	97.0%	96.9%	+0.1%
55-64	97.3%	96.5%	+0.8%
65+	97.3%	96.6%	+0.7%

14. **Annual Total Income.** Despite similar employment rates, income varies significantly between U.S. citizens and likely unauthorized immigrants, which demonstrates the gap in earning potential for unauthorized workers. This makes vivid the "undocumented penalty" that comes with living in the U.S. without legal status. Regarding annual total income, the data show clearly that U.S. citizens earn significantly more annual total income when compared to likely unauthorized immigrants. For example, for U.S. citizens between the ages of eighteen and twenty-four, average annual total income is $24,899.43. For likely unauthorized immigrants between the ages of eighteen and twenty-four, average annual total income is $23,857.68. This $1,041.75 difference is highly statistically significant. Despite annual total income being higher for likely unauthorized immigrants between the ages of twenty-five and thirty-four when compared to U.S. citizens between the ages of twenty-five and thirty-four, the income disadvantage for unauthorized immigrants grows and becomes more significant over time. For U.S. citizens between the ages of thirty-five and forty-four, average annual total income is $69,623.08. For likely unauthorized immigrants between the ages of thirty-five and forty-four, average annual total income is $63,236.55. This $6,386.53 difference is highly statistically

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significant. Between the ages of forty-five and fifty-four, the income disadvantage for unauthorized immigrants is at its widest. For U.S. citizens between the ages of forty-five and fifty-four, average annual total income is $75,845.63. For likely unauthorized immigrants between the ages of forty-five and fifty-four, average annual total income is $52,534.81. This $23,310.82 difference is highly statistically significant. As Table 4 shows, the income disadvantage for unauthorized immigrants persists for the rest of their working lifetimes. Altogether, from the ages of eighteen to sixty-four, U.S. citizens will earn an estimated $455,717.35 more in annual total income, which translates into a 19.5 percent difference, when compared to likely unauthorized immigrants.

Table 4

Age Group	Annual Total Income – U.S. Citizen	Annual Total Income – Likely Unauthorized Immigrant	Difference
18-24	$24,899.43	$23,857.68	+$1,041.75
25-34	$50,902.85	$55,784.47	-$4,881.62
35-44	$69,623.08	$63,236.55	+$6,386.53
45-54	$75,845.63	$52,534.81	+$23,310.82
55-64	$65,276.56	$45,249.78	+$20,026.78
65+	$48,638.26	$29,591.35	+$19,046.91

15. **Poverty.** Lastly, the data show clearly that poverty is more pronounced among likely unauthorized immigrants when compared to U.S. citizens. For example, whereas 15.6 percent of U.S. citizens between the ages of eighteen and twenty-four live at or below the federal poverty line, the commensurate percentage for likely unauthorized immigrants between the ages

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of eighteen and twenty-four is 18.0 percent. This 2.4 percent difference is highly statistically significant. As Table 5 shows, the poverty disadvantage for unauthorized immigrants persists across all age groups except for likely unauthorized immigrants between the ages of fifty-five and sixty-four. As Table 5 also shows, the poverty disadvantage for unauthorized immigrants is widest for unauthorized immigrants sixty-five years and older. Whereas 10.4 percent of U.S. citizens sixty-five years and older live at or below the federal poverty line, the commensurate percentage for likely unauthorized immigrants sixty-five years and older is 15.9 percent. This 5.4 percent difference is highly statistically significant.

Table 5

Age Group	% Poverty – U.S. Citizen	% Poverty – Likely Unauthorized Immigrant	Difference
18-24	15.6%	18.0%	-2.4%
25-34	8.5%	9.9%	-1.4%
35-44	8.1%	10.5%	-2.4%
45-54	7.3%	8.2%	-0.9%
55-64	9.5%	7.7%	+1.8%
65+	10.4%	15.9%	-5.5%

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 21st day of January 2025, at San Diego, California.

DR. TOM K. WONG

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF DAVID C. BALUARTE

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I, David C. Baluarte, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge.

2. I am a Professor of Law and the Senior Associate Dean for Academic Affairs at CUNY School of Law in New York. My professional and scholarly focus is and has long been on immigration, refugee, and statelessness protection, and international human rights issues.

3. Prior to joining CUNY School of Law in 2024, I held numerous academic positions at Washington and Lee University School of Law in Lexington, Virginia, from 2013 to 2023. As a Clinical Professor of Law, I founded the Immigrant Rights Clinic and designed a clinical curriculum in which students represented immigrants in federal removal proceedings and state court custody matters. In addition to the Immigrant Rights Clinic, I taught classes on Immigration Law, Transnational Law, Refugee Protection and Human Rights, and Civil Litigation. Prior to my time at Washington and Lee University School of Law, I also was a Practitioner-in-Residence in the International Human Rights Law Clinic at American University Washington College of Law, where I co-taught a year-long clinic seminar and supervised students in their representation of individuals and communities in international human rights litigation and advocacy, as well as their representation of asylum seekers. I also taught a class on Asylum and Refugee Law in that position. In this role, I also conducted multiple funded projects, including a project to establish a pilot clinic for stateless persons in the United States (funded through the United Nations High Commissioner for Refugees) and a cross-clinical partnership focused on protecting and promoting nationality rights in the Bahamas.

4. I have researched and published extensively on issues related to immigration, refugee, and statelessness in particular. For example, in 2017, I published an article in the Yale Human Rights and Development Law Journal on issues related to statelessness, entitled *The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality*, 19 Yale Hum. Rts. & Dev. L.J. 47 (2017). Before that, in 2015, I published an article in the Georgetown

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Immigration Law Journal entitled *Life after Limbo: Stateless Persons in the United States and the Role of International Protection in Achieving a Legal Solution*, 29 Geo. Imm. L.J. 351 (2015). In addition to those law review articles (and numerous others), I have also published multiple short journal articles and reports on issues related to statelessness and other immigration, refugee, and human rights issues. For example, in 2020, I published an article in the Brown Journal of World Affairs entitled *Protecting Stateless Refugees in the United States*. In 2012, I authored a report entitled *Citizens of Nowhere*, which was co-published by the United Nations High Commissioner for Refugees (UNHCR) and the Open Society Justice Initiative. That report was the first comprehensive review of U.S. jurisprudence relating to statelessness.

5. As a scholar focused on statelessness issues, I have also served as an expert consultant in numerous roundtable matters, advised on a variety of legal issues related to statelessness, and engaged with civil society on these issues. I have also delivered numerous speaking engagements on statelessness issues in multiple academic and civil society convenings. I was a founding Steering Committee Member of the American Network on Nationality and Statelessness and am currently an Advisory Council Member with the Institute on Statelessness and Inclusion.

6. The term "stateless" refers to individuals and populations who are "not considered as a national by any State under the operations of its law." That definition comes from the 1954 Convention Relating to the Status of Stateless Persons and has acquired customary international law status. In essence, stateless individuals are citizens or nationals of no country. They include individuals who are not recognized as a national under the laws of any country or certain individuals outside the county of their presumptive nationality who are denied the protection, assistance, or recognition by that country. An expert meeting on statelessness issues in 2010 offered a useful and recognized functional definition of statelessness, stating that an individual is stateless "if all states to which he or she has a factual link fail to consider the person as a national." Polly J. Price, *Stateless in the United States: Current Reality and a Future*

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Prediction, 46 Vanderbilt J. Transnat'l L. 443, 451 (2021) (discussing the 2010 Expert Meeting on the Concept of Stateless Persons at Prato, Italy). The State Department's Bureau of Population, Refugees, and Migration likewise recognizes this understanding of what it means to be stateless, explaining that "[a] stateless person is someone who, under national laws, does not enjoy citizenship – the legal bond between a government and an individual – in any country."[1] As I have written previously, "to be stateless is to have no nationality, which the U.S. Supreme Court has called 'a fate of ever increasing fear and distress' that is 'deplored by the international community of democracies.'" *Life after Limbo: Stateless Persons in the United States and the Role of International Protection in Achieving a Legal Solution*, 29 Geo. Imm. L.J. 351, 352 (2015).

7. Worldwide, the United Nations Commissioner for Refugees has found that there are at least 4.4 million stateless people and recognizes that the actual number is believed to be substantially higher due to the fact that many countries do not report statelessness data. In the United States, the Center for Migration Studies, which is recognized as having conducted the most rigorous analysis to date on the issue, estimates that as of 2020, there were approximately 218,000 U.S. residents, spread across all 50 states, that are potentially stateless or at risk of becoming stateless.[2] Numerous causes are recognized as driving statelessness in the United States and elsewhere, including gaps in nationality laws (including laws restricting acquisition of citizenship, laws restricting the right of women to pass on their nationality to their children, and laws relating to children born out of wedlock and during transit), discrimination against minorities, lack of birth registration and birth certificates, birth to stateless parents, political changes and transfers of territory, and other administrative oversights and procedural problems (such as destruction of official records).

[1] Available at: https://www.state.gov/other-policy-issues/statelessness/.
[2] Available at: https://cmsny.org/wp-content/uploads/2020/01/StatelessnessReportFinal.pdf

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8. While there are likely more than 200,000 individuals in the United States who are potentially stateless or at risk of being stateless today, that number is generally limited to one generation. The reason is that under the existing rule of birthright citizenship in the U.S., children born in the United States are citizens regardless of their parents' citizenship, status, or country of origin. In other words, the United States currently has a relatively minor statelessness problem when compared with other countries around the world, in large part because of the longstanding and brightline rule of birthright citizenship. If the established rule of birthright citizenship in the United States were to change to exclude children born to undocumented mothers or parents, however, the number of stateless children would increase dramatically.

9. This likely outcome of modifications to the Fourteenth Amendment's birthright citizenship rule in the United States has been discussed at length in the academic literature on statelessness issues. One key article that details the mechanisms by which the number stateless individuals would increase if there were a change to the United States' established rule of birthright citizenship is Professor Polly Price's *Stateless in the United States: Current Reality and a Future Prediction*, 46 Vanderbilt J. Transnat'l L. 443 (2021). As Professor Price explains, "[s]tatelessness, already present in the United States, would be increased by these restrictions [on birthright citizenship]" for two reasons: "(1) statelessness already exists in the Western Hemisphere, from which many, if not most, unauthorized migrants come to the United States, and (2) new restrictions will extend statelessness to second or subsequent generations, as well as create statelessness for some children even when the parent has a recognized nationality." *Id.* at 446. In terms of the number of individuals who might be rendered stateless under a change to the U.S. birthright citizenship rules, one study estimated that a prospective denial of birthright citizenship to children born to unauthorized immigrants would create in the United States a population of up to 13.5 million native-born, but stateless, children by 2050. *See* Margaret Stock,

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The Cost to Americans and America of Ending Birthright Citizenship, National Foundation for American Policy (March 2012).[3]

10. In my view, there are three ways that the number of stateless individuals in the United States would multiply at an exponential rate should the established birthright citizenship rule be limited. The first is that there are already individuals who are stateless in the United States today. If those individuals have children who are not U.S. citizens and do not automatically acquire another nationality through their parents' country of origin, those children too will become stateless. This is essentially the creation of a second generation of stateless individuals. Second, the number of stateless individuals would be increased because some parents, due to the laws of their country of origin, may be nationals of that country but are prohibited from transmitting citizenship to their children born abroad (i.e., in the United States). This is essentially the creation of a new generation of stateless individuals in the United States. And third, there are individuals who are nationals of other countries that nonetheless reside here in the United States. Under a reasonable interpretation of their country of origin's nationality laws, they may be able to pass that citizenship to their children, but despite a credible claim, their country of origin may refuse to recognize a claim to citizenship for numerous reasons (such as record keeping issues, political issues or disagreements with the United States, or discrimination against certain racial, ethnic, or religious groups of which the individual is a member).

11. The impacts are not purely hypothetical. As I have explained in prior work, whatever the exact size of the stateless population, birthright citizenship limits the size of the population put into the legal limbo that is being statelessness in the United States. Indeed, the Fourteenth Amendment's birthright citizenship rule has provided a guarantee that statelessness cannot be reproduced in the United States. One example is Kuwaiti Bidoons (a group that lacks a nationality in their homeland), who fled the first Gulf War to the United States and can count on U.S. citizenship for their children who are born here. Those children would otherwise be

[3] Available at: https://nfap.com/pdf/NFAPPolicyBrief.BirthrightCitizenship.March2012.pdf.

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stateless. As noted above, due to country-specific nationality laws, nationals of some countries cannot transmit their own nationality to children who are born abroad. But if those children are born in the United States, they automatically gain American citizenship. The Bahamas presents another example of this phenomenon in the Western hemisphere: Bahamian women are not permitted to pass their nationality to children born abroad. And in Haiti and some other Western hemisphere countries, crumbling birth-registration systems make it difficult to substantiate nationality claims for children who are born abroad. Other noted profiles of individuals who are stateless or likely stateless in the United States have been recognized in the literature, including in the 2020 CMS Report, which provides an extensive description of such groups in the United States. Taking these cases into consideration, the potential problem of statelessness in the United States would be substantially larger if the current birthright citizenship rule is changed or limited.

12. The harm of individuals becoming stateless is significant to the individual and to the United States as a whole. For an individual, U.S. immigration law does not explicitly recognize statelessness, nor does it provide humanitarian protection to relieve stateless persons of their suffering. Stateless individuals are instead treated like other unauthorized migrants in the United States. This means that a limitation on birthright citizenship in the United States will have the effect of immediately increasing the population of undocumented individuals here, and in fact will create a permanent growing class of undocumented individuals. And because of their stateless status, these individuals do not have a home country to return to voluntarily or otherwise. They must simply remain in the United States with no citizenship or status at all.

13. The personal harm is substantial to these individuals—many of whom will be children if birthright citizenship is denied to them. Some stateless individuals may be able to apply for and obtain protection from removal or a form of temporary relief, but neither those forms of relief nor a path to nationality or citizenship are guaranteed. If requests for those protections are not granted and the individual is put into removal proceedings and ordered removed, they may be subject to mandatory detention while immigration officials try to execute

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those efforts—which will fail because no other nation will recognize the stateless individual and accept them. And for individuals subsequently released or who have not entered removal proceedings, they are left in legal limbo. They have no nationality or legal status in the United States or elsewhere.

14. Being stuck in this limbo comes with serious consequences. Stateless individuals face significant barriers to participating in the economy because, without a legal status, they cannot obtain authorization from the government to work legally. They also lack access to many social welfare or government services programs and cannot be involved in the political process. While they are here in the United States, they must navigate without consular assistance matters involving protection, travel documentation, and judicial proceedings. Instead, they must live with the permanent threat of detention or being put into removal proceedings, and they cannot return to a country of origin and pursue a life where political, economic, and social participation is possible.

15. In essence, individuals who are stateless in the United States are part of a permanent underclass of people with no path to citizenship. They face increased insecurity and instability in their daily lives, restrictions on their ability to freely travel, detrimental employment and economic consequences as a result of their status that severely limit their upward mobility, and overall they must navigate their lives in American society without being fully part of society. This harm can be hard to quantify but cannot be understated—for individuals who are stateless there is simply no safe place to go. Limiting birthright citizenship in the United States will exponentially increase the number of individuals put into this situation and vastly expand the scope of those harms to those individuals, their families, and the United States at large.

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I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at New York, NY.

David C. Baluarte

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF DR. CAITLIN PATLER

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I, Caitlin Patler, PhD, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge. If called to testify as a witness, I could and would testify competently to the matters set forth below.

2. I am an Associate Professor of Public Policy at University of California (UC), Berkeley Goldman School of Public Policy. I am a faculty affiliate of the Berkeley Interdisciplinary Migration Initiative, the Berkeley Population Center, and the Institute for Research on Labor and Employment. Prior to joining the UC Berkeley faculty, I was an Associate Professor of Sociology at UC Davis, where I was a Chancellor's Fellow and helped establish the Global Migration Center. I received a Ph.D. in Sociology from the University of California Los Angeles (UCLA) in 2014. I have a Master of Arts and Bachelor of Arts degrees in Sociology, both from UCLA.

3. My research focuses on the origins and reproduction of inequality in the United States through an examination of immigration laws, legal statuses, and law enforcement institutions as drivers of socioeconomic and health disparities. I also study the spillover and intergenerational consequences of legal vulnerability and structural inequality for the health and wellbeing of older adults, young adults, youth, and children. I have written over 50 peer-reviewed journal articles and book chapters, commentaries, and research reports on these subjects.

4. I have received several internationally competitive awards. In 2021, I received the American Sociological Association (ASA) Section on Mental Health Best Publication Award. In 2019, I received the Pacific Sociological Association (PSA) Distinguished Contribution to Sociological Perspectives award. In 2018, I received the ASA Latina/o Sociology Section Distinguished Contribution to Research article award. My work has been supported with nationally and internationally competitive grants from the ASA, the National Academy of Education/Spencer Foundation, the National Science Foundation, the Russell Sage

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Foundation, and the Sociological Initiatives Foundation, among others. As a recognized expert on issues related to immigration law enforcement, in 2024, I presented summaries of research before the National Academies of Science, Engineering and Medicine Committee on Population.

5. My work has been presented to courts to aid in their consideration of issues concerning the rights of immigrants. In 2020, I authored a declaration to the United States District Court, Central District of California, analyzing the health profiles of certain individuals detained at Adelanto Detention Facility in 2013-14 who would have been classified as having "High-Risk conditions" by the Centers for Disease Control (CDC) for purposes of their vulnerability to COVID-19. *See* Reply Brief for Petition at Ex. 7, *Hernandez-Roman et al. v. Chad F. Wolf et al.*, No. 5:20-cv-00768-TJH-PVC (C.D. Cal., May 21, 2020). In 2019, I co-authored an amicus brief to the United States Supreme Court summarizing empirical research on the Deferred Action for Childhood Arrivals ("DACA") program. *See* Amici Curiae Brief of Empirical Scholars in Support of Respondents, *Dep't of Homeland Sec. et al. v. Regents of the Univ. of S. Cal., et al.*, Nos. 18-587, 18-589, 18-588 (U.S. Oct. 9, 2019). In 2018 and 2015, research I did as part of my analysis of the implementation of the injunction in *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *rev'd in part*, *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018), was judicially noticed by the Court. *See* Order, *Rodriguez v. Robbins*, No. 13-56706, ECF No. 133 at *4 (9th Cir. Oct. 28, 2015). My research has been cited in at least four federal courts of appeals and two federal district courts, as well as by the Department of Homeland Security in its response to public comments on the proposed Rule on Deferred Action for Childhood Arrivals (DACA) CIS No. 2691-21; DHS Docket No. USCIS-2021-0006, (Aug. 2022), as well as its Notice of Implementation of Keeping Families Together, CIS No. 2779-24; DHS Docket No. USCIS-2024-0010 (Aug. 2024). I have served as an expert on the economic and social impacts of US immigration detention in the California Senate Judiciary Committee.

6. I have attached a true and complete copy of my curriculum vitae as Exhibit A to this Declaration, which includes a list of all of my publications over the past fifteen years.

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7. I have been retained by the State of Washington to provide a review of the research and academic literature on the impacts of denying birthright citizenship to certain children born in the United States, particularly with regard to education and health. In addition to my own research, I have reviewed a large body of peer-reviewed research on the socioeconomic and health disparities resulting from immigration law and legal statuses. I rely on my own research and this academic literature to inform my opinions.

8. I have attached as Exhibit B to this Declaration a complete list of all references cited herein.

9. My research and the academic literature show that citizenship confers legal, political, and social membership in the United States, thus creating paths to mobility. In contrast, undocumented immigrants are excluded from legal, political, and social membership, and thus face thwarted opportunities for mobility. In a comprehensive review of research on the integration of immigrants in the US, the National Academies of Sciences, Engineering, and Medicine concluded that immigrant legal status is a central determinant of immigrants' integration and mobility: "Given the significant potential to alter individuals' life chances, legal status has become a new axis of social stratification, similar to other social markers such as social class, gender, and race" (Waters, Pineau, and National Academies 2015:148), a "fundamental determinant of immigrant integration" (Hamilton, Patler, and Hale 2019:2). This is because the rights and benefits of citizenship structure access to opportunities, benefits, and resources not available to undocumented immigrants. These benefits include, e.g., federal loan support for higher education; access to the formal labor market; and access to health insurance and medical care, cash assistance, and other social services (Hamilton, Patler, et al. 2019; Perreira and Pedroza 2019). Undocumented immigration status also takes on negative social meaning through processes of politicization, stigmatization, and racialization (Asad and Clair 2018; Massey, Durand, and Pren 2016). In this way, citizenship advantage and undocumented disadvantage are

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legally and socially produced, rather than stemming from innate or biological features of human beings.

10. My research and the academic literature has identified citizenship advantage and corresponding undocumented disadvantage in educational outcomes among undocumented immigrants who came to the US as children, with implications for their long-term mobility.[1] Undocumented immigrant children attend K-12 schools alongside US citizen children, and many do not realize they are undocumented, or the stakes of undocumented status, until they reach adulthood and become aware of the barriers they face to higher education and the formal labor market (Gonzales 2011, 2016). This realization, coupled with the corresponding fear of deportation and lack of support and information, can keep some undocumented immigrant children from completing high school (Jefferies 2014). One representative sample of Latina/o young adults (age 18-26), captured in the California Young Adult Study (CYAS), found that undocumented immigrant youth had more than double the probability of high school non-completion, relative to US citizens (16% and 7%, respectively), even after controlling for demographic and socioeconomic background and educational tracking (Patler 2018:16).

11. Undocumented educational disadvantage persists after high school: undocumented Latino youth in the CYAS had a predicted probability of 66% of enrolling in post-secondary education, compared to 82% among the US-born control group (Patler 2018:1096). Another study, using a large, nationally representative sample of US households

[1] A large and established body of research identifies educational, labor market, occupational, and other disadvantages among undocumented US adults and older adults. *See e.g.*, Hall, Greenman, and Farkas 2010 ("Our estimates reveal a gross 17 percent wage disparity between documented and undocumented Mexican immigrant men, and a 9 percent documented-undocumented wage disparity for Mexican immigrant women. When worker human capital and occupation are held constant, these wage gaps reduce to 8 and 4 percent, respectively. We also find large differences in returns to human capital with undocumented Mexican immigrants having the lowest wage returns to human capital and having very slow wage growth over time"); Hirokazu Yoshikawa et al., Unauthorized Status and Youth Development in the United States: Consensus Statement of the Society for Research on Adolescence, 27(1) J. Rsch. Adolesc. 4, 6 (2017) (workers with unauthorized status face worse work conditions, higher rates of working below minimum wage, and lower rates of wage growth); Flores Morales 2021 (arguing that there is a "continuity of exclusion via policies" that "magnify inequalities on the basis of immigration status and racialization in older age.")

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captured in the Survey of Income and Program Participation (SIPP), compared undocumented and documented Mexican and Central Americans aged 18-24, concluding: "our results indicate that legal status matters: we find that the odds of college enrollment are about four times higher for documented immigrants than their undocumented peers" (Greenman and Hall 2013:1492).

12. Undocumented legal status also shapes the ability to persist and excel once enrolled in college, both at the community college and university levels. Analyzing CYAS data, one study found higher rates of discontinuous community college enrollment among undocumented students, relative to their non-immigrant peers (Terriquez 2014). While another study using administrative data from the CUNY system found that "undocumented students either perform as well as or outperform their legal-status peers, particularly compared to citizens," in community college and four-year college graduation rates and cumulative college GPA, this is likely due to selection into these experiences; that is, more disadvantaged undocumented immigrant students are likely to have been unable even to access these experiences (Hsin and Reed 2020). Furthermore, undocumented Latino immigrants in the CUNY system from 2002-2012 show evidence of achievement decline across their semesters of enrollment, relative to documented and naturalized citizen peers (Kreisberg and Hsin 2020).

13. There are numerous reasons for undocumented immigrants' difficulty persisting and excelling in higher education. Undocumented immigrants cannot access federally funded financial aid or work study. Terriquez found that: "the most common reason for withdrawing from community college was not being able to afford college," reported by 81% of undocumented students compared to 43% of their US citizen and lawful permanent resident (LPR) peers (Terriquez 2014:1313). Structural factors including financial barriers and institutional characteristics were also associated with reduced educational achievement among Latino undocumented immigrants in the CUNY system (Kreisberg and Hsin 2020). Qualitative research from children of working-class Latino immigrants in Los Angeles found that although undocumented and US citizen children attended schools together and had similar social

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incorporation processes, "knowledge of future barriers to college attendance" led to "a decline in educational motivation" among some undocumented children (Abrego 2006). Another study, using qualitative interview data from 37 undocumented college students in Massachusetts and North Carolina found that "even when undocumented students gain access to higher education, barriers to legal status generate chronic feelings of despair and hopelessness that persist throughout their educational trajectories" (Bazo Vienrich and Torres Stone 2022:1). S*ee also* (Williams 2016) (finding feelings of exclusion among undocumented university students).

14. In contrast, undocumented students' educational outcomes improve when structural barriers are removed and supports are enacted, e.g., through in-state tuition policies that make college more affordable, through relief from removal and access to work authorization via the Deferred Action for Childhood Arrivals (DACA) program, or through access to citizenship via the Immigration Reform and Control Act (IRCA). One study using Current Population Survey data from 1999-2012 found that "the policy of granting in-state tuition to undocumented students does attain its intended goal and increases Mexican non-citizen college enrollment rates by 4 percentage points" without impacting rates for native-born students (Amuedo-Dorantes and Sparber 2014:21; see also Kaushal 2008). A longitudinal qualitative study of undocumented immigrant youth before and after the passage of California's in-state tuition policy provides context for the potential mechanisms for these changes: the policy not only provided a more affordable path to higher education, but also "immediately relieved stigma" and "provided a socially acceptable identity" (Abrego 2008:709).

15. The DACA program also led to increased rates of high school completion (Hamilton, Patler, and Savinar 2020), though there is more mixed evidence of DACA's impact on higher education, likely due to many DACA recipients feeling compelled to work while work authorization is valid, given the temporary nature of the program (Hamilton et al. 2020; Hsin and Ortega 2018; Pope 2016). The educational gains from DACA may also have varied by the age of the recipient, suggesting that "policy makers should ensure that opportunities to

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permanently legalize status are available to immigrants as early as possible in the life course" (Hamilton, Patler, and Langer 2021:1).

16. Unlike temporary legalization programs, access to citizenship provides a much clearer path to higher education and socioeconomic mobility. The case of IRCA underscores the importance of citizenship: utilizing data from the 2000 decennial census and a rigorous causal identification strategy, Cortes shows that "immigrant youth who were granted legal status under IRCA are 13.9 percentage points more likely to enroll in college," signifying a "25% increase over the base college enrollment of 55%" (Cortes 2013:430, 432). The study concludes that "immigrant youth are more likely to enroll in college when legal barriers are removed and financial barriers lowered" (ibid). In summary, US citizenship creates structural opportunities and paths to educational mobility, while undocumented status imposes barriers to mobility.

17. My research and the academic literature shows that immigrant legal status is also a fundamental determinant of health, including mental and physical health (Bacong and Menjívar 2021; Castañeda et al. 2015). Federal laws governing immigration status and immigrants' rights, as well as state and local laws defining benefits based on citizenship, not only structure access to health care (e.g., through (in)eligibility for Medicaid or access to preventative care outside of community clinic settings), but also structure access to health-protective resources (e.g., through state and local policies that (dis)allow access to state-sponsored public benefits or increase or decrease immigration law enforcement, which can lead to delayed care) (Cabral and Cuevas 2020; Hamilton, Patler, et al. 2019; Perreira and Pedroza 2019; Wallace et al. 2019).

18. These structural disadvantages, combined with other disadvantages imposed by undocumented status (e.g., disadvantaged socioeconomic status that leads to poverty, housing/food insecurity, and neighborhood/school disadvantage; chronic exposure to deportation fear and/or discrimination based on racialized legal status, etc.) have severe consequences for health: "Undocumented individuals are more likely to report greater depression and social isolation, higher rates of hypertension with longer length of hospital stay, greater

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anxiety and post-traumatic stress, and higher levels of acculturative stress compared to documented immigrants" (Cabral and Cuevas 2020:874). In addition, "undocumented immigrants present more advanced stage diseases, such as breast cancer and HIV infection…than their documented counterparts" at the initiation of treatment (Cabral and Cuevas 2020:874). Although some research finds undocumented immigrants have lower levels of physician-diagnosed health outcomes such as asthma or hypertension, "this may be a result of undocumented immigrants having limited access to healthcare," for the purposes of receiving diagnoses in the first place (Cabral and Cuevas 2020; see also Hamilton, Hale, and Savinar 2019). In summary, the cumulative effects of the adversities created by legal status increase risk of disease and poor mental and physical health.

19. The health harms of immigration policies determining immigrant legal status and rights are profound for undocumented children, particularly with regard to mental health and emotional wellbeing. As undocumented children grow up in the United States, they become increasingly aware of the implications of their legal status and living in "an in-between social position where one's social identity (as an immigrant or an American) is not recognized or reflected by society" (Hamilton, Patler, et al. 2019:6; see also Gonzales and Chavez 2012; Gonzales, Suárez-Orozco, and Dedios-Sanguineti 2013; Suárez-Orozco et al. 2011). Formal exclusion from mainstream rites of passage in adolescence and young adulthood (e.g., getting a driver's license or job, going to college) can cause many young undocumented immigrants to feel hopeless and isolated (Gonzales 2011). Emotional wellbeing is further harmed by negative public portrayals of undocumented immigrants: "children's identities, feelings of self-worth, friendships, and relationships with school-based adults are compromised as they become aware of the hostile and disparaging portrayal of unauthorized immigrants in the media, as well as of the common stigma associated with being undocumented" (Hamilton, Patler, et al. 2019:6; see also Abrego 2006; Gonzales et al. 2013; Patler 2014; Suárez-Orozco et al. 2011). Qualitative studies, based on interviews with undocumented youth, describe some of the emotional and

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physical manifestations of distress related to undocumented immigration status: "Many participants spoke of their anxieties, of chronic sadness, of depression, of overeating or undereating, of difficulties sleeping, and of a desire simply to never get out of bed. Participants talked about exacerbation of chronic diseases like high blood pressure, chronic headaches, toothaches, and bodily pain"(Gonzales et al. 2013:1187).

20. Undocumented status also creates chronic deportation worry: "children growing up in the shadow of undocumented status live with what is likely an immeasurable ever-present stress of the threat of the deportation of a loved one or potentially themselves" (Suárez-Orozco and Yoshikawa 2013:66; see also Abrego 2006; Gonzales 2011). This chronic stress is exacerbated following the actual detention or deportation of a loved one can cause further harm to wellbeing: In a qualitative study of children aged 11-18 who had experienced parental detention, "Younger children were reported to cry inconsolably, wake with night terrors, and cling to their remaining parents. Children of all ages reported loss of appetite or overeating, self-isolation, trouble sleeping or being unable to get out of bed, headaches, stomach pain, and dizziness" (Patler and Gonzalez 2020:896; see also Brabeck 2010; Patler et al. In press; Patler and Gonzalez 2023).

21. In these ways, undocumented immigration status interrupts children's ontological security—the ability to count on the promise of the future, which is central to trust: "Lack of ontological security is at the core of emotions [undocumented immigrant youth] must contend with, from frustration, fear, shame, and depression to anxiety about their future" (Vaquera, Aranda, and Sousa-Rodriguez 2017:298; see also Gonzales et al. 2013). Experts in child and adolescent development conclude: "These compromised ecologies lead to far from optimal developmental contexts for children of unauthorized parents" (Suárez-Orozco and Yoshikawa 2013:66).

22. The legal, political, and social exclusion faced by undocumented children can lead to poorer health. One study analyzed survey data from the 2005-2017 waves of the

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California Health Interview Survey (CHIS) and found higher rates of poor self-reported health and among undocumented Latina/o immigrants who came to the US as children, compared to their naturalized citizen counterparts (Hamilton, Patler, and Savinar 2022). Another survey of middle- and high school aged Latino youth in North Carolina found higher rates of anxiety among undocumented adolescents, compared to documented peers (Potochnick and Perreira 2010).

23. In the most extreme cases, despair about blocked paths to mobility caused by legal status can lead to self-harm, suicidal ideation, or even suicide itself: "Eighteen-year-old Joaquin Luna Jr. came to the U.S. with his parents as a 6-month-old infant. Growing up in the small town of Mission, Texas, among his American-born peers, this church-attending, guitar-playing, strong student had hoped to become the first in his family to pursue college. Despairing that his undocumented status would block his ability to achieve his dreams to go to college, however, he took his life on November 25, 2011" (Gonzales et al. 2013:1175). Unfortunately, research suggests mental health issues are not likely to be addressed through access to healthcare alone: Interviews with undocumented immigrant college students, some of whom can access mental healthcare services through student health plans, showed that treatment was viewed by some as "futile because it could not address underlying immigration-related issues" (Cha, Enriquez, and Ro 2019:193).

24. State and federal policies and administrative programs that more directly address immigration status-related stressors may improve mental health, at least in the short-term. Qualitative research shows that in-state tuition policies gave immigrant youth in California an improved sense of wellbeing and renewed optimism about the future (Abrego 2008). Quantitative analyses of National Health Interview Survey (NHIS) support these conclusions, providing some evidence of improved self-related health and reduced psychological distress among noncitizen Mexican adults associated with in-state tuition policies, as well as increased

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psychological distress associated with policies that ban in-state tuition access (Kaushal, Wang, and Huang 2018).

25. The Deferred Action for Childhood Arrivals (DACA) program addressed some of the formal and informal exclusion faced by young undocumented immigrants by providing relief from the immediate threat removal and granting work authorization. Multiple research studies find strong evidence of DACA's association with improvements to self-reported health and psychological distress (Patler, Hamilton, and Savinar 2021; Patler and Pirtle 2018; Venkataramani et al. 2017). Moreover, the health-promoting impacts of DACA were intergenerational: analyses of US birth records found that DACA-eligible Latina mothers gave birth to healthier infants, on average, compared to ineligible Latina immigrants (Hamilton, Langer, and Patler 2021). Another study, analyzing CHIS data found that following DACA's initiation, DACA-eligible Latina mothers reported improved health among their US citizen children who were, on average, under five years old (Patler et al. 2019). However, given DACA's temporary nature and the formal efforts to rescind it, improvements to health among DACA-eligible immigrants and their children may not have been sustained (Patler et al. 2019, 2021). Evidence from programs providing permanent access to citizenship (IRCA) is more promising: One study analyzed US birth records and found that in areas with higher concentration of IRCA applications, infants' average birth weights increased and the likelihood of low birthweight births was reduced by 5 to 15% (Timilsina 2023).

26. In summary, undocumented immigration status and the disadvantages it confers can lead to poorer physical and emotional health among undocumented immigrants. Unaddressed, these harms may be long-term and intergenerational (Torres and Young 2016).

27. Based on my own research and having reviewed the literature on the impacts of citizenship and immigration status' on education and health, my expert opinion is that denying citizenship to children born to undocumented parent(s) would be catastrophically harmful for children's development, wellbeing, and mobility. These harms would extend beyond the millions

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of impacted children themselves, impacting schools, neighborhoods, communities and, indeed, our nation as a whole. Birthright citizenship is a cornerstone of the U.S. identity as a nation of immigrants, promoting social cohesion, opportunity, and mobility. Ending birthright citizenship would erode those principles and divide our national community, creating and reinforcing vast inequality for generations to come.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at Berkely, California.

Caitlin Patler, PhD

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF SARAH K. PETERSON

ATTORNEY GENERAL OF WASHINGTON
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I, Sarah K. Peterson, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein and make this declaration based on my personal knowledge.

2. I serve as the Washington State Refugee Coordinator and the Director of Washington's Office of Refugee and Immigrant Assistance (ORIA) within the Community Services Division of the Economic Services Administration (ESA) at the Washington Department of Social and Health Services (DSHS). Prior to joining ORIA in 2014, I worked for 14 years in nonprofit organizations that served immigrant and refugee communities in Philadelphia, Pennsylvania. In 2003, I earned my Master's Degree in Social Work from the University of Pennsylvania. I worked for HIAS Pennsylvania (Hebrew Immigrant Aid Society) for eight years helping to support their work in Philadelphia providing immigration legal services and refugee resettlement. It is at this organization that I gained direct experience helping people navigate federal immigration processes as well as access to public benefits programs.

3. I direct Washington's Office of Refugee and Immigrant Assistance (ORIA), which administers over $100 million in state and federal funds to provide comprehensive services for refugees and immigrants living in Washington State. Washington State has a long legacy of welcoming people who are refugees and immigrants. ORIA offers programs and services that help people who are refugees and immigrants reach their full potential and contribute to thriving and diverse communities in Washington State.

4. ORIA is housed within the Community Services Division (CSD), a Division within the Economic Service Administration (ESA), which is one of six administrations of the Washington Department of Social and Health Services (DSHS). ESA's core services focus on poverty reduction and safety net programs, child support services, and disability determinations. Nearly one out of every four Washington residents turned to DSHS for assistance with cash, food, child support, childcare, disability determinations, support for transitioning to employment, and other services. ESA's Community Services Division (CSD) operates the

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federal and state public assistance programs that help low-income people meet their foundational needs and achieve economic security. Major programs include Temporary Assistance for Needy Families (TANF) and WorkFirst (Washington's welfare to work program), Basic Food (food assistance) and Basic Food Employment and Training, Refugee Cash Assistance, and others.

5. ESA's Community Services Division (CSD) operates 52 different Community Services Offices (CSOs) and the Community Services Call Center that process client applications and determine eligibility for Washington's many public assistance programs, including cash and food assistance programs. ESA provides a variety of public assistance programs that draw from both federal and state resources and have many eligibility requirements, which include income levels, residency in Washington state, and verification of citizenship/immigration status. Eligibility for federally-funded cash and food assistance programs administered by ESA are limited to lawfully present immigrants who meet federally-defined eligibility standards that do not include unauthorized immigrants.[1] Washington state invests general state funds to mirror federal food and cash assistance to help individuals and families who are ineligible for federal programs, but eligibility still requires the immigrant be lawfully present.[2] Washington regulations for cash and food assistance define citizens to include individuals born in the United State or its territories.[3]

6. ORIA works within CSD to ensure that refugee and immigrant families and individuals receiving public assistance have access to culturally sensitive and linguistically appropriate programs and services that aid them in rebuilding their lives. ORIA accomplishes this by partnering with more than 100 different community-based organizations across the state to provide direct services to more than 20,000 individuals annually. ORIA values our community

[1] *See* Wash. Admin. Code § 388-424-0010, 388-424-0020; 8 U.S.C. §§ 1611(a).

[2] Wash. Admin. Code §§ 388-424-0001, 388-424-0015, 388-424-0030. The only exceptions to the eligibility requirement of lawful presence for benefits administered by ESA are the Consolidated Emergency Assistance Program, a one-time emergency program, and the Disaster Cash Assistance Program, activated due to natural disasters or states of emergency.

[3] Wash. Admin. Code § 388-424-0001.

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partners, and my team of professional staff and I engage with these community stakeholders on a monthly and quarterly basis to understand how the programs that we oversee are impacting the lives of refugees and immigrants. This regular community engagement enables ORIA to learn and receive feedback about how state and federal policies impact people in the community.

7. I understand that the President has issued an Executive Order directing that children born in the United States to undocumented parents are not to be deemed United States citizens. The federal government's attempt to end birthright citizenship for children born in the United States based on their parents' immigration status will cause a generation of babies born in Washington State to become ineligible for the basic food and cash assistance programs that prevent all children from living in deep poverty and support their health and stability. Based on my experience with past changes to immigration and benefits laws, I believe that this order will also discourage immigrants from accessing services that they are eligible for and need to rebuild their lives in Washington communities. The Executive Order creates barriers for immigrants' abilities to get the assistance they need to meet their basic needs, stabilize their lives, and fulfill their full potential to contribute to diverse and thriving communities in Washington state.

8. As a result of the Order, babies stripped of citizenship and left without a qualified immigration status will no longer be eligible for Washington's Basic Food program that provides assistance for households to purchase and access nutritious foods. The program combines federally funded Supplemental Nutrition Assistance Program (SNAP) and the state-funded Food Assistance Program for Legal Immigrants (FAP). Food benefits are provided on a "household" basis. To qualify for Basic Food, a household's earnings must fall below 200% ($53,300 for a family of three) of the federal poverty level. Beneficiary households may use the benefit to purchase food at one of the quarter million retailers authorized by the Food and Nutrition Service to participate in the program. By stripping children of citizenship and therefore denying them access to food assistance, the Order will affect children's access to sufficient and healthy food, causing a negative impact on children's health and risking increasing rates of child hunger.

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9. In addition, individuals stripped of citizenship by the Order and left without a qualified immigration status will no longer be eligible for programs that use state and federal funding to provide cash assistance. This includes federally funded Temporary Assistance for Needy Families (TANF) and state funded State Family Assistance, Aged, Blind or Disabled Program, and Pregnant Women's Assistance. TANF utilizes federal funds from the U.S. Department of Health and Human Services and state funding to provide cash assistance to parents/caregivers with children and pregnant individuals to bolster their ability to meet their families' foundational needs, including a safe home, healthy food, reliable transportation, and school supplies. Washington's programs make income assistance available to individuals who are ineligible for TANF, including pregnant individuals and families in emergency conditions. This funding is used to alleviate emergency conditions by providing cash to assist with food, shelter, clothing, medical care, or other necessary items. Loss of eligibly for these programs for children who will be stripped of citizenship will result in children living in deep poverty without access to shelter, warm clothing, safety, and security.

10. Under the current eligibility structure, children who are citizens by birth in Washington meet immigration eligibility for these federal and state cash and food assistance programs even if their parents do not. The household may therefore receive food or cash assistance based on the child's eligibility. When the children in a household are eligible for benefits but the parents are not eligible for or able to access benefits independently, we identify these as "child only cases." Stripped of citizenship by the Executive Order, these children and by reference their families will no longer be eligible for basic public benefits that foster health, stability, and community integration.

11. This Executive Order would create confusion for CSD's public benefits specialist who determine eligibility. CSD will need to review the processes and procedures to ensure that no changes to the Automated Client Eligibility Systems are required. Additional staff training

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and policy clarifications will be required to ensure the program and policy is implemented accurately.

12. If children subject to the Executive Order are no longer eligible for essential public benefits through the government, they and their families will be forced to increasingly rely on local non-profit and community-based organization to meet basic needs. Many of these organizations are also facing reduction in funding and lack of resources for those in need. This will strain local organizations and have a widespread negative impact on communities whose residents will face barriers to health, stability, and opportunities to integrate and positively contribute to their community. Lack of access to these safety net programs for these children will create a domino effect leading to fewer and fewer resources available to the growing number of people in need.

13. From my experience working with community organizations during past changes in federal immigration policy and from social science research of which I am aware, I also expect there to be a "chilling effect" on enrollment in essential benefits even among families that have members eligible for those benefits. Evidence from prior policy changes that affect public benefits eligibility strongly suggests that many immigrants who are *not* directly subject to the law will nevertheless withdraw from a broad array of public programs and services out of confusion, fear, or an abundance of caution. The Executive Order is likely to have a negative impact on the health and well-being of immigrant individuals and families, regardless of their immigration status, because they will voluntarily disenroll from public benefits they are eligible out of fear to interact with government programs. Failing to receive essential public benefits that support health, and stability will slow social integration, create new economic challenges due to a lack of stability, and make it increasingly difficult for them to become fully self-sufficient and integrated into our communities.

14. If immigrant families fear accessing social services and benefits, this affects the provision of emergency and other medical assistance, children's immunizations, and basic

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nutrition programs, as well as the treatment of communicable diseases. Immigrants' fears of obtaining these necessary medical and other benefits are not only causing them considerable harm but are also jeopardizing the general public. For example, infectious diseases may spread as the numbers of immigrants who decline immunization services increase. I believe the Executive Order will undermine the State's priorities of increasing access to health care and helping people to become self-sufficient.

15. One of ESA's core missions is to reduce the number of people living in poverty. Federal and state cash and food assistance programs provide people with the resources that they need to keep people from living in deep poverty. The birthright citizenship executive order creates walls that prevent ESA from being able to provide support to Washingtonians who will be stripped of citizenship. The order will prevent individuals and families from receiving the resources and supports that they need to thrive and become fully integrated into our local communities.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at Seattle, WA

SARAH K. PETERSON

ATTORNEY GENERAL OF WASHINGTON
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(206) 464-7744

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE, GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF MAGALY SOLIS CHAVEZ

ATTORNEY GENERAL OF WASHINGTON
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800 Fifth Avenue, Suite 2000
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(206) 464-7744

I, Magaly Solis Chavez, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal and professional knowledge.

2. I am the Executive Director of La Casa Hogar, a non-profit community-based organization in Yakima, Washington. Prior to becoming the Director in 2021, I was the organization's citizenship program manager for seven years. For over 30 years, La Casa Hogar has provided community services and education to Latina families in the Yakima Valley. In Yakima County, Latinos make up over 50% of the population, and in the Yakima School District 82% of the student population is Latino.

3. La Casa Hogar's core programs include adult education, early learning, and citizenship education and legal services for individuals and families across Central Washington. We offer adult education including English classes, pre-GED, English-Spanish Language Exchange, and leadership development. Our Early Learning Center prepares children ages three to five to enter kindergarten and includes parent support classes. Annually La Casa Hogar serves over 1,000 individuals with educational opportunities across all three programs. We also provide referrals to over 4,500 community members annually seeking resources.

4. In my seven years as the program manager at La Casa Hogar's citizenship program, I taught classes to prepare community members applying for citizenship. During my tenure as program manager, over 1000 people successfully naturalized and became US citizens because of their eligibility to apply for citizenship under immigration laws, as well as determination and commitment; the expertise of our team of staff and immigration attorney volunteers and board members makes this possible. Currently, approximately 500 adult immigrant students enroll in our citizenship classes. We are a Department of Justice-recognized organization and assist these students to apply for naturalization. Since 2014, over 2,300 immigrants have become U.S. citizens through our program. In working with citizenship students for ten years now, I have witnessed that obtaining citizenship offers stability particularly

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by providing access to employment, economic, and housing opportunities. One of the biggest changes I have observed is an increased feeling of safety and sense of belonging for people who have lived in and contributed to the United States. This increased safety and stability for the persons who are eligible to apply and are granted citizenship creates security and peace of mind for their children and families as well, allowing families to no longer fear potential separation. I have observed that when people become citizens, they quickly and eagerly register to vote, participate in elections, and engage in local civic issues as the active community members they are.

5. La Casa Hogar invests in education for Latina families because we know that equipping immigrant children and adults to participate fully in the community of the Yakima Valley leads to a healthier and thriving community for everyone.

6. I am aware that President Trump has issued an Executive Order attempting to deny birthright citizenship to children of immigrant parents. This fulfills promises he made throughout his campaign to end birthright citizenship for children of undocumented parents. The news of this expected change in federal law and policy has caused uncertainty and fear in the community La Casa Hogar serves, and among other supporters who are not immigrants. I and my staff have directly listened to families we work with express the following concerns.

7. Parents are concerned that if their children are stripped of citizenship, they will face the same challenges in life that they as parents have already experienced living undocumented in this country. These challenges include (but are not limited to) accessing education, services like basic healthcare, and difficulty building credit, which in turn, create barriers to obtaining both critical needs like a job, to even simple things like getting a cell phone plan. Parents are thinking about all the challenges they have had to navigate, and how their children will now have to navigate those same challenges and live in constant fear of potential familial separation.

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8. Parents are worried about how education and employment opportunities will be reduced for Latino children being born in the U.S., reducing economic mobility.

9. Families are worried about their ability to travel anywhere outside the state.

10. The community is concerned about the ability to have a healthy life because they fear they will not have access to needed services and benefits, including medical care.

11. Many of the individuals La Casa Hogar works with have lived in the United States since they were young children. They do not have a home country to return to; the United States is the only home they know. Other individuals we work with are unable to return to their country of origin because of violence or persecution. Many of these individuals now have their own children and are raising their families. If their children born here are denied citizenship, the family will live in limbo, forced to raise their children without stability and the ability to fully participate in their new home; forced to raise their children in fear and instability.

12. The community and staff at La Casa Hogar are concerned about how stripping citizenship from children will increase young people's feeling of a lack of belonging. Changes in immigration law that deprive children of protection and citizenship create fear. Fear drives young people to distance themselves from their family, culture, and language because being identified as an immigrant or associated with their family creates greater risk of deportation or other harms. Without lawful status, they likewise cannot experience full belonging in U.S. culture and communities. Our organization's vision is to cultivate connected community, and this change in federal law undermines people's ability to integrate with and contribute to their community.

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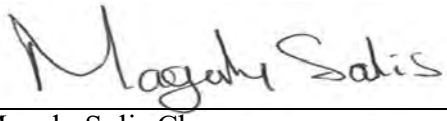
I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 20th day of January 2025, at Yakima, Washington.



Magaly Solis Chavez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF MATT ADAMS

I, Matt Adams, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal and professional knowledge.

2. I am an attorney at law, admitted in the State of Washington and currently employed by Northwest Immigrant Rights Project (NWIRP) as its Legal Director. I have worked as an immigration attorney at NWIRP for the last twenty-six years. From June of 1998 to July of 2005, I worked as a Staff Attorney and later as the Directing Attorney of NWIRP's Granger office. In June of 2005, I became the Litigation Director. In July of 2006, I assumed my current position as Legal Director of NWIRP. In this role, I am responsible for supervising all litigation by NWIRP on behalf of clients before the federal district courts, the Court of Appeals and the Supreme Court.

3. Northwest Immigrant Rights Project (NWIRP) is a nonprofit organization that serves low-income immigrants in Washington State through direct representation, community education, and systemic advocacy. NWIRP provides direct legal representation and assistance in immigration matters to thousands of people with low incomes each year who come from over 150 countries and speak over 60 different languages. NWIRP is also the largest provider of legal services to persons in immigration proceedings in Washington. NWIRP is a trusted provider of immigration-related community education for immigrant communities and social service providers. NWIRP serves the community through four offices in Washington State in Granger, Seattle, Tacoma and Wenatchee.

4. I have extensive experience on cases focusing on immigrant rights. I have represented hundreds of immigrants before the Immigration Court, the Board of Immigration Appeals and the Federal Courts, including presenting arguments before the U.S. Supreme Court on behalf of two classes of detained individuals. I have successfully presented claims in twenty published decisions before the Ninth Circuit Court of Appeals and have been appointed as class counsel for over a dozen successful class action cases, including serving as lead-

counsel for two nationwide classes vindicating the rights of asylum seekers. I was awarded the Jack Wasserman Memorial Award for Excellence in Litigation from the American Immigration Lawyers Association (AILA) in 2008, and again in 2014 a part of legal team in *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX, 2014 WL 8115423 (C.D. Cal. 2013), which for the first time established the right to appointed counsel at government expense for a category of persons in removal proceedings. In 2016, I was awarded the Washington State Bar Association Award of Merit, its highest honor.

5. I have reviewed the Executive Order "Protecting the Meaning and Value of American Citizenship" signed by President Trump on January 20, 2025. The order purports to strip citizenship from persons born in the United States to 1) a mother with undocumented status and father without U.S. citizenship or permanent residency; or to 2) a mother with temporary status and father without U.S. citizenship or permanent residency. As a result of the Order, these children will lack citizenship or any legal immigration status at birth. The Immigration and Nationality Act (INA) does not provide any alternative legal status to persons born in the United States. Moreover, under the INA the vast majority of persons subject to the Order will have no pathway to even apply for lawful status in the United States. This is true not only at the time of their birth, but also throughout the course of their lifetime. Instead, they will grow up and live undocumented, forced to remain in the legal shadows of the country they were born in.

6. The INA provides two primary paths to lawful permanent residence—family visas and employment visas, but neither path is available for the overwhelming majority of undocumented newborns whose parents are not U.S. citizens or lawful permanent residents. The Order targets those persons whose parents are not U.S. citizens or lawful permanent residents. Under the Immigration and Nationality Act, only U.S. citizens and lawful permanent residents are eligible to file family visa petitions for their children. Thus, none of the parents of persons targeted by the Order are eligible to file family visa petition for their newborn children.

Moreover, even if later in life they become eligible for a family visa petition, for example by marrying a U.S, citizen, they would be ineligible to apply for adjustment of status to lawful permanent resident status. This is because in order to apply for adjustment of status a person must demonstrate that they have been "inspected and admitted or paroled into the United States." *See* 8 U.S.C. § 1255(a). Because these persons were born in the United States, they have never been inspected and admitted or paroled into the United States, which is a statutorily required element to apply for adjustment of status.

7. Further, persons living without legal status cannot simply travel abroad and be admitted upon their return, as they are not authorized to reenter the United States if they have no status. *See* 8 U.S.C. § 1182(a)(7) (rendering persons ineligible to be admitted into the United States if they do not have lawful immigration status). The beneficiary of a visa petition filed by a U.S. citizen spouse may instead apply for a visa at a U.S. embassy or consulate in a foreign country, but this is a lengthy process that would require them to be admitted into the foreign country for a significant period of time. Moreover, because they have been living without status in the United States they will inevitably be subject to what is referred to as the 10 year bar, for having departed after living without status for more than one year in the United States. *See* 8 U.S.C. § 1182(a)(9)(B)(ii). As a result they would not be granted permission to return to the United States for at least ten years, unless they were granted a discretionary waiver. *Id.* Waivers are only available to those who can establish that "the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent." 8 U.S.C. § 1182(a)(9)(B)(v). The waiver does not take into account the extreme hardship to the person, but instead only weighs the hardship caused to the U.S. citizen or lawful permanent resident spouse or parent. Notably, these waivers generally take more than a year to be approved. In the meantime, the person is left to languish in the foreign country with no assurance that the discretionary waiver will ultimately be granted. Finally, it is

important to note that this difficult process is not even available for all the persons who are not married to U.S. citizens or lawful permanent residents.

8. Persons targeted by this Order would also be ineligible to obtain lawful permanent resident status through employment visa petitions because even if they eventually graduate from college with a specialized skill required for employment visas, and are offered qualifying employment, they would similarly be ineligible to adjust status because they were not inspected and admitted or paroled into the United States, as required by 8 U.S.C. § 1255(a). Moreover, they face an additional bar: because they would not have status they would be independently barred by 8 U.S.C. § 1255(c), which renders a person ineligible who "accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status." Finally, most would not qualify to even apply for an employment visa through an embassy or consulate abroad because as noted above, persons who depart the United States and who have lived without status in the United States for more than a year are rendered inadmissible for ten years, 8 U.S.C. § 1182(a)(9)(B)(ii), and most will not have a qualifying relative to even apply for the discretionary waiver.

9. Because the INA does not provide an alternative legal status to persons born in the United States who are not U.S. citizens, children stripped of citizenship by the Order and left undocumented will be at immediate risk of removal from the United States. This includes being at risk of being arrested and detained by Immigration and Customs Enforcement, even while they go through the removal (i.e., deportation) process. If placed in removal proceedings, most will not qualify for any immigration status. The most common form of relief from removal for persons who have no lawful status is to apply for cancellation of removal. *See* 8 U.S.C. § 1229b. However, they would not qualify for the first type of cancellation, § 1229b(a), as that only provides relief for persons who have already been granted lawful permanent residence. The vast majority would not qualify for the second type of cancellation,

§1229b(b)(1), as that is only available for persons who have been continuously residing in the U.S. for at least ten years and are able to demonstrate that their removal would cause "exceptional and extremely unusual hardship" to either a U.S. citizen or lawful permanent resident spouse, parent or child. *See* 8 U.S.C. § 1229b(b)(1)(D). Even if these persons were not placed in removal proceedings until after ten years had passed, the vast majority would not have a qualifying relative, i.e., U.S. citizen or lawful permanent resident spouse, parent or child. And even those with a qualifying relative must demonstrate that it causes the qualifying relative not just hardship, but "exceptional and extremely unusual hardship," an extremely difficult standard to satisfy. Indeed, to reinforce the difficult standard the statute placed a numerical limit so that no more than 4,000 people may be granted cancellation of removal in any given year. *See* 8 U.S.C. § 1229b)(e)(1).Our office represents many undocumented persons in removal proceedings who have a qualifying relative and are statutorily eligible to apply for cancellation of removal under 8 U.S.C. § 1229b(b)(1), and who present compelling equities—including demonstrating family separation and the loss of a parent where a child has physical or mental disabilities. Yet immigration judges regularly deny such applications finding the hardship they present is similar to the hardship of hundreds of other undocumented persons who are ordered removed each week.

10. While there are other limited forms of immigration relief, they only apply to a small section of the population. For example, asylum is only available to persons who demonstrate a well-founded fear of persecution on account of a protected ground (race, religion, nationality, membership in a particular social group or political opinion). *See* 8 U.S.C. §§ 1101(a)(42), 1158. In my experience undocumented persons who have not already lived in the country where they fear persecution are highly unlikely to qualify as they will not be able to demonstrate objective evidence that they will individually be targeted despite having no past persecution. Special Immigrant Juvenile Visas are only available for children who have been abandoned, abused or neglected by a parent. 8 U.S.C. § 1101(a)(27)(J)(i). Similarly, U visas

are only available for persons who have been the victim of enumerated crimes that caused substantial harm, and subsequently cooperated with the investigation or prosecution of the crime. *See* 8 U.S.C. § 1101(a)(15)(U). The vast majority of persons subject to the Order will remain without any path to lawful immigration status. Instead, they will be forced to remain undocumented, living in fear of any encounter with public officials. In my experience working directly with clients living without legal immigration status, the fear of detention and deportation is profoundly detrimental to their wellbeing and the ability to fully integrate into their communities. Our clients are often afraid to call the police or the fire department, as they have heard of others who ended up being reported to immigration after calling such authorities. Some clients are even afraid of taking their children to the hospital, or interacting with school officials.

11. In most states undocumented persons have no right to apply for a driver's license. Even in Washington State, they will not be eligible for REAL ID-compliant identification, which starting in May 2025 will be required for domestic air travel. Their ability to travel even within the United States will be severely limited. Many clients live in fear of interactions with immigration officials at airports or bus stations.

12. Undocumented persons are not eligible to obtain an employment authorization document (EAD) or a Social Security number, both necessary to work lawfully for those who cannot prove citizenship or lawful permanent residency. Undocumented individuals are not eligible for work authorization under any of the avenues available under the INA. *See* 8 C.F.R. § 274a.12. Because of this they face a much higher likelihood of being exploited by employers who know they face difficulty in finding employment. Over the years I have worked with countless clients where employers have withheld their last paycheck or denied them overtime because the employers are confident that undocumented persons, fearing immigration enforcement, will not report the employer's unlawful conduct.

13. The order will exponentially increase the undocumented population in Washington State. As the largest provider of immigration legal services in Washington, NWIRP's services are already in high demand. Even with a staff of over 180, we are unable to meet the needs of the majority of immigrant community members who contact us seeking representation. The majority of persons placed in removal proceedings are forced to represent themselves, and must stand alone against an ICE attorney before the immigration judge. Similarly, for persons not in removal proceedings we are not able to represent everyone who seeks our assistance. Instead we use waitlists for most types of affirmative relief. The Order would add thousands of additional undocumented children in Washington who will at some point likely need legal representation. This will stretch the already full capacity of NWIRP and other immigration legal providers in Washington

14. We have already received phone calls from worried parents who ask whether their children will now lose their citizenship and whether they should pull their children out of the school, or whether they should withdraw from WIC or cutoff food stamps for their children. Many parents have sacrificed so much of their lives in order to find stability and safety for their children. Now they are distraught knowing that their children potentially face a lifetime of uncertainly, hiding in the shadows, limited to an underground economy which has caused the parents so much pain in their lifetime. Many have explained that their children have nowhere to go in their home country, talking about how difficult it would be for their children, many who do not even speak, read and write in the language of their parents' home country.

15. It is very difficult to respond to these inquiries other than ensuring them that the U.S. Constitution and the Supreme Court of this Country have made clear, for more than a century, that their children who are born in the United States, are entitled to citizenship, regardless of the fact that the parents have no lawful status.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 21st day of January 2025, at Seattle, Washington.

Matt Adams

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF KRYSTAL COLBURN

DECLARATION OF KRYSTAL COLBURN

I, Krystal Colburn, hereby declare:

1. I am the Chief Reporting Officer and Assistant State Registrar of the Arizona Department of Health Services ("ADHS"), a position I have held since 2023. As Chief Reporting Officer and Assistant State Registrar, I provide overall leadership, management and direction to the Bureau of Vital Records (BVR), Cancer and Birth Defects Registries and the Office of Auditing. Prior to holding this position, I served as Section Chief and Assistant State Registrar for the BVR. I have been employed by the ADHS since 2007.
2. As Chief Reporting Officer and Assistant State Registrar, I have personal knowledge of the matters set forth below, or have knowledge of the matters based on my review of information and records gathered by my staff.

Arizona Department of Health Services

3. ADHS's mission is to promote, protect, and improve the health and wellness of individuals and communities in Arizona. To support that goal, ADHS performs many functions, including overseeing the BVR, which register vital events such as births. BVR's functions date back to the late 1800s and have been statutorily required since the early 1900s. Many state and federal agencies use birth certificates to determine eligibility for various programs, including but not limited to the issuance of driver licenses and U.S. passports.

Registration and Birth Certificates of Newborns

4. Healthcare facilities coordinate with BVR to collect information to register a child's birth.
5. When a child is born in a healthcare facility, a medical attendant to the birth is statutorily obligated to register the birth. They provide the newborn's parents with a Certificate of Live Birth Worksheet that asks for several pieces of information, including the parents' place of

birth and Social Security Numbers (SSNs). The Worksheet does not inquire about the parents' immigration status.

6. If the parents do not have an SSN, or do not wish to share it, they can leave that field blank or select none or unknown. Their omission of that information does not affect the newborn's ability to obtain a birth certificate. If parents do provide their SSNs, that information is stored only for child support enforcement purposes and is not used to verify their immigration status.

7. After the newborn's parents complete and sign the Worksheet, hospital staff enter the information from the Worksheet into an electronic birth registration system maintained by BVR. BVR then creates and registers the birth certificate with the State.

8. A newborn's completed birth certificate does not indicate whether the parents have an SSN. The only information on the parents is the mother's legal name, the father's full name (if provided), their places and dates of birth, and address. Currently, it is not possible to determine a foreign-born parent's immigration status from their child's birth certificate.

Application for Social Security Number of Newborns

9. While completing the Certificate of Live Birth Worksheet to register a newborn for a birth certificate at a healthcare facility, parents may also request an SSN for the newborn through a Social Security Administration (SSA) program called Enumeration at Birth (EAB).

10. The EAB process is voluntary for families, but according to SSA, about 99% of SSNs for infants are assigned through this program.

11. After a healthcare facility receives a completed Certificate of Live Birth Worksheet, it submits electronically the information from the worksheet and a request for an SSN to BVR,

which then transmits that information and request to SSA. BVR only sends EAB records to SSA for enumeration of infants born within the past 12 months.

