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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY; COMMONWEALTH OF MASSACHUSETTS; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAI'I; STATE OF MAINE; STATE OF MARYLAND; ATTORNEY GENERAL DANA NESSEL FOR THE PEOPLE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN; and CITY & COUNTY OF SAN FRANCISCO,

Plaintiffs,

v.

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

Defendants.

No. 1:25-cv-10139

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Few principles are stitched deeper into the American fabric than birthright citizenship—and few principles have clearer grounding in law. From the earliest days of this Nation's history, America followed the common law tradition of *jus soli*, that those born within the United States's sovereign territory are subject to its laws and citizens by birth. That tradition continued unimpeded until the Supreme Court's notorious pronouncement in *Dred Scott* that descendants of slaves were not citizens despite their birth in this country. But that aberration was short-lived: in the wake of the Civil War, our Nation adopted the Fourteenth Amendment to ensure citizenship for all who are born here. The Citizenship Clause thus promises "[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." Since its adoption, Congress has codified that guarantee, and the Supreme Court has twice confirmed that it means what it says. *See* 8 U.S.C. § 1401(b); *United States v. Wong Kim Ark*, 169 U.S. 649 (1898); *Plyler v. Doe*, 457 U.S. 202 (1982). For more than 150 years, the promise of the Citizenship Clause has never been undermined—until now.

This Court should step in to protect the centuries-old status quo from unprecedented attack. The President's decision last night to direct federal agencies to refuse to recognize children newly born in this country as citizens based on the immigration status of their parents is inconsistent with the Constitution and federal statutes alike. Indeed, because the Supreme Court has repeatedly held that the Citizenship Clause "affirms the ancient and fundamental rule of citizenship by birth within the territory," *Wong Kim Ark*, 169 U.S. at 693, this lawsuit is not just likely to succeed before this Court—is it all but certain. And this unlawful order works tremendous and irreparable harms, not only on more than 150,000 American babies born each year who will be deprived of the privileges of citizenship, but also on the Plaintiffs themselves: the order, which takes effect in 29 days, will

cause Plaintiffs to suffer direct losses of federal funds that turn on residents' citizenship and incur significant expenses to account for this radical change, none of which is remediable at the end of this case. Preliminary relief before February 19, 2025, including nationwide relief, is thus essential to protect the status quo from these profound and irretrievable injuries.

The President has no power to deny citizenship that the Fourteenth Amendment and federal statutes guarantee. This Court should grant a preliminary injunction.

BACKGROUND

A. Terms of the Executive Order.

Within hours of taking office, President Trump issued an Executive Order, "Protecting the Meaning and Value of American Citizenship," (Ex. W) ("Order") to strip American-born children of citizenship. The Order declares that birthright citizenship does not extend to anyone born to (i) a mother who is unlawfully present or who is lawfully present on a temporary basis, and (ii) a father who is neither a citizen nor lawful permanent resident. Based on this declaration, the Order announces a new policy: no federal agency "shall issue documents recognizing United States citizenship, or accept documents ... purporting to recognize United States citizenship" for such children born after February 19, 2025 ("Affected Children"). Order, § 2. The Order instructs all executive departments and agencies to implement this policy and specifically directs the Social Security Administration and the Departments of State, Justice, and Homeland Security to "ensure that the regulations and policies of their respective departments and agencies are consistent with this order, and that no officers, employees, or agents of their respective departments and agencies act, or forbear from acting, in any manner inconsistent with this order." *Id.*, § 3(a).

Not only does the Order strip the Affected Children of their citizenship, but the Order does not confer on them any lawful status and renders their presence in the United States unauthorized. Because the Order instructs all federal agencies to refuse to issue or accept any written recognition

of an Affected Child's citizenship, it leaves the Affected Children ineligible for a range of federal services and programs that are unavailable to unauthorized individuals. As a result, in less than 30 days, Plaintiffs will begin to lose significant federal funding for various critical health and welfare services that they provide to newborns who will now be considered unauthorized.

B. The Impacts Of The Order.

"Citizenship is unique"; "it is nothing less than the right to have rights." *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1277 (10th Cir. 2018). The Order will deny this fundamental right to millions across the Nation, creating a class of American-born children who are excluded from most federal public benefits, who live under a constant, destabilizing threat of deportation, and who, as they age, will be unable to work lawfully or to participate in American political life as voters or officeholders. Margaret Stock, *Is Birthright Citizenship Good for America*, 32 CATO J. 139, 150 (Winter 2012). The impacts on their health and well-being will be profound. Not only will they be ineligible for many public services to which U.S. citizens and even "qualified aliens" are entitled, but they may be dissuaded from accessing services for which they are eligible based on a "fear of deportation and harassment from authorities." Omar Martinez, et al, *Evaluating Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review*, J. Immigrant Minority Health 947, 964 (2015) (describing resultant impacts on public health); *see also* Jocelyn Kane, et al., *Health Care Experiences of Stateless People in Canada* 1 J. Migration & Hum. Security 272-73 (2023). Further, as compared to U.S. citizens, undocumented immigrants are more likely to live in poverty and less likely to have a high school diploma. *See* Wong Decl. (Ex. T). And this newly subordinated class of American babies may be rendered stateless—unable to naturalize and potentially denied citizenship by any other nation. Stock, *supra*, at 148-49; *see* Polly J. Price, *Stateless in the United States: Current Reality and a Future Prediction*, 46 Vand. J. Transnat'l L. 443, 492-99 (March 2013). Our Nation will also suffer, losing the "the constructive

economic energies" of these American children: "engagement in [authorized] work, establishment of businesses, provision of services, [and] innovation." Price, *supra*, at 503.

In addition to the profound long-term impacts on these children, the Order will impose financial injury on Plaintiffs, principally by causing them to assume a greater fiscal responsibility for providing critical services and assistance to tens of thousands of their residents. The federal government has long provided funding to States to support provision of low-cost health insurance, certain educational services, and child welfare services. But eligibility for federal funding depends on the citizenship and immigration status of the children who are served. *See*, *e.g.*, 8 U.S.C. §§ 1611(a), (c)(1)(B), 1612(b)(3)(C); 42 U.S.C. § 1396b; 42 C.F.R. § 435.406. To comply with federal and state laws, as well as to maintain the health and safety of their overall communities, Plaintiffs must continue to provide services to the Affected Children, but will now solely bear the costs of doing so. Plaintiffs will also lose funding for their agencies as a direct effect of the Order's instruction to SSA to adopt the new citizenship policy. Consider the following examples:[1]

Healthcare. Medicaid and CHIP, created by federal law, provide low-cost health insurance to U.S. citizens or "qualified aliens" whose family incomes fall below certain thresholds. 42 C.F.R. § 435.406; 8 U.S.C. § 1611(a), (c)(1)(B). States administer the programs, but the federal government covers a substantial portion of the costs—between 50 and 75 percent for children across the States. *See* Adelman Decl. (Ex. A) at ¶15; 42 U.S.C. § 1396d(b); 88 Fed. Reg. 81090. But U.S. law prohibits federal reimbursement for non-emergency costs incurred on behalf of "an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law." 42 U.S.C. § 1396b(v). To ensure that all children within

[1] While this brief focuses on the fiscal impacts the Order will have on States, the City and County of San Francisco's declaration spells out the impacts on localities as well. *See* Ex. V.

their jurisdictions have access to comprehensive health insurance, several Plaintiff States offer fully state-funded health insurance to unauthorized children who meet the income eligibility requirements for Medicaid or CHIP. *See* Ex. A at ¶¶5-11 (describing state program); Harrington Decl. (Ex. K) at ¶17. These programs expand access to preventative healthcare, limit the spread of communicable illnesses, and minimize the financial burdens on healthcare providers. *See* Ex. A at ¶¶12-14; Ex. K at ¶16-17. As a direct result of the Order, however, the federal government will refuse to recognize Affected Children as eligible for Medicaid or CHIP, so they will have to be enrolled in state-funded health insurance instead, a shift in coverage that will cost the Plaintiff States tens of millions of dollars. *See* Ex. A at ¶29; Boyle Decl. (Ex. E) at ¶¶9-11; Ex. K at ¶36; Armenia Decl. (Ex. O) at ¶¶23-25; Hadler Decl. (Ex. R) ¶¶26-27. Meanwhile, in Plaintiff States that do not provide such coverage to undocumented children, the loss of Medicaid and CHIP eligibility will place a financial strain on their public healthcare facilities, which will experience greater levels of uncompensated care. *See* Groen Decl. (Ex. J) at ¶¶19.

Special Needs Education. The same loss of Medicaid eligibility also has direct impacts on public health agencies and local schools, which must provide certain early intervention and special education services to infants, toddlers, and students with disabilities under the Individuals with Disabilities in Education Act (IDEA). *See* 20 U.S.C. §§ 1400(d)(1)(A), 1412(a)(1). States and local school districts receive partial Medicaid reimbursement from the federal government for providing such services to Medicaid-enrolled children. Ehling Decl. (Ex. B) at ¶10; Baston Decl. (Ex. C) at ¶¶17-18; Heenan Decl. (Ex. L) at ¶12. Because the Order will eliminate this funding for Affected Children with special needs, the Plaintiffs will suffer direct financial harms.

Child Welfare. The Order will cause state child welfare agencies to lose significant federal Title IV-E funding, which covers a sizeable portion of States' expenses for foster care, adoption,

and guardianship assistance. *See*, *e.g.*, Jamet Decl. (Ex. D) at ¶¶14-15; Sesti Decl. (Ex. H) at ¶¶4-6. Plaintiff States incur costs to provide Affected Children with child welfare services as required by state law, and federal funds are used for both direct payments to families caring for children in foster care and to help cover States' administrative expenses. *See*, *e.g.*, Ex. D at ¶12; Ex. H at ¶5. But because this funding, too, is limited to citizens or "qualified aliens," *see* 8 U.S.C. §§ 1611(a), (c)(1)(B), 1641, States would lose access to Title IV-E funding for Affected Children and have to cover the costs themselves. *See*, *e.g.*, Ex. D at ¶15; Ex. H at ¶¶8-9; Avenia Decl. (Ex. Q) at ¶¶17-20. And the impacts do not stop there: to help keep children with their parents, some child welfare agencies provide targeted assistance for basic necessities to the families they serve. *See*, *e.g.*, Ex. D at ¶18; Ex. Q at ¶20. Here, too, the Order has a direct impact: because the quantum of assistance the State must provide to keep a child with their parents turns on the child's eligibility for federal programs like SNAP, TANF, and SSI, and the federal programs are again available to U.S. citizens and qualified aliens, the States would have to increase their assistance to families whose Affected Children are otherwise at risk of requiring foster care. *See*, *e.g.*, Ex. D at ¶18; Ex. Q at ¶20.

SSN Funding. The Order will also strip States of federal funding from the Social Security Administration (SSA). Pursuant to SSA's Enumeration At Birth ("EAB") program—under which 99% of newborns obtain their SSNs—participating States transmit SSN applications for newborns to SSA and receive $4.82 per SSN issued. *See*, *e.g.*, Ex. C at ¶¶10-11; Duncan Decl. (Ex. I) at ¶19; Nguyen Decl. (Ex. M) at ¶¶22-23. Consistent with the Order, however, SSA will issue fewer SSNs to newborns, because it can no longer recognize the citizenship of Affected Children—and thereby cost the States tens of thousands of dollars they use to support the work of their vital statistics and records agencies. *See*, *e.g.*, Ex. C at ¶¶12-16; Ex. E at ¶19; Ex. I at ¶¶20-21; Ex. M at ¶30; Villamil-Cummings Decl. (Ex. N) at ¶18; Gauthier Decl. (Ex. S) ¶19.

Administrative/Operational Expenses. Finally, the Order will impose direct administrative and operational burdens on Plaintiffs. Plaintiffs maintain systems to verify residents' eligibility for federally-funded programs such as Medicaid, CHIP, Title IV-E, TANF, and SNAP. *See*, *e.g.*, Ex. A at ¶17; Ex. D at ¶¶19-20; Ex. H at ¶¶7-8; Ex. K at ¶23. Before the Order, there was an easily administrable way to verify the citizenship of American-born children: confirming that they were born in America. *See*, *e.g.*, Ex. D at ¶21; Ex. J at ¶15. But because a child's birth in this country will no longer suffice as proof, Plaintiffs will have to develop new systems that incorporate information about the child's parents to determine eligibility for federally funded programs; identify and determine the kinds of evidence sufficient to prove citizenship; design and implement new systems for processing applications and tracking citizenship status; train staff, partner organizations, and healthcare providers on the new system and procedures; and revise existing guidance and manuals regarding eligibility. *See* Ex. A at ¶¶32-35 (detailing costs); Ex. D at ¶¶22-25 (same); Ex. H at ¶¶12-15 (same); Ex. K at ¶¶44-45 (same); Ex. O at ¶¶31-33 (same); Ex. R at ¶¶25-28 (same). Moreover, Plaintiffs—as well as public healthcare facilities—will face increased administrative burdens trying to secure SSNs for newborn children through the EAB program. *See* Ex. C at ¶14-16; Ex. M at ¶¶31-32. Here, again, state facilities will no longer be able to count on the fact of the child's birth at their facility—and will incur new costs to verify their parents' immigration statuses. Ex. C at ¶16.

The federal government's own practices confirm the substantial cost Plaintiffs will incur to determine a child's citizenship based on their parents' own immigration status. USCIS charges *$1,335 per application* to determine whether a child (who was not born in the United States) is entitled to U.S. citizenship because one of their parents is a U.S. citizen—an amount that was set "at a level that will ensure recovery of the full costs of providing … services." 8 U.S.C. § 1356(m);

see USCIS, Form G-1055, Fee Schedule, at 34-35 (ed. Jan. 17, 2025).

ARGUMENT

"When assessing a request for a preliminary injunction, a district court must consider '(1) the movant's likelihood of success on the merits; (2) the likelihood of the movant suffering irreparable harm; (3) the balance of equities; and (4) whether granting the injunction is in the public interest.'" *Norris ex rel. A.M. v. Cape Elizabeth Sch. Dist.*, 969 F.3d 12, 22 (1st Cir. 2020). All four factors overwhelmingly support granting a preliminary injunction.

I. PLAINTIFFS HAVE STANDING TO BRING SUIT.

Plaintiffs have standing to challenge this unprecedented Order because they will suffer an "injury in fact" that is "fairly traceable" to the Order and "may be redressed by" a judicial order enjoining its implementation. *McBreairty v. Miller*, 93 F.4th 513, 518 (1st Cir. 2024). Plaintiffs can show standing based on a "substantial risk" that they will suffer proprietary harms, including fiscal injuries. *Massachusetts v. U.S. Dep't of Health & Hum. Servs.*, 923 F.3d 209, 222 (1st Cir. 2019) (State "established standing under a traditional Article III analysis" via its "demonstration of fiscal injury"); *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 110 F.4th 295, 308 (1st Cir. 2024) (agreeing financial losses are "a quintessential injury in fact"); *Gustavsen v. Alcon Labs, Inc.*, 903 F.3d 1, 7 (1st Cir. 2018) ("out-of-pocket loss of $500 to $1000 per year" is Article III injury). Even "small economic loss … is enough to confer standing." *Massachusetts*, 923 F.3d at 222.

Plaintiffs have more than cleared that bar here. As detailed both above and in the attached declarations, Plaintiffs have demonstrated that the Order will impose financial injuries directly on them: the loss of federal health funds and concomitant state healthcare expenses, *supra* at 4-5; loss of federal funding and concomitant expenses for special needs youth, *supra* at 5; loss of federal funding and concomitant governmental expenses for foster care, adoption, guardianship, and child

welfare assistance, *supra* at 5-6; loss of SSA reimbursements under the EAB, *supra* at 6; and major operational disruptions and administrative burdens across agencies and facilities, *supra* at 6-7. Each financial injury flows from the Order, which requires all federal agencies to comply with its unprecedented approach to citizenship, and would thus be redressed by a swift injunction.

II. PLAINTIFFS ARE HIGHLY LIKELY TO SUCCEED ON THE MERITS.

Plaintiffs are exceptionally likely to succeed on their claims that the Order contravenes the Constitution and a series of federal statutes, including the Immigration and Nationality Act (INA), and that any actions an executive agency takes to implement it would violate the APA. *See*, *e.g.*, *Pub. Int. Rsch. Grp. v. FCC*, 522 F.2d 1060, 1064 (1st Cir. 1975) (Executive is bound by "the twin external standards of statutory law and constitutional right"); 5 U.S.C. § 706(2) (requiring court invalidate agency action that is contrary to law). The President's decision to eliminate birthright citizenship contravenes the plain text of the Fourteenth Amendment, directly on-point Supreme Court decisions, centuries of history and practice, and a decades-old federal statute.

A. The Order Violates the Fourteenth Amendment.

Begin with the Fourteenth Amendment. The Citizenship Clause is clear: "All persons born … in the United States, and subject to the jurisdiction thereof, are citizens of the United States." U.S. Const. amend. XIV, § 1. The Constitution does not qualify this guarantee of citizenship, nor does it empower the President, or even Congress, to do so. The sole textual question is thus whether a child born in the United States to non-citizen parents is "subject to the jurisdiction" of the United States. That question admits of an easy answer: prior to the adoption of the Citizenship Clause in 1868, it was established that persons physically present in the United States, including non-citizens and their children, were subject to its sovereign power and control. *See*, *e.g.*, Noah Webster, An American Dictionary of the English Language 635 (George & Charles Merriam 1860) (Ex. X) (explaining legal term of art "subject to the jurisdiction" refers to the sovereign's "[p]ower of

governing or legislating" or "power or right of exercising authority" over the person); *Schooner Exchange 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."); *Wong Kim Ark*, 169 U.S. at 693 (emphasizing "[i]t can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides").

The Supreme Court has twice held, in no uncertain terms, that children born in the United States to non-citizen parents fall within the Citizenship Clause's textual guarantee—regardless of their parents' immigration status. In *Wong Kim Ark*, decided 127 years ago, the Court forcefully rejected a challenge to the citizenship of an American born in California to parents of Chinese descent. 169 U.S. at 705. The Court reviewed the text of the Fourteenth Amendment, canvassed the history of birthright citizenship, and found that the Citizenship Clause "affirms the ancient and fundamental rule of citizenship by birth within the territory" and expressly "includ[es] all children here born of resident aliens." *Id.* at 693; As the Court explained:

> The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

Id. In short, the Court held, to "exclude[] 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 … who have always been considered and treated as citizens of the United States." *Id.* at 694.

The four circumscribed exceptions to birthright citizenship that *Wong Kim Ark* identified only confirm the Citizenship Clause extends broadly to those born in the United States and subject to U.S. authority. The exceptions are for children: (1) of active "members of the Indian tribes," (2) of "foreign sovereigns or their ministers," (3) "born on foreign public ships," and (4) of "enemies

within and during a hostile occupation of part of our territory." *Wong Kim Ark*, 169 U.S. at 693. Each describes individuals who are not fully subject to U.S. jurisdiction, that is, to U.S. law and governance, despite physical presence in the country. "[C]hildren of members of the Indian tribes" who maintain their tribal affiliations, *id.*, are subject to tribal law. *See Elk v. Wilkins*, 112 U.S. 94, 102 (1884). (Congress ultimately granted children of tribal members citizenship by statute in 1924. *See* 8 U.S.C. § 1401(b).) Children of foreign sovereigns and their ministers, and children born on foreign government ships, enjoy immunity from U.S. law, conferred by common law, *see Wong Kim Ark*, 169 U.S. at 658, 684-85; conferred by statute, *see* 22 U.S.C. §§ 254a–254e; or both. And children of foreign enemies "during and within [a] hostile occupation" are governed by martial law. *Wong Kim Ark*, 169 U.S. at 655; *see Inglis v. Trustees of Sailor's Snug Harbour*, 28 U.S. 99, 156 (1830) (Story, J., dissenting) (explaining common-law rule that "children of enemies, born in a place ... then occupied by them by conquest, are still aliens"); Michael Ramsey, *Originalism and Birthright Citizenship*, 109 Geo. L.J. 405, 444 (2020) ("It was common ground that hostile armies were not subject to U.S. jurisdiction when within U.S. territory as a result of their practical condition as beyond U.S. civil authority"). The children born to foreign visitors or resident aliens fit none of these; they are bound by U.S. law, enjoying no immunity from its reach. *See* 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.").

The Supreme Court unanimously reached the same conclusion eight decades later in *Plyler v. Doe*, 457 U.S. 202 (1982). Although that case involved the threshold question of which persons fall "within [the United States's] jurisdiction" for purposes of the Fourteenth Amendment's Equal Protection Clause, U.S. Const. Amend XIV, § 1, the Supreme Court acknowledged that the phrase

bore the same meaning across the Amendment. *See Wong Kim Ark*, 169 U.S. at 687 (finding it "is impossible to construe the words 'subject to the jurisdiction thereof,' in the [Citizenship Clause], as less comprehensive than the words 'within its jurisdiction,' in the [Equal Protection Clause]"); *Plyler*, 457 U.S. at 211 n.10 (same). And in construing the term, the Court agreed that immigrants who are physically present in this country, regardless of their immigration status, fall within the Nation's "jurisdiction." *Compare Plyler*, 457 U.S. at 211 & n.10 (majority) (finding "no plausible" basis to distinguish "resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful," for purposes of who falls "within" U.S. "jurisdiction"), *with id.* at 243 (Burger, C.J., dissenting) (agreeing equal protection "applies to aliens who, after their illegal entry into this country, are indeed physically 'within the jurisdiction' of a state").[2]

Not only is this Court bound by *Wong Kim Ark* and *Plyler*, but these longstanding decisions follow inexorably from the history and original understanding of the Citizenship Clause. Prior to the Fourteenth Amendment, the Constitution referenced U.S. citizenship, *see, e.g.*, U.S. Const. art. I, §§ 2-3; *id.* art. IV, § 2, including the concept of citizenship by birth, *see id.* art. II, § 1, but left its precise scope to the common law. *See Slaughter-House Cases*, 83 U.S. 36, 72 (1872); Ramsey, *supra*, at 410-15. With respect to the acquisition of citizenship at birth, the prevailing view in the early nineteenth century was that the United States adopted "the English idea of subjectship by birth within the nation's territory (*jus soli*)," *id.* at 413, that "[n]atural-born subjects are such as are born within the dominions of the crown of England," 1 William Blackstone, *Commentaries on the Laws of England* 366 (6th ed., Co. of Booksellers, Dublin 1775) (Ex. Y); *accord Wong Kim*

[2] Nor was *Plyler* the last word: the Supreme Court has repeatedly acknowledged that children born in this country to noncitizens are citizens themselves. *See INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (unanimously noting undocumented resident "had given birth to a child, who, born in the United States, was a citizen of this country"); *Hamdi v. Rumsfeld*, 542 U.S. 507, 510 (2004).

Ark, 169 U.S. at 654-64 (detailing common law *jus soli* rule and surveying U.S. decisions holding that birth within United States sovereign territory conveys U.S. citizenship). And when the Supreme Court infamously declared that this citizenship right was unavailable to the descendants of slaves, *Dred Scott v. Sandford*, 60 U.S. 393, 404-05 (1857), the post-Civil War Nation adopted the Citizenship Clause "to establish a clear and comprehensive definition" of citizenship, *Slaughter-House Cases*, 83 U.S. at 73, by returning the Nation to the citizenship doctrine that had long prevailed. *See* Cong. Globe, 39th Cong., 1st Sess., 2890 (Ex. Z) (Sen. Howard of Michigan, introducing Citizenship Clause proposal and explaining "[t]his amendment … is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is … a citizen of the United States"); *id.* at 2890-91 (Sen. Cowan) (opposing provision *because* it would ensure birthright citizenship); James C. Ho, *Defining "American:" Birthright Citizenship & the Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 370 (2006) (canvassing Citizenship Clause debates and finding "[t]his understanding was universally adopted by other Senators," including by its opponents).

Beyond text, precedent, and history, centuries of practice are in accord. The Department of Justice's Office of Legal Counsel has found that "the text and legislative history of the citizenship clause as well as consistent judicial interpretation" all "place the right to citizenship based on birth within the jurisdiction of the United States beyond question." *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 1995 WL 1767990, at *1-2 (1995) ("OLC Op."). And federal agencies have long accepted a U.S. birth certificate as evidence of citizenship. *See, e.g.*, 20 C.F.R. § 422.107(d) ("[A]n 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 … that shows a U.S. place of birth."); 20 C.F.R. § 422.103(c)(2) (same for issuance of

SSNs to newborns through State's birth registration process); Ex. U (State Department's Foreign Affairs Manual, involving issuance of passports, noting "[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"). Plaintiffs know of no contrary precedent, history, or practice that would undermine this bedrock principle.

B. The Order Independently Violates Federal Law.

Not only does the Order thus violate the Fourteenth Amendment, but it is contrary to the INA as well. The INA, enacted in 1952, parrots the Citizenship Clause's language by providing that any "person born in the United States, and subject to the jurisdiction thereof" is a "citizen[] of the United States at birth." Pub. L. No. 82-414, §301(a)(1), 66 Stat. 163, 235 (codified at 8 U.S.C. § 1401(a)). "Under controlling precedent, [this Court] interpret[s] a statute's words based on their plain and ordinary meaning at the time of the statute's enactment." *United States v. Abreu*, 106 F.4th 1, 12 (1st Cir. 2024). And by 1952, the meaning of the term of art "subject to the jurisdiction thereof" was clear: it followed the "fundamental rule of citizenship by birth within the territory," and "includ[ed] all children here born of resident aliens." *Wong Kim Ark*, 169 U.S. at 693. So even if the federal government urges the Supreme Court to abandon its interpretation of the Citizenship Clause—notwithstanding its plain text, unanimous precedent, preexisting common law, originalist evidence, and a century of practice—the meaning of the law Congress enacted in 1952 would stay the same. *See, e.g.*, *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation."). In abrogating birthright citizenship for the first time since the Civil War, the Order is unconstitutional and *ultra vires* alike.[3]

[3] Actions federal agencies will have to take in order to implement this Order likewise violate their governing laws, and so those actions must thus be enjoined on those bases too. For example, SSA is statutorily required to issue SSNs to persons eligible to apply for federal benefits, 42 U.S.C.

III. THE EQUITIES COMPEL PRELIMINARY RELIEF.

This Court should grant preliminary relief to protect the centuries-old status quo before the Order strips American children of citizenship in 30 days, not only because the Order is unlawful, but because relief is necessary to avoid irreparable harm and protect the equities and public interest. *See, e.g.*, *CMM Cable Rep., Inc. v. Ocean Coast Props.*, 48 F.3d 618, 620 (1st Cir. 1995) (noting salutary "purpose of a preliminary injunction is to preserve the status quo" and "freez[e] an existing situation" to avoid injuries while court engages in "full adjudication"); *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005) (asking if challengers would suffer "irreparable harm" because injuries "cannot adequately be compensated for either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy").

Absent relief from this Court before the Order takes effect, Plaintiffs' injuries here will be immediate and irreparable. *See*, *e.g.*, *Concord Hosp., Inc. v. NH Dep't of Health & Hum. Servs.*, ___ F. Supp. 3d ___, 2024 WL 3650089, at *24 (D.N.H. Aug. 5, 2024) (emphasizing financial costs cannot be recouped where the public defendant is protected from damages claims); *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1157 (10th Cir. 2011); *Texas v. Yellen*, 105 F.4th 755, 774 (5th Cir. 2024); *Kentucky v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023). As the record confirms, approximately 153,000 babies are born in this country to two undocumented parents every year—such that, on average, at least 420 Affected Children would be born, stripped of their citizenship,

§ 405(c)(2)(B), which necessarily includes Affected Children pursuant to the Citizenship Clause and 8 U.S.C. § 1401(a). SSA therefore cannot implement this Order and start categorically refusing to recognize as proof of citizenship documents showing that a child was born in the United States without running afoul of that statute and, consequently, the APA. *See* 5 U.S.C. §§ 706(2)(B)-(D); *E. Bay Sanctuary v. Covenant v. Trump*, 932 F.3d 742, 770-71 (9th Cir. 2018) (finding agency action implementing executive order is reviewable under the APA).

every day after the Order takes effect in a month. *See* Lapkoff Decl. (Ex. F), Ex. 2 at 1.[4]

Plaintiffs must thus contend with the operational chaos and financial losses that this Order imposes as soon as it takes effect—indeed they must start planning for its disruption now. *See City & Cnty. of S.F. v. USCIS*, 408 F. Supp. 3d 1057, 1122 (N.D. Cal. 2019) (recognizing "burdens on … ongoing operations" for public entities constitute irreparable harm); *Tennessee v. Dep't of Education*, 104 F.4th 577, 613 (6th Cir. 2024) (same); *cf. Whitman-Walker Clinic, Inc., v. HHS*, 485 F.Supp.3d 1, 56 (D.D.C. 2020) (finding irreparable harm based upon "financial and operational burdens" imposed by a regulatory action). For Affected Children, Plaintiffs could no longer use their existing and longstanding procedures for verifying eligibility for federal funding for health and welfare programs. *See*, *e.g.*, Ex. D at ¶16 (noting, as immediate example in which verification is needed, that hundreds of New Jersey children unfortunately enter state care in first year of their lives, some of whom will be Affected Children); Ex. A at ¶30-31 (noting many States enroll low-income children in public health insurance immediately upon birth, likewise requiring verification). Instead of relying on a U.S. hospital's registration to confirm the newborn's eligibility for federal funding, Plaintiffs would need to develop eligibility verification systems that document and track the immigration status of the newborn's parents—an immediate change that demands significant expenditures and diversion of resources. *See* Ex. A at ¶¶31-35; Ex. D at ¶¶22-24; *see also* Stock, *supra*, at 152 ("Proving one's parents' citizenship or immigration status at the moment of one's birth can be difficult … apart from the simple birthright citizenship rule."); USCIS, Form G-1055, at 34-35 ($1,335 per application to certify citizenship based upon parentage). This disruption will be compounded if Plaintiffs prevail, despite having spent weeks

[4] This is a conservative estimate of the number of Affected Children, because it does not account for Affected Children whose parents are lawfully present on a temporary basis or whose fathers at birth are conditional permanent residents. *See* Order, § 2(a).

redesigning and reimplementing their system, as they would then have to expend resources to revert to the pre-existing system. A court order preserving the status quo that has been in effect since 1868 would prevent this chaos and harm.