12. Arizona receives federal funding from the SSA for each SSN that is issued through the EAB process. The SSA has paid the State of Arizona $874,560.08 for FY 2024, $936,469.38 for FY 2025, and it is projected to pay $1,002,389.94 in FY 2026.

13. If birthright citizenship were revoked pursuant to the Executive Order, certain children born in the United States would no longer be considered citizens and would therefore be ineligible for an SSN.

14. If the number of births in Arizona stays constant or increases, but fewer of those children are considered citizens eligible for SSNs, then there will be fewer SSNs issued.

15. If fewer SSNs were issued through the EAB process due to the revocation of birthright citizenship, then this will result in reduced EAB funding to Arizona, perhaps a significant reduction.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 21 day of January, 2025, in Phoenix, Arizona.

Krystal Colburn

Krystal Colburn

Chief Reporting Officer and Assistant State Registrar
Arizona Department of Health Services

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF JEFFREY TEGEN

DECLARATION OF JEFFERY TEGEN

I, Jeffery Tegen, hereby declare:

1. I am the Assistant Director of the Division of Business and Finance at the Arizona Health Care Cost Containment System ("AHCCCS") Administration, which is Arizona's Medicaid agency.
2. My educational background includes a Bachelor of Science in Finance, a Master of Business Administration, and a Master of Health Service Administration. I have been employed as the Assistant Director of the Division of Business and Finance since May 2015.
3. I have compiled the information in the statements set forth below through personal knowledge, through AHCCCS personnel who have assisted me in gathering this information from our agency, and on the basis of documents that have been provided to and/or reviewed by me.

AHCCCS Coverage and Eligibility

4. AHCCCS is Arizona's Medicaid agency that offers health care programs to serve Arizona residents who meet certain income and other requirements. AHCCCS's mission is to help Arizonans live healthier lives by ensuring access to quality healthcare across all Arizona communities.
5. AHCCCS is the largest insurer in Arizona, covering more than 2,714,609 individuals in State Fiscal Year 24. It uses federal, state, county, and other funds to provide health care coverage to the State's Medicaid-eligible population.
6. Eligibility for AHCCCS health insurance programs, including eligibility for Federal-State Medicaid and Children's Health Insurance Program ("CHIP"), depends in part on age, immigration status, and household income.

7. In general, children through the age of 18 (i) meet the income eligibility requirement for Federal-State Medicaid in Arizona if their household's modified adjusted gross income ("MAGI") is less than 133% to 147% of the federal poverty level ("FPL")[1], and (ii) meet the income eligibility requirement for CHIP in Arizona if their household's MAGI is less than 225% of the FPL.

8. To be eligible for Federal-State Medicaid or CHIP, a child must also be a U.S. citizen or "lawfully residing" in the United States, as that term is defined by federal law. "Lawfully residing" individuals are "lawfully present" and include qualified immigrants such as lawful permanent residents, asylees, refugees, and trafficking victims, as well as nonimmigrant visa holders and humanitarian status classes such as Temporary Protected Status and Special Immigrant Juvenile Status. Children who are not citizens or "lawfully residing" are commonly referred to as undocumented. The only exception to this eligibility requirement is for certain emergency services, which Federal-State Medicaid covers for individuals who are neither citizens nor "lawfully residing." 8 U.S.C. § 1611(b)(1); A.R.S. § 36-2903.03(F).

Healthcare Coverage for Newborns in Arizona and Federal Funding

9. The amount of federal funding Arizona receives for health care it provides children through AHCCCS varies by federal program but generally represents 64% to 75% of Arizona's total health care expenditures for children. The specific federal program that applies depends on the child's age, household income, immigration status, and the health care service provided.

10. For children covered by the Federal-State Medicaid program, the federal government generally reimburses for 64% of Arizona's health care expenditures, but if federal CHIP allotment is available, Arizona can claim 75% reimbursement for children between 100%

[1] 147% for MAGI age 0-1, 141% for MAGI ages 1-5, 133% MAGI age 6-18.

and 133% of FPL. For children covered by CHIP, the federal government generally reimburses 75% of Arizona's health care expenditures.

11. Federal funding for AHCCCS's Medicaid and CHIP programs is provided through an advance quarterly grant from the federal Center on Medicare and Medicaid Services ("CMS") to the State of Arizona, with a post-quarter reconciliation. This quarterly process begins with the State submitting to CMS a CMS-37 report, which estimates the reimbursable expenditures it expects to make for the upcoming quarter, six weeks before the quarter begins. For the January to March 2025 quarter, the State submitted the report in November 2024.

12. CMS then issues a quarterly federal grant the week before the start of the quarter. The State draws from this grant award during the quarter to partially fund its expenditures for Medicaid and CHIP.

13. Within 30 days after the end of a quarter, the State sends CMS a CMS-64 report, which reports all expenditures for the quarter.

14. Children from birth to age 18 typically have a range of health care needs that require services from various health care providers.

15. All children born in the United States and residing in Arizona whose family income is at or below 225% of the Federal Poverty Level are eligible for AHCCCS.

16. Presently, all children born in Arizona are U.S. citizens.

17. Thus, at present, AHCCCS coverage for newborns in Arizona is partially funded by the State and partially funded by the federal government, either through Medicaid or CHIP.

Fiscal and Public Health Impact of Revoking Birthright Citizenship

18. AHCCCS does not currently rely on a Social Security Number or parental immigration status to determine eligibility. Newborns are automatically approved for benefits through an automated process when a mother living in Arizona on AHCCCS gives birth. Citizenship is considered automatically verified if the child's birth is verified through this method since they are born in the United States.

19. If this methodology no longer applied, AHCCCS would need to update its eligibility policy and update three systems it uses: HEAPlus, PMMIS and AHCCCS Online. This would take approximately 12 months to implement the change. Based on the complexity of the potential update, the expense to change HEAplus would be approximately $1 million to $2.5 million and would take about 12 months to develop. In addition, it would cost $1.3 million to $1.9 million to update PMMIS and AHCCCS Online.

20. If AHCCCS were no longer able to automatically determine a newborn's eligibility through the deemed newborn process, this could cause service delays in healthcare coverage and access for all children while they go through the eligibility determination process. It would require the additional steps of verifying the citizenship status of the parents before being able to determine the child's eligibility, which could include obtaining additional information, including the SSN of the parents to run data matches or documentation of their citizenship. Depending on the volume, this could take additional staff to process these determinations, requiring additional funding to complete this new administrative work

21. AHCCCS provides certain emergency medical and behavioral health care services through the Federal Emergency Services Program ("FESP") for uninsured qualified and nonqualified

aliens, as specified in 8 U.S.C. § 1611 *et seq.*, who meet all requirements for Title XIX eligibility as specified in the State Plan except for citizenship. *See also* A.R.S. § 36-2903.03.

22. The FESP covers emergency medical or behavioral health conditions, meaning a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

    a. Placing the member's health in serious jeopardy;

    b. Serious impairment to bodily functions;

    c. Serious dysfunction of any bodily organ or part; or

    d. Serious physical harm to self or another person.

See A.A.C. § R9-22-217.

23. In 2024 there were 4,519 births paid for by the FESP. For each of these births, the parent's household income fell under 133% of the Federal Poverty Level and the parent would have been eligible for Title XIX (Medicaid) if they were U.S. citizens or "lawfully residing." However, because these children were born in the United States, the children were eligible for Medicaid and qualified for AHCCCS, but they would not be eligible if birthright citizenship were removed. If each of these children became ineligible for AHCCCS until 18, using FFY2026 figures for FMAP of 64.34% (federal match) and capitation rates, then this would likely cost the State $39,400 in federal revenue per child used to pay $61,300 in total capitation payments over the first 18 years of that child's life.[2]

[2] Age < 1 CYE 2026 cap rate per month: $813.80
Age 1 – 20 CYE 2026 cap rate per month: $252.67
Total capitation for first 18 years: $813.80 * 12 + $252.67 * 12 * 17 = $61,300

24. AHCCCS does not have data to project the number of children born to undocumented parents in Arizona earning between 156% to 225% of the FPL. Under current birthright citizenship rules, these children would be U.S. citizens and eligible for Title XXI (KidsCare). Each child eligible for KidsCare has the same total capitation rate payments over the first 18 years of that child's life as above ($61,300), but the KidsCare FMAP of 75.04% is higher than the regular FMAP with federal revenue of $46,000 offsetting the total capitation payments over the first 18 years of the child's life. Assuming the income distribution of parents in the State who have an immigration status that excludes them from Medicaid coverage is uniform, AHCCCS estimates that approximately 3,126 births each year are of children who would be eligible for KidsCare under current birthright citizenship rules, but who would not be eligible if birthright citizenship were removed.

25. Removing birthright citizenship from the above 7,645 (4,519 + 3,126) children would reduce federal revenues to Arizona by $321,844,600 used to pay $468,638,500 in total capitation payments over the first 18 years of the children's lives.[3] This amount and the calculations in paragraphs 23 and 24 do not factor in inflation, population growth, or changes in the FMAP rate in future years and assume all the children remain eligible for AHCCCS until they turn 18. Additionally, these reductions in federal revenues to Arizona are only for the first "cohort" of children and only through their first 18 years of life. Each year, additional children would be born, adding to the lost revenue to the State.

26. Arizona draws federal funds on a daily basis. Therefore, any changes in policy would impact the State from the first month a child impacted by the policy change is born.

[3] Total Federal Revenue for 7,645 children = 4,519 * $39,400 + 3,126 * $46,000 = $321,844,600

27. Having fewer newborns in Arizona qualifying as citizens could place increased strain on health systems throughout the State. AHCCCS currently provides emergency services only to those individuals who would otherwise qualify except for their immigration status. This provides a pathway for hospitals and other emergency service providers to receive reimbursement for the services they are required to provide to this population and reduces uncompensated care. However, this coverage does not extend to primary or preventive care. If these newborns would not be considered citizens by location of birth and therefore be ineligible for full AHCCCS services due to their citizenship status, the cost to the State would continue to accrue year after year through uncompensated non-emergent services provided by hospitals throughout Arizona, and for the much higher emergency services costs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 21st day of January, 2025, in Phoenix, Arizona.

Jeffery Tegen

Jeffery Tegen
Assistant Director of the Division of
Business & Finance
Arizona Health Care Cost Containment
System Administration

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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Defendants.

NO. 2:25-cv-00127

DECLARATION OF NADINE O'LEARY

DECLARATION OF NADINE O'LEARY

I, Nadine O'Leary, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am the Deputy Registrar of the State of Illinois, Department of Health (IL DPH or DPH), Department of Vital Records (DVR), a position I have held since 2019.
2. In this position, I direct, supervise, and issue instructions necessary to the efficient administration of a statewide system of vital records, the Office of Vital Record, and act as custodian of its record in accordance with 410 ILCS 535/5, as delegated by the State Registrar.
3. Prior to working with DVR, I worked at the Abraham Lincoln Presidential Library and Museum from 2012 to 2019; my last position at the Library and Museum was Acting Director. From 1999 to 2012, I worked for the Illinois Secretary of State's Organ and Tissue Donor Program as a Program Analyst and eventually as Program Director.
4. I earned a Bachelor of Arts from Knox College in Galesburg, Illinois.
5. I submit this Declaration in support of Plaintiff States' Motion for Temporary Restraining Order pertaining to the Executive Order entitled "Protecting the Meaning and Value of American Citizenship" (the "Citizenship Stripping Order"). I have compiled the information of the matters set forth below through personal knowledge, my review of information and records gathered by staff, and through IL DPH personnel who have assisted me in gathering this information. I also reviewed the Illinois data in "Birth to Unauthorized Immigrants in the State of Washington, Arizona, Illinois, and Oregon" Report prepared by the National Demographics Corporation. Compl. Ex. B, app. E. I have also familiarized myself with the Citizenship Stripping Order in order to understand its immediate and long-term impact on IL DPH and the State of Illinois.

Illinois Department of Public Health

6. IL DPH's mission is to protect public health, promote healthy communities, and continue to improve the quality of health care in Illinois. To support that goal, IL DPH performs many functions, including regulating healthcare facilities and overseeing the Department of Vital Records (DVR), which registers vital events such as births.

Registration and Birth Certificates of Newborns

7. Illinois healthcare facilities coordinate with DVR to collect information to register a child's birth.

8. When a child is born in a healthcare facility, the person in charge of the facility or their designated representative is statutorily obligated to register the birth pursuant to Illinois Statute, which mirrors the U.S. standard form birth certificate. 410 ILCS 535/12. That individual provides the newborn's parents with a Certificate of Live Birth Worksheet ("Worksheet") that asks for several pieces of information, including the parents' place of birth and Social Security Numbers (SSNs). The Worksheet does not inquire about the parents' immigration status.

9. If the parents do not have an SSN, or do not wish to share it, they can leave that field blank. Their omission of that information does not affect the issuance of the newborn's birth certificate. If parents do provide their SSNs, that information is stored only for child support enforcement purposes and is not used to verify their immigration status.

10. After the newborn's parents complete and sign the Worksheet, hospital staff enter the information from the Worksheet into an electronic birth system (IVRS) maintained by DVR. IVRS then routes the record to the appropriate Local Registrar to complete registration with the State.

11. A newborn's completed birth certificate does not indicate whether the parents have an SSN. The only information regarding the parents on a newborn's birth certificate is the mother's legal name, the father's full name (if provided), their places and dates of birth, residence, and mailing addresses. Currently, it is not possible to determine a foreign-born parent's immigration status from their child's birth certificate.

12. Healthcare facilities do not routinely ask patients, including new parents, for their immigration status. Generally, hospitals learn that information only when assessing a patient's eligibility for public benefits, which may depend on immigration status. If hospitals obtain immigration status information for patients, it is recorded in their health records and becomes protected health information that is shielded from disclosure under the Health Insurance Portability and Accountability Act ("HIPAA"). Currently, healthcare facilities do not verify the accuracy of the information provided by parents in this process.

13. If the newborn registration process had to be amended to provide for verification of the parents' citizenship and/or immigration status because of the Citizenship Stripping Order, this would impose considerable administrative burdens on State-run healthcare facilities. If healthcare facilities were required to confirm the accuracy of the parents' places of birth, SSNs, or immigration status, the facilities would incur significant new administrative costs related to implementing a system to substantiate the information provided and hire and train staff to do the same. Assuming this burden would further lead to delays in registration and issuance of the newborn's birth certificate, leaving a child born in Illinois in a limbo status until that system is created and implemented.

Application for Social Security Number of Newborns

14. While registering a newborn for a birth certificate at a healthcare facility, parents may also complete an application for an SSN for the newborn through a Social Security Administration ("SSA") program called Enumeration at Birth ("EAB").

15. The EAB process is voluntary for families, but according to SSA, about 99% of SSNs for infants are assigned through this program.

16. Under the EAB process, a question added to the Worksheet allows parents to voluntarily request a SSN for their newborn child. Hospital or birth center personnel enter the request for an SSN along with birth certification information in IVRS. DVR submits to the SSA the necessary information for it to assign an SSN to the newborn.

17. The EAB application asks for the parents' SSNs. Parents born outside the United States can apply for and receive an SSN for their child without including their own SSNs on the application. Currently, because children born in the United States are U.S. citizens, they are eligible for SSNs regardless of their parents' immigration status.

18. DVR only sends EAB records to SSA for enumeration of infants born within the past 12 months.

19. Illinois receives federal funding from the SSA EAB process on a quarterly basis for each SSN that is issued through the EAB process. The State receives $4.19 per SSN issued through the EAB process. DVR requested over $500,000 in FY 2024 and just under $500,000 in FY2025 in IVRS for federal funding from the SSA EAB process. DVR uses those funds to support the payment of its administrative and operational costs.

20. For 2022, there were approximately 9,100 children born in Illinois to undocumented mothers. If birthright citizenship were revoked pursuant to the Citizenship Stripping Order, those

children would no longer be granted citizenship and would therefore be ineligible for an SSN. This estimate is based on the expert analysis provided by the National Demographics Corporation. Compl. Ex. B, app. E.

21. For 2022, there were approximately 5,200 children born in Illinois to two undocumented parents. If birthright citizenship were revoked pursuant to the Citizenship Stripping Order, those children would no longer be granted citizenship and would therefore be ineligible for an SSN. This estimate is based on the expert analysis provided by the National Demographics Corporation. *Id.*

22. If approximately 5,200 to 9,100 fewer SSNs were issued through the EAB process due to the revocation of birthright citizenship, this would result in an annual loss of EAB funding to IL DPH of approximately $21,788 to $38,129.

23. In addition to the loss in funding, state-run healthcare facilities would incur new administrative costs from expending resources to verify parents' immigration status before applying for a newborn's SSN through the EAB process. SSA will presumably require proof of parents' lawful status to issue an SSN under the Citizenship Stripping Order. State-run healthcare facilities would then be forced to consult with, and assist, families with obtaining the paperwork necessary to prove their immigration status. It is likely that the electronic system and guidelines for submitting SSN applications through that system—which are currently detailed in a 59-page SSA manual— would have to be revised. This would likely require healthcare facilities to train, and potentially hire, staff to work with parents in obtaining, and then verifying, the requisite documents to establish lawful immigration status.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 21st day of January, 2025, in Springfield, IL

Nadine J. O'Leary

State Deputy Registrar
Division of Vital Records
Illinois Department of Public Health
925 E. Ridgely
Springfield, IL 62702

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127

DECLARATION OF JENNIFER A WOODWARD

DECLARATION OF JENNIFER A WOODWARD

I, Jennifer A. Woodword, declare as follows:

1. I am over the age of 18 and have personal knowledge of the matters herein.

2. I am the State Registrar at the Oregon Health Authority (OHA). I have held this position for 24 years, and have been with OHA since 1993. As State Registrar, I oversee Oregon's system of vital statistics, including the registration of vital events, such as births, and the issuance of vital records, including birth certificates. I am also familiar with OHA's relationship with the U.S. Social Security Administration, and OHA's role in SSA's "Enumeration at Birth" program for issuance of Social Security Numbers (SSNs) to babies born in Oregon.

3. OHA's mission is to protect and improve the health of all people in Oregon. In carrying out that mission, it administers programs and provides services that touch the lives of all Oregonians and visitors to the State. OHA regulates healthcare facilities and oversees the Center for Health Statistics, among other things. The Center is responsible for the registration, preservation, amendment, and release of official state records of all births, deaths, fetal deaths, marriages and divorces that occur in Oregon. It also participates in the U.S. Social Security Administration's Enumeration at Birth program, enabling parents to request issuance of an SSN at or shortly after the time a baby is born, as part of completing the standard birth filing forms in Oregon.

4. One primary function of the OHA is to oversee registration and release of birth certificates. The U.S. Department of Health and Human Services, National Center for Health Statistics (NCHS) develops standard form certificates for vital events, which it recommends that the States adopt to maintain nationwide uniformity in the system of vital statistics. Oregon has adopted the U.S. standard form birth certificate, with few modifications.

5. The Oregon form to register a birth is called the Birth Record Parent Worksheet and is completed upon the birth of a newborn child. It requires entry of information about the

child and birthplace, information about the mother and father, and information for hospital use only. The form asks for information about the parents, including place of birth and their SSN if they have one or it is unknown. The form does not contain fields for immigration or citizenship status of a baby's parents. Therefore, Oregon birth certificates do not collect parental immigration or citizenship status information.

6. Oregon's form to register a birth does not contain any field for immigration or citizenship status of the baby. Babies born in Oregon have always been considered U.S. citizens, and Oregon birth certificates have always been proof of U.S. citizenship sufficient to obtain a U.S. passport or SSN. Oregon birth certificates contain no information or representation about a baby's immigration or citizenship status.

7. As part of the Birth Record Parent Worksheet, parents are asked whether they wish to get an SSN for their children. They select either a "Yes" or "No" box when completing the form.

8. After the newborn's parents complete the Birth Record Parent Worksheet, the hospital sends the information electronically to OHA through the Oregon Vital Events Registration System (OVERS) and the birth is registered. OHA and the local public health jurisdiction then use that information to create a birth certificate with the State.

9. Oregon participates in the U.S. Social Security Administration's Enumeration at Birth program. The EAB program is a process by which babies born in the United States may obtain an SSN based on the submission of information from the State's vital statistics agency rather than a separate application.

10. The Birth Record Parent Worksheet asks for the parents' SSNs. Parents born outside the United States can apply for and receive an SSN for their child born in the United States without including their own SSNs. Because children born in the United States are U.S. citizens, they are eligible for SSNs regardless of their parents' immigration status. The EAB process facilitates a streamlined application and issuance of SSNs to U.S. Citizen babies born

in Oregon. To my knowledge, based on its agreement with the SSA, more than 98 percent of parents in the United States voluntarily request an SSN for their newborns through the EAB program.

11. After a healthcare facility receives a completed Birth Record Parent Worksheet indicating that an SSN is sought for a newborn child, it sends the required information to OHA. OHA then sends the required birth record information to the SSA in the prescribed format for the purpose of SSA issuing an SSN to the newborn child. The information sent must include the child's name, date of birth, place of birth, sex, mother's maiden name, father's name if listed on the birth registration document, the mother's address, the birth certificate number, and the parents' SSNs if available.

12. In exchange for administering this program and formatting and transmitting certain data to the SSA, OHA receives federal funding from the SSA. Through a contract in place with the SSA, the State currently receives $4.82 per SSN assigned through the EAB process. In 2023 OHA received $158,381 through the program. Through three quarters of 2024, OHA has received $129,900. Under the agreement, OHA only sends EAB records and information to the SSA for enumeration of infants born within the past 12 months, and it receives payment only for records received for births in the current month and the prior two months. Further, the number of records processed and available for reimbursement is reduced by the number of births that are assigned an SSN in SSA Field Offices after the parent has applied for EAB at the hospital. In other words, OHA is only reimbursed for those SSNs assigned through EAB. The annual payment received through the EAB program is approximately 2.1% percent of the Center's annual budget, and OHA uses those funds to support the payment of administrative and operational costs for the Center.

13. If children born in Oregon become ineligible for SSNs because they are no longer citizens, OHA will lose federal funds because there will be a decrease in the number of SSN applications sent through the EAB process. For example, if there is an annual decrease of

approximately 1,500 newborn children eligible for SSNs in Oregon and the SSA declines to issue SSNs for those children, OHA would stand to lose approximately $7,230per year. Based on my experience, I anticipate that OHA would in fact see an even larger decrease in the number of children eligible to obtain an SSN because data quality may decrease, making it hard to provide enough information to SSA to get an SSN assigned.

14. OHA also anticipates additional negative impacts based on the loss of birthright citizenship to newborns in Oregon. If it were no longer the case that all children born in the United States are U.S. citizens at birth and the newborn registration process had to be amended to provide for verification of the parents' citizenship or immigration status, Oregon's vital records system would have no immediate way to reflect this significant change. It would instead require substantial operational time, manpower resources, and technological resources from the Center and healthcare facilities in Oregon to respond to the change. The Center endeavors to avoid deviation from the national standard to preserve interoperability of data systems. Modifying required birth certificate information would require significant system changes for the Center and additional rulemaking by OHA.

15. Historically, the National Center for Health Statistics within the U.S. Centers for Disease Control and Prevention (NCHS) has reviewed and revised U.S. standard vital form certificates every 10-15 years only, by way of a years-long collaborative process with state vital records officers and public health experts. Even if NCHS were to develop and promulgate a new U.S. standard birth certificate that included fields for immigration or citizenship information, adoption of a new form by OHA would require significant system changes, which cannot occur overnight.

16. A change of this scale would place significant new burdens on OHA and the Center in particular. OHA would need to determine what changes are required to birth certificates and what new information may need to be collected. Once determined, OHA would

need to work with NCHS to promulgate a new U.S. standard birth certificate for Oregon's adoption. OHA then would have to promulgate a new rule to effectuate the changes.

17. Meanwhile, approximately 38,000 babies are born every year in Oregon. That is an average of more than 100 babies per day. It is unclear what would be required or requested of OHA in connection with the registration of births that were to occur prior to the implementation of updated birth certificates, since birth certificates are proof of U.S. citizenship. OHA is not currently equipped to handle those new burdens; for example, it is hard to know how we would go about determining the immigration status or citizenship of every newborn (or their parents) when their immigration status is unclear to us, and whose job it would be to make that determination. Most births are assisted births, and hospitals and midwives are the ones who collect and transmit birth registration information to OHA. Furthermore, all information we receive is self-reported, we have no way to verify it, and we do not receive information concerning the parents' immigration or citizenship status.

18. Furthermore, implementing any changes to the Oregon birth certificate—an electronic system comprised of distinct end-user interfaces for medical providers to input data for transmission to OHA, on the one hand, and files OHA can transmit to the SSA, for example, on the other—would require substantial, unbudgeted expenditures by OHA.

I declare under penalty of perjury under the laws of the State of Oregon and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 21st day of January 2025 at Portland, OR.

Jennifer A. Woodward
State Registrar
Oregon Health Authority

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127-JCC

DECLARATION OF APRILLE FLINT-GERNER

DECLARATION OF APRILLE FLINT-GERNER

I, Aprille Flint-Gerner, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge and records of the Oregon Department of Human Services that are kept in the ordinary course of its business.

2. I am the Director for the Oregon Child Welfare Division of the Oregon Department of Human Services. (ODHS). I have served as Director since July 2023 and was previously the Child Welfare Interim Director. I am responsible for executive level oversight and administration of Oregon's foster care program and compliance with Title IV-E.

3. I hold a Bachelor of Arts in African American Studies and a Master of Social Work from San Jose State University. I have more than 25 years of experience in public sector work, including specialized experience in workforce and adaptive leadership development, community and cross-system engagement, and technical assistance and implementation support. I have specialized knowledge and expertise in many promising practices and equity frameworks in child welfare and human services. I am knowledgeable about the administration of the Child Welfare Division, including its implementation of Title IV-E.

4. The Child Welfare Division of ODHS is focused on the well-being of children. Its mission is to ensure every child and family is empowered to live a safe, stable and healthy life. We are part of a larger statewide social system that works to support children, families and communities. Child Welfare focuses on keeping families together whenever it is safe to do so.

5. One of ODHS's duties is to administer Oregon's child welfare system. Oregon's child welfare system is funded in part through an annual appropriation based on an open-ended formula grant entitlement operated by the U.S. Department of Health and Human Services (HHS) Federal Foster Care Program, known as Title IV-E.

6. Title IV-E includes various programs that provide funding to children and ODHS. While ODHS provides foster care support for all children in the foster care system, regardless of

immigration status, it receives federal matching reimbursements for any funds that are directed to foster children eligible for Title IV-E. Children must be citizens or qualifying non-citizens to be entitled to enjoy benefits under Title IV-E and may be eligible as soon as birth. ODHS does not receive reimbursements based on their services to individuals who are undocumented or do not have a lawful, qualifying immigration status, as defined in Title IV-E. ODHS is also entitled to reimbursements for many types of administrative costs incurred in serving Title IV-E children, including the administration of various Title IV-E programs that ODHS administers and receives funding for.

7. Included in Title IV-E's funding program is its "Adoption and Guardianship Assistance Program," which provides funding to facilitate the timely placement of children, whose special needs or circumstances would otherwise make it difficult for them to have permanency through adoption or guardianship. Under federal law, Child Welfare Division receives Title IV-E funding for the administrative functions of the Adoption and Guardianship Assistance Program, which includes:

a. Overall: the determination and redetermination of eligibility; fair hearings and appeals; rate setting; other costs directly related only to the administration of the adoption and guardianship assistance program; the administration of any grievance procedures; negotiation and review of adoption/guardianship assistance agreements; post-placement management of subsidy payments; a proportionate share of related agency overhead; development of the case plan; referral to services; home studies; and mediation of post-finalization contact agreements.

b. For adoptions: recruitment of adoptive homes; placement of the child in the adoptive home; case reviews conducted during a specific preadoptive placement for children who are legally free for adoption; case management and supervision

prior to a final decree of adoption; and a proportionate share of the development and use of adoption exchanges.

8. Title IV-E also includes a "Foster Care Maintenance Payments Program," which provides funding for the regular costs of supervising and providing social services to children in foster care. This includes: payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, it also includes the administration of providing all of the services detailed above.

9. Title IV-E funds the Independent Living Program services for youth who are age 14 and over and the Chafee educational stipends to support young adults pursuing higher education after experiencing foster care.

10. Title IV-E administrative funds support the training of agency staff, including resource parents (who some states refer to as foster parents), as well as funding training for legal representation for parents and children, Court-Appointed Special Advocates (CASA), and members of the Citizen Review Board (CRB).

11. Title IV-E funding is critical to ensuring high quality service to Oregon's children who experience foster care today and in the future.

12. The amount of federal funds that Oregon is entitled to under Title IV-E depends on the number of Title IV-E eligible children. The amount Oregon receives is based on Oregon's "eligibility rate" or "penetration rate," which is then used to determine the amount Oregon will be reimbursed for providing services. The eligibility rate describes the percentage of Title IV-E eligible children being served, compared against the total number of served children in foster care, pursuant to the definition of foster care in 45 CFR 1355.20. The total number of children being served depends on the services being provided. For example, Title IV-E reimburses Child

Welfare Division for payments for services in support of children placed in a resource family home, a licensed group care facility, or in a home other than that of the child's parent, guardian, or legal custodian. The reimbursed services include the recruitment, training, and management of resource parents, the recruitment of adoptive families, and the facilitation of the adoption process, among other services. The rate that CWD is reimbursed for the costs related to serving children in paid out of home care is calculated by the number of days that Title IV-E eligible children were in paid out of home care divided by the total number of days that all children (including children ineligible for Title IV-E) were in paid out of home care.

13. Because the penetration rate depends on the number of children eligible for Title IV-E funding, even a small decrease in the number of children eligible for Title IV-E funding would have dramatic impacts on the total amount of federal funding that Oregon receives under Title IV-E.

14. For example, in Federal Fiscal Year 2024, Oregon spent a total of $792,403,677 to administer its child welfare system. That same year, Oregon had a penetration rate of 49% percent, based on approximately 2,200 children who are eligible for Title IV-E divided by approximately 4,490 children in foster care on a given day. Consequently, even 45 fewer children being eligible for Title IV-E funding would have decreased Oregon's penetration rate by 1% percent, which would have decreased Oregon's reimbursement by $3.4 million. Or, taking a different approach, if 1,500 children are born annually in Oregon who would not be considered citizens under the federal executive order, then we can extrapolate the impact based on the percentage of Oregon children who enter foster care. Using fiscal year 2024 dollars and foster care percentages (.005%), there would be eight children who would enter foster care and would not be considered citizens and who, therefore, would not be entitled to Title IV-E eligibility. Even just eight fewer eligible children per year equates to $596,850.49 in lost federal funding based on fiscal year 2024 expenditures.

15. The impact of the executive order on Oregon's child welfare system would not be limited to a reduction in federal funding for care of the children experiencing foster care. The recent executive order purporting to end birthright citizenship for children born in the United States based on their parent(s)' non-citizen/immigration status, if implemented, would have a variety of widespread impacts on Oregon's foster care program, including an increase in the operational and administrative costs for Oregon's foster care program.

16. In addition to impacts on those subject to this new policy, the federal government's action would increase the cost of ODHS's administration of its foster care programs and, at the same time, decrease the amount of federal funding Oregon receives to reimburse administrative and maintenance costs related to its services for foster children in Oregon.

17. ODHS is required by federal law to verify the citizenship status of all individuals receiving foster care support under Title IV-E, to determine the child's eligibility. Currently, the primary method of citizenship verification is through birth certificates held by other state agencies. Because ODHS can serve children as soon as they are born, it relies on birth certificates to determine whether young children are eligible under Title IV-E. When a child enters foster care, ODHS does not otherwise verify the citizenship of their biological parents in any way, as the parent(s)' citizenship is irrelevant to the services that Child Welfare provides.

18. ODHS has no system in place to determine the citizenship of a child's parents when the child enters foster care. If ODHS were required to change its practices to conform with the federal government's executive order, ODHS would also need to develop that system and develop updated comprehensive training for staff, partners, and other contracted agencies who carry out Title IV-E duties. For example, ODHS would likely need to update its training and guidance around which children are citizens and therefore eligible for Title IV-E funding, and which children are only eligible for state-only programs. Moreover, Title IV-E requires ODHS to verify the citizenship of each child for whom it seeks federal reimbursements. While ODHS

was previously able to rely on birth certificates to meet its federal obligation, it would no longer be able to do so and would need to create a process to verify the citizenship of the parents at the time the child enters foster care to determine whether the ODHS is entitled to federal reimbursements. This would be a significant and costly administrative burden on the State and ODHS.

I declare under penalty of perjury under the laws of the State of Oregon and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 24th day of January, at Happy Valley, OR.

APRILLE FLINT-GERNER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON, Plaintiffs, v. DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; BENJAMINE HUFFMAN, in his official capacity as Acting Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA, Defendants.	Civil Action No. 2:25-cv-00127 Judge John C. Coughenour

DECLARATION OF HEIDI E. MUELLER

I, Heidi E. Mueller, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I am Director of the Illinois Department of Children and Families Services ("IL DCFS" or "DCFS"), a position I have held since February 1, 2024. I served as the Acting Director of IL

DCFS from February 2024 until March 21, 2024. On March 22, 2024, I was unanimously confirmed by the Illinois Senate as Director of IL DCFS. As Director of IL DCFS, I oversee the care, custody, and services to abused, neglected and dependent minors placed in DCFS's custody by Illinois Courts as well as programs provided to children and families at risk of coming into foster care.

2. Prior to holding this position, from December 2016 to February 2024, I served as the Director of the Illinois Department of Juvenile Justice where I oversaw the care, custody, and services provided to youth committed to that department by Illinois Courts. I was first appointed by Governor Bruce Rauner after having served from April 2014 to December 2016 as the Deputy Director of Programs, responsible for the Department of Juvenile Justice's service array and rehabilitative model. From 2012 to 2014, I served as the Executive Director of the Illinois Juvenile Justice Commission, advising the Governor and the General Assembly regarding juvenile justice policy and practice and administering the State's federal grant funding under the Juvenile Justice and Delinquency Prevention Act.

3. I hold a bachelor's degree, cum laude, in psychology and history from Macalester College, completed Master's level studies in Social Psychology from Stony Brook University, and earned a Juris Doctor degree from the University of Chicago Law School.

4. I submit this Declaration in support of Plaintiff States' Motion for Preliminary Injunction pertaining to the Executive Order entitled "Protecting the Meaning and Value of American Citizenship" (the "Citizenship Stripping Order"). I have compiled the information of the matters set forth below through personal knowledge, my review of information and records gathered by staff, and through IL DCFS personnel who have assisted me in gathering this

information. I have also read the Citizenship Stripping Order in order to understand its immediate and long-term impact on IL DCFS and the State of Illinois.

Department of Children and Family Services Background

5. IL DCFS is the state agency mandated to investigate allegations of child abuse and neglect, maintain records regarding those investigations, and offer preventative and other services in Illinois. IL DCFS provides services to families at risk of having children enter foster care and to abused, neglected, and dependent youth who are placed in State custody and their families to address the issues that brought the family to the attention of the State with the goal of reunifying the families or providing alternative permanency living arrangements for youth. IL DCFS oversees the licensing and certification of relative and foster family homes for youth in the custody of the State and the licensing of other childcare institutions and placements for youth in DCFS care and custody. IL DCFS also provides early childhood care and education programs as part of the State's child welfare service system.

6. IL DCFS was created by the Children and Family Services Act "to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services as enumerated in this Act." 20 ILCS 505/1. Those services include: ensuring the necessary number of placements and other resources of sufficient quality and variety to meet the needs of children and families; providing direct child welfare services through public or private childcare programs or facilities, which protect and promote the health, safety, and welfare of children, including abused and neglected children; and placing children who have been removed from their parents in appropriate living arrangements.

7. IL DCFS is also mandated to provide arrangements and monitor rehabilitative services for children and their families on a voluntary basis or who are under a court order. 325 ILCS 5/8.4.
8. IL DCFS is a statewide agency that operates in all 102 counties in the State of Illinois. DCFS consists of a central office and four regions: Cook County, Northern, Central and Southern. Each region is divided into field service areas. The general statewide management and support functions of the agency are currently performed at the central office level.
9. IL DCFS contracts with community-based child welfare contributing agencies ("CWCA") throughout the State to provide services for children and families. These services include case management services for families and children who remain together and are at risk of coming into foster care.
10. IL DCFS directly and through CWCAs provides foster care and residential placement and other services to children and youth removed from their parents.
11. DCFS provides services regardless of a child's or family's immigration status.
12. DCFS supervised or administered foster care for 19,514 children in 2023. As of the end of the state fiscal year on June 30, 2024, DCFS supervised or administered foster care for 18,854 children.
13. Children can enter IL DCFS's care at any time prior to their 18th birthday. In State Fiscal Year 2024 (July 1, 2023 to June 30, 2024) 6,252 children entered foster care. The breakdown of the ages of those children at the time they entered foster care is: 1,455 children were less than one year old; 1,942 children were between one year to five years old; 1,414 children were six to ten years old; 1,329 children were 11 to 16 years old; and 112 were 17 years old.

14. In calendar year 2024, 5,991 children entered foster care: 1,373 children were less than one year old; 1,827 were one year to five years old; 1,352 were six to ten years old; 1,308 were 11 to 16 years old; and 131 of those children were 17 years old.

15. DCFS must timely identify the needs of children and youth placed in their custody and provide timely and appropriate services and placements to meet those identified needs and ensure children and youth in DCFS custody are cared for.

Federal Funding Tied to a Child's Citizenship Status

16. Section 471 of the Social Security Act provides that for a state to obtain foster care maintenance payment reimbursements for a child in foster care, the State Plan must set forth that the state has procedures in effect for verifying the citizenship or immigration status of the child. 42 U.S.C. 671 (a)(27).

17. IL DCFS receives several sources of federal funding for providing services to children that are contingent on the child's immigration status. DCFS receives federal funding for providing services to eligible children, children that are a U.S. citizen or a "qualified alien." DCFS does not receive federal funding for providing similar services to children who are undocumented.

18. Prior to the enactment of the Citizenship Stripping Order, DCFS received federal funding for providing services to income-eligible children including those whose parents' immigration status was unknown or not determined.

19. If the Executive Order is implemented, IL DCFS will not receive the same level of federal funding for the provision of services to children even though it will continue to provide the same services to children regardless of their immigration status, as required by State law.

20. DCFS would also have to use its limited resources (resources that would otherwise directly provide for the care of youth) to create, implement, and update systems for all its programs to

track and determine the citizenship status of newborn children entering its care, even if the immigration status of a child's parents is unknown or indeterminable.

21. Title IV-E of the Social Security Act ("Title IV-E") requires the federal government to provide grants to state foster care agencies with approved Title IV-E plans, including IL DCFS, to assist those agencies with the costs of foster care maintenance for eligible children, as well as for adoption, guardianship, prevention, and other support services.

22. Title IV-E entitles Illinois to claim partial reimbursement from the federal government for IL DCFS's foster care expenditures for children who are removed from a home and placed in foster care and who meet the eligibility criteria for the former Aid to Families with Dependent Children ("AFDC") program, as it was in effect on July 16, 1996.

23. The 1996 AFDC program also limits federal public benefits to United States citizens and "qualified aliens." As IL DCFS understands the Title IV-E limitations independently, *cf.* 8 U.S.C. § 1641, and per the AFDC criteria, children who are undocumented are not "qualified aliens," and thus DCFS does not receive any federal reimbursement for its foster care expenditures for those children.

24. Federal funding under Title IV-E covers foster care maintenance payments for eligible children and provides for partial reimbursement of the State's administrative expenses associated with its foster care system. Foster care maintenance payments cover the cost of basic necessities, including food, clothing, shelter, daily supervision, and school supplies for eligible children in DCFS's care. Federal funding is provided on a quarterly basis after the State submits claims for eligible expenditures associated with eligible children.

25. Partial reimbursement of DCFS's administrative expenses is calculated by using the State's "penetration rate" or "eligibility rate," which is the percentage of children in foster care who

are eligible for Title IV-E funding. This loosely equates to the percentage of children in foster care who came from families with limited resources. That rate describes the percentage of Title IV-E eligible children DCFS serves, compared against the total number of children in DCFS's foster care, pursuant to the definition of foster care in 45 CFR 1355.20. IL DCFS must calculate a penetration rate for each quarter. For federal Fiscal Years 2023 and 2024, IL DCFS's penetration rate was between 26 and 34 percent: for those years, federal funds covered approximately 26 to 34 percent of the administrative expenses associated with DCFS's provision of foster care for eligible children.

26. In Federal Fiscal Year 2024, IL DCFS received almost **$140** million in Title IV-E federal funding for administrative expenses and foster care maintenance payments for eligible children.

27. Title IV-E federal funds also include funding for the Adoption Assistance Program, which facilitates the timely adoption of children with special needs or circumstances. Under federal law, DCFS receives Title IV-E funding for administering the Adoption Assistance Program, including assessing a child's eligibility for DCFS care, conducting hearings and appeals, and recruiting adoptive homes for identified children, among other administrative functions.

28. Based on DCFS's experience, it is very likely that DCFS serves U.S. citizen children with parents whose status would disqualify their child from birthright citizenship under the Citizenship Stripping Order. In calendar year 2024, 1,373 children entered foster care in Illinois in the first year of their lives. Those children were eligible for inclusion in the tabulation of federal funding received by IL DCFS, but children with parents of disqualifying status would be ineligible for inclusion in that tabulation under the Citizenship Stripping Order.

29. If children born to undocumented parents in Illinois who require foster care services were not given citizenship status as of birth, thereby becoming undocumented, IL DCFS would, consistent with state law, including the Children and Family Services Act, 20 ILCS 505; the Abused and Neglected Child Reporting Act, 325 ILCS 5; and the Illinois Juvenile Court Act, 705 ILCS 405, and the terms of the Consent Decree entered in *B.H. v. Mueller*, 88-cv-5599 (N.D. Ill. Dec. 20, 1991) continue to provide these children with foster care services as needed. However, because those children would be ineligible for Title IV-E funding, DCFS would not receive any reimbursement from the federal government under Title IV-E for providing those services. DCFS, and Illinois would be solely responsible for funding care for those children via its foster care and adoption systems.

30. Given all that, if the Citizenship Stripping Order took effect, IL DCFS would not receive a significant share of federal funds under Title IV-E based on the exclusion of children who are undocumented from the calculation of IL DCFS's expected federal funding.

Costs of Ascertaining Citizenship Status

31. DCFS needs to determine the citizenship status of the children it serves in order for Illinois to accurately obtain quarterly Title IV-E reimbursements from federal sources for foster care services provided to eligible children. Children are only eligible for the afore-listed programs and services if they are U.S. citizens or "qualified aliens."

32. Prior to the issuance of the Citizenship Stripping Order, IL DCFS relied on a child's birth certificate as evidence of U.S. citizenship. This is administratively simple, especially with respect to newborns that DCFS caseworkers may interact with shortly after birth.

33. If birthright citizenship were terminated and DCFS could not rely on a child's birth certificate as proof of citizenship, it would significantly complicate DCFS's ascertainment of certain foster care services provided for that child that are reimbursable under Title IV-E.

34. To ascertain eligibility stemming from citizenship, DCFS caseworkers would have to develop a new system for determining the citizenship and immigration status of children entering its care. That system would likely require DCFS to take steps to determine, verify, and document the immigration status of the parents of children who come into foster care. It would cost considerable time and resources to implement such a system. This would be especially difficult in certain circumstances where parents are unwilling to engage with DCFS. DCFS would also incur significant costs to train DCFS caseworkers to implement that system.

35. While the precise costs are difficult to estimate without further guidance from the federal government on how states must determine citizenship status for federal benefits and Title IV-E eligibility, it could easily cost millions of dollars. Because quarterly submissions to the federal government for Title IV-E reimbursements are due at the end of April 2025, DCFS would have to develop and begin implementing such a system immediately, which may not be possible in the short timeframe.

36. Developing such a system to ascertain a child's citizenship status would also divert DCFS's limited resources from providing services to at risk children in Illinois to the detriment of children that benefit from a variety of DCFS's programs.

37. Separately, DCFS occasionally takes temporary custody of newborn children who have been abandoned, such as pursuant to Illinois's Abandon Newborn Infant Protection Act. (Protection Act), 325 ILCS 2/1-70. The parents of such abandoned children may be unknown, and DCFS

would therefore be unable to ascertain their eligibility for the above-mentioned federal programs.

38. Indeed, if a newborn is abandoned pursuant to the Protection Act, Illinois law permits an individual relinquishing a newborn infant to remain anonymous, absent any evidence of abuse or neglect of the child. 325 ILCS 2/30. DCFS could therefore be prevented from being able to determine the immigration status of the abandoned newborn's parents unless that information were volunteered.

39. Consequently, DCFS would be unable to establish that abandoned newborns are U.S. citizens eligible for Title IV-E reimbursement for DCFS—regardless of the actual immigration status of the newborn's parents. In summary, the Citizen Stripping Order will have an immediate and detrimental effect on the operations and finances of IL DCFS and harm the vulnerable youth and families we serve.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 27th day of January 2025, in Chicago, Illinois.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127-JCC

DECLARATION OF MOZHDEH OSKOUIAN

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DECLARATION OF MOZHDEH OSKOUIAN

I, Mozhdeh Oskouian, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal and professional knowledge.

2. I am an attorney at law, admitted in the State of Washington and currently employed by Northwest Immigrant Rights Project (NWIRP) as its co-Deputy Director. I have worked as an immigration attorney at NWIRP for the last nineteen years. From December of 2005 to July of 2006, I worked as a Staff Attorney in the Violence Against Women Act (VAWA) Unit. From July of 2006 until mid-2015 I supervised the VAWA Unit. From 2015 until June 2023, I was the directing attorney of NWIRP's Seattle office. I became one of NWIRP's co-Deputy Directors in June of 2023, and continue serving in this role. In this role, I supervise NWIRP's Seattle and Granger offices and supervise all the work done by NWIRP's attorneys on behalf of our clients

3. Northwest Immigrant Rights Project (NWIRP) is a nonprofit organization that serves low-income immigrants in Washington State through direct representation, community education, and systemic advocacy. NWIRP provides direct legal representation and assistance in immigration matters to thousands of people with low incomes each year who come from over 150 countries and speak over 60 different languages. NWIRP is also the largest provider of legal services to persons in immigration proceedings in Washington. NWIRP is a trusted provider of immigration-related community education for immigrant communities and social service providers. NWIRP serves the community through four offices in Washington State in Granger, Seattle, Tacoma and Wenatchee.

4. I have extensive experience on cases focusing on immigrant rights. I have represented over a hundred immigrants before the Immigration Court, the Board of Immigration Appeals and the Federal Courts. I have also represented hundreds of clients with various forms of immigration applications before United States Citizenship and Immigration Services,

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including applications for family visas, naturalization, VAWA forms of relief, temporary protected status, asylum, and administrative appeals.

5. I have reviewed the Executive Order "Protecting the Meaning and Value of American Citizenship" signed by President Trump on January 20, 2025. The order purports to strip citizenship from persons born in the United States to 1) a mother with undocumented status and father without U.S. citizenship or permanent residency; or to 2) a mother with temporary status and father without U.S. citizenship or permanent residency. As a result of the Order, these children will lack citizenship or any legal immigration status at birth. The Immigration and Nationality Act (INA) does not provide any alternative legal status to persons born in the United States. Moreover, under the INA the vast majority of persons subject to the Order will have no pathway to even apply for lawful status in the United States. This is true not only at the time of their birth, but also throughout the course of their lifetime. Instead, they will grow up and live undocumented, forced to remain in the legal shadows of the country they were born in.

6. The INA provides two primary paths to lawful permanent residence—family visas and employment visas, but neither path is available for the overwhelming majority of undocumented newborns whose parents are not U.S. citizens or lawful permanent residents. The Order targets those persons whose parents are not U.S. citizens or lawful permanent residents. Under the Immigration and Nationality Act, only U.S. citizens and lawful permanent residents are eligible to file family visa petitions for their children. Thus, none of the parents of persons targeted by the Order are eligible to file family visa petition for their newborn children. Moreover, even if later in life they become eligible for a family visa petition, for example by marrying a U.S, citizen, they would be ineligible to apply for adjustment of status to lawful permanent resident status. This is because in order to apply for adjustment of status a person must demonstrate that they have been "inspected and admitted or paroled into the United States." *See* 8 U.S.C. § 1255(a). Because these persons were born in the United States, they have never

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been inspected and admitted or paroled into the United States, which is a statutorily required element to apply for adjustment of status.

7. Further, persons living without legal status cannot simply travel abroad and be admitted upon their return, as they are not authorized to reenter the United States if they have no status. *See* 8 U.S.C. § 1182(a)(7) (rendering persons ineligible to be admitted into the United States if they do not have lawful immigration status). The beneficiary of a visa petition filed by a U.S. citizen spouse may instead apply for a visa at a U.S. embassy or consulate in a foreign country, but this is a lengthy process that would require them to be admitted into the foreign country for a significant period of time. Moreover, because they have been living without status in the United States, they will inevitably be subject to what is referred to as the 10 year bar for having departed after living without status for more than one year in the United States. *See* 8 U.S.C. § 1182(a)(9)(B)(ii). As a result they would not be granted permission to return to the United States for at least ten years, unless they were granted a discretionary waiver. *Id.* Waivers are only available to those who can establish that "the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent." 8 U.S.C. § 1182(a)(9)(B)(v). The waiver does not take into account the extreme hardship to the person, but instead only weighs the hardship caused to the U.S. citizen or lawful permanent resident spouse or parent. Notably, these waivers generally take more than a year to be approved. In the meantime, the person is left to languish in the foreign country with no assurance that the discretionary waiver will ultimately be granted. Finally, it is important to note that this difficult process is not even available for all the persons who are not married to U.S. citizens or lawful permanent residents.

8. Persons targeted by this Order would also be ineligible to obtain lawful permanent resident status through employment visa petitions because even if they eventually graduate from college with a specialized skill required for employment visas, and are offered qualifying employment, they would similarly be ineligible to adjust status because they were not

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inspected and admitted or paroled into the United States, as required by 8 U.S.C. § 1255(a). Moreover, they face an additional bar: because they would not have status they would be independently barred by 8 U.S.C. § 1255(c), which renders a person ineligible who "accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status." Finally, most would not qualify to even apply for an employment visa through an embassy or consulate abroad because as noted above, persons who depart the United States and who have lived without status in the United States for more than a year are rendered inadmissible for ten years, 8 U.S.C. § 1182(a)(9)(B)(ii), and most will not have a qualifying relative to even apply for the discretionary waiver.

9. Because the INA does not provide an alternative legal status to persons born in the United States who are not U.S. citizens, children stripped of citizenship by the Order and left undocumented will be at immediate risk of removal from the United States. This includes being at risk of being arrested and detained by Immigration and Customs Enforcement, even while they go through the removal (i.e., deportation) process. If placed in removal proceedings, most will not qualify for any immigration status. The most common form of relief from removal for persons who have no lawful status is to apply for cancellation of removal. *See* 8 U.S.C. § 1229b. However, they would not qualify for the first type of cancellation, § 1229b(a), as that only provides relief for persons who have already been granted lawful permanent residence. The vast majority would not qualify for the second type of cancellation, §1229b(b)(1), as that is only available for persons who have been continuously residing in the U.S. for at least ten years and are able to demonstrate that their removal would cause "exceptional and extremely unusual hardship" to either a U.S. citizen or lawful permanent resident spouse, parent or child. *See* 8 U.S.C. § 1229b(b)(1)(D). Even if these persons were not placed in removal proceedings until after ten years had passed, the vast majority would not have a qualifying relative, i.e., U.S. citizen or lawful permanent resident spouse, parent or child. And even those with a qualifying relative

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must demonstrate that it causes the qualifying relative not just hardship, but "exceptional and extremely unusual hardship," an extremely difficult standard to satisfy. Indeed, to reinforce the difficult standard the statute placed a numerical limit so that no more than 4,000 people may be granted cancellation of removal in any given year. *See* 8 U.S.C. § 1229b)(e)(1).Our office represents many undocumented persons in removal proceedings who have a qualifying relative and are statutorily eligible to apply for cancellation of removal under 8 U.S.C. § 1229b(b)(1), and who present compelling equities—including demonstrating family separation and the loss of a parent where a child has physical or mental disabilities. Yet immigration judges regularly deny such applications finding the hardship they present is similar to the hardship of hundreds of other undocumented persons who are ordered removed each week.

10. While there are other limited forms of immigration relief, they only apply to a small section of the population. For example, asylum is only available to persons who demonstrate a well-founded fear of persecution on account of a protected ground (race, religion, nationality, membership in a particular social group or political opinion). *See* 8 U.S.C. §§ 1101(a)(42), 1158. In my experience undocumented persons who have not already lived in the country where they fear persecution are highly unlikely to qualify as they will not be able to demonstrate objective evidence that they will individually be targeted despite having no past persecution. Special Immigrant Juvenile Visas are only available for children who have been abandoned, abused or neglected by a parent. 8 U.S.C. § 1101(a)(27)(J)(i). Similarly, U visas are only available for persons who have been the victim of enumerated crimes that caused substantial harm, and subsequently cooperated with the investigation or prosecution of the crime. *See* 8 U.S.C. § 1101(a)(15)(U). The vast majority of persons subject to the Order will remain without any path to lawful immigration status. Instead, they will be forced to remain undocumented, living in fear of any encounter with public officials. In my experience working directly with clients living without legal immigration status, the fear of detention and deportation is profoundly detrimental to their wellbeing and the ability to fully integrate into their communities.

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Our clients are often afraid to call the police or the fire department, as they have heard of others who ended up being reported to immigration after calling such authorities. Some clients are even afraid of taking their children to the hospital, or interacting with school officials.

11. In most states undocumented persons have no right to apply for a driver's license. Even in Washington State, they will not be eligible for REAL ID-compliant identification, which starting in May 2025 will be required for domestic air travel. Their ability to travel even within the United States will be severely limited. Many clients live in fear of interactions with immigration officials at airports or bus stations.

12. Undocumented persons are not eligible to obtain an employment authorization document (EAD) or a Social Security number, both necessary to work lawfully for those who cannot prove citizenship or lawful permanent residency. Undocumented individuals are not eligible for work authorization under any of the avenues available under the INA. *See* 8 C.F.R. § 274a.12. Because of this they face a much higher likelihood of being exploited by employers who know they face difficulty in finding employment. Over the years I have worked with countless clients where employers have withheld their last paycheck or denied them overtime because the employers are confident that undocumented persons, fearing immigration enforcement, will not report the employer's unlawful conduct.

13. The order will exponentially increase the undocumented population in Washington State. As the largest provider of immigration legal services in Washington, NWIRP's services are already in high demand. Even with a staff of over 180, we are unable to meet the needs of the majority of immigrant community members who contact us seeking representation. The majority of persons placed in removal proceedings are forced to represent themselves, and must stand alone against an ICE attorney before the immigration judge. Similarly, for persons not in removal proceedings we are not able to represent everyone who seeks our assistance. Instead we use waitlists for most types of affirmative relief. The Order would add thousands of additional undocumented children in Washington who will at some point

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likely need legal representation. This will stretch the already full capacity of NWIRP and other immigration legal providers in Washington

14. We have already received phone calls from worried parents who ask whether their children will now lose their citizenship and whether they should pull their children out of school, or whether they should withdraw from WIC or cut off food stamps for their children. Many parents have sacrificed so much of their lives in order to find stability and safety for their children. Now they are distraught knowing that their children potentially face a lifetime of uncertainly, hiding in the shadows, limited to an underground economy which has caused the parents so much pain in their lifetime. Many have explained that their children have nowhere to go in their home country, talking about how difficult it would be for their children, many who do not even speak, read and write in the language of their parents' home country.

15. It is very difficult to respond to these inquiries other than ensuring them that the U.S. Constitution and the Supreme Court of this Country have made clear, for more than a century, that their children who are born in the United States, are entitled to citizenship, regardless of the fact that the parents have no lawful status.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED and SIGNED this 27th day of January 2025, at Seattle, Washington.

MOZHDEH OSKOUIAN

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The Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127-JCC

INDEX OF DECLARATIONS IN SUPPORT OF PLAINTIFF STATES' MOTION FOR PRELIMINARY INJUNCTION

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15	Jenny Heddin	Deputy Secretary—Chief of Staff Washington State Department of Children, Youth and Families
16	Katherine Hutchinson	State Registrar and Office Director Center for Health Statistics Washington Department of Health
17	Brian Reed	Service Line Administrator of Women's and Children's Services UW Medicine
18	Dr. Tom K. Wong	Associate Professor University of California, San Diego (UCSD)
19	David C. Baluarte	Professor of Law and Senior Associate Dean for Academic Affairs CUNY School of Law
20	Dr. Caitlin Patler	Associate Professor of Public Policy Goldman School of Public Policy University of California, Berkeley

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22	Magaly Solis Chavez	Executive Director La Casa Hogar
24	Krystal Colburn	Chief Reporting Officer and Assistant State Registrar Arizona Department of Health Services
25	Jeffrey Tegen	Assistant Director Division of Business and Finance Arizona Health Care Cost Containment System Administration
26	Nadine O'Leary	Deputy State Registrar Division of Vital Records Illinois Department of Public Health
27	Jennifer A. Woodward	State Registrar Oregon Health Authority
65	Aprille Flint-Gerner	Director Child Welfare Division Oregon Department of Human Services
66	Heidi E. Mueller	Director Illinois Department of Children and Family Services
67	Mozhdeh Oskouian	Deputy Director Northwest Immigrant Rights Project (NWIRP)

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DATED this 27th day of January 2025.

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The Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
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AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

NO. 2:25-cv-00127-JCC

PLAINTIFF STATES' MOTION FOR PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR: FEBRUARY 6, 2025

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I. INTRODUCTION

The Fourteenth Amendment's Citizenship Clause emerged out of one of our Nation's darkest chapters and embodies one of its most solemn promises. It was passed and ratified following the Civil War to overturn the Supreme Court's infamous holding in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), which denied citizenship to an entire class of persons—descendants of enslaved people. The Citizenship Clause repudiated *Dred Scott* and reaffirmed the common law principle of *jus soli*, under which all individuals born in the United States and subject to its jurisdiction are citizens. Its operation is automatic and its scope broad. It provides our Nation a bright-line and nearly universal rule under which citizenship cannot be conditioned on one's race, ethnicity, alienage, or the immigration status of one's parents. And since its adoption, the Supreme Court, Congress, and the Executive Branch have continuously affirmed its foundational principle that birth in the United States confers citizenship, with all its benefits and privileges.

President Trump and the federal government now seek to impose a modern version of *Dred Scott*. But nothing in the Constitution grants the President, federal agencies, or anyone else authority to impose conditions on the grant of citizenship to individuals born in the United States. The President's Executive Order of January 20, 2025—the Citizenship Stripping Order—declares that children born to parents who are undocumented or who have lawful, but temporary, status lack citizenship and directs federal agencies to deprive those individuals of their rights. It is flatly contrary to the Fourteenth Amendment's text and history, century-old Supreme Court precedent, longstanding Executive Branch interpretation, and the Immigration and Nationality Act (INA). The Plaintiff States are therefore exceedingly likely to succeed on the merits of their claims.

Absent an injunction, the Citizenship Stripping Order will cause substantial and irreparable harm to the Plaintiff States and their residents. More than 150,000 newborn children who are born each year in the United States will be denied citizenship under the Citizenship

Stripping Order because their parents are undocumented; more than 1,100 such children are born in the Plaintiff States each month. These numbers represent only a conservative baseline because the Order also attempts to deny citizenship to children born to parents with lawful, temporary status. If implemented, the Citizenship Stripping Order will cause the Plaintiff States to lose substantial federal funds that are conditioned on their residents' citizenship and to incur immediate, substantial, and unbudgeted expenditures to implement the massive changes required to state programs and systems, none of which the Plaintiff States can recoup through this case or otherwise.

The Plaintiff States will also suffer irreparable harm because thousands of children will be born within their borders but denied full participation and opportunity in American society and the Plaintiff States' communities. Children born in the Plaintiff States will be rendered undocumented, subject to removal or detention, and many left stateless. They will be denied their right to travel freely and re-enter the United States, including the Plaintiff States. They will lose their ability to obtain a Social Security number (SSN) and work lawfully in the Plaintiff States as they grow up. They will be denied their right to vote, serve on juries, and run for certain offices. And they will be placed into positions of instability and insecurity as part of a new, Presidentially-created underclass in the United States.

In issuing the Temporary Restraining Order currently in place, the Court rightfully recognized the blatant unlawfulness of the Citizenship Stripping Order and the grave harms it will cause. ECF No. 43. A preliminary injunction is imperative to protect the Plaintiff States and their public agencies, public programs, public fiscs, and state residents against the egregiously illegal actions of the President and federal government. The Court should preliminarily enjoin the implementation and enforcement of the Citizenship Stripping Order.

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II. BACKGROUND

A. President Trump Issues the Citizenship Stripping Order on Day One of His Presidency

On January 20, 2025, President Trump issued an Executive Order entitled "Protecting the Meaning and Value of American Citizenship." ECF No. 1 ¶ 2; Declaration of Lane Polozola, Ex. 1. Section 1 of the Order declares that U.S. citizenship "does not automatically extend to persons born in the United States" if (1) the individual'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) the "person's mother's presence in the United States at the time of said person's birth was lawful but temporary . . . and the father was not a United States citizen or lawful permanent resident at the time of said person's birth." Polozola Decl., Ex. 1. Section 2 states that it is the "policy of the United States" that no department or agency of the federal government shall issue documents recognizing such persons as U.S. citizens or accept documents issued by State governments recognizing such persons as U.S. citizens. *Id.* This specific provision is effective for births occurring on or after February 19, 2025. *Id.* Section 3 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 mandates that officials cannot "act, or forbear from acting, in any manner inconsistent with this order." *Id.* Finally, the Order directs that "the heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities." *Id.*

B. The Citizenship Stripping Order Will Immediately Disrupt Plaintiff States' Programs and Upset the Lives of Hundreds of Thousands of Families

Citizenship confers the "right to full and equal status in our national community, a right conferring benefits of inestimable value upon those who possess it." *Fedorenko v. United States*, 449 U.S. 490, 522 (1981) (Blackmun, J., concurring). At the highest level, "citizenship confers

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legal, political, and social membership in the United States, thus creating paths to mobility." Declaration of Caitlin Patler ¶ 9. It guarantees the opportunity to participate and belong in society—to live free from fear of deportation, vote, serve on a jury, and travel. ECF No. 1 ¶¶ 55-63; *see* Declaration of Mozhdeh Oskouian ¶¶ 5-9; Declaration of David Baluarte ¶¶ 12-15. It further provides the opportunity to achieve economic, health, and educational potential through the right to work legally and through eligibility for social supports, such as federally backed healthcare benefits, cash and food assistance during vulnerable times, and federal student financial aid. ECF No. 1 ¶¶ 64-65, 71-90; Patler Decl. ¶¶ 10-13, 16-22; Declaration of Tom Wong ¶¶ 11-14; Declaration of Sarah Peterson ¶¶ 5, 8-10.