Beyond the chaos for residents and Plaintiffs alike, the many financial harms laid out above are likewise imminent and irreparable. As explained above, many States enroll their low-income children in public health insurance immediately upon birth. *See, e.g.*, Ex. A at ¶30. That matters not only for basic operations, but for funding too: Federal Medicaid and CHIP funding are provided through an upfront quarterly grant. Ex. A at ¶17. States utilize these funds throughout the quarter—for example, New Jersey draws from the funds on a weekly basis—to fund health care expenditures for enrolled children. *Id.* ¶18. Once the Order takes effect, more and more Affected Children will be enrolled in state-funded health care rather than Medicaid or CHIP with each passing day, and States will be unable to use the federal funds to pay for their care—funds they would have received but for the Order. *Id.* ¶¶28-29. And the same is true for EAB funding associated with SSNs, which will also prove irreparable immediately upon the Order taking effect. Once any newborn leaves a hospital without securing an SSN through the EAB program, States will likely lose the opportunity to secure an EAB payment. And Title IV-E funding, for its part, is provided quarterly, meaning States must submit to the federal government their next reimbursement claims for eligible children soon after the end of the first quarter in 2025. *See, e.g.*, Ex. D at ¶12. There is no basis to require States to incur these costs where their legal success is so certain.

The equities and public interest overwhelmingly demand temporary and preliminary relief too. *See, e.g., Does 1-6 v. Mills*, 16 F.4th 20, 37 (1st Cir. 2021) (noting the balance of equities and the public interest "merge when the [g]overnment is the opposing party" (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)); *Savino v. Souza*, 459 F. Supp. 3d 317, 331 (D. Mass. 2020) (adding the

factors merge "in the immigration context"). The public interest could scarcely be clearer: today's Order undermines "the ancient and fundamental rule of citizenship by birth within the territory," *Wong Kim Ark*, 169 U.S. at 693, a doctrine that reflects the post-*Dred Scott* lesson 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," and that ensures there will "be no inquiry into whether or not one came from the right caste, or race, or lineage, or bloodline in establishing American citizenship," *OLC Op.* at *6. Without the fundamental citizenship to which their birth entitles them, Affected Children risk deportation before their right to citizenship may be adjudicated, even in the weeks and months in which this case is pending. Even if they are not removed during the pendency of this litigation, in many States, they will be unable to access non-emergency healthcare during the first few months of their lives on account of ineligibility for federal benefits like CHIP and Medicaid. Add to that the federal funds Plaintiffs will irreparably lose and the time and resources that their agencies must expend as they rush to redesign benefits eligibility systems to accord with the Executive Branch's new definition of citizenship, *supra* at 2-3, and the equities call powerfully for averting all these harms by preserving the status quo prior to February 19, 2025, while this litigation proceeds.

Consistent with the extraordinary nature of this case, the emergency relief this Court orders should apply nationwide. District court judges have discretion "to design 'the scope of injunctive relief'" so that it is tailored to the "specific harm alleged." *DraftKings Inc. v. Hermalyn*, 118 F.4th 416, 423 (1st Cir. 2024) (affirming nationwide preliminary injunction enjoining ex-employee from competing with former employer anywhere in the country). Because there are times in which any narrower relief "would entirely undercut th[e] injunction's effectiveness," *id.* at 424, courts have found nationwide injunctions of federal policies can be appropriate if a more limited preliminary injunction would fail to remedy the irreparable harm. *See, e.g.*, *Trump v. Int'l Refugee Assistance*

Project, 582 U.S. 571, 579, 581 (2017) (declining to stay nationwide injunction insofar as it barred enforcement of travel ban "against foreign nationals who have a … relationship with a person or entity in the United States," given "the hardships identified by the courts below" that would flow to such persons absent nationwide preliminary relief); *HIAS v. Trump*, 985 F.3d 309, 326-27 (4th Cir. 2021) (affirming nationwide injunction when state agencies "place[d] refugees throughout the country" and demonstrated irreparable harm from the order taking effect in other jurisdictions).

Such relief is appropriate here. Initially, the issue has already been settled for this Nation: the Supreme Court has twice, in decisions that apply to every State, expressly confirmed that the Constitution ensures birthright citizenship for all American-born children subject to our sovereign laws. *See Wong Kim Ark*, 169 U.S. 649; *Plyler*, 457 U.S. 202. Indeed, other than in the post-*Dred Scott* Civil War, that has been the clear status quo for the entire Nation since before the Fourteenth Amendment and in the 157 years since. And any order that grants narrower relief than established by *Wong Kim Ark* and *Plyler*—in which birthright citizenship would exist in some States but not others—would fail to fully remedy Plaintiffs' harms. After all, if children born in Plaintiff States acquire citizenship regardless of their parents' immigration status, but children born in other States do not, then Plaintiffs' agencies would still have to recalibrate how they determine eligibility for federal programs, and incur related administrative costs, due to the reality that infants born in other States can move to Plaintiff States and ultimately seek services. Ex. A at ¶36; Ex. D at ¶25. That is, given the reality that families move across state lines, Plaintiff States faced with any patchwork judicial order would still have to redesign and implement eligibility verification systems to account for this possibility—one of the irreparable harms laid out above, *see supra* at 7—which would "undercut th[e] injunction's effectiveness." *DraftKings*, 118 F.4th at 424.

There are further reasons that a patchwork court order fails "to provide complete relief" to

Plaintiffs. *Sindi v. El-Moslimany*, 896 F.3d 1, 31 (1st Cir. 2018). In addition to the operational chaos that would persist, if the challenged policies are enjoined within the Plaintiff States but not throughout the rest of the country, then Plaintiff States will still incur increased costs for providing state-funded healthcare and foster care to infants who move into their States after being born in non-Plaintiff States. For example, Plaintiff States provide foster care to infants regardless of the child's state of birth or of the parents' citizenship or immigration status, but they only receive Title IV-E matching funds for providing foster care to U.S. citizens or qualifying noncitizens. *See supra* at 5-6; Ex. D at ¶11. And many Plaintiff States likewise fund health care for children without regard to their immigration status or to the State in which they were born. *See supra* at 4-5. Without nationwide preliminary relief, Plaintiff States would have to spend more of their own funds providing foster care and healthcare to children born to undocumented parents in this country but outside of the Plaintiff States. Given the unprecedented and extraordinary nature of this Order, this court should preserve the centuries-old status quo to protect babies' fundamental citizenship rights and avoid profound irreparable harms while this case proceeds.

As the Department of Justice has acknowledged, "[t]o have citizenship in one's own right, by birth upon this soil, is fundamental to our liberty as we understand it." *OLC Op.* at *7. Although other Nations make other choices, "for us, for our nation, the simple, objective, bright-line fact of birth on American soil is fundamental." *Id.* at *6. Simply put, "All who have the fortune to be born in this land inherit the right, save by their own renunciation of it, to its freedoms and protections." *Id.* at *7. This Court should enjoin this assault on our fundamental American tradition.

CONCLUSION

This Court should grant the motion for a preliminary injunction.

January 21, 2025

Respectfully submitted.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

/s/ Jeremy M. Feigenbaum
Jeremy M. Feigenbaum *
Solicitor General
Shankar Duraiswamy*
Deputy Solicitor General
Viviana M. Hanley*
Shefali Saxena*
Elizabeth R. Walsh*
Deputy Attorneys General
Office of the Attorney General
25 Market Street
Trenton, NJ 08625
(609) 376-3377
Jeremy.feigenbaum@njoag.gov

Counsel for the State of New Jersey

ANDREA JOY CAMPBELL
ATTORNEY GENERAL OF MASSACHUSETTS

/s/ Gerard J. Cedrone
Gerard J. Cedrone (BBO No. 699674)
Deputy State Solicitor
Jared B. Cohen (BBO No. 689217)
Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108
(617) 963-2282
gerard.cedrone@mass.gov
jared.b.cohen@mass.gov

Counsel for the Commonwealth of Massachusetts

ROB BONTA
ATTORNEY GENERAL OF CALIFORNIA

/s/ Denise Levey
Denise Levey*
Deputy Attorney General
Michael Newman
Senior Assistant Attorney General
Marissa Malouff*
Irina Trasovan*
Supervising Deputy Attorneys General
Lorraine López*
Delbert Tran*
Annabelle Wilmott*
Deputy Attorneys General
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
(213) 269-6269
Denise.Levey@doj.ca.gov

Counsel for the State of California

PHIL WEISER
ATTORNEY GENERAL OF COLORADO

/s/ *Shannon Stevenson*
Shannon Stevenson
Solicitor General
Office of the Colorado Attorney General
1300 Broadway, #10
Denver, CO 80203
(720) 508-6000
Shannon.Stevenson@coag.gov

Counsel for the State of Colorado

WILLIAM M. TONG
ATTORNEY GENERAL OF CONNECTICUT

/s/ *William M. Tong*
William M. Tong*
Attorney General
Janelle Rose Medeiros*
Assistant Attorney General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860)-808-5020
Janelle.Medeiros@ct.gov

Counsel for the State of Connecticut

KATHLEEN JENNINGS
ATTORNEY GENERAL OF DELAWARE

/s/ *Vanessa L. Kassab*
Vanessa L. Kassab*
Deputy Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8899
vanessa.kassab@delaware.gov

Counsel for the State of Delaware

BRIAN L. SCHWALB
ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

/s/ Nicole S. Hill
Nicole S. Hill*
Assistant Attorney General
Public Advocacy Division
Office of the Attorney General for the District of Columbia
400 Sixth Street, N.W.
Washington, D.C. 20001
(202) 727-4171
nicole.hill@dc.gov

Counsel for the District of Columbia

ANNE E. LOPEZ
ATTORNEY GENERAL OF HAWAI‘I

/s/ Kaliko‘onālani D. Fernandes
Solicitor General
425 Queen Street
Honolulu, Hawai‘i 96813
(808) 586-1360
kaliko.d.fernandes@hawaii.gov

Counsel for the State of Hawai‘i

AARON M. FREY
ATTORNEY GENERAL OF MAINE

/s/ Sean D. Magenis
Sean D. Magenis
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800
Sean.d.magenis@maine.gov

Counsel for the State of Maine

ANTHONY G. BROWN
ATTORNEY GENERAL OF MARYLAND

/s/ Jessica M. Finberg
Jessica M. Finberg*
Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
jfinberg@oag.state.md.us
410-576-6921

Counsel for the State of Maryland

DANA NESSEL
ATTORNEY GENERAL OF MICHIGAN

/s/ Toni L. Harris
Toni L. Harris*
Stephanie Service*
Neil Giovanatti*
Assistant Attorneys General
Michigan Department of Attorney General
525 W. Ottawa
Lansing, Michigan 48909
(517) 335-7603
harrist19@michigan.gov
ServiceS3@michigan.gov
GiovanattiN@michigan.gov

Counsel for Attorney General Dana Nessel on behalf of the People of Michigan

KEITH ELLISON
ATTORNEY GENERAL OF MINNESOTA

/s/ John C. Keller
John C. Keller*
Chief Deputy Attorney General
445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2130
651-757-1355
john.keller@ag.state.mn.us

Counsel for the State of Minnesota

AARON D. FORD
ATTORNEY GENERAL OF NEVADA

/s/ Heidi Parry Stern
Heidi Parry Stern*
Solicitor General
Office of the Nevada Attorney General
1 State of Nevada Way, Ste. 100
Las Vegas, NV 89119
(702) 486-5708
HStern@ag.nv.gov

Counsel for the State of Nevada

LETITIA JAMES
ATTORNEY GENERAL OF NEW YORK

/s/ Zoe Levine
Zoe Levine*
Special Counsel for Immigrant Justice
28 Liberty Street
New York, NY 10005
zoe.levine@ag.ny.gov
(212) 416-8329

Counsel for the State of New York

RAÚL TORREZ
ATTORNEY GENERAL OF NEW MEXICO

/s/ James W. Grayson
James W. Grayson*
Chief Deputy Attorney General
New Mexico Department of Justice
408 Galisteo St.
Santa Fe, NM 87501
(505) 218-0850
jgrayson@nmdoj.gov

Counsel for the State of New Mexico

JEFF JACKSON
ATTORNEY GENERAL OF NORTH CAROLINA

/s/ Daniel P. Mosteller
Daniel P. Mosteller*
Associate Deputy Attorney General
Laura Howard
Chief Deputy Attorney General
Associate Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602
919-716-6026
dmosteller@ncdoj.gov

Counsel for State of North Carolina

PETER F. NERONHA
ATTORNEY GENERAL OF RHODE ISLAND

/s/ Katherine Connolly Sadeck
Katherine Connolly Sadeck (MA Bar No. 681501)
Solicitor General
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903
Tel: (401) 274-4400, Ext. 2480
Fax: (401) 222-2995
ksadeck@riag.ri.gov

Counsel for the State of Rhode Island

CHARITY R. CLARK
ATTORNEY GENERAL OF VERMONT

/s/ Julio A. Thompson
Julio A. Thompson*
Co-Director, Civil Rights Unit
109 State Street
Montpelier, VT 06509
(802) 828-5519
julio.thompson@vermont.gov

Counsel for State of Vermont

JOSHUA L. KAUL
ATTORNEY GENERAL OF WISCONSIN

/s/ Gabe Johnson-Karp
Gabe Johnson-Karp*
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8904
johnsonkarpg@doj.state.wi.us

Counsel for the State of Wisconsin

DAVID CHIU*
CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO

/s/ David Chiu
Yvonne R. Meré*
Chief Deputy City Attorney
Sara J. Eisenberg*
Chief of Complex and Affirmative Litigation
Mollie M. Lee*
Chief of Strategic Advocacy
David S. Louk*
Molly J. Alarcon*
Deputy City Attorneys
Fox Plaza
1390 Market Street, 6th Fl.
San Francisco, California 94102-5408
(415) 505-0844
David.Louk@sfcityatty.org

Counsel for City and County of San Francisco

**Application for pro hac vice admission forthcoming*

TABLE OF EXHIBITS

Exhibit	Description
A	Declaration of Sarah Adelman, Commissioner of New Jersey Department of Human Services
B	Declaration of Kathy Ehling, Assistant Commissioner for the Division of Educational Services in the New Jersey Department of Education
C	Declaration of Kaitlan Baston, Commissioner of the New Jersey Department of Health
D	Declaration of Laura Jamet, Assistant Commissioner of New Jersey Department of Children and Families
E	Declaration of Sharon C. Boyle, General Counsel of the Massachusetts Executive Office of Health and Human Services (EOHHS)
F	Declaration of Shelley Lapkoff, Senior Demographer at NDC
G	Declaration of Michael F. Rice, Superintendent of Public Instruction within the Michigan Department of Education (MDE)
H	Declaration of Kelly Sesti, Director for the Bureau of Administration within the Children's Services Administration (CSA) of the Michigan Department of Health and Human Services (MDHHS)
I	Declaration of Jeffrey Duncan, State Registrar and the Director of the Division of Vital Records and Health Statistics (VRHS) within the Michigan Department of Health and Human Services (MDHHS)
J	Declaration of Meghan Groen, Senior Deputy Director for Behavioral and Physical Health and Aging Services within the Michigan Department of Health and Human Services (MDHHS).
K	Declaration of Lindy Harrington, Assistant State Medicaid Director at the California Department of Health Care Services (DHCS)
L	Declaration of Rachel A. Heenan, Director of the Special Education Division at the California Department of Education (CDE)
M	Declaration of Rita Nguyen, Assistant Public Health Officer for the State of California at the California Department of Public Health (CDPH)
N	Declaration of Elizabeth Villamil-Cummings, New York State Registrar and the Director of the Bureau of Vital Records at the New York Department of Health (DOH)
O	Declaration of Gabrielle Armenia, Director of the Division of Eligibility and Marketplace Integration in the Office of Health Insurance Programs of the New York Department of Health (DOH)
P	Declaration of Jonathan Fanning, Director of Fiscal Management of the New York Department of Health (DOH)
Q	Declaration of Jennifer Avenia, Director of Immigration Practice for the Connecticut Department of Children and Families (DCF)
R	Declaration of Peter Hadler, Deputy Commissioner for the Connecticut Department of Social Services (DSS)
S	Declaration of Yvette Gauthier, State Registrar of Vital Records of the Connecticut Department of Public Health

T	Declaration of Tom Wong, Associate Professor at the University of California, San Diego (UCSD)
U	State Department's Foreign Affairs Manual
V	Declaration of Peri Weisberg, Principal Administrative Analyst in the Planning Unit of the City and County of San Francisco's Human Services Agency
W	Executive Order, "Protecting the Meaning and Value of American Citizenship," (Jan. 20, 2025)
X	Noah Webster, An American Dictionary of the English Language 635 (George & Charles Merriam 1860) (excerpt)
Y	1 William Blackstone, *Commentaries on the Laws of England* 366 (6th ed., Co. of Booksellers, Dublin 1775) (excerpt)
Z	Cong. Globe, 39th Cong., 1st Sess. (excerpts)

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, *et al*.

Plaintiffs,

v.

DONALD J. TRUMP, *et al*.

Defendants.

Civil Action No.: _____

DECLARATION OF SARAH ADELMAN

I, Sarah Adelman, hereby declare:

1. I am the Commissioner of the New Jersey Department of Human Services ("DHS"). I have been employed as Commissioner since January 2021.
2. As Commissioner of DHS, 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.
3. I am providing this declaration to explain certain impacts on the State of New Jersey's health insurance programs of an executive order titled "Protecting the Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"), which revokes birthright citizenship for children born after February 19, 2025 to (i) a mother who is

unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

NJ FamilyCare and Eligibility Rules

4. Within DHS, the Division of Medical Assistance and Health Services ("DMAHS"), administers several programs that enable qualifying New Jersey residents to access free or low-cost healthcare coverage. These are referred to as "NJ FamilyCare" programs.
5. NJ FamilyCare is publicly funded health insurance. It includes New Jersey's partially federally funded Medicaid program ("Federal-State Medicaid"), New Jersey's partially federally funded Children's Health Insurance Program ("CHIP"), and New Jersey's Cover All Kids Phase II initiative. As of December 2024, 1,673,856 New Jersey residents are enrolled in Federal-State Medicaid, of which 639,212 were children. An additional 161,577 children are enrolled in CHIP.
6. NJ FamilyCare provides comprehensive healthcare coverage for a wide range of services, including primary care, hospitalization, laboratory tests, x-rays, prescriptions, mental health care, dental care, preventive screenings, and more.
7. Health insurance provided through NJ FamilyCare, including programs that rely in part on federal funding and those funded entirely by the state, are generally administered through managed care organizations ("MCOs") that receive a monthly capitation payment from the State for each member enrolled in a particular MCO plan.
8. Eligibility for NJ FamilyCare health insurance programs, including eligibility for Federal-State Medicaid and CHIP, depends in part on age, immigration status, and household income.
9. In general, children under the age of 18 (i) meet the income eligibility requirement for Federal-State Medicaid in New Jersey if their household's modified adjusted gross income

("MAGI") is less than 147% of the federal poverty level ("FPL"), and (ii) meet the income eligibility requirement for CHIP in New Jersey if their household's MAGI is less than 355% of the FPL.

10. To be eligible for Federal-State Medicaid or CHIP, a child must also be a U.S. citizen or "lawfully residing," 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. This eligibility requirement is subject to certain narrowly-defined exceptions for some emergency services, which Federal-State Medicaid may cover for individuals who are neither citizens nor "lawfully residing" if they meet the Federal-State Medicaid income eligibility guidelines.

11. Pursuant to Cover All Kids Phase II, all New Jersey children under age 19 who meet the income eligibility requirements for Federal-State Medicaid or CHIP but are not U.S. citizens or "lawfully residing" are eligible for health insurance through NJ FamilyCare that is fully funded by the State.

12. New Jersey implemented Cover All Kids Phase II because access to healthcare, particularly to primary care, makes children and communities healthier, and it is a fiscally responsible investment in the future of New Jersey children.

13. The increased enrollment of children in NJ FamilyCare via Cover All Kids Phase II has had a positive impact on public health in the state. Children enrolled in NJ FamilyCare are more likely to receive preventative care services. This reduces the need for more intensive health

care treatments, including emergency care, as illnesses develop. It also reduces the financial burden on health care providers from providing care to uninsured individuals and ensures that families are not left with medical bills that they are unable to pay. In addition, sick children with health insurance coverage are more likely to see a health care provider and receive treatment, limiting the spread of infectious illnesses across the state.

14. Having insurance coverage also makes it less likely that children will have to visit an emergency room to treat preventable illnesses because it is more likely that they will receive medical care before a treatable medical issue becomes an emergency. This reduces the resource strain and uncompensated care burden on hospitals.

Federal Funding

15. For children covered by the Federal-State Medicaid program, the federal government generally reimburses for 50 percent of New Jersey's health care expenditures. For children covered by CHIP, the federal government generally reimburses for 65 percent of New Jersey's health care expenditures.

16. By contrast, with the exception of certain limited emergency medical services that may be covered by Federal-State Medicaid, NJ FamilyCare coverage for undocumented children is fully funded by New Jersey, without any federal funding assistance.

17. Federal funding for NJ FamilyCare's Medicaid and CHIP programs is provided through an advance quarterly grant from the federal Centers on Medicare and Medicaid Services ("CMS") to the State of New Jersey, with a post-quarter reconciliation. This quarterly process begins with the State submitting to CMS a CMS-37 report, which estimates the reimbursable expenditures the State expects to make for the upcoming quarter, six weeks before the quarter begins. Those estimates are based on current enrollment figures. For the

January to March 2025 quarter, the State submitted the report on or about October 15, 2024. The next CMS-37 report is expected to be submitted in mid-February.

18. CMS then issues quarterly federal grants the week before the start of the quarter. During the quarter, the State draws down from this grant award what is needed to make weekly batch payments to partially fund its expenditures for Medicaid and CHIP. Within 30 days after the end of a quarter, the State sends to CMS a CMS-64 report, which reports all reimbursable expenditures for the quarter. If the initial federal grant was less than final reimbursable expenditures, CMS will typically transmit an additional reconciling grant four to five months after the end of the relevant quarter.

Healthcare Coverage for Newborns

19. All children born in the United States and residing in New Jersey whose family income is at or below 355% of the Federal Poverty Level are eligible for NJ FamilyCare.

20. Before the Executive Order, all children born in New Jersey were considered U.S. citizens. Thus, NJ FamilyCare coverage for newborns in New Jersey was partially funded by the State and partially funded by the federal government, either through Federal-State Medicaid or CHIP.

21. Most healthy newborns remain in the hospital for two or three days after delivery. During this time, they receive routine postnatal care, including a vitamin K injection, antibiotic eye ointment, screening tests (e.g., heel-prick blood test, hearing screening), and hepatitis B vaccination.

22. Additionally, the American Academy of Pediatrics recommends that newborns see a doctor or nurse for a "well-baby visit" six times before their first birthday, including within the first

3-5 days, the first month, the second month, the fourth month, the sixth month, and the ninth month after birth.

23. Within the first year of life, babies may also need to visit a doctor when they appear ill and may require testing or prescription medication.

24. Children ages 1-18 typically have a range of health care needs that require services from various health care providers. For example, children in New Jersey must receive certain immunizations prior to starting school, unless they have an exemption for medical or religious reasons.

Fiscal Impact of Revoking Birthright Citizenship

25. NJ FamilyCare currently pays $248.35 per member, per month (totaling $2,980.20 per year) for the vast majority of children enrolled in NJ FamilyCare health insurance programs. As noted above, the federal government generally covers 50 percent of these costs for children enrolled in Federal-State Medicaid and 65 percent for children enrolled in CHIP.

26. However, if a child were not eligible for Federal-State Medicaid or CHIP, New Jersey would not receive that federal assistance, and would cover the full cost of health insurance coverage for the newborn.

27. The Medical Emergency Payment Program ("MEPP") provides limited emergency Medicaid coverage that is partially federally-funded to adults ages 19 or older who meet income eligibility guidelines regardless of citizenship or immigration status. MEPP covers labor and delivery services for undocumented women giving birth in New Jersey, but does not cover post-delivery health care for their newborn children. Instead, those newborns have, until now, been eligible for Federal-State Medicaid because they meet the income eligibility guidelines and are U.S. citizens.

28. In each of the last three calendar years, there have been between 7,000 and 8,000 births per year to pregnant women whose labor and delivery was covered by MEPP. DHS has been advised of estimates indicating that approximately 58 percent of these children likely had a second parent who was undocumented. Thus, a reasonable approximation of the number of children born to undocumented parents who would have been eligible for Federal-State Medicaid but will not be due to the Executive Order—and instead will receive health insurance through New Jersey's state-funded health insurance program—is 4,060 to 4,640 children per year. This is an underestimate to some degree because it does not include children who have one parent who is not undocumented but who nonetheless does not meet the immigration status requirements of the Executive Order to confer citizenship on their child born in the United States.

29. New Jersey spends close to $3,000 per member per year on children enrolled in Federal-State Medicaid, and the federal government covers 50 percent of these costs. If between 4,060 and 4,640 children are enrolled in fully state-funded health insurance rather than Federal-State Medicaid in a given year because of the Executive Order, this will cost the State between approximately $6 to $7 million per year. This estimate does not include the loss of federal funding that New Jersey would experience from children who are eligible for CHIP but not Federal-State Medicaid being shifted to fully state-funded health insurance.

Eligibility Verification Process For Federally-Funded Medicaid and CHIP

30. When a child is born to parents who lack private health insurance, the healthcare facility at which the child is born typically submits information to DHS for a determination of the child's eligibility for public health insurance through NJ FamilyCare. The application is processed by either a state vendor or the county social services agency in the individual's

county of residence. Approximately half of all Medicaid enrollees are enrolled through the vendor and another half through the counties.

31. The vendor and counties utilize an eligibility verification system to determine whether the applicant is eligible for Federal-State Medicaid or CHIP, and if not, if they are eligible for fully state-funded health insurance. The vendor uses its own eligibility verification system, while the counties use a system designed by DHS. Both systems currently rely on the fact that a newborn was born in a New Jersey healthcare facility as proof of citizenship to qualify the newborn for Federal-State Medicaid or CHIP.

32. Because of the Executive Order, the state vendor and DHS will have to develop a new eligibility verification system to determine whether newborn children are eligible for Federal-State Medicaid or CHIP because they can no longer rely on the fact that a child was born in the United States to confirm citizenship status. Although some newborn children, pursuant to a federal regulation, may be deemed eligible for Federal-State Medicaid until the age of one because their mother was covered by MEPP, this does not ensure coverage for all newborn children who are otherwise eligible for Federal-State Medicaid or CHIP.

33. DHS and the state vendor would incur significant costs to re-design their eligibility verifications systems to address changes in citizenship rules for newborn children. The re-design would require significant planning to understand the new rules governing U.S. citizenship for newborn children born in the United States, to identify and determine the kinds of evidence that would suffice as proof of citizenship, and to modify the IT systems that are used to process applications and verify eligibility. The state vendor would almost certainly seek to pass on to the State any costs that it incurred.

34. In addition, DHS would incur significant costs to train staff, partners, and healthcare providers on the new eligibility system and procedures, and to revise existing guidance documents and manuals regarding eligibility rules and procedures. DHS currently relies on 1,471 county caseworkers and 173 vendor employees to handle eligibility determinations for NJ FamilyCare.

35. It will likely take in the range of six months to develop and implement a new eligibility system and undertake the necessary training to ensure that it can be deployed effectively.

36. Children residing in New Jersey are eligible for NJ FamilyCare health insurance programs, including the fully state-funded program regardless of where they were born. Children residing in New Jersey who moved into the state from other states, including neighboring states like Pennsylvania or New York, are frequently enrolled in NJ FamilyCare health insurance programs. Presently, the eligibility verification systems used by DHS's vendor and county agencies have no reason to track the state of birth of U.S.-born children who apply for NJ FamilyCare. If the rules governing birthright citizenship varied by state of birth, these eligibility verification systems will have to start tracking state of birth so that they can accurately determine whether a child is a citizen and therefore eligible for Federal-State Medicaid or CHIP, or whether they are not a citizen and thus only eligible for fully state-funded health insurance. This will further complicate the process of redesigning eligibility verification systems described above, requiring additional expenditure of DHS's time and resources.

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 Trenton, New Jersey.

Sarah Adelman, Commissioner
New Jersey Department of Human Services

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	Civil Action No.: _____

DECLARATION OF KATHLEEN EHLING

I, Kathleen Ehling, hereby declare:

1. I am the Assistant Commissioner for the Division of Educational Services within the New Jersey Department of Education ("NJDOE"), a position I have held since 2021. As Assistant Commissioner, I oversee the Offices of Special Education, including the Special Education Medicaid Initiative ("SEMI") program, Supplemental Educational Programs, Fiscal and Data Services, Student Support Services, Performance Management and the Marie H. Katzenbach School for the Deaf. I am also responsible for overseeing implementation of the federal Every Student Succeeds Act, the federal Individuals with Disabilities Education Act ("IDEA"), the New Jersey Tiered Systems of Support, and the development and release of the annual School Performance Reports. Prior to holding this position, I served in various positions throughout my 20-year tenure with NJDOE including as the Director of the Office

of Fiscal and Data Services in which I oversaw the administration of over $4 billion in federal and state grant funds for NJDOE. Prior to this role, I served as the Manager of the Bureau of Governance and Fiscal Support, Office of Special Education Policy and Procedure within NJDOE. In this capacity, I oversaw the implementation of administrative policy for the office, including development of regulations, model individualized education programs ("IEPs"), and the Parental Rights in Special Education booklet. I also oversaw the dispute resolution system, the complaint investigation process, the approval and monitoring of approved private schools for students with disabilities and clinics and agencies, the SEMI program, and the IDEA Part B grant process. Prior to assuming the role of Manager, I worked as a Special Assistant to the Director of the Office of Special Education Programs, a Complaint Investigator, and a Mediator with the Office of Special Education.

2. As Assistant Commissioner, I have personal knowledge of the matters set forth below, or I have knowledge of the matters below based on my review of information, information provided by other state agencies, including the New Jersey Department of the Treasury, and information gathered by my staff.

3. I am providing this declaration to explain certain impacts on the State of New Jersey and its local education agencies of an executive order entitled "Protecting the Meaning and Value of American Citizenship" issued on January 20, 2025 (the "Executive Order"). The Executive Order revokes birthright citizenship for children born after February 19, 2025, to (i) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

New Jersey Department of Education

4. NJDOE's mission is to support schools, educators, and districts to ensure all of New Jersey's 1.4 million public school students have equitable access to high quality education and achieve academic excellence.

5. Pursuant to *Plyler v. Doe*, 457 U.S. 202 (1982), local education agencies ("LEAs") within the State serve all school-age children, regardless of their immigration status. An LEA is a public authority legally constituted by the State as an administrative agency to provide control of and direction for kindergarten through grade 12 public educational institutions.

6. Within NJDOE, the Division of Finance and Business Services administers federal and state funds to LEAs to support crucial education initiatives and provide essential services to students.

Special Education Medicaid Initiative

7. School-based health services ("SBHS") refer broadly to medical services provided to all students in a school setting, such as on-site school nurses, behavioral health counselors, and preventative health screenings for visual and auditory acuity.

8. All New Jersey LEAs are required to provide certain SBHS free of charge to all students, regardless of their immigration or insurance status.

9. In State Fiscal Year 2024, $2,466,759,247 of State funds were provided to LEAs for special education services. This is the total amount for special education categorical aid, extraordinary aid for special education costs, and the estimated portion of equalization aid that is calculated for special education costs.

10. Since 1988, Section 1903(c) of the Social Security Act has authorized the federal Medicaid program to reimburse LEAs for medically necessary SBHS provided to Medicaid-eligible students with disabilities ("special education SBHS") pursuant to the IDEA, 20 U.S.C. §

1400 et seq., provided the services were delineated in the student's individualized education program ("IEP") (or similar plan) and covered in the State plan for Medicaid. IDEA requires LEAs to develop an IEP for children found eligible for special education and related services. An IEP identifies certain special education and related services, and program modifications and supports, that the LEA will provide a child with a disability.

11. Currently, New Jersey's State plan for Medicaid provides coverage for certain special education SBHS, such as occupational or speech therapy, that are specified in a student's IEP.

12. The Medicaid reimbursement program for special education SBHS in New Jersey is called the Special Education Medicaid Initiative ("SEMI"), which is jointly operated by NJDOE and New Jersey's Departments of Human Services and Treasury.

13. New Jersey has contracted with a vendor for administrative support in managing SEMI and matching reimbursement claims to Medicaid-eligible students.

14. Approximately 408 LEAs in New Jersey were required under State law to participate in SEMI in State Fiscal year 2025 because they had more than 40 Medicaid-eligible classified students. LEAs with 40 or fewer Medicaid-eligible classified students may request a waiver from the executive county superintendent not to participate in SEMI. Approximately 185 such LEAs did not seek a waiver and therefore participated in SEMI in State Fiscal year 2025.

15. Under SEMI, over the course of a school year, LEAs receive interim reimbursement payments through a fee-for-service process for costs associated with providing special education SBHS to Medicaid-eligible students.

16. The federal reimbursement funds are split between the State Treasury and LEAs. In State Fiscal Year 2024, the federal government paid 50% of the costs submitted for interim reimbursement for special education SBHS. The State retained 65% of the federal reimbursement and passed on 35% of the federal reimbursement to the relevant LEA.
17. At the end of the fiscal year, New Jersey engages in a cost settlement process to verify that LEAs are accurately reimbursed for the costs of providing SBHS by comparing interim reimbursements with reported annual expenditures.
18. In State Fiscal Year 2024, New Jersey LEAs submitted interim fee-for-service reimbursement claims to the federal government for claims valued at $220,734,493, of which federal Medicaid reimbursed 50%, or $110,367,246.60. The State retained 65% of the federal reimbursement, a total of $71,755,196.95, and passed on the remaining 35%, a total of $38,612,049, to the LEAs. These sums reflect the pre-cost settlement interim dollar amount, as the cost settlement process has not been completed.
19. To be eligible for a partially federally-funded Medicaid program, a student must be a U.S. citizen, a "qualified non-citizen," or "lawfully present."
    a. Qualified non-citizens include lawful permanent residents, asylees, refugees, and trafficking victims, among others.
    b. Individuals who are lawfully present include those with humanitarian statuses (such Temporary Protected Status and Special Immigrant Juvenile Status) as well as asylum applicants, among others.
    c. Children who are neither "qualified non-citizens" nor "lawfully present" are commonly referred to as undocumented.

20. Thus, undocumented children are not eligible for partially federally-funded Medicaid. LEAs are still required to provide special education SBHS to undocumented children, but cannot receive federal reimbursement dollars for those services.
21. In 2024, New Jersey's SEMI vendor identified approximately 88,000 students with disabilities who were enrolled in partially federally-funded Medicaid in New Jersey.
22. Because of the Executive Order, students with disabilities who are born in the United States to two undocumented parents, or whose birthright citizenship will otherwise be revoked by the Executive Order, will lose eligibility for federally-funded Medicaid for which they otherwise would have qualified. LEAs will thus not receive any SEMI reimbursement funds for provision of SBHS to those students, increasing the State's net costs.
23. The Executive Order will also increase the population of undocumented children, some percentage of whom will very likely have disabilities that require SBHS and would be eligible for partially federally-funded Medicaid but for their immigration status. The costs of providing those services will be borne by the State and LEAs without any federal Medicaid reimbursement.

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 Trenton, New Jersey.

Kathleen Ehling, Assistant Commissioner
Division of Educational Services, New Jersey Department of Education

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

Civil Action No.: _____

DECLARATION OF KAITLAN BASTON

I, Kaitlan Baston, MD, MSc, DFASAM, hereby declare the following:

1. I am the Commissioner of the New Jersey Department of Health ("DOH") and have been employed as the Commissioner since August of 2023. I am dual boarded in Family Medicine and Addiction Medicine, obtained a master's degree in Neuroscience from Kings College, London, and graduated from Jefferson Medical College in Philadelphia, Pennsylvania. Prior to becoming DOH's Commissioner, I built and led the Cooper Center for Healing, an integrated pain, addiction, and behavioral health center and was an Associate Professor of Medicine at Cooper Medical School of Rowan University. Prior to my position with Cooper, my work ranged from public health projects in Rwanda, to public maternity and trauma

hospitals in the Dominican Republic, to providing full spectrum family planning services and working in a bilingual community health center in Seattle, Washington.

2. The information in the statements set forth below were compiled through personal knowledge, through DOH personnel who have assisted in gathering this information from our agency, as well as information from experts outside of DOH provided to me.

New Jersey Department of Health

3. DOH's mission is to protect public health, promote healthy communities, and continue to improve the quality of health care in New Jersey. To support that goal, DOH performs many functions, including regulating healthcare facilities and overseeing the registration of vital events, such as births, through the Department's Office of Vital Statistics and Registry ("OVSR").

Registration and Birth Certificates of Newborns

4. Healthcare facilities coordinate with OVSR 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 Birth Certificate Worksheet ("the Worksheet"). The Worksheet does not inquire about the parents' immigration status.

6. After the newborn's parents complete and sign the Worksheet, the healthcare facility enters the information from the Worksheet into an electronic birth system (VERI) maintained by OVSR. The local registrar in the municipality where the child is born then reviews the birth record in VERI, and if accepted, the birth certificate is created and registered with OVSR.

7. A newborn's completed birth certificate does not indicate whether the parents have a Social Security Number ("SSN"). The only information provided on a birth certificate regarding the

child's parents 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.

8. In 2024 there were approximately 95,792 births registered in the State of New Jersey.

Application for Social Security Number of Newborns

9. While registering a newborn for a birth certificate at a healthcare facility, parents may also indicate on the Worksheet whether they would like to request an SSN for their child through a Social Security Administration ("SSA") program called Enumeration at Birth ("EAB").

10. The EAB program is voluntary for families, but according to SSA, about 99 percent of SSNs for infants are assigned through this program. If parents indicate on the Worksheet that they want an SSN for their child, healthcare facilities transmit these requests electronically to OVSR, which then transmits the requests to SSA.

11. New Jersey 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 $4.82 per SSN issued through the EAB program, or approximately $90,000 to $110,000 per quarter. The State generally receives payment a month after the quarter ends and is thus expecting its next payment in April 2025. OVSR uses those funds to support the payment of administrative and operational costs.

Effects of the Executive Order on Registration and EAB Process

12. I have been advised that an executive order titled "Protecting the Meaning and Value of American Citizenship" was issued on January 20, 2025 (the "Executive Order") stating that children born to (i) a mother who is unauthorized or who is lawfully present but only on a temporary basis, and (ii) a father who is neither a U.S. citizen nor a lawful permanent

resident, shall not be recognized as citizens by the federal government, rendering them ineligible to receive an SSN. DOH has been advised that approximately 6,200 children per year are born in New Jersey with two undocumented parents. This is an underestimate to some degree because it does not include children who have one parent who is not undocumented but who nonetheless does not meet the immigration status requirements of the Executive Order to confer citizenship on their child born in the United States.

13. If SSA will not issue an SSN to those children, OVSR estimates approximately 6,200 fewer SSNs will be issued annually in New Jersey. If approximately 6,200 fewer SSNs are issued through the EAB process under the Executive Order, this will result in an annual loss of EAB funding to New Jersey of approximately $30,000.

14. If, as a result of the Executive Order, the newborn registration process has to be amended to provide for verification of the parents' citizenship and/or immigration status either to obtain an SSN for the newborn, issue a birth certificate to the newborn, or to indicate on the birth certificate whether the newborn child is eligible for birthright citizenship based on their parents' status, this will impose material administrative burdens on OVSR and healthcare facilities, including University Hospital, which is an acute care hospital that is an instrumentality of the State providing obstetric services.

15. OVSR and healthcare facilities would have to develop a system for ascertaining, documenting, and verifying the parents' immigration status, and they would have to train staff on how to implement and use this system. Assuming this burden would further lead to delays in registration and issuance of the newborn's birth certificate, which must be completed within five days of the birth under state law.

16. Because of the Executive Order, SSA will presumably require proof of parents' lawful status to issue an SSN. Healthcare facilities providing obstetric services, including University Hospital, will be forced to consult with, and assist, families with obtaining the paperwork necessary to prove their lawful 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— will have to be revised. This will 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. It will also require OVSR to expend resources to modify its systems for obtaining information from healthcare facilities and transmitting that information to SSA, and to train staff on these changes.

Early Intervention Services for Children

17. Under the federal Individuals with Disabilities Act ("IDEA"), states are required to provide Early Intervention Services ("EIS"), such as speech or occupational therapy, to children up to three years old with certain disabilities and developmental delays. In New Jersey, DOH administers and provides EIS for families.

18. Direct services for children enrolled in EIS are principally funded by the State, but the federal government covers 50 percent of the costs for children enrolled in the federal-state Medicaid program ("Federal-State Medicaid"). Children are eligible for Federal-State Medicaid if they are U.S. citizens or "qualified aliens" and their family income is below certain thresholds.

19. There are currently 37,075 children in New Jersey receiving EIS, of which approximately 46 percent, or 17,220 are enrolled in Federal-State Medicaid.

20. For EIS direct services furnished in State fiscal year 2024, New Jersey appropriated approximately $118 million, had approximately $180 million in EIS Medicaid claims, and the federal government reimbursed approximately $90 million of those claims.

21. Before the Executive Order, children born in New Jersey were U.S. citizens by birthright regardless of their parents' immigration status and would be eligible for Federal-State Medicaid provided they met certain income requirements. If those children were enrolled in Federal-State Medicaid and needed EIS in the first three years of life, DOH would provide those services and receive a 50 percent cost reimbursement from the federal government. If those children needed EIS, but were ineligible for Federal-State Medicaid, DOH would still be required to provide EIS, but would not receive any reimbursement from the federal government and instead would have to rely on State-appropriated funds.

22. DOH has been advised of estimates that in the last three calendar years, there have been between 7,000 and 8,000 births per year to undocumented pregnant women whose labor and delivery were covered by emergency Medicaid services. Undocumented patients may qualify for emergency Medicaid that covers certain emergency medical services if they meet all Federal-State Medicaid eligibility requirements except for immigration status.

23. DOH has further been informed that approximately 58 percent of children born to undocumented mothers covered by emergency Medicaid likely had a second parent who was undocumented. Thus, a reasonable approximation of the number of children born to undocumented parents who have been eligible for Federal-State Medicaid prior to the Executive Order is 4,060 to 4,640 children per year.

24. Of this number, it is highly likely some will require EIS. The State will lose the federal reimbursement funds it would have otherwise received and will then have to absorb the cost of those lost reimbursement funds.

I declare under penalty of perjury that I am authorized to sign this certification, that there is no single official or employee of the DOH who has personal knowledge of all such matters; that the facts stated above have been assembled by employees of DOH as well as provided by experts outside of DOH, and I am informed that the information set forth above are in accordance with the information available to me and records maintained by the DOH and are true and accurate. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Executed this 21st day of January, 2025, in Trenton, New Jersey.

Kaitlan Baston, MD, MSc, DFASAM
Commissioner
New Jersey Department of Health

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

Civil Action No.: _____

DECLARATION OF LAURA JAMET

I, Laura Jamet, hereby declare:

1. I am Assistant Commissioner of the New Jersey Department of Children and Families ("DCF"), a position I have held since 2023. As Assistant Commissioner, I oversee the Division of Child Protection and Permanency ("DCPP"), New Jersey's division responsible for child protective services and permanency, including foster care and public adoptions. Prior to holding this position, I served in an acting capacity as Assistant Commissioner since 2022, and I served as Deputy Director of Operations for DCPP since 2021, along with other clinical and administrative roles in the New York City Administration for Children's Services.

2. As Assistant Commissioner for DCF, 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.

3. I am providing this declaration to explain certain impacts on the State of New Jersey's child welfare programs of an executive order entitled "Protecting the Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"). The Executive Order revokes birthright citizenship for children born in the United States after February 19, 2025, to (i) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

Division of Child Protection and Permanency

4. DCF is devoted to serving and supporting at-risk children and families. Within DCF, the DCPP is New Jersey's child protection and child welfare agency. DCPP is responsible for investigating allegations of child abuse and neglect and, if necessary, arranging for a child's protection.

5. DCPP contracts with community-based agencies throughout the State to provide services for children and families. Services include counseling, substance abuse treatment, in-home services, and residential placement.

6. If a child has been harmed or is at risk of harm, DCPP may ask the county family court to place the child in foster care. Foster homes are provided by caring individuals who have completed extensive licensing and care training.

7. DCPP provides foster care services to children regardless of their immigration status.

8. The average daily population of children in foster care in New Jersey in State Fiscal Year 2024 was 3,753. The total number of children in foster care in New Jersey in Calendar Year 2024 was 4,547.

9. Children often enter DCPP's care within the first year of their lives. In 2023, 268 children entered DCPP's care within three months of birth, 308 within six months of birth, and 364 within 12 months of birth.

Federal Funding Tied to a Child's Citizenship

Title IV-E Funding

10. Under Title IV-E of the federal Social Security Act, the federal government provides grants to State foster care agencies with approved Title IV-E plans, including DCF, to assist those agencies with the costs of foster care maintenance for eligible children, as well as for adoption, guardianship, prevention services, and other support services.

11. Federal funding under Title IV-E is available only for services provided to children who are United States citizens or "qualified aliens." As DCF understands the Title IV-E limitations, undocumented children are not "qualified aliens," *cf.* 8 U.S.C. § 1641, and thus DCF does not receive any federal reimbursement for foster care expenditures by DCF for undocumented children.

12. Federal funding under Title IV-E covers maintenance payments for eligible children and a portion of the State's administrative expenses. Maintenance payments include foster care assistance, adoption assistance, and guardianship assistance, and cover the cost of basic necessities, including food, clothing, shelter, daily supervision, and school supplies, for eligible children in DCF's care. Federal funding is provided on a quarterly basis after the

State submits claims for eligible expenditures associated with eligible children. New Jersey submits claims for reimbursement within eight weeks of the close of a quarter.

13. Partial reimbursement of administrative expenses is calculated by using the State's "penetration rate," which is the percentage of children in foster care who are eligible for Title IV-E funding. DCF calculates a penetration rate for each quarter. For federal Fiscal Years 2023 and 2024, the penetration rate was between 55 and 60 percent.

14. In Federal Fiscal Year 2024, DCF received $205.3 million in Title IV-E federal funding, including $138.9 million for administrative expenses and $66.4 million for maintenance payments for eligible children. This federal funding constitutes a substantial share of DCF's budget. For example, DCF spent approximately $170 million on maintenance payments during the last fiscal year. Federal funding covered approximately 40 percent of these maintenance expenditures.

15. DCF must, consistent with state law, continue to provide children born in the United States whose birthright citizenship is not recognized by the federal government with foster care services as needed. However, because these children are now ineligible for Title IV-E funding, DCF will not receive any reimbursement under Title IV-E for providing those services.

16. DCF does not keep records of the immigration status of the parents of children that DCF works with. Based on DCF's experience and understanding of general demographics in New Jersey, it is very likely that DCF serves U.S. citizen children whose birthright citizenship would not be recognized by the federal government pursuant to the Executive Order. DCF has been advised that there were around 95,792 registered births in New Jersey in 2024, and that an estimated 6,200 children are born each year in New Jersey to two undocumented

parents. This is a conservative underestimate of the number of children affected by the Executive Order because it does not include children who have one parent who is not undocumented but who nonetheless does not meet the immigration status requirements of the Executive Order to confer citizenship on their child born in the United States. Given that 364 children entered foster care within the first year of their lives in 2023, it is likely that some number of these children had two undocumented parents or a mother with temporary lawful status and a father who was neither a U.S. citizen nor lawful permanent resident. DCF reasonably expects that some number of children born within the 12-month period after February 19, 2025 will enter DCF's care. As a result of the Executive Order, DCF will 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.

Medicaid Funding

17. Under New Jersey law, all foster children, regardless of immigration status, are eligible for public health insurance through NJ FamilyCare. Children in foster care who are U.S. citizens or have a qualifying immigration status are eligible for the federal-state Medicaid program that is partially funded by the federal government. However, except for certain limited emergency care that is covered by the federal-state emergency Medicaid program, undocumented children in foster care are eligible only for health insurance that is fully funded by the State. Because of the Executive Order, the State will lose federal health insurance for such children and incur greater health care costs.

Other Federal Benefits Programs

18. DCF provides targeted financial and resource assistance to families with children who are at risk of familial crisis, including for necessities such as rent, baby supplies, and groceries, to ensure that children receive adequate care. DCF's goal is to keep families together, so that children do not experience the disruption and trauma of being removed from their home. In fiscal year 2024, DCF spent $13.3 million on this assistance. Many families with at-risk children also receive assistance for their children through federal programs, including SNAP, TANF, and SSI, for which their children are eligible because of their citizenship status. DCF determines the need for providing targeted assistance only after considering whether federal assistance to these families is sufficient to ensure that the basic needs of their children are met. Children with two undocumented parents, or whose birthright citizenship will otherwise be revoked by the Executive Order, will not be recognized as eligible for such federal assistance. DCF will be forced to increase its expenditures to ensure that these at-risk children receive adequate care.

Costs of Ascertaining Citizenship and Immigration Status

19. In order to determine whether children in its care are eligible for Title IV-E funding, DCF needs to determine the citizenship or immigration status of the children it serves.

20. In addition, DCF is responsible for applying for certain federal assistance for which a child in its care may be eligible, including Medicaid and SSI benefits. These federal benefits are not available to children who are not citizens or have a qualifying immigration status. Thus, as part of the application process, DCF must submit proof that a child is a citizen or has a qualifying immigration status.

21. Presently, DCF relies on a birth certificate as evidence of U.S. citizenship. This is administratively simple, especially with respect to newborns that DCPP caseworkers may interact with shortly after birth.

22. The Executive Order complicates DCF's ascertainment of whether a child is eligible for Title IV-E funding and the process for applying for certain federal assistance for children in its care.

23. To ascertain eligibility for these programs, DCPP caseworkers must now develop a new system for determining the citizenship and immigration status of children in its care. That system will likely require DCPP to take steps to determine, verify, and document the immigration status of the parents of children who come into foster care. This may be especially difficult in certain circumstances where parents are unwilling to engage with DCF. It will cost considerable time and resources to implement such a system.

24. DCPP will have to expend considerable resources to develop and implement a system to determine, verify, and document the citizenship and immigration status of children whose citizenship could not be presumed on the basis of a birth certificate showing their birth in the United States. DCPP will also incur significant costs to train DCPP caseworkers to implement that system. While the precise costs are difficult to estimate without further guidance from the federal government on how states must determine citizenship status for Title IV-E eligibility, it may easily cost millions of dollars. Because quarterly submissions to the federal government for reimbursements are due within 30 days of the end of a quarter, DCF must develop and begin implementing such a system within a matter of months. As a result of the Executive Order, DCF must immediately begin planning the development of a

new system for determining, verifying, and documenting the citizenship and immigration status of children born in the United States.

25. DCF provides services for children residing in New Jersey regardless of where they were born. With respect to U.S.-born children, DCF commonly provides services for children residing in New Jersey who moved into the state from other states, including neighboring states like Pennsylvania or New York. Presently, DCF does not and has no reason to track the state of birth of U.S.-born children in its care. If rules governing birthright citizenship varied by state of birth, DCF would have to start tracking state of birth so that DCF could accurately determine the citizenship and immigration status of children in its care for the purpose of determining Title IV-E eligibility. Without uniformity around such eligibility, DCF must also design, implement, and train staff on an eligibility determination system that accounts for differential rules based on a child's state of birth. This introduces additional complexity into any eligibility determination process for children in DCF's care, and will require additional expenditure of DCF's time and resources.

* * *

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 Trenton, New Jersey.

Laura Jamet, MSW

Laura Jamet, Assistant Commissioner
New Jersey Department of Children and Families

EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, *et al.*, *Defendants.*	No. 1:25-cv-10139

DECLARATION OF SHARON C. BOYLE

I, Sharon C. Boyle, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

I. Background

1. I am the General Counsel of the Massachusetts Executive Office of Health and Human Services (EOHHS), a position I have held since 2016. EOHHS is a cabinet-level secretariat in Massachusetts that directly manages the MassHealth program and oversees eleven state agencies charged with promoting the health, resilience, and independence of the Commonwealth's residents. EOHHS's public-health programs serve nearly one in three Massachusetts residents, touching every city and town in the Commonwealth.

2. Between 2003 and 2016, before assuming my current role, I held several titles within the EOHHS general counsel's unit, including First Deputy General Counsel and Chief MassHealth Counsel. From 1995 to 2003, I worked as an assistant general counsel in the Division of Medical Assistance.

3. As EOHHS General Counsel, I have personal knowledge of the rules, regulations, and processes governing EOHHS and its agencies. I have personal knowledge, or knowledge based

on review in my capacity as General Counsel of information and records gathered by EOHHS and agency staff, of the matters set forth below.

II. MassHealth Programs

A. Overview, Eligibility, and Funding

4. EOHHS administers several publicly funded programs that enable qualifying Massachusetts residents to access free or low-cost healthcare coverage. These programs include the Medicaid plan, Children's Health Insurance Program (CHIP), and the 1115 Demonstration Project—collectively known in Massachusetts as "MassHealth." Jointly funded by state and federal dollars, MassHealth provides coverage for a wide range of health services to children, the elderly, families, and individuals with disabilities. MassHealth benefits may vary depending on, among other things, a person's citizenship and immigration status and household income.

5. Depending on household income, children who are U.S. Citizens or who have qualifying immigration status are eligible for MassHealth's more comprehensive health benefits. For example, children whose household income is no more than 200% of the federal poverty level (for children under 1) or 150% of the federal poverty level (for children 1 through 18) are eligible for MassHealth Standard benefits. These MassHealth plans, which are funded in part by federal dollars, cover comprehensive medical and behavioral health care, primary and specialty physician services, inpatient and outpatient hospital services, long-term services and supports, comprehensive dental and vision care, lab tests, and pharmacy services.

6. Under federal law, children who are undocumented or who lack a qualifying immigration status are not eligible for the comprehensive plans discussed in the preceding paragraph. Instead, the only Medicaid coverage available for children who are undocumented or who lack qualifying immigration status is emergency services—known in Massachusetts as "MassHealth Limited." The household income thresholds for MassHealth Limited are 200% of the

federal poverty level for children under 1 and 150% of the federal poverty level for children aged 1 through 18.

7. To provide more comprehensive coverage for children who are ineligible for the comprehensive MassHealth plans discussed in paragraph 5, Massachusetts allows individuals under age 19 to enroll in the state's Children's Medical Security Plan (CMSP). A child whose household income is at or below 200% of the federal poverty level does not pay for CMSP coverage. CMSP is funded primarily by the Commonwealth of Massachusetts; the federal government does not provide matching funds for CMSP as it does for the comprehensive MassHealth programs.[1] Stated otherwise, Massachusetts children under age 19 who meet the income eligibility requirements for federally funded comprehensive Medicaid or CHIP programs, but who are not eligible for those programs because they are not U.S. citizens or qualified immigrants, are eligible for more comprehensive health coverage through CMSP at the state's expense.

8. For most MassHealth programs, the "Federal Medical Assistance Percentage"—*i.e.*, the amount that the federal government reimburses the Commonwealth for its spending—is 50%. For spending on children in CHIP, the Federal Medical Assistance Percentage is 65%. By contrast, and as just discussed, CMSP coverage for undocumented children, who are not eligible for federal-state Medicaid or CHIP, is primarily funded by the Commonwealth.

B. Fiscal Impact from Elimination of Birthright Citizenship

[1] The federal government provides limited funding for CMSP through the "Health Services Initiative," but that funding is subject to an annual cap which the program regularly exceeds, meaning that the state will shoulder the cost of any increased enrollment in the CMSP.

9. Today, any child born in Massachusetts is automatically deemed a U.S. citizen. Thus, any child born in Massachusetts to Massachusetts residents who meets income-eligibility criteria is eligible, as a citizen, for comprehensive federally funded MassHealth programs.

10. Massachusetts currently spends an average of approximately $4,800 per year per child enrolled in a comprehensive federally funded MassHealth program. As noted above, the federal government currently reimburses at least 50–65% of those costs.

11. On January 20, 2025, the President issued an Executive Order entitled "Protecting the Meaning and Value of American Citizenship," which purports to revoke birthright citizenship for certain children born in the United States after February 19, 2025. If the Executive Order is given effect, children covered by the Executive Order would not be eligible for any federally funded MassHealth program beyond MassHealth Limited. Instead, those children, if they meet income and other eligibility criteria, would receive CMSP from birth. Accordingly, other than emergency services, Massachusetts would cover the increased cost of health coverage for those children without federal reimbursement. This will be a significant number of children. MassHealth covers approximately 40% of the births in Massachusetts. Babies whose mothers are on MassHealth are deemed eligible for MassHealth for their first year.

C. Administrative Burdens from Elimination of Birthright Citizenship

12. Today, MassHealth's process for determining a newborn's eligibility for health care coverage operates on the premise that birth in a Massachusetts healthcare facility is, without more, proof that the newborn is a citizen.

13. If the Executive Order goes into effect, MassHealth would have to develop new eligibility processes because EOHHS could no longer rely on the fact that a child was born in the United States to confirm citizenship status.

14. EOHHS would incur significant costs to train eligibility staff and customer service workers on the new procedures and to revise existing guidance documents and manuals regarding eligibility rules and procedures.

III. Enumeration at Birth Program

15. Massachusetts is a participant in the Social Security Administration's "Enumeration at Birth" (EAB) program. EAB allows new parents to request a Social Security Number (SSN) during the birth registration process, eliminating the need for them to gather documents and submit a separate application to the Social Security Administration.

16. EAB involves collaboration between the federal government and state agencies. When a state participates in the program, the state's vital-statistics agency—in Massachusetts, the Registry of Vital Records and Statistics (RVRS) in the Department of Health (DPH)—electronically sends birth registration information to the Social Security Administration. The Administration then assigns an SSN, issues a card, and automatically updates its records with proof of birth. The federal government provides funding to the state for each SSN assigned this way.

17. According to the Social Security Administration, approximately 99% of SSNs for infants are assigned through this program. 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.

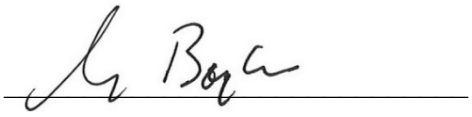
18. Massachusetts receives federal funding from the federal government in connection with the EAB program on a quarterly basis. The funding rate for the June 2024–June 2025 time period is $4.82 per SSN issued through Massachusetts's EAB participation. Massachusetts's current contract with the Social Security Administrations provides for up to 87,860 SSNs to be

issued through the program in Massachusetts in that time—resulting in up to $423,485.20 in federal payments to the Commonwealth.

19. If birthright citizenship were revoked pursuant to the Executive Order, children covered by the order would no longer be citizens and would therefore be ineligible for an SSN, and Massachusetts would lose the federal funding associated with issuance of those SSNs.

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.



Sharon C. Boyle
General Counsel, Massachusetts Executive Office of Health and Human Services

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	:	Civil Action No.: 1:25-cv-10139

DECLARATION OF KELLY SESTI

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

1. I am the Director for the Bureau of Administration within the Children's Services Administration (CSA) of the Michigan Department of Health and Human Services (MDHHS). In this role, I am responsible for oversight of policy, technology, human resources, budget, continuous quality improvement efforts and data management for CSA. I also oversee the Title IV-E program for Michigan.

2. Through my role, 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.

3. I am providing this declaration to explain certain impacts on the State of Michigan's Title IV-E program of the executive order titled "Protecting the

Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"), which revokes birthright citizenship for children born in the United States after February 19, 2025 to (i) a mother who is unlawfully present or permitted into the United States on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident..

Michigan's Title IV-E program, eligibility requirements, and federal funding

4. Michigan currently serves a monthly average of 8,668 children through the Title IV-E foster care program, 15,740 children through the Title IV-E adoption assistance program, 527 children through the Title IV-E guardianship program, and 8,516 children with Title IV-E prevention services. These numbers do not include the number of children who are already supported through state, county, and tribal funds. All children who are eligible receive equitable access to these services regardless of their citizenship status. Currently, MDHHS ensures that all children in need of services are supported through a combination of state, county, and tribal funds if they are not eligible for Title IV-E or other federal support. If children in the Michigan foster care system are stripped of citizenship status pursuant to the Executive Order, MDHHS would, consistent with state law and policy, continue to provide these children with foster care services as needed. However, because those children would be ineligible for Title IV-E funding, MDHHS would not receive any federal reimbursement under Title IV-E for providing these services.

5. Michigan's Title IV-E program also supports many programs through administrative claims. Staffing for foster care, adoption, guardianship, and

prevention cases are supported in part through Title IV-E funds. Child and parent legal representation and the Foster Care Review Board through the State Court Administrative Office are also supported through Title IV-E funds. Statewide training initiatives for current MDHHS, contracted private agencies, and tribal social services receive Title IV-E funding. The Title IV-E Child Welfare Fellowship program, contracted through the University of Michigan and subcontracted to several other Michigan public universities, is supported through Title IV-E funds. These programs rely on the Title IV-E penetration rate to determine the matching funds to meet the Title IV-E requirements. Partial reimbursement of administrative expenses is calculated by using the State's Title IV-E penetration rate, which is based in part on the percentage of children in foster care who are eligible for Title IV-E payments. MDHHS calculates the penetration rate for each quarter. For federal Fiscal Years 2023 and 2024, the penetration rate was between 31 and 32 percent.