By purporting to revoke birthright citizenship, the Citizenship Stripping Order seeks to immediately deny these rights and benefits to more than 150,000 children born each year in the United States, condemning most to a life without authorized immigration status and some to statelessness. ECF No. 1 ¶ 3; Declaration of Shelley Lapkoff ¶¶ 10, 16; Baluarte Decl. ¶¶ 8-10; Oskouian Decl. ¶¶ 5-10. Instead of the right to full participation and belonging in their home country—the United States—these children will be forced to live "in the shadow," under the constant risk of deportation and unable to obtain work authorization as they grow up, interrupting their "ability to count on the promise of the future." Patler Decl. ¶¶ 20-21; *see also* ECF No. 1 ¶¶ 56, 64-65; Oskouian Decl. ¶¶ 5, 9-10, 12; Baluarte Decl. ¶¶ 12-15.

"Denying birthright citizenship to children born in the U.S. to undocumented parents will create a permanent underclass of people who are excluded from U.S. citizenship and are thus not able to realize their full potential." Wong Decl. ¶ 9. Indeed, the consequences will be severe and long-lasting to the Plaintiff States and their communities, of which the children born under the Order are a part. Undocumented students are less likely to complete high school or enroll in higher education and will earn less at almost every stage of the lifetimes than their citizen counterparts. ECF No. 1 ¶ 64; Patler Decl. ¶¶ 10-12; Wong Decl. ¶¶ 11-12, 14. They will be more likely than their citizen peers to experience disease, depression, anxiety, and social

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isolation. ECF No. 1 ¶ 64; Patler Decl. ¶¶ 18-19, 22. Stated differently, "[b]irthright citizenship is a cornerstone of the U.S. identity as a nation of immigrants, promoting social cohesion, opportunity, and mobility. Ending birthright citizenship would erode those principles and divide our national community, creating and reinforcing vast inequality for generations to come." Patler Decl. ¶ 27.

The Citizenship Stripping Order will directly injure the Plaintiff States in other ways, too, including by directly reducing their federal funding through programs that the Plaintiff States administer, such as Medicaid, the Children's Health Insurance Program (CHIP), Title IV-E foster care and adoption assistance programs, and programs to facilitate streamlined issuance of SSNs to eligible babies—among others. ECF No. 1 ¶¶ 71-92; *see* Declaration of Charissa Fotinos ¶¶ 21-28; Declaration of Jenny Heddin ¶¶ 11-21; Declaration of Katherine Hutchinson ¶¶ 9-13; Declaration of Jeffrey Tegen ¶¶ 8-17, 21-26; Declaration of Krystal Colburn ¶¶ 12-15; Declaration of Nadine O'Leary ¶¶ 19-22; Declaration of Jennifer Woodward ¶ 13; Declaration of Aprille Flint-Gerner ¶¶ 12-16; Declaration of Heidi Mueller ¶¶ 16-30. In addition to these direct and substantial financial losses, the Plaintiff States will also be required to immediately begin modifying the funding, operational structure, and administration of large, statewide programs to account for this change. ECF No. 1 ¶¶ 93-101; Fotinos Decl. ¶¶ 21-25, 28; Heddin Decl. ¶¶ 18-21; Hutchinson Decl. ¶¶ 14-18; Tegen Decl. ¶¶ 18-20; O'Leary Decl. ¶¶ 7-13, 23; Woodward Decl. ¶¶ 14-18; Flint-Gerner Decl. ¶¶ 16-18; Mueller Decl. ¶¶ 31-39.

III. ARGUMENT

A preliminary injunction is warranted where the moving party establishes that (1) it is likely to succeed on the merits; (2) irreparable harm is likely absent preliminary relief; (3) the balance of equities tips in the movant's favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). All factors strongly favor the Plaintiff States here. The Court should enter a nationwide preliminary injunction to prevent the cascade of irreparable and immediate harm that will follow if the Order is implemented.

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A. The Plaintiff States Have Standing to Challenge the Citizenship Stripping Order

The Plaintiff States have standing to obtain an injunction because the Citizenship Stripping Order harms both their sovereign and pecuniary interests. The Plaintiff States' sovereign interests involve "the exercise of sovereign power over individuals and entities within the relevant jurisdiction." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982). "[T]his involves the power to create and enforce a legal code, both civil and criminal." *Id.*; *see also Diamond v. Charles*, 476 U.S. 54, 65 (1986) (the power to enforce a legal code "is one of the quintessential functions of a State," and gives the State a "direct stake . . . in defending the standards embodied in that code") (cleaned up). "This interest is sufficient to convey standing to . . . challenge a federal [law] that preempts or nullifies state law." *Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1176 (9th Cir. 2024).

Here, the Citizenship Stripping Order proclaims that thousands of the Plaintiff States' residents are not subject to the jurisdiction of the United States. While that assertion is based on a frivolous interpretation of the Fourteenth Amendment, *see infra* § III.B, if not enjoined the Order would render these residents the legal equivalents of "foreign ministers" who enjoy immunity from "national or municipal law." *Schooner Exch. v. McFaddon*, 11 U.S. 116, 138, 147 (1812); *see also Davis v. Packard*, 33 U.S. 312, 324 (1834) (affirming dismissal of civil suit against diplomat whose status "exempted him from being sued in [New York] state court"). Because the Plaintiff States have a "'sovereign interest' in the retention of [their] authority" to regulate individuals within their borders, they have standing to challenge the present attempt to gut it. *Washington*, 108 F.4th at 1176 (quoting *Snapp*, 458 U.S. at 601).

Next, the Plaintiff States may seek redress for the direct and immediate economic and administrative harms the Citizenship Stripping Order will impose. As the Supreme Court has recognized, "[m]onetary costs are of course an injury[,]" *United States v. Texas*, 599 U.S. 670, 676 (2023), and such losses constitute "sufficiently concrete and imminent injury to satisfy Article III," *Dep't of Com. v. New York*, 588 U.S. 752, 767 (2019). Indeed, where the federal

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government's action causes a direct reduction in the number of individuals a state entity serves—and therefore a loss of revenue—the loss is unquestionably sufficient for standing. *Biden v. Nebraska*, --- U.S. ---, 143 S. Ct. 2355, 2365-66 (2023) (holding Missouri had standing to challenge federal action cancelling student loans because state entity serviced loans under contract with the federal government and the state alleged the challenged action would cost it millions in fees "it otherwise would have earned under its contract"). The Ninth Circuit has likewise confirmed that states have standing to challenge unlawful federal action that will directly reduce the number of individuals eligible for federally backed programs like Medicaid. *City & Cnty. of San Francisco v. U.S. Citizen & Immigr. Servs.*, 981 F.3d 742, 754 (9th Cir. 2020).

The Plaintiff States provide health, social, and administrative services to their residents and will, as a result of the Order, lose substantial federal funds they currently receive. Thousands of babies born each year will be impacted. At a minimum, there will be approximately 4,000 in Washington, 5,200 in Illinois, 3,400 in Arizona, and 1,500 in Oregon. ECF No. 1 ¶ 3; Lapkoff Decl. ¶¶ 11-16. If denied citizenship, these children will no longer be eligible for programs the Plaintiff States administer pursuant to federal law, including Medicaid, CHIP, and foster care and adoption assistance programs. ECF No. 1 ¶¶ 94-100; Fotinos Decl. ¶¶ 21-28; Heddin Decl. ¶¶ 6, 11-13; Tegen Decl. ¶¶ 8-17, 23-25; Flint-Gerner Decl. ¶ 6; Mueller Decl. ¶¶ 16-30. The result is that the Plaintiff States will necessarily lose federal reimbursement dollars for services provided through these programs. *See* Fotinos Decl. ¶¶ 21-28 (Washington's Health Care Authority (HCA) estimating likely loss of nearly $7 million per year if approximately 4,000 children become ineligible for Medicaid or CHIP coverage); Tegen Decl. ¶¶ 23-25 (Arizona Health Care Cost Containment System (AHCCCS) estimating expected reduction in federal revenue to the state for medical care for children of $321,844,600 over the first 18 years of life for the first cohort subject to the Order); Flint-Gerner Decl. ¶¶ 12-14 (Oregon Department of Human Services (ODHS) estimating that "even 45 fewer children being eligible for Title IV-E"

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would reduce "Oregon's reimbursement by $3.4 million" and "even just eight fewer eligible children per year equates to $596,850.49 in lost federal funding"); Heddin Decl. ¶¶ 11-19 (detailing how each loss of an eligible child will negatively impact Washington's foster care reimbursements under Title IV-E); Mueller Decl. ¶¶ 16-30 (same). These losses will further injure the Plaintiff States by harming children who are wards in their custody. *See* ECF No. 1 ¶¶ 89-90.

The Plaintiff States will likewise suffer direct losses of federal reimbursements under the Social Security Administration's (SSA) longstanding Enumeration at Birth program. ECF No. 1 ¶¶ 91-92; Hutchinson Decl. ¶¶ 9-13 (detailing expected loss of $16,000 per year to Washington's Department of Health (DOH) due to decrease in the number of newborns assigned SSNs at birth); Colburn Decl. ¶¶ 12-15 (revocation of birthright citizenship to children born in Arizona will result in reduced EAB funding to the state); O'Leary Decl. ¶¶ 19-22 (estimating loss to Illinois of $21,788 to $38,129); Woodward Decl. ¶¶ 12-13 (estimating loss to Oregon of more than $7,230 per year).

If no preliminary injunction issues, the Plaintiff States also will suffer immediate and significant operational disruptions and administrative burdens within state agencies and state-run-healthcare facilities as they try to navigate the chaos and uncertainty the Citizenship Stripping Order creates. ECF No. 1 ¶¶ 93-101; *see* Declaration of Brian Reed ¶ 7 (detailing disruptions to "services UW Medicine provides to newborns in the neonatal intensive care unit (NICU)"); Fotinos Decl. ¶¶ 25-28 (detailing HCA's need to develop extensive training and guidance in response to a denial of birthright citizenship to children born in the United States, which it estimates will require 7-8 FTEs and take two to three years to complete); Hutchinson Decl. ¶¶ 14-18 (detailing Washington DOH's likely need to devote "substantial operational time, manpower resources, and technological resources" to change Washington's vital records system); Heddin Decl. ¶¶ 20-21 (Washington's child-welfare agency will need to divert staff resources from existing projects in order to amend and update processes related to Title IV-E

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eligibility determinations and training); Tegen Decl. ¶¶ 18-20 (estimating it will cost $2.3-4.4 million and require 12 months to update Arizona's three systems to determine eligibility for Medicaid coverage); O'Leary Decl. ¶¶ 13, 23 (state-run healthcare facilities would incur new administrative costs to implement new systems for registration of newborns); Flint-Gerner Decl. ¶¶ 17-18 (identifying the "significant and costly administrative burden on [Oregon]" of developing a new system to determine the citizenship of children entering foster care system); Mueller Decl. ¶¶ 31-39 (discussing the "immediate and detrimental effect on the operations and finances" of Illinois child welfare system). These harms and more are detailed below, and there is no doubt that they confer standing upon the Plaintiff States to challenge the Citizenship Stripping Order.

B. The Plaintiff States' Claims Are Likely to Succeed on the Merits Because Birthright Citizenship Is a Cornerstone of American Constitutional and Statutory Law That Is Beyond Serious Dispute

The Plaintiff States will succeed on the merits because the Citizenship Stripping Order unlawfully attempts to rob individuals born in the United States of their constitutionally conferred and statutorily protected citizenship. A wall of Supreme Court, Ninth Circuit, and Executive Branch authorities, as well as the INA, make clear that children born in the United States in the coming weeks are citizens—just like all children born in the United States for more than 150 years. The Court recognized this in issuing a TRO and should do so again by issuing a preliminary injunction.

1. Birthright Citizenship Is Enshrined in the Constitution

The meaning of the Fourteenth Amendment begins with the text. As the Supreme Court has explained, "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008). The text is expressly broad: "*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

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(emphasis added). The Citizenship Clause contains no exceptions based on the citizenship, immigration status, or country of origin of one's parents. Rather, its only requirements are that an individual be born "in the United States" and "subject to the jurisdiction thereof."

The only U.S.-born individuals excluded are those who are *not* subject to the jurisdiction of United States' law at birth—the children of diplomats covered by diplomatic immunity and children born to foreign armies at war against the United States on U.S. soil. Not excepted are children born in the United States, even if their parents are undocumented or here lawfully but on a temporary basis. They must comply with U.S. law; so too must their parents. Undocumented immigrants pay taxes, must register for the Selective Service, and must otherwise follow—and are protected by—federal and state law just like anyone else within the United States' territorial sweep. *See Plyler v. Doe*, 457 U.S. 202, 211 (1982) ("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. Given such presence, he is subject to the full range of obligations imposed by the State's civil and criminal laws."). Indeed, it is absurd to suggest that undocumented immigrants are somehow not subject to the jurisdiction of the United States. They may be arrested and deported precisely *because* they are subject to the jurisdiction of the United States.

The history of the Citizenship Clause confirms this longstanding, well-recognized meaning of its plain language. Birthright citizenship stems from English common law's principle of *jus soli*—citizenship determined by birthplace. James C. Ho, *Defining "American" Birthright Citizenship and the Original Understanding of the 14th Amendment*, 9 Green Bag 367, 369 (2006). In response to *Dred Scott* and the Civil War, Congress and the States adopted the Fourteenth Amendment to reaffirm birthright citizenship as the law and "guarantee citizenship to virtually everyone born in the United States," with only narrow exceptions. James C. Ho, *Birthright Citizenship, The Fourteenth Amendment, and State Authority*, 42 U. Rich. L. Rev. 969, 971 (2008); *see also* Gabriel J. Chin & Paul Finkelman, *Birthright Citizenship, Slave Trade*

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Legislation, and the Origins of Federal Immigration Regulation, 54 U.C. Davis L. Rev. 2215, 2227 (2021) ("Congress had indeed identified a category of people who were not allowed to be here, and who could be deported under federal law if found in the United States. Nevertheless, through the Fourteenth Amendment, Congress made the children of illegally imported slaves and free blacks U.S. citizens if born in the United States."); Ho, *Defining "American" Birthright Citizenship*, *supra* at 369-72 (detailing ratification debate and concluding that "[t]ext and history confirm that the Citizenship Clause reaches all persons who are subject to U.S. jurisdiction and laws, regardless of race or alienage"); Garrett Epps, *The Citizenship Clause: A "Legislative History,"* 60 Am. Univ. L. Rev. 331, 352-59 (2010) (detailing ratification debate); *see also Plyler*, 457 U.S. at 214 ("Although the congressional debate concerning § 1 of the Fourteenth Amendment was limited, that debate clearly confirms the understanding that the phrase 'within its jurisdiction' was intended in a broad sense.").

This understanding of the Citizenship Clause is cemented by controlling U.S. Supreme Court precedent which, more than 125 years ago, confirmed that the Fourteenth Amendment guarantees citizenship to the children of immigrants born in the United States. *United States v. Wong Kim Ark*, 169 U.S. 649, 704 (1898). As the Supreme Court explained: "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 (emphasis added). Consequently, the Court held that a child born in San Francisco to Chinese citizens, who could not themselves become citizens, was an American citizen. *Id.* at 704. In reaching this conclusion, the Court reasoned that 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*." *Id.* at 693 (emphasis added). The Court noted that the only exclusions involved individuals who were not, in fact, subject to U.S. jurisdiction: "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state[]—both of which . . . had been recognized exceptions to the fundamental rule

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of citizenship by birth within the country."[1] *Id.* at 682. In language that remains apt, the Court explained that the Citizenship Clause "is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and not to impose any new restrictions upon citizenship." *Id.* at 688.

In addition to *Wong Kim Ark*, the Supreme Court has separately made clear that undocumented immigrants are "subject to the jurisdiction" of the United States. In *Plyler v. Doe*, the Court interpreted the Equal Protection Clause and explained that the term "within its jurisdiction" makes plain that "the Fourteenth Amendment extends to anyone, citizen or stranger, who *is* subject to the laws of a State, and reaches into every corner of a State's territory." 457 U.S. at 215. As the Court explained, "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. The Court expressly confirmed that the phrases "within its jurisdiction" and "subject to the jurisdiction thereof" in the first and second sentences of the Fourteenth Amendment have the same meaning. *Id.*

These are merely the most notable examples of the judiciary's steadfast protection of the Fourteenth Amendment's birthright-citizenship guarantee. The Supreme Court, the Ninth Circuit, and other courts have repeatedly confirmed that individuals born in this country are citizens subject to its jurisdiction regardless of their parents' status or country of origin. *See*, *e.g.*, *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (recognizing that child of two undocumented immigrants "was a citizen of this country" by virtue of being "born in the United States"); *Perkins v. Elg*, 307 U.S. 325, 328 (1939) ("[A] child born here of alien parentage becomes a citizen of the United States."). Indeed, during World War II, the Ninth Circuit affirmed a district court's rejection of an attempt to strike from voter rolls 2,600 people of Japanese descent who

[1] Although the original understanding of the Fourteenth Amendment was that children born to tribal members are not subject to the United States' jurisdiction at birth, it is well established under a federal statute passed in 1924 that such children *are* granted U.S. citizenship at birth. *See* 8 U.S.C. § 1401(b).

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were born in the United States. *Regan v. King*, 49 F. Supp. 222, 223 (N.D. Cal. 1942), *aff'd*, 134 F.2d 413 (9th Cir. 1943), *cert. denied*, 319 U.S. 753 (1943). As the district court explained, it was "unnecessary to discuss the arguments of counsel" challenging those individuals' citizenship because it was "settled" that a child born "within the United States" is a U.S. citizen. *Id.* Even before *Wong Kim Ark*, the Ninth Circuit confirmed the same. *Gee v. United States*, 49 F. 146, 148 (9th Cir. 1892) (Chinese exclusion laws "are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens").[2]

The Executive Branch, too, has long endorsed this understanding of the Citizenship Clause. When the U.S. Department of Justice's Office of Legal Counsel (OLC) was asked in 1995 to assess the constitutionality of a bill that would deny citizenship to children unless a parent was a citizen or permanent resident alien, OLC concluded that the "legislation is unquestionably unconstitutional." *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 341 (1995). As OLC recognized, "Congress and the States adopted the Fourteenth Amendment in order to place the right to citizenship based on birth within the jurisdiction of the United States beyond question." *Id.* at 340. The phrase "subject to the jurisdiction thereof," OLC explained, "was meant to reflect the existing common law exception for discrete sets of persons who were deemed subject to a foreign sovereign and immune from U.S. laws," such as "foreign diplomats." *Id.* at 342. OLC concluded: "Apart from these extremely limited exceptions, there can be no question that children born in the United States of aliens are subject to the full jurisdiction of the United States." *Id.* Thus, "as consistently recognized by courts and Attorneys General for over a century, most notably by the Supreme

[2] *Accord Chin v. United States*, 43 App. D.C. 38, 42 (D.C. App. Ct. 1915) ("If it be true that Chin Wah was born of Chinese parents domiciled in California, and not employed in any diplomatic or official capacity, he became at his birth a citizen of the United States."); *Moy Suey v. United States*, 147 F. 697, 698 (7th Cir. 1906) ("Nativity gives citizenship, and is a right under the Constitution. It is a right that congress would be without constitutional power to curtail or give away.").

Court in *United States v. Wong Kim Ark*, there is no question that they possess constitutional citizenship under the Fourteenth Amendment." *Id.*

The Executive Branch has accepted this foundational understanding and built daily government functions around the Citizenship Clause's plain meaning. For example, the U.S. Department of State is granted the authority under federal law to issue U.S. passports. 22 U.S.C. § 211a. As explained in the State Department's Foreign Affairs Manual, "[a]ll children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S. citizenship at birth even if their parents were in the United States illegally at the time of birth[.]" Polozola Decl., Ex. 4. The State Department's Application for a U.S. Passport confirms that for "Applicants Born in the United States" a U.S. birth certificate alone is sufficient to prove one's citizenship. *Id.*, Ex. 5. And U.S. Citizenship and Immigration Services (USCIS) likewise confirms in public guidance that "[i]f you were born in the United States, you do not need to apply to USCIS for any evidence of citizenship. Your birth certificate issued where you were born is proof of your citizenship." *Id.*, Ex. 6.

In short, with the stroke of a pen, the Citizenship Stripping Order seeks to overrule 150 years of consensus as to the Citizenship Clause's established meaning. But the Constitution does not confer upon the President the authority to deny birthright citizenship to children born on American soil. The Citizenship Stripping Order is unconstitutional, and the Plaintiff States are overwhelmingly likely to succeed on the merits of their Fourteenth Amendment claim.

2. Birthright Citizenship Is Protected Under the INA

The Plaintiff States are equally likely to prevail on their claim under the INA. That statute faithfully tracks the Citizenship Clause's language, stating: "The following shall be nationals and citizens of the United States at birth:[] a person born in the United States, and subject to the jurisdiction thereof[.]" 8 U.S.C. § 1401(a). Like any statute, it must be "interpret[ed] . . . in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). There is no doubt that the INA incorporates the

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Citizenship Clause's broad grant of birthright citizenship. It uses identical language and the legislative history confirms that it codified the Fourteenth Amendment's protections.[3] *See To Revise and Codify the Nationality Laws of United States into a Comprehensive Nationality Code: Hearings Before the Comm. on Immig. and Naturalization on H.R. 6127 Superseded by H.R. 9980*, 76th Cong., 1st Sess., at 38 (1940) (Section 201 language regarding citizenship at birth "is taken of course from the fourteenth amendment to the Constitution"); *Nationality Laws of the United States*, 76th Cong. 1st Sess., at 418 ("It accords with the provision in the fourteenth amendment to the Constitution[.]").[4]

As a result, the INA incorporates the same bright-line and near-universal grant of birthright citizenship as the Citizenship Clause itself. *See George v. McDonough*, 596 U.S. 740, 746 (2022) ("Where Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it.") (cleaned up). Like the Citizenship Clause and Supreme Court precedent interpreting it, the INA cannot be displaced by executive fiat. The Plaintiff States are highly likely to succeed in showing that the Citizenship Stripping Order violates the INA.

C. The Citizenship Stripping Order Will Immediately and Irreparably Harm the Plaintiff States

If not enjoined, the Citizenship Stripping Order will immediately and irreparably harm the Plaintiff States by injuring their sovereign interests and forcibly shifting unrecoverable financial costs and substantial administrative and operational burdens onto the Plaintiff States. Economic harm "is irreparable" when a state "will not be able to recover money damages," *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018), including when money damages are not recoverable due to the sovereignty of the defendant, *Idaho v. Coeur d'Alene Tribe*, 794 F.3d

[3] 8 U.S.C. § 1401 was first enacted as Section 201 of the Nationality Act of 1940 and reenacted as Section 301 of the Immigration and Nationality Act of 1952. *See* H.R. Rep. No. 82-1365 (1952), *as reprinted in* 1952 U.S.C.C.A.N. 1653, 1734 ("The bill carries forward substantially those provisions of the Nationality Act of 1940 which prescribe who are citizens by birth."); *id.* at 1675-78 (1952 House Report discussing the Citizenship Clause as interpreted by *Wong Kim Ark*).

[4] Available at: https://babel.hathitrust.org/cgi/pt?id=mdp.39015019148942&seq=1.

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1039, 1046 (9th Cir. 2015). And when "[t]he State will bear the administrative costs of changing its system to comply" and is unlikely to recover those costs in litigation, the harm is irreparable. *Ledbetter v. Baldwin*, 479 U.S. 1309, 1310 (1986).

Under the new regime the Citizenship Stripping Order attempts to erect, the Plaintiff States will suffer irreparable and immediate harm to their public health programs. Medicaid and CHIP, created by federal law, support the Plaintiff States' provision of low-cost health insurance to individuals whose family incomes fall below eligibility thresholds and who are U.S. citizens or "qualified aliens." 42 U.S.C. § 1396b(v); 8 U.S.C. §§ 1611(a), (c)(1)(B); 42 C.F.R. § 435.406. The programs are administered by States but funded in part by the federal government. *See* Fotinos Decl. ¶¶ 4-7, 10-16. And under federal law, agencies like Washington's HCA must provide Medicaid and CHIP coverage to citizens and qualified noncitizens whose citizenship or qualifying immigration status is verified and who are otherwise eligible. *Id.* ¶ 17. To provide legally mandated care, ensure that children within their jurisdiction have access to comprehensive health insurance, and further the public health, certain states like Washington also provide state-funded health insurance to undocumented children who otherwise are eligible for Medicaid or CHIP. *Id.* ¶¶ 4-5, 11-16, 23-24.

Washington's Medicaid and CHIP programs rely on significant federal funding to operate—including federal reimbursements of between 50 and 65 percent of expenditures for coverage provided to eligible children. *Id.* ¶¶ 6, 14, 24, 26. In 2022, HCA administered coverage for more than 4,000 children who, as citizens, were eligible for Medicaid or CHIP despite being born to undocumented or non-qualifying mothers. *Id.* ¶ 27. If those children were not citizens at birth, they would be ineligible for Medicaid or CHIP and the cost of their care would shift to Washington's state-funded CHP health coverage for children, resulting in an increase to State expenditures of $6.9 million. *Id.* ¶¶ 26-27. The Citizenship Stripping Order will impact at least that many newborn children in Washington each year. Lapkoff Decl. ¶ 11.

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Nor can this harm be waved away as self-inflicted. These programs are established and operated pursuant to federal law that dictates services states *must* provide. State providers like UW Medicine's Harborview hospital are required by federal law to provide emergency care. Fotinos Decl. ¶ 26; *see* 42 U.S.C. § 1395dd(b); 42 C.F.R. § 440.255(c). For children who would be eligible for CHIP but for their status, the State will necessarily lose the 65 percent federal reimbursement for emergency care that is provided. Fotinos Decl. ¶ 26. Other Plaintiff States will similarly lose federal Medicaid and CHIP funding for babies stripped of citizenship. *See* Tegen Decl. ¶¶ 23-25 (estimating that removal of birthright citizenship would reduce federal revenue to Arizona for medical care provided to children by $321,844,600 over the first 18 years of life for the first cohort subject to the Order).

The Citizenship Stripping Order will likewise cause the direct loss of federal reimbursements for services provided in state foster care systems. For example, Washington State's Department of Children, Youth, and Families (DCYF), like other Plaintiff States' child welfare agencies, receives federal Title IV-E funding for the administration of its foster care program, including programs to support permanent placements and other critical functions. Heddin Decl. ¶¶ 4-10; Flint-Gerner Decl. ¶¶ 4-11 (Oregon); Mueller Decl. ¶¶ 16-30 (Illinois). State reliance on Title IV-E is substantial: In federal financial year 2024, Washington received $219 million in Title IV-E reimbursements. Heddin Decl. ¶ 17. Under the Citizenship Stripping Order, children born to undocumented parents will no longer be eligible under Title IV-E; the Plaintiff States will thus bear the full cost of serving children in their foster care systems. Heddin Decl. ¶¶ 11-18; *see also* Flint-Gerner Decl. ¶ 14 (estimating Oregon will lose $569,850 if even eight children become ineligible and $3.4 million if even 45 children become ineligible under Title IV-E); Mueller Decl. ¶¶ 16-30 (detailing likely loss to Illinois of "significant share of federal funds under Title IV-E").

The Plaintiff States will also face an immediate reduction in payments from SSA for administration of the Enumeration at Birth program. Hutchinson Decl. ¶ 13; Colburn Decl.

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¶¶ 12-15; O'Leary Decl. ¶¶ 19-22; Woodward Decl. ¶¶ 12-13. Pursuant to contracts with SSA, Plaintiff States' vital statistics agencies, like Washington's DOH, collect newborn birth data, format it, and transmit it to the SSA to facilitate the assignment of SSNs to newborn babies. Hutchinson Decl. ¶¶ 7-13. This is how almost all SSNs are assigned in the United States today. *Id.* ¶ 10. In exchange, the SSA pays the State $4.19 for each SSN assigned through this process, for a total of nearly $440,000 per year. *Id.* ¶ 12; *see* O'Leary Decl. ¶ 19 (Illinois receives $4.19 per SSN, for a total of just under $500,000 in FY 2025); Woodward Decl. ¶ 12 (Oregon receives $4.82 per SSN, for a total of $158,381 in 2023); Colburn Decl. ¶ 12 (Arizona received $936,469.38 for FY2025 through the EAB process). The loss of revenue will begin occurring immediately if the Citizenship Stripping Order goes into effect and SSA ceases issuing SSNs to children whose citizenship the federal government no longer recognizes.

Finally, the Plaintiff States' agencies will suffer additional immediate harms due to the sudden and substantial new administrative and operational burdens created by the Order. The Plaintiff States are required under federal law to verify the eligibility of the residents they serve through programs like Medicaid and CHIP. Fotinos Decl. ¶¶ 17-20; Tegen Decl. ¶ 18. Likewise, the Plaintiff States must confirm citizenship or a qualifying immigration status of children in foster care to receive reimbursements under Title IV-E. Heddin Decl. ¶ 20; Flint-Gerner Decl. ¶ 17; Mueller Decl. ¶ 31. State agencies that previously relied on a child's place of birth, birth certificate, or SSN to automatically determine eligibility for federal programs will now be required to create new systems to affirmatively determine the citizenship or immigration status of *every* child born in their states to ascertain whether they are entitled to federally backed services, as well as update policies, training, and guidance to operationalize these new systems. *See* Fotinos Decl. ¶¶ 25, 28 (necessary system changes for HCA would require 7-8 FTEs and take two to three years); Tegen Decl. ¶¶ 18-20 (cost of implementing necessary changes to AHCCCS eligibility systems range from $2.3-4.4 million); *see also* Heddin Decl. ¶¶ 20-21; O'Leary Decl. ¶¶ 13, 23; Flint-Gerner Decl. ¶¶ 16-18; Mueller Decl. ¶¶ 31-39.

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In sum, the Plaintiff States will be forced to bear the costs of reforming their systems for the administration of several programs due to the Citizenship Stripping Order. They will lose millions of dollars in federal reimbursements and be forced to expend significant resources addressing the "chaotic" change the Citizenship Stripping Order requires. Hutchinson Decl. ¶ 16. These types of financial, operational, and administrative burdens, which cannot be avoided, are precisely the types of irreparable harm that warrant an injunction. *See, e.g.*, *City & Cnty. of San Francisco*, 981 F.3d at 762 (affirming injunction where states showed "they likely are bearing and will continue to bear heavy financial costs because of withdrawal of immigrants from federal assistance programs and consequent dependence on state and local programs"); *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1084-86 (9th Cir. 2020) (entering emergency stay where sudden election-law change would "send[] the State scrambling to implement and to administer a new procedure" in less than two months); *Doe v. Trump*, 288 F. Supp. 3d 1045, 1083 (W.D. Wash. 2017) ("Throughout the time it will take [plaintiff organizations] to adequately build programs to service other populations, the organizations will suffer irreparable harm.").

D. The Equities and Public Interest Weigh Strongly in the Plaintiff States' Favor

The equities and public interest, which merge when the government is a party, could not tip more sharply in favor of the Plaintiff States. *Wolford v. Lopez*, 116 F.4th 959, 976 (9th Cir. 2024). The Citizenship Stripping Order attempts to return our Nation to a reprehensible chapter of American history when *Dred Scott* excluded Black Americans from citizenship—a view of citizenship soundly rejected by the people and their representatives through the Fourteenth Amendment. *See* 19 Op. O.L.C. at 349 ("From our experience with *Dred Scott*, we had learned that our country should never again trust to judges or politicians the power to deprive from a class born on our soil the right of citizenship."). The Court should not allow a return to a regime where Americans born on United States soil are excluded from our citizenry based on their class, race, status, or any other characteristic. This grave deprivation of rights belies any public interest in the Order because "public interest concerns are implicated when a constitutional right has

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been violated, . . . all citizens have a stake in upholding the Constitution." *Betschart v. Oregon*, 103 F.4th 607, 625 (9th Cir. 2024) (quotations omitted).

The harms to Plaintiff States and their residents are not abstract. The Citizenship Stripping Order deprives children born in the Plaintiff States of a foundational right enabling full participation in our democracy, as citizens may exercise their fundamental right to vote in federal, state, or local elections. U.S. Const. amend. XVI; ECF No. 1 ¶ 57 (citing state constitutions). They may serve on federal and state juries. 28 U.S.C. § 1865(b)(1); ECF No. 1 ¶ 58 (citing state statutes). They may become the President, Vice President, or a member of Congress, and hold offices in the Plaintiff States. U.S. Const. art. II, § 1; U.S. Const. art I, §§ 2-3; ECF No. 1 ¶ 61 (citing state laws). Children subject to the Citizenship Stripping Order will be denied each of these rights and benefits they would have had if they were born earlier.

The vast majority of those subject to the Order will be condemned to the additional harm of living with undocumented legal status. Most of the babies denied citizenship will be left with no legal immigration status and no prospects for legalization. Oskouian Decl. ¶¶ 5-10. Children left without legal status "will be at immediate risk of removal from the United States," including "being at risk of being arrested and detained" during removal proceedings. *Id.* ¶ 9. Others will likely become stateless, "left in legal limbo" with "no home country to return to voluntarily or otherwise." Baluarte Decl. ¶¶ 8-15. Statelessness would assign these children "a fate of ever-increasing fear and distress." *Trop v. Dulles*, 356 U.S. 86, 102 (1958).

The harms of living in the United States without legal status are profound. One such harm is the deprivation of one's fundamental right to travel: "Travel abroad, like travel within the country . . . may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." *Aptheker v. Sec'y of State*, 378 U.S. 500, 505-506 (1964) (cleaned up). The Order deprives individuals of their right to travel by denying eligibility to obtain a passport, 22 C.F.R. § 51.2, bars them from re-entry to the

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United States, Oskouian Decl. ¶ 7, and makes them ineligible for identification needed for certain domestic travel. *Id.* ¶ 11; 6 C.F.R. §§ 37.11(g), 37.5.

Depriving children born and residing in the Plaintiff States of citizenship will further harm their economic, educational, and mental health outcomes, depriving the Plaintiff States of the human capital and economic contribution that results from the full social and economic integration of youth into society. Without legal status, individuals have worse educational outcomes: One study found that undocumented immigrant youth had more than double the probability of high school non-completion, relative to U.S. citizens. Patler Decl. ¶ 10; *see also* Wong Decl. ¶¶ 11-12 (finding 17.9% difference in unauthorized immigrants ages 18-24 with high school diploma compared to citizens). There are multiple causes of the disparity in education outcomes for undocumented students, including ineligibility for federal student financial aid. 34 C.F.R. § 668.33(a); *see also* Patler Decl. ¶ 13 (institutional characteristics, knowledge of future barriers, and feelings of despair and hopelessness also affect educational trajectories). In addition, the impacts on earning potential and mobility of undocumented status are stark. Children left without lawful status due to the Order will not be eligible for employment authorization. *See* 8 C.F.R. § 274a.12; Oskouian Decl. ¶ 12; Baluarte Decl. ¶ 14. While citizens and undocumented immigrants are both employed at similar rates, U.S. citizens earn significantly more annual total income. Wong Decl. ¶¶ 13-14; Patler Decl. ¶ 10 n.1.

"[I]mmigrant legal status is also a fundamental determinant of health." Patler Decl. ¶ 17. Children growing up undocumented experience "profound" health harms, "particularly with regard to mental health and emotional wellbeing." *Id.* ¶ 19. Barriers to health care, isolation and stigma, exclusion from normal rites of passage in American life, and fear of deportation contribute to undocumented individuals experiencing anxiety, chronic sadness, depression, and hopelessness, as well as poorer physical health. *Id.* ¶¶ 17-22. Furthermore, denial of critical cash and food assistance to children who would have been eligible but for the Order will deprive them of access to sufficient and healthy food and to shelter, warm clothing, and safety, "causing a

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negative impact on children's health and risking increasing rates of child hunger." Peterson Decl. ¶¶ 7-10. An increase in the number of uninsured children will also exacerbate the harm to public health. *Id.* ¶¶ 13-14; Fotinos Decl. ¶ 24 (loss of federal eligibility for health coverage will "likely result in a significant number of children who may go uninsured and receive only emergency care when absolutely necessary, leading to worse health outcomes").

The Citizenship Stripping Order will additionally harm communities and civic life in the Plaintiff States. Threats to citizenship status trigger fear and cause young people to "distance themselves from their family, culture, and language[,]" and "[w]ithout lawful status, [young people] . . . cannot experience full belonging in U.S. culture and communities." Declaration of Magaly Solis Chavez ¶ 12. That is because "citizenship confers legal, political, and social membership in the United States," and is a "central determinant of immigrants' integration and mobility." Patler Decl. ¶¶ 9. "[D]enying citizenship to children born to undocumented parent(s) would be catastrophically harmful for children's development, wellbeing, and mobility. These harms would extend beyond the millions of impacted children themselves, impacting schools, neighborhoods, communities and, indeed, our nation as a whole." *Id.* ¶ 27. The Citizenship Stripping Order will create a permanent underclass of people excluded from American society, impeding community integration, self-sufficiency, and a thriving democracy. *See* Baluarte Decl. ¶ 15; Wong Decl. ¶ 8; Patler Decl. ¶¶ 9, 27; Peterson Decl. ¶¶ 7, 10; Solis Chavez Decl. ¶¶ 7-12; Oskouian Decl. ¶ 14.

Finally, the federal government has *no* legitimate public interest in enforcing the unlawful Citizenship Stripping Order. An executive order's "facially unconstitutional directives and its coercive effects weigh heavily against leaving it in place." *Santa Clara v. Trump*, 250 F. Supp. 3d 497, 539 (N.D. Cal. 2017). The only justification offered is that the Citizenship Stripping Order may deter unlawful immigration, a hypothetical rationale and political motivation that can never justify an unlawful deprivation of constitutional rights. Indeed, the entire point of the Citizenship Clause was to *remove* the weaponization of citizenship status as a

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policy tool. *See* 19 Op. O.L.C. at 347. The government has lawful means to effect immigration policy. The Citizenship Stripping Order is not one of them.

E. A Nationwide Injunction Barring Implementation of the Citizenship Stripping Order Is Needed to Provide Complete Relief

A nationwide injunction is necessary due to the extraordinary nature of the Citizenship Stripping Order and the impossibility of fashioning an injunction of lesser scope that would provide complete relief to the Plaintiff States. As the Ninth Circuit has explained, "[t]he scope of an injunction is 'dependent as much on the equities of a given case as the substance of the legal issues it presents,' and courts must tailor the scope 'to meet the exigencies of the particular case.'" *Doe #1 v. Trump*, 957 F.3d 1050, 1069 (9th Cir. 2020) (quoting *Azar*, 911 F.3d at 584). Here, American citizenship cannot be made to hinge on the state in which a child is born without causing the Plaintiff States the harms detailed herein. If an injunction is limited in geographic scope, the Plaintiff States would suffer the same harms insofar as babies born in non-party states (who would otherwise have been citizens) travel or move to the Plaintiff States and obtain healthcare and foster care services at the Plaintiff States' expense. Expecting parents would be restricted from travel—essentially trapped in the Plaintiff States—rather than risk their baby's birth as a non-citizen in a different state. State-based citizenship would also be unworkable at airports and other international ports of entry, which are controlled by federal authorities and require uniform rules.

In addition to these practical realities, the Supreme Court has acknowledged nationwide relief is necessary when "one branch of government [has] arrogated to itself power belonging to another." *Biden*, 143 S. Ct. at 2373 (reversing district court's refusal to issue preliminary injunction). The Citizenship Stripping Order's attempt to do precisely that—to unilaterally amend the Fourteenth Amendment and discard a federal statute—necessitates an injunction that preserves the status quo birthright citizenship guarantee as it has long existed: A uniform rule

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that draws no lines based upon the citizenship or immigration status of one's parents or the location of one's birth within the United States.

IV. CONCLUSION

Plaintiff States request that the Court issue a preliminary injunction barring the Citizenship Stripping Order's enforcement or implementation.

DATED this 27th day of January 2025.

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I certify that this memorandum contains 8395 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United State District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 27th day of January 2025 in Seattle, Washington.

s/ Tiffany Jennings
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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, *et al.*, Plaintiffs, v. DONALD TRUMP, *et al.*, Defendants.	CASE NO. C25-0127-JCC CONSOLIDATION ORDER
DELMY FRANCO ALEMAN, *et al.*, Plaintiffs, v. DONALD TRUMP, *et al.*, Defendants.	CASE NO. C25-0163-JCC

This matter comes before the Court *sua sponte*. On January 20, 2025, President Trump issued an executive order entitled "Protecting the Meaning and Value of American Citizensip." *See* C25-0127-JCC, Dkt. No. 43 at 1. It directs agencies not to recognize the U.S. citizenship rights of certain children born within the United States "30 days from the date of this order."

C25-0127-JCC, Dkt. No. 1 at 36.

Shortly thereafter, the states of Washington, Oregon, Arizona, and Illinois ("Plaintiff States") filed suit in this Court, seeking to enjoin enforcement of the President's order. *See generally id.* The Court issued a temporary restraining order enjoining implementation and enforcement of President Trump's order and set a preliminary injunction hearing for February 6, 2025. *See* C25-0127-JCC, Dkt. Nos. 43, 44. The following day, Delmy Franco Aleman, Cherly Norales Castillo, Alicia Chavarria Lopez[1] ("Individual Plaintiffs") filed suit seeking similar relief as the Plaintiff States. *See* C25-0163-JCC, Dkt. No. 1. The Individual Plaintiffs also filed notice pursuant to LCR 3(g) of a related case—case number C25-0127-JCC. *See* C25-0163-JCC, Dkt. No. 2. As indicated in the notice, both cases "present the same questions regarding the constitutionality and legality of President Trump's Executive Order." *Id.* at 2.

If multiple actions before the Court involve a common question of law or fact, the Court may consolidate the actions. Fed. R. Civ. P. 42(a)(2). The Court has substantial discretion in determining whether to do so. *See Inv'rs Research Co. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). Once a common question of law or fact is identified, the Court considers factors such as the interests of justice, expeditious results, conservation of resources, avoiding inconsistent results, and the potential of prejudice. *See* Wright & Miller, 9A Fed. Prac. & Proc. Civ. § 2383 (3d ed.).

Here, both suits are brought against, ostensibly, the same defendants. *Compare* C25-0127-JCC, Dkt. No. 1, *with* C25-0163-JCC, Dkt. No. 1. And while the plaintiffs and their interests vary, the relief they seek turn on the same core legal issue: the constitutionality and legality of President Trump's order. *Id.* Therefore, to ensure consistent results, conserve resources, and avoid prejudice, the Court FINDS consolidation warranted in this instance. Accordingly, it ORDERS that the following cases be consolidated: C25-0127-JCC and C25-

[1] All of whom are pregnant noncitizens living in the United States with due dates more than 30 days following President Trump's order. *See* C25-0163-JCC, Dkt. No. 1 at 13–15.

0163-JCC. All future filings shall bear the caption and case number of the case first filed in this district, *State of Washington, et al., v. Donald Trump, et al.*, C25-0127-JCC. The remaining case, C25-0163-JCC, shall be CLOSED, and any case management deadlines set in that case shall be VACATED.

In light of the temporary relief already provided to the Plaintiff States, *see* C25-0127-JCC, Dkt. No. 43, and the pendency of a preliminary injunction hearing, scheduled for February 6, 2025, *see* C25-0127-JCC, Dkt. No. 44, the Court sets the following supplemental deadlines:

- The Individual Plaintiffs may supplement the Plaintiff States' anticipated motion for a preliminary injunction, no later than January 29, 2025.
- The Individual Plaintiffs may file a supplemental reply to the Government's anticipated response (due January 31, 2025) on or before February 4, 2025.
- The Individual Plaintiffs shall appear at the preliminary injunction hearing set for 10:00 a.m. on February 6, 2025.
- The Plaintiff States **and** the Individual Plaintiffs are ORDERED to file a consolidated complaint no later than February 10, 2025.

DATED this 27th day of January 2025.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

The Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

State of Washington, et al.,

Plaintiffs,

v.

Donald Trump, et al.,

Defendants.

Case No. 2:25-cv-00127-JCC

INDIVIDUAL PLAINTIFFS' SUPPLEMENTAL MOTION FOR PRELIMINARY INJUNCTION

Noting Date: February 4, 2025

ORAL ARGUMENT REQUESTED

Hearing Scheduled for:
February 6, 2025 at 10:00 a.m.

NORTHWEST IMMIGRANT RIGHTS PROJECT
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I. INTRODUCTION

Individual Plaintiffs (hereinafter, "Plaintiffs"), on behalf of themselves and the class they seek to represent, ask the Court to enjoin implementation of a flagrantly unconstitutional executive order that purports to reinterpret the Fourteenth Amendment's Citizenship Clause and strip persons born in the United States of citizenship by "mere executive fiat." *Sterling v. Constantin*, 287 U.S. 378, 400 (1932). Plaintiffs Delmy Franco, Cherly Norales, and Alicia Chavarria are expectant mothers whose anticipated due date is on or after February 19, 2025. Because neither they nor the fathers of their children are lawful permanent residents (LPRs) or citizens of the United States, their children, once born—and despite being born in the United States—will not be recognized as U.S. citizens by operation of an executive order that President Trump signed shortly after his inauguration on January 20, 2025. *See* The White House, Executive Order, Protecting the Meaning and Value of American Citizenship, https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/ (Jan. 20, 2025) (hereinafter, "EO").

The EO brazenly seeks to override the plain text of the Fourteenth Amendment, which affords citizenship to "[a]ll persons born . . . in the United States, and subject to the jurisdiction thereof." U.S. Const. amend. XIV, § 1, cl. 1. The Citizenship Clause thus guarantees for *all* people born in the United States, regardless of race or parentage, the "priceless treasure" that is U.S. citizenship. *Fedorenko v. United States*, 449 U.S. 490, 507 (1981) (citation omitted).

While the EO claims that the excluded children are "not subject to the jurisdiction" of the United States, EO § 1, that assertion is baseless. The persons targeted by the EO are subject to the jurisdiction of the United States, as they remain bound by its laws. The history of the Fourteenth Amendment—including the tradition of *jus soli* prior to Reconstruction, the

legislative debates surrounding passage of the Fourteenth Amendment, and caselaw since the Amendment's adoption—has made clear that the phrase regarding jurisdiction exempts only a narrow class of individuals. Indeed, the Supreme Court explicitly rejected the EO's legal basis long ago in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). As the Court explained there, the classes of persons exempted by the Amendment include only people such as the children of diplomats or of hostile foreign armies on U.S. soil. Thus, the EO is nothing more than a transparent attempt to rewrite the Constitution.

Plaintiffs and putative class members face irreparable harm if the Court does not enjoin this EO. The order's directive to strip persons of birthright citizenship amounts to "the total destruction of the individual's status in organized society" and constitutes "a form of punishment more primitive than torture." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). As the Supreme Court has recognized time and again, "[c]itizenship is a most precious right," *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963), whose "value and importance" is "difficult to exaggerate," *Schneiderman v. United States*, 320 U.S. 118, 122 (1943). Without the protection of citizenship, the babies that will be born to Plaintiffs—and others similarly targeted by the EO—will lack any legal immigration status and accordingly will face the threat of removal and separation from family.[1] They will also lose access to public benefits available to U.S.-citizen children, and, later

[1] Plaintiffs seek a preliminary injunction for themselves and for putative class members. Temporary injunctive relief cannot be granted to a class before an order has been entered determining that class treatment is proper. *Nat'l Center for Immigrants Rts., Inc. v. INS*, 743 F.2d 1365, 1371 (9th Cir. 1984). Thus, Plaintiffs request provisional class certification to allow the Court to provide the preliminary injunctive relief required to protect the status quo and to prevent irreparable harm to putative class members as well as named plaintiffs. While "granting such provisional certification" still requires the Court to determine the Rule 23 requirements, "[i]ts analysis is tempered . . . by the understanding that such certifications may be altered or amended before the decision on the merits." *Damus v. Nielsen*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018) (internal quotation marks and citation omitted).

in life, will lack work authorization, access to federal financial aid for higher education, the ability to vote or travel, and the other precious rights that U.S. citizenship affords.

Fundamental constitutional rights "in our society [can]not . . . be decided by executive fiat or by popular vote." *Patton v. Yount*, 467 U.S. 1025, 1054 (1984) (Stevens, J., dissenting). The Constitution is clear in this case—and the consequences of the EO threaten Plaintiffs with "the loss 'of all that makes life worth living.'" *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)). They accordingly request that the Court enjoin any implementation of the EO to preserve the status quo while this case proceeds.

II. LEGAL BACKGROUND

This case centers on the Citizenship Clause of the Fourteenth Amendment. The Amendment affirmed a Founding-era and antebellum legal consensus that *jus soli*—i.e., birthright citizenship—guaranteed U.S. citizenship to those born on U.S. soil. *See generally* Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L. J. 405, 410–16 (2020). But in many cases, that right was denied to black people, both free and enslaved, as well as their descendants. *See, e.g.*, *id.* at 416–17. That racial limitation on *jus soli* reached its apex in the Supreme Court's infamous decision in *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

Following the Civil War, Congress passed, and the states ratified, the Fourteenth Amendment. *See, e.g.*, Ramsey, *Originalism*, *supra*, at 417. The first section of that Amendment includes the Citizenship Clause, which 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, cl. 1. The Clause repudiated *Dred Scott* and ensured that *jus soli* applied to *all* people in the United States. That broad language is subject

only to limited exceptions of people not "subject to the jurisdiction" of the United States—that is, of those who are not subject to our laws, such as diplomats.

In 1940, Congress enacted a statute that mirrors the Citizenship Clause. This birthright citizenship statute provides that "a person born in the United States, and subject to the jurisdiction thereof" is a citizen of the United States. 8 U.S.C. § 1401(a). The language "[wa]s taken . . . from the fourteenth amendment to the Constitution." *To Revise and Codify the Nat'y Laws of the United States into a Comprehensive Nat'y Code: Hearings Before the Comm. on Immig. and Naturalization on H.R. 6127 Superseded by H.R. 9980*, 76th Cong., 1st Sess., 38 (1940).

III. STATEMENT OF FACTS

A. The Birthright Citizenship Executive Order

On January 20, 2025, President Trump issued "Protecting the Meaning and Value of American Citizenship," the executive order at issue here. *See* EO. The EO states that, beginning thirty days after its signing, "no department or agency of the United States government shall issue documents recognizing United States citizenship" to newborn children whose "father was not a United States citizen or lawful permanent resident at the time of [the child's] birth" and mother was either "unlawfully present in the United States" or in a "lawful but temporary" status. EO § 2(a). In short, the order attempts to redefine the Citizenship Clause of the Fourteenth Amendment and restrict *jus soli* in the United States. The order only applies prospectively, so the constitutional text means one thing for certain people, and the opposite for similarly situated people born mere days apart.

Notably, the order fails to define who is "unlawfully present" or who has "temporary" status. To Plaintiffs' knowledge, Defendants have not provided any clarifying guidance. But the

most natural reading is that the order sweeps in any child born to parents who are neither LPRs nor U.S. citizens. This covers a wide range of immigration statuses, many of which allow noncitizens to reside in this country for years and even decades, such as asylum, withholding of removal, Temporary Protected Status, U status, and H-1B status. The order's arbitrary scope reflects the widespread and devastating impact it will have on thousands of immigrant families in this state. *See infra* Sec. IV, B.

B. Plaintiffs' Pregnancies and the Harms They Will Face

1. Plaintiff Delmy Franco

Ms. Franco is a noncitizen from El Salvador who currently resides in Lynnwood, Washington. Dkt. 59, Franco Decl., ¶ 2. She is around seven months pregnant, and her due date is March 26, 2025. *Id.* ¶ 9. Ms. Franco fled El Salvador in 2015 with her oldest daughter, who was six years old at the time, to escape violence and threats. Her partner had already fled El Salvador the year prior. *Id.* ¶¶ 6–7. An immigration judge (IJ) granted withholding of removal to Ms. Franco and asylum to her daughter. *Id.* ¶ 7. She has lived in the state of Washington for almost 10 years. *Id.* ¶ 3. Her brother and sister live in Washington, as does her immediate family, including a U.S.-citizen son born in 2018. *Id.* ¶ 8. She considers Washington her and her family's home. *Id*. Ms. Franco is also the primary caregiver for her niece and nephew, both of whom are teenagers and live with her immediate family. *Id.* ¶ 4.

When Ms. Franco heard about the EO in January 2025, she was immediately fearful that her child will be deemed undocumented at birth, as neither she nor her partner are U.S. citizens or LPRs. *Id.* ¶¶ 11–12. Ms. Franco fears her child may become the target of immigration enforcement, and that immigration agents could separate her and her family from her undocumented child because of the EO and her family's mixed immigration status. *Id.* ¶ 13. She

also fears that her child will lack educational opportunities and authorization to work legally in the United States. *Id.* Without the assurance of citizenship, Ms. Franco is concerned her child will feel unsafe and that she will have to live in hiding to protect the child and her family. *Id.* She is distressed at the prospect that her child will face removal to a country that the family had to flee due to persecution and violence. *Id.*

2. Plaintiff Cherly Norales

Ms. Norales is a noncitizen from Honduras who currently resides in Seattle, Washington. Dkt. 60, Norales Decl., ¶ 2. She is around seven months pregnant, and her due date is March 19, 2025. *Id.* ¶ 9. Ms. Norales fled Honduras in 2023 with her son, who was two years old at the time, to escape severe violence, abuse, and threats. *Id.* ¶ 6. Ms. Norales and her child have applied for asylum before an IJ. *Id.* ¶ 8.

When she heard about the EO, Ms. Norales feared that her child will be deemed undocumented at birth, as neither she nor her partner are U.S. citizens or LPRs. *Id.* ¶ 11. She worries that the child will not have access to certain public benefits that critically impact their well-being and, eventually, to access to higher education and work authorization. *Id.* ¶ 13. She does not want her child to ever risk removal to a country the child has never known—a country where she has suffered so much violence and abuse. *Id.*

3. Plaintiff Alicia Chavarria

Ms. Chavarria is a noncitizen from El Salvador who currently resides in Bothell, Washington. Dkt. 61, Chavarria Decl., ¶ 2. She is around three months pregnant, and her due date is July 21, 2025. *Id.* ¶ 8. Ms. Chavarria fled El Salvador in 2016 to escape violence and abuse, because the Salvadoran police could not help or protect her. *Id.* ¶¶ 5–6. She has applied for asylum with U.S. Citizenship and Immigration Services. *Id.* ¶ 6. She came to Washington,

where her brother lived, and met her partner here. *Id.* ¶ 7. Their first child was born in 2019. *Id.* Ms. Chavarria has now lived in Washington about eight years and considers this state her and her family's home. *Id.*

When she heard about the EO, Ms. Chavarria feared that her child will be deemed undocumented at birth as neither she nor her partner are U.S. citizens or LPRs. *Id.* ¶ 10. She worries that her expected child could be targeted for immigration enforcement and removed to a country from which she was forced to flee. *Id.* ¶ 12. It is imperative to her that her family remain united and safe in the United States. *Id.* She is also concerned for how difficult her child's life will be without proof of U.S. citizenship and the benefits it includes, like an unrestricted social security number. *Id.* She worries that without work authorization, her child will face significant barriers to educational and work opportunities. *Id.*

IV. ARGUMENT

To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Plaintiffs raise only "serious questions going to the merits," the Court can nevertheless grant relief if the balance of hardships tips "sharply" in Plaintiffs' favor, and the remaining equitable factors are satisfied. *All. For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

A. Plaintiffs Franco, Norales, and Chavarria are likely to succeed on the merits of their argument that the EO violates the Citizenship Clause of the Fourteenth Amendment as well as 8 U.S.C. § 1401.

Plaintiffs are likely to succeed on their claim that the EO is both unconstitutional and illegal. The Citizenship Clause of the Fourteenth Amendment expressly 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, cl. 1. The Immigration and Nationality Act (INA) reinforces that constitutional directive, declaring that "a person born in the United States, and subject to the jurisdiction thereof," "shall be [a] national[] and citizen[] of the United States at birth." 8 U.S.C. § 1401(a). The text of both the Constitution and the INA makes plain that someone born in the United States and subject to its jurisdiction is a U.S. citizen. *See Amalgamated Transit Union Loc. 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*, 435 F.3d 1140, 1146 (9th Cir. 2006) ("As is oft said, the plain language of the statute is usually the best indication of the drafters' intent.").

Moreover, the Supreme Court long ago ruled that children born in the United States to noncitizens are U.S citizens. A few decades after the Citizenship Clause's drafting, in the seminal case *United States v. Wong Kim Ark*, the Supreme Court ruled that a child born to two Chinese nationals acquired U.S. citizenship at birth under the Fourteenth Amendment. 169 U.S. 649. Examining the text and history of the Citizenship Clause, the Court explained that to acquire citizenship at birth, a child must simply be "born in the United States, and subject to the jurisdiction thereof." *Id*. at 702. The Court clarified that the phrase "subject to the jurisdiction" of the United States was intended "to exclude, by the fewest and fittest words," the common law exceptions to birthright citizenship: namely, children born to "alien enemies in hostile occupation" and children of "diplomatic representatives of a foreign state." *Id.* at 682. In line with these common law exceptions, the Court noted that the Clause also excluded children born aboard "foreign public ships" and those born to "members of the Indian tribes owing direct allegiance to their several tribes"—groups who were then considered under the power of separate sovereigns. *Id.* at 693.

Beyond these narrowly enumerated historical exceptions, the Court concluded that the Citizenship Clause "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.* The Court explained that an individual's physical presence in a country inherently subjects an individual to the laws of that government, and thus to the jurisdiction thereof. *Id.* at 693–96. Examining the Citizenship Clause in concert with the Equal Protection Clause, the Court further reasoned that

> [i]t is impossible to construe the words 'subject to the jurisdiction thereof,' in the opening sentence, as less comprehensive than the words 'within its jurisdiction,' in the concluding sentence of the same section; or 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.'

Id. at 696; *see also, e.g.*, Christopher L. Eisgruber, *Birthright Citizenship and the Constitution*, 72 N.Y.U. L. Rev. 54, 65 (1997) ("[T]he children of illegal aliens are certainly 'subject to the jurisdiction of the United States' in the sense that they have no immunity from American law."); James C. Ho, *Defining "American:" Birthright Citizenship and the Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 368 (2006) ("To be 'subject to the jurisdiction' of the U.S. is simply to be subject to the authority of the U.S. government."); Garrett Epps, *The Citizenship Clause: A "Legislative History,"* 60 Am. U. L. Rev. 331, 370 (2010) ("Can 'illegal aliens' be arrested, tried, and even executed? Can 'illegal aliens' buy and sell property? Can they make contracts and incur liability for breach? Can they be sued in tort if they, for example, drive unsafely and injure or kill other motorists? The answer to these questions is clear."); Ramsey, *Originalism*, *supra*, at 472 ("[T]he original meaning indicates that the [Citizenship] Clause does not exclude U.S.-born children of temporary visitors or of persons not lawfully present in the United States.").

Subsequent Supreme Court precedent supports the same understanding of what it means to be subject to the jurisdiction of the United States. In *Plyler v. Doe*, the Court relied on *Wong Kim Ark* in holding that undocumented immigrants are "within [the] jurisdiction" of any state where they are physically present. 457 U.S. 202, 215 (1982). The Court stated that an unlawful entry into the United States "cannot negate the simple fact of [a person's] presence within the State's territorial perimeter." *Id*. "Given such presence," the Court continued, "he is subject to the full range of obligations imposed by the State's civil and criminal laws." *Id*. Critically, the Court explained that "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 (citing C. Bouvé, *Exclusion and Expulsion of Aliens in the United States* 425–27 (1912)). Notably, the dissenting judges in the case did not dispute the basic proposition that the Fourteenth Amendment encompasses noncitizens, whether lawfully present or not. *Id.* at 243 (Burger, C.J., dissenting).

Consistent with this understanding, the Supreme Court has repeatedly recognized that all children born within the United States to noncitizen parents are entitled to citizenship by birth, without distinction as to those born to parents without lawful immigration status. *E.g.*, *Morrison v. California*, 291 U.S. 82, 85 (1934) (holding that individual of Japanese ancestry was a citizen "if he was born within the United States" even though he would not have been eligible to naturalize if born abroad); *Perkins v. Elg*, 307 U.S. 325, 329 (1939) (holding that "at birth [plaintiff] became a citizen of the United States" notwithstanding parents' Swedish nationality); *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (recognizing that a child born to two "illegal[ly] presen[t]" noncitizens was "of course, an American citizen by birth"); *Nishikawa v. Dulles*, 356 U.S. 129, 138 (1958) (Black, J., concurring) ("Nishikawa was

born in this country while subject to its jurisdiction; therefore American citizenship is his constitutional birthright. What the Constitution has conferred neither the Congress, nor the Executive, nor the Judiciary, nor all three in concert, may strip away." (citation omitted)); *INS v. Errico*, 385 U.S. 214, 215 (1966) (acknowledging that child "acquired United States citizenship at birth" even though born to two noncitizens who entered the United States fraudulently); *INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (same, for child of two noncitizens who had entered unlawfully and were unlawfully present in the United States). Circuit courts, including the Ninth Circuit, have naturally adhered to the same understanding. *E.g.*, *Regan v. King*, 134 F.2d 413 (9th Cir. 1943) (per curiam) (affirming, on the basis of Fourteenth Amendment, district court's judgment that all persons of Japanese descent born in the United States are citizens by birth); *United States v. Carvalho*, 742 F.2d 146, 148 (4th Cir. 1984) (child born to noncitizen parents subject to deportation order was "citizen by virtue of her birth in the United States"); *Mariko v. Holder*, 632 F.3d 1, 8 n.4 (1st Cir. 2011) (noting that asylum seekers' daughter, "born in the United States," is a citizen).

Despite the plain text and well-established precedent on this issue, the EO attempts to draw support for its unconstitutional action by claiming the language "subject to the jurisdiction" has been misinterpreted. EO § 1. In interpreting the meaning of constitutional text, courts must "interpret the words consistent with their 'ordinary meaning . . . at the time'" of their enactment. *Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (alteration in original) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)); *see also, e.g.*, *Tabares v. City of Huntington Beach*, 988 F.3d 1119, 1122 (9th Cir. 2021) (analysis of constitutional text must be grounded "in an understanding of the text's original public meaning at ratification"). That is precisely what the Supreme Court did when analyzing the text of the Citizenship Clause just three decades after its

drafting. *See Wong Kim Ark*, 169 U.S. at 653–54 (declaring that ascertaining the Citizenship Clause's meaning required "regard . . . not only to all parts of the act itself, and of any former act of the same lawmaking power, of which the act in question is an amendment, but also to the condition and to the history of the law as previously existing"); *see also id.* at 654–99 (consulting, inter alia, common law sources, Attorney General opinions, early Republic caselaw, and legislative debate over the Fourteenth Amendment to interpret and contextualize the Citizenship Clause).