6. Due to the expansive programming that MDHHS has implemented with Title IV-E support, a small drop in the Title IV-E penetration rate causes a significant increase in the amount that the State, counties, and tribes must contribute. For example, a one percent increase in the penetration rate in each quarter of fiscal year 2024 would have resulted in an estimated $2,950,941.59 more Title IV-E reimbursement to the state.

7. Children who are eligible for Title IV-E are categorically eligible for Medicaid per federal requirements. Children placed with MDHHS who are not

eligible for Medicaid because they are not a U.S. citizen or qualified alien, however, continue to incur medical and dental expenses. Those expenses are paid by state funds to ensure children have access to appropriate medical and dental care. Any increase in the number of children who are not Title IV-E or Medicaid eligible due to a change in citizenship determination will result in substantial increases in the medical and dental costs to the state, starting with birth expenses for a child who enters care as a newborn.

Fiscal Impact of Revoking Birthright Citizenship

8. 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 Michigan's foster care, adoption, guardianship, and prevention system programs, including a decrease in receipt of federal Title IV-E funding for children born in Michigan and increased operational and administrative costs for Michigan.

9. For fiscal year 2024, Michigan claimed $30,824,969 in maintenance expenses for foster care expenses, $113,843,897 for adoption assistance maintenance expenses, $3,662,817 for guardianship maintenance expenses, and $5,831,968 for prevention services. For fiscal year 2024, Michigan claimed a total of $61,455,039 in administrative and training expenses for foster care, $21,808,189 in administrative expenses for adoption assistance, $159,385 in administrative expenses for guardianship, and $9,296,981 in administrative expenses for prevention administration and training.

Administrative Burden

10. In addition, MDHHS expects burdensome increases in administrative and training costs for Title IV-E program as a result of the Executive Order.

11. MDHHS currently determines Title IV-E eligibility by meeting several factors, one of which is being determined to be a United States citizen or qualified alien. Per federal guidance, the *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV-E of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,* published in the Federal Register on November 17, 1997 (62 Fed. Reg. 61344) by the Department of Justice, requirements were incorporated into MDHHS policies to ensure that the citizenship and qualified alien requirements are being met. There are checks and balances built into MDHHS's policy, processes, and electronic case records system to ensure that this eligibility requirement is met. Prior to the Executive Order there were no federal requirements for the child's parents' citizenship to be factored into the eligibility decision. That information is not gathered by MDHHS, nor readily available. Obtaining this information from the Michigan Vital Records Department would most likely require legislative changes if the parent does not voluntarily provide the documentation. This delay in determining if this child is Title IV-E eligible due to their citizenship would cause the child's payments to be made from a combination of state and county funds—rather than Title VI-E funds. This process will add additional research onto those working with the family and the child welfare funding specialists. Those delays in making a determination will force the

state, county, and/or tribe to fully support those children in the interim time needed for this additional research.

12. Estimates on the number of children who will be impacted is difficult to determine as the citizenship and immigration status of parents is not something that is currently tracked. The shift will impact the processes for all children who enter care and were born after the implementation date of the Executive Order. In fiscal year 2024, 824 children under one-year-old entered foster care. It is estimated a similar number of newborns will enter foster care in 2025. For children born after February 19, 2025, they will all require additional research into their parents' citizenship to determine if they meet the new citizenship details in the Executive Order.

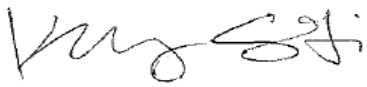
13. There is federal guidance regarding Social Security Numbers and their impact to both Title IV-E and Medicaid eligibility as follows: Changes brought about by the Deficit Reduction Act of 1984 (DEFRA) (Public Law 98-369) resulted in an Office of Human Development Services (OHDS) Policy Announcement which stated that otherwise eligible children are not required to apply for or furnish a Social Security Number (SSN) in order to be eligible for the Title IV-E Foster Care Maintenance Payments Program or the Adoption Assistance Program. However, Title XIX program regulations, 42 C.F.R. § 435.910, were amended to require, effective April 1, 1985, that each individual (including children) requesting Medicaid services furnish his/her SSN as a condition of eligibility for Medicaid. Children who are eligible for Title XIX Medicaid on the basis of their eligibility

under Title IV-E must furnish an SSN as a condition of eligibility for Medicaid, even though an SSN is not required under title IV-E.

14. The changes to citizenship documentation will require policy updates and changes to the electronic case records system. Changes to the system come at a large expense and will involve several different departments within MDHHS. Training will be needed for all case managers within MDHHS, contracted private agencies, and tribal social services agencies. Training of the courts in collaboration with the State Court Administrative Office (SCAO) would be needed as well. The Child Welfare Funding Specialists will require additional training regarding how to now determine a child's citizenship and how to manually track the changes until updates can be made to the electronic case records system.

15. The cost of care for children who are not eligible for Title IV-E is paid for with a combination of state, county, and tribal funds. Each of Michigan's 83 counties and twelve federally recognized tribes will need to turn to their local communities for additional funding to support the expected increase in their contributions due to this Executive Order.

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



Dated: January 21, 2025

Kelly Sesti
Director, Bureau of Administration
Children's Services, MDHHS

EXHIBIT I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	:	Civil Action No.: _____

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

1. I am the State Registrar and the Director of the Division of Vital Records and Health Statistics (VRHS) within the Michigan Department of Health and Human Services (MDHHS). In this role, I am responsible for administration of Michigan's state vital records and statistics functions, including the civil registration of births, deaths, marriages, and divorces. I also administer contracts under which VRHS has to provide services to the Social Security Administration and the National Center for Health Statistics, a Center in the U.S. Centers for Disease Control and Prevention (CDC). In addition, I am the President-Elect of the National Association for Public Health Statistics and Information Systems, the organization of state and territorial vital statistics registrars.

2. As Michigan's 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.

3. I am providing this declaration to explain certain impacts on the State of Michigan of the executive order titled "Protecting the Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"), which revokes birthright citizenship for children born in the United States after February 19, 2025 to (i) a mother who is unlawfully present or who is lawfully present in permitted into the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

4. The VRHS is responsible for the civil registration of births, deaths, marriages, and divorces, as well as issuing certified copies of these events to the public. VRHS contracts with the National Center for Health Statistics (NCHS) to contribute data toward national vital statistics, and with the Social Security Administration for Enumeration at Birth (EAB).

Registration and Birth Certificates of Newborns

5. Healthcare facilities throughout Michigan coordinate with VRHS to collect and submit information to register each child's birth.

6. 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 Birth Certificate 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.

7. After the newborn's parents complete and sign the Worksheet, hospital staff enter the information from the Worksheet into an electronic birth system (VERA) maintained by VRHS. Local registrars, typically county clerks in Michigan, log in to VERA to accept and register each birth certificate and file it with VRHS. Upon registration, VRHS subsequently extracts statistical information from birth certificates and transmits weekly to the NCHS. Daily, VRHS extracts data from newly registered birth records and submits to Social Security for EAB.

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, residence, and mailing addresses. Currently, it is not possible to determine a foreign-born parent's immigration status from their child's birth certificate.

9. 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).

10. If the newborn registration process had to be amended to provide for verification of the parents' citizenship and/or immigration status, this would impose material administrative burdens on healthcare facilities throughout Michigan. During the newborn registration process, hospitals ask parents for their SSNs and places of birth, but do not directly inquire about immigration status. Currently, healthcare facilities do not verify the accuracy of the information provided. If healthcare facilities were required to confirm the accuracy of the parents' places of birth, SSNs, or immigration status, they would incur significant new administrative costs to implement a system to substantiate the information and hire and train staff. This burden would likely further lead to delays in registration and issuance of birth certificates for all children.

Application for Social Security Number of Newborns

11. While registering a newborn for a birth certificate at a healthcare facility, parents may also request an SSN for their child through a Social Security Administration (SSA) program called Enumeration at Birth (EAB).

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

13. The EAB application is included as part of the Birth Certificate Worksheet parents complete at the facility. For EAB purposes the Worksheet 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. Parents check a box on the Worksheet indicating their permission to share information with SSA to obtain a social security number for their newborn child.

14. EAB information collected on the Worksheet is keyed into VERA and submitted to the VRHS electronically at the same time the birth is filed. VRHS extracts and submits EAB information to SSA daily to support timely enumeration. VRHS only sends EAB records to SSA for enumeration of infants born within the past 12 months.

15. Michigan 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 $4.82 per SSN issued through the EAB process, or approximately $100,000 to $115,000 per quarter. VRHS uses those funds to support the payment of administrative and operational costs.

16. If birthright citizenship were revoked pursuant to the Executive Order for children born in the United States after February 19, 2025 to (i) a mother who is unlawfully present or who is lawfully present in permitted into the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident, such children would no longer be citizens and would therefore be ineligible for an SSN. Assuming that SSA would not issue an SSN to such children , VRHS estimates approximately 6,615 to 6,673 fewer SSNs would be issued. This estimate is based on the number of births for which the parents

identified a foreign place of birth and did not provide an SSN on the Birth Certificate Worksheet in 2023 (6,673 births) and in 2024 (6,615 births).

17. If approximately 6,600 to 6,800 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 Michigan of approximately $31,812 to $32,776.

18. In addition to the loss in funding, healthcare facilities in Michigan would incur new administrative costs by expending resources to verify parents' immigration status before applying for a newborn's SSN through the EAB process as SSA will presumably require proof of parents' lawful status to issue an SSN. Healthcare facilities will be forced to consult with, and assist, families with obtaining the paperwork necessary to prove their lawful status. It is likely that Michigan's VERA system and guidelines for submitting SSN applications through to SSA—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 under the laws of the United States of America that the foregoing is true and correct.

Dated: January 21, 2025

Jeffrey Duncan

Jeffrey Duncan
State Registrar
Director, State Vital Records Office
MDHHS

EXHIBIT J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	:	Civil Action No.: _____

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

1. I am the Senior Deputy Director for behavioral and physical health and aging services within the Michigan Department of Health and Human Services (MDHHS). I became the Senior Deputy Director for behavioral and physical health and aging services in May 2023. I am responsible for executive level oversight and administration of Medicaid and the HMP (Healthy Michigan Plan) (together commonly referred to as Medicaid), as well as CHIP (Children's Health Insurance Program), policy and the related eligibility and determination process. In this capacity, I also serve as the Michigan Medicaid Director.

2. I am providing this declaration to explain certain impacts on Michigan's health assistance programs of an Executive Order titled "Protecting the Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"), which revokes birthright citizenship for children born in the

United States after February 19, 2025 to (i) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

Michigan's Medicaid and CHIP programs, eligibility requirements, and federal funding

3. Medicaid is a comprehensive health care coverage program for low-income Michiganders. To qualify, individuals must generally fall into one of the following categories:

- Elderly adults
- Blind or disabled adults
- Pregnant women Families/Caretakers of dependent children
- Very low income children (generally under 110% of the federal poverty level)

4. HMP is Michigan's Medicaid Expansion program, which provides comprehensive health care coverage for individuals who:

- Are age 19-64 years
- Have income at or below 133% of the federal poverty level* ($16,000 for a single person or $33,000 for a family of four)
- Do not qualify for or are not enrolled in Medicare
- Do not qualify for or are not enrolled in other Medicaid programs
- Are not pregnant at the time of application, and
- Are residents of the State of Michigan.

5. CHIP is a health coverage program funded jointly by the state and federal government to provide health care coverage to eligible children in families that make too much to be eligible for Medicaid, but too low to afford private coverage. Michigan's primary CHIP program is known by the name of MIChild. Children enrolled in MIChild are considered Medicaid beneficiaries and are entitled to all Medicaid covered services. The MIChild program provides health care coverage for children who:

- Are age 0 through 18
- Have income above traditional Medicaid eligibility levels but at or below 212% of the Federal Poverty Level under the Modified Adjusted Gross Income (MAGI) methodology
- Do not have other comprehensive medical insurance (this includes insurance that covers inpatient and outpatient hospital services, laboratory, x-ray, pharmacy, and physician services)
- Do not qualify for other MAGI related Medicaid programs, and
- Are residents of the State of Michigan.

6. Medicaid, HMP, and MIChild offer a full array of health benefits, including physical health, behavioral health, dental, vision, and long-term care coverage. Medicaid, HMP, and MIChild are federal-state partnership programs with both a federal and state share funding the overall program costs. Michigan is able to draw 65% federal match for Medicaid, 90% federal match for HMP, and 76% federal match for MIChild.

7. Non-citizens are generally eligible for coverage of Emergency Services Only (ESO) Medicaid. ESO Medicaid provides a very limited benefit for aliens who are not otherwise eligible for full Medicaid because of immigration status. Aliens who are not otherwise eligible for full Medicaid because of immigration status may be eligible for Emergency Services Only (ESO) Medicaid. For the purpose of ESO coverage, federal Medicaid regulations define an emergency medical condition (including emergency labor and delivery) as a sudden onset of a physical or mental condition which causes acute symptoms, including severe pain, where the absence of immediate medical attention could reasonably be expected to:

- Place the person's health in serious jeopardy, or
- Cause serious impairment to bodily functions, or
- Cause serious dysfunction of any bodily organ or part.

ESO Medicaid coverage is limited to those services necessary to treat emergency conditions. The following services are not covered under this benefit today:

- preventative services
- follow-up services related to emergency treatment (e.g., removal of cast, follow-up laboratory studies, etc.)
- treatment of chronic conditions (e.g., chemotherapy, etc.)
- sterilizations performed in conjunction with delivery
- organ transplants pre-scheduled surgeries
- postpartum care
- non-emergency newborn care

8. In order to get Medicaid or HMP coverage, most non-citizens have a five-year waiting period before they can get full Medicaid or HMP coverage. Certain noncitizens, like refugees or asylees, are exempt from the five-year waiting period.

9. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) allows states to provide full coverage to pregnant women and children who are lawfully residing in the United States. Michigan Medicaid allows lawfully residing pregnant women to receive full coverage through the entirety of both their pregnancy and their 12-month postpartum period. After the end of their postpartum period, they will revert to ESO coverage if applicable. Lawfully residing children receive full coverage until they reach age 21 and then revert to ESO coverage if applicable. Individuals who are not considered lawfully present pursuant to section 1903(v)(4) and 2107(e)(l)(J) of the Social Security Act would not qualify for this option and instead receive limited coverage through ESO Medicaid only.

10. During state fiscal year 2024, 3.3 million Michiganders, including 1.22 million children, were provided with health care coverage through Michigan's Medicaid and CHIP programs. An average of 979,727 children under the age of 18 and 42,735 pregnant women were covered each month over the course of the fiscal year.

11. Under federal law, Medicaid and CHIP coverage is provided to citizens and qualified noncitizens whose citizenship or qualifying immigration status is verified and who are otherwise eligible. Individuals may apply via MI Bridges, Michigan's online application platform, via phone, or in person by completing an

application. With the exception of individuals who apply for ESO Medicaid coverage only, citizenship is considered to be an eligibility factor for Medicaid and CHIP coverage and is verified by MDHHS. There are multiple ways that MDHHS verifies citizenship to determine eligibility.

12. Citizenship is generally verified through a data matching process leveraging Social Security Administration and/or MDHHS vital records data. In instances where citizenship cannot be verified through those automatic means, the applicant is contacted to provide supporting documentation, including, but not limited to, a passport, Certificate of Naturalization, or Certificate of Citizenship, military record of service. If verification of this manner cannot be provided, MDHHS will request third level evidence of U.S. citizenship.

13. Third level evidence is usually a non-government document established for a reason other than to establish U.S. citizenship and showing a U.S. place of birth. This includes an extract of a hospital record on hospital letterhead established at the time of birth that was created at least five years before the initial application date that indicates a U.S. place of birth; life, health or other insurance record showing a U.S. place of birth that was created at least five years before the initial application date; religious record recorded in the U.S. within three months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made; or an early school record showing a U.S. place of birth.

14. If third level evidence cannot be supplied, MDHHS policy stipulates that fourth level evidence can be used only in the rarest of circumstances. When this is necessitated, a written affidavit completed by the applicant or recipient and at least two additional individuals of whom one is not related to the applicant/recipient and who have personal knowledge of the event(s) establishing the person's claim of citizenship can be considered. Individuals making the affidavit must be able to provide proof of their own citizenship and identity. The affidavit is signed under penalty of perjury by the person making the affidavit and must include information explaining why other documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be obtained.

15. A child born to a woman receiving Medicaid in Michigan is considered a U.S. citizen. No further documentation of the child's citizenship is required. Following the child's birth, he or she would be automatically enrolled in Medicaid for the first 12 months after birth. This coverage provides full Medicaid benefits and permits the hospital and other providers to bill Medicaid for the child's covered services such as newborn testing and screenings, vaccination, pediatrician visit, and the hospital stay. The Executive Order is likely to have serious impacts on public health and inflict harm on hospitals and other safety-net providers that will be left with the costs of now uncompensated, but required, health care services and supports. Hospitals across the country and in Michigan have suspended labor and delivery units and adding uncompensated costs as a result of this order may

exacerbate growing access concerns over access to labor and delivery services for pregnant women regardless of their insurer.

16. I understand that the President has issued an Executive Order ending birthright citizenship. 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 Michigan's medical benefits programs, including a decrease in receipt of proper medical care for children born in Michigan and increased operational and administrative costs for Michigan. In addition, the change of policy will have a direct impact on Michigan's administration of its Medicaid and CHIP programs and result in a loss of federal funding Michigan receives to reimburse medical expenses in Michigan. As a result, uncompensated care costs will increase for hospitals and safety net providers in Michigan.

Fiscal Impact of Revoking Birthright Citizenship

17. The Executive Order will result in a direct loss of federal funding for both the undocumented mothers and their children that were eligible for the Maternity Outpatient Medical Services program (MOMS).

18. MOMS is a health coverage program in Michigan. The MOMS program provides health coverage for pregnant or recently pregnant women who are eligible for ESO Medicaid. MOMS provides coverage for outpatient prenatal services and pregnancy-related postpartum services for two months after the pregnancy ends including but not limited to inpatient labor and delivery, radiology and ultrasound,

laboratory service, doula and home visiting, behavioral health and substance use disorder services. MOMS also covers family planning services for the mother during the postpartum period.

19. In state fiscal year 2024, 5,500 women were covered through the MOMS program for at least a portion of their pregnancy and postpartum period and 1,907 babies were born to women covered by this program. If the pregnant women covered through MOMS became ineligible due to a loss of citizenship for their unborn child, that would result in a loss of $13.2 million in federal reimbursements to Michigan and, assuming the State covers MOMS program expenses for those individuals with State funds, a corresponding increase to State expenditures of the same amount. If the babies born to these women were no longer considered citizens and ineligible for Medicaid as a result of this status change, that would result in a loss of approximately $11.6 million in federal reimbursements to Michigan and a corresponding increase to State expenditures of the same amount.

20. The Executive Order will also result in a direct loss of federal funding for children that are born in Michigan to undocumented parents and were eligible for CHIP.

Administrative Burden

21. In addition, MDHHS expects increased administrative and training costs for these programs relative to resources for training and potentially systems/policy implementation as a result of the Executive Order. Additional administrative costs will be incurred by hospitals and other safety-net providers.

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

Dated: January 20, 2025

Meghan E. Groen
Senior Deputy Director
Behavioral and Physical Health and Aging Services Administration
MDHHS

EXHIBIT K

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

Civil Action No.: _____

DECLARATION OF LINDY HARRINGTON

I, Lindy Harrington, hereby declare:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am currently employed by the California Department of Health Care Services (DHCS) as the Assistant State Medicaid Director. I have held the Assistant State Medicaid Director position since 2023. As Assistant State Medicaid Director my responsibilities include assisting the State Medicaid Director in overseeing all aspects of the Medicaid and Children's Health Insurance Programs (CHIP) as governed by state and federal rules. My experience includes over 17 years of various executive leadership roles within DHCS, including over 7 years as the Deputy Director, Health Care Financing where I was responsible for the development, promotion, and implementation of financing for California's Medicaid program (Medi-Cal) prior to my appointment as Assistant State Medicaid Director.

3. The organizational purpose of DHCS is to provide equitable access to quality health care leading to a healthy California for all. In that effort, DHCS oversees the provision of healthcare for citizen and noncitizen low-income families, children, women, seniors, and persons with disabilities within the Medi-Cal and CHIP programs.

4. DHCS is the single state agency authorized to administer California's Medicaid program under Title XIX of the federal Social Security Act, referred to in California as "Medi-Cal" and California's Children's Health Insurance Program (CHIP) under Title XIX and XXI of the federal Social Security Act.

5. I am providing this declaration to explain certain impacts on the State of California's health insurance programs of the Executive Order titled "Protecting the Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"), which revokes birthright citizenship for children born in the United States after February 19, 2025 to (i) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

6. As described below, this Executive Order will inflict significant harm upon DHCS' efforts to provide Californians with equitable access to quality health care.

Medicaid and CHIP

7. California's Medi-Cal and CHIP programs are federal/state partnerships that provide comprehensive healthcare to individuals and families who meet defined eligibility requirements.

8. There are several ways to be eligible for Medi-Cal, but in general, children born in the United States and residing in California whose household modified adjusted gross income (MAGI) is at or below 266 percent of the Federal Poverty Level (FPL) are eligible for Medi-Cal.

9. DHCS also leverages Medi-Cal resources to extend meaningful coverage to a wide range of children. This is accomplished in part with federal funds available under Titles XIX and XXI (Children's Health Insurance Program or CHIP).

10. The vast majority of the State's Title XXI allotment is used to expand Medicaid coverage to children in working families whose parent(s) or guardians(s) exceed the income eligibility thresholds for traditional Title XIX based Medi-Cal. DHCS uses Title XXI funds to further extend coverage to children with income up to 322 percent of the FPL in San Francisco, Santa Clara, and San Mateo Counties.

11. In addition, DHCS has elected to use Medi-Cal resources to make pregnancy health services accessible to the largest number of individuals possible. Medi-Cal includes coverage for eligible pregnant individuals up to 213 percent of the FPL. Pregnancy-related services include prenatal care, all Medi-Cal services for conditions that might complicate pregnancy (such as high blood pressure and diabetes) and postpartum care. Labor and delivery are provided under emergency services. Additionally, these services directly affect maternal and child health outcomes.

12. As part of California's CHIP State Plan, pregnant individuals and individuals up to 12 months post-partum who have income between 213 percent of the FPL and up to 322 percent of the FPL may be eligible for the Medi-Cal Access Program (MCAP), which includes the From-Conception-to-the-End-of-Pregnancy (FCEP) Option, which offers comprehensive coverage for no-cost with no copayments or deductibles for its covered services. Eligible pregnant individuals that meet the State's residency requirements may qualify for the MCAP, regardless of immigration status.

13. Newborns whose mothers are enrolled in Medi-Cal or MCAP and give birth in participating hospitals or clinics can be automatically enrolled into Medi-Cal or the Medi-Cal Access Infant Program (MCAIP) at the time of birth using a simplified application. Medi-Cal deemed eligible newborns and MCAIP infants will receive full-scope, no-cost Medi-Cal until their first birthday.

14. Under federal law, individuals who are undocumented and do not have a lawful, qualifying immigration status, are not eligible for federal Medicaid, CHIP, or other benefits. The limited exception involves the federal program for undocumented or non-qualified individuals otherwise eligible for Medicaid, known as Emergency Medicaid. Thus, except for emergency, pregnancy-related services, and postpartum services, California fully funds health insurance for individuals who meet the income eligibility guidelines for federally-funded Medicaid or CHIP, but do not qualify for those programs because they are not United States citizens or "qualified aliens."

15. Under the CHIP State Plan, DHCS elected the From-Conception-to-End-of-Pregnancy Option, which provides full-scope coverage of services for pregnant individuals, regardless of immigration status, up to 322 percent of the FPL. This option provides the DHCS authority to cover pregnancy-related and postpartum services for undocumented or non-qualified individuals.

16. DHCS recognizes that meaningful access to affordable and quality healthcare requires statewide efforts to increase coverage for more Californians.

17. Thus, to better address the State's coverage needs, in 2015, California expanded full-scope, State-funded Medi-Cal eligibility to all low-income children through age eighteen, regardless of immigration status, and subsequently, expanded coverage to additional age groups

until, beginning in 2024, California became the second state to expand comprehensive coverage to all income-eligible residents, regardless of immigration status.

Federal Funding

18. As of the State Fiscal Year 2024-25 enacted budget, DHCS has an annual budget of more than $160 billion, the vast majority of which relates to Medi-Cal and CHIP, which supports the health care of more than 14 million Californians.

19. The amount contributed by the federal government, known as the Federal Medical Assistance Percentage (FMAP), is based on a formula that uses a state's per capita income. California receives a 50 percent FMAP for Medi-Cal, which generally means that for every dollar California spends on Medi-Cal services, the federal government matches it with a dollar. For CHIP, the FMAP is 65 percent.

20. However, Medi-Cal coverage for undocumented children who are not eligible for federal Medicaid or CHIP because of their immigration status, is fully funded by California, without any federal funding assistance.

21. The only exception to this is Emergency Medicaid which is available to all income-eligible individuals who have a medical emergency or need pregnancy-related or postpartum services.

22. In order to receive Medicaid matching funds from the federal government for healthcare expenditures by California, DHCS needs to verify that the expenditures submitted for federal matching were for care provided to citizens or qualifying noncitizens, or for emergency, pregnancy-related, or postpartum services.

23. As of 2024, DHCS administers Medicaid and CHIP funded coverage for more than five million children in California. DHCS estimates that coverage on a per-child basis costs

approximately $3,445 per year. For this coverage, California estimates it expended approximately $17 billion in total and received approximately $8 billion in reimbursement from the federal government under Medicaid and CHIP.

24. Federal funding for California's Medi-Cal program is provided through an advance quarterly grant from the federal Centers on Medicare and Medicaid Services ("CMS") to California, with a post-quarter reconciliation. This quarterly process begins approximately six weeks before the quarter begins, with the State submitting to CMS a CMS-37 report, which estimates the reimbursable expenditures California expects to make for the upcoming quarter. For instance, for the January to March 2025 quarter, California submitted the CMS-37 report on approximately November 15, 2024.

25. Federal funding for California's CHIP program is provided through an annual allotment. The allotment amount is calculated by CMS as defined in Section 2104(m)(10) of the Social Security Act. Funds from this allotment are released to California based on the quarterly budget submission to CMS. For the January through March 2025 quarter, the State submitted the reports on approximately November 15, 2024. Initial CHIP allotment funds for Federal Fiscal Year 2025 were released to California previously.

26. CMS then issues a quarterly federal grant no later than 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.

Healthcare Coverage for Newborns

27. Presently, all children born in California are U.S. citizens.

28. Thus, at present, Medi-Cal coverage for newborns in California is partially funded by the State and partially funded by the federal government, either through Medicaid or CHIP.

However, if a child were not eligible for federally-funded Medicaid or CHIP, California would not receive that federal assistance, and would cover the full cost of health insurance coverage for the newborn, with the exception of federal funding for emergency services.

29. CHIP and Medi-Cal are especially important for children under 21 years of age with disabilities enrolled in California's Children's Services (CCS) program which provides diagnostic and treatment services, medical case management, and physical and occupational therapy health care services to children with CCS-eligible conditions (e.g., severe genetic diseases, chronic medical conditions, infectious diseases producing major sequelae, and traumatic injuries) from families unable to afford catastrophic health care costs. CCS currently serves approximately 182,000 children in California, approximately 90 percent of whom receive this service through CHIP and Medi-Cal benefits.

Impact of Executive Order

30. Medi-Cal is the pillar of the State's health care safety net, providing access and meaningful coverage to millions of low-income Californians. If implemented, the Executive Order will not only interfere with the administration of Medi-Cal and other health programs operated by DHCS, reducing California's health care coverage gains, but it will also reduce the amount of federal funding California receives to reimburse medical expenses for children in California.

31. California'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 DHCS and those individuals it serves.

32. The Executive Order revoking birthright citizenship for certain children born in the United States will result in some babies being born in California as non-citizens with no legal

status. That will result in the 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 depends on the individual's eligibility under federal law, which necessarily depends on their citizenship or immigration status.

33. In particular, federally matched coverage for 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 coverage. This will necessarily result in a shift to the State of funding responsibility for this group of children.

34. Further under California's CHIP State Plan, California covers pregnant individuals regardless of immigration status, with incomes at or below 322 percent of the FPL for prenatal care 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 CHIP, while the mother is no longer covered under the federal CHIP program. If these children are no longer deemed citizens at birth, DHCS will lose federal funding for all non-emergency services for these children.

35. This poses an immediate risk to DHCS's federal funding stream used to provide healthcare coverage to vulnerable California newborns and children.

36. In 2022, DHCS estimates there were approximately 41,000 births to undocumented pregnant individuals whose labor and delivery was covered by emergency Medicaid. Assuming that a similar number of undocumented pregnant individuals give birth within one year of the Executive Order, and that many of those children would have been

eligible for federal Medicaid and CHIP but for their new non-citizen status, DHCS estimates that it will lose several millions in federal funding in the first year, compounding annually.

37. Further, to the extent that the Executive Order will sow confusion about immigrants and their children's ability to access essential health benefits, for which they remain eligible under state law, the Executive Order undermines the substantial progress that DHCS has made to increase access to healthcare, harming families and communities, weakening the public health, and creating public distrust in the State's social welfare institutions.

38. Because the Executive Order will cause families and caregivers of children, especially infants, to avoid the preventive care and treatment provided by these programs, it will have long-term consequences for the health outcomes of those children.

39. Currently, these programs all follow the American Academy of Pediatrics Bright Futures recommendations, a series of evidence-based preventive care and treatment recommendations shown to improve the health outcomes of children. Beyond health outcomes like avoiding childhood diseases, avoiding long-term risk of chronic diseases in adulthood and promoting age-appropriate development, these services are also critical for ensuring the success of children in other domains like engagement in school, literacy and appropriate social development. These programs are also where any issues, especially related to development, child welfare and congenital or infectious diseases are first identified and treated early. Lack of utilization of these programs will pose long-term risk to the health of all Californians, increased risk for future pandemics, and overall impact to California's health and economy.

40. In addition, if implemented the Executive Order likely will interfere with and complicate DHCS' administration of programs.

41. DHCS will need to immediately begin planning for the potential loss of federal funding. This includes reassigning staff from other priorities, hiring contractor support, and expanding existing financial and programmatic support contracts to encompass the new scope of work this would entail.

42. DHCS would also incur significant costs to train staff, partners, and healthcare providers on any updated eligibility system and procedures, and to revise existing guidance documents and manuals regarding eligibility rules and procedures. DHCS will have an enormous administrative burden in training workers across 58 counties on processing Medi-Cal eligibility based on new immigration rules, which is a significant overhaul to Medi-Cal's current enrollment policies.

43. DHCS will need to revise all eligibility determination policies around Medi-Cal at application, annual renewal, and changes of circumstances relating to citizenship and immigration status verifications, which can take as many as several years to complete and operationalize due to complexity. This includes significant updates to the Medicaid application and its requisite online applications in two eligibility systems, including reconstructing how verifications of immigration status will work to output an accurate Medi-Cal determination. None of these changes will be immediate due to the complexity, breadth, and depth of these fundamental policies for verification of citizenship status.

44. Because so many changes will need to be made to implement Medicaid and CHIP under this new citizenship rule, DHCS is unable to currently predict how many millions of dollars it will cost to implement these changes. The changes that would need to be made both at the state and federal level could take years to update to the new citizenship rule.

45. Further, children residing in California are eligible for Medi-Cal, including the fully state-funded program, regardless of whether they were born in California. Children residing in California who moved into the State from other states, are frequently enrolled in Medi-Cal. Presently, the eligibility verification systems used by DHCS's vendor and county agencies does not track the state of birth of U.S.-born children who apply for Medi-Cal. If the rules governing birthright citizenship varied by state of birth, these eligibility verification systems need to be modified to track state of birth and parentage in order to determine whether a child relocating from another State is a citizen and therefore eligible for Federal-State Medicaid or CHIP. This would add further complexity to the process of updating eligibility verification systems described above, requiring additional expenditure of DHCS's time and resources.

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

Executed this __20th__ day of January, 2025, in Sacramento, CA.

Lindy Harrington
Assistant State Medicaid Director
California Department of Health Care Services

EXHIBIT L

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

Civil Action No.: _____

DECLARATION OF RACHEL A. HEENAN

I, Rachel A. Heenan, declare as follows:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am currently employed by the California Department of Education (CDE) as the Director of the Special Education Division. I have been in this position for one year. I have more than 7 years of experience as District Special Education Director and Special Education Local Plan Area Director and more than 19 years of experience in Special Education administration.

3. As the Director of Special Education, I oversee the implementation of federal and state special education laws including the Individuals with Disabilities Education Act. I also oversee a total budget of $6,300,000,000 in state and federal funds that are allocated to Local Educational Agencies (LEAs) to meet the needs of 850,000 students with disabilities.

4. CDE's mission is to innovate and collaborate with educators, schools, parents, districts, and community partners to ensure that all of California's 5.8 million public school students—across more than 9,000 schools—have access to a world-class education. Our aim is to prepare students to live, work, and thrive in a multicultural, multilingual, and highly connected world.

5. Pursuant to *Plyler v. Doe*, 457 U.S. 202 (1982), LEAs within the State serve all school-age children, regardless of their immigration status. An LEA—such as a school district—is a public authority legally constituted by the State as an administrative agency to provide control of and direction for kindergarten through grade 12 public educational institutions.

6. The children of immigrant families are a vital part of our school communities, and they are a part of what makes our schools so vibrant and diverse.

7. I understand that the President issued the Executive Order "Protecting the Meaning and Value of American Citizenship" on January 20, 2025 (the "Executive Order"). It is my understanding that the Executive Order revokes birthright citizenship for children born in the United States after February 19, 2025 to (i) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

8. As described below, it is my understanding that an Executive Order ending birthright citizenship would inflict significant harm upon CDE's efforts to provide a free and appropriate public education to all children by restricting the federal funding made available to LEAs and public schools in California to serve students with disabilities.

Special Education

9. The Individuals with Disabilities Education Act (IDEA) provides that schools are responsible for providing a free appropriate public education (FAPE) to students with disabilities. 20 U.S.C. § 1412(e).

10. Funding for special education is meant to cover the additional costs that are associated with educating students with disabilities due to their disability. In California, there are three main sources of special education funding: (1) the federal government, as part of the IDEA; (2) the State; and (3) school district and charter school LEAs. For the school year 2024-25, California received $1.5 billion in special education funding from the federal government, the State allocated $4.8 billion for special education, and LEAs, using unrestricted funds, covered the remaining approximately $8 billion in special education costs.

11. Medicaid responsibility precedes that of the LEA for a Medicaid (called Medi-Cal in California) covered service in the student's Individualized Education Plan (IEP). 20 U.S.C. § 1412(a)(12)(A)(i); 42 U.S.C. § 1396b(c). Section 1396b(c) states: "Nothing in this subchapter shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the IDEA [20 U.S.C. 1411 et seq.] or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act [20 U.S.C. 1431 et seq.]." The IDEA provisions regarding LEA responsibilities for a FAPE do not alter the Medicaid responsibility for Medicaid-covered services in the IEP. 20 U.S.C. § 1412(e).

12. CDE receives funding under three provisions of IDEA. Since 1988, Section 1903(c) of the Social Security Act has authorized the federal Medicaid program to reimburse LEAs for covered services provided to Medicaid-eligible students with disabilities, pursuant to the IDEA, 20 U.S.C. § 1400 et seq., provided the services were delineated in the student's IEP (or similar plan) and covered in the state plan for Medicaid.

13. IDEA requires LEAs to develop an IEP for children found eligible for special education and related services. An IEP identifies certain special education and related services, and program modifications and supports, that the LEA will provide a child with a disability. If the IEP identifies Medicaid-covered services necessary to provide supports for the child with a disability, the IDEA requires LEAs to provide those Medicaid-covered services pursuant to the IEP.

14. Thus, LEAs and public schools in California may provide certain Medicaid-covered services to special needs students under an IEP, such as (but not limited to): audiological services, occupational therapy, physical therapy, psychological and mental health services, behavioral intervention services, as well as speech and language therapy.

15. In school year 2023-24, one of the largest school districts in the state (serving approximately 10,000 students with disabilities) received $5,000,000 in Medi-Cal reimbursements. Smaller districts sampled received approximately $1.5-$1.8 million in reimbursement for these services. On average, LEAs with between 4,000-6,000 students with disabilities receive more than $1,000,000 per LEA. In the State, there are 30 LEAs that serve more than 4,000 students with disabilities, thus receiving approximately $30,000,000 in Medi-Cal reimbursement.

16. It is my understanding that if birthright citizenship is terminated, students with disabilities with undocumented parents—who would otherwise be citizens and qualify for federally-funded Medicaid but for the Order—will not be eligible for federally-funded Medicaid.

17. LEAs would thus not receive any federal Medicaid reimbursements for their provision of health services to those special needs students under their IEPs. In the absence of those federal reimbursements, LEAs would have to draw upon state funds to maintain those IEP-required services for the affected special needs students, reducing the State's overall funds and diverting those funds from other educational services.

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

Executed on January 21, 2025, at Clearwater, Florida.

/s/ Rachel A. Heenan

EXHIBIT M

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

Civil Action No.: _____

DECLARATION OF RITA NGUYEN, M.D.

I, Rita Nguyen, declare as follows:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am currently employed by the California Department of Public Health (CDPH) as the Assistant Public Health Officer for the State of California, a role I have served in since February 2022. I was previously the Assistant Health Officer at the San Francisco Department of Public Health from 2017-2022 where I supported chronic disease and cancer prevention efforts for the City and County of San Francisco. Prior to that, I was Assistant Clinical Professor at UCSF with a focus on nutrition security, public health, and providing clinical care to hospitalized patients. I received my M.D. at Johns Hopkins University School of Medicine and B.A. from Stanford University. I completed Internal Medicine Residency Training at Brigham and Women's Hospital.

3. I oversee CDPH's Population Health Pillar which entails providing policy, program, and administrative oversight of the Centers for Healthy Communities, Family Health, Environmental Health, and Health Statistics and Informatics. As the Assistant Public Health Officer, I also assist and support the Director and State Public Officer with pressing and/or emerging public health issues.

4. CDPH aims to optimize the health and wellbeing of all people in California. CDPH works with local health departments, as well as public and private partners, to implement policies and programs that advance public health.

5. I am familiar with the Executive Order "Protecting the Meaning and Value of American Citizenship" issued on January 20, 2025 (the "Executive Order"). It is my understanding that the Executive Order revokes birthright citizenship for children born in the United States after February 19, 2025 to (i) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident.

6. I anticipate that the Executive Order will harm California by: (1) directly impacting the federal funding that CDPH and California receive to facilitate Social Security Number applications for newborn babies; and (2) imposing new administrative burdens upon CDPH that require it to expend and divert resources.

Registration and Birth Certificates of Newborns

7. As part of its functions, CDPH maintains birth, death, fetal death/still birth, marriage, and divorce records for California. CDPH issues certified copies of California vital records and registers and amends vital records as authorized by law.

8. Within CDPH, the Center for Health Statistics and Informatics (CHSI) is responsible for collecting and maintaining data regarding births in California.

9. California has the largest proportion and highest number of births in the United States, representing about one out of every eight births in the nation.

10. In 2022, 420,543 babies were born in California.

11. Hospitals and other healthcare facilities in California coordinate with CHSI to collect information to register a child's birth.

12. 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 Birth Certificate form that asks for several pieces of information, including the parents' place of birth and Social Security Numbers (SSNs). The form does not inquire about the parents' immigration status.

13. 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 newborn's ability to obtain a birth certificate.

14. After the newborn's parents complete and sign the form, hospital staff enter the information from the form into the Electronic Birth Registration System (EBRS) maintained by CHSI. Hospital staff then submit the record to the Local Registration District (usually affiliated with the county health department) who then registers the record (i.e., local registration). Once the record has been locally registered, it is then state registered by CHSI.

15. A newborn's completed birth certificate only includes the parents' SSNs at the bottom of the confidential section if the parents provided an SSN. The mother's residence address is also provided in the confidential section. The mother's birth name, the father's birth

name (if provided), and their places and dates of birth are provided in the public section of the certificate.

16. Currently, it is not possible to determine a parent's immigration status from their child's birth certificate.

Application for Social Security Number of Newborns

17. CHSI also helps facilitate parents' applications for an SSN for their newborn baby through a Social Security Administration program called Enumeration at Birth.

18. Under the Enumeration at Birth Program, the healthcare facility provides parents with an application form to request an SSN for their child.

19. The Enumeration at Birth application form asks for the parents' SSNs. However, parents can leave that information field blank in the application, for various reasons. In 2023-2024, 22 percent of all Enumeration at Birth applications in California did not include either parents' SSN.

20. After a healthcare facility receives a completed SSN application from the parents, it submits the information from the application through EBRS, which then transmits that information and request to SSA after state registration.

21. Although the Enumeration at Birth Program is voluntary, the vast majority of families apply for SSNs for their newborns through this Program. In California, approximately 98 percent of families participated in the Enumeration at Birth Program in 2024.

22. CDPH receives federal funding from the Social Security Administration's Enumeration at Birth Program for each SSN that is issued through this process.

23. CDPH receives $4.82 in federal funding per SSN issued to a newborn baby in California. For the upcoming year, CDPH estimates that it will receive up to $2,885,599 through federal funding for CDPH's administration of the Enumeration at Birth Program in California.

24. Prior to the Executive Order, the Social Security Administration accepted nearly all Enumeration at Birth applications sent by CDPH, including those that did not contain either parent's SSN. CDPH receives a report from the Social Security Administration every day indicating how many SSN applications the Social Security Administration received from CDPH, the number of applications rejected, and the reason for rejection. In 2023 and 2024, CDPH received no rejections of SSN applications sent through the Enumeration at Birth Program due to a lack of parental SSN.

25. In 2023, parents in California submitted 393,897 applications for SSNs for newborn babies through the Enumeration at Birth Program, resulting in $1,898,583.54 in federal funding.

26. In 2024, parents in California submitted 390,966 applications for SSNs for newborn babies through the Enumeration at Birth Program, resulting in $1,884,456.12 in federal funding.

27. If the Executive Order revokes the citizenship of newborn babies born to undocumented parents, or to newborn babies born to one undocumented parent where the other parent is unknown, those babies would no longer be eligible for an SSN.

28. If the Social Security Administration declines to issue SSNs to babies born to two undocumented parents, CDPH estimates approximately 24,500 babies would be affected.

29. This estimate is based on figures provided to me by the State's demographer approximating the number of births to California residents who are undocumented in 2022. This

is an underestimate to some degree because it does not include children who have one parent who is not undocumented but who nonetheless does not meet the immigration status requirements of the Executive Order.

30. If approximately 24,500 newborn babies were denied SSNs due to the revocation of birthright citizenship, this would result in an annual loss of Enumeration at Birth funding to California of approximately $118,090.

31. In addition to the loss in funding, CDPH would incur new administrative costs if required to expend resources to verify parents' immigration status before facilitating an application for a newborn's SSN through the Enumeration at Birth Process. If required to obtain proof of parents' lawful status before facilitating an SSN application for newborns, CDPH or state-run facilities will be forced to consult with, and assist, families with obtaining the paperwork necessary to prove lawful status.

32. CDPH would also need to update and revise its electronic system, along with its guidelines for submitting SSN applications through that system. This would likely require CDPH and state 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.

Conclusion

33. CDPH's mission is to protect and advance the public health of California's residents. But the Executive Order impairs this mission in two main ways.

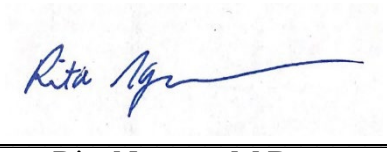
34. First, by stripping away the citizenship of newborn babies, the Order threatens to deny CDPH and the State of California more than a hundred thousand dollars per year in federal funding through the Enumeration at Birth Program.

35. Second, the Executive Order imposes administrative burdens and costs upon CDPH. CDPH would incur administrative costs if required to verify parents' immigration status before facilitating an application for a newborn's SSN through the Enumeration at Birth Process, including the expenditure of resources revising CDPH's electronic system, submission guidelines, and the necessary training, hiring, and technical expertise to accomplish these changes.

36. In sum, the Executive Order directly reduces the federal funding that CDPH receives, imposes administrative burdens, and diverts resources from public health programs that protect the health of families and their children.

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

Executed on January 20, 2025, at Walnut Creek, California.



Rita Nguyen, M.D.

EXHIBIT N

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al. Plaintiffs, v. DONALD J. TRUMP, et al. Defendants.	:	Civil Action No.: _____

Declaration of Elizabeth Villamil-Cummings

I, Elizabeth Villamil-Cummings, hereby declare:

1. I am the New York State Registrar and the Director of the Bureau of Vital Records at the New York Department of Health ("DOH"). I have held this position since June 2023. As the State Registrar, I oversee all of the Bureau's operations including the filing of vital records and the processing of applications and court order for copies of, and amendments to, such records, in New York State, outside of New York City. Before this position, I was the Director of Data Management and Analytics in the Bureau of Vital Records.
2. As the 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.
3. I am providing this declaration to explain certain impacts of the Executive Order "Protecting the Meaning and Value of American Citizenship" (January 20, 2025) (the "Executive Order"), which revokes birthright citizenship for certain newly-born children of immigrants in the United States, on the State of New York's vital records programs.

4. DOH's mission is to protect and promote health and well-being for all, building on a foundation of health equity. To support that goal, DOH performs many functions, including regulating healthcare facilities and overseeing the registration of vital events such as births.

Registration and Birth Certificates of Newborns

5. Healthcare facilities coordinate with New York State Bureau of Vital Records[1] to collect information to register a child's birth.

6. When a child is born in a healthcare facility, a medical attendant to the birth is statutorily obligated to register the birth with the institution's registrar. They provide the newborn's parents with a Birth Certificate Work Booklet that asks for several pieces of information, including the parents' place of birth and Social Security Numbers (SSNs).[2] The Work Booklet does not inquire about, or require proof of, the parents' immigration status. A copy of the Birth Certificate Work Booklet is attached hereto, as Exhibit A.

7. After the newborn's parents complete and sign the Work Booklet, hospital staff enter the information from the Work Booklet into an electronic birth registration system maintained by the Bureau of Vital Records.

8. When a record is complete, the hospital prints out a short-form birth certificate, which contains only that portion of the birth information contained on the legal record. Once the physician or hospital administrator has signed the certificate, the record is filed with the local registrar, who in turn sends the state's copy of the certificate to the state.

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[1] Through a cooperative agreement, the DOH Bureau of Vital Records receives data on vital events recorded in New York City from the New York City Department of Health and Mental Hygiene's Bureau of Vital Statistics.

[2] Parents of children born in New York State are provided with a Work Booklet by the New York State Bureau of Vital Records, and parents of children born in New York City are provided with a Work Booklet by the New York City Department of Health and Mental Hygiene's Bureau of Vital Statistics.

9. A newborn's completed birth certificate does not indicate whether the parents have an SSN. The only information provided on a birth certificate regarding the child's parents is the birthing parent's legal name, the second parent'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.

10. Healthcare facilities do not routinely ask patients, including new parents, for their immigration status and do not collect proof of citizenship or immigration status.

Application for Social Security Number of Newborns

11. Through the birth certificate registration process at a healthcare facility, parents have the opportunity to apply for an SSN for their newborn through a Social Security Administration ("SSA") program called Enumeration at Birth ("EAB").

12. The EAB program is voluntary for families, but according to SSA, about 99 percent of SSNs for infants are assigned through this program.[3]

13. To obtain an SSN through the EAB program, newborn parents can indicate on the Work Booklet that they allow the furnishing of information from the Work Booklet to SSA to issue their child an SSN.

14. 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. Because children born in the United States are entitled to U.S. citizenship, they are eligible for SSNs regardless of their parents' immigration status.

[3] SOCIAL SECURITY ADMINISTRATION – BUREAU OF VITAL STATISTICS, STATE PROCESSING GUIDELINES FOR ENUMERATION AT BIRTH (2024), https://perma.cc/UK22-ZQSS.

15. Healthcare facilities transmit these requests electronically to the Bureau of Vital Records, which then transmits the request to SSA.

16. New York 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 $4.82 per SSN issued through the EAB process, or approximately $111,000 per quarter. The state generally receives payment a month after the quarter ends, and is thus expecting its next payment in April 2025.

Effects of the Executive Order on Registration and EAB Process

17. Following the Executive Order, children born in the United States to two undocumented parents, among others, will no longer be considered citizens and will therefore be deemed ineligible for an SSN. The State of New York will lose revenue from the SSA, because fewer children born in the U.S. will be eligible for SSNs. The State of New York also anticipates a chilling effect, wherein fewer parents will opt in to the EAB program, out of concerns about sharing their information with the federal government. This, too, will result in reduced revenue to the State of New York.

18. In addition to the loss in funding, the State of New York would need to update its information technology infrastructure and train health care staff in how to document the information necessary to determine whether a child born in New York is eligible for an SSN. In addition, the Bureau of Vital Records would need to differentiate the births between those born to U.S. citizens or lawful permanent residents, or those born in the U.S. This would result in two different birth certificates, enhanced information gathering on parents' citizenship and technology advancements to capture the new workflow, data modifications and verification processes.

19. The State of New York also anticipates that 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.
20. If, as a result of the Executive Order, the newborn registration process has to be amended to provide for verification of the parents' citizenship and/or immigration status, this would impose material administrative burdens on the State to communicate with and train staff in healthcare facilities. There are 121 maternity hospitals across the State of New York, and it is a huge undertaking to communicate with these hospitals and birthing centers about changes to what the Department of Health requires for newborn registration.
21. During the newborn registration process, hospitals ask parents for their SSNs and places of birth, but do not directly inquire about immigration status. Currently, healthcare facilities do not verify the accuracy of the information provided. If healthcare facilities were required to confirm the accuracy of the parents' places of birth, SSNs, or immigration status, they would incur significant new administrative costs to implement a system to substantiate the information. This burden will lead to delays in registration and issuance of the newborn's birth certificate, which must be completed within five days under state law. The lack of that birth certificate, in turn, can prevent a parent from securing health insurance coverage for the infant, leading to otherwise preventable lapses in early pediatric care.

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 Menands, NY.

Elizabeth Villamil-Cummings

Elizabeth Villamil-Cummings

New York State Registrar and Director of the

Bureau of Vital Records

New York Department of Health

EXHIBIT A

Mother's Name:	Mother's Med. Rec. Number:

New York State Birth Certificate and Statewide Perinatal Data System Work Booklet

A child's birth certificate is a very important document. It is the official record of the child's full name, date of birth and place of birth. Throughout the child's lifetime, it provides proof of identity and age. As a child grows from childhood to adulthood, information in the birth certificate will be needed for many important events such as: entrance to school, obtaining a work permit, driver's license or marriage license, entrance in the Armed Forces, employment, collection of Social Security and retirement benefits, and for a passport to travel in foreign lands.

Because the birth certificate is such an important document, great care must be taken to make certain that it is correct in every detail. By completing this work booklet carefully, you can help assure the accuracy of the child's birth certificate.

Please Note: The Certificate of Live Birth serves as medical documentation of a birth event. Therefore, the sex of the infant (Male, Female, Unknown/ Undetermined – a synonym for intersex) is captured as a medical fact by attending personnel. The Department of Health has an administrative interest in retaining the medically designated sex at birth on the Certificate of Live Birth to ensure the proper tracking of the health and development of this child. Therefore, the gender designation of 'X (Non-Binary)' will not be permitted on the original Certificate of Live Birth.

New York State Birth Certificate:

PARENTS, for the birth certificate, you must complete the <u>unshaded</u> portions of this work booklet, see pages 3 - 5, 10 - 12 & 14 (the shaded portions will be completed by hospital staff).

Information that is not labeled "QI", "IMM", 'HS', or "NBS" in the work booklet will be used to prepare the official birth certificate. The completed birth certificate is filed with the Local Registrar of Vital Statistics of the municipality where the child was born within five (5) business days after the birth and with the New York State Department of Health. When the filing process is completed, the mother will receive a Certified Copy of the birth certificate. This is an official form that may be used as proof of age, parentage, and identity. Receiving it confirms that the child's birth certificate is officially registered in the State of New York. Additional copies of the birth certificate may be obtained from the Local Registrar or the New York State Department of Health, P.O. Box 2602, Albany, New York 12220-2602. For further information about obtaining copies, please call (518) 474-3077 or visit the New York State Department of Health web site at: *www.health.ny.gov/vital_records/*.

All information (including personal/identifying information) is shared with the County Health Departments or other Local Health Units where the child was born and where the mother resides, if different. County Health Departments and Local Health Units may use this data for Public Health Programs. The Social Security Administration receives a minimal set of data ONLY when the parents have indicated, in this work booklet, that they wish to participate in the Social Security Administration's Enumeration at Birth program.

While individual information is important, public health workers will use medical and demographic data in their efforts to identify, monitor, and reduce maternal and newborn risk factors. This information also provides physicians and medical scientists with the basis to develop new maternal and childcare programs for New York State residents.

Statewide Perinatal Data System (SPDS) – Quality Improvement (QI), Immunization Registry (IMM), Hearing Screening (HS) and Newborn Screening Program (NBS) Information:

The information labeled "QI" will be used by medical providers and scientists to perform data analyses aimed at improving services provided to pregnant women and their babies. "IMM" information will be used by New York State's Immunization Information System (NYSIIS). A birthing hospital's obligation to report immunizations for newborns can be met by recording the information in SPDS, including the manufacturer and lot number as required by law. "HS" information will be used to improve the Newborn Hearing Screening program. Information labeled "NBS" will result in significant improvements in the Newborn Screening Program such as better identification and earlier treatment of infants at risk for a variety of disorders.

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

ATTENTION HOSPITAL STAFF:

This work booklet has been designed to obtain information relating to the pregnancy and birth during the 72-hour period immediately following the birth of a live born child in New York State. Hospital staff should complete the shaded portions of the work booklet.

New York State Public Health Law provides the basis for the collection of the birth certificate data. For pertinent information about the New York State Public Health Laws refer to sections 206(1)(e), 4102, 4130.5, 4132 and 4135. These laws are also described in the New York State Birth Certificate Guidelines. The Guidelines are available to SPDS users on the **Help** tab of the SPDS Core Module.

Please Note: If the parent or legal guardian wishes to change the gender identification of the child to "X (Non-Binary)", the Parent/Legal Guardian Notarized Affidavit of Gender Error for a Person 16 Years of Age or Under and Parent/Legal Guardian Application for Correction of Certificate of Birth for Gender Designation for a Minor forms must be completed. If, at the age of 17 years or older, an individual would like to change their gender identification to "X (Non-Binary)", the Application for Correction of Certificate of Birth for Gender Designation for an Adult forms must be completed. If requested, parents or legal guardians can be directed to the NYS Bureau of Vital records website for more information: Birth Certificates - New York State Department of Health (ny.gov)

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Help for Parents Completing This Work Booklet

Page 4: Last Name on Mother's Birth Certificate
This is commonly referred to as "maiden name." If the mother was adopted, it would be the last name on her birth certificate *after* the adoption.

Page 4: Infant's Pediatrician/Family Practitioner
Enter the name of the doctor who will care for the infant after he/she is released from the hospital. This may or may not be the same as the doctor who cared for the infant while in the hospital.

Page 11: Last Name on Father's / Second Parent's Birth Certificate

- **Father:** This is usually the same as his current last name. In the event that a man has changed his last name through marriage, the name on his birth certificate should be entered here. This may or may not be the same as his current last name depending on whether his name was changed by marriage only or changed through a court proceeding which resulted in an amendment to his birth certificate.

- **Mother (Second Parent):** This is commonly referred to as maiden name and is the name on her birth certificate.

- **In either case:** If the parent was adopted it would be the last name on his or her birth certificate *after* the adoption.

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

New Birth Registration

Parents – Mother

Mother's First Name:	Mother's Middle Name:
Mother's Current Last Name :	Last Name on Mother's Birth Certificate:
Social Security Number: – –	Mother's Date of Birth: *(MM/DD/YYYY)* / /
Infant's First Name:	Infant's Middle Name:
Infant's Last Name:	Infant's Name Suffix *(e.g. Jr., 2nd, III)*:

Infant

Sex: ☐ Male ☐ Female ☐ Undetermined	Plurality:	Birth Order:	Medical Record No.:
Date of Birth: *(MM/DD/YYYY)* / /	Time of Birth: *(HH:MM)* : ☐ am ☐ pm ☐ military (24-hour time)		

Parents – Infant

Was child born in this facility? ☐ Yes ☐ No If child was **not** born in this facility, please answer the following questions:

In what type of place was the infant born?	If New York State Birthing Center, enter its name:
☐ Freestanding Birth Center (regulated by DOH) ☐ Home (intended) ☐ Home (unintended) ☐ Home (unknown intent) ☐ Clinic / Doctor's Office (not regulated by DOH) ☐ Other	In what county was the child born?

Parents – Birthplace

Institution

Site of Birth, If **Other** Type of Place:	Street Address – if other than Hospital / Birthing Center:
If place of infant's birth was other than Hospital or Birthing Center: City, town or village where birth occurred:	Zip / Postal Code:

Infant's Pediatrician/Family Practitioner: NBS

Attendant

Attendant's Information:

License Number:	Name: *First*	*Middle*	*Last*

Title: *(Select one)*
☐ Medical Doctor ☐ Doctor of Osteopathy ☐ Licensed Midwife (CNM) ☐ Licensed Midwife (CM) ☐ Other

Certifier

Certifier's Information:
☐ Check here if the Certifier is the same as the Attendant *(otherwise enter information below)*

License Number:	Name: *First*	*Middle*	*Last*

Title: *(Select one)*
☐ Medical Doctor ☐ Doctor of Osteopathy ☐ Licensed Midwife (CNM) ☐ Licensed Midwife (CM) ☐ Other

Parents – Payor

Primary Payor for this Delivery:

Select one:
☐ Medicaid / Family Health Plus ☐ Private Insurance ☐ Indian Health Service
☐ CHAMPUS / TRICARE ☐ Other Government / Child Health Plus B ☐ Other
☐ Self-pay

If Medicaid is not the primary payor, is it a secondary payor for this delivery? ☐ Yes ☐ No	Is the mother enrolled in an HMO or other managed care plan? ☐ Yes ☐ No

Mother's Name: *First*	*Middle*	*Last*	Mother's Med. Rec. Number:
Father / Second Parent Name: *First*	*Middle*	*Last*	*Suffix*
Infant's Name: *First*	*Middle*	*Last* *Suffix*	Date of Birth

To the hospital:

1. Obtain the parent(s) signature(s).
2. File the original Release Form in the mother's hospital record.
   Note: It is not necessary to file the remainder of the Work Booklet.
3. Provide a copy to the parent(s).
4. Do **not** send copies to the New York State Department of Health or to any Social Security office, unless specifically requested by such agency.

To the parent(s):

1. Please read the following notice about the collection and use of Social Security Numbers on your child's birth certificate.
2. Please check "Yes" or "No" to indicate if you wish to participate in the Social Security Administration's Enumeration at Birth program.

NOTICE REGARDING COLLECTION OF PARENTS' SOCIAL SECURITY NUMBERS: The collection of parents' Social Security Numbers on the New York State Certificate of Live Birth is mandatory. They are required by Public Health Law Section 4132(1) and may be used for child support enforcement, public health related purposes, when requested by State, federal and municipal governments for official purposes, when required by Public Health Law Section 4173 or 4174, and when otherwise required or authorized by law.

Social Security Release

The Social Security Administration offers the parents of newborns an opportunity to apply for a Social Security Number for their child through the birth certificate registration process. This is referred to by the Social Security Administration as Enumeration at Birth (EAB). If you participate in the EAB, the New York State Department of Health will forward to the Social Security Administration information from your child's birth certificate. Please note that the Social Security Administration will not process your EAB request unless, the birth certificate includes your child's full name. If you participate in the EAB, disclosure of parents' Social Security Numbers is mandated by 42 U.S.C. 405(c)(2). The Social Security Number(s) will be used by the Internal Revenue Service (IRS) solely for the purpose of determining Earned Income Tax Credit compliance. If you wish to participate in the Social Security Administration EAB program check "Yes" below.

May the Social Security Administration be furnished with information from this form to issue your child a social security number?

Yes ☐

No ☐

Mother's Signature ▶ _____ **Date** _____

Father's or Second Parent's Signature ▶ _____ **Date** _____

Either parent's signature applies to the above release.
If neither box is checked for the release, a 'No' response will be assumed.