Indeed, the Fourteenth Amendment's qualifying phrase—"subject to the jurisdiction"—had an accepted meaning prior to its inclusion in that Amendment. The "use of particular phrases and concepts [by the drafters of the Fourteenth Amendment] reflected legal meanings and ideas that had emerged in antebellum judicial cases and legal commentary—both of which were regularly quoted on the floor during debate." Kurt T. Lash, *The Origins of the Privileges or Immunities Clause, Part I: "Privileges and Immunities" As an Antebellum Term of Art*, 98 Geo. L.J. 1241, 1246 (2010).

Specifically, use of the word "jurisdiction" or "subject to the jurisdiction" conveyed the idea that a person was subject to the authority or sovereign power of a country or government. Dictionaries at the time defined the word "jurisdiction" not only in terms of a court's power to decide cases but also as the "power of governing or legislating; the right of making or enforcing law; the power or right of exercising authority." *Jurisdiction*, Noah Webster et al., *An American Dictionary of the English Language* (1865). Indeed, Congress used the phrase this same way in legislation in the antebellum period. *See* Act of March 27, 1804, § 2, 2 Stat. 298, 299 (making the Act applicable in all places that were "subject to the jurisdiction of the United States"). While courts often used this phrase to reference their own jurisdiction, they also used it in this other

sense—i.e., that of sovereign power. *See, e.g.*, *The Schooner Exch. v. McFaddon*, 11 U.S. 116, 136 (1812) (Marshall, C.J.) ("The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself."); *United States v. Bailey*, 24 F. Cas. 937, 939 (C.C.D. Tenn. 1834) (asking if "Cherokee territory" was "subject to the jurisdiction of" the United States). Legislators used the phrase in this sense too. *See, e.g.*, Matthew Ing, *Birthright Citizenship, Illegal Aliens, and the Original Meaning of the Citizenship Clause*, 45 Akron L. Rev. 719, 727–28 (2012) (chronicling uses of "jurisdiction" in this sense by members of Congress during the 1860s).

Notably, the principle that "ambassadors were exempted from all local jurisdiction, civil and criminal," was widely accepted in pre-civil war cases and legal commentary. James Kent, *Commentaries on American Law* 15 (9th ed. 1858); *see also, e.g.*, *The Schooner Exch.*, 11 U.S. at 138–39 ("The assent of the sovereign to the very important and extensive exemptions from territorial jurisdiction which are admitted to attach to foreign ministers, is implied from the considerations that, without such exemption, every sovereign would hazard his own dignity by employing a public minister abroad."); *see also id.* at 125, 127, 132 (argument of counsel for both parties agreeing with this principle). This use of "jurisdiction"—and the principle that ambassadors and foreign ministers were exempt from such jurisdiction—also provides important context for the Fourteenth Amendment's Citizenship Clause, which incorporated the principle in its text.

The legislative history supports this established understanding of what the "subject to the jurisdiction thereof" phrase refers to. *See D.C. v. Heller*, 554 U.S. 570, 584–615 (2008) (consulting a wide range "founding-era sources" to understand the meaning of the Second Amendment, including the ratification debates). When the language of the Citizenship Clause

was first proposed by Senator Howard from Michigan, vigorous debate ensued over the meaning of the "subject to the jurisdiction thereof" language. But that debate focused only on whether the clause included "wild Indians" and Native Americans living in reservations. *See* Cong. Globe, 39th Cong., 1st Sess. Pt. 4, 2890–97 (1866). Senator Howard's position—that "Indians born within the limits of the United States, and who maintain their tribal relations, are not, in the sense of this amendment, born subject to the jurisdiction of the United States. They are regarded, and always have been in our legislation and Jurisprudence, as being *quasi* foreign nations"—eventually won the day, and the proposal to add "excluding Indians not taxed" to the Citizenship Clause to make the exclusion explicit was rejected. *Id.* at 2890, 2897.

Prior to that conversation, Senator Howard clarified one group of U.S.-born children who, "of course," were not granted birthright citizenship by the amendment: those born to "foreigners, aliens, who belong to the families of embassadors [sic] or foreign ministers." *Id.* at 2890. Notably, Senator Howard then stated the amendment "will include every other class of persons"—including, of course, those noncitizens not born to ambassadors. *Id.* Other exchanges during the debates also reflected the common understanding that the Citizenship Clause applied to noncitizens. Criticizing the Clause, Senator Cowan of Pennsylvania decried the idea that "the child of the Chinese immigrant" and "the child of a Gypsy" would be considered citizens under the clause, given that they, like "a sojourner," "ha[ve] a right to the protection of the laws." *Id.*; *see also id*. (lamenting that "the mere fact that a man is born in the country" should be enough to grant him citizenship).[2] Invoking the specter of an invasion by undesirable noncitizens, Senator

[2] As Professor Garrett Epps argues, "the discussion of Gypsies provides about the closest thing we are likely to get to the issue of illegal immigration," as they were described by Senator Cowan with the same vitriol used to describe undocumented noncitizens today. Epps, *The Citizenship Clause, supra*, at 361.

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Cowan then questioned, "[I]s it proposed that the people of California are to remain quiescent while they are overrun by a flood of immigration of the Mongol race? Are they to be immigrated out of house and home by Chinese?" *Id.* at 2890–91. In response, Senator Conness of California noted his support for the clause's declaration "that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States." *Id.* at 2891. No one questioned that which was readily apparent—the children of Chinese (and other noncitizens) were "subject to the jurisdiction" of the United States. Instead, the primary question regarding the meaning of the "subject to the jurisdiction" language was with respect to Native Americans. *See, e.g.*, *id.* 2890, 2892–97.

The legislative history also makes clear that the framers intended to enshrine the concept of birthright citizenship. When Senator Howard first introduced the language of the Citizenship Clause, he affirmed that it was "simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States." *Id.* at 2890. This is because the Fourteenth Amendment's guarantee of birthright citizenship for *all* people born in the United States (with limited exceptions) was not a novel concept at the time it was drafted. Prior to the passage of the amendment, courts and legal commentators already generally understood that the doctrine of *jus soli*, that is, citizenship by birth, made people born in the United States citizens. *See, e.g., Lynch v. Clarke*, 1 Sand. Ch. 583, 663 (N.Y. Ch. 1844); *see also, e.g.*, *Gardner v. Ward*, 2 Mass. (1 Tyng) 244 (1805) ("I take it, then, to be established, with a few exceptions not requiring our present notice, that a man, born within the jurisdiction of the common law, is a citizen of the country wherein he is born."); *Kilham v. Ward*, 2 Mass. (1 Tyng) 236, 264–65 (1806) (opinion of Sewall, J.) ("The doctrine of the common law is, that

every man born within its jurisdiction is a subject of the sovereign of the country where he is born . . . ."); *State v. Manuel*, 20 N.C. (3 & 4 Dev. & Bat.) 144, 151 (1838) ("[A]ll free persons born within the State are born citizens of the State."); *Barzizas v. Hopkins*, 23 Va. (2 Rand.) 276, 278 (1824) ("The place of birth, it is true, in general, determines the allegiance.").[3]

Notably, the question of whether *jus soli* applied to children born to noncitizens arose prior to Reconstruction, and there too courts applied the doctrine to hold that such children were U.S. citizens. For example, in *McCreery's Lessee v. Somerville*, the Court's decision observed that the U.S.-born daughters of an Irish citizen were "native born citizens of the United States." 22 U.S. 354, 354 (1824). Several other cases around the time of the Civil War held or observed the same. *See, e.g.*, *Munro v. Merchant*, 28 N.Y. 9, 40 (1863) (assuming that plaintiff "born in this state of non-resident alien parents . . . is *prima facie* a citizen"); *Ludlam v. Ludlam*, 26 N.Y. 356, 371 (1863) ("[B]y the law of England the children of alien parents, born within the kingdom, are held to be citizens."). The Department of Justice held the same view at the time. *See* Citizenship of Children Born in the United States of Alien Parents, 10 Op. Att'ys Gen. 328, 328 (1862) ("I am quite clear in the opinion that children born in the United States of alien parents, who have never been naturalized, are native-born citizens of the United States, and, of course, do not require the formality of naturalization to entitle them to the rights and privileges of such citizenship."); Citizenship of Children Born Abroad of Naturalized Parents, 10 Op. Att'ys Gen. 329, 330 (1862) (similar); Citizenship, 9 Op. Att'ys Gen. 373, 374 (1859) (similar).

[3] Of course, prior to the Fourteenth Amendment, this principle had a racial component: enslaved people born in the United States were not considered citizens. The citizenship status of free black people prior to the Civil War is a complex one that was determined by state law, *see, e.g.*, Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* 25–34 (2018), and also federal law, *see, e.g.*, *Dred Scott*, 60 U.S. 393.

Indeed, the Constitution in 1789 assumed people obtained citizenship at birth. For example, Article II requires that the President be a "natural born citizen" to hold that office. U.S. Const. art. II, § 1, cl. 5. That the Constitution assumes some people are "born citizens" reflects that the Founders assumed *jus soli* would apply on U.S. soil.

Leading legal commentators agreed. As one stated:

> Therefore every person born within the United States, its territories or districts, whether the parents are citizens or aliens, is a natural born citizen in the sense of the constitution . . . . Under our constitution the question is settled by its express language, and when we are informed that, excepting those who were citizens, (however the capacity was acquired,) at the time the Constitution was adopted, no person is eligible to the office of president unless he is a natural born citizen, the principle that the place of birth creates the relative quality is established as to us.

William Rawle, *A View of the Constitution of the United States of America* 80–81 (1825); *see also* Ramsey, *Originalism*, *supra*, at 414 (citing additional founding-era legal commentators agreeing with these principles).

These sources reflect the common law background that the Founders inherited. English law applied *jus soli*, including as to noncitizens residing in English territory. In 1608, English courts held in *Calvin's Case* that birthright citizenship made "subjects" of all people born within territories held by the English crown. *See Calvin v. Smith*, 77 Eng. Rep. 377, 382 (K.B. 1608). Specifically, the case "determined that all persons born within any territory held by the King of England were to enjoy the benefits of English law as subjects of the King. A person born within the King's dominion owed allegiance to the sovereign and in turn was entitled to the King's protection." Polly J. Price, *Natural Law and Birthright Citizenship in* Calvin's Case (1608), 9 Yale J.L. & Humans. 73, 73–74 (1997). A century and a half later, Blackstone's Commentaries continued to reflect that this remained the law of the land, including as to noncitizens. As Blackstone explained, allegiance was due to the King by all people born on English soil. 1 William Blackstone, *Commentaries on the Laws of England* 354–62 (1765). And as a result,

the same people were also considered "subjects." Indeed, Blackstone explicitly noted that because of the "natural allegiance" everyone born on English soil owed to the monarch, "[t]he children of aliens, born here in England, are, generally speaking, natural-born subjects, and entitled to all the privileges of such." *Id.* at 362.

In sum, the EO flatly contravenes the Citizenship Clause's plain text, legislative history, historical context, and binding judicial precedent. All these sources demonstrate that the Clause's grant of birthright citizenship encompasses the children of noncitizens, irrespective of their parents' immigration status. And no provision of the Constitution gives the Executive the right to restrict the birthright citizenship recognized in the Citizenship Clause. *See generally* U.S. Const. art. II; *see also Wong Kim Ark*, 169 U.S at 703 (explaining that the government has "no authority . . . to restrict the effect of birth, declared by the constitution to constitute a sufficient and complete right to citizenship").[4]

B. Plaintiffs will suffer irreparable harm absent an injunction.

Parties seeking preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer* (*Ariz. I*), 757 F.3d 1053, 1068 (9th Cir. 2014).

The implementation of the EO violates the Citizenship Clause, and such "deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695

[4] Similarly, the EO contravenes the plain text of the INA. *See* 8 U.S.C. § 1401 (stating that the following "shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof"). As noted above, Congress lifted this language directly from the Fourteenth Amendment. *Supra* p. 4. Moreover, Congress's use of "shall" imposes a "discretionless obligation[]." *Lopez v. Davis*, 531 U.S. 230, 241 (2001). The EO's directive that "no department or agency of the United States government shall issue documents recognizing United States citizenship" to Plaintiffs' expected children and putative class members, EO § 2(a), therefore violates the INA.

F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also, e.g.*, *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) ("We have stated that an alleged constitutional infringement will often alone constitute irreparable harm." (quoting *Associated Gen. Contractors v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)). Accordingly, the Ninth Circuit has explained that where a plaintiff establishes "that the government's current policies are likely unconstitutional . . . Plaintiffs have also carried their burden as to irreparable harm." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *see also, e.g.*, *Matsumoto v. Labrador*, 122 F.4th 787, 816 (9th Cir. 2024) (holding that "[i]rreparable harm is a given" where plaintiffs established "a colorable First Amendment claim"); *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) ("If a plaintiff bringing . . . a [constitutional] claim shows he is likely to prevail on the merits, that showing will almost always demonstrate he is suffering irreparable harm as well."). Here, Plaintiffs have amply demonstrated that they are likely to succeed on the merits of their claim that the EO violates the Fourteenth Amendment and have thus established irreparable harm. *See supra* Sec. IV, A.

The loss of citizenship under the EO will result in "severe and unsettling consequences." *Fedorenko*, 449 U.S. at 505; *see also, e.g.*, *Kennedy*, 372 U.S. at 160 ("Deprivation of citizenship . . . has grave practical consequences."); *Trop*, 356 U.S. at 101 (noting that "denationalization" results in "total destruction of the individual's status in organized society"); *Schneiderman*, 320 U.S. at 122 (explaining that deprivation of citizenship is "more serious than a taking of one's property, or the imposition of a fine or other penalty"). Deprivation of citizenship signifies a denial of fundamental rights, as citizens at birth are "entitled . . . 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. INS*, 533 U.S. 53, 67 (2001). No adequate legal remedy exists for the loss of "priceless benefits that derive from [citizenship]." *Schneiderman*, 320 U.S. at 122.

Citizenship also affords full protection from deportation—"the loss of all that makes life worth living." *Bridges*, 326 U.S. at 147 (quotation marks omitted). Serious and irreparable injury is imminent, as Plaintiffs' children and putative class members targeted by the EO will not only be stripped of citizenship but they will be deemed to be without any legal status, for the INA provides no alternative legal status to persons born in the United States. Accordingly, Plaintiffs' children face the prospect of detention and removal to countries they have never known and, in some instances, separation from their family members with lawful status. Dkt. 59, Franco Decl., ¶ 13; Dkt. 60, Norales Decl., ¶ 13; Dkt. 61, Chavarria Decl., ¶ 12. This prospect of detention and removal constitutes irreparable harm. *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019). Moreover, such uncertainty subjects Plaintiffs and proposed class members to "ever-increasing fear and distress," *Trop*, at 356 U.S. at 102, further supporting a finding of irreparable harm, *see, e.g.*, *Moreno Galvez*, 387 F. Supp. 3d at 1218 (finding that "feelings of stress, devastation, fear, and depression arising from" the challenged immigration policy constitute irreparable harm because "[s]uch emotional and psychological harms will not be remedied by an award of damages").

Even if they are not removed, the individuals targeted by the EO will grow up and live undocumented, forced to remain in the legal shadows of the country where they were born. Most will have no pathway to legal status throughout the course of their lifetime. For example, none of the parents of persons targeted by the EO are eligible to file family visa petitions for their newborn children, as only U.S. citizens and LPRs are eligible to do so. 8 U.S.C. §§ 1151(b)(2)(A)(i); 1153(a). Nor are employment visas an option. Even if they eventually

graduate from college with a specialized skill and are offered qualifying employment, they still lack key eligibility requirements. Specifically, persons targeted by the EO would be ineligible to obtain LPR status through employment visa petitions because they were never "inspected and admitted or paroled" into the United States. *Id.* § 1255(a). Moreover, they would be independently barred by 8 U.S.C. § 1255(c), which renders a person ineligible "who is in unlawful immigration status on the date of filing the application for adjustment of status."

Furthermore, by rendering Plaintiffs' children undocumented, the EO threatens to deprive the children of access to federally-funded public benefits that are critical to their well-being and stability. Only "qualified" noncitizens enumerated under 8 U.S.C. § 1641(b) are eligible to receive "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided . . . by an agency of the United States or by appropriated funds of the United States." *Id.* § 1611(c)(1)(B); *see also id.* § 1612 (limiting eligibility for Supplemental Security Income and Supplemental Nutritional Assistance Program (food stamps)). While Washington state provides food and cash assistance to certain noncitizens who do not qualify for similar federal benefits, the state's eligibility requirements exclude most noncitizens without *any* lawful status. *See* WASH. ADMIN. CODE § 388-424-0030 (defining eligibility for food assistance program); *id.* § 388-400-0010 (defining eligibility for state family assistance). Notably, the State Medicaid Director for the Washington State Health Care Authority anticipates that the EO will "result in direct loss of federal reimbursements to the State for [healthcare] coverage" for children that will be deemed noncitizens without lawful status. Dkt. 14, Fotinos Decl., ¶ 24. The EO thus "poses a direct threat to the ability of the State to provide meaningful healthcare to all in need without interruption." *Id.* While Washington State currently provides

healthcare coverage to all pregnant women without respect to their immigration status, the removal of birthright citizenship will result in "substantial uncertainty and administrative burdens" that jeopardize "streamlined coverage to women in need." *Id.* ¶ 25.

The EO will severely limit the educational opportunities of the children in the proposed class, including rendering them ineligible for federal financial aid. *See* 20 U.S.C. § 1091(a)(5); 34 C.F.R. § 668.33(a)–(b). Thus, putative class members will face significant limitations in their education and career opportunities. Such "loss of opportunity to pursue one's chosen profession constitutes irreparable harm." *Ariz. Dream Act Coal. v. Brewer (Ariz. II)*, 855 F.3d 957, 978 (9th Cir. 2017); *see also Medina v. U.S. DHS*, 313 F. Supp. 3d 1237, 1251 (W.D. Wash. 2018) (finding Deferred Action for Childhood Arrivals recipient's potential loss of opportunity to pursue his profession constituted irreparable harm).

Finally, the EO's purported stripping of citizenship has cascading effects on other civil rights protected by the Constitution. Most notably, it eliminates the right of those targeted to vote upon turning eighteen. As noted above, the loss of this constitutional right, *see* U.S. Const. amend. XV, § 1, constitutes irreparable harm, *supra* pp. 18–19; *see also, e.g.*, *Elrod*, 427 U.S. at 373 ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

In sum, Plaintiffs will suffer numerous and irreparable harms absent an injunction. The grave nature of these harms underscores "the basic function of a preliminary injunction": "to preserve the status quo ante litem." *L.A. Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980).

C. The balance of hardships and public interest weigh heavily in Plaintiffs' favor.

The final two factors for a preliminary injunction—the balance of hardships and public

interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). As with the irreparable harm analysis, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048.

The violation of the Fourteenth Amendment that will result absent a preliminary injunction strongly favors Plaintiffs, as "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (internal quotation marks and citation omitted); *see also, e.g.*, *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Moreno Galvez*, 387 F. Supp. 3d at 1218 (concluding that because "the government's . . . policy is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction"). Similarly, the balance of hardships also favors ensuring that Plaintiffs' children and putative class members are not deprived of their birthright U.S. citizenship and its accompanying benefits. *See supra* pp. 19–22. The balance tips further in Plaintiffs' favor when "consider[ing]. . . the indirect hardship to their friends and family members." *Hernandez*, 872 F.3d at 996 (alteration in original) (quoting *Golden Gate Rest. Ass'n v. City & Cnty. of S.F.*, 512 F.3d 1112, 1126 (9th Cir. 2008)). Defendants, by contrast, cannot allege that they will suffer any hardships absent a preliminary injunction, as all they are being required to do is maintain the status quo and follow the law.

Accordingly, the balance of hardships and the public interest overwhelmingly favor injunctive relief to ensure that Defendants comply with the Constitution and federal law.

V. CONCLUSION

For the foregoing reasons, Plaintiffs Franco, Norales, and Chavarria respectfully request the Court to grant their motion for a preliminary injunction.

Respectfully submitted this 29th of January, 2025.

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I certify that this memorandum contains 7762 words, in compliance with the Local Civil Rules.

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District Judge John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	CASE NO. 2:25-cv-00127-JCC OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

Pursuant to the Court's Orders of January 23 (ECF No. 44) and January 27, 2025 (ECF No. 56), Defendants submit this consolidated brief in opposition to the plaintiff states' motion for preliminary injunction (ECF No. 63) and the individual plaintiffs' supplemental motion for preliminary injunction (ECF No. 74).

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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 EO recognizes that the Constitution does not grant birthright citizenship to the children of aliens who are unlawfully present in the United States or the children of aliens whose presence is lawful but temporary. Prior misimpressions of the Citizenship Clause have created a perverse incentive for illegal immigration that has negatively impacted this country's sovereignty, national security, and economic stability. But the generation that enacted the Fourteenth Amendment did not fate the United States to such a reality. Instead, 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.

The plaintiffs—in the lead case, four states, and in the other, a putative class of Washington residents—immediately filed suit. But their dramatic assertions about the supposed illegality of the EO cannot substitute for a showing of entitlement to extraordinary

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emergency relief. And as to each factor of that analysis, all plaintiffs have failed to carry their burden.

To start, the states lack standing. While they largely concede that the EO does not operate directly upon them, they nonetheless complain that the EO will force them to spend more money on public benefits. But that is the exact sort of incidental expenditure the Supreme Court has held insufficient. Just two years ago, the Supreme Court rejected Texas's argument for standing based on expenditures on public programs in response to a federal policy that increased the number of illegal aliens in the state. *See United States v. Texas*, 599 U.S. 670 (2023). Similarly, the states here cannot satisfy Article III by claiming that they will choose to spend more money on public programs in response to a federal policy that will result in more individuals in their states being classified as illegal aliens. Moreover, all Plaintiffs lack a cause of action—these suits cannot be brought under the Citizenship Clause or the Immigration and Nationality Act (INA), and the individuals cannot proceed under the Administrative Procedure Act (APA).

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 "subject 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

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(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. "[N]o one can become a citizen of a nation without its consent." *Id.* at 103. And if the United States has not consented to someone's enduring presence, it follows that it has not consented to making citizens of that person's children.

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 Citizenship Clause, even though they were subject to the regulatory power of the United States, *id*. at 101-02, but it would have made 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 also lean on the Supreme Court's decision in *United Sates v. 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, and "[b]reath spent repeating dicta does not infuse it with life." *Metro. Stevedore Co. v. Rambo*, 515 U.S. 291, 300 (1995). The Court in *Wong Kim Ark* did not suggest that it was overturning *Elk* or jeopardizing the 1866 Civil Rights Act, and reading that decision to leave open the question presented here is consistent with contemporary accounts,

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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 motions.

BACKGROUND

I. The Executive Order

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. 10866, 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* 8-11 (2019).

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The 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).

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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." *Id*. § 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).

II. This Litigation

The states of Washington, Arizona, Illinois, and Oregon (the state plaintiffs or the states) filed suit the day after the EO issued. *See* ECF No. 1. Claiming harm to "their residents," *id.* ¶ 3, and the loss of federal reimbursement for services the states voluntarily choose to provide, *id*. ¶ 5, the states assert claims via the Citizenship Clause (Count 1) and the INA (Count 2). The states moved for a temporary restraining order (TRO), which the Court entered on January 23, to remain in effect "pending further orders from the Court." *See* ECF Nos. 43 & 44. The TRO enjoins Defendants from enforcing or implementing Section 2(a), Section 3(a), or Section 3(b) of the Citizenship EO. ECF No. 43. The state plaintiffs then moved for a preliminary injunction on January 27. *See* ECF NO. 63 (State PI Mot.).

The individual plaintiffs (or class plaintiffs) filed a complaint on January 24, asserting claims under the Citizenship Clause, the INA, and the APA. *See* Compl. *Franco Aleman, et. al. v. Trump, et. al.*, Case No. 2:25-cv-163, ECF No. 1. These plaintiffs are "three expecting

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mothers who are not U.S. citizens or lawful permanent residents with due dates after the implementation date" of the Citizenship EO, *id*. ¶ 5., who seek to represent a class of "similarly situated parents and their children" within the state of Washington, *id*. ¶¶ 5, 100. On January 27, the Court ordered the cases consolidated and established a schedule for briefing on the individual plaintiffs' requests for preliminary injunctive relief. *See* ECF No. 56. Pursuant to that schedule, the class plaintiffs filed a supplementary preliminary injunction motion on January 29, *see* ECF No. 74 (Class PI Mot.).

STANDARD OF REVIEW

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain such extraordinary relief, a plaintiff must demonstrate "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citation omitted).

ARGUMENT

I. The State Plaintiffs Lack Standing.

The state plaintiffs' motion should be denied at the outset because the states have not established that they are likely to meet Article III standing requirements. First, the direct harms that they allege to have suffered as states are insufficient to confer Article III standing. And

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second, the states lack third-party standing to assert Citizenship Clause claims on behalf of their residents.

1. To establish Article III standing, the states must show that they have suffered a judicially cognizable injury that is fairly traceable to the defendant and likely redressable by judicial relief. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). The states attempt to satisfy that requirement primarily by asserting incidental "economic and administrative harms." State PI Mot. at 6. Those alleged harms—essentially, that the EO will indirectly reduce the measure of federal funding the states receive—do not satisfy Article III.

As an initial matter, the Supreme Court rejected those types of incidental economic harms as a basis for standing in *United States v. Texas*. There, Texas and Louisiana challenged federal actions that, in their view, increased the number of noncitizens in their states, which imposed various costs on the states (*e.g.*, costs from continuing to "supply social services . . . to noncitizens"). *See Texas*, 599 U.S. at 674. Those costs were insufficient for standing:

> [I]n our system of dual federal and state sovereignty, federal policies frequently generate indirect effects on state revenues or state spending. And when a State asserts, for example, that a federal law has produced only those kinds of indirect effects, the State's claim for standing can become more attenuated. In short, none of the various theories of standing asserted by the States in this case overcomes the fundamental Article III problem with this lawsuit.

Id. at 680 n.3 (citations omitted).

That holding forecloses the state plaintiffs' standing here. Just as in *Texas*, where it was insufficient for the challenger states to identify monetary costs stemming from the

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presence of aliens, these states cannot rely on social services expenditures to challenge the federal government's regulation of others. The Citizenship EO simply regulates how the federal government will approach certain individuals' citizenship status. The state where such individuals live has no legally cognizable interest in the recognition of citizenship by the federal government of a particular individual—let alone economic benefits or burdens that are wholly collateral to citizenship status. Whatever potential downstream effects might arise for state programs in response cannot establish standing. *See Washington v. FDA*, 108 F.4th 1163, 1174-76 (9th Cir. 2024) (reasoning that increased costs to state Medicaid system were the sort of "indirect" fiscal injuries that fell short of Article III); *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1002 (9th Cir. 2024) (holding that states lack "a significant protectable interest in minimizing their expenditures" from immigration-related policy changes because "such incidental effects are … attenuated and speculative.").[1]

Accepting the states' theory of injury here—that states suffer Article III injury whenever a federal policy allegedly results in an increase in state expenditures or loss in state revenues—would eliminate any limits on state challenges to federal policies. *See Arizona v. Biden*, 40 F.4th 375, 386 (6th Cir. 2022) ("Are we really going to say that any federal regulation of individuals through a policy statement that imposes peripheral costs on a State

[1] The indirect, downstream nature of the states' claimed harm is what distinguishes this case from *Biden v. Nebraska*, 143 S. Ct. 2355 (2023), where the challenged federal policy would have directly deprived a state government corporation of ongoing fees that it would have otherwise continued earning under a federal contract. *See id*. at 2366.

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creates a cognizable Article III injury for the State to vindicate in federal court? If so, what limits on state standing remain?"). Indeed, the states' claimed interest in future fees under their contract with the Social Security Administration (SSA), State PI Mot. at 8, highlights the breadth of their theory—asserting that a discrete contract with SSA grants them Article III license to challenge any federal action that conceivably lowers the birthrate within their states.

Moreover, the states' asserted injuries regarding "health, social, and administrative services" are not traceable to the Citizenship EO, because the EO does not require the states to provide those services to aliens. *See* State PI Mot. at 7. Nor have the states identified any other source of federal law that compels them to provide the referenced services. Because the states have *voluntarily* chosen to provide certain benefits to aliens, the costs they incur to do so are the result of an independent choice made by the states' legislatures and not attributable to the Citizenship EO itself. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 417-18 (2013) (holding that "respondents' self-inflicted injuries" were insufficient for Article III standing, because they "are not fairly traceable" to the challenged government action); *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) ("No State can be heard to complain about damage inflicted by its own hand.").[2]

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[2] The states assert that "federal law dictates" that they "*must* provide" some of these services. State PI Mot. at 17. The only example they cite is one state hospital that is allegedly "required by federal law to provide emergency care" that is unreimbursed for alien children. *Id*. But that requirement to provide emergency care—stemming from the Emergency Medical Treatment and Labor Act (EMTALA)—exists solely because the state-operated hospital voluntarily chose to participate in Medicare. *See* 42 U.S.C. § 1395dd(e)(2) (confirming that EMTALA applies only to hospitals participating in Medicare); *Se. Arkansas Hospice, Inc. v.*

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The states likewise cannot rely on "operational disruptions and administrative burdens" that they claim will result from the Citizenship EO, State PI Mot. at 8, which does not require states to change their systems or impose any penalty for failing to do so. These claimed harms are not attributable to the federal policy itself. And again, the notion that states can assert standing based on putative harms from changing their systems to adapt to new federal policies would create automatic standing to challenge every new federal policy. That is not the law, for states or other organizations. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394-95 (2024).

Finally, the states' purported harm to their "sovereign interests," *see* State PI Mot. at 6, provides no basis for Article III standing. The Citizenship EO sets forth a federal government policy with respect to United States citizenship. As discussed above, its impacts on states are indirect, and it has no effect on the states' ability to "create and enforce a legal code." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982); *see also Washington*, 108 F.4th at 1176 (a state's interest in the "preservation of sovereign authority . . . does not convey standing to challenge federal action that affects state law enforcement indirectly").

2. "[E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement," "the plaintiff generally must assert his own legal rights and

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Burwell, 815 F.3d 448, 450 (8th Cir. 2016) (acknowledging that Medicare participation is a voluntary choice by hospitals).

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interests." *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (citation omitted). A plaintiff "cannot rest his claim to relief on the legal rights or interests of third parties." *Id.* Thus, constitutional claims generally may be brought only by "one at whom the constitutional protection is aimed." *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (citation omitted).

Relatedly, the Supreme Court has foreclosed states from suing the federal government in *parens patriae* actions to protect their citizens. *See, e.g.*, *Massachusetts v. Mellon*, 262 U.S. 447, 485-486 (1923) ("[I]t is no part of [a state's] duty or power to enforce [its people's] rights in respect of their relations with the federal government."); *Murthy v. Missouri*, 603 U.S. 43, 76 (2024) ("States do not have standing as *parens patriae* to bring an action against the Federal Government." (internal quotation marks & citation omitted)).

Applying those principles, the Supreme Court has held that states lack standing to bring claims under Section 1 of the Fourteenth Amendment against the federal government. For example, in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), the Court held that South Carolina lacked standing to challenge a federal statute under the Due Process Clause. *See id.* at 323-324. The "States of the Union" have no rights of their own under that clause; "[n]or does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government." *Id.* at 323-24. Similarly, in *Haaland v. Brackeen*, 599 U.S. 255 (2023), the Court held that Texas lacked standing to challenge a federal statute under the Equal Protection Clause. Texas "ha[d] no equal protection rights of its own," and Texas could not "assert equal protection claims on behalf of its citizens because 'a State does not have

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standing as *parens patriae* to bring an action against the Federal Government.'" *Id.* at 294-295 (brackets and citation omitted).

Those precedents control this case. Just as South Carolina and Texas could not sue the federal government under the Fourteenth Amendment's Due Process and Equal Protection Clauses, the state plaintiffs here may not sue the federal government under the Citizenship Clause. The states do not "ha[ve] [any] [citizenship] rights of their own," and given established "limits on *parens patriae* standing," they also may not "assert [Citizenship Clause] claims"—or any other claims—on behalf of [their residents]." *Brackeen*, 599 U.S. at 294-95 & n.11.

II. Plaintiffs Lack A Valid Cause of Action.

The Court should also deny both motions for the threshold reason that neither group of plaintiffs are likely to show that they have a valid cause of action. The plaintiffs cannot assert the claims at issue in this lawsuit directly under the Citizenship Clause or the INA. And while the individual plaintiffs invoke the APA in one of their claims, they cannot proceed under that statute because they fail to identify any final agency action and because the INA provides an adequate remedy.

A. The Class Plaintiffs' APA Claim Fails.

The class plaintiffs assert, in conclusory fashion, an APA challenge to agency actions "that are required or permitted by the Executive Order." Class Compl. ¶¶ 116-17. But the

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APA only authorizes judicial review over "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Neither requirement is met here.

First, Plaintiffs do not attempt to "identify the final agency action being challenged." *Elk Run Coal Co. v. U.S. Dep't of Labor*, 804 F. Supp. 2d 8, 30 (D.D.C. 2011). They do not identify *any* agency action that has been taken, much less final agency action that is reviewable under the APA. The EO does not qualify as an agency action because the President is not an "agency" within the meaning of the APA. *See Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992). Until such time as an agency named in the complaints takes action by determining rights or obligations, or otherwise causes legal consequences, *see, e.g.*, *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016), Plaintiffs' APA claims are not cognizable.

Second, the INA provides an adequate alternate remedy for review of citizenship determinations. *See Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009) ("[T]he Supreme Court interpreted [5 U.S.C.] § 704 as precluding APA review where Congress has otherwise provided a 'special and adequate review procedure.'" (citation omitted)). Pursuant to the INA's comprehensive statutory framework for judicial review, disputes regarding the citizenship of an individual within the United States 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(a). 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

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States," then that person may institute an action under 8 U.S.C. § 1503(a), in conjunction with 28 U.S.C. § 2201, for a declaratory judgment that he is a U.S. national. *See id*. § 1503(a).[3] Under section 1503, district courts conduct *de novo* proceedings as to the person's nationality status. *See Vance v. Terrazas*, 444 U.S. 252, 256 (1980); *Richards v. Sec'y of State*, 752 F.2d 1413, 1417 (9th Cir. 1985).

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 offers an adequate alternative remedy to—and thus precludes—APA review. *See, e.g.*, *Alsaidi v. U.S. Dep't of State*, 292 F. Supp. 3d 320, 326-27 (D.D.C. 2018); *Esparza v. Clinton*, 2012 WL 6738281, at *1 (D. Or. Dec. 21, 2012); *Ortega-Morales v. Lynch*, 168 F. Supp. 3d 1228, 1233-34 (D. Ariz. 2016).

B. Plaintiffs Lack a Cause of Action to Assert Their Constitutional and INA Claims.

Both groups of plaintiffs primarily assert claims under the Fourteenth Amendment's Citizenship Clause. As discussed above, the state plaintiffs lack standing to assert such claims.

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[3] 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).

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But even setting that aside, it is well established that the Constitution does not generally provide a cause of action to pursue affirmative relief. *See, e.g.*, *DeVillier v. Texas*, 601 U.S. 285, 291 (2024) ("[C]onstitutional 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."). Neither group of plaintiffs identifies any "independent cause of action"[4] that would enable them to enforce the Citizenship Clause. *Id*. at 291.

As for the INA claims, Congress provided a specific remedy for individuals within the United States to seek judicial resolution of disputes concerning their citizenship. *See supra* Sec. II.A. The exclusive remedy for an individual in the U.S. who claims to be a U.S. citizen denied a right or privilege of citizenship is to institute an action for declaratory relief under section 1503(a). The INA does not provide for states to sue under section 1503(a), either on their own account or on behalf of residents or members—a particularly telling omission, given that some provisions of the INA—as amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025)—expressly authorize states to bring enforcement actions. *See* 8 U.S.C. §§ 1185(d)(5)(C), 1225(b)(3), 1226(f), 1231(a)(2)(B), 1253(e). And even with respect to individuals, the statute requires any dispute over a citizenship determination to be resolved in individual declaratory judgment proceedings once a right or privilege is actually denied. It does not permit this facial challenge seeking to permanently enjoin enforcement of an

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[4] As discussed above, the class plaintiffs assert a separate claims under the APA. But they do not allege that their constitutional or INA claims are pursuant to the APA cause of action, and in any event have failed to assert a proper APA claim.

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executive order on a class basis before any right has been denied to them. *See, e.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001) ("Raising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals." (citation omitted)).

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.

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 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.[5] *United States v. Wong Kim Ark*, 169

[5] 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,

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U.S. 649, 682, 693 (1898). The Citizenship EO recognizes an additional category of persons not subject to the jurisdiction of the United States: children born in the United States of illegal aliens or temporary visitors.

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 the children of illegal aliens or temporary visitors are subject to the jurisdiction of the United States because they "must comply with U.S. law." State PI Mot. at 10; *see also* Class PI Mot. at 12 (asserting that jurisdiction means "subject to the authority or sovereign power of a country or government"). But 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, the 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

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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).

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and their children are plainly subject to the United States' regulatory power. "It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations." *Winton v. Amos*, 255 U.S. 373, 391 (1921); *see Brackeen*, 599 U.S. at 272-73. 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, the 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

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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

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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 (1866) (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). And Representative John Broomall explained that the freed slaves were properly regarded as U.S. citizens by birth because they owed no allegiance to any foreign sovereign. *See id*. at 1262. Trumbull went on to equate "being subject to our jurisdiction" with "owing allegiance solely

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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"). And then as now, domicile was understood to have two components—presence that is both permanent and lawful. *See* M.A. Lesser, *Citizenship and Franchise*, 4 Colum. L. Times 145, 146 n.3 (1891) (explaining the term "'resident' … 'is applied exclusively to one who lives in a place and has a fixed *and legal* settlement'") (emphasis added). The Clause thus confirms that citizenship flows from lawful domicile.

Finally, the government's reading, unlike the 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

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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 Temporary 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 Pizarro*,

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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 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

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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 680-82.

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

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or lawful but temporary are not. 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); *see also* 2 James Kent, *Commentaries on American Law* 42 (6th ed. 1848). The phrase "born . . . in the United States," U.S. Const. amend. XIV, § 1, codifies the traditional requirement of "birth within the territory," *Wong Kim Ark*, 169 U.S. 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 the country, of parents who are citizens." Emmerich 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.* § 213, at 102 (emphasis omitted); *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

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physical presence. He 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).

As noted above, the Civil Rights Act 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, "who wrote [the Act's] citizenship language and managed the Act in the Senate," summarized that provision as follows: "The Bill declares 'all persons' *born of parents domiciled in the United States*, except untaxed Indians, to be citizens of the United States." Mark Shawhan, Comment, *The Significance of Domicile in Lyman Trumbull's Conception of Citizenship*, 119 Yale L. J.

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1351, 1352-53 (2010) (citations omitted). "Trumbull thus understood the Act's 'not subject to any foreign [p]ower' requirement as equivalent to 'child of parents domiciled in the United States.'" *Id.* at 1353 (footnote omitted).

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 2769, 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

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(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 juris); Samuel F. Miller, *Lectures on the Constitution of the United States* at 279 (1891) (similar).

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) (quoted in *Wong Kim Ark*, 169 U.S. at 692). 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

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citizen thereof." *Id.* Although the bill ultimately failed because of "opposition to its expatriation provisions," 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 United States' jurisdiction under 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. Later the same year, Secretary Frelinghuysen's successor, Thomas F. Bayard, issued an opinion denying a passport to an applicant born "in the State of Ohio" to "a German subject" "domiciled in Germany." *Id.* at 399. Secretary Bayard explained that the applicant "was no doubt born in the United States, but he was on his birth 'subject to a foreign power' and 'not subject to the jurisdiction of the United States.'" *Id.* at 400.

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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

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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. Plaintiffs' reading, by contrast, would for all time deprive the political branches of the power to address serious problems caused by near-universal birthright citizenship.

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 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

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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 given that, for centuries, countries have extended citizenship to the foreign-born children of their citizens. England, for example, has extended citizenship to certain foreign-born children of English subjects since at least the 14th century. *See Wong Kim Ark*, 169 U.S. at 668-71. In 1790, the First 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

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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. To the extent any ambiguity remains in the Clause, however, the Court should resolve it against extending citizenship.

D. Plaintiffs' Contrary Arguments Are Unpersuasive.

1. Plaintiffs rely heavily on *Wong Kim Ark*, *see* State PI Mot. at 11-12; Class PI Mot. at 8, 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, 169 U.S. 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

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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'

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position. But *Wong Kim Ark* never purported to overrule any part of *Elk*, 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 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."

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

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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."); Hannis Taylor, *A Treatise on International Public Law* 220 (1901) ("[C]hildren born in the United States to foreigners here on transient residence are not citizens, because by the law of nations they were not at the time of their birth 'subject to the jurisdiction.'").

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 that question.

2. Other arguments asserted by the plaintiffs are likewise incorrect. The other Supreme Court cases they cite, State PI Mot. at 12-13; Class PI Mot. at 10-11, like *Wong Kim Ark*, do not contain holdings that resolve the precise questions raised here. In particular, plaintiffs do not advance their argument by relying on *Plyler v. Doe*, 457 U.S. 202 (1982), a case interpreting the Equal Protection Clause. *See* State PI Mot. at 12; Class PI Mot. at 10. The phrase "*within* its jurisdiction" in the Equal Protection Clause, which focuses on a person's

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geographic location, 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. Notwithstanding *Plyler*'s dicta about the scope of the latter clause, Supreme Court precedent illustrates that 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, 647-50 (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 lean on the "English common law's principle of *jus soli*—citizenship determined by birthplace," State PI Mot. at 10, contending that the Citizenship Clause was meant to "ensure[] that *jus soli* applied to *all* people in the United States," Class PI Mot. at 3. 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.'" *NYSRPA 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

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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.

The states also point to 20th century Executive Branch precedent that accords with their view. *See* State PI Mot. at 13-14. But the scope of the Citizenship Clause turns on what it meant in 1868, not on what the Executive Branch assumed it meant during parts of the 20th century. *See*, *e.g.*, *Bruen*, 597 U.S. at 66 n.28 (declining to consider "20th-century evidence" in interpreting the Constitution).

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E. The Citizenship EO Does Not Violate the INA.

Both groups of plaintiffs make passing arguments that the Citizenship EO also violates the INA. *See* State PI Mot. at 14-15; Class PI Mot. at 18 n.4. These claims are also unlikely to succeed on the merits because they depend on the plaintiffs' incorrect construction of the Fourteenth Amendment.

The INA recognizes citizenship for "a person born in the United States, and subject to the jurisdiction thereof," 8 U.S.C. § 1401(a), in language the class plaintiffs concede is "lifted . . . directly from the Fourteenth Amendment," Class PI Mot. at 18 n.4. And Plaintiffs do not identify any authority suggesting that Congress intended any delta between the statute and the Amendment; rather, they fully acknowledge that it "codified the Fourteenth Amendment's protections." State PI Mot. at 15. Defendants agree that in using the exact text of the Citizenship Clause in the INA, Congress imported its exact scope. *See Taggart v. Lorenzen*, 587 U.S. 554, 560 (2019) ("When a statutory term is obviously transplanted from another legal source, it brings the old soil with it.") (citation and quotation marks omitted); *Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter*, 575 U.S. 650, 661 (2015). Accordingly, the INA provides no independent basis to enjoin the Citizenship EO, and if the Court properly concludes that the Citizenship Clause does not extend to the children of illegal aliens or temporary visitors, then neither does the near-identical text of the INA.

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

As discussed above, the state plaintiffs lack standing to challenge the Citizenship EO; by definition, they cannot show that the EO will cause them irreparable harm. In any event, the states fail to establish that their claimed pecuniary harms are irreparable. For example, routine "administrative and operative" costs associated with verifying eligibility for state and federal programs, *see* State PI Mot. at 18, are not directly attributable to the EO and hardly "threaten[] the existence of [their] business." *Optinrealbig.com, LLC v. Ironport Sys., Inc.*, 323 F. Supp. 2d 1037, 1051 (N.D. Cal. 2004). The state plaintiffs also fail to show that their feared loss of federal funding and reimbursements would not be "recoverable," State PI Mot. at 15. For instance, they do not explain how they would be unable to adjudicate their claims in separate proceedings when they seek reimbursement or whether there are any available administrative processes to recover federal monies to which the states claim entitlement after the conclusion of this litigation. *Cf. Kaiser v. Blue Cross of Cal.*, 347 F.3d 1107, 1115-16 (9th Cir. 2003) (finding that a party asserting a claim for Medicare reimbursement would not be irreparably harmed by exhausting claims through an administrative review process).

The class plaintiffs similarly fail to demonstrate an "immediate threatened injury" required to obtain preliminary injunctive relief. *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). To start, it is not the case, as the class plaintiffs suggest, that any constitutional violation constitutes per se irreparable harm. *See, e.g.*, *Great Northern Res., Inc. v. Coba*, 2020 WL 6820793, at *2 (D. Or. Nov. 20, 2020) ("the Ninth Circuit has required

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more than a constitutional claim to find irreparable harm'). In any event, the class plaintiffs are not likely to succeed on the merits of their constitutional claim, and their mere assertion of it does not demonstrate irreparable injury.

Turning to the actual harms alleged, the class plaintiffs claim that the Citizenship EO creates "the prospect of detention and removal" for their children. Class PI Mot. at 20. But the EO does not, by its terms, mandate that outcome with certainty for the named plaintiffs' children. As discussed above, Section 1 declares the Executive Branch's policy against recognizing birthright citizenship in certain situations, but the implementation and enforcement of the Citizenship EO are left to agencies under Section 3. *See* Citizenship EO § 3(a)-(b). That implementation and enforcement have yet to occur, and no agency has taken any action pursuant to the EO to determine the immigration status of any of the named plaintiffs or their children, much less initiate any deportation actions.

Indeed, one of the named plaintiffs (Ms. Franco) has already been granted withholding of removal (and her daughter has been granted asylum). Class PI Mot. at 5-6. The other two (Ms. Norales and Ms. Chavarria) have applied for asylum, *id*. at 5-7, which, if granted, can provide "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, if any removal action were initiated against the child of any plaintiff, the subject of the action could assert her claim to citizenship as a defense in that proceeding. *See* 8 U.S.C. § 1252(b)(5). Because the precise effects of the EO are yet

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to materialize, the class plaintiffs can only speculate at what specific harms the Citizenship EO might ultimately cause. *See Caribbean Marine Servs Co.*, 844 F.2d at 674 ("Speculative injury does not constitute irreparable injury . . . .").

A similar rationale undercuts the class plaintiffs' arguments about the potential effects of the EO more generally. Many of the harms the plaintiffs assert cannot form the basis for emergency preliminary relief because they are remote or could not happen to anyone covered by the EO for many years in the future. *See, e.g.*, Class PI Mot. at 22 (alleging that putative class members will lose "the right . . . to vote upon turning eighteen" and will one day face "limitations in their education and career opportunities"). And in any event, if an individual were actually "denied" any "right or privilege" of citizenship, 8 U.S.C. § 1503 provides an adequate legal remedy to avoid any irreparable harm. *See supra* Sec. II.A.

Finally, class plaintiffs assert that the EO "threatens to deprive the[ir] children of access to federally-funded public benefits." Class PI Mot. at 21. But by the class plaintiffs' own account, Washington currently provides at least some of the referenced benefits without regard to citizenship, and the EO merely creates "uncertainty" about their continued availability. *See id*. at 21-22. These plaintiffs fail to show with sufficient certainty that they or their children are at imminent risk of losing public health benefits during the pendency of this lawsuit. *See, e.g.*, *Titaness Light Shop, LLC v. Sunlight Supply, Inc.*, 585 F. App'x 390, 391 (9th Cir. 2014) (the "mere 'possibility of irreparable harm'" is insufficient to justify preliminary injunctive relief (citation omitted)).

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V. The Public Interest Does Not Favor an Injunction.

Plaintiffs' asserted harms are outweighed by the harm to the government and public interest that would result from the requested relief. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting that the balancing of harms and public interest requirement for emergency 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 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"); *see also Doe #1 v. Trump*, 957 F.3d 1050, 1084 (9th Cir. 2020) (Bress, J., dissenting) (an injunction that limits presidential authority is "itself an irreparable injury" (citing *Maryland v. King*, 567 U.S. 1301 (2012)).

VI. Any Relief Should Be Limited.

For the reasons above, the Court should deny the plaintiffs' motions in their entirety. But even if the Court determines that a preliminary injunction is appropriate, it should limit its scope in at least three ways. *First*, nationwide relief would be improper because "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)

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(citation omitted). Relying on that principle, the Ninth Circuit has repeatedly vacated or stayed nationwide injunctions. *See, e.g.*, *E. Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019); *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018); *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1233-35 (9th Cir. 2018).

The state plaintiffs argue that a geographically limited injunction would have spillover effect on state expenditures, *see* State PI Mot. at 23, but that is the case with any nationwide policy and is not sufficient to justify nationwide relief. To prevent ordering "the government to act or refrain from acting toward nonparties in the case," *Arizona v. Biden*, 40 F.4th 375, 396 (6th Cir. 2022) (Sutton, C.J., concurring), the Court should limit any relief to any party before it that is able to establish its entitlement to preliminary injunctive relief.

Second, "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*, 505 U.S. at 802–03 ("[I]n general 'this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties.'" (citation omitted)); *id*. at 827 (Scalia, J., concurring in part) ("[W]e cannot issue a declaratory judgment against the President."); *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866). Accordingly, the Court lacks jurisdiction to enter Plaintiffs' requested relief against the President and should dismiss him as a defendant in both actions.

Third, the Court should reject the plaintiffs' facial challenges to the Citizenship EO so that its lawfulness can be determined in individual as-applied challenges, consistent with the

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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.[6]

CONCLUSION

For the foregoing reasons, the Court should deny the plaintiffs' motions for preliminary injunction.

DATED this 31st day of January, 2025.

Respectfully submitted,

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[6] Because the plaintiffs' claims are purely legal and fully addressed in the parties' briefing on the instant motions, defendants request that the Court consolidate the February 6 preliminary injunction hearing with a trial on the merits, pursuant to Federal Rule of Civil Procedure 65(a)(2).

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I certify that this memorandum contains 12,767 words, in compliance with the Local Civil Rules as modified by this Court's January 31, 2025 Minute Order (ECF No. 77).

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The Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, *et al.*,

Plaintiffs,

v.

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

Defendants.

NO. 2:25-cv-00127-JCC

REPLY IN SUPPORT OF PLAINTIFF STATES' MOTION FOR PRELIMINARY INJUNCTION

NOTE ON MOTION CALENDAR: FEBRUARY 6, 2025

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I. INTRODUCTION

Defendants' opposition fails to rebut what the Plaintiff States have shown: Defendants should be enjoined from implementing the Citizenship Stripping Order on a nationwide basis. Anything less will result in direct, substantial, and irreparable harm to the Plaintiff States and their residents. It would also return the Nation to a shameful episode of our history in which entire classes of people born on American soil are treated as undeserving of inclusion in American civic life. That is the approach to citizenship embodied in *Dred Scott* that the people and the states rejected in ratifying the Fourteenth Amendment. It is "undeniable," the Supreme Court has said, that the Citizenship Clause's drafters "wanted to put citizenship beyond the power of any governmental unit to destroy." *Afroyim v. Rusk*, 387 U.S. 253, 263 (1967). The Plaintiff States ask the Court to honor the Fourteenth Amendment's promise and *keep* birthright citizenship beyond the power of the Administration to destroy.

II. ARGUMENT

A. The Court Has Authority to Declare the Citizenship Stripping Order Unlawful and Enjoin Its Implementation

Defendants first challenge the Plaintiff States' standing and otherwise argue that the Citizenship Stripping Order should be shielded from judicial scrutiny. ECF No. 84 (Opp.) at 7. But the Plaintiff States have offered undisputed evidence that the Order will directly harm their legally protected interests, causing harm that is actual or imminent, "fairly traceable" to the Order, and redressable by an injunction. *See Dep't of Com. v. New York*, 588 U.S. 752, 766-67 (2019). Specifically, the Plaintiff States' sovereign and pecuniary interests will be immediately harmed as a direct result of the Order's attempted denial of citizenship to thousands of the Plaintiff States' residents. ECF No. 63 (States' Mot.) at 6-9. Defendants wave away these harms as too indirect or self-inflicted, but their assertions ignore governing law and the facts presented. Nor do Defendants' remaining procedural complaints hold water.

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1. The Plaintiff States have standing to protect their sovereign interests

Defendants do not dispute that the Plaintiff States have a sovereign interest in protecting their "power to create and enforce a legal code, both civil and criminal[.]" *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982); *see also Maine v. Taylor*, 477 U.S. 131, 137 (1986) ("[A] State clearly has a legitimate interest in the continued enforceability of its own statutes."). Nor do they dispute that the Plaintiff States are injured if thousands of residents are suddenly immune from state regulatory jurisdiction. Their only response is the conclusory assertion that the Citizenship Stripping Order "has no effect on the states' ability to 'create and enforce a legal code.'" Opp. at 11. But that is plainly wrong. Under the Citizenship Stripping Order, thousands of state residents will be deemed not subject to the jurisdiction of the United States, directly injuring the Plaintiff States' "'sovereign interest' in the retention of [their] authority" to regulate individuals within their borders. *Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1176 (9th Cir. 2024).

Moreover, many of the Plaintiff States' constitutions and laws rely on the settled meaning of "United States citizen." This includes laws requiring citizenship to vote in state elections, serve on state juries, hold local offices, and serve as a police or corrections officers. *See, e.g.*, Wash. Const. art. VI, § 1 (right to vote in state elections); Ariz. Const. art. VII, § 2 (same); Or. Const. art. II, § 2 (same); Ill. Const. art III, § 1 (same); Wash. Rev. Code § 2.36.070 (juror qualifications); Ariz. Rev. Stat. § 21-201(1) (same); Or. Rev. Stat. Ann. § 10.030(2) (same); 705 Ill. Comp. Stat. 305/2(a) (same); Ariz. Const. art. V, § 2 (eligibility to hold certain state offices); Ill. Const. art. V, § 3 (same); Or. Rev. Stat. Ann. §§ 181A.490, .520 .530 (qualifications for police, corrections, and probation officers).

As a result of the Citizenship Stripping Order, the meaning of "citizen" for purposes of these state laws is suddenly "endangered and rendered uncertain." *Ohio ex rel. Celebrezze v. U.S. Dep't of Transp.*, 766 F.2d 228, 233 (6th Cir. 1985). If federal citizenship changes, the Plaintiff States will need to re-evaluate these state laws and decide whether state voting rights,

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state jury service, and more should turn on a state-specific definition of "citizenship." *See Texas v. United States*, 787 F.3d 733, 749 (5th Cir. 2015) (federal "pressure to change state law in some substantial way," including "laws [that] exist for the administration of a state program," constitutes a sovereign injury); *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1242 (10th Cir. 2008) (federal action gives rise to sovereign standing where it "preempts state law" or "interferes with [a state's] ability to enforce its legal code"); *Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443-44 (D.C. Cir. 1989) (federal rule's "preemptive effect" on "construction of state laws" is sufficient for sovereign standing). The Plaintiff States easily have sovereign standing here.

2. The Plaintiff States have standing to protect their pecuniary interests

Defendants' attempt to downplay the financial and administrative harms to the Plaintiff States fares no better. They contend that under *United States v. Texas*, 599 U.S. 670 (2023), *any* injury is too "indirect" and "downstream." They also make the laughable assertion that the Plaintiff States' harm is "self-inflicted" because the States may simply withdraw from critical federal-state programs like Medicaid, CHIP, Title IV-E, and SSA's Enumeration at Birth program. Defendants are wrong for three reasons.

First, Defendants' position cannot be squared with the Supreme Court's decision in *Biden v. Nebraska*, --- U.S. ----, 143 S. Ct. 2355, 2365-66 (2023). There, the Supreme Court held that Missouri had standing to challenge federal action cancelling student loans because a state entity serviced loans under contract with the federal government and Missouri alleged the challenged action would cost it millions in fees "it otherwise would have earned under its contract." *Id.* at 2366. That harm was neither too indirect nor "self-inflicted," even though Missouri was under no obligation to contract with the federal government to service student loans. *See id.* at 2365-66. The Plaintiff States here face the same situation. States' Mot. at 6-9; *see also New York*, 588 U.S. at 767 (holding that plaintiff states had standing where inclusion of a citizenship question on the census would cause states to "lose out on federal funds that are

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distributed on the basis of state population"); *City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 981 F.3d 742, 754 (9th Cir. 2020) (holding that states had standing to challenge federal action that would reduce the number of individuals eligible for federally backed programs like Medicaid). The cases Defendants cite, Opp. at 8-10, involved generalized assertions regarding speculative future impacts and do not undercut the Plaintiff States' standing here.

Second, Defendants' "indirect, downstream" harms argument relies on a single footnote in *Texas* taken out of context. *Id.* In that case, Texas and Louisiana asserted standing to challenge DHS's guidelines setting forth discretionary immigration enforcement priorities. *Texas*, 599 U.S. at 674. The Supreme Court held that the states' injuries in the form of increased costs to incarcerate and provide social services to non-citizens were not redressable because the judiciary could not interfere in the exercise of Article II executive discretion, which courts generally lack meaningful standards to review. *Id.* at 677-80. The Court did not disturb the district court's conclusion that the states suffered cognizable injuries and no one "dispute[d] that even one dollar's worth of harm is traditionally enough to 'qualify as concrete injur[y] under Article III.'" *Id.* at 688 (Gorsuch, J., concurring) (citation omitted).

The *Texas* holding by its own terms was "narrow" and limited to the redressability concerns of arrest and prosecutorial discretion policies. *Id.* at 683-84. Indeed, as the Ninth Circuit has explained, *Texas* "pertained to prosecutorial inaction where the injury was not redressable" and does not pose a barrier where, as here, an asserted injury is "more than merely speculative" and will be redressed by the requested injunction. *Nebraska v. Su*, 121 F.4th 1, 13 n.5 (9th Cir. 2024). Other courts likewise have refused to accept the federal government's overbroad reading of footnote 3. *See, e.g.*, *Texas v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 737 F. Supp. 3d 426, 435 (N.D. Tex. 2024); *Gen. Land Office v. Biden*, 722 F. Supp. 3d 710, 723-24 (S.D. Tex. 2024). The Court should reject Defendants' strained reading here, too.

Third, Defendants' boundless "self-inflicted injuries" argument, Opp. at 10, has been squarely rejected by the Ninth Circuit. *See California v. Azar*, 911 F.3d 558, 573-74 (9th Cir.

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2018) (rejecting argument that state plaintiffs' economic injuries "will be self-inflicted because the states voluntarily chose to provide money for contraceptive care to its residents through state programs" because "[c]ourts regularly entertain actions brought by states and municipalities that face economic injury, even though those governmental entities theoretically could avoid the injury by enacting new legislation"). The Supreme Court's decision in *Clapper v. Amnesty International USA*, 568 U.S. 398, 417-18 (2013), which Defendants quote out of context, does not support their position, either. *Clapper* held that the domestic plaintiffs' voluntary actions based on subjective fears of possible government surveillance of foreigners were insufficient to confer standing because the alleged harm was not fairly traceable to the Government's purported foreign surveillance activities. *Id.* The Supreme Court's "too many links in the chain" traceability holding does not suggest that plaintiffs can suffer cognizable harm only when a federal law or directive compels their action, as Defendants argue.[1] Opp. at 10-11.

Defendants' arguments, if accepted, would seal the courthouse doors shut to nearly all plaintiffs. There is simply no way to reconcile Defendants' arguments with precedent. *See Nebraska*, 143 S. Ct. at 2365-66 (lost fees sufficient despite Missouri's choice to enter student loan market); *New York*, 588 U.S. at 766-67 (lost funding sufficient without concern for whether states could withdraw from federally backed funding programs); *City & Cnty. of San Francisco*, 981 F.3d at 754 (same); *see also City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 944 F.3d 773, 788 (9th Cir. 2019) (rejecting DHS's reliance on *Clapper* where state plaintiffs demonstrated disenrollment in public programs and rising administrative costs). The questions the Court must answer are whether the Plaintiff States will suffer cognizable harm and whether that harm will be redressed by an injunction. The answer to both is yes.

[1] Defendants also ignore that the Plaintiff States are obligated by law to care for wards within their custody. By inflicting pecuniary injuries on the Plaintiff States' programs, the Citizenship Stripping Order injures the Plaintiff States' sovereign interests in caring for children within their custody.

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3. The Plaintiff States have standing to bring challenges under the Citizenship Clause

Defendants next make a much bolder claim, arguing that the Plaintiff States can *never* have standing to assert claims under the Citizenship Clause. Opp. at 11-12. The Fourteenth Amendment's text and history show otherwise.

The Citizenship Clause renders individuals born in the United States "citizens of the United States *and of the State wherein they reside*." U.S Const. amend. XIV, § 1 (emphasis added). This text squarely implicates the states, and the history of the Citizenship Clause is in accord. In ratifying the Fourteenth Amendment, the states actively agreed to nationalize and constitutionalize the baseline rule of birthright citizenship. *See, e.g.*, Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L.J. 405, 417 (2020) ("The Amendment also, by its plain language, nationalized the idea of citizenship: state citizenship was linked directly to national citizenship, and states would not have power to deny state citizenship to national citizens living within the state."); *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983) (recognizing that the Fourteenth Amendment "broadened the national scope of the Government under the Constitution by causing citizenship of the United States to be paramount and dominant instead of being subordinate and derivative [to state citizenship]") (quoting *Colgate v. Harvey*, 296 U.S. 404, 427-28 (1935), *overruled on other grounds*, *Madden v. Kentucky*, 309 U.S. 83 (1940)). Because the Citizenship Clause's meaning directly affects the states, the Plaintiff States have a direct "stake in the outcome of the controversy." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).[2]

[2] Defendants cite *Warth*, but fail to note that the quoted portion, which purports to limit plaintiffs from raising claims that implicate the rights of others, is not part of the Article III analysis but rather a "limitation[]" that is "essentially [a] matter[] of judicial self-governance . . . ." 422 U.S. at 500. Since *Warth*, the Supreme Court has clarified that so-called "prudential standing" is in tension with the principle that "a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125-26 (2014) (cleaned up); *see also Sprint Commc'ns., Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) ("Federal courts, it was early and famously said, have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'") (citation omitted).