Hospital Name:	
Signature of Hospital Representative: ▶	Date:

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NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Infant

Infant

If Multiple Births:
Number of Live Births: | Number of Fetal Deaths:

Birth Weight:
grams | lbs. oz.

If birth weight < 1250 grams (2 lbs. 12 oz.), reason(s) for delivery at a less than level III hospital: *(Only if applicable)*

☐ None ☐ Unknown at this time

QI

Select all that apply:

☐ Rapid / Advanced Labor ☐ Bleeding ☐ Fetus at Risk ☐ Severe pre-eclampsia
☐ Woman Refused Transfer ☐ Other *(specify)*

Infant Transferred:
☐ Within 24 hrs ☐ After 24 hrs. ☐ Not transferred

NYS Hospital Infant Transferred To:

State/Terr./Province:

Birth Information

Apgar Scores
1 minute: | 5 minutes: | 10 minutes:

Is the Infant Alive?
☐ Yes ☐ No
☐ Infant Transferred / Status Unknown

Clinical Estimate of Gestation: *(Weeks)*

Newborn Treatment Given:
☐ Conjunctivitis only
☐ Vitamin K only
☐ Both
☐ Neither

How is infant being fed at discharge? *(Select one)*
☐ Breast Milk Only ☐ Formula Only ☐ Both Breast Milk and Formula
☐ Other ☐ Do Not Know

Newborn Screening

Newborn Blood-Spot Screening
Screening Lab ID Number: *(9-digits)*

__ __ __ __ __ __ __ __ __

Reason if Lab ID is not submitted:
☐ No NBS Lab ID because infant died prior to test
☐ No NBS Lab ID because infant transferred prior to test
☐ Lab ID is unknown / illegible
☐ Refused NBS

NBS

Hepatitis B

Hepatitis B Inoculation

Immunization Administered: ☐ Yes ☐ No
Date: *(MM/DD/YYYY)* __/__/__
Mfr: _____ IMM
Lot: _____ IMM

Immunoglobulin Administered: ☐ Yes ☐ No
Date: *(MM/DD/YYYY)* __/__/__
Mfr: _____ IMM
Lot: _____ IMM

Hearing Screening

Newborn Hearing Screening
☐ Screening Performed (one or both ears)
☐ Not Performed – Facility Related
☐ Not Performed – Medical Exclusion (both ears)
☐ Not Performed – Parent Refused

Equipment Type
☐ AABR ☐ Unknown
☐ ABR
☐ TEOAE
☐ DPOAE

Screening Results
Left Ear: ☐ Pass ☐ Refer ☐ Not Performed - Medical Exclusion
Right Ear: ☐ Pass ☐ Refer ☐ Not Performed - Medical Exclusion

HS

Date: *(MM/DD/YYYY)* __/__/__ - Enter date final hearing screening was conducted prior to discharge

Abnormal Conditions of the Newborn

Abnormal Conditions of the Newborn:
☐ None ☐ Unknown at this time

Select all that apply

☐ Assisted ventilation required immediately following delivery
☐ NICU Admission
☐ Antibiotics received by the newborn for suspected neonatal sepsis
☐ Significant birth injury (skeletal fx, peripheral nerve injury, soft tissue/solid organ hemorrhage which requires intervention)
☐ Assisted ventilation required for more than six hours
☐ Newborn given surfactant replacement therapy
☐ Seizures or serious neurologic dysfunction

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Congenital Anomalies

☐ None of the listed ☐ Unknown at this time
Select all that apply

		Yes	No	Anencephaly	Yes	No	Diagnosed Prenatally?	If Yes, please indicate all methods used:
Congenital Anomalies		☐	☐	Anencephaly	☐	☐		☐ Level II Ultrasound ☐ MSAFP / Triple Screen ☐ Amniocentesis ☐ Other ☐ Unknown
		☐	☐	Meningomyelocele/Spina Bifida	☐	☐		☐ Level II Ultrasound ☐ MSAFP / Triple Screen ☐ Amniocentesis ☐ Other ☐ Unknown
		☐	☐	Cyanotic Congenital Heart Disease	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
		☐	☐	Congenital Diaphragmatic Hernia	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
		☐	☐	Omphalocele	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
Congenital Anomalies		☐	☐	Gastroschisis	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
		☐	☐	Limb Reduction Defect	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
		☐	☐	Cleft lip with or without Cleft Palate	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
		☐	☐	Cleft Palate Alone	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown
		☐	☐	Down Syndrome ☐ Karyotype confirmed ☐ Karyotype pending	☐	☐		☐ Level II Ultrasound ☐ MSAFP / Triple Screen ☐ CVS ☐ Amniocentesis ☐ Other ☐ Unknown
		☐	☐	Other Chromosomal Disorder ☐ Karyotype confirmed ☐ Karyotype pending	☐	☐		☐ Level II Ultrasound ☐ MSAFP / Triple Screen ☐ CVS ☐ Amniocentesis ☐ Other ☐ Unknown
		☐	☐	Hypospadias	☐	☐		☐ Level II Ultrasound ☐ Other ☐ Unknown

Labor & Delivery

Mother Transferred in Antepartum: ☐ Yes ☐ No	NYS Facility Mother Transferred From:	State/Terr./Province:
Mother's Weight at Delivery: *lbs.*		

Method of Delivery

Fetal Presentation: *(select one)*
☐ Cephalic ☐ Breech ☐ Other

Route & Method: *(select one)*
☐ Spontaneous ☐ Forceps – Mid ☐ Forceps – Low / Outlet ☐ Vacuum ☐ Cesarean ☐ Unknown

Cesarean Section History:
☐ Previous C-Section Number ☐

Attempted Procedures:
Was delivery with forceps attempted but unsuccessful? ☐ Yes ☐ No
Was delivery with vacuum extraction attempted but unsuccessful? ☐ Yes ☐ No

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Labor & Delivery

Method of Delivery

Trial Labor:

If Cesarean section, was trial labor attempted? ☐ Yes ☐ No

Indications for C-Section: QI

☐ Unknown

Select all that apply

☐ Failure to progress ☐ Malpresentation ☐ Previous C-Section
☐ Fetus at Risk / NFS ☐ Maternal Condition – Not Pregnancy Related ☐ Maternal Condition – Pregnancy Related
☐ Refused VBAC ☐ Elective ☐ Other

Indications for Vacuum: QI

☐ Unknown

Select all that apply

☐ Failure to progress ☐ Fetus at Risk
☐ Other

Indications for Forceps: QI

☐ Unknown

Select all that apply

☐ Failure to progress ☐ Fetus at Risk
☐ Other

Labor

Onset of Labor

☐ None ☐ Unknown at this time

Select all that apply

☐ Prolonged Rupture of Membranes -- (12 or more hours) ☐ Premature Rupture of Membranes -- (prior to labor) ☐ Precipitous Labor -- (less than 3 hours)
☐ Prolonged Labor (20 or more hours)

Characteristics

Characteristics of Labor & Delivery

☐ None ☐ Unknown at this time

Select all that apply

☐ Induction of Labor – AROM ☐ Induction of Labor – Medicinal ☐ Augmentation of Labor
☐ Steroids ☐ Antibiotics ☐ Chorioamnionitis
☐ Meconium Staining ☐ Fetal Intolerance ☐ External Electronic Fetal Monitoring
☐ Internal Electronic Fetal Monitoring

Maternal Morbidity

Maternal Morbidity

☐ None ☐ Unknown at this time

Select all that apply

☐ Maternal Transfusion ☐ Perineal Laceration (3rd / 4th Degree) ☐ Ruptured Uterus
☐ Unplanned Hysterectomy ☐ Admit to ICU ☐ Unplanned Operating Room Procedure Following Delivery
☐ Postpartum transfer to a higher level of care QI

Anesthesia / Analgesia

Anesthesia / Analgesia

☐ None ☐ Unknown at this time

Select all that apply

☐ Epidural (Caudal) ☐ Local ☐ Spinal
☐ General Inhalation ☐ Paracervical ☐ General Intravenous
☐ Pudendal

Was an analgesic administered?

☐ Yes ☐ No

Procedures

Other Procedures Performed at Delivery

☐ None ☐ Unknown at this time

Select all that apply

☐ Episiotomy and Repair ☐ Sterilization

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Mother

Medical Record Number:

Parents

Mother's Demographics

Mother's Education: *(select one)*

- ☐ 8th grade or less
- ☐ 9th – 12th grade; no diploma
- ☐ High school graduate; or GED
- ☐ Some college credit, but no degree
- ☐ Associate's degree
- ☐ Bachelor's degree
- ☐ Master's degree
- ☐ Doctorate degree

City of Birth:	State/Terr./Province of Birth:	Country of Birth, if not USA:

Hispanic Origin:

Select all that apply

- ☐ No, not Spanish/Hispanic/Latina
- ☐ Yes, Cuban
- ☐ Yes, Mexican, Mexican American, Chicana
- ☐ Yes, Other Spanish/Hispanic/Latina
  Specify:
- ☐ Yes, Puerto Rican

Mother's Demographics

Race:

Select all that apply

- ☐ White/Caucasian
- ☐ Chinese
- ☐ Korean
- ☐ Guamanian or Chamorro
- ☐ American Indian or Alaska Native **Tribe:**
- ☐ Other Asian **Specify:**
- ☐ Other Pacific Islander **Specify:**
- ☐ Other **Specify:**
- ☐ Black or African American
- ☐ Filipino
- ☐ Vietnamese
- ☐ Samoan
- ☐ Asian Indian
- ☐ Japanese
- ☐ Native Hawaiian

Mother's Residence

Residence Address

Street Address:

State/Terr./Province:	County:	City, Town or Village:

Zip/Postal Code:	Mother's Country of Residence, if not USA:	U.S./Canadian Phone Number: ( ) –

Mother's Mailing

Mailing Address – Most Recent

☐ Check here if the mailing address is the same as the residence address *(otherwise enter information below)*

Mailing Address:

City, Town or Village:	State/Terr./Province:	Country, if not USA:	Zip/Postal Code:

Employment

Employment History

Employed while Pregnant: ☐ Yes ☐ No	Current / Most Recent Occupation:	Kind of Business / Industry:

Name of Company or Firm:	Address:

City:	State/Territory/Province:	Zip / Postal Code:

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Father or Second Parent

Will the mother and father be executing an Acknowledgement of Parentage? ☐ Yes ☐ No ☐ Not required

What type of certificate is required? ☐ Mother / Father ☐ Mother / Mother

Parents

Father's or Second Parent's Demographics

Parent's First Name:	Parent's Middle Name:
Parent's Current Last Name:	Last Name on Parent's Birth Certificate:
Parent's Name Suffix *(e.g. Jr., 2nd, III)*:	Social Security Number: – –

Demographics

Parent's Date of Birth: *(MM/DD/YYYY)* / /

Education: *(select one)*

- ☐ 8th grade or less
- ☐ 9th – 12th grade; no diploma
- ☐ High school graduate; or GED
- ☐ Some college credit, but no degree
- ☐ Associate's degree
- ☐ Bachelor's degree
- ☐ Master's degree
- ☐ Doctorate degree

City of Birth:	State/Terr./Province of Birth:	Country of Birth, if not USA:

Hispanic Origin:

Select all that apply

- ☐ No, not Spanish/Hispanic/Latino
- ☐ Yes, Cuban
- ☐ Yes, Mexican, Mexican American, Chicano
- ☐ Yes, Other Spanish/Hispanic/Latino — **Specify:**
- ☐ Yes, Puerto Rican

Race:

Select all that apply

- ☐ White/Caucasian
- ☐ Chinese
- ☐ Korean
- ☐ Guamanian or Chamorro
- ☐ American Indian or Alaska Native **Tribe:**
- ☐ Other Asian **Specify:**
- ☐ Other Pacific Islander **Specify:**
- ☐ Other **Specify:**
- ☐ Black or African American
- ☐ Filipino
- ☐ Vietnamese
- ☐ Samoan
- ☐ Asian Indian
- ☐ Japanese
- ☐ Native Hawaiian

Parent's Residence

Residence Address

☐ Check here if the parent's residence address is the same as the mother's address *(otherwise enter information below)*

Street Address:	
City, Town or Village:	State / Territory / Province:
Parent's Country of Residence, if not USA:	Zip / Postal Code:

Employment

Employment History

Current / Most Recent Occupation:	Kind of Business / Industry:
Name of Company or Firm:	Address:
City:	State / Territory / Province: / Zip / Postal Code:

NEW YORK STATE DEPARTMENT OF HEALTH
Vital Records – Birth Registration Unit

Birth Certificate and SPDS Work Booklet

Mother's Name:	Mother's Med. Rec. Number:

Prenatal History

Parents — Prenatal History

Did mother receive prenatal care?	Primary Prenatal Care Provider Type:	Did mother participate in WIC?
☐ Yes ☐ No	☐ MD / DO / C(N)M / HMO ☐ No Information ☐ Clinic ☐ No Provider ☐ Other	☐ Yes ☐ No

Key Pregnancy Dates *(MM/DD/YYYY)*

Date of Last Menses:	Estimated Due Date:	Date of First Prenatal Visit:	Date of Last Prenatal Visit:
/ /	/ /	/ /	/ /

Prenatal Visits

Total Number of Prenatal Visits:	

Pregnancy History

Pregnancy History

Previous Live Births:		Previous Spontaneous Terminations:		Previous Induced Terminations:	Total Prior Pregnancies:
Now Living None or Number ☐	**Now Dead** None or Number ☐	**Less than 20 Weeks** None or Number ☐	**20 Weeks or More** None or Number ☐	None or Number ☐	None or Number ☐

First Live Birth: *(MM / YYYY)*	Last Live Birth: *(MM / YYYY)*	Last Other Pregnancy Outcome: *(MM / YYYY)*	Prepregnancy Weight:	Height:
/	/	/	*lbs.*	*ft.* *in.*

Prenatal Care

Risk Factors

Risk Factors in this Pregnancy

☐ None ☐ Unknown at this time

Select all that apply

☐ Prepregnancy Diabetes	☐ Gestational Diabetes	☐ Prepregnancy Hypertension	☐ Gestational hypertension
☐ Other Serious Chronic Illnesses	☐ Previous Preterm Births	☐ Abruptio Placenta	☐ Eclampsia
☐ Other Poor Pregnancy Outcomes	☐ Prelabor Referred for High Risk Care	☐ Other Vaginal Bleeding	☐ Previous Low Birthweight Infant QI

☐ Pregnancy resulted from infertility treatment (if yes, check all that apply)

☐ Fertility-enhancing drugs, artificial or intrauterine insemination

☐ Assisted reproductive technology (e.g. IVF, GIFT) **Number of Embryos Implanted:** (if applicable) ☐ QI

Infections

Infections Present and/or Treated During Pregnancy

☐ None ☐ Unknown at this time

Select all that apply

☐ Gonorrhea	☐ Syphilis	☐ Herpes Simplex Virus (HSV)	☐ Chlamydia
☐ Hepatitis B	☐ Hepatitis C	☐ Tuberculosis	☐ Rubella
☐ Bacterial Vaginosis			

Parents — Other Risk Factors

Other Risk Factors

Smoking Before or During Pregnancy?	List Number of Packs OR Cigarettes Smoked Per DAY			
	3 Months Prior to Pregnancy	First Three Months of Pregnancy	Second Three Months of Pregnancy	Third Trimester of Pregnancy
☐ Yes ☐ No	Packs OR Cigarettes	Packs OR Cigarettes	Packs OR Cigarettes	Packs OR Cigarettes

Mother's Name:	Mother's Med. Rec. Number:

Prenatal Care

Other Risk Factors

Alcohol Consumed During This Pregnancy?	Number of Drinks per Week:	Illegal Drugs Used During This Pregnancy?	
☐ Yes ☐ No		☐ Yes ☐ No	

Obstetric Procedures

☐ None ☐ Unknown at this time

Select all that apply

☐ Cervical Cerclage ☐ Tocolysis ☐ External Cephalic Version — ☐ Successful ☐ Failed

☐ Fetal Genetic Testing QI

If woman was 35 or over, was fetal genetic testing offered? QI

☐ Yes ☐ No, Too Late ☐ No, Other Reason

Serological Test for Syphilis?	Date of Test: *(MM/DD/YYYY)*	Reason, if No Test:
☐ Yes ☐ No	/ /	☐ Mother refused ☐ Religious reasons ☐ No prenatal care ☐ Other ☐ No time before delivery

Mother's Name:	Mother's Med. Rec. Number:

Interview/Records

Parents

Survey of Mother (in hospital)

Survey of Mother (in hospital)

Did you receive prenatal care? ☐ Yes ☐ No *(If 'Yes' please answer question 1. Otherwise skip to question 2.)*

1. During any of your prenatal care visits, did a doctor, nurse, or other health care worker talk with you about any of the things listed below?

	Yes	No
a. How smoking during pregnancy could affect your baby?	☐	☐
b. How drinking alcohol during your pregnancy could affect your baby?	☐	☐
c. How using illegal drugs could affect your baby?	☐	☐
d. How long to wait before having another baby?	☐	☐
e. Birth control methods to use after your pregnancy?	☐	☐
f. What to do if your labor starts early?	☐	☐
g. How to keep from getting HIV (the virus that causes AIDS)?	☐	☐
h. Physical abuse to women by their husbands or partners?	☐	☐

2. How many times per week during your current pregnancy did you exercise for 30 minutes or more, above your usual activities? — Times per week:

3. Did you have any problems with your gums at any time during pregnancy, for example, swollen or bleeding gums? ☐ Yes ☐ No

4. During your pregnancy, would you say that you were: *(select one)*
   ☐ Not depressed at all ☐ A little depressed
   ☐ Moderately depressed ☐ Very depressed
   ☐ Very depressed and had to get help

5. Thinking back to just before you were pregnant, how did you feel about becoming pregnant?
   ☐ You wanted to be pregnant sooner ☐ You wanted to be pregnant later
   ☐ You wanted to be pregnant then ☐ You didn't want to be pregnant then or at any time in the future

Chart Review (Prenatal and Medical)

Chart Review (Prenatal and Medical)

1a. Copy of prenatal record in chart?
   ☐ Yes, Full Record ☐ Yes, Prenatal Summary Only
   ☐ No

1b. Was formal risk assessment in prenatal chart?
   ☐ Yes, with Social Assessment ☐ Yes, without Social Assessment
   ☐ No

1c. Was MSAFP / triple screen test offered?
   ☐ Yes ☐ No
   ☐ No, Too Late

1d. Was MSAFP / triple screen test done?
   ☐ Yes ☐ No

2. How many times was the mother hospitalized during this pregnancy, not including hospitalization for delivery?

Admission & Discharge

Admission and Discharge Information

Mother

Admission Date for Delivery *(MM/DD/YYYY)* / /

Discharge Date *(MM/DD/YYYY)* / /

Infant

Discharge Date *(MM/DD/YYYY)* / /

☐ Discharged Home ☐ Infant Died at Birth Hospital
☐ Infant Still in Hospital ☐ Infant Discharged to Foster Care/Adoption
☐ Infant Transferred Out ☐ Unknown

EXHIBIT O

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al.

Plaintiffs,

v.

DONALD J. TRUMP, et al.

Defendants.

Civil Action No.: _____

Declaration of Gabrielle Armenia

I, Gabrielle Armenia, hereby declare:

1. I am the Director of the Division of Eligibility and Marketplace Integration in the Office of Health Insurance Programs of the New York Department of Health ("DOH"), a position I have held since 2024. I have also been New York State's Children's Health Insurance Program (CHIP) Director since 2019. As Director of Eligibility and Marketplace Integration, I am responsible for eligibility policy for the Medicaid and Child Health Plus Program, among other things. Prior to holding this position, I was the Director of the Bureau of Child Health Plus policy from April 2008 through October 2013, the Director of the Bureau of Child Health Plus and Marketplace Integration from October 2013 through October 2022, and the Director of the Child Health Plus and Marketplace Consumer Assistance Group from October 2022 through March 2024.
2. As Director of the Division of Eligibility and Marketplace Integration and New York's CHIP Director, 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.

3. I am providing this declaration to explain certain impacts of Executive Order titled "Protecting the Meaning and Value of American Citizenship" January 20, 2025) (the "Executive Order"), which revokes birthright citizenship for certain newly-born children of immigrants in the United States, on the State of New York's health insurance programs.

4. DOH's mission is to protect and promote health and well-being for all, building on a foundation of health equity. To support that goal, DOH performs many functions, including regulating healthcare facilities and overseeing the registration of vital events such as births.

New York Health Insurance and Eligibility Rules

5. Within DOH, the Office of Health Insurance Programs administers several programs through the NY State of Health Marketplace that enable qualifying New York residents to access free or low-cost healthcare coverage.

6. Publicly-funded health insurance programs in New York include: Medicaid[1], Child Health Plus[2] (New York's Children's Health Insurance Program, which includes federal- and state-

[1] The term "Medicaid," as used throughout, means the New York State- and federally-funded healthcare program for low-income New Yorkers whose income and/or resources are below certain levels. It also includes state-funded Medicaid for individuals who are ineligible for federally funded Medicaid due to their immigration status. Eligible populations include children, pregnant women, single individuals, families, and individuals certified blind or disabled. In addition, certain persons with medical bills may be eligible for Medicaid if paying such bills allows them to spend down their income and resources to meet required Medicaid income levels. Medicaid enrollees do not pay premiums and have little to no out-of-pocket costs for many services. The term "Medicaid" does not include the Essential Plan, Child Health Plus, or Qualified Health Plans.

[2] Eligibility for Child Health Plus begins where Medicaid eligibility ends (223 percent of the federal poverty level for children under 1 year old and 154 percent of the federal poverty level for children age 1 year and older; children are eligible for subsidized coverage with incomes up to 400 percent of the federal poverty level. There is no Child Health Plus premium for children in households with incomes below 223 percent of the federal poverty level, and a sliding scale premium for those in households with incomes above 222 up to 400 percent of the federal poverty level. Households with incomes above 400 percent of the federal poverty level have the option to purchase Child Health Plus at full premium. 96 percent of children enrolled in Child Health Plus are enrolled with no premium or sliding scale premiums, and approximately four percent are enrolled with full premiums.

funded CHIP and New York's state extension), the Essential Plan[3] ("EP") (New York's 1332 State Innovation Waiver), and Qualified Health Plans ("QHP")[4].

7. As of October 2024, a total of 2,461,497 children in New York were enrolled in federal- and state- funded Medicaid ("Federal-State Medicaid") and Child Health Insurance Program, of whom 571,386 were enrolled in Child Health Plus. Some of the children enrolled in Child Health Plus were enrolled in federal- and state-funded CHIP, and some were enrolled in New York's state extension.

8. In New York, Medicaid and Child Health Plus provide comprehensive healthcare coverage for a wide range of services, including primary care, hospitalization, laboratory tests, x-rays, prescriptions, mental health care, dental care, preventive screenings, and more.

9. Eligibility for New York's publicly funded health insurance programs, including eligibility for Medicaid and Child Health Plus depends on age, New York State residency, household size, immigration status, and household income. Specifically, a child must not be eligible for Medicaid or have other comprehensive insurance or enrollment in or access to state health

[3] The Essential Plan covers New Yorkers between the ages of 19-64 who are not eligible for Medicaid and have incomes up to 250-percent of the federal poverty level. The Essential Plan provides comprehensive benefits including free preventive care and dental and vision with no annual deductibles and low copayments. Essential Plan is currently authorized under Section 1332 of the Affordable Care Act as a State Innovation Waiver, which allows states to pursue innovative strategies for providing residents with access to high-quality, affordable health insurance. Section 369-ii of the NY Social Services Law authorizes State action under the Waiver. New York's Section 1332 State Innovation Waiver was approved effective April 1, 2024 to expand Essential Plan eligibility to consumers up to 250 percent of the Federal Poverty Level, and is effective through December 31, 2029. New York received approval of a Waiver Amendment to extend subsidies to certain Qualified Health Plan enrollees under the Waiver, with an effective date of January 1, 2025.

[4] Qualified Health Plans are health plans that have been certified by and are available through the Marketplace in accordance with the Affordable Care Act and federal regulations. 42 § U.S.C. 18021(a). Enrollment in a Qualified Health Plan with financial assistance is available based on income and the cost of available health plans ,for residents who do not have access to other affordable health insurance that meets minimum essential coverage.

benefits coverage (New York State Health Insurance Program or NYSHIP) to be eligible for Child Health Plus.

10. In general, children under the age of 18 (i) meet the income eligibility requirement for Medicaid in New York if their household's modified adjusted gross income ("MAGI") is less than 223% of the federal poverty level (FPL) for children under age 1 and 154% of the FPL for children between the ages of 1 and 18, and (ii) meet the income eligibility requirement for subsidized Child Health Plus coverage if their household's MAGI is less than 400% of the FPL. Children with household income over 400% of the FPL who are otherwise eligible may purchase coverage at the full cost.
11. For a child to be eligible for Federal-State Medicaid or CHIP, they must also be a U.S. citizen or "lawfully residing," as that term is defined by federal law.
12. Most New York children under age 19 who do not qualify for Federal-State Medicaid because they are not U.S. citizens or "lawfully residing" are eligible for Child Health Plus, and the cost of providing that coverage is fully funded by the state.
13. New York implemented Child Health Plus because access to healthcare, particularly to primary care, makes children and communities healthier, and it is a fiscally responsible investment in the future of New York children.
14. The increased enrollment of children in New York through Child Health Plus has had a positive impact on public health in the state. Children enrolled in health insurance are more likely to receive preventative care services, including vaccinations. This reduces the need for more intensive health care treatments, including emergency care, as illnesses develop. It also reduces the financial burden on health care providers from providing care to uninsured individuals and ensures that families are not left with medical bills that they are unable to

pay. In addition, sick children with health insurance coverage are more likely to see a health care provider and receive treatment, limiting the spread of infectious illnesses across the state.

15. Having insurance coverage also makes it less likely that children will have to visit an emergency room to treat preventable illnesses because it is more likely that they will receive medical care before a treatable medical issue becomes an emergency. This reduces the resource strain and uncompensated care burden on hospitals.

Healthcare Coverage for Newborns

16. Many children born in the United States and residing in New York whose family income is at or below 400% of the Federal Poverty Level are eligible for New York public health insurance.

17. Presently, all children born in New York are U.S. citizens, regardless of the immigration status of their parent(s).

18. Thus, at present, public health insurance coverage for newborns born in New York State is funded jointly by the state and federal government, either through Medicaid or Child Health Plus.

19. Most healthy newborns remain in the hospital for two or three days after delivery. During this time, they receive routine postnatal care, including a vitamin K injection, antibiotic eye ointment, screening tests (e.g., heel-prick blood test, hearing screening), and hepatitis B vaccination.

20. Additionally, the American Academy of Pediatrics recommends that newborns see a doctor or nurse for a "well-baby visit" six times before their first birthday, including within the first

3-5 days, the first month, the second month, the fourth month, the sixth month, and the ninth month after birth.

21. Within the first year of life, babies may also need to visit a doctor when they appear ill and may require testing or prescription medication.

22. Children ages 1-18 typically have a range of health care needs that require services from various health care providers. For example, children in New York must show proof of certain immunizations within 14 days of starting school, unless they have an exemption for medical reasons.

Fiscal Impact of Revoking Birthright Citizenship

23. New York spends on average $299 per member per month on non-disabled children enrolled in Medicaid. New York currently pays approximately $272 per member, per month (totaling $3,264 per member per year) for children enrolled in its Child Health Plus program. As noted above, the federal government generally covers 50 percent of these costs for children enrolled in Federal-State Medicaid and 65 percent for children enrolled in Child Health Plus.

24. However, if a low-income child were not eligible for Federal-State Medicaid or CHIP, New York would not receive that federal assistance, and would cover the full cost of health insurance coverage for the newborn through Child Health Plus.

25. In 2023, approximately 100,000 or approximately 49% of births in New York State are enrolled in Federal-State Medicaid. Assuming that as a result of the Executive Order certain children born in New York will no longer be considered citizens, within one year of the revocation of birthright citizenship, a substantial portion of these children would be eligible for federally participating Federal-State Medicaid but for their new status as non-citizens.

26. DOH would need to immediately begin planning for this potential loss of federal funding and would need to determine how to offset this loss to pay for coverage if newborns were shifted to state only funding through Child Health Plus. This includes reassigning staff from other priorities, hiring contractor support, changing information technology infrastructure, and expanding existing financial and programmatic support contracts to encompass the new scope of work this would entail. These costs increase dramatically the longer it takes CMS and the federal government to issue Medicaid specific impact guidance on this new policy.

Eligibility Verification Process for Children on Federal-State Medicaid and CHIP

27. The State of New York fully funds public health insurance for children who meet the income eligibility guidelines for Federal-State Medicaid or CHIP, but do not qualify for those programs because they are not United States citizens or "qualified aliens."

28. When a child's birthing parent is enrolled in Federal-State Medicaid, the DOH automatically enrolls that child in Medicaid, as a "deemed newborn." This is authorized by 42 C.F.R. § 435.117, which requires States to provide Medicaid coverage from birth to a child's first birthday if the child's birthing parent was eligible for and received Federal-State Medicaid at the time of the child's birth. Newborns are not "deemed" in Child Health Plus and must proactively apply for coverage as it is not automatic.

29. New York State utilizes the hospital newborn reporting system to automatically deem and enroll an eligible child in Federal-State Medicaid. The eligibility system currently relies on the fact that a newborn was born in a New York health care facility provided through the hospital newborn reporting system as proof of citizenship, qualifying the newborn for Federal-State Medicaid.

30. Under the Executive Order, DOH will have to amend its existing processes to determine whether newborn children are eligible for Federal-State Medicaid because they can no longer rely on the fact that a child was born in the United States to confirm citizenship status. For example, the intake process including the booklet the parents complete in the hospital when the child is born would need to be revised to collect the immigration status of the birthing parent. Hospitals would only report children who appear eligible for Federal-State Medicaid through this system. Hospitals would need to be trained about what cases to report. Quality assurance reviews would need to occur to be sure the hospitals appropriately report the births that are Medicaid eligible. Since newborns are not deemed in Child Health Plus as they are for Medicaid, the parent/guardian would be required to apply for coverage on NY State of Health. For purposes of Child Health Plus, as long as a completed application is submitted within 60-days of the date of birth, coverage can be retroactive to the first date of the month of the child's date of birth. This may create a gap in coverage for the child if the application is not completed within this timeframe, thus creating the potential for families to forgo needed care and placing a strain of uncompensated care on the provider community.

31. The DOH would incur significant costs to revise the process hospitals follow for reporting births to address changes in citizenship rules for newborns. This would require significant planning to understand the new rules governing U.S. citizenship for newborn children, to identify and determine the kinds of evidence that would suffice as proof of citizenship, to modify the intake process/booklet the parent completes in the hospital, and to develop and implement guidance and training for Department and State agency staff as well as for hospital staff statewide.

32. DOH would incur significant costs to train staff, partners, and healthcare providers on the new newborn reporting rules and procedures. DOH would also need to revise existing guidance documents and manuals regarding eligibility rules and procedures which will involve significant effort. A quality assurance component would need to be added to ensure hospitals are reporting correctly.

33. It would likely take years to make the necessary updates to the process and perform the necessary training to ensure that it can be deployed effectively.

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

Executed this twenty-first day of January, 2025, in Niskayuna, NY.

Gabrielle Armenia

Gabrielle Armenia
Director, Division of Eligibility and
Marketplace Integrity
Office of Health Insurance Programs
New York Department of Health

EXHIBIT R

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	:	Civil Action No.: _____

DECLARATION OF PETER HADLER

I, Peter Hadler, hereby 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 or have knowledge of the matters herein based on my review of information and records gathered by agency staff.
2. I am the Deputy Commissioner for the Connecticut Department of Social Services (DSS). I have been employed in this position since April 2023 and have been employed by DSS since January 2012. I am responsible for executive level program and policy oversight and administration of eligibility policy and enrollment determinations for the Medicaid program and the Children's Health Insurance Program (CHIP), among other healthcare programs. In my capacity as Deputy Commissioner, I also oversee the state's program and policy administration for the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families block grant, the Low Income Home Energy Assistance block grant and numerous other public assistance programs.
3. I am an attorney with a juris doctor degree from Boston University and am admitted to the bar in both Connecticut and New York.

Connecticut HUSKY and Eligibility Rules

4. Medicaid is the federally matched medical assistance program under Title XIX of the Social Security Act. CHIP is the federally matched medical assistance program under Title XXI of the Social Security Act. The programs operate as a state and federal partnership with states funding a portion of the programs (usually starting at 50%). In Connecticut, Medicaid, CHIP and other medical assistance programs are collectively called "HUSKY Health" or simply "HUSKY." HUSKY provides comprehensive health care coverage to

State residents, including preventative care, inpatient and outpatient services, behavioral health services and many other health care services.

5. DSS is the designated single state agency responsible for administering Connecticut'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 herein. DSS also administers some state funded health care programs, including the State HUSKY program (which provides coverage for children up to 15 years of age who do not qualify for Medicaid or CHIP due to immigration status).

6. "HUSKY" is an umbrella term or "brand name" for all Connecticut State medical assistance programs, including Medicaid, CHIP and state-funded coverage. DSS is Connecticut's Medicaid authority and functions as one of the largest providers of health coverage in Connecticut. It is a leader in ensuring Connecticut residents have access to high-quality, affordable health care, and it is committed to whole-person care, integrating physical and behavioral health services for better results and healthier communities in Connecticut. DSS provides health care for over 1 million state residents annually through HUSKY.

7. The table below illustrates the State Fiscal Year (SFY) 2024 expenditure dollars in the thousands for DSS's programs. Funds are broken out by federal funded (FF) and state funded (SF) expenditures. The Medicaid line in the table includes funds associated with all eligibility groups authorized pursuant to Title XIX of the Social Security Act as well as CHIP funds that cover certain pregnant women and children. The CHIP line in the table includes children covered under Title XXI of the Social Security Act. State-only programs

in Connecticut include State HUSKY for Children and post-partum coverage for noncitizens, among others. States, including Connecticut, use federal funds to support services for noncitizens through Emergency Medicaid. Emergency Medicaid is authorized under Title XIX and expenditures are reflected within the Medicaid line in the below table.

SFY 2024 Expenditures ($$ in Thousands)			
	FF	**SF**	**Total**
Medicaid	$4,883,249	$3,357,225	$8,240,475
CHIP	$26,608	$14,145	$40,753
State-only (State HUSKY)	$ -	$23,502	$23,502
Total	$4,883,249	$3,394,873	$8,304,730

8. Within DSS, roughly 1,000 State employees and hundreds of contracted staff are responsible for determining eligibility, providing customer service, and managing policy for the majority of state and federal medical assistance programs serving over 1 million Connecticut residents. In addition to providing direct access to the Medicaid and CHIP programs through HUSKY, DSS administers the Supplemental Nutrition Assistance Program, the Temporary Assistance for Needy Families block grant, and a number of other public assistance programs.

9. Medicaid eligibility is comprised of three income methodologies: Modified Adjusted Gross Income (MAGI) methodology, non-MAGI methodology, and categorical eligibility (for example, SSI recipients or Foster Care/Adoption support coverage). Programs with eligibility determined under MAGI rules include coverage for adults aged 19-64, pregnant women, families, and children. Programs with eligibility determined under non-MAGI rules include coverage for aged, blind, or disabled populations, including long-term services and supports programs. Categorical eligibility means that a person is granted

coverage based on their categorical relationship to the program. For example, a person receiving Supplemental Security Income (SSI) automatically receives Medicaid coverage.

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 qualifying immigration status in order to determine eligibility. Individuals who are undocumented or do not have a lawful, qualifying immigration status are not eligible for Medicaid or most other federally funded DSS administered benefits. The limited exception involves the federal Medicaid program for undocumented or non-qualified non-citizens to receive emergency medical care coverage if they are otherwise eligible for Medicaid. This is also known as Emergency Medicaid. Emergency Medicaid covers emergency health care for a limited set of qualifying emergent medical conditions. Individuals must meet all the income and other requirements of Medicaid. In other words, they must be eligible "but for" their citizenship and immigration status. Individuals who are undocumented or non-qualified can receive Emergency Medicaid services, and the federal matching rate is 50%, meaning that federal funds cover 50% of the cost and state funds cover 50% of the cost.

11. Coverage programs for children are also provided under HUSKY. HUSKY covers all kids through age 15, regardless of immigration status, up to 323% of the Federal Poverty Level (FPL), and covers all citizen children and non-citizens with qualifying immigration statuses up to 323% FPL through age 18. Funding for the coverage depends on a child's eligibility for different programs that fall under the HUSKY Health branding, i.e. Medicaid, CHIP or State coverage.

12. Below 201% of the FPL, for children who are citizens or qualified immigrants, the funding for this coverage is through Medicaid.

13. Between 201% and 323% of the FPL, for children who are citizens or qualified immigrants, the funding for this coverage comes through CHIP, and some households pay a small premium or copays for coverage. CHIP is a federally matched health coverage program that expands coverage to children above the Medicaid income limit. Connecticut's CHIP offers comprehensive healthcare coverage to children through age 18, who reside in households with incomes between 201% and 323% of the FPL, whereas Medicaid covers eligible children at or below 201% of the FPL.

14. While provided in Connecticut under the name HUSKY, coverage provided under the CHIP program operates separately from Medicaid on the funding side. Historically, CHIP federal match has been 65%. It was increased as high as 88% for a period of time in recent years, but now is at 65%. This means that coverage provided to eligible children under the CHIP funding structure results in federal funds covering a higher portion of the expenses compared to Medicaid, where federal funding normally covers 50% of the expenses.

15. Children who would have been eligible for Connecticut's Medicaid or CHIP-funded coverage programs had they met immigration status requirements receive coverage through the 100% state-funded State HUSKY program. Connecticut law requires such coverage to be provided to all children who apply and are eligible.

Healthcare Coverage for Pregnant Women and Newborns

16. HUSKY also covers all pregnant women regardless of immigration status with income at or below 263% of the FPL. This is possible because their unborn children are deemed covered at conception, so even though the mother may not have a qualifying immigration status, the child will be born a U.S. citizen and is therefore eligible for services under CHIP from conception through birth. After the child is born, the child (as a U.S. citizen) can

remain covered under HUSKY, while the mother is no longer covered under any federal healthcare program, but in Connecticut is provided 12 months of state-funded postpartum coverage.

17. As of 2024, DSS administers Medicaid funded coverage for more than 380,000 children annually in Connecticut, and CHIP funded coverage for approximately 39,000 children in Connecticut. DSS estimates that coverage on a per-child basis costs approximately $3,850 per year on average. For this coverage, Connecticut expended approximately $1,450,000,000 and received $744,000,000 in reimbursement from the federal government under Medicaid and CHIP. With respect to State HUSKY, there were over 20,000 children covered and the State expended approximately $23,000,000 in 2024.

18. Under federal law, DSS 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 Access Health Connecticut (the state's health insurance marketplace), where eligibility is based on a MAGI determination, or through DSS directly for individuals qualifying under a non-MAGI basis. Citizenship eligibility status is one eligibility factor that DSS must verify for HUSKY coverage. There are multiple ways that DSS verifies citizenship or immigration status to determine eligibility.

19. Generally speaking, for MAGI-based coverage, DSS first uses an individuals' 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 or qualifying immigration status through what is called the "federal data services hub." For newborns who do not yet have an SSN, citizenship eligibility is verified

by birth records provided (usually by the hospital or other medical provider) at the time of birth because children born in the United States are citizens. For individuals who declare to be lawfully present and have an SSN, DSS 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 and declare to be a citizen, but for whom citizenship cannot be automatically verified, DSS will request verification from the individual of their citizenship. When an individual is applying for non-MAGI coverage through DSS, SSN and citizenship are automatically verified through an interface with the SSA.

20. In the relatively infrequent instances where citizenship is not or cannot be verified by those automatic means, an individual can be approved for coverage based on their attestation and given a reasonable opportunity to provide verification. On that issue, a declaration of citizenship or qualifying 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 qualifying immigration status. Individuals making a declaration of a qualifying citizenship or immigration status are furnished at least 90 days of Medicaid coverage while additional verification is collected. If an individual's status is found to be unsatisfactory before the 90 days, their eligibility is determined and their coverage closed.

Impact of Purported Revocation of Birthright Citizenship

21. I am aware of an executive order titled "Protecting the Meaning and Value of American Citizenship," issued on January 20, 2025 (the "Executive Order"), which revokes birthright citizenship for children born in the United States after February 19, 2025 to (i) a mother

who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (ii) a father who is neither a citizen nor a lawful permanent resident. This Executive Order will have a variety of widespread harmful impacts on Connecticut's HUSKY programs, including a decrease in receipt of proper medical care for children born in Connecticut and increased operational and administrative costs for the State.

22. In addition to impacts on those subject to such a policy—children who would have been citizens had they been born weeks earlier—it will have a direct impact on DSS's administration of its healthcare programs and the amount of federal funding Connecticut receives to reimburse medical expenses for children residing in Connecticut.

23. Connecticut has made tremendous strides in reducing the number of uninsured individuals. Many immigrants are direct beneficiaries of HUSKY coverage. Connecticut has continued to improve and broaden coverage options for children residing in the State and worked to streamline the application process and make that process as simple as possible for parents seeking coverage for themselves and their children. This is possible using both state and federal Medicaid and CHIP dollars as appropriate. Uninsured individuals suffer significant negative health impacts and the economic impacts of an increase in the uninsured rate could be severe. Individuals with health insurance that provides preventative care are less likely to need more intensive health care treatments, including emergency care. Health insurance reduces the financial burden on Connecticut health care providers who provide care to uninsured individuals, reduces uncompensated care, and ensures families are not left with medical bills that they are unable to pay. Sick children with health insurance coverage are more likely to see a health care provider and receive treatment, limiting the spread of infectious illnesses across the state.

24. Connecticut's current Medicaid, CHIP, and other health coverage programs are structured around the significant reimbursements from the federal government, and any loss of funding would have serious consequences for Connecticut and the individuals served by DSS. The federal government action of taking away birthright citizenship from children born in Connecticut would 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 without the clear line of eligibility tied to birth in the United States, because those programs are not available to individuals who have not been verified to be eligible. 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 going uninsured and receiving only emergency care when absolutely necessary, leading to worse health outcomes as they grow up and require more expensive care through emergency procedures due to a lack of access to affordable preventative care.

25. Additionally, there will be substantial uncertainty and administrative burdens for DSS in providing coverage to pregnant women and their unborn children. As noted above, Connecticut is able to provide coverage to all pregnant women, regardless of 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, DSS 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 DSS providing streamlined coverage to State residents in need of medical care for themselves and their future children.

26. The purported removal of birthright citizenship is also likely 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 immediately eligible for Medicaid and/or CHIP at birth. 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 the Emergency Medical Treatment and Labor Act 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% 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% 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, Connecticut's state-funded State HUSKY program 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% federal reimbursement for any care provided—solely because the child, now as a non-citizen, would not be eligible for CHIP.

27. This poses a risk to DSS's federal funding stream used to provide healthcare coverage to vulnerable Connecticut newborns and children. Based on DSS's most recent data for 2024, there were over 5,500 children born who were eligible for HUSKY and born to mothers who qualified for state-funded postpartum coverage because the mother could not qualify for Medicaid due to their immigration status. If the children covered under Medicaid and CHIP became ineligible due to a loss of citizenship and moved to the State-funded coverage, that would result in a loss of over $10,000,000 in federal reimbursements to Connecticut and a corresponding increase to State expenditures of the same amount.

28. In order to respond and update its practices in light of the federal government's new policy, DSS will also need to develop updated comprehensive training for staff, partners, and healthcare providers. For example, DSS will 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. DSS will also need to change its verification processes, acquire more information from parents, pursue absent parents, change its computer systems, and in so doing significantly increase both the number of staff required to conduct this eligibility work and delay the enrollment process for families. This is a significant burden for the State, children, parents, and healthcare providers. This will require additional eligibility units comprised of eligibility workers and supervisory staff. For every additional eligibility unit that would need to be brought on to support the additional work, it will cost the state approximately $1,700,000. Because of the burden of revamping a program of this size and complexity, adjusting to the federal government's new policy and ensuring coverage for all needy newborns in Connecticut would likely take one year at a minimum. It may also require additional legislative

solutions at the state level, including the allocation of additional state funds to operationalize this dramatically changed interpretation of citizenship.

Impact on School-Based Health Services

29. In addition, and upon information and belief, local education agencies (LEAs) within the State serve all school-age children, regardless of their immigration status. Within DSS, the Division of Health Services administers federal Medicaid funds to LEAs to support crucial education initiatives and provide essential services to students. Upon information and belief, school-based health services (SBHS) refer broadly to medical services provided to all students in a school setting, such as on-site school nurses, behavioral health counselors, and preventative health screenings for visual and auditory acuity. All Connecticut LEAs are required to provide certain SBHS free of charge to all students, regardless of their immigration or insurance status.

30. Upon information and belief, Section 1903(c) of the Social Security Act has authorized the federal Medicaid program to reimburse LEAs for medically necessary SBHS provided to Medicaid-eligible students with disabilities pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., provided the services were delineated in the student's individualized education program (IEP) (or similar plan) and covered in the State plan for Medicaid. IDEA requires LEAs to develop an IEP for children found eligible for special education and related services. An IEP identifies certain special education and related services, and program modifications and supports, that the LEA will provide a child with a disability.

31. Upon information and belief, in SFY 2023 there were over 25,000 unique Medicaid recipients identified as obtaining services claimed under Medicaid related to SBHS. For

SFY 2023, and upon information and belief, quarterly statistics submitted by the LEAs to DSS indicate a total of approximately 22,800 Medicaid-eligible special educated students with medical services in their IEP/504 plans. Upon information and belief, in SFY 2022, total LEA gross costs were approximately $61 million, of which federal Medicaid reimbursed 50%, or approximately $30.5 million. The State retained 50% of the federal reimbursement, or approximately $15.25 million, with the remainder passed on to the LEAs.

32. If birthright citizenship was revoked, impacted students with disabilities—who would have otherwise qualified for federally-funded Medicaid—would lose that eligibility and thus there would be no federal matching support. LEAs would thus not receive any reimbursement funds for provision of SBHS to those students, increasing the State's net costs. A change to birthright citizenship would also increase the population of undocumented children, some percentage of whom would very likely have disabilities that require SBHS and would have been eligible for partially federally-funded Medicaid but for their immigration status. The costs of providing those services would be borne by the State of Connecticut and LEAs without any federal Medicaid reimbursement.

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

Executed this 21st day of January 2025, in New Haven, Connecticut.

Peter Hadler Digitally signed by Peter Hadler
DN: cn=Peter Hadler, o=DSS, ou=Deputy Commissioner, email=peter.hadler@ct.gov, c=US
Date: 2025.01.21 07:32:04 -05'00'

Peter Hadler, Deputy Commissioner
Connecticut Department of Social Services

EXHIBIT S

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	:	Civil Action No.: _____

DECLARATION OF YVETTE GAUTHIER

I, Yvette Gauthier, hereby declare:

1. I am State Registrar of Vital Records of the Connecticut Department of Public Health, a position I have held since 2022. As State Registrar of Vital Records, I am responsible for the supervision of the State-wide vital records data collection system. Prior to holding this position, I was the Health Program Supervisor of the Office of Vital Records.
2. As Registrar of Vital Records, 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.

Connecticut Department of Public Health

3. Connecticut Department of Public Health's mission is to protect and improve the health and safety of the people of Connecticut by assuring the conditions in which people can be healthy; preventing disease, injury and disability, and promoting the equal enjoyment of the highest attainable standard of health, which is a human right and a priority of the State. To support that goal, Connecticut Department of Public Health performs many functions, including regulating healthcare facilities and overseeing the Office of Vital Records (OVR), which facilitates the registration of vital events such as births.

Registration and Birth Certificates of Newborns

4. Healthcare facilities coordinate with OVR 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 must provide the newborn's parents with a Birth Certificate 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' citizenship or immigration status.

6. If the parents do not have SSNs, or do not wish to share them, they can leave that field blank. Their omission of that information does not affect the newborn's ability to obtain a birth certificate.

7. After the newborn's parents complete and sign the Worksheet, hospital staff enter the information from the Worksheet into an electronic birth system (ConnVRS) maintained by OVR. Local Registrars in the town of Birth then create and register the birth certificate with the State. Neither OVR nor Local Registrars have a duty to verify the accuracy of the information submitted by the parent(s) on the Worksheet.

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 and previous name, the father's full name (if provided), their places and dates of birth, mother's residence and mailing address(es). Currently, it is not possible to determine a foreign-born parent's citizenship or immigration status from their child's birth certificate.

9. If the newborn registration process had to be amended to require the Department to verify the parents' citizenship and/or immigration status, this would impose substantial administrative burdens on the Department. Assuming this burden would further lead to delays in registration and issuance of the newborn's birth certificate.

10. Connecticut currently receives funding from the National Center for Health Statistics (NCHS), which is a unit of the Centers for Disease Control and Prevention, for sharing its statistical birth data with NCHS. NCHS annually allocates funds to states based on the number and quality of birth records provided. If the births of children born to two foreign

born parents were not recorded, the State estimates that it would lose approximately 20% of its NCHS funding.

11. The State received $341,280 from NCHS for its 2023 birth records. A loss of 20% in funding would total $68,256.

Application for Social Security Number of Newborns

12. 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).

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

14. Under the EAB process, the healthcare facility provides parents with an application form to request an SSN for their child.

15. 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' citizenship or immigration status.

16. After a healthcare facility receives a completed SSN application, it submits electronically the information from the application and a request for an SSN to OVR, which then transmits that information and request to SSA. OVR only sends EAB records to SSA for enumeration of infants born within the past 12 months. OVR does not have a duty to verify the information submitted by the parent(s) on the EAB application.

17. Connecticut Department of Public Health receives federal funding from the SSA EAB process on a quarterly basis for each SSN that is issued through the EAB process. The

Department receives $4.82 per SSN issued through the EAB process, or approximately $45,000 per quarter. OVR uses those funds to support the payment of administrative and operational costs.

18. Assuming that SSA would not issue an SSN to a child born in the United States if the child's parents were undocumented, OVR estimates approximately 7,400 fewer SSNs annually would be issued. This estimate is based on the number of births for which the parents identified a foreign place of birth on the Birth Certificate Worksheet in 2023 (7,380 births) and in 2024 (7,704 births).

19. If approximately 7,400 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 the Connecticut Department of Public Health of approximately $35,668.

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

Executed this 17th day of January, 2025, in Hartford, Connecticut.

Yvette Gauthier

Digitally signed by Yvette Gauthier
Date: 2025.01.17 14:03:37 -05'00'

Yvette Gauthier, State Registrar of Vital Records

Connecticut Department of Public Health/Office of Vital Records

EXHIBIT Y

COMMENTARIES

ON THE

LAWS

OF

ENGLAND.

IN FOUR BOOKS.

By Sir WILLIAM BLACKSTONE,

ONE OF HIS MAJESTY'S JUSTICES OF THE HONOURABLE COURT OF COMMON PLEAS.

THE SIXTH EDITION.

DUBLIN:

PRINTED FOR THE COMPANY OF BOOKSELLERS.

M.DCC.LXXV.

CHAPTER THE TENTH.

OF THE PEOPLE, WHETHER ALIENS, DENIZENS, OR NATIVES.

HAVING, in the preceding chapters, treated of perſons as they ſtand in the public relations of *magiſtrates*, I now proceed to conſider ſuch perſons as fall under the denomination of the *people*. And herein all the inferior and ſubordinate magiſtrates, treated of in the laſt chapter, are included.

THE firſt and moſt obvious diviſion of the people is into aliens and natural-born ſubjects. Natural-born ſubjects are ſuch as are born within the dominions of the crown of England; that is, within the ligeance, or as it is generally called, the allegiance of the king: and aliens, ſuch as are born out of it. Allegiance is the tie, or *ligamen*, which binds the ſubject to the king, in return for that protection which the king affords the ſubject. The thing itſelf, or ſubſtantial part of it, is founded in reaſon and the nature of government; the name and the form are derived to us from our Gothic anceſtors. Under the feodal ſyſtem, every owner of lands held them in ſubjection to ſome ſuperior or lord, from whom or whoſe anceſtors the tenant or vaſal had received them: and there was a mutual truſt or confidence ſubſiſting between the lord and vaſal, that the lord ſhould protect the vaſal in the enjoyment of the territory he had granted him, and, on the other hand, that the vaſal ſhould

EXHIBIT Z

THE CONGRESSIONAL GLOBE:

CONTAINING

THE DEBATES AND PROCEEDINGS

OF

THE FIRST SESSION

OF

THE THIRTY-NINTH CONGRESS.

BY F. & J. RIVES.

CITY OF WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1866.

Mr. CHANDLER. I will then renew my motion, that the unfinished business be postponed until to-morrow at two o'clock.

The PRESIDENT *pro tempore*. The motion of the Senator from Illinois is that the present and all prior orders be postponed, and that the Senate proceed to the consideration of the resolution from the House of Representatives proposing an amendment to the Constitution of the United States. That is now the motion before the Senate.

The motion was agreed to.

RECONSTRUCTION.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the pending question being on the amendment offered by Mr. JOHNSON to strike out the third section, in the following words:

SEC. 3. Until the 4th day of July, in the year 1870, all persons who voluntarily adhered to the late insurrection, giving it aid and comfort, shall be excluded from the right to vote for Representatives in Congress and for electors for President and Vice President of the United States.

Mr. HOWARD. I hope the vote will be taken on that motion.

Mr. JOHNSON. Is there anything proposed as a substitute for that section?

Mr. CLARK. Your motion precludes that now. You move to strike out, simply.

Mr. JOHNSON. I ask for the yeas and nays upon the amendment.

The yeas and nays were ordered; and being taken, resulted—yeas 43, nays 0; as follows:

YEAS—Messrs. Anthony, Buckalew, Chandler, Clark, Conness, Cowan, Cragin, Creswell, Davis, Doolittle, Edmunds, Fessenden, Foster, Grimes, Guthrie, Harris, Henderson, Hendricks, Howard, Howe, Johnson, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nesmith, Norton, Nye, Poland, Pomeroy, Ramsey, Riddle, Saulsbury, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—43.

NAYS—0.

ABSENT—Messrs. Brown, Dixon, McDougall, Sprague, Wright, and Yates—6.

So the amendment was agreed to.

Mr. HOWARD. I now offer a series of amendments to the joint resolution under consideration, which I will send to the Chair.

Mr. FESSENDEN. Take them one section at a time.

Mr. HOWARD. I will state very briefly what they are. I propose to amend section one of the article by adding after the words "section one" the following words, which will of course constitute a part of section one:

All persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside.

The second amendment——

Mr. FESSENDEN. Let us take a vote on the first one.

Mr. TRUMBULL. The Senator had better state all the amendments.

Mr. JOHNSON. I hope we shall hear them all.

Mr. HOWARD. The second amendment is to amend the second section by striking out the word "citizens," in the twentieth line, where it occurs, and inserting after the word "male" the words "inhabitants, being citizens of the United States;" and by inserting at the end of that section the words "any such State."

The third section has already been stricken out. Instead of that section, or rather in its place, I offer the following:

SEC. 3. No person shall be a Senator or Representative in Congress, or an elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two thirds of each House, remove such disability.

The following is to come in as section four:

The obligations of the United States incurred in suppressing insurrection, or in defense of the Union, or for payment of bounties or pensions incident thereto, shall remain inviolate.

Section four, as it now stands, will be changed to section five, and I propose to amend that section as follows: strike out the word "already," in line thirty-four, and also the words "or which may hereafter be incurred," in line thirty-five, and also the words "or of war" in lines thirty-five and thirty-six, and insert the word "rebellion" in lieu thereof; and also strike out the words "loss of involuntary service or labor" in line thirty-seven, and insert "the loss or emancipation of any slave; but all such debts, obligations, and claims shall be forever held illegal and void."

After consultation with some of the friends of this measure it has been thought that these amendments will be acceptable to both Houses of Congress and to the country, and I now submit them to the consideration of the Senate.

The PRESIDENT *pro tempore*. The first question in order is the amendment proposed to the joint resolution by the Senator from Ohio, [Mr. WADE.]

Mr. WADE. I ask leave to withdraw that amendment.

The PRESIDENT *pro tempore*. It is still in the power of the mover, and he can withdraw it if he pleases. The amendment is withdrawn. The question now is on the amendments proposed by the Senator from Michigan.

Mr. SAULSBURY. It is very well known that the majority of the members of this body who favor a proposition of this character have been in very serious deliberation for several days in reference to these amendments, and have held some four or five caucuses on the subject. Perhaps they have come to the conclusion among themselves that the amendments offered are proper to be made, but this is the first intimation that the minority of the body has had of the character of the proposed change in the constitutional amendment. Now, sir, it is nothing but fair, just, and proper that the minority of the Senate should have an opportunity to consider these amendments; and I rise for the purpose of moving that these amendments, together with the original proposition, be printed, so that we may see them before we are called upon to vote on them. Certainly there can be no graver question, no more serious business that can engage the attention of this Senate than a proposed change in the fundamental law.

Mr. FESSENDEN. I will say to the Senator that if any gentleman on that side of the Chamber desires that these amendments be laid upon the table and printed, there is no objection to that.

Mr. SAULSBURY. Then I will defer any further remarks, and make that motion.

The PRESIDENT *pro tempore*. It is moved that the amendments be printed and that the further consideration of the joint resolution be postponed until to-morrow.

The motion was agreed to.

Mr. SUMNER. I wish to give notice of an amendment which at the proper time I intend to offer to Senate bill No. 292, entitled "A bill to provide for restoring to the States lately in insurrection their full political rights." It is to strike out all after the enacting clause of the first section and to insert a section as a substitute which I ask to have printed.

Mr. JOHNSON and Mr. STEWART. Let it be read.

The PRESIDENT *pro tempore*. The proposed amendment will be read, if there be no objection.

The Secretary read it, as follows:

Strike out all after the enacting clause of the first section of the bill and insert in lieu thereof the following:

That when any State lately in rebellion shall have ratified the foregoing amendment and shall have modified its constitution and laws in conformity therewith, and shall have further provided that there shall be no denial of the elective franchise to citizens of the United States because of race or color, and that all persons shall be equal before the law, the Senators and Representatives from such State, if found duly elected and qualified, may, after having taken the required oaths of office, be admitted into Congress as such: *Provided*, That nothing in this section shall be so construed as to require the disfranchisement of any loyal person who is now allowed to vote.

Mr. SUMNER. I simply wish to have that amendment printed.

The PRESIDENT *pro tempore*. The order to print will be entered.

Mr. SUMNER. I also ask the unanimous consent of the Senate to introduce a bill of which no notice has been given, which I desire to have considered in connection with the other measure, as it belongs to this group of reconstruction measures.

There being no objection, leave was granted to introduce a bill (S. No. 345) to enforce the amendment to the Constitution abolishing slavery by securing the elective franchise to colored citizens; which was read twice by its title.

Mr. SUMNER. I move that the bill be printed and laid upon the table.

The motion was agreed to.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House of Representatives had agreed to the amendment of the Senate to the bill (H. R. No. 459) granting a pension to Anna E. Ward.

The message further announced that the House of Representatives had passed the following bills of the Senate with amendments to each, in which it requested the concurrence of the Senate:

A bill (S. No. 184) to define more clearly the jurisdiction and powers of the supreme court of the District of Columbia, and for other purposes; and

A bill (S. No. 237) granting a pension to Mrs. Martha Stevens.

PRIVATE CLAIMS.

Mr. CLARK. I ask that the Senate give me a little time on Friday next for the purpose of disposing of certain private claims, if there be no objection.

Mr. FESSENDEN. I shall object to that unless the constitutional amendment is disposed of by that time.

Mr. CLARK. I will state that I will not antagonize them with the constitutional amendment, or a public necessity of that kind, but I should like to have an understanding that I may have an hour or so on Friday next for the consideration of private claims, if there is no other public business of pressing importance in the way.

APPROVAL OF BILLS.

A message from the President of the United States, by Mr. COOPER, his Secretary, announced that the President of the United States had approved and signed, on the 26th instant, the following act and joint resolutions:

An act (S. No. 318) to authorize the appointment of an additional Assistant Secretary of the Navy;

A joint resolution (S. R. No. 74) providing for the acceptance of a collection of plants tendered to the United States by Frederick Pech; and

A joint resolution (S. R. No. 97) to authorize certain medals to be distributed to veteran soldiers free of postage.

MARTHA STEVENS.

Mr. LANE, of Indiana. I move to take up Senate bill No. 237, granting a pension to Mrs. Martha Stevens, which has been returned from the House of Representatives with an amendment. The bill as it passed the Senate gave a pension of twenty dollars a month; the amendment of the House reduces it to seventeen dollars a month, the amount allowed in the case of a first lieutenant.

The amendment was concurred in.