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Defendants' cited cases stand at most for the principle that states cannot generally bring *parens patriae* claims against the federal government. *See* Opp. at 12-13.[3] But the Plaintiff States are not bringing *parens* claims here, and the law is clear that state standing may exist against the federal government where the state is not proceeding as *parens patriae*. For example, in *South Carolina v. Katzenbach*, 383 U.S. 301, 323-24 (1966), the Court explained "at the outset" that South Carolina would lack standing to challenge the Voting Rights Act of 1965 if it brought suit as "the parent of its citizens." But the Court did not dismiss South Carolina's lawsuit for lack of standing—it evaluated the state's Fifteenth Amendment claims on the merits. *Id.* at 325-37. That was so even though the Fifteenth Amendment speaks to "[t]he right of citizens of the United States to vote," and does not expressly assign rights to the states. U.S. Const. amend. XV, § 1. But, of course, the challenged federal action *did* affect South Carolina—it "temporarily barred [the state] from enforcing the [literacy test] portion of its voting laws." *Katzenbach*, 383 U.S. at 319. Accordingly, South Carolina had standing. *Id.* at 334-37.

The same is true of *Haaland v. Brackeen*, 599 U.S. 255 (2023). *See* Opp. at 12-13. In *Brackeen*, Texas brought an equal protection challenge to the Indian Child Welfare Act. *Id.* at 294-95. As Defendants correctly cite, the Court held that Texas could not "assert equal protection claims on behalf of its citizens" as "*parens patriae*." *Id.* (citing *Snapp*, 458 U.S. at 610 n.16). But the analysis did not end there. The Court separately considered whether Texas had "alleged costs" that were "fairly traceable" to the challenged federal statute. *Id.* at 296. Although Texas failed to make an adequate showing of financial harm to the state, that analysis would have been irrelevant if states *never* have standing to bring Fourteenth Amendment claims. The rule is that *parens patriae* claims are off limits where states do not identify a separate harm to their own interests, but claims based on a "direct pocketbook injury" are fair game. *Id.* Because the Plaintiff States have demonstrated sovereign injuries and concrete, direct funding losses as a result of the

[3] Of course, the Plaintiff States' considerable evidence of the harms to their residents from the Citizenship Stripping Order *are* squarely relevant to the Court's consideration of the "balance of equities" and the "public interest," two mandatory *Winter* factors that Defendants essentially ignore. *See* Opp. at 44.

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Order—tens of thousands of dollars that will be lost under contracts with SSA and millions in lost Medicaid, CHIP, and Title IV-E funding—the Plaintiff States have standing.

4. The Plaintiff States can obtain declaratory and injunctive relief directly under the Fourteenth Amendment and the INA

The final procedural barrier Defendants assert is a passing argument that the Plaintiff States "lack a cause of action." Opp. at 15-17. But it is well established that plaintiffs who have demonstrated Article III standing, including states, can obtain prospective declaratory and injunctive relief to prevent unlawful and *ultra vires* federal action that violates the Constitution and federal statutes. *See, e.g.*, *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1233-35 (9th Cir. 2018) (affirming judgment in favor of local government plaintiffs on ground that Executive Order was an unconstitutional violation of the separation of powers); *Washington v. Trump*, 847 F.3d 1151, 1164-65 (9th Cir. 2017) (denying motion to stay injunction that barred Executive Order's enforcement or implementation where Washington was likely to prevail on constitutional due process claims); *Karnoski v. Trump*, No. C17-1297-MJP, 2017 WL 6311305, at *7-9 (W.D. Wash. Dec. 11, 2017) (enjoining enforcement of President Trump's Presidential Memorandum excluding transgender individuals from the military where Washington and individual plaintiffs asserted claims under the First and Fifth Amendments).

Indeed, "[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." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015); *see also Sierra Club v. Trump*, 929 F.3d 670, 694, 696-97 (9th Cir. 2019) ("The Supreme Court has 'long held that federal courts may in some circumstances grant injunctive relief against' federal officials violating federal law.") (quoting *Armstrong*, 575 U.S. at 326-27). The Court likewise has authority to declare even duly enacted laws unconstitutional under the Citizenship Clause. *See Afroyim*, 387 U.S. at 254-67 (federal statute that stripped citizenship under certain circumstances violated the Citizenship Clause).

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None of Defendants' authority, *see* Opp. at 15-17, stands for the extraordinary proposition that the Court is powerless to review the legality of the Citizenship Stripping Order. The only case Defendants cite, *DeVillier v. Texas*, 601 U.S. 285, 291 (2024), dealt with the availability of a cause of action *for damages* against the federal government under the Fifth Amendment's Takings Clause. It said nothing to suggest that plaintiffs cannot seek declaratory and injunctive relief—equitable relief—to prevent constitutional violations. *Id.* at 292. It in fact recognized the opposite. *Id.* That makes sense because it is "beyond question that the federal judiciary retains the authority to adjudicate constitutional challenges to executive action." *Washington*, 847 F.3d at 1164.

For the same reasons, the INA provision that allows individuals already denied certain discrete benefits to pursue declaratory judgment lawsuits, 8 U.S.C. § 1503, presents no barrier to the Plaintiff States' claims. Defendants cite no authority for the proposition that this provision, which says individuals "may" bring a declaratory judgment action, somehow shields from judicial review the Executive Branch's rewriting of the Fourteenth Amendment to declare entire classes of U.S.-born individuals to be non-citizens. Opp. at 16-17. And even when provisions of the INA purport to restrict judicial review, the Supreme Court has interpreted limitations narrowly. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). Courts can and do entertain challenges to executive action that violates the constitution and federal statutory provisions. *See Trump v. Hawaii*, 585 U.S. 667, 683 (2018) (reviewing states' claims that presidential restriction on immigration violated INA); *Sierra Club*, 929 F.3d at 699 ("Here, no statute expressly makes Plaintiffs' claims reviewable, but, as we have explained, Plaintiffs do have an adequate remedy in a court: an equitable cause of action for injunctive relief."); *Murphy Co. v. Biden*, 65 F.4th 1122, 1128-31 (9th Cir. 2023) (discussing authority to review executive action that is *ultra vires* and violates federal statute). The Court should do the same here.

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B. The Plaintiff States Are Extremely Likely to Succeed on the Merits

The plain text of the Fourteenth Amendment and the INA guarantee citizenship to all born in the United States and subject to its jurisdiction, regardless of one's race, ethnicity, alienage, or the immigration status of one's parents. The Citizenship Clause's history confirms this understanding. *See* States' Mot. at 10-11. Binding precedent confirms this understanding. *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898); *see also Plyler v. Doe*, 457 U.S. 202, 211-15 (1982). And every branch of government has confirmed this understanding for the past 150 years. *See* 8 U.S.C. § 1401; *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 342 (1995); States' Mot. at 9-14. Defendants' counterarguments are meritless.

1. The Citizenship Stripping Order is blatantly unconstitutional

Defendants' core contention is that children born to undocumented and many legal immigrants are not actually "subject to the jurisdiction" of the United States, and thus not entitled to birthright citizenship, under a theory never before adopted by any court. They are wrong as a matter of constitutional text and history, and their arguments are foreclosed by the Supreme Court's decision in *Wong Kim Ark*.

As the Supreme Court explained in *Wong Kim Ark*, "[t]he real object" of including the "subject to the jurisdiction thereof" language was "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 . . . recognized [as] exceptions to the fundamental rule of citizenship by birth within the country." 169 U.S. at 682. Those two classes are "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state[.]" *Id.* The Court explained at length how in each of these cases, the United States' exercise of sovereign power was limited either in fact, as a matter of common law and practice, or in the case of Native American tribes, as a result of their tribal sovereignty. *Id.* at 683 (discussing *United States v. Rice*, 17 U.S. (4 Wheat.) 246 (1819)

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(regarding hostile invasion and the suspension of sovereign power over occupied territory), and *Schooner Exch. v. McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812) (explaining why diplomats are not subject to the United States' jurisdiction even though the Nation's sovereign power is necessary and absolute in its territory)); *see also* Ramsey, *Originalism*, *supra*, at 436-58 (detailing mid-Nineteenth Century understanding of what it meant to be "subject to the jurisdiction" of the United States).

The Supreme Court, reviewing many of the authorities Defendants now cite, concluded that "[t]he 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[.]" *Wong Kim Ark*, 169 U.S. at 693. The *only* individuals understood not to be subject to the United States' jurisdiction at birth were children born to diplomats or enemies during hostile occupation, those born on foreign ships, and those born to members of Native American tribes. *Id.* The Court made clear, in language that forecloses Defendants' modern-day interpretation:

> 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. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory, is . . . "strong enough to make a natural subject, for, if he hath [a child] here, that [child] is a natural-born subject"; and his child . . . "[i]f born in the country, is as much a citizen as the natural-born child of a citizen . . . ."

Id. (cleaned up). The Court reiterated that "[i]t can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides[.]" *Id.* "Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance," the Court stated, "it is well known that by the public law an alien, or a stranger born, for so long

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a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government[.]" *Id.* at 693-94. That is, such persons are subject to the United States' jurisdiction.

The Court's reasoning is complete and its holding dispositive. None of the individuals targeted in the Citizenship Stripping Order today enjoy any type of immunity from general laws or represent another sovereign nation or political entity. The Defendants' "surplusage" argument, Opp. at 19-20, is accordingly resolved by simply reading the Fourteenth Amendment's plain text. Without "subject to the jurisdiction thereof," the Citizenship Clause would extend to the narrow categories that have long been recognized by courts, Congress, and the Executive to be exempt from the Citizenship Clause's grant of birthright citizenship.

Defendants nonetheless attempt to import two new non-textual requirements, complete "allegiance" and "lawful domicile," by chaining together selective quotes from cases unrelated to the interpretation of the Citizenship Clause. Opp. at 20-25. But allegiance and lawful domicile appear nowhere in the Fourteenth Amendment. *McPherson v. Blacker*, 146 U.S. 1, 27 (1892) ("The framers of the constitution employed words in their natural sense; and, where they are plain and clear, resort to collateral aids to interpretation is unnecessary, and cannot be indulged in to narrow or enlarge the text . . . ."). And with respect to the requirement of being "subject to the jurisdiction thereof," it was clear at ratification that this phrase included all non-citizens who were physically present in the United States, absent the very narrow exceptions recognized at common law and noted above. *Wong Kim Ark* interpreted the Citizenship Clause's language and directly forecloses Defendants' argument. 169 U.S. at 693.

Nor do those non-textual requirements comport with the Citizenship Clause's history. Illegally imported enslaved individuals were not "lawfully domiciled" in the United States under Defendants' interpretation, yet there is no question that the Citizenship Clause applied to their children. *See, e.g.*, Gabriel J. Chin & Paul Finkelman, *Birthright Citizenship, Slave Trade Legislation, and the Origins of Federal Immigration Regulation*, 54 U.C. Davis L. Rev. 2215,

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2250 (2021) ("This history demonstrates that there were clearly 'illegal aliens,' both free migrants banned under the 1803 law and illegally imported slaves, in the United States before and during the consideration of the Fourteenth Amendment."); Gerald L. Neuman, *Back to* Dred Scott*?*, 24 San Diego L. Rev. 485, 497-99 (1987) (detailing the history of enslaved individuals who were imported illegally and recognizing that the Fourteenth Amendment was intended to grant citizenship to all native-born individuals of African descent).[4]

Defendants also turn to *Elk v. Wilkins*, 112 U.S. 94 (1884), the *Slaughter-House Cases*, 83 U.S. 36 (1872), and a slew of nonbinding authorities that predate *Wong Kim Ark* and *Plyler* to try to read extra requirements into the Citizenship Clause. Opp. at 20-21, 28-30. Defendants' arguments re-hash well-trodden and widely rejected bases for attempting to adopt exclusionary views of the Citizenship Clause. *See, e.g.*, Ramsey, *Originalism*, *supra*, at 436-58 (analyzing common arguments for reading "subject to the jurisdiction thereof" narrowly with respect to undocumented immigrants and concluding they are all contrary to the Fourteenth Amendment's text and history). In short, *Wong Kim Ark* cemented the meaning of the Citizenship Clause in a manner consistent with *Elk*. *See Wong Kim Ark*, 169 U.S. at 682 (recognizing that *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 . . . not in the diplomatic service of a foreign country"); *accord* Ramsey, *Originalism*, *supra*, at 419-20 (discussing *Elk*). The Supreme Court likewise dismissed the dicta in the *Slaughter-House Cases* that suggested a narrow view of the Citizenship Clause. *Id.* at 677-80.

Nowhere in *Wong Kim Ark* did the Supreme Court recognize a "lawful domicile" or "exclusive allegiance" requirement for one to be subject to the United States' jurisdiction. Indeed, the dissent made similar arguments to those Defendants offer today. *Id.* at 729 (Fuller, C.J., dissenting) ("If children born in the United States were deemed presumptively and generally citizens, this was not so when they were born of aliens whose residence was merely

[4] Available at: https://digital.sandiego.edu/sdlr/vol24/iss2/8/.

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temporary, either in fact or in point of law."). Those arguments were rejected, and the Citizenship Clause's broad scope was established. *Id.* at 694.

Defendants further point to the Civil Rights Act of 1866, but that Act confirms that they are wrong. The Act provided that "[a]ll persons born in the United States, and not subject to any foreign Power, are hereby declared to be citizens of the United States, without distinction of color." Civil Rights Act of 1866 § 1; *see* Cong. Globe, 39th Cong., 1st Sess. 474, 498 (1866). All involved in its passage understood that this language included the children of immigrants, regardless of their background. When one senator asked whether this language "would have the effect of naturalizing the children of Chinese and Gypsies born in this country[,]" for example, Senator Trumbull, the Act's author, responded, "Undoubtedly." Cong. Globe, 39th Cong., 1st Sess. 498.[5] This was true even though, at the time, Chinese immigrants could not become naturalized U.S. citizens and "Gypsies" were, if present, likely present unlawfully. *See* Garrett Epps, *The Citizenship Clause: A "Legislative History,"* 60 Am. U. L. Rev. 331, 350-52 (2010); Ramsey*, Originalism*, *supra*, at 451-52 (discussing 1866 Act).

Finally, even if the Civil Rights Act of 1866 did not include immigrants in its citizenship clause—and it did—the Fourteenth Amendment's Citizenship Clause certainly confers citizenship to the children subject to the Citizenship Stripping Order. All involved in its passage understood that the Citizenship Clause guaranteed citizenship to virtually all U.S.-born children regardless of the race or citizenship of their parents. Indeed, it was introduced to confirm that "every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States." Cong. Globe, 39th Cong., 1st Sess. 2890 (statement of Sen. Howard). Senator Cowan, notably, argued against ratification because "[i]f the mere fact of being born in the country confers that right," of citizenship, then

[5] Defendants stitch the legislative history of the Civil Rights Act of 1866 and the Fourteenth Amendment's ratification debates together to argue that Senator Trumbull equated being "subject to our jurisdiction" with "owing allegiance solely to the United States." Opp. at 21-22. Senator Trumbull made the latter statement in explaining why Native American tribes are not subject to the jurisdiction of the United States, not as a blanket statement about the Citizenship Clause. *See* Cong. Globe, 39th Cong., 1st Sess. 2894; *see also* Ramsey*, Originalism*, *supra*, at 449.

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the children of parents "who have a distinct, independent government of their own," "who owe [the state] no allegiance," and who would "settle as trespassers" would also be citizens. *Id.* at 2891; *id.* at 2890 (statement of Sen. Cowan) ("Is the child of the Chinese immigrant in California a citizen? Is the child of a Gypsy born in Pennsylvania a citizen? . . . Have they any more rights than a sojourner in the United States?"). All agreed that Senator Cowan properly understood the Citizenship Clause's broad scope, and the Senate adopted that broad language anyway. *See id.* at 2891 (Senator Conness confirming that the Clause as proposed would provide citizenship to "children begotten of Chinese parents in California," because the 1866 Act made that the case by law and "it is proposed to incorporate the same provision in the fundamental instrument of the nation" and "declare that the children of all parentage whatever . . . should be regarded and treated as citizens of the United States.").

Ultimately, the Citizenship Clause was adopted to "remove[] all doubt as to what persons are or are not citizens of the United States." *Id.* (statement of Sen. Howard). *Wong Kim Ark* confirmed the Citizenship Clause's proper interpretation, and there is still no doubt today. The Plaintiff States are likely to succeed on the merits.

2. The Citizenship Stripping Order independently violates the INA

Defendants argue that the Plaintiff States' INA claim fails "because [it] depend[s] on the plaintiffs' incorrect construction of the Fourteenth Amendment." Opp. at 40. But they miss the point. Because Congress "employ[ed] a term of art obviously transplanted from another legal source," the INA brought "the old soil with it." *George v. McDonough*, 596 U.S. 740, 746 (2022) (cleaned up). The "old soil" was, and is, the established understanding of the Citizenship Clause set forth in *Wong Kim Ark*. *See* States' Mot. at 14-15. Because Defendants do not dispute that the Citizenship Stripping Order attempts to exclude a *new* category of individuals from the Citizenship Clause's reach based on a theory that has never been accepted, it is contrary to the INA as properly construed. The Plaintiff States are likely to prevail on their INA claim.

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C. The Remaining Injunction Factors Decisively Favor the Plaintiff States

The irreparable harm, public interest, and equities factors compel an injunction. Defendants offer no serious response regarding the extensive harms the Citizenship Stripping Order will cause to the Plaintiff States and their residents. Defendants suggest merely that the operational chaos and financial losses the Plaintiff States will suffer "are not directly attributable to the EO" and muse that there might be another way to recover certain lost reimbursements. Opp. at 41. They are wrong on all accounts.

The Plaintiff States' harms flow directly from the unilateral reclassification of *thousands* of individuals as non-citizens—individuals whose citizenship the Plaintiff States must verify to be reimbursed under longstanding programs like Medicaid, CHIP, and Title IV-E. *See* States' Mot. at 7-9, 16-19. Likewise, the Plaintiff States are integral participants in SSA's Enumeration at Birth program. *See id.* at 8, 17-18. It is not speculative that the Plaintiff States will lose money under their existing agreements with SSA; thousands of children born in each Plaintiff State will be deemed ineligible for SSNs, and as a result, the Plaintiff States will not be able to receive SSA payments for processing their birth data. *Id.* Despite these direct harms, Defendants nowhere acknowledge that money damages are not recoverable against sovereign defendants like the federal government. *See id.* at 15-16. Nor do they rebut the overwhelming evidence that the Plaintiff States will have to expend significant resources to update and modify systems used to verify citizenship and immigration status *now* for the programs the Plaintiff States administer. *See id.* at 18-19.

Defendants instead invite the Court to grant them unchecked power to determine citizenship by executive fiat, invoking the federal government's "broad, undoubted power over the subject of immigration and the status of aliens." Opp. at 44 (citing *Arizona v. United States*, 567 U.S. 387, 394 (2012)).[6] But this is not a case that threatens a "severe intrusion into [a] core

[6] Defendants assert that the Court should dismiss the President, Opp. at 45, but the Supreme Court has recognized that "the president's actions may [] be reviewed for constitutionality." *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992).

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executive authority." Opp. at 44. It is a case about citizenship rights that are intentionally *beyond* the President's authority. And as the Supreme Court has confirmed, "[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." *Afroyim*, 387 U.S. at 268. Neither the equities nor the public interest favor allowing the Defendants to wage a war on the citizenship of children born on American soil. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 679 (9th Cir. 2021) ("[T]he public has an interest in ensuring that the '[laws] enacted by [their] representatives are not imperiled by executive fiat.'") (cleaned up).

D. A Nationwide Injunction Is Required for Complete Relief

Absent an injunction preserving the 157-year-old status quo nationwide, the Plaintiff States' ultimate remedy—requiring the federal government to recognize U.S. citizens *as citizens*—would lose its meaning. Defendants do not dispute that the Court has discretion to fashion an appropriate injunction, including a nationwide injunction, as necessary to provide the Plaintiff States with complete relief. Opp. at 44-45 (citing *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994)). Nor could they. The Supreme Court and Ninth Circuit have confirmed as much. *See Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579, 581 (2017) (allowing nationwide injunction as to enforcement of portions of Executive Order that exceeded presidential authority); *Doe #1 v. Trump*, 957 F.3d 1050, 1069 (9th Cir. 2020) (declining to stay nationwide injunction and explaining that "there is no bar" against such injunctions "when it is appropriate") (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987)).

Defendants' request for a more limited injunction ignores the practical realities that would accompany a geographically checkered rule of birthright citizenship and glosses over the extraordinary nature of the Citizenship Stripping Order. Nationwide injunctions are particularly warranted where, as here, the fact that individuals can and do move between states exposes the plaintiffs to irreparable harm. *See, e.g.*, *E. Bay Sanctuary Covenant*, 993 F.3d at 680-81 (holding

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that district court did not abuse discretion in entering nationwide injunction of rule that conflicted with the INA where plaintiff organizations would be harmed by losing clients who may have entered the United States at a location not covered under a geographically limited injunction); *HIAS, Inc. v. Trump*, 985 F.3d 309, 327 (4th Cir. 2021) (affirming nationwide injunction prohibiting enforcement of Executive Order where organizations "place[d] refugees throughout the country" and demonstrated irreparable harm from the order taking effect in other jurisdictions). If individuals born in other states are deemed non-citizens under the Order and move to the Plaintiff States, the Plaintiff States will suffer the same irreparable injuries to their sovereign interests and substantial financial losses and administrative burdens that they would without any injunction at all.

III. CONCLUSION

The Plaintiff States request that the Court issue a nationwide preliminary injunction barring the Citizenship Stripping Order's enforcement or implementation.

DATED this 4th day of February 2025.

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I certify that this memorandum contains 6,383 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United State District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 4th day of February 2025 in Seattle, Washington.

s/ Tiffany Jennings
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The Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF ARIZONA; STATE OF ILLINOIS; and STATE OF OREGON,

Plaintiff States,

and

Cherly NORALES CASTILLO and Alicia CHAVARRIA LOPEZ, on behalf of themselves as individuals and on behalf of others similarly situated,

Individual Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM in her official capacity as Secretary of Homeland Security; U.S. SOCIAL SECURITY ADMINISTRATION; MICHELLE KING, in her official capacity as Acting Commissioner of the Social Security Administration; U.S. DEPARTMENT OF STATE; MARCO RUBIO, in his official capacity as Secretary of State; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOROTHY FINK, in her official capacity as Acting Secretary

NO. 2:25-cv-00127-JCC

CONSOLIDATED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF—CLASS ACTION

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of Health and Human Services; U.S. DEPARTMENT OF JUSTICE; JAMES MCHENRY, in his official capacity as Acting Attorney General; U.S. DEPARTMENT OF AGRICULTURE; GARY WASHINGTON, in his official capacity as Acting Secretary of Agriculture; and the UNITED STATES OF AMERICA,

Defendants.

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I. INTRODUCTION

1. Plaintiffs bring this action to stop the illegal Executive Order issued by President Donald J. Trump that purports to unilaterally alter the meaning of the Fourteenth Amendment's guarantee of birthright citizenship. The Executive Order directs federal agencies to bar certain persons born in the United States from citizenship and the many benefits to which citizenship entitles them by unlawful executive fiat.

2. The Executive Order, issued on January 20, 2025, and entitled "Protecting the Meaning and Value of American Citizenship" (Citizenship Stripping Order), is contrary to the plain terms of the Fourteenth Amendment's Citizenship Clause and Section 1401 of the Immigration and Nationality Act (INA).[1] The President has no authority to amend the Constitution or supersede the Citizenship Clause's grant of citizenship to individuals born in the United States. Nor is he empowered by any other constitutional provision or law to determine who shall or shall not be granted U.S. citizenship at birth. The Fourteenth Amendment and federal law automatically confer citizenship upon individuals born in the United States and subject to its jurisdiction.

3. The States of Washington, Arizona, Illinois, and Oregon (Plaintiff States) bring this action to protect the States—including their public agencies, public programs, public fiscs, and state residents—from the irreparable harm that will result to the States and their residents as a result of the illegal actions of the President and federal government that purport to unilaterally strip U.S. citizens of their citizenship.

4. Cherly Norales Castillo and Alicia Chavarria Lopez (Individual Plaintiffs) bring this action on behalf of themselves and a class of similarly situated persons to stop the Order's deprivation of citizenship to their unborn children.[2] Individual Plaintiffs are expecting mothers

[1] Attached as Ex. A, *also available at* https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/. The Order was subsequently published in the Federal Register as Exec. Order No. 14,160, 90 Fed. Reg. 18 (Jan. 29, 2025).

[2] Individual Plaintiffs previously filed a separate action challenging the Executive Order, which the Court consolidated with the instant case. *See Franco Aleman v. Trump*, Complaint, No. 2:25-cv-00163 (W.D. Wash. Jan.

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who are not U.S. citizens or lawful permanent residents (LPRs) and who have due dates after the implementation date of the Order's prohibition on issuance of citizenship documents. By the terms of the Citizenship Stripping Order—though not by the terms of the Fourteenth Amendment—their children born after the Order's date of implementation will be deprived of U.S. citizenship and be considered without legal status in this country. They seek to represent a class of similarly situated parents and their expected children. These children, although born in the United States and subject to its jurisdiction, will be deprived of U.S. citizenship under the Order.

5. This deprivation of citizenship strikes at the core of this country's identity as a nation that, following Reconstruction, affirmed that all persons born in the United States are citizens, regardless of race, parentage, creed, or other markers of identity. The Citizenship Stripping Order's attempt to deny citizenship to those born on U.S. soil amounts to "the total destruction of the individual's status in organized society" and "is a form of punishment more primitive than torture." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). This is because, as the Supreme Court has recognized time and again, "[c]itizenship is a most precious right," *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963), whose "value and importance" is "difficult to exaggerate," *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

6. If the Citizenship Stripping Order is allowed to stand, the Plaintiff States and their residents (including Individual Plaintiffs) will suffer immediate and irreparable harm. Nationally, in 2022 alone, there were approximately 255,000 births of U.S. citizen children to noncitizen mothers without lawful status (undocumented) and approximately 153,000 births to two undocumented parents. In Washington, in 2022 alone, approximately 7,000 U.S. citizen children were born to mothers who lacked legal status and approximately 4,000 U.S. citizen children were born to two parents who lacked legal status. In Arizona, in 2022 alone, there were

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24, 2025), ECF No. 1. One of the named plaintiffs, Delmy Franco Aleman, has chosen to withdraw from the case following the Court's Consolidation Order, ECF No. 56. Accordingly, she no longer seeks to represent the proposed class.

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approximately 6,000 U.S. citizen children born to mothers who lacked legal status and approximately 3,400 U.S. citizen children born to two parents who lacked legal status. Likewise, in Illinois, in 2022 alone, there were approximately 9,100 U.S. citizen children born to mothers who lacked legal status and approximately 5,200 U.S. citizen children born to two parents who lacked legal status. And in Oregon, in 2022 alone, there were approximately 2,500 U.S. citizen children born to mothers who lacked legal status and approximately 1,500 U.S. citizen children born to two parents who lacked legal status. Using these numbers, likely more than 12,000 babies born in the United States each month who are entitled to citizenship—including more than 1,100 babies born each month in the Plaintiff States—will no longer be considered U.S. citizens under the Citizenship Stripping Order and will be left with no immigration status. This estimate is conservative, because it includes only a subset of the newborns that would be stripped of citizenship. The actual number of newborns affected in Plaintiff States is certainly higher.

7. The individuals who are stripped of their U.S. citizenship, including the States' residents, Individual Plaintiffs' expected children, and members of the proposed class, will be left without any legal immigration status, vulnerable to removal from this country, and threatened with the loss of "all that makes life worth living." *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (cleaned up). Many will be left stateless—that is, citizens of no country at all. They will be left on the outside of society and forced to remain in the shadows in fear of immigration enforcement actions that could result in their separation from family members and removal from their country of birth. They will lose eligibility for myriad federal benefits programs. They will lose their right to travel freely and re-enter the United States. They will lose their ability to obtain a Social Security number (SSN) and work lawfully. They will lose the opportunity to qualify for many educational opportunities. They will lose their right to vote, serve on juries, and run for most public offices. They will be placed into lifelong positions of instability and insecurity as part of a new underclass in the United States. In short, despite the Constitution's guarantee of their citizenship, Individual Plaintiffs' children and the thousands of newborns who would be

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subject to the Citizenship Stripping Order will lose their ability to fully and fairly be a part of American society as a citizen with all its benefits and privileges.

8. The Citizenship Stripping Order will also directly injure the Plaintiff States in additional ways. The Plaintiff States will suffer immediate and irreparable harm by losing federal funding or reimbursements to programs that the Plaintiff States administer, such as Medicaid, the Children's Health Insurance Program (CHIP), foster care and adoption assistance programs, and programs to facilitate streamlined issuance of SSNs to eligible babies—among others. By purporting to unilaterally strip citizenship from individuals born in the Plaintiff States based on their parents' citizenship or immigration status, the Plaintiff States will be forced to bear significantly increased costs to operate and fund programs that ensure the health and well-being of their residents. The Plaintiff States will also be required—on no notice and at their considerable burden and expense—to immediately begin modifying their funding and operational structures and administration of programs to account for this change. This will impose significant administrative and operational burdens for multiple of the Plaintiff States' agencies that operate programs for the benefit of their residents.

9. To prevent the President's and the federal government's unlawful action from harming Plaintiffs, as well as the proposed class that Individual Plaintiffs seek to represent, they ask this Court to invalidate the Citizenship Stripping Order in its entirety and enjoin any actions taken to implement its directives.

II. JURISDICTION AND VENUE

10. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2). The Court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202, 5 U.S.C. § 706, and Federal Rule of Civil Procedure 65.

11. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1). Defendants are United States agencies or officers sued in their official capacities. The State of Washington is a resident of this judicial district, the Individual Plaintiffs reside in

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this judicial district, and a substantial part of the events or omissions giving rise to this Complaint occurred within the Seattle Division of the Western District of Washington, including the harms to UW Medicine at its Montlake and Northwest campuses, as well as at Harborview Medical Center in Seattle.

III. PARTIES

PLAINTIFFS

12. The State of Washington is a sovereign state of the United States of America.

13. The Attorney General of Washington is the chief legal adviser to the State and is authorized to act in federal court on behalf of the State on matters of public concern.

14. The State of Arizona is a sovereign state of the United States of America.

15. The Attorney General of Arizona is the chief legal officer of the State and is authorized to act in federal court on behalf of the State.

16. The State of Illinois is a sovereign state of the United States of America.

17. The Attorney General of Illinois is the chief legal officer of the State and is authorized to act in federal court on behalf of the State on matters of public concern. *See* Ill. Const. art. V, § 15; 15 ILCS 205/4.

18. The State of Oregon is a sovereign state of the United States of America.

19. The Attorney General of Oregon is the chief legal officer of the State of Oregon and is authorized to act in federal court on behalf of the State on matters of public concern.

20. The Plaintiff States are aggrieved and have standing to bring this suit because Defendants' action purporting to strip citizenship from U.S. citizens born and residing in the Plaintiff States, receiving benefits in the Plaintiff States, and receiving government services in the Plaintiff States—including children who are wards of the Plaintiff States and in their custody—harms the Plaintiff States' sovereign, proprietary, and quasi-sovereign interests and will continue to cause injury unless and until enforcement of the Citizenship Stripping Order is permanently enjoined.

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21. Plaintiff Cherly Norales Castillo is a noncitizen from Honduras. She is in removal proceedings and has filed an application for asylum before the immigration court. She is pregnant, and her due date is March 19, 2025.

22. Plaintiff Alicia Chavarria Lopez is a noncitizen from El Salvador. She has filed an application for asylum before United States Citizenship and Immigration Services (USCIS). She is pregnant, and her due date is July 21, 2025.

DEFENDANTS

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

24. Defendant Department of Homeland Security (DHS) is a federal cabinet agency responsible for implementing the Citizenship Stripping Order, including by issuing regulations, policies, and guidance consistent with the Order. DHS is a department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552. DHS is comprised of USCIS, U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). USCIS is responsible for adjudicating immigration benefits applications, as well as certain applications to recognize a person's citizenship. ICE is responsible for, among other things, the detention and removal of unlawfully present noncitizens in the United States and prosecuting removal cases of noncitizens. CBP is responsible for, among other things, operating U.S. ports of entry.

25. Defendant Kristi Noem is the Secretary of Homeland Security. She is responsible for implementing and enforcing the INA and oversees USCIS, ICE, and CBP. She is sued in her official capacity.

26. Defendant United States Social Security Administration (SSA) is a federal agency responsible for administering federal retirement, survivors, and disability income programs, as well as the program of supplemental security income for the aged, blind, and disabled. SSA processes applications for and issues Social Security numbers (SSNs) to eligible

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applicants. SSA is responsible for implementing the Citizenship Stripping Order, including by ceasing issuance of SSNs to children born in the United States but subject to the Citizenship Stripping Order's interpretation of the Citizenship Clause. SSA is a department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552.

27. Defendant Michelle King is the Acting Commissioner of the SSA. The Office of the Commissioner is directly responsible for all programs administered by the SSA, including the development of policy, administrative and program direction, and program interpretation and evaluation. She is sued in her official capacity.

28. Defendant United States Department of State is responsible for implementing the Citizenship Stripping Order, including by issuing regulations, policies, and guidance consistent with the Order. The State Department is a department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552. It is authorized by law to grant and issue passports.

29. Defendant Marco Rubio is the Secretary of State. He is responsible for carrying out the President's foreign policies through the State Department and Foreign Service of the United States. He is sued in his official capacity.

30. Defendant United States Department of Health and Human Services (HHS) is a federal cabinet agency responsible for implementing the Citizenship Stripping Order, including through the administration of Medicaid, CHIP, and Title IV-E. HHS is a department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552. HHS is responsible for implementing the Citizenship Stripping Order in its agency program, operations, and activities.

31. Defendant Dorothy Fink is the Acting Secretary of Health and Human Services. She is responsible for overseeing and administering all HHS programs through the Office of the Secretary and HHS's Operating Divisions. She is sued in her official capacity.

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32. Defendant United States Department of Justice (DOJ) is a federal cabinet agency responsible for the federal government's legal affairs. The DOJ is a department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552. DOJ is responsible for implementing the Citizenship Stripping Order, including by ensuring agency regulations are consistent with the Order.

33. Defendant James McHenry is the Acting Attorney General of the United States. He is responsible for overseeing and administering all duties and programs of the DOJ, including overseeing and administering the Executive Office for Immigration Review, which adjudicates the removal proceedings of noncitizens charged with being inadmissible or removable from the United States. He is also responsible for overseeing the Department of Justice's immigration-related prosecutions, such as prosecutions for illegal entry and reentry to the United States. He is sued in his official capacity.

34. Defendant United States Department of Agriculture (USDA) is a cabinet-level department of the United States. USDA is in charge of administering the Supplemental Nutrition Assistance Program (SNAP), which provides food benefits to eligible low-income families to supplement their grocery budget. USDA is a department of the Executive Branch of the U.S. Government and is an agency within the meaning of 5 U.S.C. § 552. USDA is responsible for implementing the Citizenship Stripping Order in its agency operations and activities.

35. Defendant Gary Washington is the Acting Secretary of Agriculture. He is responsible for overseeing and administering all USDA programs. He is sued in his official capacity.

36. Defendant the United States of America includes all government agencies and departments responsible for the implementation, modification, and execution of the Citizenship Stripping Order.

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IV. ALLEGATIONS

A. The United States Constitution Confers Automatic Citizenship on All Individuals Born in the United States and Subject to the Jurisdiction Thereof

37. Section 1 of the Fourteenth Amendment to the United States Constitution 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. This provision is known as the Citizenship Clause. The Citizenship Clause's automatic conferral of citizenship on all individuals born in the United States and subject to its jurisdiction, regardless of the citizenship or immigration status of their parents, is confirmed by the Fourteenth Amendment's text and history, judicial precedent, and longstanding Executive Branch interpretation.

38. The Citizenship Clause was passed and ratified as part of the Fourteenth Amendment following the Civil War to overturn the Supreme Court's infamous holding in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), where the Supreme Court ruled that Black Americans who were enslaved or were descended from enslaved persons could not be citizens. The Citizenship Clause reaffirmed the longstanding common law principle of *jus soli* as the default rule of citizenship in the United States: All individuals born in the United States and subject to its jurisdiction are citizens. Its operation is automatic. No further action is required for individuals born in the United States to "become" citizens and no additional limitations are imposed.

39. Unlike the Naturalization Clause, U.S. Const. art. I, § 8, cl. 4, which empowers Congress to set rules for naturalization, the Constitution nowhere empowers the President or Congress to set additional requirements that override or conflict with the Citizenship Clause's plain and broad grant of automatic citizenship to individuals born in the United States.

40. The Citizenship Clause contains no exceptions based on the citizenship or immigration status of one's parents or their country of origin. Rather, the Citizenship Clause's

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only requirements are that an individual be born "in the United States" and "subject to the jurisdiction thereof[.]" The only individuals who are excluded under the "subject to the jurisdiction thereof" language are the extremely limited number of individuals who are in fact *not* subject to the jurisdiction of the United States at birth—the children of diplomats covered by diplomatic immunity or children born to enemy combatants engaged in war against the United States while on United States soil.[3] Indeed, before the Fourteenth Amendment's adoption, there was explicit legislative debate and clarity that the Citizenship Clause was meant to reach all persons born in the United States, with only the limited exceptions above. *See* Garrett Epps, *The Citizenship Clause: A "Legislative History,"* 60 Am. Univ. L. Rev. 331, 355-56 (2010) (detailing congressional debate). By embedding 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).

41. The Supreme Court cemented this longstanding and established understanding of the Citizenship Clause more than 125 years ago in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). There, the Supreme Court held that a child born in the United States to noncitizen parents was entitled to automatic citizenship by birth under the Fourteenth Amendment. In so holding, the Court explained:

> 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 . . . . To hold that the fourteenth amendment of the constitution excludes

[3] Another exception recognized by the drafters of the Fourteenth Amendment, children born to Native American tribes with their own sovereign status, are granted U.S. citizenship at birth by a federal statute passed in 1924. *See* 8 U.S.C. § 1401(b) (declaring to be a national and citizen of the United States at birth "a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe").

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> from citizenship the children born in the United States of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.

Id. at 693-94.

42. In addition to *Wong Kim Ark*, the Supreme Court has separately made clear that undocumented immigrants are "subject to the jurisdiction" of the United States. In *Plyler v. Doe*, 457 U.S. 202, 215 (1982), the Supreme Court interpreted the Fourteenth Amendment's Equal Protection Clause—the sentence immediately following the Citizenship Clause—and explained that the term "within its jurisdiction" makes plain that "the Fourteenth Amendment extends to anyone, citizen or stranger, who *is* subject to the laws of a State, and reaches into every corner of a State's territory." The Court concluded:

> That a person's initial entry into a State, or into the United States, was unlawful, and that he may for that reason be expelled, cannot negate the simple fact of his presence within the State's territorial perimeter. Given such presence, he is subject to the full range of obligations imposed by the State's civil and criminal laws.

Id. As the Supreme Court explained, "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. The Supreme Court further confirmed that the phrases "within its jurisdiction" and "subject to the jurisdiction thereof" in the first and second sentences of the Fourteenth Amendment have the same meaning. *Id.*

43. The Executive Branch has accepted and endorsed this reading and understanding of the Citizenship Clause for more than a century. Indeed, in 1995, the U.S. Justice Department's Office of Legal Counsel (OLC) provided a statement to Congress explaining why proposed legislation that would deny citizenship to certain children born in the United States based on their parents' immigration or citizenship status would be "unconstitutional on its face" and "unquestionably unconstitutional." 19 Op. O.L.C. 340, 341 (1995). The OLC's statement and

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opinion recognize that "[t]hroughout this country's history, the fundamental legal principle governing citizenship has been that birth within the territorial limits of the United States confers United States citizenship." *Id.* at 340. As OLC explained: "Congress and the States adopted the Fourteenth Amendment in order to place the right to citizenship based on birth within the jurisdiction of the United States *beyond question*. Any restriction on that right contradicts both the Fourteenth Amendment and the underlying principle that the amendment safeguards." *Id.* (emphasis added). Indeed, OLC explained that "children born in the United States of aliens are subject to the full jurisdiction of the United States[,]" and that "as consistently recognized by courts and Attorneys General for over a century, most notably by the Supreme Court in *United States v. Wong Kim Ark*, there is no question that they possess constitutional citizenship under the Fourteenth Amendment." *Id.* at 342.

44. Congress likewise has reaffirmed through statute the Citizenship Clause's commandment regarding birthright citizenship. The Immigration and Nationality Act states: "The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof[.]" 8 U.S.C. § 1401(a). This language was originally enacted in 1940, well after *Wong Kim Ark*, and taken directly from the Fourteenth Amendment.

45. Federal and state agencies rely on this fundamental and longstanding constitutional grant of birthright citizenship in implementing various federal programs. For example, the U.S. State Department is granted the authority under federal law to issue U.S. passports. 22 U.S.C. § 211a. As explained in the State Department's Foreign Affairs Manual, "[a]ll children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S. citizenship at birth even if their parents were in the United States illegally at the time of birth."[4] The U.S. State Department's Application for a U.S. Passport confirms that

[4] 8 FAM 301.1 (Acquisition By Birth in the United States) (2021), *available at* https://fam.state.gov/FAM/08FAM/08FAM030101.html (attached as Ex. B).

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for "Applicants Born in the United States," a U.S. birth certificate alone is sufficient to prove one's citizenship.[5] USCIS likewise confirms in public guidance that "[i]f you were born in the United States, you do not need to apply to USCIS for any evidence of citizenship. Your birth certificate issued where you were born is proof of your citizenship."[6]

46. SSA also has long accepted that all children born in the United States are citizens. Under current public guidance, SSA states that "[t]he easiest way to get a Social Security number (SSN) for your newborn is to apply when you provide information for your baby's birth certificate in the hospital."[7] With respect to citizenship, SSA explains that for children born in the United States, the child's U.S. birth certificate is proof of U.S. citizenship.[8] SSA's guidance is consistent with federal regulations, which establish that "[g]enerally, an applicant for an original or replacement social security number card may prove that he or she is a U.S. citizen by birth by submitting a birth certificate or other evidence . . . that shows a U.S. place of birth." 20 C.F.R. § 422.107(d). Indeed, for newborn babies, SSA utilizes what is called "Enumeration at Birth." Under that program, SSA enters into agreements with states to streamline the process for obtaining SSNs. Where a parent requests an SSN as part of an official birth registration process, the state vital statistics office electronically transmits the request to SSA along with the child's name, date and place of birth, sex, mother's maiden name, father's name, address of the mother, and birth certificate number. 20 C.F.R. § 422.103(c)(2). That information alone is used to establish the age, identity, and U.S. citizenship of the newborn child. *Id.* States receive payment from the federal government under this program for each record transmitted to the SSA for purposes of issuing an SSN—approximately $4.19 per SSN that is issued. Currently,

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[5] U.S. Dep't of State, *Application for a U.S. Passport*, DS-11 04-2022, 2 (expiration date April 30, 2025) (attached as Ex. C).

[6] U.S. Citizenship & Immigr. Servs., *A4--I am a U.S. citizen…How do I get proof of my U.S. citizenship?*, M-560B, 1 (October 2013) *available at* https://www.uscis.gov/sites/default/files/document/guides/A4en.pdf (attached as Ex. D).

[7] Soc. Sec. Admin., *Social Security Numbers for Children*, Pub. No. 05-10023, 1 (Jan. 2024), *available at* https://www.ssa.gov/pubs/EN-05-10023.pdf (attached as Ex. E).

[8] *Id.* at 2-3.

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Washington receives approximately $440,000 per year for administering this process and transmitting birth data for newborn babies in Washington to SSA. Arizona, likewise, has received approximately $874,000 for FY 2024 and more than $935,000 for FY 2025 through the Enumeration at Birth program, and is expected to receive more than $1 million in FY 2026. Oregon received approximately $158,000 in 2023 and $129,000 through the first three quarters of 2024 through the program. Illinois likewise participates in this program and receives federal funds for each record transmitted.

47. State law also relies on the basic constitutional principle that a person born in the territorial United States is an American citizen. For example, Arizona has unique and complicated proof of citizenship requirements for voter registration. Birth certificates play an important role in this process. One of the documents that qualifies as "satisfactory evidence of citizenship" for voter registration in Arizona is "the applicant's birth certificate that verifies citizenship to the satisfaction of the county recorder." Ariz. Rev. Stat. § 16-166(F)(2). Another document that qualifies as "satisfactory evidence of citizenship" for voter registration in Arizona is a "driver license" number, if the driver license indicates that the applicant previously submitted proof of citizenship to the Arizona Department of Transportation or equivalent agency of another state. Ariz. Rev. Stat. § 16-166(F)(1). Applicants often use their birth certificate to meet this requirement.

48. If a U.S. birth certificate were to stop being sufficient for proof of citizenship, voter registration in Arizona would become substantially more difficult and time-consuming. This is because election officials in Arizona would face a dilemma each time a prospective voter submits a birth certificate or driver license number. Under current registration procedures, the assumption is that these kinds of documents prove U.S. citizenship and nothing further is required. Without this assumption, a new and more complex set of procedures would need to be developed to try to identify which birth certificates and driver license numbers qualify as proof of U.S. citizenship.

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B. The President Acted Without Legal Authority in Purporting to Strip Individuals of Their U.S. Citizenship

49. President Trump's public statements make clear that he wishes to end birthright citizenship purely as a policy tactic to purportedly deter immigration to the United States. Despite a president's broad powers to set immigration policy, the Citizenship Stripping Order falls far outside the legal bounds of the president's authority.

50. During his most recent campaign for President, for example, then-candidate Trump made clear that an Executive Order would issue "[o]n Day One" to "stop federal agencies from granting automatic U.S. citizenship to the children of illegal aliens."[9] As he explained, the goal is for this Executive Order to "eliminate a major incentive for illegal immigration, discourage future waves of illegal immigration to exploit this misapplication of citizenship, and encourage illegal aliens in the U.S. to return home."[10] He explained that the Executive Order would do this by instructing agencies not to issue passports, Social Security numbers, and otherwise have the federal government treat those children as noncitizens.

51. After the 2024 election, President-Elect Trump continued to state that birthright citizenship should be ended. In December 2024, for example, President-Elect Trump again promised an Executive Order "directing federal agencies to require a child to have at least one parent be either a U.S. citizen or legal permanent resident to automatically become a U.S. citizen."[11]

52. The Citizenship Stripping Order, issued January 20, 2025, is the promised Executive Order. It declares that U.S. citizenship "does not automatically extend to persons born in the United States" if (1) the individual's mother is "unlawfully present in the United States"

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[9] Trump Vance 2025, *Agenda47: Day One Executive Order Ending Citizenship for Children of Illegals and Outlawing Birth Tourism* (May 30, 2023), https://www.donaldjtrump.com/agenda47/agenda47-day-one-executive-order-ending-citizenship-for-children-of-illegals-and-outlawing-birth-tourism (attached as Ex. F).

[10] *Id.*

[11] Tarini Parti & Michelle Hackman, *Trump Prepares for Legal Fight Over His 'Birthright Citizenship' Curbs*, Wall Street Journal (Dec. 8, 2024), https://www.wsj.com/politics/policy/trump-birthright-citizenship-executive-order-battle-0900a291 (attached as Ex. G).

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and the father "was not a citizen or lawful permanent resident at the time of said person's birth"; or (2) the "person's mother's presence in the United States at the time of said person's birth was lawful but temporary . . . and the father was not a United States citizen or lawful permanent resident at the time of said person's birth." The Citizenship Stripping Order affects at least hundreds of thousands of newborns in the United States, including those who are born to two undocumented parents.

53. Section 2 of the Order states that, effective in 30 days, it is the "policy of the United States" that no department or agency of the federal government "shall issue documents recognizing U.S. citizenship" to persons within those categories or "accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship." Section 3 of the Order 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." The Order further directs that "the heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities."

54. The Citizenship Stripping Order thus attempts to redefine the Fourteenth Amendment and restrict *jus soli*—or birthright citizenship—in the United States. If implemented, the Fourteenth Amendment's text would mean one thing for certain people, and the opposite for the same class of persons born mere days apart.

55. Its language underscores its arbitrary nature, particularly by failing to define who is considered "unlawfully present" or who has "temporary status." The INA contains many "non-immigrant" and other forms of status that do not provide or guarantee a pathway to lawful permanent residence. Many noncitizen parents-to-be covered by the Order include people who

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have lived in this country for decades and built their lives here. This includes people who have no status, as well as those who have or are seeking other forms of lawful status (including asylum and other humanitarian forms of relief provided by the INA).

56. The Constitution does not empower the President to set rules regarding citizenship at birth.

57. The Constitution does not empower the President to condition citizenship at birth on the citizenship or immigration status of one's parents.

58. The Constitution does not empower the President to unilaterally amend the Fourteenth Amendment.

59. The Constitution does not empower the President to grant or deny citizenship to individuals born in the United States.

60. The Constitution and federal law confer automatic citizenship to individuals born in the United States and subject to its jurisdiction. The Constitution removes control over the grant of birthright citizenship from the category of legitimate policy options the President and Congress may exercise to address immigration policy issues. As the Office of Legal Counsel explained when discussing the unconstitutionality of such proposals: "In short, the text and legislative history of the citizenship clause as well as consistent judicial interpretation make clear that the amendment's purpose was to remove the right of citizenship by birth from transitory political pressures." 19 Op. O.L.C. at 347.

C. United States Citizens Are Entitled to All Rights and Benefits of Citizenship as Defined by Law

61. U.S. citizens are entitled to a broad array of rights and benefits as a result of their citizenship. U.S. citizenship is a "priceless treasure." *Fedorenko v. United States*, 449 U.S. 490, 507 (1981). Not only does citizenship provide a sense of belonging, but it carries with it immense privileges and benefits—all of which the President claims to wipe away at the stroke of a pen.

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Withholding citizenship or stripping individuals of their citizenship will result in an immediate and irreparable harm to those individuals and to the Plaintiff States.

62. Among other rights, 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).

63. The implication of these rights is equally important: U.S. citizens cannot be detained by immigration authorities, removed from this country, separated from their families, or deprived of their friends and communities. *See, e.g.*, 18 U.S.C. § 4001 (preventing the U.S. government from detaining U.S. citizen absent authorization by Congress); 8 U.S.C. § 1229a(a)(1) (removal proceedings are to "decid[e] the inadmissibility or deportability of [a noncitizen]"). Such rights to belong and remain are among the most fundamental and valuable rights that the Constitution protects.

64. U.S. citizens are entitled to obtain a U.S. passport and may travel abroad for an unlimited period of time and with unlimited frequency without risk of being denied re-entry to the United States. Such travel may be needed to visit family, receive healthcare, travel for work or pleasure, or for many other reasons.

65. Individuals over 18 years of age who are U.S. citizens are eligible to vote in federal, state, and local elections. U.S. Const. amend. XXVI; Wash. Const. art. VI, § 1; Ariz. Const. art. VII, § 2; Or. Const. art. II, § 2; Ill. Const. art III, § 1. The right to vote is a fundamental political right.

66. Individuals over 18 years of age who are U.S. citizens are eligible to serve on federal and state juries. 28 U.S.C. § 1865(b)(1); Wash. Rev. Code § 2.36.070; Ariz. Rev. Stat. § 21-201(1); Or. Rev. Stat. Ann. § 10.030(2); 705 ILCS 305/2(a).

67. Individuals who are U.S. citizens may petition for immigration status for family members including spouses, children, parents, and siblings. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153(a).

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68. Individuals who are natural born U.S. citizens are eligible for election to the offices of President and Vice President of the United States. U.S. Const. art. II, § 1; U.S. Const. amend. XII.

69. Individuals who are U.S. citizens are eligible for election to the United States House of Representatives and the United States Senate, and to certain state offices. U.S. Const. art I, §§ 2-3; Wash. Const. art. II, § 7, art. III, § 25; Ariz. Const. art. IV pt. 2 § 2, art. V § 2; Or. Const. art. V, § 2, art. IV, § 8; Or. Rev. Stat. Ann. § 204.016(1); Ill. Const. art. V, § 3, art. IV § 2.

70. Individuals who are U.S. citizens or nationals are eligible for appointment to competitive service federal jobs. Exec. Order No. 11,935, 5 C.F.R. § 7.3(b) (Sept. 3, 1976).

71. Depending on immigration or citizenship status, residents of Plaintiff States may also be eligible to participate in a number of federal and state programs that ensure the health and welfare of individuals, families, and communities. Those include programs administered by the Plaintiff States and funded by federal and state dollars. These programs provide healthcare coverage for newborns and children, foster care and custodial services for children in need, and other forms of social and economic assistance to those in need.

72. Longer term, a child stripped of birthright citizenship who remains undocumented will face the effects of a lack of legal status over their lifespan. While U.S. citizens of sufficient age are authorized to work in the United States, only noncitizens granted particular immigration statuses are or can be authorized to work. *See* 8 C.F.R. § 274a.12. A noncitizen who is unlawfully present is ineligible for employment authorization, affecting their lifetime earning potential and job opportunities. Undocumented individuals are not eligible for federal student financial aid, affecting their educational opportunities. Research also shows that undocumented individuals are more likely to report greater depression, social isolation, longer hospital stays, and higher levels of stress.

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73. A person without legal immigration status is not generally eligible to be issued a social security number. *See* 20 C.F.R. § 422.107. This creates cascading barriers to basic needs and milestones, such as accessing traditional mortgages or banking services, as well as eligibility for federal housing programs, among other things. Likewise, undocumented individuals are not eligible for a REAL ID Act compliant driver's license or identification card, which will be required for all air travel, including domestic flights, as of May 7, 2025. 6 C.F.R. §§ 37.5(b), 37.11(g).

D. Plaintiff States Will Be Irreparably Injured by Defendants' Citizenship Stripping Order

74. The Plaintiff States will be immediately and irreparably injured by Defendants' Citizenship Stripping Order separate and apart from the grievous harms its residents will suffer as a result of the Order.

75. As noted above, in Washington in 2022 alone, approximately 7,000 U.S. citizen children were born to mothers who lacked legal status and approximately 4,000 U.S. citizen children were born to two parents who lacked legal status. This is a conservative estimate of the number of children affected by the Citizenship Stripping Order, and the full number of children affected will be greater.

76. In Arizona in 2022 alone, approximately 6,000 U.S. citizen children were born to mothers who lacked legal status and approximately 3,400 U.S. citizen children were born to two parents who were noncitizens and lacked legal status. This is a conservative estimate of the number of children affected by the Citizenship Stripping Order, and the full number of children affected will be greater.

77. In Illinois in 2022 alone, approximately 9,100 U.S. citizen children were born to mothers who lacked legal status and approximately 5,200 U.S. citizen children were born to two parents who were noncitizens and lacked legal status. This is a conservative estimate of the

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number of children affected by the Citizenship Stripping Order, and the full number of children affected will be greater.

78. In Oregon in 2022 alone, approximately 2,500 U.S. citizen children were born to mothers who lacked legal status and approximately 1,500 U.S. citizen children were born to two parents who were noncitizens and lacked legal status. This is a conservative estimate of the number of children affected by the Citizenship Stripping Order, and the full number of children affected will be greater.

79. The Plaintiff States administer numerous programs for the benefit of their residents, including for newborns and young children, some of whom are wards of the Plaintiff States who are entitled to care by statute. Some of these programs are funded in part by federal dollars, with federal funding frequently tied to the citizenship and immigration status of the individuals served. As detailed below, stripping individuals of their citizenship and leaving them without a qualifying immigration status will render them ineligible to receive federally funded benefits, leaving them to rely on state-only funded benefits and services that the Plaintiff States must provide, and causing direct, immediate, and measurable financial harm to Plaintiff States.

80. The Medicaid and CHIP health insurance programs were created by federal law and are jointly funded by the federal and state governments. Medicaid provides health insurance for individuals, including children, whose household incomes fall below certain eligibility thresholds that vary slightly by state. CHIP is a program through which health insurance coverage is provided for children whose household incomes exceed the eligibility thresholds for Medicaid but fall below a separate threshold. The federal government pays states a percentage of program expenditures for individuals enrolled in Medicaid and CHIP. This percentage varies by program, state, covered population, and service, but generally ranges between 50% and 90% of the total expenditure.

81. Only individuals who are U.S. citizens or have a qualifying immigration status are eligible for Medicaid and CHIP except for certain emergency medical services that must be

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provided and can be covered under Medicaid where the individual is otherwise qualified but for their immigration or citizenship status. 42 U.S.C. § 1396b(v); 8 U.S.C. §§ 1611(a), (c)(1)(B); 42 C.F.R. § 435.406. In all Plaintiff States, children who would be eligible for Medicaid or CHIP but for the fact that they are not U.S. citizens or qualifying noncitizens are eligible for certain health insurance or emergency services that are funded entirely by the State. The Citizenship Stripping Order will therefore result in newborn children who would otherwise be eligible for federally funded Medicaid or CHIP instead being enrolled in entirely state-funded health care programs or provided entirely state-funded healthcare services, transferring the cost for their health care to the States and causing a direct loss of federal funding. And for some Plaintiff States, those State-funded services may be underfunded or restricted to emergency care only, resulting in newborns and children not receiving regular or preventative care and ultimately leading to more expensive emergency care in the long term.

82. One example is Washington's programs for ensuring healthcare coverage for its most vulnerable residents. The Washington State Health Care Authority (HCA) is the designated single state agency responsible for administering Washington's Medicaid program and CHIP. In Washington, Medicaid is called Apple Health. Coverage programs for children are provided under the name Apple Health for Kids and serve all kids regardless of immigration status up to 317% of the Federal Poverty Limit (FPL). Between 215% and 317% of the FPL, for children who are citizens or qualified and authorized immigrants, the funding for this coverage comes through CHIP, and households pay a minimal premium for children's coverage. Below that range, for children who are citizens or qualified and authorized immigrants, funding for coverage is provided through Medicaid. Under federal law, HCA must provide Medicaid and CHIP coverage to citizens and qualified noncitizens whose citizenship or qualifying immigration status is verified and who are otherwise eligible. For those children who would be eligible but for their lack of citizenship or a qualifying immigration status, the State provides coverage through what is called the Children's Health Plan (CHP).

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83. As of December 2024, HCA administers federally-backed Medicaid and CHIP funded coverage for more than 860,000 children in Washington. HCA estimates that coverage on a per-child basis costs approximately $2,844 per year on average for physical health care coverage alone. For this coverage, Washington expended approximately $2.37 billion with approximately $1.3 billion coming from the federal government under Medicaid and CHIP. With respect to the division of funding in Washington, health coverage provided through CHIP generally receives a 65% federal match rate as opposed to Medicaid's 50% federal match rate.

84. If deemed ineligible because they are no longer U.S. citizens, children enrolled in CHIP who do not meet the income eligibility guidelines for Medicaid would be left without health coverage unless Washington provides it using only state funding—even for emergency medical care that hospitals (including State-operated hospitals) are required by federal law to provide. *See, e.g.*, 42 U.S.C. § 1395dd. The result would be that federal law would *require* State-providers, like UW Medicine's Harborview hospital, to provide emergency and other care, but *withhold* federal contribution for that care at the normal CHIP rates. Washington would provide coverage to these individuals using State-only funds, and therefore be required to spend substantial funds it otherwise should receive from the federal government through the CHIP program.

85. The CHIP program also enables certain healthcare services to be provided to children prior to birth in the form of prenatal care for their mother, regardless of the mother's status. Under CHIP, a child is defined as "an individual under the age of 19 including the period from conception to birth." 42 C.F.R. § 457.10. In Washington, children are eligible at conception for prenatal care through CHIP. This prenatal care coverage is provided regardless of the immigration status of the mother because the child is assumed to be a U.S. citizen. In State FY 2025, Washington expects to receive $161.5 million in federal CHIP funding to provide prenatal health care to children born in Washington to mothers ineligible for Medicaid and CHIP.

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86. Certain children born whose health care would have been covered through Medicaid or CHIP as U.S. citizens will become ineligible for those programs because they are no longer deemed U.S. citizens or qualifying noncitizens under the Citizenship Stripping Order. This poses an immediate risk to HCA's federal funding stream used to provide healthcare coverage to vulnerable Washington newborns and children. In state fiscal year 2022, for example, there were more than 4,000 children born to unauthorized and non-qualifying mothers whose labor and delivery was covered by Emergency Medicaid. Those children, by being born in the United States and deemed citizens, were eligible for federally-backed coverage. If this number of children became ineligible due to a loss of citizenship and moved to the State-funded CHP coverage, however, that will result in a loss of $6.9 million in federal reimbursements to Washington and a corresponding increase to State expenditures of the same amount, based on the current expenditures for the complete physical and behavioral health package of benefits.

87. In Arizona, in 2024 there were 4,519 births paid for by the Federal Emergency Services Program (FES births). For each of these births, the parent's household income fell under 133% of the Federal Poverty Level and the parent would have been eligible for Title XIX (Medicaid) if they were U.S. citizens or "lawfully residing." However, because these children were born in the United States, the children were eligible for Medicaid and qualified for Arizona's Medicaid program, the Arizona Health Care Cost Containment System (AHCCCS), but they would not be eligible if birthright citizenship were removed. If each of these children became ineligible for AHCCCS until 18, using FFY 2026 figures for FMAP of 64.34% (federal match) and capitation rates, then this would likely cost the State $39,400 in federal revenue per child used to pay $61,300 in total capitation payments over the first 18 years of that child's life.

88. In addition, based on current data, AHCCCS estimates that approximately 3,126 births each year are for children whose family income are low enough to make them eligible for Title XXI (KidsCare) under birthright citizenship, but who would not be eligible if birthright

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citizenship were removed. And given the scope of the Order, the number of children affected will likely be higher.

89. Removing birthright citizenship from the above 7,645 (4,519 + 3,126) children would reduce federal revenues to Arizona by $321,844,600 used to pay $468,638,500 in total capitation payments over the first 18 years of the children's lives. This amount is only for the first "cohort" of children and only through their first 18 years of life. Each year additional children would be born, adding to the lost revenue.

90. In Illinois, the Department of Healthcare and Family Services (HFS) is responsible for administering Illinois's Medicaid program and CHIP. HFS currently administers federally-backed Medicaid and CHIP funded coverage for over 1 million children in Illinois. Some of those children—children whose health care would have been covered through Medicaid or CHIP as U.S. citizens—will become ineligible for those programs because they are no longer deemed U.S. citizens or qualifying noncitizens under the Citizenship Stripping Order. That threatens the federal funds that HFS uses to provide healthcare coverage to vulnerable Illinois newborns and children and risks transferring the cost for their health care to Illinois.

91. Similarly, Plaintiff States' child welfare systems are funded in part through an annual appropriation based on an open-ended formula grant entitlement operated by the Defendant HHS' federal Foster Care Program, known as "Title IV-E." For example, in Federal Fiscal Year 2024, Washington received approximately $219 million in federal Title IV-E funding.

92. The Title IV-E grant amount is awarded to partially reimburse the States' expenditures on allowable uses of funds for the direct costs of supporting eligible children in foster care. The States receive no Title IV-E funding for the costs to care for foster children who do not meet Title IV-E eligibility. Children who are neither citizens nor qualifying noncitizens, which will include children who would be natural-born U.S. citizens but for the Citizenship Stripping Order, are not covered by Title IV-E. 8 U.S.C. §§ 1611(a), (c)(1)(A).

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93. Plaintiff States also receive federal funding under Title IV-E for certain program administrative costs based in part on the number of children eligible for Title IV-E. Washington's Department of Children, Youth, and Families (DCYF) receives reimbursements for foster care maintenance, adoption support, guardianship support, and associated legal, administrative, and training costs. Therefore, any decrease in the number of foster children who are Title IV-E eligible will reduce federal funding to States for foster care and related programs. As a result of the Citizenship Stripping Order, fewer children will be eligible for welfare and support services and Plaintiff States will suffer a negative financial impact to their child welfare programs.

94. Washington's DCYF foster care services provide support for children and families when they may be most vulnerable and ensures that children have the tools they need to succeed. In Washington, those services will often be provided for a long period of time—the median length of stay for a child in out-of-home care is nearly two years. If that child is ineligible for Title IV-E because they are not a citizen, DCYF cannot receive federal reimbursements for any of the services they provide to that child. And any decrease in Title IV-E funding means that DCYF will have fewer resources to help all of the children it serves, including children whose citizenship status is unaffected by the Citizenship Stripping Order.

95. Arizona's Department of Child Services (DCS) also relies on Title IV-E funding and operates on a limited budget appropriated by the State Legislature. The Citizenship Stripping Order will cause DCS to lose material amounts of federal funding that it would use for foster care maintenance payments for those children, as well as reimbursement for administrative expenses associated with their care.

96. Illinois Department of Child and Family Services (DCFS) also relies on Title IV-E funding. The guaranteed reduction in Title IV-E funding—as well as other federal reimbursements—that will result from the Citizenship Stripping Order will have a meaningful effect and strain on DCFS's ability to fulfill its statutory mandate to provide care to the wards in its custody.

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97. The loss of federal funding and reimbursement will have other significant and negative ripple effects on the Plaintiff States. For example, in Arizona, DCS prioritizes kinship placements for the children within its custody. In kinship placements, children are placed in the homes of relatives or individuals with a significant relationship to the children. Placements with relatives and kin provides children with more stability by maintaining connections to neighborhood, community, faith, family, tribe, school and friends. A family's willingness and ability to accept a kinship placement is often dependent on the family's ability to receive financial and resource assistance from DCS. If fewer children are considered U.S. citizens and therefore are ineligible for these vouchers and resources, DCS will not be able to provide the same assistance to support relative and kinship placements, and the number of these placements will decrease. That will harm these already vulnerable children. It will also increase costs for DCS, which will have to place those same children in group homes, which are significantly more expensive.

98. Because the benefit is to the child, not the caregiver, an increase of children without legal status in DCS care will also impact community foster homes. Community foster homes may not be willing to take placement of a child if they are not able to receive benefits like childcare assistance. Many communities foster caregivers work outside of the home and rely on childcare assistance to pay for care while they work.

99. Plaintiff States will also suffer a direct and immediate loss of federal reimbursements that they receive for every SSN that is assigned to a child born in their state through the Enumerated at Birth (EAB) program. Pursuant to this program, Plaintiff States are under contract with the SSA to collect and transmit to SSA certain birth information on behalf of parents who wish to obtain an SSN for their newborn child. For their services under this program, the States receive a payment from SSA of approximately $4.19 per assigned SSN. These funds are used to support general administrative expenses for state agencies beyond the cost of transmitting SSN applications to SSA.

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100. As noted above, each year, the Citizenship Stripping Order is likely to impact—at a bare minimum—at least 4,000 children born in Washington; 3,400 children born in Arizona; 5,200 children born in Illinois; and 1,500 children born in Oregon. Those children will therefore be ineligible for SSNs, which in turn will cause the Plaintiff States to suffer an immediate decrease in the number of SSNs assigned and payments received through the EAB program. For example, withholding issuance of approximately 4,000 SSNs through the EAB process will cause Washington to lose approximately $16,000 per year at a minimum, because of the Citizenship Stripping Order's direction to SSA to stop issuing SSNs to these children. Withholding issuance of approximately 3,400 SSNs through the EAB process will cause Arizona to lose approximately $14,000 per year at a minimum, because of the Citizenship Stripping Order's direction to SSA to stop issuing SSNs to certain children. Withholding issuance of approximately 5,200 SSNs through the EAB process will cause Illinois to lose approximately $21,000 per year at a minimum. And withholding issuance of approximately 1,500 SSNs through the EAB process will cause Oregon to lose approximately $6,200 per year at a minimum, because of the Citizenship Stripping Order's direction to SSA to stop issuing SSNs to certain children.

101. As noted above, the Citizenship Stripping Order will also harm Arizona's ability to implement its voter registration laws aimed at ensuring that only citizens register to vote.

102. The Citizenship Stripping Order will immediately begin to upend administrative and operational processes within the Plaintiff States. States must immediately alter their systems for verifying which children they serve are eligible for federal reimbursement programs like Medicaid, CHIP, and Title IV-E; operationalize those altered systems; and plan for the fiscal impact of losing substantial federal funding that the Plaintiff States rely on receiving to support a range of programs.

103. In Washington, for example, agencies rely on birthright citizenship in their internal processes to determine eligibility for federal programs. This includes Washington's HCA, which administers Washington's Medicaid and CHIP programs. The Citizenship Stripping

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Order will require HCA to develop updated training and guidance for staff, partners, and health care providers across Washington about which children are citizens and therefore eligible for Medicaid and CHIP. HCA anticipates this will take at least seven to eight full-time employees around two to three years to make these changes. These updates may then require training for up to 2,000 staff, on top of coordination with external community partners. Similarly, the Citizenship Stripping Order requires health care providers like UW Medicine to immediately update their understanding of how to assess coverage to assist patients and parents in understanding and navigating applications for coverage, when those parents may have a due date in just a few weeks.

104. Washington's DCYF likewise relies on birthright citizenship to determine which services it may receive reimbursement for. Federal law requires DCYF to verify citizenship status of children it serves as a part of determining Title IV-E eligibility. Currently, the primary method of citizenship verification is through birth certificates issued by other state agencies. DCYF relies on those birth certificates to determine whether children are eligible for Title IV-E, and DCYF's services for children may begin as soon as they are born. The Citizenship Stripping Order requires DCYF to amend its processes, trainings, and materials to make any Title IV-E eligibility determinations. That will take staff time that would have been spent on other projects to better serve children and families in Washington.

105. Washington's DOH also faces uncertainty and substantial administrative burdens under the Citizenship Stripping Order. DOH cannot modify State's newborn registration process immediately. Instead, doing so will require substantial operational time, manpower resources, and technological resources from DOH and healthcare facilities in Washington. Indeed, because more than 80,000 babies are born every year in Washington, DOH anticipates that any required updates to the birth registration process or birth certificates in Washington will impose serious burdens on DOH that it is not currently equipped to handle, as DOH has no way of determining the immigration status or citizenship of every newborn (or their parents).

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106. Similarly, in Arizona, the State's Medicaid program, AHCCCS, is jointly funded by the federal and state governments for individuals and families who qualify based on income level. AHCCCS does not currently rely on a Social Security Number or parental immigration status to determine eligibility. Newborns are automatically approved for benefits through an automated process when a mother living in Arizona on AHCCCS gives birth. Citizenship is considered automatically verified if the child's birth is verified through this method since they are born in the United States. If this methodology no longer applied, AHCCCS would need to update its eligibility policy and update three systems it uses: HEAPlus, PMMIS and AHCCCS Online. This would take approximately 12 months to implement the change. Based on the complexity of the potential update, the expense to change HEAplus would be approximately $1 million to $2.5 million and would take about 12 months to develop. In addition, it would cost $1.3 million to 1.9 million to update PMMIS and AHCCCS Online.

107. The Illinois Department of Public Health (IDPH) will also face substantive administrative burdens under the Citizenship Stripping Order in order to modify its newborn registration process immediately. IDPH would need to create systems for state-run healthcare facilities to use to verify parents' immigration statuses for purposes of issuing birth certificates and applying for a newborn's SSN. This would require training and hiring of staff and would potentially cause delays in the registration and issuance of a newborn's birth certificate.

108. In Oregon, the sudden need to collect proof of citizenship information from parents at the birth of a child will cause the state to incur the expense of training its employees and staff at Oregon hospitals on new protocols.

109. In sum, the Citizenship Stripping Order, if allowed to stand, will work direct and substantial injuries to Washington, Arizona, Illinois, and Oregon, in addition to their residents.

E. Individual Plaintiffs

a) Cherly Norales Castillo

110. Plaintiff Cherly Norales Castillo is a noncitizen from Honduras.

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111. She has lived in the United States since 2023, and currently resides in Seattle, Washington.

112. Ms. Norales lives with her partner and her four-year-old son.

113. Ms. Norales and her son have a pending asylum application before the immigration court.

114. In 2023, they fled a violent and abusive situation in Honduras to seek protection in the United States.

115. Ms. Norales learned she is pregnant with her second child in or around July 2024.

116. Her expected due date is March 19, 2025.

117. When Ms. Norales learned of President Trump's Executive Order on birthright citizenship in January 2025, she became fearful for her unborn child, as neither she nor the child's father are citizens or LPRs.

118. Ms. Norales fears for the safety and security of her family if her unborn child does not receive citizenship by birthright. She does not want her unborn child to ever face removal to Honduras, a country she had to flee due to abuse and violence. It is important to Ms. Norales that her family remain unified and safe in this country.

119. Ms. Norales also desires that her soon-to-be-born child have access to an education, work authorization, and the many other benefits of U.S. citizenship. She fears the many obstacles her child will face if the child lacks citizenship.

b) Alicia Chavarria Lopez

120. Plaintiff Alicia Chavarria Lopez is a noncitizen from El Salvador.

121. She has lived in the United States since 2016, and currently resides in Bothell, Washington.

122. Ms. Chavarria lives with her partner and their five-year-old child.

123. Ms. Chavarria has a pending asylum application before USCIS.

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124. In 2016, she fled a violent and abusive situation in El Salvador to seek protection in the United States.

125. Ms. Chavarria learned she is pregnant with her second child in or around October or November 2024.

126. Her anticipated due date is July 21, 2025.

127. When Ms. Chavarria learned of President Trump's Executive Order on birthright citizenship in January 2025, she became fearful for her unborn child, as neither she nor the child's father are citizens or LPRs.

128. Ms. Chavarria's family is one of mixed immigration status. She is seeking asylum, and her five-year-old child is a U.S. citizen.

129. Ms. Chavarria fears that the Citizenship Stripping Order puts her family at risk of separation, and that her expected child may become a target for immigration enforcement. She does not want her unborn child to live in fear of removal to El Salvador, a country Ms. Chavarria had to flee for her own safety.

130. Ms. Chavarria desires that her soon-to-be-born child have access to education, work opportunities, and the many other benefits of U.S. citizenship—the same benefits that are available to her other child who was born in this country. She fears the many obstacles her child will face if the child lacks citizenship.

F. The Effect of the Executive Order on the Plaintiff States' Residents, Individual Plaintiffs, and Proposed Class Members

131. The Citizenship Stripping Order will have widespread and destructive effects on the lives of the Plaintiff States' residents, Individual Plaintiffs, and proposed class members, which includes the Individual Plaintiffs' expected children.

132. Without the protections of citizenship, the Plaintiff States' residents, Individual Plaintiffs, and proposed class members face the risk of family separation, as DHS could take away and remove resident and proposed class member children at any moment. This is not

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speculative. *See Ms. L. v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018) (enjoining policy implemented by first Trump administration to deter immigration by separating parents and their children).

133. Some children subject to the Citizenship Stripping Order may also become stateless. A U.S.-born child deemed to be a noncitizen may not be recognized as a citizen under the laws of their parents' country or countries of origin. Even if legally possible, practical barriers may prevent these children from being recognized as citizens of any other country, especially where those countries offer no consular services in the United States (and thus no means to obtain a passport and verify citizenship). This is true for some large immigrant populations in the United States, like Venezuelans.[12]

134. The Order also deprives the Plaintiff States' residents, Individual Plaintiffs' expected children, and the other proposed class member children of the ability to obtain social security numbers and work lawfully once they are of lawful age. Without social security numbers, the Plaintiff States' residents, Individual Plaintiffs' children, and the other proposed class member children will be unable to provide for themselves or their families (including, eventually, the Individual Plaintiffs and class member parents themselves). *Gonzalez Rosario v. U.S. Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018) (recognizing a "negative impact on human welfare" when asylum seekers "are unable to financially support themselves or their loved ones").

135. In addition, and among other things, the Citizenship Stripping Order denies the Plaintiff States' residents, Individual Plaintiffs' expected children, and the other proposed class member children (once they become adults) the right to vote in federal elections, serve on federal juries, serve in many elected offices, and work in various federal jobs.

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[12] U.S. Dep't of State, *International Travel, Learn About Your Destination, Venezuela* https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Venezuela.html (last updated Oct. 30, 2024) ("The Venezuelan embassy and consulates in the United States are not open.") (attached as Ex. H).

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136. The Order will further deprive the Plaintiff States' residents, Individual Plaintiffs' children, and the other proposed class member children of access to higher education, as they will not qualify for federal financial aid to higher education, limiting their ability to develop their full potential.

137. The Citizenship Stripping Order will also deprive the Plaintiff States' residents, Individual Plaintiffs' children, and the other proposed class member children of access to other critical public benefits. For example, as undocumented persons, children subject to the Order will not qualify for federally funded SNAP benefits. *See* 7 U.S.C. § 2015(f); 7 C.F.R. § 273.4. While Washington State provides supplemental, state-funded programs for many noncitizens, not all noncitizens (and thus not all class member children) would be covered. *See, e.g.*, Wash. Admin. Code § 388-424-0030 (addressing how immigration status affects eligibility for state-funded food assistance programs); Wash. Admin. Code § 388-424-0001 (identifying qualifying immigration statuses for state-funded food assistance programs).

138. The Order will deprive the Plaintiff States' residents, Individual Plaintiffs' children, and the other proposed class member children of any immigration status. The INA and its implementing regulations do not provide any status to, and in fact do not contemplate, persons born in the United States who are not U.S. citizens, except for those born to foreign diplomatic officers. *See* 8 C.F.R. § 101.3(a); *see also* 8 U.S.C. §1401(a). Indeed, most persons born in the U.S. who are subject to the Order will have no other path to gain lawful status in this country.

139. Finally, the Citizenship Stripping Order is a source of immense stress, anxiety, and concern for some of the Plaintiff States' residents, Individual Plaintiffs, and proposed class members. They are understandably apprehensive and distressed about the prospect that their families may be separated, rendered ineligible for benefits, and subject to many other harms.

V. CLASS ACTION ALLEGATIONS

140. Individual Plaintiffs bring this action on behalf of themselves and all others who are similarly situated pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). A class

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action is proper because this action involves questions of law and fact common to the class, the class is so numerous that joinder of all members is impractical, Individual Plaintiffs' claims are typical of the claims of the class and will fairly and adequately protect the interests of the class. Defendants have acted on grounds that apply generally to the class, so that injunctive and declaratory relief and relief under the APA are appropriate with respect to the class as a whole.

141. Individual Plaintiffs seek to represent the following class:

> All pregnant persons residing in Washington State who will give birth in the United States on or after February 19, 2025, where neither parent of the expected child is a U.S. citizen or lawful permanent resident at the time of the child's birth; and,
>
> all children residing in Washington State who are born in the United States on or after February 19, 2025, where neither of their parents is a U.S. citizen or lawful permanent resident at the time of the child's birth.

142. The proposed class meets the numerosity requirements of Federal Rule of Civil Procedure 23(a)(1). The class is so numerous that joinder of all members is impracticable. The precise number of class members will be determined by how Defendants define and implement the key terms of the Citizenship Stripping Order. However, in 2021, Washington State estimated that there were over 300,000 undocumented noncitizens in the state.[13] Even a conservative estimate thus suggests that thousands of people, and perhaps many more, will be born this year alone in the state that will now be considered noncitizens.[14] Additionally, as described above, in 2022 there were approximately 4,000 births in Washington State to parents who were undocumented.

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[13] *See* Wei Yen, *Washington state's immigrant population: 2010-21*, Office of Financial Management, 2 (May 2023), *available at* https://ofm.wa.gov/sites/default/files/public/dataresearch/researchbriefs/brief110.pdf (attached as Ex. I).

[14] Washington State Dep't of Health, *All Births Dashboard*, https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/county-all-births-dashboard (last accessed Jan. 23, 2025) (reflecting a fertility rate of 53.5 births per 1,000 women aged 15–44 in 2022 in Washington) (attached as Ex. J).

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143. The proposed class meets the commonality requirements of Federal Rule of Civil Procedure 23(a)(2). The members of the class are all subject or will be subject to the Citizenship Stripping Order divesting them or their soon-to-be or future children of U.S. citizenship. The lawsuit raises questions of law common to members of the proposed class, including whether the Order violates the Fourteenth Amendment.

144. The proposed class meets the typicality requirements of Federal Rule of Civil Procedure 23(a)(3) because the claims of the representative Individual Plaintiffs are typical of the class. Individual Plaintiffs and the proposed class share the same legal claims, which assert the same claim under the Fourteenth Amendment, federal law, and the APA. All involve families where a child will be born in the United States where neither parent is a U.S. citizen or lawful permanent resident.

145. The proposed class meets the adequacy requirements of Federal Rule of Civil Procedure 23(a)(4). The representative Individual Plaintiffs seek the same final relief as the other members of the class—namely, an injunction that enjoins the President and federal agencies and personnel from enforcing the Order, a declaration clarifying the citizenship status of the children born in the United States targeted by the Citizenship Stripping Order, and appropriate relief under the APA. Individual Plaintiffs will fairly and adequately protect the interests of the proposed class members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

146. Individual Plaintiffs are represented by competent counsel with extensive experience in complex class actions and immigration law.

147. The proposed class also satisfies Federal Rule of Civil Procedure 23(b)(2). Defendants have acted on grounds generally applicable to the proposed class, thereby making final injunctive, declaratory, and APA relief appropriate.

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VI. FIRST CAUSE OF ACTION
(Fourteenth Amendment – Citizenship Clause)

148. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1-139.

149. The Fourteenth Amendment declares: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

150. Section 1 of the Citizenship Stripping Order declares that U.S. citizenship does not automatically extend to individuals born in the United States when (1) the individual's mother is "unlawfully present in the United States" and the father "was not a citizen or lawful permanent resident at the time of said person's birth"; or (2) the "person's mother's presence in the United States at the time of said person's birth was lawful but temporary . . . and the father was not a United States citizen or lawful permanent resident at the time of said person's birth."

151. Section 2 of the Citizenship Stripping Order states that Defendants will not issue documents recognizing U.S. citizenship to those individuals, nor accept documents issued by State, local, or other governments recognizing U.S. citizenship of those individuals.

152. Section 3 of the Citizenship Stripping Order requires Defendants to "take all appropriate measures to ensure" that Defendant agencies do not recognize the citizenship of certain U.S. citizens.

153. The Citizenship Stripping Order expressly violates the Fourteenth Amendment's guarantee of birthright citizenship to all individuals born in the United States and subject to the jurisdiction thereof.

154. The President has no authority to override or ignore the Fourteenth Amendment's Citizenship Clause or otherwise amend the Constitution, and therefore lacks authority to strip individuals of their right to citizenship.

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155. The Citizenship Stripping Order will cause harm to Washington, Arizona, Illinois, Oregon, and the residents of each Plaintiff State.

156. The Citizenship Stripping Order will cause harm to the Individual Plaintiffs and proposed class members.

VII. SECOND CAUSE OF ACTION
(Immigration and Nationality Act – 8 U.S.C. § 1401)

157. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1-139.

158. Section 1401 of the Immigration and Nationality Act states that "a person born in the United States, and subject to the jurisdiction thereof" "shall be [a] national[] and citizen[] of the United States at birth." 8 U.S.C. § 1401(a).

159. Section 1 of the Citizenship Stripping Order declares that U.S. citizenship does not automatically extend to individuals born in the United States when (1) the individual's mother is "unlawfully present in the United States" and the father "was not a citizen or lawful permanent resident at the time of said person's birth"; or (2) the "person's mother's presence in the United States at the time of said person's birth was lawful but temporary . . . and the father was not a United States citizen or lawful permanent resident at the time of said person's birth."

160. Section 2 of the Citizenship Stripping Order states that Defendants will not issue documents recognizing U.S. citizenship to those individuals, nor accept documents issued by State, local, or other governments recognizing U.S. citizenship of those individuals.

161. Section 3 of the Citizenship Stripping Order requires Defendants to "take all appropriate measures to ensure" that Defendant agencies do not recognize the citizenship of certain U.S. citizens.

162. The Citizenship Stripping Order expressly violates Section 1401's guarantee of birthright citizenship to all individuals born in the United States and subject to the jurisdiction thereof.

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163. The President has no authority to override Section 1401's statutory guarantee of citizenship, and therefore lacks any authority to unilaterally strip individuals of their right to citizenship.

164. The Citizenship Stripping Order will cause harm to Washington, Arizona, Illinois, Oregon, and the residents of each Plaintiff State.

165. The Citizenship Stripping Order will cause harm to the Individual Plaintiffs and proposed class members.

VIII. THIRD CAUSE OF ACTION
(Administrative Procedure Act – 5 U.S.C. § 706)

166. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1-139.

167. The actions of Defendants that are required or permitted by the Citizenship Stripping Order, as set forth above, are contrary to constitutional right, power, privilege, or immunity, including rights protected by the Fourteenth Amendment to the U.S. Constitution, in violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(B).

168. The actions of Defendants that are required or permitted by the Citizenship Stripping Order, as set forth above, violate 8 U.S.C. § 1401 *et seq*., and are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

169. The Citizenship Stripping Order will cause harm to Washington, Arizona, Illinois, Oregon, and the residents of each Plaintiff State.

170. The Citizenship Stripping Order will cause harm to the Individual Plaintiffs and proposed class members.

171. Accordingly, Plaintiffs request that the Court set aside any and all agency action that implements the Citizenship Stripping Order.

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IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

a. Declare that the Citizenship Stripping Order is contrary to the Constitution and laws of the United States;

b. Certify the case as a class action as proposed by Individual Plaintiffs herein and in the previously filed motion for class certification, ECF No. 58;

c. Preliminarily and permanently enjoin Defendants from implementing or enforcing the Citizenship Stripping Order, pending further orders from this Court;

d. Declare that Individual Plaintiffs' children born on or after the implementation date of the Citizenship Stripping Order and others similarly situated are U.S. citizens, notwithstanding the terms of the Order;

e. Award Individual Plaintiffs costs and reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

f. Award such additional relief as the interests of justice may require.

DATED this 4th day of February 2025.

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EXHIBIT A

PRESIDENTIAL ACTIONS

PROTECTING THE MEANING AND VALUE OF AMERICAN CITIZENSHIP

EXECUTIVE ORDER

January 20, 2025

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. The privilege of United States citizenship is a priceless and profound gift. 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." That provision rightly repudiated the Supreme Court of the United States's shameful decision in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), which

misinterpreted the Constitution as permanently excluding people of African descent from eligibility for United States citizenship solely based on their race. But the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States. The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not "subject to the jurisdiction thereof." Consistent with this understanding, the Congress has further specified through legislation that "a person born in the United States, and subject to the jurisdiction thereof" is a national and citizen of the United States at birth, 8 U.S.C. 1401, generally mirroring the Fourteenth Amendment's text. 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.

Sec. 2. Policy. (a) It is the policy of the United States that 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: (1) when that person's mother was unlawfully present in the United States and the person's 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 was lawful but temporary, and the

person's father was not a United States citizen or lawful permanent resident at the time of said person's birth.

(b) Subsection (a) of this section shall apply only to persons who are born within the United States after 30 days from the date of this order.

(c) Nothing in this order shall be construed to affect the entitlement of other individuals, including children of lawful permanent residents, to obtain documentation of their United States citizenship.

Sec. 3. Enforcement. (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security shall 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.

(b) The heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities.

Sec. 4. Definitions. As used in this order:

(a) "Mother" means the immediate female biological progenitor.

(b) "Father" means the immediate male biological progenitor.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against

the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,

January 20, 2025.

THE WHITE HOUSE

1600 Pennsylvania Ave NW
Washington, DC 20500

Privacy

EXHIBIT B

8 FAM 300
U.S. CITIZENSHIP AND NATIONALITY

8 FAM 301
U.S. CITIZENSHIP

8 FAM 301.1
ACQUISITION BY BIRTH IN THE UNITED STATES

(CT:CITZ-50; 01-21-2021)
(Office of Origin: CA/PPT/S/A)

8 FAM 301.1-1 INTRODUCTION

(CT:CITZ-50; 01-21-2021)

a. U.S. citizenship may be acquired either at birth or through naturalization subsequent to birth. U.S. laws governing the acquisition of citizenship at birth embody two legal principles:

(1) Jus soli (the law of the soil) - a rule of common law under which the place of a person's birth determines citizenship. In addition to common law, this principle is embodied in the 14th Amendment to the U.S. Constitution and the various U.S. citizenship and nationality statutes; and

(2) Jus sanguinis (the law of the bloodline) - a concept of Roman or civil law under which a person's citizenship is determined by the citizenship of one or both parents. This rule, frequently called "citizenship by descent" or "derivative citizenship", is not embodied in the U.S. Constitution, but such citizenship is granted through statute. As U.S. laws have changed, the requirements for conferring and retaining derivative citizenship have also changed.

b. National vs. citizen: While most people and countries use the terms "citizenship" and "nationality" interchangeably, U.S. law differentiates between the two. Under current law all U.S. citizens are also U.S. nationals, but not all

U.S. nationals are U.S. citizens. The term "national of the United States", as defined by statute (INA 101 (a)(22) (8 U.S.C. 1101(a)(22)) includes all citizens of the United States, and other persons who owe allegiance to the United States but who have not been granted the privilege of citizenship:

(1) Nationals of the United States who are not citizens owe allegiance to the United States and are entitled to the consular protection of the United States when abroad, and to U.S. documentation, such as U.S. passports with appropriate endorsements. They are not entitled to voting representation in Congress and, under most state laws, are not entitled to vote in Federal, State, or local elections except in their place of birth. (See 7 FAM 012 and 7 FAM 1300 Appendix B Endorsement 09.);

(2) Historically, Congress, through statutes, granted U.S. non-citizen nationality to persons born or inhabiting territory acquired by the United States through conquest or treaty. At one time or other natives and certain other residents of Puerto Rico, the U.S. Virgin Islands, the Philippines, Guam, and the Panama Canal Zone **were** U.S. non-citizen nationals. (See 7 FAM 1120 and 7 FAM 1100 Appendix P.);

(3) Under current law, only persons born in American Samoa and Swains Island are U.S. non-citizen nationals (INA 101(a)(29) (8 U.S.C. 1101(a)(29) and INA 308(1) (8 U.S.C. 1408)). (See 7 FAM 1125.); and

(4) See 7 FAM 1126 regarding the citizenship/nationality status of persons born on the Commonwealth of the Northern Mariana Islands (CNMI).

c. Naturalization – Acquisition of U.S. Citizenship Subsequent to Birth: Naturalization is "the conferring of nationality of a State upon a person after birth, by any means whatsoever" (INA 101(a)(23) (8 U.S.C. 1101(a)(23)) or conferring of citizenship upon a person (see INA 310, 8 U.S.C. 1421 and INA 311, 8 U.S.C. 1422). Naturalization can be granted automatically or pursuant to an application. (See 7 FAM 1140.)

d. "Subject to the Jurisdiction of the United States": All children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S. citizenship at birth even if their parents were in the United States illegally at the time of birth:

(1) The U.S. Supreme Court examined at length the theories and legal precedents on which the U.S. citizenship laws are based in U.S. v. Wong Kim Ark, 169 U.S. 649 (1898). In particular, the Court discussed the types of persons who are subject to U.S. jurisdiction. The Court affirmed that a child born in the United States to Chinese parents acquired U.S. citizenship even though the parents were, at the time, racially ineligible for naturalization;

(2) The Court also concluded that: "The 14th 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 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." Pursuant to this ruling:

(a) Acquisition of U.S. citizenship generally is not affected by the fact that the parents may be in the United States temporarily or illegally; and that; and

(b) A child born in an immigration detention center physically located in the United States is considered to have been born in the United States and be subject to its jurisdiction. This is so even if the child's parents have not been legally admitted to the United States and, for immigration purposes, may be viewed as not being in the United States.

8 FAM 301.1-2 WHAT IS BIRTH "IN THE UNITED STATES"?

(CT:CITZ-45; 12-09-2020)

a. INA 101(a)(38) (8 U.S.C. 1101 (a)(38)) provides that "the term 'United States,' when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States."

b. On November 3, 1986, Public Law 94-241, "approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", (Section 506(c)),took effect. From that point on, the Northern Mariana Islands have been treated as part of the United States for the purposes of INA 301 (8 U.S.C. 1401) and INA 308 (8 U.S.C. 1408) (see 8 FAM 302.1)

c. The Nationality Act of 1940 (NA), Section 101(d) (54 Statutes at Large 1172) (effective January 13, 1941 until December 23, 1952) provided that "the term 'United States' when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands of the United States." The 1940 Act did not include Guam or the Northern Mariana Islands as coming within the definition of "United States."

> See the text of the 1940 Act on the Intranet, Acquisition of Citizenship, Legal and Regulatory Documents.

d. Prior to January 13, 1941, there was no statutory definition of "the United States" for citizenship purposes. The phrase "in the United States" as used in Section 1993 of the Revised Statues of 1878 clearly includes states that have been admitted to the Union (see 8 FAM 102.2).

e. INA 304 (8 U.S.C. 1404) and INA 305 (8 U.S.C. 1405) provide a basis for citizenship of persons born in Alaska and Hawaii, respectively, while they were territories of the United States.

8 FAM 301.1-3 NOT INCLUDED IN THE MEANING OF "IN THE UNITED STATES"

(CT:CITZ-1; 06-27-2018)

a. Birth on U.S. Registered Vessel On High Seas or in the Exclusive Economic Zone: A U.S.-registered or documented ship on the high seas or in the exclusive economic zone is not considered to be part of the United States. Under the law of the sea, an Exclusive Economic Zone (EEZ) is a maritime zone over which a State has special rights over the exploration and use of natural resources. The EEZ extends up to 200 nautical miles from the coastal baseline. A child born on such a vessel does not acquire U.S. citizenship by reason of the place of birth (Lam Mow v. Nagle, 24 F.2d 316 (9th Cir., 1928)).

> **NOTE**: This concept of allotting nations EEZs to give better control of maritime affairs outside territorial limits gained acceptance in the late 20th century and was given binding international recognition by the United Nations Convention on the Law of the Sea (UNCLOS) in 1982.
>
> Part V, Article 55 of the Convention states:
>
> Specific legal regime of the EEZ:
>
> The EEZ is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this convention.

b. A U.S.-registered aircraft outside U.S. airspace is not considered to be part of U.S. territory. A child born on such an aircraft outside U.S. airspace does not acquire U.S. citizenship by reason of the place of birth.

> **NOTE**: The United States of America is not a party to the U.N. Convention on Reduction of Statelessness (1961). Article 3 of the Convention does not apply to the United States. Article 3 provides
>
> > "For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be."
>
> This is a frequently asked question.

c. Birth on U.S. military base outside of the United States or birth on U.S. embassy or consulate premises abroad:

(1) Despite widespread popular belief, U.S. military installations abroad and U.S. diplomatic or consular facilities abroad are not part of the United

States within the meaning of the 14th Amendment. A child born on the premises of such a facility is not born in the United States and does not acquire U.S. citizenship by reason of birth;

(2) The status of diplomatic and consular premises arises from the rules of law relating to immunity from the prescriptive and enforcement jurisdiction of the receiving State; the premises are not part of the territory of the United States of America. (See Restatement (Third) of Foreign Relations Law, Vol. 1, Sec. 466, Comment a and c (1987). See also, Persinger v. Iran, 729 F.2d 835 (D.C. Cir. 1984).

d. Birth on foreign ships in foreign government non-commercial service:

(1) A child born on a foreign merchant ship or privately owned vessel in U.S. internal waters is considered as having been born subject to the jurisdiction of the United States. (See U.S. v. Wong Kim Ark.); and

(2) Foreign warships, naval auxiliaries, and other vessels or aircraft owned or operated by a State and used for governmental non-commercial service are not subject to jurisdiction of the United States. Persons born on such vessels while in U.S. internal waters (or, of course, anywhere else) do not acquire U.S. citizenship by virtue of place of birth.

e. Alien enemies during hostile occupation:

(1) If part of the United States were occupied by foreign armed forces against the wishes of the United States, children born to enemy aliens in the occupied areas would not be subject to U.S. jurisdiction and would not acquire U.S. citizenship at birth; and

(2) Children born to persons other than enemy aliens in an area temporarily occupied by hostile forces would acquire U.S. citizenship at birth because sovereignty would not have been transferred to the other country. (See U.S. v. Wong Kim Ark.)

8 FAM 301.1-4 BIRTH IN U.S. INTERNAL WATERS AND TERRITORIAL SEA

(CT:CITZ-50; 01-21-2021)

a. Persons born on ships located within U.S. internal waters (except as provided in 8 FAM 301.1-3) are considered to have been born in the United States. Such persons will acquire U.S. citizenship at birth if they are subject to the jurisdiction of the United States. Internal waters include the ports, harbors, bays, and other enclosed areas of the sea along the U.S. coast. As noted above, a child born on a foreign merchant ship or privately owned vessel in U.S. internal waters is considered as having been born subject to the jurisdiction of the United States. (See U.S. v. Wong Kim Ark.)

b. Twelve Nautical Mile Limit: The territorial sea of the United States was formerly three nautical miles. (See, e.g., Cunard S.S. Co. v Mellon, 262 U.S. 100, 122, 43 S. Ct. 504, 67 L. Ed. 894 (1923).) However, the three-mile rule

was changed by a Presidential Proclamation in 1988, implementing the territorial-sea provision of the 1982 U.N. Convention on the Law of the Sea. (Presidential Proclamation 5928, signed December 27, 1988, published at 54 Federal Register 777, January 9, 1989.) As decreed by that Proclamation, the territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law. (The Proclamation also stated that the jurisdiction of the United States extends to the airspace over the territorial sea.) (See Gordon, Immigration Law and Procedure, Part 8 Nationality and Citizenship, 92.03(2)(b) territorial limits.)

c. FAM guidance up until 1995 (7 FAM 1116.1-2 In U.S. Waters TL:CON-64; 11-30-95) advised that persons born within the 3-mile limit of the U.S. territorial sea were born "within the United States" and could be documented as U.S. citizens if they were also born subject to U.S. jurisdiction. Some commentators took this view as well, such as Gordon. Analysis of this issue undertaken in 1994-1995 revealed, however, that there is a substantial legal question whether persons born outside the internal waters of the United States but within the territorial sea are in fact born "within the United States" for purposes of the 14th Amendment and the INA.

d. Cases involving persons born outside the internal waters but within the U.S. territorial sea, must be referred to AskPPTAdjudication@state.gov for coordination with L/CA, L/OES, and other appropriate offices within the United States government.

***NOTE**: This is not a public-facing e-mail address and public inquiries will not be replied to.*

8 FAM 301.1-5 WHAT IS BIRTH IN U.S. AIRSPACE?

(CT:CITZ-45; 12-09-2020)

a. Under international law, the limits of a country's sovereign airspace correspond with the extent of its territorial sea. The outer limit of the territorial sea of the United States is 12 nautical miles from the coastline. Airspace above the land territory, internal waters, and territorial sea is considered to be part of the United States (Presidential Proclamation 5928, signed December 27, 1988, published at 54 Federal Register 777, January 9, 1989).

b. Comments on the applicability of the 14th Amendment to vessels and planes, are found in Gordon, Immigration Law and Procedure, Part 8, Nationality and Citizenship, Chapter 92, 92.03 (New York: Matthew Bender, 2007). This volume states:

> "The rules applicable to vessels obviously apply equally to airplanes. Thus a child born on a plane in the United States or flying over its territory would acquire United States citizenship at birth."

c. Under the 1944 Convention on International Civil Aviation, articles 17–21, all aircraft have the nationality of the State in which they are registered, and may not have multiple nationalities. For births, the nationality law of the aircraft's "nationality" may be applicable, and for births that occur in flight while the aircraft is not within the territory or airspace of any State, it is the only applicable law that may be pertinent regarding acquisition of citizenship by place of birth. However, if the aircraft is in, or flying over the territory of another State, that State may also have concurrent jurisdiction.

d. Cases of citizenship of persons born on planes in airspace above the United States land territory or internal waters may be adjudicated by passport specialists at domestic passport agencies and centers or consular officers at posts abroad in accordance with 8 FAM 301.1-6.

e. Cases of persons born on planes in airspace outside the 12 nautical mile limit would be adjudicated as a birth abroad under INA 301 (8 U.S.C. 1401) or INA 309 (8 U.S.C. 1409) as made applicable by INA 301(g).

f. Cases of persons born on a plane in airspace above the U.S. territorial sea (12 nautical mile limit) must be referred to AskPPTAdjudication@state.gov for consultation with L/CA.

8 FAM 301.1-6 DOCUMENTING BIRTH IN U.S. WATERS AND U.S. AIRSPACE

(CT:CITZ-1; 06-27-2018)

a. Proof of birth in U.S. internal waters or U.S. airspace consists of a U.S. birth certificate certified by the issuing authority in the U.S. jurisdiction.

b. There is no U.S. Federal law governing the report of such births.

c. Generally speaking, U.S. Customs and Border Protection (CBP) would require some documentation of the birth, generally an excerpt of the ship's/aircraft's medical log or master/captain's log, reflecting the time, latitude, and longitude when the birth occurred.

d. For ships/aircraft in-bound for the United States, the parents would then be responsible for reporting the birth to the civil authorities in the U.S. jurisdiction where the vessel put into port. (See the Centers for Disease Control and Prevention (CDC) publication "Where to Write for Birth Certificates.")

(1) The parents will have to contact the state vital records office to determine the exact procedures for report such a birth;

(2) Parents should obtain a certified copy of the ship's medical log, airplane's log, or other statement from the attending physician or other attendant and attempt to obtain information on how to contact attendants in the future should further questions arise;

(3) If the mother and child were immediately taken to a U.S. hospital, authorities there may be of assistance in facilitating contact with the appropriate state authorities; and

(4) It is unlikely that the vital records office in the parents' state of residence will issue such a birth certificate. Parents may be redirected to the vital records office in the state where the ship first put into port after the birth of the child.

8 FAM 301.1-7 NATIVE AMERICANS AND ESKIMOS

(CT:CITZ-1; 06-27-2018)

a. Before U.S. v. Wong Kim Ark, the only occasion on which the Supreme Court had considered the meaning of the 14th Amendment's phrase "subject to the jurisdiction" of the United States was in Elk v. Wilkins, 112 U.S. 94 (1884). That case hinged on whether a Native American who severed ties with the tribe and lived among whites was a U.S. citizen and entitled to vote. The Court held that the plaintiff had been born subject to tribal rather than U.S. jurisdiction and could not become a U.S. citizen merely by leaving the tribe and moving within the jurisdiction of the United States. The Court stated that: "The Indian tribes, being within the territorial limits of the United States, were not, strictly speaking, foreign States; but they were alien nations, distinct political communities, with whom the United States might and habitually did deal through treaties or acts of Congress. They were never deemed citizens of the United States except under explicit provisions of treaty or statute to that effect, either declaring a certain tribe, or such members of it as chose to remain behind on the removal of the tribe westward, to be citizens, or authorizing individuals of particular tribes to become citizens upon application for naturalization."

b. The Act of June 2, 1924 was the first comprehensive law relating to the citizenship of Native Americans. It provided: That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.

c. Section 201(b) NA, effective January 13, 1941, declared that persons born in the United States to members of an Indian, Eskimo, Aleutian, or other aboriginal tribe were nationals and citizens of the United States at birth.

d. INA 301(b) (8 U.S.C. 1401(b)) (formerly INA 301(a)(2)), in effect from December 24, 1952, restates this provision.

8 FAM 301.1-8 FOUNDLINGS

(CT:CITZ-1; 06-27-2018)

a. Under INA 301(f) (8 U.S.C. 1401(f)) (formerly Section 301(a)(6)) INA), a child of unknown parents is conclusively presumed to be a U.S. citizen if found in the United States when under 5 years of age, unless foreign birth is established before the child reaches age 21.

b. Under Section 201(f) of the Nationality Act of 1940, a child of unknown parents, found in the United States, was presumed to have been a U.S. citizen at birth until shown not to have been born in the United States no matter at what age this might have been demonstrated.

UNCLASSIFIED (U)

EXHIBIT C

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

OMB Control No. 1405-0004
Expiration Date: 04-30-2025
Estimated Burden: 85 Minutes

Please read all instructions first and type or print in black ink to complete this form.
For information or questions, visit travel.state.gov or contact the National Passport Information Center (NPIC) at 1-877-487-2778 (TDD/TTY: 1-888-874-7793) or NPIC@state.gov.

SECTION A. ELIGIBILITY TO USE THIS FORM

This form is used to apply for a U.S. passport book and/or card **in person** at an acceptance facility, a passport agency (by appointment only), or a U.S. embassy, consulate, or consular agency (if abroad). The U.S. passport is a travel document attesting to one's identity and issued to U.S. citizens or non-citizen U.S. nationals. To be eligible to use this form you must **apply in person** if at least one of the following is true:

- ✓ I am applying for my first U.S. passport
- ✓ I am under age 16
- ✓ My previous U.S. passport was either: a) issued under age 16; b) issued more than 15 years ago; c) lost, stolen, or damaged

If none of the above statements apply to you, then you may be eligible to apply using form DS-82 or DS-5504 depending on your circumstances. Visit travel.state.gov for more information.

- **Notice to Applicants Under Age 16:** You must appear in person to apply for a U.S. passport with your parent(s) or legal guardian(s). See Section D of these instructions or travel.state.gov for more details.
- **Notice to Applicants Ages 16 and 17:** At least one of your parent(s) or legal guardian(s) must know that you are applying for a U.S. passport. See Section D of these instructions or travel.state.gov for more details.
- **Notice to Applicants for No-Fee Regular, Service, Official, or Diplomatic Passports:** You may use this application if you meet all provisions listed; however, you must consult your sponsoring agency for instructions on proper routing procedures before forwarding this application. Your completed passport will be released to your sponsoring agency and forwarded to you.

SECTION B. STEPS TO APPLY FOR A U.S. PASSPORT

1. Complete this form (Do not sign until requested to do so by an authorized agent).
2. Attach one color photograph 2x2 inches in size and supporting documents (See Section D of these instructions).
3. Schedule appointment to apply in person by visiting our website or calling NPIC (see contact info at the top page).
4. Arrive for appointment and present completed form and attachments to the authorized agent who will administer the oath, witness you signing your form, and collect your passport fee.
5. Track application status online at Passportstatus.state.gov.
6. Receive new passport and original supporting documents (that you submitted with your application).

SECTION C. HOW TO COMPLETE THIS FORM

Please see the instructions below for items on the form that are not self-explanatory. The numbers match the numbered items of the form.

1. Name (Last, First, Middle): Enter the name to appear in the passport. The name to appear in the passport should be consistent with your proof of citizenship and identification. If you have changed your name and are not eligible to use a DS-82 or DS-5504, you must use this form. Visit travel.state.gov/namechange for more information.

2. Date of Birth: Use the following format: Month, Date, and Year (MM/DD/YYYY).

3. Gender: The gender markers used are "M" (male), "F" (female) and "X" (unspecified or another gender identity). The gender marker that you check on this form will appear in your passport regardless of the gender marker(s) on your previous passport and/or your supporting evidence of citizenship and identity. If changing your gender marker from what was printed on your previous passport, select "Yes" in this field on Application Page 1. If no gender marker is selected, we may print the gender as listed on your supporting evidence or contact you for more information. **Please Note**: We cannot guarantee that other countries you visit or travel through will recognize the gender marker on your passport. Visit travel.state.gov/gender for more information.

4. Place of Birth: Enter the name of the city and state if in the U.S. or city and country as presently known.

5. Social Security Number: You must provide a Social Security number (SSN), if you have been issued one, in accordance with Section 6039E of the Internal Revenue Code (26 U.S.C. 6039E) and 22 U.S.C 2714a(f). If you do not have a Social Security number, you must enter zeros in this field and submit a statement, signed, and dated, that includes the phrase, "*I declare under penalty of perjury under the laws of the United States of America that the following is true and correct: I have never been issued a Social Security Number by the Social Security Administration.*" If you reside abroad, you must also provide the name of the foreign country where you reside. The U.S. Department of State must provide your SSN and foreign residence information to the U.S. Department of the Treasury which will use it in connection with debt collection and check against lists of persons ineligible or potentially ineligible to receive a U.S. passport, among other authorized uses. If you fail to provide the information, we may deny your application and the Internal Revenue Service (IRS) may enforce a penalty. Refer all questions on this matter to the nearest IRS office.

6. Email: By providing your email you are consenting to us communicating with you by email about your application.

7. Primary Contact Phone Number: If providing a mobile/cell phone number you are consenting to receive calls and/or text messaging about your application.

8. Mailing Address Line 1 and 2 "In Care Of": For line 1 enter applicant's Street/RFD #, ***or*** P.O. Box ***or*** URB. For line 2, if you do not live at the address listed in this field, put the name of the person who lives at this address and mark it "In Care Of". **If the applicant is a minor child, you must include the "In Care Of" name of the parent or adult registered to receive mail at this address.**

9. List all other names you have used: Enter all legal names previously used to include maiden name, name changes, and previous married names. You can enter up to two names one in item A and one in item B. If only your last name has changed just enter your last name. If you need more space to write additional names, please use a separate sheet of paper and attach it to this form.

⚠ **Blue Section Application Page 1 - Identifying Documents and Signature Blocks: Skip this section and complete Application Page 2. Do not sign this form until requested to do so by the authorized agent who will administer the oath to you.**

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

SECTION D. ATTACHMENTS TO SUBMIT WITH THIS FORM

Once you have completed Application Pages 1 and 2, attach the supporting documents as outlined in this section.

1. **PROOF OF U.S. CITIZENSHIP** Information can be found on travel.state.gov/citizenship.

Applicants Born in the United States

Your evidence will be returned to you if it is not damaged, altered, or forged. Submit an original or certified copy and a photocopy of the front and back if there is printed information on the back, of one of the following documents:

- U.S. Birth Certificate that meets all the following requirements:
  - Issued by the city, county, or state of birth
  - Lists your full name, birthdate, and birthplace
  - Lists your parent(s)' full names
  - Lists date filed with registrar's office (must be within one year of birth)
  - Shows registrar's signature and the seal of the issuing authority
- Fully valid, undamaged U.S. passport (may be expired)
- Consular Report of Birth Abroad or Certification of Birth Abroad
- Certificate of Naturalization or Citizenship

- Secondary documents may be submitted if the U.S. birth certificate was filed more than one year after your birth ***or*** if no birth record exists. For no birth record on file, submit a registrar's letter to that effect. For both scenarios, submit a combination of the evidence listed below, with your first and last name, birthdate and/or birthplace, the seal or other certification of the office (if customary), and the signature of the issuing official.
  - A hospital birth record
  - An early baptismal or circumcision certificate
  - Early census, school, medical, or family Bible records
  - Insurance files or published birth announcements (such as a newspaper article)
  - Notarized affidavits (or DS-10, Birth Affidavit) of older blood relatives having knowledge of your birth may be submitted in addition to some of the records listed above.

Applicants Born Outside the United States

If we determine that you are a U.S. citizen, your lawful permanent resident card submitted with this application will be forwarded to U.S. Citizenship and Immigration Services.

- Claiming Citizenship through Naturalization of One or Both Parent(s), submit all the following:
  - Your parent(s) Certificate(s) of Naturalization
  - Your parents' marriage/certificate and/or evidence that you were in the legal and physical custody of your U.S. citizen parent, if applicable
  - Your foreign birth certificate (and official translation if the document is not in English)
  - Your evidence of admission to the United States for legal permanent residence and proof you subsequently resided in the United States

- Claiming Citizenship through Birth Abroad to At Least One U.S. Citizen Parent, submit all the following:
  - Your Consular Report of Birth Abroad (Form FS-240), Certification of Birth (Form DS-1350 or FS-545), or your foreign birth certificate (and official translation if the document is not in English)
  - Your parent's proof of U.S. citizenship
  - Your parents' marriage certificate
  - Affidavit showing all your U.S. citizen parents' periods and places of residence and physical presence before your birth (DS-5507)

- Claiming Citizenship Through Adoption by a U.S. Citizen Parent(s), *if your birthdate is on or after October 5, 1978*, submit evidence of all the following:
  - Your permanent residence status
  - Your full and final adoption
  - You were in the legal and physical custody of your U.S. citizen parent(s)
  - You have resided in the United States

2. **PROOF OF IDENTITY** Information can be found at travel.state.gov/identification.

Present your original identification and submit a front and back photocopy with this form. It must show a photograph that is a good likeness of you. Examples include:

- Driver's license (not temporary or learner's permit)
- Previous or current U.S. passport book/card
- Military identification
- Federal, state, or city government employee identification
- Certificate of Naturalization or Citizenship

3. **A RECENT COLOR PHOTOGRAPH** See the full list of photo requirements on travel.state.gov/photos.

Attach one photo, 2x2 inches in size. U.S. passport photo requirements may differ from photo requirements of other countries. To avoid processing delays, be sure your photo meets all the following requirements (Refer to the photo template on Application Page 1):

- Taken less than six months ago
- Head must be 1-1 3/8 inches from the bottom of the chin to the top of the head
- Head must face the camera directly with full face in view
- No eyeglasses and head covering and no uniforms*
- Printed on matte or glossy photo quality paper
- Use a plain white or off-white background

*Head coverings are not acceptable unless you submit a signed statement verifying that it is part of recognized, traditional religious attire that is customarily or required to be worn continuously in public or a signed doctor's statement verifying its daily use for medical purposes. Glasses or other eyewear are not acceptable unless you submit a signed statement from a doctor explaining why you cannot remove them (e.g., during the recovery period from eye surgery). Photos are to be taken in clothing normally worn on a daily basis. You cannot wear a uniform, clothing that looks like a uniform, or camouflage attire.

APPLICATION FOR A U.S. PASSPORT

4. **PROOF OF PARENTAL RELATIONSHIP** ***(FOR APPLICANTS UNDER AGE 16)***

Parents/guardians must appear in person with the child and submit the following:

- Evidence of the child's relationship to parents/guardian(s) (Example: a birth certificate or Consular Report of Birth Abroad listing the names of the parent(s)/guardian(s) and child)
- Original parental/guardian government-issued photo identification and a photocopy of the front and back (to satisfy proof of identity)

If only one parent/guardian can appear in person with the child, you must also submit one of the following:

- The second parent's notarized written statement or DS-3053 (including the child's full name and date of birth) consenting to the passport issuance for the child. The notarized statement cannot be more than three months old, must be signed and notarized on the same day, and must come with a front and back photocopy of the second parent's government-issued photo identification.
- The second parent's death certificate (if second parent is deceased)
- Evidence of sole authority to apply (Example: a court order granting sole legal custody or a birth certificate listing only one parent)
- A written statement (made under penalty of perjury) or DS-5525 explaining, in detail, why the second parent cannot be reached

OR

PROOF OF PARENTAL AWARENESS ***(FOR APPLICANTS AGES 16 AND 17)***

We may request the consent of one legal parent/legal guardian to issue a U.S. passport to you. In many cases, the passport authorizing officer may be able to ascertain parental awareness of the application by virtue of the parent's presence when the minor submits the application or a signed note from the parent or proof the parent is paying the application fees. However, the passport authorizing officer retains discretion to request the legal parent's/legal guardian's notarized statement of consent to issuance (e.g., on Form DS-3053).

5. **FEES** Passport service fees are established by law and regulation (see 22 U.S.C. 214, 22 C.F.R. 22.1, and 22 C.F.R. 51.50-56) and are collected at the time you apply for the passport service. By law, the passport fees are **non-refundable**. Visit travel.state.gov/passportfees for current fees and how fees are used and processed. Payment methods are as follows:

Applicant Applying in the United States At Acceptance Facility	Applicant Applying at a Passport Agency or Outside the United States
• Passport fees must be made by check (personal, certified, cashier's, travelers) or money order (U.S. Postal, international, currency exchange) with the applicant's full name and date of birth printed on the front and payable to "U.S. Department of State." • The execution fee **must be paid separately** and made payable to the acceptance facility in the form that they accept.	• We accept checks (personal, certified, cashier's, travelers); major credit cards (Visa, Master Card, American Express, Discover); money orders (U.S. Postal, international, currency exchange); or exact cash (no change provided). Make all fees payable to the "U.S. Department of State." • If applying outside the United States: Please see the website of your embassy, consulate, or consular agency for acceptable payment methods.

Other Services Requiring Additional Fee (Visit travel.state.gov for more details)**:**

- **Expedite Service:** Only available for passports mailed in the United States and Canada.
- **1-2 Day Delivery:** Only available for passport book (and not passport card) mailings in the United States.
- **Verification of a previous U.S. Passport or Consular Report of Birth Abroad:** Upon your request, we verify previously issued U.S. passport or Consular Report of Birth Abroad if you are unable to submit evidence of U.S. citizenship.
- **Special Issuance Passports:** If you apply for a no-fee regular, service, official, or diplomatic passport at a designated acceptance facility, you must pay the execution fee. No other fees are charged when you apply.

SECTION E. HOW TO SUBMIT THIS FORM

Submitting your form depends on your location and how soon you need your passport.

- **Applicant Located Inside the United States:** For the latest information regarding processing times, scheduling appointments, and nearest designated acceptance facilities visit travel.state.gov or contact NPIC.

- **Applicant Located Outside the United States:** In most countries, you must apply in person at a U.S. embassy or consulate for all passport services. Each U.S. embassy and consulate has different procedures for submitting and processing your application. Visit travel.state.gov to check the U.S. embassy or consulate webpage for more information.

SECTION F. RECEIVING YOUR PASSPORT AND SUPPORTING DOCUMENTS

- **Difference Between U.S. Passport Book and Card:** The book is valid for international travel by air, land, and sea. The card is not valid for international air travel, only for entry at land border crossings and seaports of entry when traveling from Canada, Mexico, Bermuda, and the Caribbean. The maximum number of letters provided for your given name (first and middle) on the card is 24 characters. If both your given names are more than 24 characters, you must shorten one of your given names you list on item #1 of Application Page 1.
- **Separate mailings:** You may receive your newly issued U.S. passport book and/or card and your citizenship evidence in two separate mailings. If you are applying for both a book and card, you may receive three separate mailings: one with your returned evidence, one with your newly issued book, and one with your newly issued card. **All documentary evidence that is not damaged, altered, or forged will be returned to you.** Photocopies will not be returned.
- **Passport numbers:** Each newly issued passport book or card will have a different passport number than your previous one.
- **Shipping and Delivery Changes:** If your mailing address changes prior to receipt of your new passport, please contact NPIC. **NOTE:** We will not mail a U.S. passport to a private address outside the United States or Canada.
- **Passport Corrections, Non-Receipt/Undeliverable Passports, and Lost/Stolen Passport:** For more information visit travel.state.gov or contact NPIC.

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

WARNING

False statements made knowingly and willfully in passport applications, including affidavits or other documents submitted to support this application, are punishable by fine and/or imprisonment under U.S. law including the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542, and/or 18 U.S.C. 1621. Alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1543. The use of a passport in violation of the restrictions contained herein or of passport regulations is punishable by fine and/or imprisonment under 18 U.S.C. 1544. All statements and documents are subject to verification.

Failure to provide information requested on this form, including your Social Security number, may result in significant processing delays and/or the denial of your application.

ACTS OR CONDITIONS

If any of the below-mentioned acts or conditions have been performed by or apply to the applicant, a supplementary explanatory statement under oath (or affirmation) by the applicant should be attached and made a part of this application.

I have not been convicted of a federal or state drug offense or convicted of a statutory "sex tourism" crime, and I am not the subject of an outstanding federal, state, or local warrant of arrest for a felony; a criminal court order forbidding my departure from the United States; or a subpoena received from the United States in a matter involving federal prosecution for, or grand jury investigation of, a felony.

PRIVACY ACT STATEMENT

AUTHORITIES: Collection of this information is authorized by 22 U.S.C. 211 a et seq.; 8 U.S.C. 1104; 26 U.S.C. 6039E, 22 U.S.C. 2714a(f), Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001; Executive Order 11295 (August 5, 1966); and 22 C.F.R. parts 50 and 51.

PURPOSE: We are requesting this information in order to determine your eligibility to be issued a U.S. passport. Your Social Security number is used to verify your identity.

ROUTINE USES: This information may be disclosed to another domestic government agency, a private contractor, a foreign government agency, or to a private person or private employer in accordance with certain approved routine uses. These routine uses include, but are not limited to, law enforcement activities, employment verification, fraud prevention, border security, counterterrorism, litigation activities, and activities that meet the Secretary of State's responsibility to protect U.S. citizens and non-citizen nationals abroad. Your Social Security number will be provided to the U.S. Department of the Treasury and may be used in connection with debt collection, among other purposes authorized and generally described in this section. More information on the routine uses for the system can be found in System of Records Notices State-05, Overseas Citizen Services Records and Other Overseas Records and State-26, Passport Records.

DISCLOSURE: Providing information on this form is voluntary. Be advised, however, that failure to provide the information requested on this form may cause delays in processing your U.S. passport application and/or could also result in the refusal or denial of your application. Failure to provide your Social Security number may result in the denial of your application (consistent with 22 U.S.C. 2714a(f)) and may subject you to penalty enforced by the Internal Revenue Service, as described in the Federal Tax Law on Instruction Page 1 (Section C) to this form.

PAPERWORK REDUCTION ACT STATEMENT

Public reporting burden for this collection of information is estimated to average 85 minutes per response, including the time required for searching existing data sources, gathering the necessary data, providing the information and/or documents required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: Passport Forms Officer, U.S. Department of State, Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, 44132 Mercure Cir, PO Box 1199, Sterling, Virginia 20166-1199.

For more information about your application status, online tools, current fees, and processing times, please visit travel.state.gov.

U.S. Department of State

APPLICATION FOR A U.S. PASSPORT

OMB Control No. 1405-0004
Expiration Date: 04/30/2025
Estimated Burden: 85 Minutes

Use black ink only. If you make an error, complete a new form. Do not correct.

Select document(s) for which you are submitting fees:

☐ U.S. Passport Book ☐ U.S. Passport Card ☐ Both

The U.S. passport card is **not** valid for international air travel. See Instruction Page 3

☐ Regular Book (Standard) ☐ Large Book (Non-Standard)

The large book is for frequent international travelers who need more visa pages.

1. Name Last

☐ D ☐ O ☐ S ☐ NFR

End. # _____ Exp. _____

First

Middle

2. Date of Birth *(mm/dd/yyyy)*

3. Gender (Read Instruction Page 1) M ☐ F ☐ X ☐ Changing gender marker? Yes ☐

4. Place of Birth *(City & State if in the U.S. or City & Country as it is presently known.)*

5. Social Security Number

6. Email *(See application status at passportstatus.state.gov)*

7. Primary Contact Phone Number

8. Mailing Address Line 1: Street/RFD#, P.O. Box, or URB

Address Line 2: *(Include Apartment, Suite, etc. If applicant is a child, write "In Care Of" of the parent. Example: In Care Of - Jane Doe)*

City

State

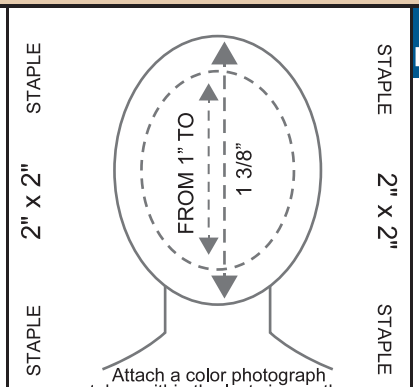
Zip Code

Country, *(if outside the United States)*

9. List all other names you have used. *(Examples: Birth Name, Maiden, Previous Marriage, Legal Name Change. Attach additional pages if needed.)*

A.

B.



STOP! CONTINUE TO PAGE 2

DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY AUTHORIZED AGENT

Identifying Documents - Applicant or Mother/Father/Parent/Legal Guardian on Second Signature Line (if identifying minor)

☐ Driver's License ☐ State Issued ID Card ☐ Passport ☐ Military ☐ Other _____

Name

Issue Date *(mm/dd/yyyy)*

Exp. Date *(mm/dd/yyyy)*

State of Issuance

ID No

Country of Issuance

Identifying Documents - Applicant or Mother/Father/Parent/Legal Guardian on Third Signature Line (if identifying minor)

☐ Driver's License ☐ State Issued ID Card ☐ Passport ☐ Military ☐ Other _____

Name

Issue Date *(mm/dd/yyyy)*

Exp. Date *(mm/dd/yyyy)*

State of Issuance

ID No

Country of Issuance

☐ Acceptance Agent ☐ (Vice) Consul USA

☐ Passport Staff Agent

(Seal)

I declare under penalty of perjury all of the following: 1) I am a citizen or non-citizen national of the United States and have not performed any of the acts listed under "Acts or Conditions" on page 4 of the instructions of this application (unless explanatory statement is attached); 2) the statements made on the application are true and correct; 3) I have not knowingly and willfully made false statements or included false documents in support of this application; 4) the photograph attached to this application is a genuine, current photograph of me; and 5) I have read and understood the warning on page 4 of the instructions to the application form.

x _____

Applicant's Legal Signature - age 16 and older

x _____

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

x _____

Mother/Father/Parent/Legal Guardian's Signature (if identifying minor)

Signature of person authorized to accept applications

Date

By signing this form, I certify that I have provided the verbal oath and witnessed the applicant's/legal guardian's signature.

Agent ID Number

Print Facility Name/Location

Facility ID Number

Name of courier company (*if applicable*)

For Issuing Office Only → Bk _____ Card _____ EF _____ Postage **412a** Execution _____ Other _____

DS 11 C 03 2022 1

Name of Applicant *(Last, First, & Middle)*

Date of Birth *(mm/dd/yyyy)*

10. Parental Information

Mother/Father/Parent - First & Middle Name *(at Parent's Birth)*

Last Name *(at Parent's Birth)*

Date of Birth *(mm/dd/yyyy)*

Place of Birth *(City & State if in the U.S. or City & Country as it is presently known)*

Gender ☐ M ☐ F ☐ X

U.S. Citizen? ☐ Yes ☐ No

Mother/Father/Parent - First & Middle Name *(at Parent's Birth)*

Last Name *(at Parent's Birth)*

Date of Birth *(mm/dd/yyyy)*

Place of Birth *(City & State if in the U.S. or City & Country as it is presently known)*

Gender ☐ M ☐ F ☐ X

U.S. Citizen? ☐ Yes ☐ No

11. Have you ever been married? ☐ Yes ☐ No *If yes, complete the remaining items in #11.*

Full Name of Current Spouse or Most Recent Spouse *(Last, First & Middle)*

Date of Birth *(mm/dd/yyyy)*

Place of Birth

U.S. Citizen? ☐ Yes ☐ No

Date of Marriage *(mm/dd/yyyy)*

Have you ever been widowed or divorced? ☐ Yes ☐ No

Widow/Divorce Date *(mm/dd/yyyy)*

12. Additional Contact Phone Number

☐ Home ☐ Cell ☐ Work ☐ _____

13. Occupation *(if age 16 or older)*

14. Employer or School *(if applicable)*

15. Height

16. Hair Color

17. Eye Color

18. Travel Plans *(If no travel plans, please write "none")*

Departure Date *(mm/dd/yyyy)*

Return Date *(mm/dd/yyyy)*

Countries to be Visited

19. Permanent Address *(Complete if P.O. Box is listed under Mailing Address **or** if residence is different from Mailing Address. **Do not list a P.O. Box.**)*

Street/RFD # or URB

Apartment/Unit

City

State

Zip Code

20. Your Emergency Contact (*Provide the information of a person not traveling with you to be contacted in the event of an emergency.*)

Name

Address: Street/RFD # or P.O. Box

Apartment/Unit

City

State

Zip Code

Phone Number

Relationship

21. Have you ever applied for or been issued a U.S. Passport Book or Passport Card? ☐ Yes ☐ No *If yes, complete the remaining items in #21.*

Name as printed on your most recent passport book

Most recent passport book number

Most recent passport book issue date *(mm/dd/yyyy)*

Status of your most recent passport book: ☐ Submitting with application ☐ Stolen ☐ Lost ☐ In my possession *(if expired)*

Name as printed on your most recent passport card

Most recent passport card number

Most recent passport card issue date *(mm/dd/yyyy)*

Status of your most recent passport card: ☐ Submitting with application ☐ Stolen ☐ Lost ☐ In my possession *(if expired)*

PLEASE DO NOT WRITE BELOW THIS LINE - FOR ISSUING OFFICE ONLY

Name as it appears on citizenship evidence _____

☐ Birth Certificate SR CR City Filed: Issued:

☐ Sole Parent

☐ Nat. / Citz. Cert. USCIS USDC Date/Place Acquired: A#

☐ Report of Birth Filed/Place:

☐ Passport C/R S/R See #21 #/DOI:

☐ Other:

☐ Attached:

☐ P/C of Citz ☐ P/C of ID ☐ DS-71 ☐ DS-3053 ☐ DS-64 ☐ DS-5520 ☐ DS-5525 ☐ PAW ☐ NPIC ☐ IRL ☐ Citz W/S

DS 11 C 03 2022 2

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EXHIBIT D

I am a U.S. citizen

A4

How do I get proof of my U.S. citizenship?

U.S. Citizenship and Immigration Services

If you were born in the United States, you do not need to apply to USCIS for any evidence of citizenship. Your birth certificate issued where you were born is proof of your citizenship.[1]

If you were born outside the United States, but one or both of your parents were U.S. citizens when you were born, you may still be a U.S. citizen. This is called citizenship through derivation. There are usually additional specific requirements, and sometimes citizenship can be through a combination of a parent and grandparent.

What documents are usually accepted as proof of U.S. citizenship?

The most common documents that establish U.S. citizenship are:

- **Birth Certificate,** issued by a U.S. State (if the person was born in the United States), or by the U.S. Department of State (if the person was born abroad to U.S. citizen parents who registered the child's birth and U.S. citizenship with the U.S. Embassy or consulate);
- **U.S. Passport,** issued by the U.S. Department of State;
- **Certificate of Citizenship,** issued to a person born outside the United States who derived or acquired U.S. citizenship through a U.S. citizen parent; or
- **Naturalization Certificate,** issued to a person who became a U.S. citizen after 18 years of age through the naturalization process.

I was born in the United States. Where can I get a copy of my birth certificate?

Check with the Department of Health (Vital Records) in the U.S. State in which you were born. For more information, visit the National Center for Health Statistics web page at **www.cdc.gov/nchs/births.htm**.

[1]An exception to this rule exists regarding children born in the United States to foreign diplomats.

I am a U.S. citizen. My child will be born abroad or recently was born abroad. How do I register his or her birth and U.S. citizenship?

Please contact the U.S. Department of State or the U.S. Embassy or consulate in the country where your child will be born for more information about eligibility requirements and how to register your child's U.S. citizenship.

I was born overseas. My birth and U.S. citizenship were registered with the U.S. Embassy or consulate. I need a copy of the evidence of my citizenship. Whom should I contact?

Contact the U.S. Department of State. For more information, please see their Web site at **www.state.gov**.

I was born overseas. I believe I was a U.S. citizen at birth because one or both my parents were U.S. citizens when I was born. But my birth and citizenship were not registered with the U.S. Embassy when I was born. Can I apply to have my citizenship recognized?

Whether or not someone born outside the United States to a U.S. citizen parent is a U.S. citizen depends on the law in effect when the person was born. These laws have changed over the years, but usually require a combination of the parent being a U.S. citizen when the child was born, and the parent having lived in the United States or its possessions for a specific period of time. Derivative citizenship can be quite complex and may require careful legal analysis.

I was born overseas. One of my parents was a U.S. citizen but never lived in the United States. One of my grandparents was also a U.S. citizen. Could I have derived U.S. citizenship?

If your parent was a U.S. citizen when you were born but had not lived in the United States for the required amount of time before your birth, but one of your grandparents was also a U.S. citizen and had already met the residence requirements, then you may still

have derived U.S. citizenship. The provisions of immigration law that govern derivative citizenship are quite precise and circumstances in individual cases can be complex. For specific information on how the law applies, please check our Web site at **www.uscis.gov**, or the U.S. Department of State Web site at **www.state.gov,** or call USCIS Customer Service at **1-800-375-5283**.

I was born overseas. After I was born, my parent(s) became naturalized U.S. citizens. Could I have derived U.S. citizenship?

If **one** of your parents naturalized after February 27, 2001, and you were a permanent resident and under 18 years old at the time, then you may have automatically acquired U.S. citizenship. Before that date, you may have automatically acquired U.S. citizenship if you were a permanent resident and under 18 years old when **both** parents naturalized, or if you had only **one** parent when that parent naturalized.

However, if your parent(s) naturalized after you were 18, then you will need to apply for naturalization on your own after you have been a permanent resident for at least 5 years.

How do I apply to have my citizenship recognized?

You have two options:

- You can apply to the U.S. Department of State for a U.S. passport. A passport is evidence of citizenship and also serves as a travel document if you need to travel. For information about applying for a U.S. passport, see the U.S. Department of State Web site at **www.state.gov**.
- If you are already in the United States, you also have the option of applying to USCIS using **Form N-600**, Application for Certificate of Citizenship. However, you may find applying for a passport to be more convenient because it also serves as a travel document and could be a faster process.

How do I replace a lost, stolen, or destroyed Naturalization Certificate or Certificate of Citizenship?

To apply to replace your Naturalization Certificate or Certificate of Citizenship issued by USCIS or by the U.S. Immigration and Naturalization Service, file a **Form N-565**, Application for Replacement Naturalization Citizenship Document. Filing instructions and forms are available on our Web site at **www.uscis.gov**.

Key Information

Key USCIS forms referenced in this guide	Form #
Application for Certificate of Citizenship	N-600
Application for Replacement Naturalization Citizenship Document	N-565

Other U.S. Government Services–Click or Call		
General Information	www.usa.gov	1-800-333-4636
New Immigrants	www.welcometoUSA.gov	
U.S. Dept. of State	www.state.gov	1-202-647-6575
National Center for Health Statistics	www.cdc.gov	1-800-311-3435
	www.cdc.gov/nchs/birth.htm	

For more copies of this guide, or information about other customer guides, please visit **www.uscis.gov/howdoi**.

You can also visit **www.uscis.gov** to download forms, e-file some applications, check the status of an application, and more. It's a great place to start!

If you don't have Internet access at home or work, try your local library.

If you cannot find what you need, please call **Customer Service at: 1-800-375-5283**
Hearing Impaired TDD Customer Service: 1-800-767-1833

Disclaimer: *This guide provides basic information to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, please visit our Web site. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency accredited by the Board of Immigration Appeals.*

EXHIBIT E

Securing today and tomorrow

Social Security Numbers for Children

SSA.gov

The easiest way to get a Social Security number (SSN) for your newborn is to apply when you provide information for your baby's birth certificate in the hospital.

If you wait to apply for a number at a Social Security office, there may be delays while we verify your child's birth certificate.

Why should I get a Social Security number for my child?

You need an SSN to claim your child as a dependent on your income tax return. Your child may also need a number if you plan to:

- Open a bank account for the child.
- Buy savings bonds for the child.
- Get medical coverage for the child.
- Apply for government services for the child.

Must my child have a Social Security number?

Getting an SSN for your newborn is voluntary, but may be necessary to obtain important services, such as those listed above, for your child. Therefore, getting a number when your child is born is a good idea.

How do I apply?

At the hospital: When you complete the application for your baby's birth certificate, you will be asked whether you want to apply for an SSN for your baby.

If you say "yes," you will be asked to provide both parents' SSNs. If you don't know both parents' SSNs, you still can apply for your child's SSN.

At a Social Security office: If you wait to apply for your child's number, you can use our online Social Security Number and Card application available at ***www.ssa.gov/number-card***. You will start the application online and complete the process in a local Social Security office or card center. If you are not able to apply online, you can fill out and print our Application for a Social Security Card (Form SS-5), available at ***www.ssa.gov/forms/ss-5.pdf***.

No matter where you apply, you will need to:

- Show us original documents proving your child's:

  —U.S. citizenship.

  —Age.

  —Identity.

- Show us documents proving your identity and your relationship to your child.

Anyone age 12 or older who requests an original SSN must appear in person for an interview. This applies even if a parent or guardian will sign the application on the child's behalf.

Citizenship

We can accept only certain documents as proof of U.S. citizenship. These include a:

- U.S. birth certificate.
- U.S. consular report of birth.
- U.S. passport (valid and unexpired).
- Certificate of Naturalization or Certificate of Citizenship.

Noncitizens should see *Social Security Numbers for Noncitizens* (Publication No. 05-10096) for more information.

Age

If your child was born in the United States, you need to present your child's birth certificate. If your child does not have a birth certificate, we may be able to accept a:

- Religious record made before the age of 5 showing the date of birth.
- U.S. hospital record of birth.
- U.S. passport or passport card.

If your child was born outside the United States, you need to present your child's foreign birth certificate. You may already have it or can get a copy within 10 business days. If you can't get it, we may be able to accept your child's:

- Certificate of Birth Abroad (FS-545).
- Certificate of Report of Birth (DS-1350).
- Consular Report of Birth Abroad (FS-240).
- Certificate of Naturalization.
- Passport.

Identity

Your child: We can accept only certain documents as proof of your child's identity. An acceptable document must be current (not expired) and show your child's name, identifying information, and, preferably, a recent photograph. We generally can accept a non-photo identity document if it has enough information to identify the child. Information may include the child's name and age, date of birth, or parents' names. We prefer to see the child's unexpired U.S. passport. If that document isn't available, we may accept the child's:

- Unexpired valid state-issued nondriver identification card.
- Adoption decree.
- Certified copy of medical record (doctor, clinic, or hospital).
- Religious record.
- Certified school record showing your child's name and your child's age or date of birth (must be for the current or prior year).
- School identification card showing your child's name and either a photograph of your child, your child's age, or date of birth (**must be for the current or prior year**).

You: If you're a U.S. citizen, we will ask to see your U.S. driver's license, state-issued nondriver identification card, or U.S. passport as proof of your identity. If you don't have these specific

documents, we'll ask to see other documents that may be available, such as:

- Unexpired U.S. passport or passport card.
- Certificate of U.S. Citizenship.
- Certificate of Naturalization.
- School identification card showing your name and either your photograph, age, or date of birth (**must be for the current or prior year**).
- Health insurance card (not a Medicare card) showing your name and either your photograph, or age, or date of birth.
- U.S. military identification card.
- Employee identification card showing your name and either your photograph or date of birth.
- Life insurance policy.

All documents must be either originals or copies certified by the issuing agency. We can't accept photocopies or notarized copies of documents. We may use 1 document for 2 purposes. For example, we may use your child's passport as proof of both citizenship and identity. Or, we may use your child's birth certificate as proof of age and citizenship. ***However, you must provide at least 2 separate documents***.

We'll mail your child's number and card as soon as we have all of your child's information and have verified your child's documents.

What if my child is adopted?

We can assign your adopted child an SSN before the adoption is complete, but you may want to wait until the adoption is finalized. Then, you can apply for the number using your child's new name, with your name as parent. You may want to claim your child for tax purposes while the adoption is still pending. If so, contact the Internal Revenue Service for Form W-7A, *Application for Taxpayer Identification Number for Pending U.S. Adoptions*.

What does it cost?

There's no charge for issuing an SSN and card. If someone contacts you and wants to charge you for getting a number or card, please remember that these Social Security services are free. You can report anyone attempting to charge you by calling our Office of the Inspector General hotline at **1-800-269-0271 (TTY 1-866-501-2101 deaf or hard of hearing)** from 10:00 a.m. to 4:00 p.m. Eastern Time or visit ***https://oig.ssa.gov***.

What if I lose the card?

You can replace your Social Security card if it's lost or stolen. You're limited to 3 replacement cards in a year and 10 during your lifetime. Legal name changes and other exceptions don't count toward these limits. For example, changes in noncitizen status that require card updates may not count toward these limits. Also, you may not be affected by these limits if you can prove you need the card to prevent a significant hardship.

Your child's Social Security card is an important document. We recommend you keep it in a safe place. **Do not carry it with you**.

Social Security number misuse

If you think someone is using your child's SSN fraudulently, you should file a complaint with the Federal Trade Commission via:

- Internet — ***www.identitytheft.gov***.
- Telephone — **1-877-IDTHEFT** (**1-877-438-4338**).
- TTY — **1-866-653-4261**.

It's against the law to:

- Use someone else's SSN.
- Give false information when applying for a number.
- Alter, buy, or sell Social Security cards.

Contacting Us

The most convenient way to do business with us is to visit ***www.ssa.gov*** to get information and use our online services. There are several things you can do online: apply for benefits; start or complete your request for an original or replacement Social Security card; get useful information; find publications; and get answers to frequently asked questions.

When you open a personal *my* Social Security account, you have more capabilities. You can review your *Social Security Statement*, verify your earnings, and get estimates of future benefits. You can also print a benefit verification letter, change your direct deposit information (Social Security beneficiaries only), and get a replacement SSA-1099/1042S. Access to your personal *my* Social Security account may be limited for users outside the United States.

If you don't have access to the internet, we offer many automated services by telephone, 24 hours a day, 7 days a week, so you may not need to speak with a representative.

If you need to speak with someone, call us toll-free at **1-800-772-1213** or at our TTY number, **1-800-325-0778**, if you're deaf or hard of hearing. A member of our staff can answer your call from 8 a.m. to 7 p.m., Monday through Friday. We provide free interpreter services

upon request. For quicker access to a representative, try calling early in the day (between 8 a.m. and 10 a.m. local time) or later in the day. **We are less busy later in the week (Wednesday to Friday) and later in the month.**

Social Security Administration
Publication No. 05-10023
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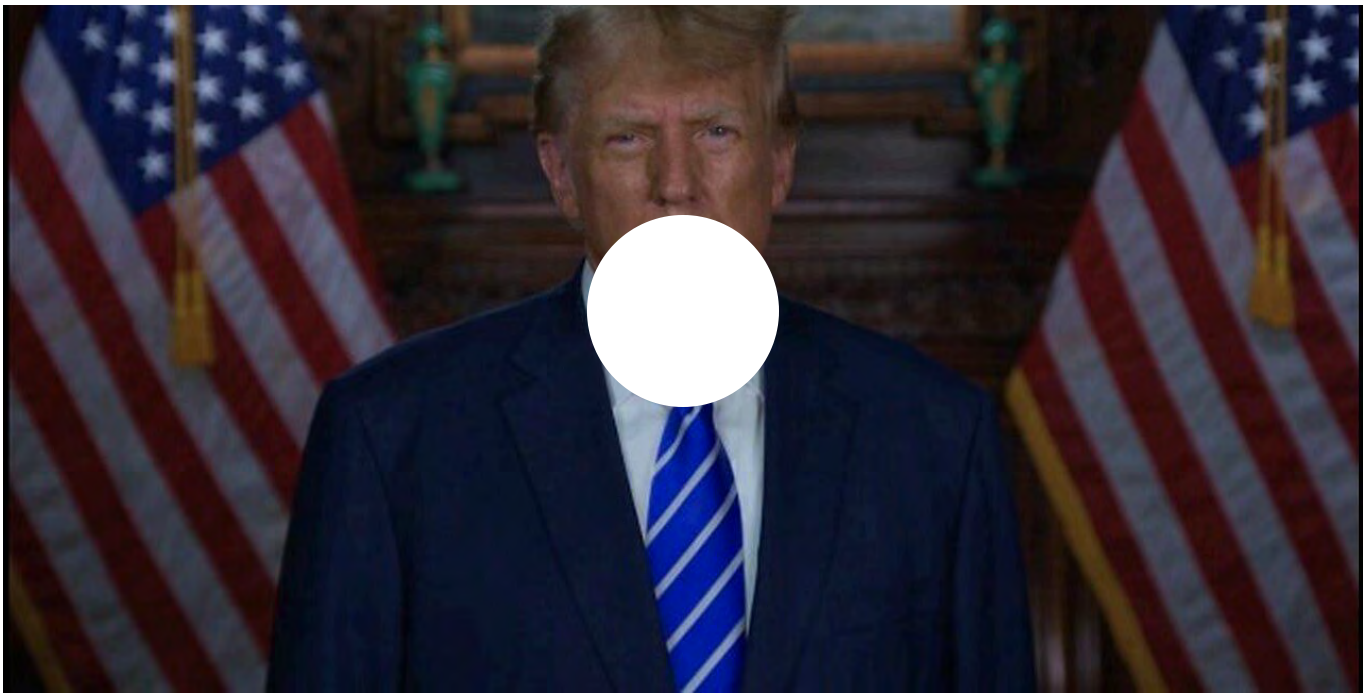
Social Security Numbers for Children
Produced and published at U.S. taxpayer expense

EXHIBIT F

Agenda47: Day One Executive Order Ending Citizenship for Children of Illegals and Outlawing Birth Tourism

May 30, 2023



Mar-a-Lago, FL— In a new Agenda47 video, President Donald J. Trump announced his plan to sign an executive order on Day One to end automatic citizenship for

children of illegal aliens.

“As part of my plan to secure the border, on Day One of my new term in office, I will sign an executive order making clear to federal agencies that under the correct interpretation of the law, going forward, the future children of illegal aliens will not receive automatic U.S. citizenship,” President Trump said.

“My policy will choke off a major incentive for continued illegal immigration, deter more migrants from coming, and encourage many of the aliens Joe Biden has unlawfully let into our country to go back to their home countries.”

PRESIDENT TRUMP’S PLAN TO DISCOURAGE ILLEGAL IMMIGRATION BY ENDING AUTOMATIC CITIZENSHIP FOR THE CHILDREN OF ILLEGAL ALIENS AND OUTLAWING BIRTH TOURISM

A DAY-ONE EXECUTIVE ORDER TO SHUT OFF A MAGNET FOR ILLEGAL IMMIGRATION:

- On Day One, President Trump will sign an Executive Order to stop federal agencies from granting automatic U.S. citizenship to the children of illegal aliens.

- It will explain the clear meaning of the 14th Amendment, that U.S. Citizenship extends only to those both born in AND “subject to the jurisdiction” of the United States.

- It will make clear that going forward, the children of illegal aliens will not be granted automatic citizenship, and should not be issued passports, Social Security numbers, or be eligible for certain taxpayer funded welfare benefits.

- It will direct federal agencies to require that at least one parent be a U.S. citizen or lawful permanent resident for their future children to become automatic U.S. citizens.

- This Executive Order ending automatic citizenship for the children of illegal aliens will eliminate a major incentive for illegal immigration, discourage future waves of illegal immigration to exploit this misapplication of citizenship, and encourage illegal aliens in the U.S. to return home.

- The Executive Order will also stop "**Birth Tourism**."

- Through "Birth Tourism," **tens of thousands** of foreign nationals fraudulently enter the U.S. each year during the final weeks of their pregnancies for the sole purpose of obtaining U.S. citizenship for their child.

- Under the current erroneous interpretation, the children of these foreign nationals are then eligible to **receive** a host of government benefits reserved for U.S. citizens, including a myriad of welfare programs and taxpayer funded healthcare, as well as chain migration and the right to vote.

- The Executive Order is part of a larger strategy to fully secure the Southern Border starting on Day One. It will remove a major incentive for illegal aliens and other foreign nationals to come to and remain in the United States in violation of our laws and National sovereignty.

- The announcement of today's Executive Order follows a historical slate of hundreds of executive actions, proclamations, and presidential memorandums on border security and immigration that President Trump implemented while in office to remake the immigration system in the United States for the interest of the American people, including:

- Executive Order Implementing the Travel Ban and Pausing Refugee Admissions

- Executive Order on Border Security and Immigration Enforcement

- Presidential Memorandum on the Extreme Vetting of Foreign Nationals

- Presidential Memorandum to Create a National Vetting Center

- Executive Order to Unleash Interior Immigration Enforcement

- Executive Order to Block Federal Grants to Sanctuary Cities

- Presidential Memorandum Ordering DHS to Train National Guard Troops to Assist with Border Enforcement

- Presidential Memorandum to End "catch and release" at the Border

- Presidential Proclamation Suspending Entry Across Southern Border Outside Ports of Entry to Bar Asylum Access

- Executive Order requiring the U.S. Government to Prioritize the Hiring of U.S. Workers in the Administration of all Immigration Programs

- Executive Order on Aligning Federal Contracting and Hiring Practices with the Interests of American Workers

- Presidential Proclamation Suspending Chain Migration, Visa Lottery, and All Non-Essential Foreign Workers

- Presidential Proclamation on Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System

- Presidential Memorandum to Cut Off Immigrant Access to the Welfare State

PRESIDENT TRUMP'S EXECUTIVE ORDER WILL FINALLY ENSURE THAT THE FEDERAL GOVERNMENT NO LONGER ADHERES TO A PATENTLY INCORRECT INTERPRETATION OF THE 14TH AMENDMENT:

- Constitutional scholars have shown for decades that granting automatic citizenship to the children of illegal aliens born in the United States is based on a patently incorrect interpretation of the 14th Amendment.

- The **14th Amendment** extends federal citizenship to "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof."

- The purpose of the 14th Amendment had nothing to do with the citizenship of immigrants, let alone the citizenship of the children of illegal aliens. Its purpose was to extend citizenship to people newly freed from slavery, whose status was left in question after the infamous case **Dred Scott v. Sandford**.

- The framers of the 14th Amendment made **clear** that "persons born in the United States who are foreigners, aliens [or] who belong to the families of ambassadors or foreign ministers" are not "subject to the jurisdiction" of the U.S.

- For years, open-borders proponents have deliberately misinterpreted "subject to the jurisdiction" in the 14th Amendment to mean merely subject to American law, which is the case for anyone physically present in the United States.

- This twisting of the amendment's meaning and intent has caused America to become one of the few countries in the world to extend citizenship to the children of illegal aliens even if both parents are not citizens nor even legally present in the United States, thus diluting the privileges that Americans are entitled to.

BIDEN'S OPEN BORDER POLICY IS A NATIONAL SECURITY, ECONOMIC, AND HUMANITARIAN DISASTER:

- A record number of illegal aliens crossed the southern border in both 2021 and 2022. In the official numbers alone, there have been over 6.6 million **illegal crossings** since Biden took office—but the true numbers are much higher.

- Biden has deliberately made his border disaster worse by abolishing Title 42 this month, allowing for an additional **400,000** illegal aliens from all corners of the globe to pour across our border each month.

- This invasion is wasting our resources, lowering our citizens' wages, poisoning our communities with lethal drugs, and threatening our national security.

- Illegal immigration **reduces** American workers' wages by $99 to $118 billion each year, with the burden falling most heavily on low-wage workers.

- Thousands of pounds of deadly drugs are pouring across our borders, poisoning over 100,000 of our citizens each year. Fueled in large part by Biden's border disaster, fentanyl poisoning has become the leading cause of death for Americans between the ages of 18 and 45.

- Nearly 100 known or suspected terrorists were **arrested** at the border last year—more than three times the total for the previous five years combined. Border arrests of illegal alien murderers **increased** by over 1,900% and arrests of illegal alien drug traffickers increased by 480% since 2020.

- Biden's open border policy has also created a humanitarian crisis, with migrant deaths reaching a record **high** last year and human smuggling arrests **up** 82% since

EXHIBIT G

https://www.wsj.com/politics/policy/trump-birthright-citizenship-executive-order-battle-0900a291

POLITICS | POLICY

Trump Prepares for Legal Fight Over His 'Birthright Citizenship' Curbs

Many constitutional scholars and civil-rights groups have said a change can't be done through executive action

By Tarini Parti Follow *and Michelle Hackman* Follow

Updated Dec. 8, 2024 9:16 pm ET

People riding the ferry to Ellis Island for a naturalization ceremony pass the Statue of Liberty. PHOTO: ALEX KENT/AFP/GETTY IMAGES

WASHINGTON—President-elect Donald Trump's transition team is drafting several versions of his long-promised executive order to curtail automatic citizenship for anyone born in the U.S., according to people familiar with the matter, as his aides prepare for an expanded legal fight.

Trump, who has railed against so-called birthright citizenship for years, said during his first term that he was planning an executive order that would outright ban it. Such an order was never signed, but the issue remained a focus of Trump's immigration proposals during his re-election campaign. He has said he would tackle the issue in an executive order on day one of his second term.

Weeks before he takes office, Trump's transition team is now considering how far to push the scope of such an order, knowing it would almost immediately be challenged in court, according to a transition official and others familiar with the matter. The eventual order is expected to focus on changing the requirements for documents issued by federal agencies that verify citizenship, such as a passport.

Through an executive order or the agency rule-making process, Trump is also expected to take steps to deter what Trump allies call "birth tourism," in which pregnant women travel to the U.S. to have children, who receive the benefit of citizenship. One option on the table is to tighten the criteria to qualify for a tourist visa, according to people familiar with the Trump team's thinking. Tourist visas are most often issued for a period of 10 years, though the tourist can't stay in the U.S. on each visit for longer than six months.

President-elect Donald Trump has said he would tackle birthright citizenship in an executive order on day one of his second term. PHOTO: OLIVIER TOURON/AFP/GETTY IMAGES

Karoline Leavitt, a spokeswoman for the Trump transition, said the president-elect "will use every lever of power to deliver on his promises, and fix our broken immigration system once and for all."

Some on the right have backed Trump's plans and argued that birthright citizenship is a misinterpretation of the 14th amendment, which dates back to the 19th century and in part granted full citizenship to former slaves. They have also criticized birth tourism. Companies in China have attracted attention in recent years for advertising such services, and airlines in Asia even started turning away some pregnant passengers they suspected of traveling to give birth.

"Because you happen to be in this country when your child is born, is not a reason for that child to be a U.S. citizen. It's just silly, and the reliance on it in law is utterly misplaced," said Ken Cuccinelli, a senior fellow at the Center for Renewing America, a pro-Trump think tank, who previously served as deputy secretary of Homeland Security.

Many constitutional scholars and civil-rights groups have said a change to birthright citizenship can't be done through executive action and would require amending the Constitution—a rare and difficult process. The most recent amendment was ratified in 1992, more than 200 years after it was first proposed.

Trump on the campaign trail this year offered more details on what executive action related to birthright citizenship could include compared with his first term, a change that some backers took as an indication that he is more willing to act on the issue.

Trump said he would sign a "day one" executive order directing federal agencies to require a child to have at least one parent be either a U.S. citizen or legal permanent resident to automatically become a U.S. citizen. It would also stop agencies from issuing passports, Social Security numbers and other welfare benefits to children who don't meet the new requirement for citizenship, the president-elect's campaign had said.

"My policy will choke off a major incentive for continued illegal immigration, deter more migrants from coming, and encourage many of the aliens Joe Biden has unlawfully let into our country to go back to their home countries," Trump said in a campaign video.

But the requirement that at least one parent be a U.S. citizen or legal permanent resident would also affect children born to parents who immigrated legally

through visas, excluding them from automatic citizenship.

"The new piece of it is them talking publicly about the mechanism they might try to use to operationalize this unconstitutional plan," said Omar Jadwat, director of the American Civil Liberties Union's Immigrants' Rights Project. "They just can't do that consistent with the constitution."

Portrait of Wong Kim Ark, whose case affirmed birthright citizenship. PHOTO: NATIONAL ARCHIVES/GETTY IMAGES

"Litigation is definitely going to follow," he added.

The Supreme Court affirmed birthright citizenship in its 1898 ruling in U.S. v. Wong Kim Ark. But critics of automatic citizenship argue Trump's proposed citizenship restrictions would be different from that case, which involved a child born to Chinese parents who were legal permanent residents in the U.S.

Trump's allies say a legal fight that makes its way to the Supreme Court is the point of the executive order.

"Force the issue and see what happens," said Mark Krikorian, executive director for the Center for Immigration Studies, a group favoring immigration restrictions that was close to Trump's first administration. Even with the court's conservative majority, Krikorian isn't optimistic about Trump's chances.

"I think they'll probably uphold the current interpretation of the 14th Amendment," he said. "They're going to want to start that court fight as soon as possible to see if they can see it through to the end before the administration ends," he said.

Write to Tarini Parti at tarini.parti@wsj.com and Michelle Hackman at michelle.hackman@wsj.com

EXHIBIT H

Venezuela International Travel Information

U.S. Embassy Colombia
Calle 24 Bis No. 48-50
Bogotá, D.C. Colombia
Telephone: +(57)(1) 275-2000
Emergency: +(57)(1) 275-2000
Fax: No fax
Online: https://co.usembassy.gov/services/contact-acs-form/
Website

The U.S. Department of State urges U.S. citizens not to travel to Venezuela, and recommends that U.S. citizens in Venezuela leave immediately. More information is in our Venezuela Travel Advisory.

The U.S. Embassy in Caracas suspended operations on March 11, 2019. It cannot provide consular services to U.S. citizens in Venezuela. The U.S. Embassy in Colombia assists U.S. citizens in Venezuela when possible.

If you are a U.S. citizen in Venezuela in need of assistance, or are concerned about a U.S. citizen in Venezuela, please contact us in one of the following ways:

- Contact us online at https://co.usembassy.gov/services/contact-acs-form/ or
- Call us at +1-888-407-4747 (from the U.S. & Canada) or +1-202-501-4444 (from overseas).

The U.S. Department of State strongly urges U.S. citizens not to travel to Venezuela. Detentions of U.S. citizens at formal or informal border crossings into Venezuela are common.

To enter Venezuela, you must have:

- A valid U.S. passport in good condition with at least six months of validity, and
- A valid Venezuelan visa. Visas are not available upon arrival.

Visas: The Venezuelan embassy and consulates in the United States are not open. For information about visa services, contact the Venezuelan Embassy in Mexico at +52 55 5203 4233. You must have the proper visa and appropriate accreditation before traveling to Venezuela. If not, you face refusal of admission, expulsion, or detention.

Immigration officials often require proof of accommodation while in Venezuela, adequate means of support, and an onward departure itinerary. Use only official crossing points when entering Venezuela. You must obtain an entry stamp upon entry.

If you reside in Venezuela as a non-citizen, you must obtain legitimate Venezuelan residency documentation and renew your residency visa well in advance of expiration. Do not use intermediaries to purchase resident visas and/or work permits.

Traveling with Children: Venezuela's child protection law mandates that minors (under 18) of any nationality who are traveling alone, with only one parent, or with a third party, must present extensive, specific, and notarized documentation granting permission for travel. Consult the nearest Venezuelan embassy or consulate for further information.

Dual Nationality: Venezuelan law requires Venezuelan citizens to enter and depart Venezuela using Venezuelan passports. If you hold dual U.S. and Venezuelan nationality, you must plan to travel between the United States and Venezuela with valid U.S. and Venezuelan passports. Dual-national minors are only allowed to depart Venezuela with both parents present or with a legal authorization signed by the absent parent in a family court.

Immunizations: Visit the CDC Traveler website for vaccination information, including Yellow Fever vaccination requirements. Carry your International Certificate of Vaccination (or yellow card) with you upon arrival or departure. Travel to Venezuela no longer requires evidence of COVID-19 vaccination.

HIV/AIDS: The U.S. Department of State is unaware of any HIV/AIDS entry restrictions for visitors to or foreign residents of Venezuela. Be aware that HIV/AIDS medications, like other medications, are often not available in Venezuela.

Find further information on dual nationality, prevention of international child abduction, and customs regulations on our websites.

Terrorism: Terrorist groups and those inspired by such organizations are intent on attacking U.S. citizens abroad. Terrorists are increasingly using less sophisticated methods of attack – including knives, firearms, and vehicles – to more effectively target crowds. Frequently, their aim is focused on unprotected or vulnerable targets, such as:

- High-profile public events (sporting contests, political rallies, demonstrations, holiday events, celebratory gatherings, etc.)
- Hotels, clubs, and restaurants frequented by tourists
- Places of worship
- Schools
- Parks
- Shopping malls and markets
- Public transportation systems (including subways, buses, trains, and scheduled commercial flights)

Terrorist groups such as the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP), Segunda Marquetalia, and the Colombian-origin National Liberation Army (ELN) have expanded in Venezuela in recent years. We are aware of reports of cooperation between FARC dissidents and the ELN in the areas of road/border checkpoints, forced displacement of communities, and narcotics trafficking.

For more information, see our Terrorism page.

Crime: Violent crime is pervasive throughout Venezuela. Venezuela has one of the highest homicide rates in the world, and kidnappings are a serious concern.

If you are in Venezuela:

- Be alert of your surroundings at all times and take personal security precautions to avoid becoming a victim of crime.
- Maintain a low profile.
- Travel in groups of five or more, and
- Provide family or friends with your itineraries prior to departure.
- Avoid police activity. Corruption within the police forces is a concern, and criminals may be posing as police officers or National Guard members. National Guard members may target

U.S. citizens, especially at remote land border crossings, for bribery, extortion, or detention, possibly in collusion with criminal organizations.

Criminal gangs operate openly and with little repercussion, often setting up fake police checkpoints. Armed robberies, including with grenades and assault rifles, take place throughout the country, including in tourist areas and institutions such as banks and ATMs, national parks, shopping malls, public transportation stations, and universities.

Drugs: Do not attempt to bring any narcotics or controlled substances into Venezuela, or substances that may be confused with illegal drugs.

- Do not accept packages from anyone.
- Always keep your luggage with you.
- U.S. citizens have been actively recruited as narcotics couriers or “drug mules.” Arrestees can expect extended jail terms under extremely difficult prison conditions.

Transportation:

- Do not use any taxis hailed on the street. Use only radio-dispatched taxis from taxi services, hotels, restaurants, and airline staff. Some taxi drivers in Caracas are known to overcharge, rob, injure, and even kidnap passengers.
- Do not use public transportation such as city buses and the metro (subway) in Caracas.
- If you drive, be aware of attacks in tunnels and avoid obstacles in the road.

Maiquetía International Airport: Only travel to and from Maiquetía International Airport near Caracas in daylight hours. Kidnappings, robberies at gunpoint, thefts, and muggings are common. Individuals wearing seemingly official uniforms and displaying airport or police credentials have been involved in crimes inside the airport, including extortion and robberies.

- Do not pack valuable items or documents in checked luggage.
- Make advance plans for transportation from the airport to your hotel or destination using a trusted party or dispatch taxi service.

ATMs: Most ATMs do not accept U.S. debit or credit cards, and malfunctions are common. Many ATMs do not have cash. Criminals target ATM users for robberies. ATM data is often hacked and used to make unauthorized withdrawals.

- Use only ATMs located in well-lit, public places.

Demonstrations occur occasionally. They may take place in response to political or economic issues, on politically significant holidays, and during international events.

- Demonstrations can be unpredictable; avoid areas around protests and demonstrations.
- Past demonstrations have turned violent.
- Check local media for updates and traffic advisories.

International Financial Scams: See the Department of State and the FBI pages for additional information.

Internet romance and financial scams are prevalent in Venezuela. Scams are often initiated through Internet postings/profiles or by unsolicited emails and letters. Scammers almost always pose as U.S. citizens who have no one else to turn to for help. Common scams include:

- Romance/online dating

- Money transfers
- Grandparent/relative targeting

Victims of Crime: The U.S. Embassy in Caracas suspended operations on March 11, 2019, and therefore cannot provide consular services to U.S. citizens in Venezuela. The U.S. Embassy in Colombia assists U.S. citizens in Venezuela when possible.

- U.S. citizen victims of crime are encouraged to contact the U.S. Embassy in Bogota.
- Report crimes to the local police and contact the U.S. Embassy in Bogota by completing our online form at https://co.usembassy.gov/services/contact-acs-form/ or dialing +57 (1) 275-2000 or +57 (1) 275-4021 after hours. Remember that local authorities are responsible for investigating and prosecuting crime. Note that emergency numbers may not function in Venezuela and travelers should be prepared to make direct contact with the nearest police station to reach emergency service personnel.

See our webpage on help for U.S. victims of crimes overseas.

We can:

- Help you find appropriate medical care
- Contact relatives or friends with your written consent
- Provide general information regarding local law enforcement investigations
- Provide a list of local attorneys
- Provide our information on victim's compensation programs in the United States
- Help you find accommodation and arrange flights home
- If you are able to travel to a U.S. Embassy, we can replace a stolen or lost passport and provide an emergency loan for repatriation to the United States and/or limited medical support in cases of destitution

Domestic Violence: U.S. citizen victims of domestic violence are encouraged to contact the U.S. Embassy in Bogota for assistance.

Colombian Border: The area within 50-miles of the entire Venezuela and Colombian border is extremely dangerous. U.S. citizens near the border are at risk of detention by authorities. U.S. citizens must obtain a visa to enter Venezuela legally. Visas are not available upon arrival. U.S. citizens attempting to enter Venezuela without a visa have been charged with terrorism and other serious crimes and detained for long periods. Maduro authorities do not notify the U.S. government of the detention of U.S. citizens and the U.S. government is not granted access to those citizens. Additionally, cross-border violence, kidnapping, drug trafficking, and smuggling are common. Some kidnapping victims are released after ransom payments, while others are murdered.

- Do not attempt to cross the land border.

Tourism: Tourists participate in activities at their own risk. Emergency response and subsequent appropriate medical treatment does not meet U.S. standards. Serious medical issues require costly medical evacuation complicated by restrictions on air travel to and from Venezuela. Air evacuations to the United States from Venezuela may not be possible.

- U.S. citizens are encouraged to purchase medical evacuation insurance. See our webpage for more information on insurance providers for overseas coverage.

Criminal Penalties: You are subject to local laws. If you violate local laws, even unknowingly, you may be expelled, arrested, or imprisoned. Individuals establishing a business or practicing a

profession that requires additional permits or licensing should seek information from the competent local authorities prior to practicing or operating a business. Application of local laws can at times be arbitrary and/or politically motivated.

In Venezuela, it is illegal to take pictures of sensitive buildings, including the presidential palace, military bases, government buildings, and airports.

Drug trafficking is a serious problem in Venezuela and treated as such by Venezuelan authorities. Convicted traffickers receive lengthy prison sentences.

Furthermore, some laws are also prosecutable in the United States, regardless of local law. For examples, see our website on crimes against minors abroad and the Department of Justice website.

Arrest Notification: If you are arrested or detained, attempt to have someone notify the U.S. Embassy in Bogota immediately. See our webpage for further information.

Please note that the U.S. Department of State may not be informed of your detention, particularly if you also hold Venezuelan citizenship. Due to the suspension of operations of the U.S. Embassy in Caracas, consular visits to detained U.S. citizens are not possible. There have been instances of U.S. citizens in recent years who have been detained without being afforded due process or fair trial guarantees, or as a pretext for an illegitimate purpose, often due to their U.S. citizenship. U.S. citizens in Venezuela are at risk of wrongful detention. See our Travel Advisory for Venezuela for additional information.

Currency and Exchange: Venezuela has started to allow dollarized commercial transactions and shopping, but policies and availability are subject to change. Some local businesses accept U.S. credit cards and electronic transfers through certain online vendors. “Black market” currency exchanges – often offering significantly favorable exchange rates – are technically prohibited under Venezuelan foreign exchange controls. Violators may be detained by Venezuelan authorities and face criminal penalties.

Wire Transfers: Wire transfers cannot be used reliably as a source of emergency funds, and receipt of funds is generally restricted to Venezuelan citizens and residents.

Counterfeit and Pirated Goods: Although counterfeit and pirated goods are prevalent in many countries, they may still be illegal according to local laws. You may also pay fines or forfeit the items if you attempt to bring them back to the United States. See the U.S. Department of Justice website for more information.

Faith-Based Travelers: See the following webpages for details:

- Faith-Based Travel Information
- International Religious Freedom Report – see country reports
- Human Rights Report – see country reports
- Hajj Fact Sheet for Travelers
- Best Practices for Volunteering Abroad

LGB Travelers: There are no legal restrictions on same-sex sexual relations or the organization of LGB events in Venezuela.

See our LGB Travel Information page and section 6 of our Human Rights report for further details.

Travelers with Disabilities: The law in Venezuela prohibits discrimination against persons with physical and mental disabilities, but the law is not enforced. Social acceptance of persons with

disabilities in public is not as prevalent as in the United States. Expect accessibility to be limited in public transportation, lodging, communication/information, and general infrastructure. Accessibility is more prevalent in the capital city of Caracas than in the rest of the country.

The availability of rental, repair, and replacement parts for aids/equipment/devices as well as service providers, such as sign language interpreters or personal assistants, is limited.

Students: See our Students Abroad page and FBI travel tips.

Women Travelers: See our travel tips for Women Travelers.

Travel to Venezuela no longer requires evidence of COVID-19 vaccination.For emergency services in Venezuela, dial 171. Emergency numbers may not function, and travelers should be prepared to make direct contact with the nearest police station to reach emergency services personnel.

Ambulance services are:

- not widely available, depending on the individual's health insurance, training, and availability of emergency responders may be below U.S. standards.
- unreliable in most areas.
- not equipped with state-of-the-art medical equipment.

Injured or seriously ill travelers may prefer to take a taxi or private vehicle to the nearest major hospital rather than wait for an ambulance.

Direct emergency medical evacuation flights between the United States and Venezuela are notpossible.

We do not pay medical bills. Be aware that U.S. Medicare/Medicaid does not apply overseas. Most hospitals and doctors overseas do not accept U.S. health insurance.

Medical Insurance: Most care providers overseas only accept cash payments. See our webpage for more information on insurance providers for overseas coverage. Visit the U.S. Centers for Disease Control and Prevention for more information on types of insurance you should consider before you travel overseas.

- Make sure your health insurance plan provides coverage overseas. We strongly recommend supplemental insurance to cover medical evacuation.
- Always carry your prescription medication in original packaging, along with your doctor's prescription.
- Before travelling to Venezuela with prescription medications, travelers should research current Customs and Immigration restrictions in place at Venezuelan ports of entry.

Vaccinations: You must be up to date on all vaccinations recommended by the U.S. Centers for Disease Control and Prevention. A Yellow Fever vaccination is required if coming from or transiting for more than 12 hours through Brazil.

- Confirm you have all vaccinations recommended by the U.S. Centers for Disease Control and Prevention.
- Carry your International Certificate of Vaccination (or yellow card) with you upon arrival.

Health Facilities in General:

- Do not depend on health care facilities in Venezuela for medical care. Serious medical issues

require costly medical evacuation complicated by restrictions on air travel to and from Venezuela. Direct air evacuations to the United States are not possible.
- Public medical clinics lack basic resources and supplies, including soap and water. In recent years, hospital infrastructure has deteriorated significantly, and medical staff are in short supply. Patients frequently must supply their own water, medication, and medical instruments to receive care.
- Adequate private health facilities are available in Caracas and other major cities, but health care in rural areas is well below U.S. standards. Many private hospitals and clinics may be overcrowded and may experience shortages of public utilities such as electricity and running water.
- Some private hospitals and doctors require cash payment "up front" prior to service or admission. Credit card payment and online transfers are sometimes available. If you cannot provide an up-front payment, you may be referred to a public institution.
- Medical staff may speak little to no English.
- Generally, in public hospitals only minimal staff is available overnight. Consider hiring a private nurse or having family spend the night with the patient, especially a minor child.
- Patients may be required to bear costs for transfer to or between hospitals.
- Psychological and psychiatric services are limited, even in the larger cities.

Medical Tourism and Elective Surgery:

- U.S. citizens have suffered serious complications or died during or after having cosmetic or other elective surgery overseas.
- Visit the U.S. Centers for Disease Control and Prevention website for information on medical tourism, the risks of medical tourism, and what you can do to prepare before traveling to Venezuela.
- We strongly recommend supplemental insurance to cover medical evacuation in the event of unforeseen medical complications.
- Your legal options in case of malpractice are very limited in Venezuela.

Pharmaceuticals:

- Some medical supplies are unavailable in Venezuela, and you should not expect to find all necessary medications in Venezuela. Travelers should carry over the counter and prescription drugs sufficient to cover the entire duration of their trips.
- Exercise caution when purchasing medication overseas. Pharmaceuticals, both over the counter and requiring prescription in the United States, are often readily available for purchase with little controls. Counterfeit medication is common and may prove to be ineffective, the wrong strength, or contain dangerous ingredients. Medication should be purchased in consultation with a medical professional and from reputable establishments.
- U.S. Customs and Border Protection and the Food and Drug Administration are responsible for rules governing the transport of medication back to the United States. Medication purchased abroad must meet their requirements to be legally brought back into the United States. Medication should be for personal use and must be approved for usage in the United States. Please visit the U.S. Customs and Border Protection and the Food and Drug Administration websites for more information.

Assisted Reproductive Technology and Surrogacy :

- There is no legal framework for foreigners or same-sex couples to pursue surrogacy in Venezuela. According to Venezuelan law, the birth mother of a child born in Venezuela is the legal mother. Surrogacy agreements between foreign or same sex intending parents and gestational mothers are not enforced by Venezuelan courts.

- If you decide to pursue parenthood in Venezuela via assisted reproductive technology (ART) with a gestational mother, be prepared for long and unexpected delays in documenting your child's citizenship. Be aware that individuals who attempt to circumvent local law risk criminal prosecution.
- If you are considering traveling to Venezuela to have a child through use of assisted reproductive technology (ART) or surrogacy, please see our ART and Surrogacy Abroad page.

Water Quality:

- Tap water is not potable, even in major cities. Bottled water and beverages are generally safe, although you should be aware that many restaurants and hotels serve tap water unless bottled water is specifically requested. Be aware that ice for drinks may be made using tap water.
- Expect frequent shortages in running water.
- Gastrointestinal illnesses such as severe diarrhea are common throughout the country.

Adventure Travel :

- Visit the U.S. Centers for Disease Control and Prevention website for more information about Adventure Travel.

General Health:

The following diseases are prevalent:

- COVID-19
- Dengue
- Zika
- Chikungunya
- Chagas Disease (Trypanosomiasis)
- Measles (Rubeloa)
- Malaria
- Leishmaniasis
- Schistosomiasis (Bilharzia)
- Travelers' Diarrhea

The Ministry of Health has announced they will start an epidemiological plan at airports for those travelers coming from countries where there is a confirmation of Mpox outbreak: "To enter the country, they must report their health status and personal data in the epidemiological surveillance form, for medical follow-up".

- Use the U.S. Centers for Disease Control and Prevention recommended mosquito repellents and sleep under insecticide-impregnated mosquito nets. Chemoprophylaxis is recommended for all travelers even for short stays.
- Visit the U.S. Centers for Disease Control and Prevention website for more information about Resources for Travelers regarding specific issues in Venezuela.

Road Conditions and Safety:

- Avoid driving in Venezuela. If you do drive, drive defensively, as most drivers do not obey rules.
- Do not drive at night outside major cities. Police and national guard checkpoints are mandatory, and criminals often set up fake checkpoints during nighttime to rob or kidnap victims.

- Road damage is not clearly marked.
- Traffic jams are common within Caracas during most of the day and are frequently exploited by criminals. Armed motorcycle gangs operate in traffic jams. Comply with demands as victims may be killed for not complying.
- Do not use buses due to high levels of criminal activity.
- Venezuela experiences shortages in gasoline, and you should plan accordingly, especially when travelling to distant or rural areas. Be aware that the quality of gasoline is not the same as in the United States and may cause vehicle damage, requiring repairs and/or frequent maintenance.

Traffic Laws:

- Child car seats and seatbelts are not required and are seldom available in rental cars and taxis.
- Some Caracas municipalities have outlawed the use of handheld cell phones while driving.
- Stops at National Guard and local police checkpoints are mandatory. Follow all National Guard instructions and be prepared to show vehicle and insurance papers and passports. Vehicles may be searched.

Public Transportation: Subways, buses, trains, and other means of public transport in Venezuela do not have the same safety standards as in the United States.

See our Road Safety page for more information.

Aviation Safety Oversight: The U.S. Federal Aviation Administration (FAA) has assessed that Venezuela's Civil Aviation Authority is not in compliance with International Civil Aviation Organization (ICAO) aviation safety standards for oversight of Venezuela's air carrier operations. Further information may be found on the FAA's safety assessment page.

The U.S. Department of Transportation issued an order suspending all nonstop flights between the United States and Venezuela. The Department of Homeland Security concluded that conditions in Venezuela threaten the safety and security of passengers, aircraft, and crew traveling to or from that country.

Due to risks to civil aviation operating within or in the vicinity of Venezuela, the Federal Aviation Administration (FAA) has issued a Notice to Air Missions (NOTAM) and/or a Special Federal Aviation Regulation (SFAR). For more information, U.S. citizens should consult the Federal Aviation Administration's Prohibitions, Restrictions, and Notices. Emergency medical evacuation flights between the United States and Venezuela may not be possible.

Maritime Travel:

Mariners should not travel to Venezuela. If transiting near Venezuelan maritime boundaries, check for U.S. maritime advisories and alerts. Information may also be posted to the U.S. Coast Guard homeport website, and the NGA broadcast warnings website.

We reiterate that the U.S. Department of State urges citizens not to travel to Venezuela or to attempt to enter Venezuela without a visa.

Incidents of piracy off the coast of Venezuela remain a concern. Yachters should note that anchoring offshore is not considered safe. Marinas, including those in Puerto la Cruz and Margarita Island (Porlamar), provide only minimal security, and you should exercise a heightened level of caution in Venezuelan waters.

EXHIBIT I

OFM Health Care Research Center
Research brief No. 110

Washington state's immigrant population: 2010-21

By Wei Yen, Ph.D. *May 2023*

Introduction

This brief presents changes in Washington's immigrant population from 2010 to 2021. We grouped the state's population in four categories: U.S.-born citizens, naturalized citizens, legal immigrants and undocumented immigrants. Our data source is the Census Bureau's American Community Survey (ACS) 1-year Public Use Microdata Sample files. Before we analyzed the ACS data, we applied an adjustment to the data to account for the underreport of Medicaid population in the ACS beginning in 2014.[1] Estimates for 2020 are not available due to data quality issues that year in the ACS because of national data collection challenges during COVID-19.[2]

Our main findings

- *Immigrant population has increased by 29% in Washington during 2010-21, with a larger increase in the immigrant group of naturalized citizens (37%). In 2021, the total immigrant population was 1,149,000.*
- *Shares of females in each immigrant population group remained about the same across the years, although the shares varied among the groups, between 40% and 60%.*
- *While the share of adults 18-64 declined in the U.S.-born citizen group to 58%, it remained the same in the immigrant groups (around 75% for naturalized citizen group and legal immigrant group, and 90% for the undocumented immigrant group).*
- *The share of individuals with Hispanic origin had a gradual but steady increase in the U.S.-born citizen group (8% to 12%). However, the undocumented immigrant group share declined from 54% to 39%.*
- *The shares of non-Hispanic white population declined in the U.S.-born citizen group (80% to 72%)[3] and the legal immigrant group (32% to 23%).*
- *The shares of non-Hispanic Asians or Pacific Islanders increased in the legal*

[1] For more information on our adjustment to the ACS, see https://ofm.wa.gov/sites/default/files/public/legacy/healthcare/healthcoverage/pdf/undercount_medicaid.pdf.
[2] For more information about data issues in the 2020 American Community Survey, see https://ofm.wa.gov/sites/default/files/public/dataresearch/researchbriefs/brief106.pdf.
[3] There is a strong reason to believe that large decline from 75.3% in 2019 to 71.5% in 2021 is mostly due to change in the survey question adopted in 2021 ACS. See more details in the section "Non-Hispanic white."

immigrant group (27% to 36%) and the undocumented immigrant group (27% to 43%).

- *In the adult population age 18-64, all groups except the legal immigrant group had increased shares with a 4-year college degree or higher. The undocumented immigrant group had the largest change (22% to 47%).*
- *For all groups, shares of adults 18-64 who were employed increased to the highest point in 2019 (above 70%) and then declined in 2021.*
- *Shares of adults 18-64 in low-income families (less than 200% of the federal poverty level) declined in all groups, particularly in the undocumented immigrant group in which the share dropped by half (56% to 28%).*

Immigrant population in 2010-21

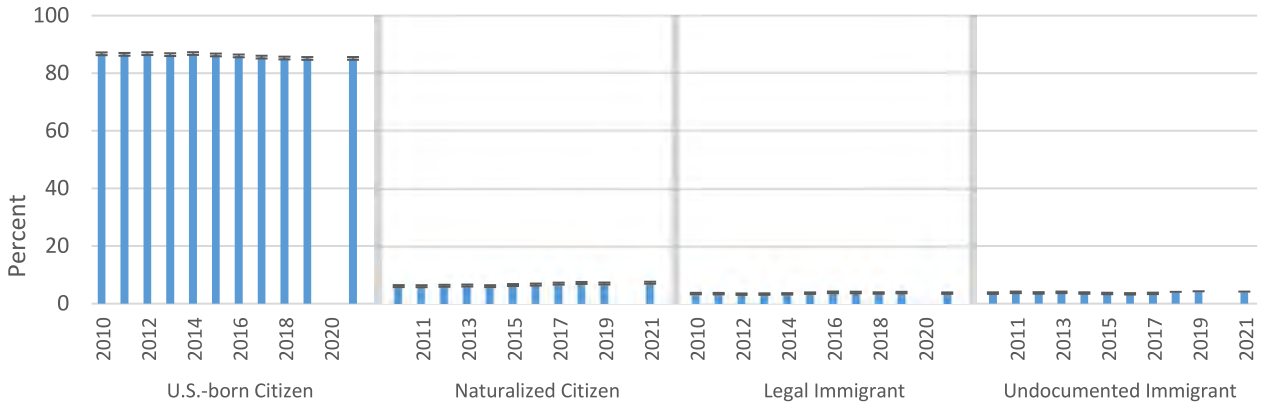
Washington's total population increased by 15% from 2010 to 2021 (7.7 million). At the same time, U.S.-born citizen population increased by 13% and the immigrant population increased by 29%. Within the immigrant population, the naturalized citizen group had the largest increase, with 37%, while the legal immigrant group and the undocumented immigrant group increased by 20% and 23%.

U.S.-born citizens accounted for 86.7% of the total population in 2010 and 85.1% in 2021. The share of naturalized citizens increased slightly from 6.1% to 7.3%. The share of legal immigrants remained unchanged essentially, at about 3.6%. The share of undocumented immigrants also remained unchanged, at about 3.8%.

Table 1. Washington population (in thousands) by immigration status: 2010-21

Immigration status	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2010-2021 change (%)
State total population	6,744	6,830	6,897	6,971	7,062	7,170	7,288	7,406	7,536	7,615		7,739	14.7%
U.S.-born citizen	5,850	5,912	5,985	6,027	6,132	6,191	6,269	6,339	6,426	6,483		6,589	12.6%
Immigrant	894	918	912	944	930	979	1,019	1,067	1,110	1,132		1,149	28.5%
Naturalized citizen	411	414	428	439	429	464	483	515	542	532		563	37.0%
Legal immigrant	236	237	227	232	240	262	287	288	279	293		283	20.0%
Undocumented immigrant	247	268	257	274	261	254	249	264	289	307		304	22.6%

Figure 1. Percentage of total population by immigration status, 2010-21: Washington

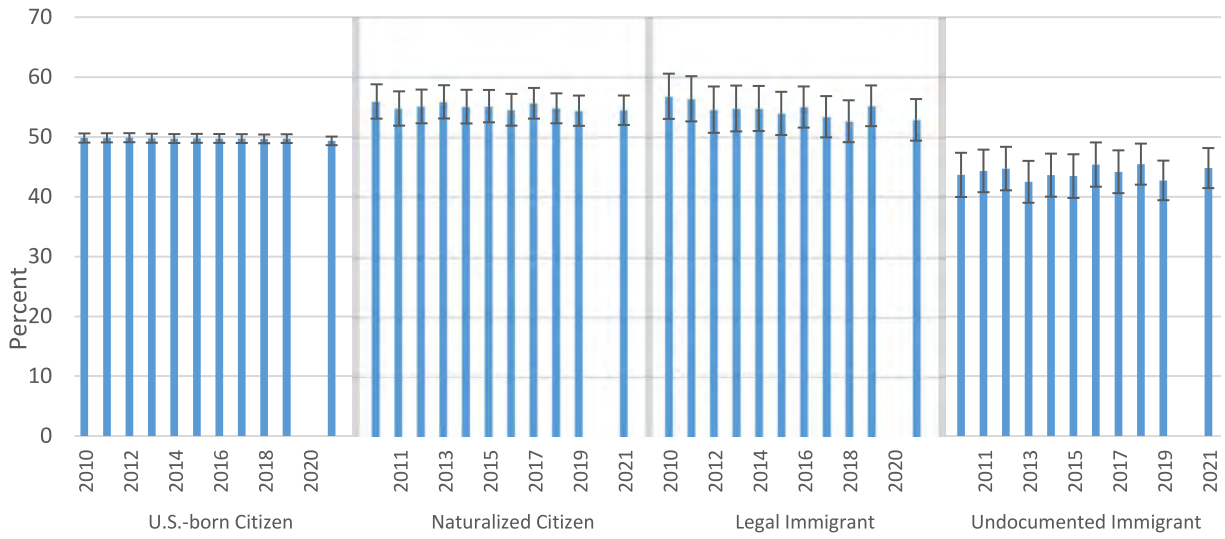


Changes in demographic characteristics, 2010-21

Sex

There were no statistically significant changes in the share of females within any of the immigrant population groups from 2010 to 2021. However, across the groups, *differences* in the shares of females persisted. For example, while the share of females in the U.S.-born citizen group has been slightly below 50%, the share in the naturalized citizen group and legal immigrant groups has been higher, in the mid-50% and the share has been lower in the undocumented immigrant group, in the mid-40%.

Figure 2. Percentage of female in population groups by immigration status, 2010-21: Washington

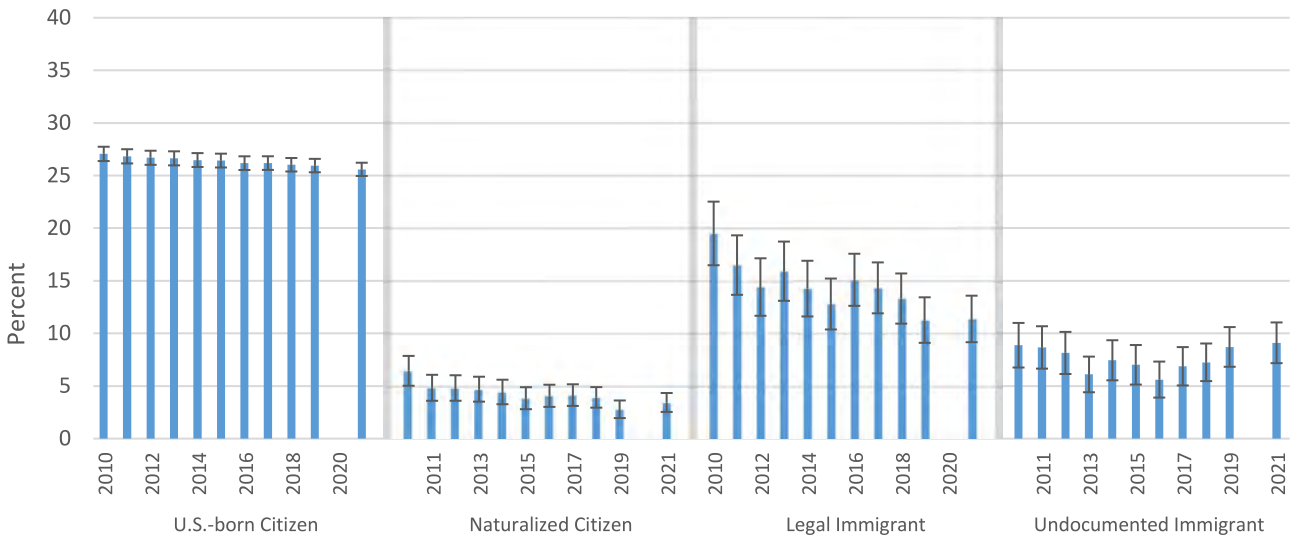


Children under 18

From 2010 to 2021, the share of children under 18 declined in the U.S.-born citizen, naturalized citizen and legal immigrant groups. In the undocumented immigrant group, the change in the share was not significant. There were, however, considerable differences across these four groups in their shares of children under 18.

The U.S.-born citizen group had the highest share, above 25%. The share was lowest in the naturalized citizen group, below 5% in all years except 2010. In the legal immigrant group, the share dropped from approximately 20% to about 11%. Finally, the share in the undocumented immigrant group remained between 5% and 10% at all times.

Figure 3. Percentage of children under 18 in population groups by immigration status, 2010-21: Washington

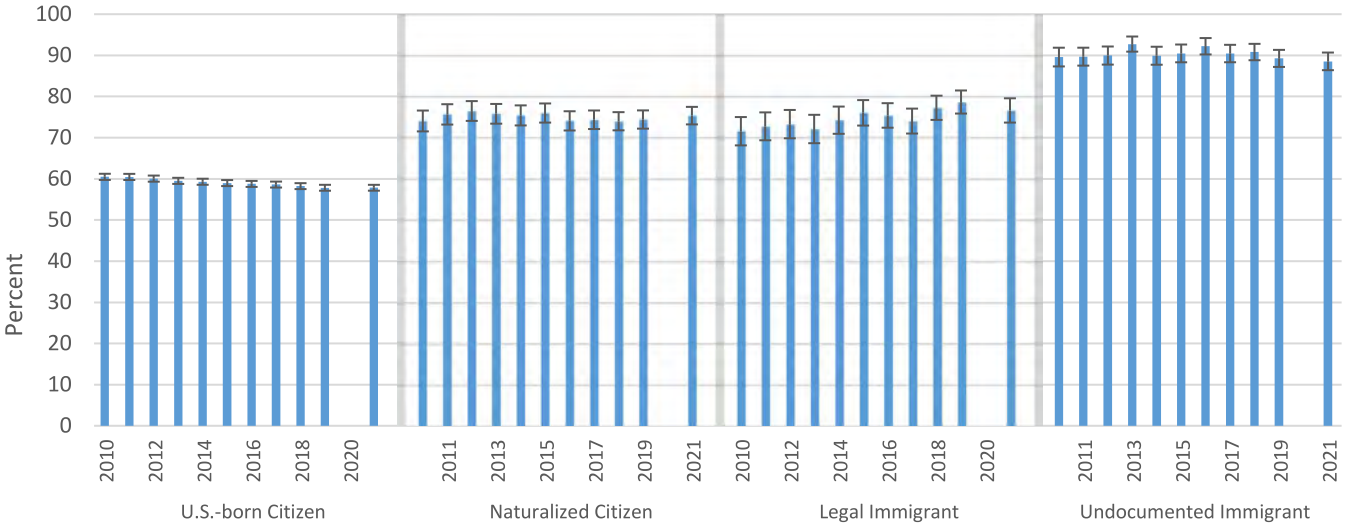


Adults 18-64

The only group that had a significant change from 2010 to 2021 in the share of adults 18-64 was the U.S.-born citizen group.

When the four groups' shares are ranked, the U.S.-born citizen group had the lowest share, at or slightly below 60%. The undocumented immigrant group had the highest share, around 90%. For the naturalized citizen group and the legal immigrant group, their shares were similar, between 70% and 80%.

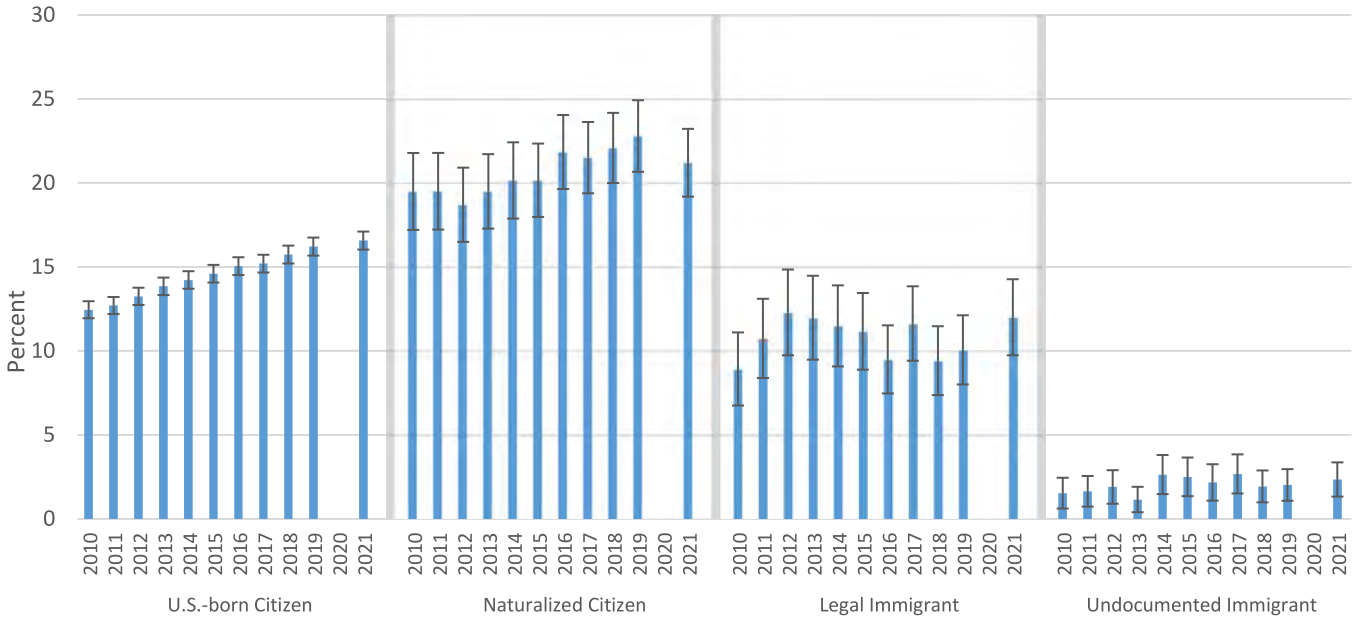
Figure 4. Percentage of adults 18-64 in population groups by immigration status, 2010-21: Washington



Adults 65 and older

Washington's population has been aging over the past decade due to Baby Boomers entering the retirement age. This phenomenon manifested itself in the share of adults 65 and older in the U.S.-born citizens. This group's increased from 12.5% in 2010 to 16.6% in 2021. In all three immigrant groups, although the share was higher in 2021 than in 2010, the change was not statistically significant. Notable differences existed in the shares when we compared the four groups. The naturalized citizen group had the highest share, about 20%, followed by the U.S.-born citizen group (around 15%), the legal immigrant group (around 10%) and the undocumented immigrant group (around 2.5%).

Figure 5. Percentage of adults 65 and older in population groups by immigration status, 2010-21: Washington



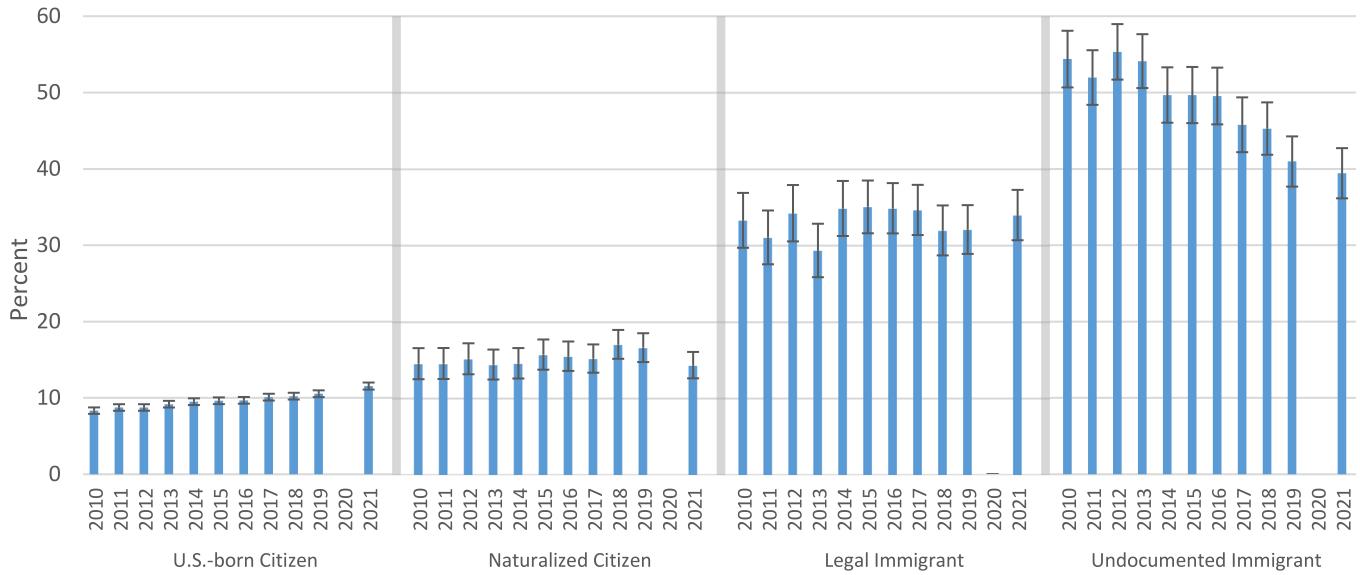
Hispanic origin

Two groups, the U.S.-born citizen group and the undocumented immigrant group, had opposite trends in their shares of people with Hispanic origin. The share in the U.S.-born citizen group rose steadily while the share in the undocumented immigrant group had an overall decline. The shares in the other two groups, naturalized citizen group and legal immigrant group, show little change over time. Despite the steady increase, the share (around 10%) in the U.S.-born citizen was the lowest when we compared all four groups. And despite the declining trend from mid-50% to approximately 40% in the undocumented immigrant group, its share remained the highest. The second highest share, between 30% and 35%, belonged to the legal immigrant group. The naturalized citizen group had the third highest share, around 15%. Note that in the U.S.-born citizen group, the average annual change from

2010 to 2019 was an increase of approximately a quarter of a percent (0.24%). However, from 2019 to 2021, the average annual change was an increase of slightly over half of a percent (0.55%), more than twice the change in previous years.

This change from 2019 to 2021 is partially due to a change first implemented in 2020 in how the U.S. Census Bureau asked race/ethnicity questions in the American Community Survey.[4]

Figure 6. Percentage of people of Hispanic origin in population groups by immigration status, 2010-21: Washington



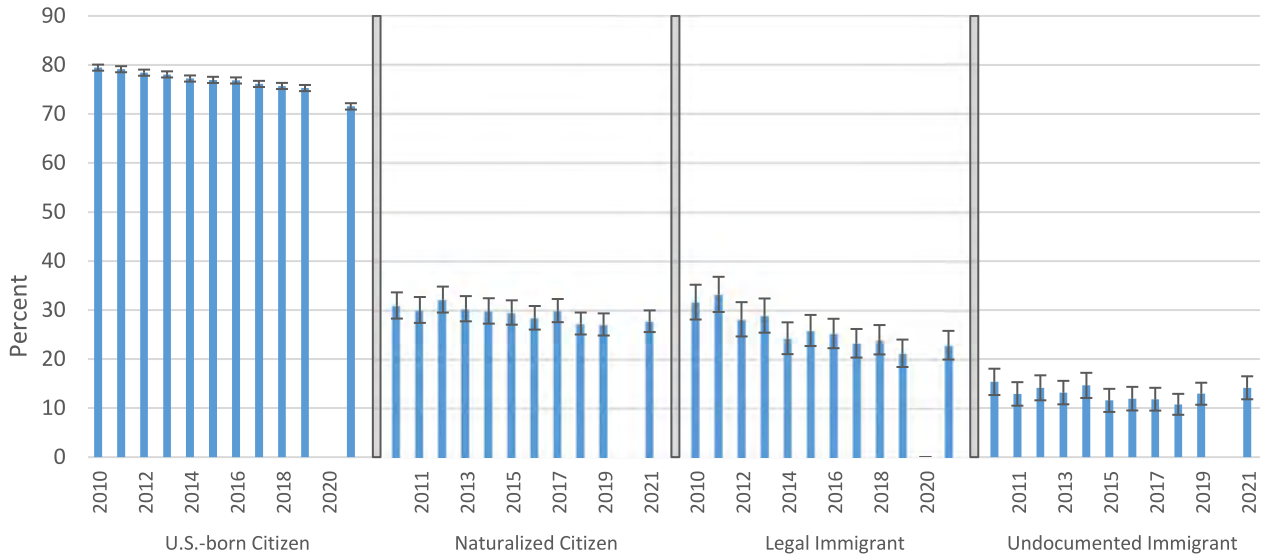
Non-Hispanic white

Changes in the shares of non-Hispanic white persons are notable in the U.S.-born citizen group and the legal immigrant group, with declines in both groups. Changes in the other two groups were not statistically significant. The change from 75.3% in 2019 to 71.5% in 2021 among U.S.-born citizens was particularly large for this group. However, this large change is mostly the result of the change in how the race questions were asked in the American Community Survey.[5] If we apply the average annual decline from 2010 to 2019 to the 2020 and 2021 ACS for Washington, we should expect the non-Hispanic white share in the U.S.-born citizen group to be approximately 74.4%. (This is true if we assume the ACS race/ethnicity questions did not change). In other words, it is reasonable to attribute a nearly 3 percentage point decline (74.4%-71.5%) in this group's share to the change based on how the race/ethnicity questions were asked in the ACS.

[4] For the change in the race/ethnicity questions, see https://www.census.gov/newsroom/blogs/random-samplings/2021/08/improvements-to-2020-census-race-hispanic-origin-question-designs.html.
[5] See the previous note for details about the change in the race/ethnicity questions in the ACS.

Across the four groups, there was a large variation in the share of non-Hispanic white people. The U.S.-born citizen group had the highest share. The naturalized citizen group and the legal immigrant group had the second highest shares. These two groups had shares ranging between 20% and 35% and there was no statistical difference between these two groups in any single year. The undocumented immigrant group had the lowest share, between 11% and 15%.

Figure 7. Percentage of non-Hispanic white in population groups by immigration status, 2010-21: Washington



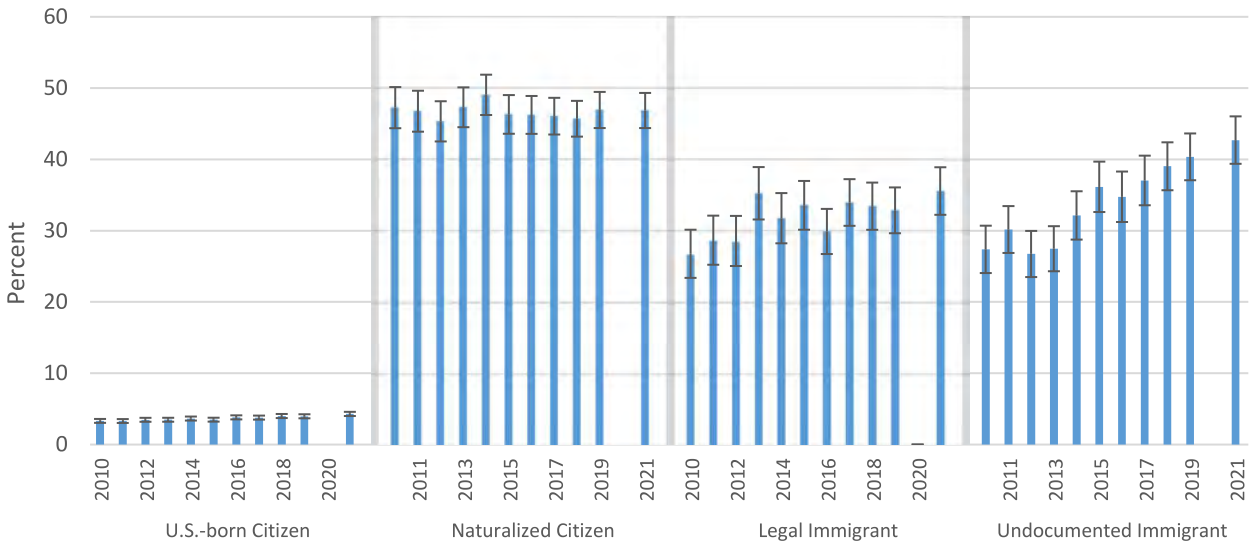
Non-Hispanic Asian and Pacific Islander

The share of non-Hispanic Asians/Pacific Islanders in the U.S.-born citizen group had a gradual and steady increase during 2010-21. However, the average annual increase in 2019-21 appeared to be much larger than any previous year-to-year increase. The larger increases in 2019-21 may be caused by the change in the ACS questions on race/ethnicity.

In the naturalized citizen group, there was no apparent change. In the legal immigrant group, there was an increase in 2013 and the share afterwards remained at the increased level. In the undocumented immigrant group, the increase started in 2014 and continued to increase through 2021.

When compared across the four groups, the share of non-Hispanic Asian/Pacific Islander people was the highest in the naturalized citizen group (more than 40%) and the lowest in the U.S.-born citizen group (below 5%). In the remaining two groups, their shares appear to be similar (between high 20% to mid-30%), except that the share in the undocumented immigrant group appeared to have a faster increase in recent years than the share in the legal immigrant group.

Figure 8. Percentage of non-Hispanic Asian or Pacific Islander people in population groups by immigration status, 2010-21: Washington



Changes in socio-economic characteristics of adults 18-64 from 2010 to 2021

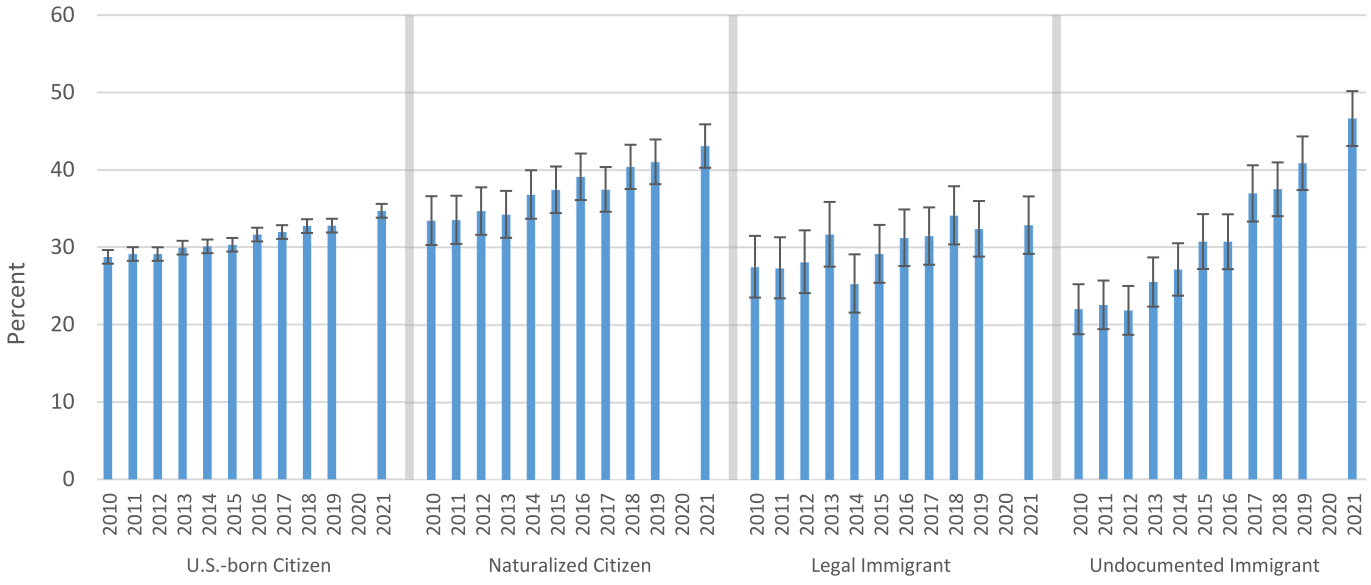
Education

The share of adults 18-64 years with a four-year college degree or higher increased in three of the four groups. The one with inconclusive trend was the legal immigrant group.

The highest share of the four groups was in the naturalized citizen group and it increased from 33% in 2010 to 43% in 2021. The undocumented immigrant group, for most of the years, had the lowest share.

However, in the last few years, this group's share had a rather fast increase, so much that it was tied statistically with the highest share in the naturalized citizen group by 2021. Over time, this group's share increased from 22% to 47%. The share in the legal immigrant group hovered around 30%, which placed the group's share between the second lowest and the lowest. The U.S.-born citizen group had a gradual yet steady increase in its share (from below 30% to 35%) and its rank among the four groups changed from the second highest to the third highest.

Figure 9. Percentage of adults aged 18-64 with a 4-year college degree or higher in population groups by immigration status, 2010-21: Washington



Employment

The share of adults 18-64 years who were employed in each group showed an upward trend from 2010 to 2019 and then a decline from 2019 to 2021. The decline from 2019 to 2021 can be attributed to the COVID-19 pandemic because many businesses were recovering in 2021. For all four groups, the share of the employed was at or above 60%. However, the share in the naturalized citizen group, between 75% and 80%, was consistently the highest in all years, except in 2021. The group with the lowest share at all

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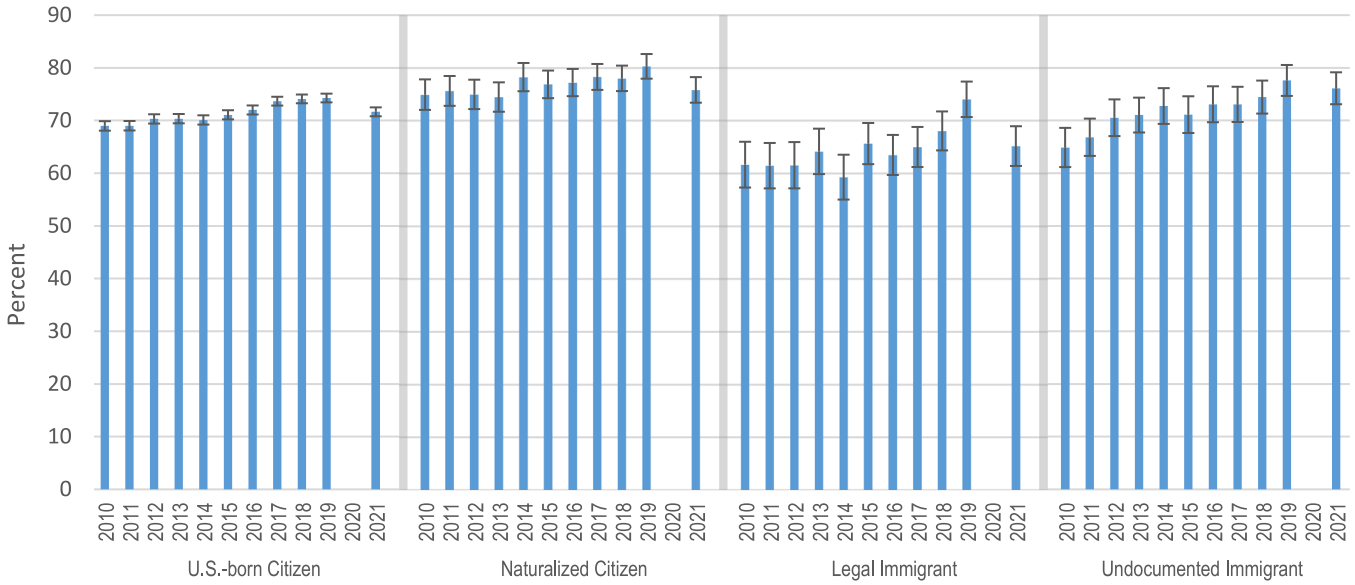
times was the legal immigrant group, with a share between 60% and 75%. The share of the U.S.-born citizen group had a narrow range, between 70% and 75%, with a ranking of the second highest early on and the third highest in the last few years. The group with the second highest share in the last few years was the undocumented immigrant group. Its share increased from 65% in 2010 to its highest point of 78% in 2019 and then dropped slightly to 76% in 2021.

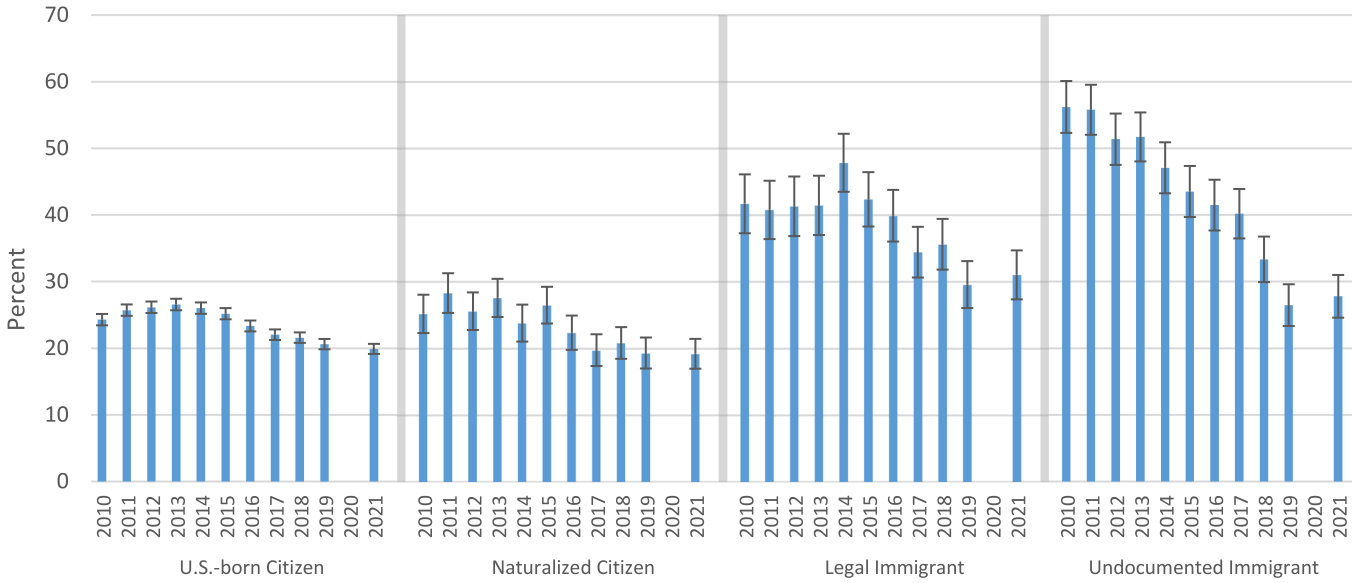
Figure 10. Percentage of adults aged 18-64 who were employed in population groups by immigration status, 2010-21: Washington



Low income (family income below 200 percent of the federal poverty level)

The share of adults 18-64 with low income dropped in all four groups from 2010 to 2021. In the legal immigrant group and the undocumented immigrant group, there was a slight increase from 2019 to 2021, but the increase was not statistically significant for either group. The shares in the U.S.-born citizen group and the naturalized citizen group were quite similar, dropping from high 20% to about 20%. Their shares were much lower than the shares in the other two groups, especially in earlier years. The undocumented immigrant group had the highest share in earlier years, at about 50%. However, in the last two years, its share dropped to a level similar to that of the legal immigrant group, below 30%.

Figure 11. Percentage with low family income (less than 200% of federal poverty level), adults aged 18-64 by immigration status, 2010-21: Washington



Evolving demographic and socio-economic characteristics of the undocumented immigrants

Changes in the demographic and socio-economic characteristics of the undocumented immigrants are worth mention. In many cases, this group's changes were the most dramatic change during 2010-21. In the early years of this period, the undocumented immigrants were nearly all in the age range of 18-64, mostly male, individuals of Hispanic origin, non-white, and non-Asian/Pacific Islander. For those in the age range of 18-64, few had a 4-year college degree and beyond and most were in low-income, though the majority of them were employed.

By the end of this period, although undocumented immigrants continued to be nearly all in the 18-64 age range, mostly male and non-white, most of them were now no longer of Hispanic origin. For those in the age range of 18-64, their share of having a 4-year college degree and beyond was approaching 50% and was the highest of all groups in 2021. The proportion with low-income dropped by half, the largest decline of all groups. Their share of being employed increased further and it was tied with the highest share.

We did not attempt to determine the cause(s) for the changes in the characteristics of the undocumented immigrant population because doing so requires data we do not have and also requires a more complex analysis. However, the higher employment share, the dramatic increase in the share holding a 4-year college degree and beyond, and the dramatic decrease in the share of low-income people appear to suggest that current undocumented immigrants were more likely to be here on expired temporary documents (e.g., student visa and temporary work visa) than in earlier years.

Data source and notes

Data source

The original data source for this research brief is the US Census Bureau's American Community Survey (ACS) 1-year Public Use Microdata Sample files for 2010 to 2019 and 2021. The Health Care Research Center at the Office of Financial Management adjusted the ACS sample weights to correct the undercount of Medicaid enrollment found in ACS beginning in 2014.[6] This adjustment may have resulted in minor changes in estimates besides counts of Medicaid enrollment. We based estimates reported in this brief for 2014-20 and 2021 on the adjusted ACS data.

Immigrant status

This brief classifies Washington's population into four groups according to their immigration statuses: U.S.-born citizen, naturalized citizen, legal immigrant and undocumented immigrant. U.S.-born citizen and naturalized citizen are determined by the citizenship and nativity data fields in the ACS. If a person is a citizen and was born native, that person is classified as U.S.-born citizen. A citizen reported to be a foreign-born is classified as a naturalized citizen. The remainder of the population are non-citizens. The ACS does not have direct data fields that can be used to classify a non-citizen as either legal immigrant or undocumented immigrant. To help make that distinction, we applied an algorithm published in the journal of Labor Economics by George Jo. Borjas to the ACS data.[7] The Borjas algorithm uses existing information in federal surveys such as the Current Population Survey and the ACS to impute a non-citizen's legal status. Such information includes their arrival in U.S. before 1980, participation in public assistance programs, employment in government positions, veteran or person currently in armed forces, etc. Surveys may have sampling and response errors that may result in under-report of non-citizens, probably more so of undocumented immigrants. Estimates of the non-citizen populations in this brief may contain those errors. In addition, there may be an over-report of naturalized citizens in this brief since people born outside the U.S. but to parents who are U.S. citizens are classified as "naturalized citizens" in the brief's analysis.

Missing income

The ACS data include a small number of records that have no income information. We excluded those records when we calculated the percentage of population in low income.

Statistical difference between estimates

The difference between two estimates is considered statistically significant if their 95% confidence intervals of the two estimates do not overlap.

[6] See footnote 1.
[7] Borjas, GJ. The Labor supply of undocumented immigrants. Labor Economics 46(2017):1-13.

Appendixes

Table A1. Total population by immigration status (in percentage), Washington, 2010-19 and 2021

Immigration status	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19	'20	'21
U.S.-born citizen	86.7	86.6	86.8	86.5	86.8	86.3	86.0	85.6	85.3	85.1		85.1
Naturalized citizen	6.1	6.1	6.2	6.3	6.1	6.5	6.6	7.0	7.2	7.0		7.3
Legal immigrant	3.5	3.5	3.3	3.3	3.4	3.6	3.9	3.9	3.7	3.9		3.7
Undocumented immigrant	3.7	3.9	3.7	3.9	3.7	3.5	3.4	3.6	3.8	4.0		3.9
Total population	100	100	100	100	100	100	100	100	100	100		100

Table A2. Demographic characteristics by Immigration status (in percentage), total population, Washington, 2010-19 and 2021

Characteristic	Immigration Status	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19	'20	'21
Female	U.S.-born citizen	49.8	49.8	49.9	49.8	49.7	49.8	49.7	49.7	49.7	49.7		49.3
	Naturalized citizen	55.9	54.7	55.1	55.8	55.1	55.1	54.5	55.6	54.8	54.4		54.4
	Legal immigrant	56.8	56.4	54.5	54.7	54.7	53.9	55.0	53.4	52.6	55.2		52.8
	Undocumented immigrant	43.6	44.3	44.7	42.5	43.6	43.4	45.4	44.2	45.4	42.7		44.8
Age 0-17	U.S.-born citizen	27.1	26.8	26.7	26.6	26.5	26.4	26.2	26.2	26.0	26.0		25.6
	Naturalized citizen	6.4	4.8	4.8	4.7	4.4	3.8	4.1	4.1	3.9	2.8		3.4
	Legal immigrant	19.5	16.5	14.4	15.9	14.3	12.8	15.1	14.3	13.3	11.3		11.4
	Undocumented immigrant	8.9	8.7	8.1	6.1	7.4	7.0	5.6	6.9	7.3	8.7		9.1
Age 18-64	U.S.-born citizen	60.5	60.5	60.1	59.5	59.3	59.0	58.8	58.6	58.2	57.8		57.8
	Naturalized citizen	74.1	75.7	76.5	75.8	75.4	76.0	74.1	74.4	74.0	74.4		75.4
	Legal immigrant	71.6	72.8	73.3	72.1	74.3	76.0	75.4	74.0	77.3	78.7		76.6
	Undocumented immigrant	89.6	89.7	90.0	92.7	89.9	90.5	92.2	90.4	90.8	89.3		88.5
Age 65 and older	U.S.-born citizen	12.5	12.7	13.3	13.8	14.2	14.6	15.0	15.2	15.7	16.2		16.6
	Naturalized citizen	19.5	19.5	18.7	19.5	20.2	20.2	21.8	21.5	22.1	22.8		21.2
	Legal immigrant	8.9	10.7	12.3	12.0	11.5	11.2	9.5	11.6	9.4	10.1		12.0
	Undocumented immigrant	1.5	1.6	1.9	1.2	2.6	2.5	2.2	2.7	1.9	2.0		2.3
Hispanic	U.S.-born citizen	8.3	8.7	8.7	9.2	9.5	9.6	9.7	10.1	10.2	10.5		11.6
	Naturalized citizen	14.5	14.5	15.1	14.4	14.5	15.7	15.5	15.2	17.0	16.6		14.3
	Legal immigrant	33.3	31.0	34.2	29.3	34.8	35.0	34.8	34.6	31.9	32.1		34.0
	Undocumented immigrant	54.4	52.0	55.3	54.1	49.7	49.7	49.5	45.8	45.3	41.0		39.4
Non-Hispanic white	U.S.-born citizen	79.5	79.1	78.4	78.1	77.2	77.0	76.8	76.1	75.7	75.3		71.5
	Naturalized citizen	30.9	30.0	32.1	30.3	29.8	29.5	28.4	29.9	27.3	27.1		27.7
	Legal immigrant	31.6	33.2	28.1	28.9	24.3	25.8	25.2	23.2	24.0	21.2		22.8
	Undocumented immigrant	15.4	12.9	14.1	13.2	14.6	11.6	11.9	11.8	10.8	12.9		14.1
Non-Hispanic Asian and Pacific Islander	U.S.-born citizen	3.3	3.3	3.5	3.5	3.6	3.5	3.8	3.8	4.0	4.0		4.3
	Naturalized citizen	47.3	46.8	45.3	47.3	49.1	46.3	46.2	46.1	45.7	46.9		46.9
	Legal immigrant	26.8	28.7	28.6	35.2	31.8	33.6	29.9	34.0	33.4	32.9		35.6
	Undocumented immigrant	27.4	30.2	26.7	27.5	32.1	36.2	34.8	37.0	39.0	40.4		42.7

Table A3. Education, employment and income by immigration status (in percentage): adults 18-64, 2010-19 and 2021

Characteristic	Immigration status	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19	'20	'21
4-year college education or higher	U.S.-born citizen	28.8	29.1	29.1	29.9	30.1	30.3	31.6	32.0	32.7	32.8		34.7
	Naturalized citizen	33.4	33.5	34.7	34.2	36.8	37.4	39.1	37.5	40.4	41.0		43.1
	Legal immigrant	27.5	27.3	28.1	31.7	25.3	29.1	31.2	31.4	34.1	32.4		32.9
	Undocumented immigrant	22.0	22.6	21.8	25.5	27.1	30.7	30.7	37.0	37.5	40.9		46.6
Employed	U.S.-born citizen	69.0	69.0	70.3	70.4	70.1	71.1	72.0	73.7	74.1	74.3		71.7
	Naturalized citizen	74.9	75.6	75.0	74.5	78.2	76.9	77.2	78.3	78.0	80.3		75.8
	Legal immigrant	61.6	61.4	61.5	64.1	59.3	65.6	63.5	65.0	68.0	74.0		65.1
	Undocumented immigrant	64.9	66.8	70.5	71.0	72.8	71.1	73.1	73.1	74.5	77.6		76.1
Low-income (below 200% of FPL)	U.S.-born citizen	24.3	25.7	26.2	26.6	26.0	25.2	23.3	22.0	21.6	20.6		19.9
	Naturalized citizen	25.2	28.3	25.6	27.6	23.8	26.5	22.3	19.7	20.8	19.3		19.2
	Legal immigrant	41.7	40.8	41.3	41.4	47.8	42.4	39.9	34.4	35.6	29.6		31.0
	Undocumented immigrant	56.2	55.8	51.4	51.7	47.1	43.5	41.5	40.2	33.3	26.5		27.8

EXHIBIT J

Washington State Department of HEALTH

Washington State Department of Health

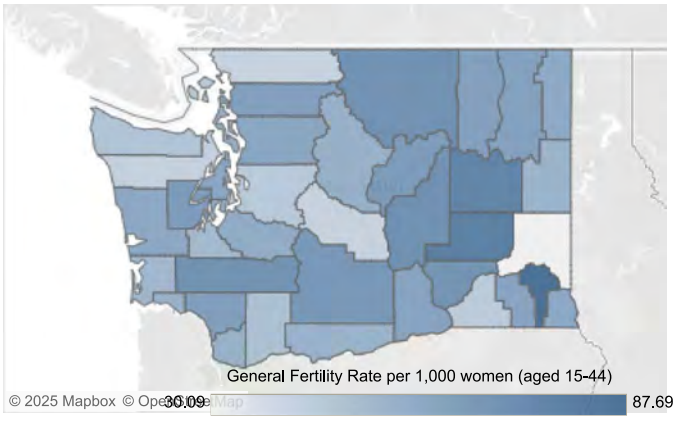
All Births Dashboard - County

Top 50 Baby Names to WA Residents | General Fertility Rate by County | General Fertility Rate by Maternal Race and County | Crude Birth Rate by County | Crude Birth Rate by Infant Sex and County | Age Specific Birth Rate by County

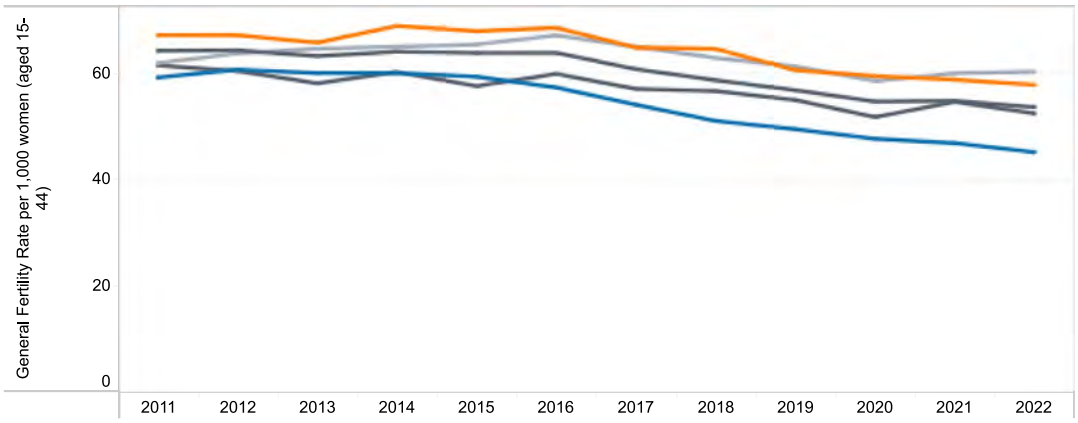
General Fertility Rate: Total # of Births to Women of All Ages per 1,000 women aged 15-44 years (WA Residents only)
Data are available in this tab for years 2011-2022 at the State and County levels. Please use the slider to select a year. The last tab titled "Download Data Table" allows you to select the data you would like to download for analysis.

Map (Select a Year)

2022



Geography	2022	2021	2020	2019	2018	2017	2016	20
State Total	53.5	54.7	54.6	56.7	58.5	60.6	63.7	63
Adams	79.5	92.0	84.3	99.6	100.8	104.0	100.1	93
Asotin	59.2	61.0	59.2	60.9	72.2	51.6	6.8	5
Benton	61.8	64.0	63.7	66.3	68.3	70.0	75.8	73
Chelan	55.9	57.8	57.9	64.9	63.4	64.0	69.5	71
Clallam	46.9	56.9	57.3	55.9	57.6	64.2	63.5	64
Clark	55.4	57.0	55.6	59.3	59.3	60.8	56.9	56
Columbia	61.5	48.4	53.7	50.2	58.2	60.3	65.3	56
Cowlitz	64.0	61.7	64.7	65.3	65.7	69.4	66.4	62
Douglas	65.5	65.3	61.5	64.5	66.2	77.1	71.3	76
Ferry	63.2	73.4	67.1	72.6	65.9	72.4	80.1	53
Franklin	69.1	70.4	73.8	78.1	79.4	84.9	89.3	90
Garfield	87.7	81.5	56.4	68.8	78.8	89.7		33



Line Graph (Select Geographies)

(Multiple values)

Geography
- King
- Pierce
- Snohomish
- Thurston

State Reference
- State Total

NR = Not Reliable. Rates are not reliable due to counts less than 17. ** = Suppression. Rates are suppressed when counts are between 1-9.
For more information, please click on the landing page: https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/birth-outcomes-data
Citation: Washington State Department of Health, Center for Health Statistics, Birth Certificate Data, 2000–2022. Due to the current lack of Small Area Data Estimates from Office of Financial Management (OFM), the population data used to calculate rates in this dashboard come from the

District Judge John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, *et al.*, Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants.	CASE NO. C25-0127-JCC MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL NOTE ON MOTION CALENDAR: FEBRUARY 28, 2025

U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
1100 L STREET, NW
WASHINGTON, DC 20005
202-616-8098

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 62, Defendants respectfully move for a partial stay pending appeal of the Court's Order granting Plaintiffs' motions for preliminary injunction, ECF No. 114 (Order), entered on February 6, 2025, which entered a nationwide injunction prohibiting Defendants from implementing or enforcing Executive Order No. 14160, Protecting the Meaning and Value of American Citizenship (EO). In particular, Defendants contend that the Court should stay its injunction in two ways, so that it provides relief to only those plaintiffs in this case who have made a sufficient showing of standing to entitle them to preliminary injunctive relief (*i.e.*, the named individual plaintiffs in the Consolidated Amended Complaint, ECF No. 106). First, the Court should stay the injunction's application to the plaintiff states, who have not shown that they are likely to establish Article III standing and have not shown that the EO violates any of *their* rights as opposed to the rights of third parties. And second, the Court should stay the injunction's nationwide application.

Defendants' arguments that the states lack standing and that nationwide relief is inappropriate are very likely to succeed on appeal. The Supreme Court has recently rejected state standing arguments very similar to what the states have offered here, *see United States v. Texas*, 599 U.S. 670 (2023), and the Court's extension of relief to individuals across the nation who are not before this 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 to parties

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202-616-8098

who are not properly before the Court, and who cannot claim to be irreparably harmed from the staying of an injunction to which they have not demonstrated their entitlement.

Defendants respectfully request a ruling by the close of business on Wednesday, February 12, 2025. After that time, if relief has not been granted, Defendants intend to seek relief from the U.S. Court of Appeals for the Ninth Circuit.

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); *Humane Soc'y of U.S. v. Gutierrez*, 523 F.3d 990, 991 (9th Cir. 2008). When the government is a party, its interests and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the significance of Defendants' arguments on appeal, together with the relevant equitable considerations, weighs in favor of granting the partial stay pending appellate review that Defendants have requested.

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

"At the preliminary injunction stage, the plaintiffs 'must make a clear showing of each element of standing.'" *LA All. for Hum. Rts. v. County of Los Angeles*, 14 F.4th 947, 956 (9th Cir. 2021) (citation omitted); *see also, e.g., Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)

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(to establish standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision").

1. As Defendants have explained, the state plaintiffs have failed to carry this burden here. *See* Defs.' Opp'n to Pls.' Mots. for Prelim. Inj. at 7-13, ECF No. 84 (Defs.' PI Opp'n). Fundamentally, their asserted economic harms are the "indirect effects on state revenues or state spending" of federal immigration policy, which the Supreme Court has held does not support Article III standing. *See Texas*, 599 U.S. at 680 n.3. *Biden v. Nebraska*, 143 S. Ct. 2355 (2023), on the other hand, dealt with a federal policy that would have directly deprived a state government corporation of ongoing fees that it would otherwise continue earning under a federal contract. Defendants respectfully submit that it is *Texas*, which the Court did not address in assessing the states' standing, that should control the standing analysis in this case.

The Court similarly did not acknowledge or rebut Defendants' argument that the states lack third-party standing to assert Citizenship Clause claims on behalf of their residents, much less the residents of other states. *See* Defs.' PI Opp'n at 11-13. Even assuming the states had made an adequate showing of direct economic injury to support Article III standing (which they have not), this argument would provide an independent basis to deny their Citizenship Clause claim. A plaintiff "cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). For the same reason that states lack standing to assert claims that individuals' Due Process and Equal Protection rights are harmed,

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see South Carolina v. Katzenbach, 383 U.S. 301, 323-24 (1966); *Haaland v. Brackeen*, 599 U.S. 255, 294-95 (2023), they lack standing to assert that other individuals' rights under the Citizenship Clause are impaired. On this argument, too, Defendants are likely to succeed on appeal.

2. Defendants are also likely to prevail on their argument that nationwide relief is improper. *See* Defs.' PI Opp'n at 44-45. 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 foreclose any relief in this case to anyone not properly before the Court, *i.e.*, anyone other than the named individual plaintiffs who, for present purposes at least, have made a sufficient showing of Article III standing to obtain emergency preliminary relief.

In nonetheless fashioning nationwide relief, the Court noted that a geographically limited injunction would be "ineffective" because of the possibility that "babies born in other states would travel to the Plaintiff States" and necessitate state funding. Order at 12. But the mere prospect of such remote future impacts on state revenue streams is insufficient to justify

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the breadth of the Court's order here, which prevents implementation or enforcement *anywhere* in the United States. Particularly in this preliminary injunction posture, the remote concern that babies will be born after the effective date of the EO but also move into the plaintiff states while this case is pending is too speculative to justify such sweeping relief. It is not necessary to provide complete relief to the plaintiff states, whose claimed injuries would be substantially remedied by an order that provided relief only within their borders (assuming that they were proper parties, which again they are not). *Cf. Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). This is particularly so when the injunction covers states who asked this Court not to issue an injunction. *See* ECF No. 89-1 (amicus brief filed by 18 states supporting Defendants' position); *Arizona v. Biden*, 31 F.4th 469, 484 (6th Cir. 2022) (Sutton, J., concurring) ("Nationwide injunctions … sometimes give States victories they do not want.").

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

The balance of the equities likewise favor limiting injunctive relief to the individual named plaintiffs in this case and not extending it to (1) states who are not proper parties to bring the claims at issue here and (2) all individuals nationwide who are not proper parties before this Court. Such overbroad 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 here: as evidenced by the amicus participation in this case, the Citizenship Clause interpretation forwarded by

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these plaintiffs is not uniformly accepted throughout the country. *See, e.g.*, ECF No. 89-1 (amicus brief filed by 18 states supporting Defendants' position).

In addition, an injunction that prevents the President from carrying 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, an 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).

The injunction causes further harm to the Defendants because its breadth and timing—applying to all implementation and enforcement and extending a temporary restraining order that was entered just three days after the EO was issued—prevents (and has prevented) 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 necessary advance preparations and the ultimate implementation of the EO will be delayed. 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

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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 4.

CONCLUSION

For the foregoing reasons, and for all the reasons stated in Defendants' opposition to Plaintiffs' motions for preliminary injunction, Defendants respectfully request that this Court stay its preliminary injunction to the extent it extends beyond the named individual plaintiffs in this consolidated action. Defendants respectfully request a ruling on this motion no later than the close of business on February 12, 2025, after which time Defendants intend to seek relief from the Ninth Circuit.

DATED this 7th day of February, 2025.

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I certify that this memorandum contains 1,767 words, in compliance with the Local Civil Rules.

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The Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, *et al.*,

Plaintiffs,

v.

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

Defendants.

NO. 2:25-cv-00127-JCC

PLAINTIFF STATES' RESPONSE TO DEFENDANTS' MOTION TO STAY INJUNCTION PENDING APPEAL

NOTE ON MOTION CALENDAR: FEBRUARY 28, 2025

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I. INTRODUCTION

Defendants seek judicial permission to implement and enforce the plainly unlawful Citizenship Stripping Order pending appeal with an exception for the two individually named private plaintiffs. The Court should decline that invitation. Defendants do not dispute the irreparable harm the Plaintiff States will suffer or the harm to the public interest that will follow if the Citizenship Stripping Order goes into effect. Instead, they make the remarkable assertion that *they* will be irreparably injured absent a stay even though the Court's injunction preserves the status quo as it has existed for more than a century and they are currently bound by separate injunctions that they have neither appealed nor sought to stay. The Court's Order explaining the basis for its injunction, which detailed the Plaintiff States' likelihood of prevailing on the merits, concluded that the Plaintiff States have standing, and explained the appropriateness of nationwide relief, rests on settled precedent. Defendants, in turn, are extraordinarily unlikely to succeed on appeal on any of the issues they raise. They come nowhere close to meeting the standard needed to justify staying the Court's injunction pending appeal. Defendants' motion should be denied.[1]

II. ARGUMENT

"A stay is not a matter of right, even if irreparable injury might otherwise result." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006 (9th Cir. 2020) (citation omitted). "It is instead 'an exercise of judicial discretion,' and 'the propriety of its issue is dependent upon the circumstances of the particular case.'" *Id.* (quoting *Nken v. Holder*, 556 U.S. 418, 433 (2009)). Courts consider four factors when determining whether to exercise their discretion and stay an order pending appeal: "(1) whether the stay applicant[s] ha[ve] made a strong showing that [they are] likely to succeed on the merits; (2) whether the applicant[s] will be irreparably injured absent a stay; (3) whether

[1] Defendants noted their motion to stay for February 28, 2025, but, for reasons they do not explain, demand a ruling by February 12, 2025, and indicate that they intend to seek relief from the Ninth Circuit before the Court has the opportunity to consider their motion on the normal timeline. The Plaintiff States accordingly file this response early.

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issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 434 (quotation omitted). "The burden of demonstrating that these factors weigh[] in favor of a stay lay with the proponent . . . ." *Mi Familia Vota v. Fontes*, 111 F.4th 976, 981 (9th Cir. 2024). And of course, the likelihood of success and irreparable injury factors "are the most critical." *Id.*

Every factor here points sharply towards denial of Defendants' requested stay.

A. Defendants Will Suffer No Injury Whatsoever in Continuing to Comply With the 157-Year-Old Established Rule Regarding Birthright Citizenship—Particularly Where They Have Not Appealed a Separate Nationwide Injunction

Defendants must show that they will suffer irreparable injury absent a stay. "[S]imply showing some possibility of irreparable injury" is insufficient. *Al Otro Lado*, 952 F.3d at 1007 (quoting *Nken*, 556 U.S. at 434). With all due respect, Defendants cannot contend with a straight face that they will be irreparably harmed by respecting a constitutional right that has been established—and accepted by all branches of the federal government—for more than a century. *See Washington v. Trump*, 847 F.3d 1151, 1168 (9th Cir. 2017) (denying emergency stay of TRO enjoining President Trump's first Travel Ban where the defendants would suffer no irreparable harm because "the district court's order merely returned the nation temporarily to the position it has occupied for many previous years"). Denial of a stay is required here because Defendants will suffer no harm whatsoever.

To be sure, Defendants try to conjure harm by invoking the President's supposed "broad authority over immigration matters" and accusing the Court of an "improper intrusion . . . into the workings of a coordinate branch of the Government." ECF No. 122 (Defs.' Mot.) at 6-7. As the Plaintiff States have explained, however, this is not a case about "immigration." It is a case about citizenship rights that are intentionally and explicitly *beyond* the President's authority. *See* ECF No. 105 (States' Prelim. Inj. Reply) at 16-17. The case Defendants cite, *INS v. Legalization Assistance Project of Los Angeles County Federation of Labor*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers), nowhere recognized a President's unilateral authority over

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"immigration matters," and it certainly did not recognize a President's authority to deny U.S. citizens their right to citizenship. Moreover, the Executive Branch does not suffer irreparable harm merely by having its actions challenged as unlawful and being subject to a preliminary injunction. *Doe #1 v. Trump*, 957 F.3d 1050, 1059 (9th Cir. 2020) ("Indeed, if we were to adopt the government's assertion that the irreparable harm standard is satisfied by the fact of executive action alone, no act of the executive branch asserted to be inconsistent with a legislative enactment could be the subject of a preliminary injunction. That cannot be so."). Defendants' vague and conclusory invocation of the President's supposed authority in the immigration context in no way shows that they will in fact suffer irreparable harm absent a stay of the Court's injunction.

Next, Defendants' plea to let them work towards implementing the Citizenship Stripping Order is unavailing (and concerning), particularly given that they do not even try to argue they are likely to succeed on the merits of the Citizenship Stripping Order's legality. They state that the injunction "prevents (and has prevented) the executive branch as a whole from even beginning the process of formulating relevant policies and guidance for implementing the EO." Defs.' Mot. at 7. That is precisely the point. Defendants are not harmed by refraining from implementing a plainly unconstitutional and unlawful Executive Order. ECF No. 114 at 11. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 679 (9th Cir. 2021) ("[T]he public has an interest in ensuring that the '[laws] enacted by [their] representatives are not imperiled by executive fiat.'") (cleaned up). Moreover, the Citizenship Stripping Order's implementation and enforcement has been enjoined since the Court issued a TRO on January 23, 2025, yet Defendants point to no actual harm that they have suffered. That failure defeats their request for a stay. *See Al Otro Lado*, 952 F.3d at 1007 (denying motion to stay injunction pending appeal where injunctive relief was in place for weeks and defendants offered no evidence of harms that had in fact occurred in that period before seeking stay).

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Finally, Defendants' manufactured claims of urgency and harm cannot be reconciled with the fact that they have neither appealed nor sought to stay a separate nationwide injunction that bars most of the Defendants here from implementing or enforcing the Citizenship Stripping Order.[2] *See CASA, Inc. v. Trump*, No. 8:25-cv-00201-DLB, ECF Nos. 65-66 (D. Md. Feb. 5, 2025) (enjoining the Secretary of State, U.S. Attorney General, Secretary of Homeland Security, Director of U.S. Citizenship and Immigration Services, the Commissioner of the Social Security Administration, and their officers and agents from "implementing and enforcing the Executive Order until further order of th[e] Court"). They have thus far declined to appeal or seek a stay of that injunction even though they made the *same* arguments in that case on the merits, about the plaintiffs' supposed lack of a cause of action, and on the propriety of nationwide relief. *See id.* ECF No. 40 at 5-7, 29-30. By accepting that injunction for the time being, Defendants are making a transparent attempt to funnel review of the Citizenship Stripping Order's legality to the Ninth Circuit. That is their litigation choice, but they may not do so and at the same time represent to the Court here that they will suffer irreparable harm absent a stay of the Court's injunction in this case.[3]

In sum, Defendants will suffer no harm at all. Their motion should be denied.

B. Defendants' Challenges to the Plaintiff States' Standing and the Injunction's Nationwide Scope Are Meritless

Defendants do not argue that they are likely to succeed on the merits of the Plaintiff States' constitutional and statutory claims. Rather, they reassert that the Plaintiff States lack standing and contend that nationwide relief is unwarranted. Defs.' Mot. at 3-4. They are wrong

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[2] Today, on February 10, 2025, another court issued an injunction that enjoins Defendants from enforcing the Citizenship Stripping Order "in any manner" with respect to the plaintiffs in that case, which have members nationwide, and "with respect to any individual or entity in any matter or instance within the jurisdiction" of the court there. *See N.H. Indonesian Cmty. Support v. Trump*, No. 1:25-cv-00038-JL-TSM, ECF No. 77 (D.N.H. Feb. 10, 2025).

[3] Indeed, Defendants' failure to acknowledge or address the impact of the Maryland injunction on their irreparable harm claim presents serious Rule 11 concerns regarding counsel's candor to the Court. The Plaintiff States do not intend to seek sanctions by motion at this time because the matter is proceeding imminently to appeal. The Court should, at a minimum, warn Defendants' counsel regarding their obligations as officers of the Court.

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on both accounts, and they certainly have not made a "strong showing" that they are likely to prevail on appeal with respect to those discrete issues.

1. Defendants Are Not Likely to Succeed in Challenging the Plaintiff States' Standing

Defendants argue (again) that the Plaintiff States' "economic harms are the 'indirect effects on state revenues or state spending' of federal immigration policy," and suggest (again) that such harms are insufficient to support Article III standing based on a single footnote from *United States v. Texas*, 599 U.S. 670, 680 n.3 (2023). Defs.' Mot. at 4-5. The Court concluded, however, that the Citizenship Stripping Order "subjects the Plaintiff States to *direct and immediate* economic and administrative harms." ECF No. 114 at 3 (emphasis added). And of course it does. The undisputed record here proves that the Plaintiff States will suffer concrete, direct funding losses as a result of the Order, including tens of thousands of dollars that will be lost under existing contracts with SSA and millions in lost Medicaid, CHIP, and Title IV-E funding. *See* ECF No. 63 (States' Prelim. Inj. Mot.) at 6-9 (detailing sovereign and pecuniary harms the Plaintiff States will suffer). Given these losses, which flow *directly* from the Citizenship Stripping Order's attempted denial of citizenship to children who the Plaintiff States serve in their programs, the Plaintiff States have standing under *Biden v. Nebraska*, --- U.S. ---, 143 S. Ct. 2355, 2365-66 (2023), and additional Ninth Circuit precedent. *See* States' Prelim. Inj. Mot. at 6-9; States' Prelim. Inj. Reply at 3-5. Defendants note *Nebraska* in a single sentence but again offer no way to reconcile their arguments with the squarely applicable facts and holding of that case. *See* Defs.' Mot. at 4.

Nothing about *United States v. Texas* undermines the Plaintiff States' standing here. As explained previously, Defendants' "indirect, downstream" harms argument relies on a single footnote in *Texas* taken out of context. The Supreme Court in *Texas* held that the plaintiff states' injuries in the form of increased costs to incarcerate and provide social services to non-citizens were not redressable because the judiciary could not interfere in the exercise of Article II

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executive discretion regarding arrest and prosecution policies, which courts generally lack meaningful standards to review. *Texas*, 599 U.S. at 677-80. The Court did not disturb the district court's conclusion that the states suffered cognizable injuries and no one "dispute[d] that even one dollar's worth of harm is traditionally enough to 'qualify as concrete injur[y] under Article III.'" *Id.* at 688 (Gorsuch, J., concurring) (citation omitted). The *Texas* holding by its own terms was "narrow" and limited to the redressability concerns of arrest and prosecutorial discretion policies, *id.* at 683-84, and the Ninth Circuit has confirmed as much, *Nebraska v. Su*, 121 F.4th 1, 13 n.5 (9th Cir. 2024). In short, *Texas* casts no doubt on the Plaintiff States' standing here. *See* States' Prelim. Inj. Reply at 4.

Second, Defendants are not likely to succeed with respect to their reprised "third-party standing" argument.[4] As the Plaintiff States explained in their Reply, Defendants' argument depends on a strawman assertion that the Plaintiff States are asserting *parens patriae* claims to protect nothing more than individual residents' interests. States' Prelim. Inj. Reply at 6-7. That is wrong. The Plaintiff States challenge the Citizenship Stripping Order to protect their own unique sovereign and pecuniary interests, not based on a *parens patriae* theory. Defendants' cited cases support the Plaintiff States' right to do so, including through assertion of a claim under the Citizenship Clause. *Id.*

Finally, while Defendants fail to address it in their motion to stay, the Plaintiff States independently have standing to protect their sovereign interests, which are harmed directly under the Citizenship Stripping Order. *See* States' Prelim. Inj. Mot. at 6; States' Prelim. Inj. Reply at 2-3. Indeed, it is not seriously disputed that under the Order's narrowed view of citizenship, thousands of state residents will be deemed not subject to the jurisdiction of the United States. That, in turn, will directly injure the Plaintiff States' "'sovereign interest' in the retention of

[4] Notably, Defendants only make this argument with respect to the Plaintiff States' constitutional claim. *See* Defs.' Mot. at 4-5. The Court also held that the Plaintiff States are likely to succeed on their INA claim, a ruling Defendants entirely ignore. ECF No. 114 at 6. Thus, Defendants' "third-party" standing argument has no practical impact on the scope of the injunction.

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[their] authority" to regulate individuals within their borders. *Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1176 (9th Cir. 2024); *see also* States' Prelim. Inj. Mot. at 6; States' Prelim. Inj. Reply at 2-3. Nor is it disputed that many of the Plaintiff States' constitutions and laws rely on the settled meaning of "United States" citizen, and as a result, the meaning of "citizen" for purposes of those laws is suddenly "endangered and rendered uncertain." *Ohio ex rel. Celebrezze v. U.S. Dep't of Transp.*, 766 F.2d 228, 233 (6th Cir. 1985); *see also* States' Prelim. Inj. Reply at 2-3. The Court can take this opportunity to make clear that the Plaintiff States have sovereign standing to challenge the Order.

2. Defendants Are Extremely Unlikely to Succeed in Challenging the Nationwide Scope of the Injunction

Defendants next protest that the Court issued a nationwide injunction. Defs.' Mot. at 5-6. They rely on general statements about such injunctions being disfavored, but they do not dispute that the Court has discretion to fashion an appropriate injunction, including a nationwide injunction, as necessary to provide the Plaintiff States with complete relief. Nor could they. *See Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571, 579, 581 (2017) (allowing nationwide injunction as to enforcement of portions of Executive Order that exceeded presidential authority); *Doe #1*, 957 F.3d at 1069 (declining to stay nationwide injunction and explaining that "there is no bar" against such injunctions "when it is appropriate") (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170 (9th Cir. 1987)). The Court acted well within its authority in issuing the current injunction.

The most Defendants muster is the conclusory suggestion that the Plaintiff States' injuries could be "substantially remedied by an order that provided relief only within their borders[.]" Defs.' Mot. at 6. That is wrong, as the Court explained. *See* ECF No. 114 at 12-13; States' Prelim. Inj. Mot. at 23-24; States' Prelim. Inj. Reply at 17-18. Moreover, in making that statement, Defendants concede that a geographically limited injunction would not provide *complete* relief to the Plaintiff States. Their hedging with language like "substantially"

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underscores the undisputed fact that individuals in the United States can and do move between states every day. And that is why their argument crumbles. If an injunction is geographically limited, the Plaintiff States will be forced to update and modify their systems to verify eligibility for their Medicaid, CHIP, and Title IV-E programs to the same degree because they must verify the citizenship status for *every* child they serve, regardless of which state that child was born in. Thus, the Court hit the nail on the head when it concluded that the "relief must be nationwide," because "[a]nything less is ineffectual." ECF No. 114 at 13. Defendants are unlikely to succeed in showing otherwise on appeal.

C. The Plaintiff States and the Public Interest Will Be Irreparably and Substantially Harmed If the Injunction is Stayed

The Plaintiff States have detailed at length the harms they and their residents face under the Citizenship Stripping Order. *See* States' Prelim. Inj. Mot. at 15-24; States' Prelim. Inj. Reply at 16-17. The Court rightfully recognized those harms, the blatant unlawfulness of the Citizenship Stripping Order, and how the "balance of equities and the public interest strongly weigh in favor of entering a preliminary injunction." ECF No. 114 at 11. Defendants ignore those harms entirely, but the stay analysis does not. The final *Nken* factors strongly support denial of a stay.

III. CONCLUSION

The Plaintiff States request that the Court deny Defendants' motion for a stay of the preliminary injunction.

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DATED this 10th day of February 2025.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was electronically filed with the United State District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 10th day of February 2025 in Seattle, Washington.

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