DISTRICT SUPREME COURT.

On motion of Mr. WADE, the amendments of the House of Representatives to the bill (S. No. 184) to define more clearly the jurisdiction and powers of the supreme court of the District of Columbia, and for other purposes, were

The motion was agreed to; and Messrs. WILSON, ANTHONY, and HENDRICKS were appointed conferees on the part of the Senate.

FORTIFICATION APPROPRIATION BILL.

The Senate proceeded to consider its amendment to the bill (H. R. No. 255) making appropriations for the construction, preservation, and repair of certain fortifications and other works of defense for the year ending June 30, 1867, which was disagreed to by the House of Representatives.

Mr. FESSENDEN. I move that the Senate insist on its amendment, and agree to the conference asked by the House.

The motion was agreed to; and Messrs. MORGAN, MORRILL, and SAULSBURY were appointed conferees on the part of the Senate.

WOMEN'S HOSPITAL.

Mr. MORRILL. There is a bill on the table which comes from the House of Representatives amended. I desire to call it up and concur in the amendments. It is Senate bill No. 167, to incorporate the Women's Hospital Association of the District of Columbia.

Mr. HOWARD. It is very nearly one o'clock, and I hope the joint resolution to amend the Constitution will be taken up.

Mr. MORRILL. This is pending simply on a question of concurring in the amendments made by the House to a bill of the Senate, and will not occupy two minutes.

Mr. HOWARD. If it does not go beyond one o'clock I shall not object.

Mr. MORRILL. Let it come up. I move to take it up.

The motion was agreed to; and the Senate proceeded to consider the amendments of the House of Representatives to the bill (S. No. 167) to incorporate the Women's Hospital Association of the District of Columbia.

The PRESIDENT *pro tempore*. The first amendment of the House has already been concurred in.

The Secretary read the second amendment of the House of Representatives, which was in the first section, line three, after the name "Adelaide J. Brown," to strike out all the names to and including that of "Mary K. Lewis," in line seven, except that of "Mary W. Kelly," and to insert "Elmira W. Knap, Mary C. Havermer, Mary Ellen Norment, Jane Thompson, Maria L. Harkness, Isabella Margaret Washington, and Mary F. Smith."

Mr. MORRILL. I move that the Senate concur in that amendment.

The motion was agreed to.

The next amendment was after the word "Columbia," at the end of section one, to add "by the name of the Columbia Hospital for Women and Lying-in Asylum."

Mr. MORRILL. I move that the Senate concur in that amendment.

The motion was agreed to.

The next amendment was in section two, line two to strike out the word "twelve" and insert "twenty-four" as the number of directors.

The amendment was concurred in.

The next amendment was in section three, after the word "directors" at the end of line three to insert "to consist of the first twelve of the above-named incorporators."

The amendment was concurred in.

The next amendment was in section four, line one, after the word "the" to insert "first twelve."

The amendment was concurred in.

The next amendment was in section five, after the word "Women" in line three, to insert "and Lying-in Asylum."

The amendment was concurred in.

The next amendment was in section five, line four, after the word "with" to insert "board, lodging."

The amendment was concurred in.

The PRESIDENT *pro tempore*. The amendments are completed.

DEATH OF GENERAL SCOTT.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States:

To the Senate and House of Representatives:

With sincere regret I announce to Congress that Winfield Scott, late lieutenant general in the Army of the United States, departed this life at West Point, in the State of New York, on the 29th day of May instant, at eleven o'clock in the forenoon. I feel well assured that Congress will share in the grief of the nation which must result from its bereavement of a citizen whose high fame is identified with the military history of the Republic.

ANDREW JOHNSON.

WASHINGTON, *May* 30, 1866.

Mr. WILSON. I offer the following resolution:

Resolved by the Senate, (the House of Representatives concurring,) That the Committee on Military Affairs and the Militia of the Senate and the Committee on Military Affairs of the House of Representatives, be, and they are hereby, appointed a joint committee of the two Houses of Congress to take into consideration the message of the President of the United States announcing to Congress the death of Lieutenant General Winfield Scott, and to report what method should be adopted by Congress to manifest their appreciation of the high character, tried patriotism, and distinguished public services of Lieutenant General Winfield Scott, and their deep sensibility upon the announcement of his death.

There being no objection, the Senate proceeded to consider the resolution; and it was adopted unanimously.

Mr. WILSON. As this committee is to be a joint one, and the resolution will have to be acted on by the House of Representatives, I move, for the present, that the message of the President be laid upon the table, and printed.

The motion was agreed to.

RECONSTRUCTION.

Mr. HOWARD. I now move to take up House joint resolution No. 127.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States.

The PRESIDENT *pro tempore*. The question is on the amendments proposed by the Senator from Michigan, [Mr. HOWARD.]

Mr. HOWARD. The first amendment is to section one, declaring that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside." I do not propose to say anything on that subject except that the question of citizenship has been so fully discussed in this body as not to need any further elucidation, in my opinion. This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of embassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. This has long been a great desideratum in the jurisprudence and legislation of this country.

The PRESIDENT *pro tempore*. The first amendment proposed by the Senator from Michigan will be read.

The Secretary read the amendment, which was in line nine, after the words "section one," to insert:

All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside.

So that the section will read:

SEC. 1. All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Mr. DOOLITTLE. I presume the honorable Senator from Michigan does not intend by this amendment to include the Indians. I move, therefore, to amend the amendment—I presume he will have no objection to it—by inserting after the word "thereof" the words "excluding Indians not taxed." The amendment would then read:

All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States and of the States wherein they reside.

Mr. HOWARD. I hope that amendment to the amendment will not be adopted. 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.

Mr. COWAN. The honorable Senator from Michigan has given this subject, I have no doubt, a good deal of his attention, and I am really desirous to have a legal definition of "citizenship of the United States." What does it mean? What is its length and breadth? I would be glad if the honorable Senator in good earnest would favor us with some such definition. Is the child of the Chinese immigrant in California a citizen? Is the child of a Gypsy born in Pennsylvania a citizen? If so, what rights have they? Have they any more rights than a sojourner in the United States? If a traveler comes here from Ethiopia, from Australia, or from Great Britain, he is entitled, to a certain extent, to the protection of the laws. You cannot murder him with impunity. It is murder to kill him, the same as it is to kill another man. You cannot commit an assault and battery on him, I apprehend. He has a right to the protection of the laws; but he is not a citizen in the ordinary acceptation of the word.

It is perfectly clear that the mere fact that a man is born in the country has not heretofore entitled him to the right to exercise political power. He is not entitled, by virtue of that, to be an elector. An elector is one who is chosen by the people to perform that function, just the same as an officer is one chosen by the people to exercise the franchises of an office. Now, I should like to know, because really I have been puzzled for a long while and have been unable to determine exactly, either from conversation with those who ought to know, who have given this subject their attention, or from the decisions of the Supreme Court, the lines and boundaries which circumscribe that phrase, "citizen of the United States." What is it?

So far as the courts and the administration of the laws are concerned, I have supposed that every human being within their jurisdiction was in one sense of the word a citizen, that is, a person entitled to protection; but in so far as the right to hold property, particularly the right to acquire title to real estate, was concerned, that was a subject entirely within the control of the States. It has been so considered in the State of Pennsylvania; and aliens and others who acknowledge no allegiance, either to the State or to the General Government, may be limited and circumscribed in that particular. I have supposed, further, that it was essential to the existence of society itself, and particularly essential to the existence of a free State, that it should have the power, not only of declaring who should exercise political power within its boundaries, but that if it were overrun by another and a different race, it would have the right to absolutely expel them. I do not know that there is any danger to many of the States in this Union; but is it proposed that the people of Cal-

ifornia 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? I should think not. It is not supposed that the people of California, in a broad and general sense, have any higher rights than the people of China; but they are in possession of the country of California, and if another people of a different race, of different religion, of different manners, of different traditions, different tastes and sympathies are to come there and have the free right to locate there and settle among them, and if they have an opportunity of pouring in such an immigration as in a short time will double or treble the population of California, I ask, are the people of California powerless to protect themselves? I do not know that the contingency will ever happen, but it may be well to consider it while we are on this point.

As I understand the rights of the States under the Constitution at present, California has the right, if she deems it proper, to forbid the entrance into her territory of any person she chooses who is not a citizen of some one of the United States. She cannot forbid his entrance; but unquestionably, if she was likely to be invaded by a flood of Australians or people from Borneo, man-eaters or cannibals if you please, she would have the right to say that those people should not come there. It depends upon the inherent character of the men. Why, sir, there are nations of people with whom theft is a virtue and falsehood a merit. There are people to whom polygamy is as natural as monogamy is with us. It is utterly impossible that these people can meet together and enjoy their several rights and privileges which they suppose to be natural in the same society; and it is necessary, a part of the nature of things, that society shall be more or less exclusive. It is utterly and totally impossible to mingle all the various families of men, from the lowest form of the Hottentot up to the highest Caucasian, in the same society.

It must be evident to every man intrusted with the power and duty of legislation, and qualified to exercise it in a wise and temperate manner, that these things cannot be; and in my judgment there should be some limitation, some definition to this term "citizen of the United States." What is it? Is it simply to put a man in a condition that he may be an elector in one of the States? Is it to put him in a condition to have the right to enter the United States courts and sue? Or is it only that he is entitled as a sojourner to the protection of the laws while he is within and under the jurisdiction of the courts? Or is it to set him upon some pedestal, some position, to put him out of the reach of State legislation and State power?

Sir, I trust I am as liberal as anybody toward the rights of all people, but I am unwilling, on the part of my State, to give up the right that she claims, and that she may exercise, and exercise before very long, of expelling a certain number of people who invade her borders; who owe to her no allegiance; who pretend to owe none; who recognize no authority in her government; who have a distinct, independent government of their own—an *imperium in imperio*; who pay no taxes; who never perform military service; who do nothing, in fact, which becomes the citizen, and perform none of the duties which devolve upon him, but, on the other hand, have no homes, pretend to own no land, live nowhere, settle as trespassers where ever they go, and whose sole merit is a universal swindle; who delight in it, who boast of it, and whose adroitness and cunning is of such a transcendent character that no skill can serve to correct it or punish it; I mean the Gypsies. They wander in gangs in my State. They follow no ostensible pursuit for a livelihood. They trade horses, tell fortunes, and things disappear mysteriously. Where they came from nobody knows. Their very origin is lost in mystery. No man to-day can tell from whence the Zingara come or whither they go, but it is understood that they are a distinct people. They never intermingle with any other. They never intermarry with any other. I believe there is no instance on record where a Zingara woman has mated with a man of any other race, although it is true that sometimes the males of that race may mate with the females of others; but I think there is no case in history where it can be found that a woman of that race, so exclusive are they, and so strong are their sectional antipathies, has been known to mate with a man of another race. These people live in the country and are born in the country. They infest society. They impose upon the simple and the weak everywhere. Are those people, by a constitutional amendment, to be put out of the reach of the State in which they live? I mean as a class. If the mere fact of being born in the country confers that right, then they will have it; and I think it will be mischievous.

I think the honorable Senator from Michigan would not admit the right that the Indians of his neighborhood would have to come in upon Michigan and settle in the midst of that society and obtain the political power of the State, and wield it, perhaps, to his exclusion. I do not know that anybody would agree to that. It is true that our race are not subjected to dangers from that quarter, because we are the strongest, perhaps; but there is a race in contact with this country which, in all characteristics except that of simply making fierce war, is not only our equal, but perhaps our superior. I mean the yellow race; the Mongol race. They outnumber us largely. Of their industry, their skill, and their pertinacity in all worldly affairs, nobody can doubt. They are our neighbors. Recent improvement, the age of fire, has brought their coasts almost in immediate contact with our own. Distance is almost annihilated. They may pour in their millions upon our Pacific coast in a very short time. Are the States to lose control over this immigration? Is the United States to determine that they are to be citizens? I wish to be understood that I consider those people to have rights just the same as we have, but not rights in connection with our Government. If I desire the exercise of my rights I ought to go to my own people, the people of my own blood and lineage, people of the same religion, people of the same beliefs and traditions, and not thrust myself in upon a society of other men entirely different in all those respects from myself. I would not claim that right. Therefore I think, before we assert broadly that everybody who shall be born in the United States shall be taken to be a citizen of the United States, we ought to exclude others besides Indians not taxed, because I look upon Indians not taxed as being much less dangerous and much less pestiferous to society than I look upon Gypsies. I do not know how my honorable friend from California looks upon Chinese, but I do know how some of his fellow-citizens regard them. I have no doubt that now they are useful, and I have no doubt that within proper restraints, allowing that State and the other Pacific States to manage them as they may see fit, they may be useful; but I would not tie their hands by the Constitution of the United States so as to prevent them hereafter from dealing with them as in their wisdom they see fit.

Mr. CONNESS. Mr. President, I have failed to learn, from what the Senator has said, what relation what he has said has to the first section of the constitutional amendment before us; but that part of the question I propose leaving to the honorable gentleman who has charge of this resolution. As, however, the State of California has been so carefully guarded from time to time by the Senator from Pennsylvania and others, and the passage, not only of this amendment, but of the so-called civil rights bill, has been deprecated because of its pernicious influence upon society in California, owing to the contiguity of the Chinese and Mongolians to that favored land, I may be excused for saying a few words on the subject.

If my friend from Pennsylvania, who professes to know all about Gypsies and little about Chinese, knew as much of the Chinese and their habits as he professes to do of the Gypies, (and which I concede to him, for I know nothing to the contrary,) he would not be alarmed in our behalf because of the operation of the proposition before the Senate, or even the proposition contained in the civil rights bill, so far as it involves the Chinese and us.

The proposition before us, I will say, Mr. President, relates simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. We have declared that by law; now it is proposed to incorporate the same provision in the fundamental instrument of the nation. I am in favor of doing so. I voted for the proposition to declare that the children of all parentage whatever, born in California, should be regarded and treated as citizens of the United States, entitled to equal civil rights with other citizens of the United States.

Now, I will say, for the benefit of my friend, that he may know something about the Chinese in future, that this portion of our population, namely, the children of Mongolian parentage, born in California, is very small indeed, and never promises to be large, notwithstanding our near neighborhood to the Celestial land. The habits of those people, and their religion, appear to demand that they all return to their own country at some time or other, either alive or dead. There are, perhaps, in California today about forty thousand Chinese—from forty to forty-five thousand. Those persons return invariably, while others take their places, and, as I before observed, if they do not return alive their bones are carefully gathered up and sent back to the Flowery Land. It is not an unusual circumstance that the clipper ships trading between San Francisco and China carry at a time three or four hundred human remains of these Chinese. When interred in our State they are not interred deep in the earth, but laid very near the surface, and then mounds of earth are laid over them, so that the process of disinterment is very easy. That is their habit and custom; and as soon as they are fit for transmission to their own country they are taken up with great regularity and sent there. None of their bones are allowed to remain. They will return, then, either living or dead.

Another feature connected with them is, that they do not bring their females to our country but in very limited numbers, and rarely ever in connection with families; so that their progeny in California is very small indeed. From the description we have had from the honorable Senator from Pennsylvania of the Gypsies, the progeny of all Mongolians in California is not so formidable in numbers as that of the Gypsies in Pennsylvania. We are not troubled with them at all. Indeed, it is only in exceptional cases that they have children in our State; and therefore the alarming aspect of the application of this provision to California, or any other land to which the Chinese may come as immigrants, is simply a fiction in the brain of persons who deprecate it, and that alone.

I wish now to address a few words to what the Senator from Pennsylvania has said as to the rights that California may claim as against the incursion of objectionable population from other States and countries. The State of California at various times has passed laws restrictive of Chinese immigration. It will be remembered that the Chinese came to our State, as others did from all parts of the world, to gather gold in large quantities, it being found there. The interference with our own people in the mines by them was deprecated by and generally objectionable to the miners in California. The Chinese are re-

garded, also, not with favor as an addition to the population in a social point of view; not that there is any intercourse between the two classes of persons there, but they are not regarded as pleasant neighbors; their habits are not of a character that make them at all an inviting class to have near you, and the people so generally regard them. But in their habits otherwise, they are a docile, industrious people, and they are now passing from mining into other branches of industry and labor. They are found employed as servants in a great many families and in the kitchens of hotels; they are found as farm hands in the fields; and latterly they are employed by thousands—indeed, I suppose there are from six to seven thousand of them now employed in building the Pacific railroad. They are there found to be very valuable laborers, patient and effective; and, I suppose, before the present year closes, ten or fifteen thousand of them, at least, will be employed on that great work.

The State of California has undertaken, at different times, to pass restrictive statutes as to the Chinese. The State has imposed a tax on their right to work the mines, and collected it ever since the State has been organized—a tax of four dollars a month on each Chinaman; but the Chinese could afford to pay that and still work in the mines, and they have done so. Various acts have been passed imposing a poll tax or head tax, a capitation tax, upon their arrival at the port of San Francisco; but all such laws, when tested before the supreme court of the State of California, the supreme tribunal of that people, have been decided to be unconstitutional and void.

Mr. HOWARD. A very just and constitutional decision, undoubtedly.

Mr. CONNESS. Those laws have been tested in our own courts, and when passed under the influence of public feeling there they have been declared again and again by the supreme court of the State of California to be void, violative of our treaty obligations, an interference with the commerce of the nation. Now, then, I beg the honorable Senator from Pennsylvania, though it may be very good capital in an electioneering campaign to declaim against the Chinese, not to give himself any trouble about the Chinese, but to confine himself entirely to the injurious effects of this provision upon the encouragement of a Gypsy invasion of Pennsylvania. I had never heard myself of the invasion of Pennsylvania by Gypsies. I do not know, and I do not know that the honorable Senator can tell us, how many Gypsies the census shows to be within the State of Pennsylvania. The only invasion of Pennsylvania within my recollection was an invasion very much worse and more disastrous to the State, and more to be feared and more feared, than that of Gypsies. It was an invasion of rebels, which this amendment, if I understand it aright, is intended to guard against and to prevent the recurrence of. On that occasion I am not aware, I do not remember that the State of Pennsylvania claimed the exclusive right of expelling the invaders, but on the contrary my recollection is that Pennsylvania called loudly for the assistance of her sister States to aid in the expulsion of those invaders—did not claim it as a State right to exclude them, did not think it was a violation of the sovereign rights of the State when the citizens of New York and New Jersey went to the field in Pennsylvania and expelled those invaders.

But why all this talk about Gypsies and Chinese? I have lived in the United States for now many a year, and really I have heard more about Gypsies within the last two or three months than I have heard before in my life. It cannot be because they have increased so much of late. It cannot be because they have been felt to be particularly oppressive in this or that locality. It must be that the Gypsy element is to be added to our political agitation, so that hereafter the negro alone shall not claim our entire attention. Here is a simple declaration that a score or a few score of human beings born in the United States shall be regarded as citizens of the United States, entitled to civil rights, to the right of equal defense, to the right of equal punishment for crime with other citizens; and that such a provision should be deprecated by any person having or claiming to have a high humanity passes all my understanding and comprehension.

Mr. President, let me give an instance here, in this connection, to illustrate the necessity of the civil rights bill in the State of California; and I am quite aware that what I shall say will go to California, and I wish it to do so. By the influence of our "southern brethren," who I will not say invaded California, but who went there in large numbers some years since, and who seized political power in that State and used it, who made our statutes and who expounded our statutes from the bench, negroes were forbidden to testify in the courts of law of that State, and Mongolians were forbidden to testify in the courts; and therefore for many years, indeed, until 1862, the State of California held officially that a man with a black skin could not tell the truth, could not be trusted to give a relation in a court of law of what he saw and what he knew. In 1862 the State Legislature repealed the law as to negroes, but not as to Chinese. Where white men were parties the statute yet remained, depriving the Mongolian of the right to testify in a court of law. What was the consequence of preserving that statute? I will tell you. During the four years of rebellion a good many of our "southern brethren" in California took upon themselves the occupation of what is there technically called "road agents." It is a term well known and well understood there. They turned out upon the public highways, and became robbers, highway robbers; they seized the treasure transmitted and conveyed by the express companies, by our stage lines, and in one instance made a very heavy seizure, and claimed that it was done in accordance with the authority of the so-called confederacy. But the authorities of California hunted them down, caught a few of them, and caused them to be hanged, not recognizing the commission of Jeff. Davis for those kinds of transactions within our bounds. The spirit of insubordination and violation of law, promoted and encouraged by rebellion here, affected us so largely that large numbers of—I will not say respectable southern people, and I will not say that it was confined to them alone—but large numbers of persons turned out upon the public highways, so that robbery was so common upon the highways, particularly in the interior and in the mountains of that State, that it was not wondered at, but the wonder was for anybody that traveled on the highways to escape robbery. The Chinese were robbed with impunity, for if a white man was not present no one could testify against the offender. They were robbed and plundered and murdered, and no matter how many of them were present and saw the perpetration of those acts, punishment could not follow, for they were not allowed to testify. Now, sir, I am very glad indeed that we have determined at length that every human being may relate what he heard and saw in a court of law when it is required of him, and that our jurors are regarded as of sufficient intelligence to put the right value and construction upon what is stated.

So much for what has been said in connection with the application of this provision to the State that I in part represent here. I beg my honorable friend from Pennsylvania to give himself no further trouble on account of the Chinese in California or on the Pacific coast. We are fully aware of the nature of that class of people and their influence among us, and feel entirely able to take care of them and to provide against any evils that may flow from their presence among us. We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others.

Mr. HOWARD. There is a typographical error in the amendment now under consideration. The word "State" in the eleventh line is printed "States." It should be in the singular instead of the plural number, so as to read "all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State" (not States) "wherein they reside." I move that that correction be made.

Mr. JOHNSON. I suggest to the Senator from Michigan that it stands just as well as it is.

Mr. HOWARD. I wish to correct the error of the printer; it is printed "States" instead of "State."

The PRESIDENT *pro tempore*. The correction will be made.

Mr. JOHNSON. I doubt whether it is an error of the printer.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Wisconsin to the amendment of the Senator from Michigan to the resolution before the Senate.

Mr. DOOLITTLE. I moved this amendment because it seems to me very clear that there is a large mass of the Indian population who are clearly subject to the jurisdiction of the United States who ought not to be included as citizens of the United States. All the Indians upon reservations within the several States are most clearly subject to our jurisdiction, both civil and military. We appoint civil agents who have a control over them in behalf of the Government. We have our military commanders in the neighborhood of the reservations, who have complete control. For instance, there are seven or eight thousand Navajoes at this moment under the control of General Carlton, in New Mexico, upon the Indian reservations, managed, controlled, fed at the expense of the United States, and fed by the War Department, managed by the War Department, and at a cost to this Government of almost a million and a half of dollars every year. Because it is managed by the War Department, paid out of the commissary fund and out of the appropriations for quartermasters' stores, the people do not realize the enormous expense which is upon their hands. Are these six or seven thousand Navajoes to be made citizens of the United States? Go into the State of Kansas, and you find there any number of reservations, Indians in all stages, from the wild Indian of the plains, who lives on nothing but the meat of the buffalo, to those Indians who are partially civilized and have partially adopted the habits of civilized life. So it is in other States. In my own State there are the Chippewas, the remnants of the Winnebagoes, and the Pottawatomies. There are tribes in the State of Minnesota and other States of the Union. Are these persons to be regarded as citizens of the United States, and by a constitutional amendment declared to be such, because they are born within the United States and subject to our jurisdiction?

Mr. President, the word "citizen," if applied to them, would bring in all the Digger Indians of California. Perhaps they have mostly disappeared; the people of California, perhaps, have put them out of the way; but there are the Indians of Oregon and the Indians of the Territories. Take Colorado; there are more Indian citizens of Colorado than there are white citizens this moment if you admit it as a State. And yet by a constitutional amendment you propose to declare the Utes, the Tabahuaches, and all those wild Indians to be citizens of the United States, the great Republic of the world, whose citizenship should be a

title as proud as that of king, and whose danger is that you may degrade that citizenship.

Mr. President, citizenship, if conferred, carries with it, as a matter of course, the rights, the responsibilities, the duties, the immunities, the privileges of citizens, for that is the very object of this constitutional amendment to extend. I do not intend to address the Senate at length on this question now. I have simply raised the question. I think that it would be exceedingly unwise not to adopt this amendment and to put in the Constitution of the United States the broad language proposed. Our fathers certainly did not act in this way, for in the Constitution as they adopted it they excluded the Indians who are not taxed; did not enumerate them, indeed, as a part of the population upon which they based representation and taxation; much less did they make them citizens of the United States.

Mr. President, before the subject of the constitutional amendment passes entirely from the Senate, I may desire to avail myself of the opportunity to address the body more at length; but now I simply direct what I have to say to the precise point contained in the amendment which I have submitted.

Mr. FESSENDEN. I rise not to make any remarks on this question, but to say that if there is any reason to doubt that this provision does not cover all the wild Indians, it is a serious doubt; and I should like to hear the opinion of the chairman of the Committee on the Judiciary, who has investigated the civil rights bill so thoroughly, on the subject, or any other gentleman who has looked at it. I had the impression that it would not cover them.

Mr. TRUMBULL. Of course my opinion is not any better than that of any other member of the Senate; but it is very clear to me that there is nothing whatever in the suggestions of the Senator from Wisconsin. The provision is, that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens." That means "subject to the complete jurisdiction thereof." Now, does the Senator from Wisconsin pretend to say that the Navajoe Indians are subject to the complete jurisdiction of the United States? What do we mean by "subject to the jurisdiction of the United States?" Not owing allegiance to anybody else. That is what it means. Can you sue a Navajoe Indian in court? Are they in any sense subject to the complete jurisdiction of the United States? By no means. We make treaties with them, and therefore they are not subject to our jurisdiction. If they were, we would not make treaties with them. If we want to control the Navajoes, or any other Indians of which the Senator from Wisconsin has spoken, how do we do it? Do we pass a law to control them? Are they subject to our jurisdiction in that sense? Is it not understood that if we want to make arrangements with the Indians to whom he refers we do it by means of a treaty? The Senator himself has brought before us a great many treaties this session in order to get control of those people.

If you introduce the words "not taxed," that is a very indefinite expression. What does "excluding Indians not taxed" mean? You will have just as much difficulty in regard to those Indians that you say are in Colorado, where there are more Indians than there are whites. Suppose they have property there, and it is taxed; then they are citizens.

Mr. WADE. And ought to be.

Mr. TRUMBULL. The Senator from Ohio says they ought to be. If they are there and within the jurisdiction of Colorado, and subject to the laws of Colorado, they ought to be citizens; and that is all that is proposed. It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government that he is "subject to the jurisdiction of the United States." Would the Senator from Wisconsin think for a moment of bringing a bill into Congress to subject these wild Indians with whom we have no treaty to the laws and regulations of civilized life? Would he think of punishing them for instituting among themselves their own tribal regulations? Does the Government of the United States pretend to take jurisdiction of murders and robberies and other crimes committed by one Indian upon another? Are they subject to our jurisdiction in any just sense? They are not subject to our jurisdiction. We do not exercise jurisdiction over them. It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens.

It seems to me, sir, that to introduce the words suggested by the Senator from Wisconsin would not make the proposition any clearer than it is, and that it by no means embraces, or by any fair construction—by any construction, I may say—could embrace the wild Indians of the plains or any with whom we have treaty relations, for the very fact that we have treaty relations with them shows that they are not subject to our jurisdiction. We cannot make a treaty with ourselves; it would be absurd. I think that the proposition is clear and safe as it is.

Mr. JOHNSON. Mr. President, the particular question before the Senate is whether the amendment proposed by the Senator from Wisconsin shall be adopted. But while I am up, and before I proceed to consider the necessity for that amendment, I will say a word or two upon the proposition itself; I mean that part of section one which is recommended as an amendment to the old proposition as it originally stood.

The Senate are not to be informed that very serious questions have arisen, and some of them have given rise to embarrassments, as to who are citizens of the United States, and what are the rights which belong to them as such; and the object of this amendment is to settle that question. I think, therefore, with the committee to whom the matter was referred, and by whom the report has been made, that it is very advisable in some form or other to define what citizenship is; and I know no better way of accomplishing that than the way adopted by the committee. The Constitution as it now stands recognizes a citizenship of the United States. It provides that no person shall be eligible to the Presidency of the United States except a natural-born citizen of the United States or one who was in the United States at the time of the adoption of the Constitution; it provides that no person shall be eligible to the office of Senator who has not been a citizen of the United States for nine years; but there is no definition in the Constitution as it now stands as to citizenship. Who is a citizen of the United States is an open question. The decision of the courts and the doctrine of the commentators is, that every man who is a citizen of a State becomes *ipso facto* a citizen of the United States; but there is no definition as to how citizenship can exist in the United States except through the medium of a citizenship in a State.

Now, all that this amendment provides is, that all persons born in the United States and not subject to some foreign Power—for that, no doubt, is the meaning of the committee who have brought the matter before us—shall be considered as citizens of the United States. That would seem to be not only a wise but a necessary provision. If there are to be citizens of the United States entitled everywhere to the character of citizens of the United States there should be some certain definition of what citizenship is, what has created the character of citizen as between himself and the United States, and the amendment says that citizenship may depend upon birth, and I know of no better way to give rise to citizenship than the fact of birth within the territory of the United States, born of parents who at the time were subject to the authority of the United States. I am, however, by no means prepared to say, as I think I have intimated before, that being born within the United States, independent of any new constitutional provision on the subject, creates the relation of citizen to the United States.

The amendment proposed by my friend from Wisconsin I think, and I submit it to the Senate, should be adopted. The honorable member from Illinois seems to think it unnecessary, because, according to his interpretation of the amendment as it stands, it excludes those who are proposed to be excluded by the amendment of the Senator from Wisconsin, and he thinks that that is done by saying that those only who are born in the United States are to become citizens thereof, who at the time of birth are "subject to the jurisdiction thereof," and he supposes and states very positively that the Indians are not subject to the jurisdiction of the United States. With due deference to my friend from Illinois, I think he is in error. They are within the territorial limits of the United States. If they were not, the provision would be altogether inapplicable to them. In one sense, therefore, they are a part of the people of the United States, and independent of the manner in which we have been dealing with them it would seem to follow necessarily that they are subject to the jurisdiction of the United States, as is anybody else who may be born within the limits of the United States. But when the United States took possession—England for us in the beginning, and our limits have been extended since—of the territory which was originally peopled exclusively by the Indians, we found it necessary to recognize some kind of a national existence on the part of the aboriginal settlers of the United States; but we were under no obligation to do so, and we are under no constitutional obligation to do so now, for although we have been in the habit of making treaties with these several tribes, we have also, from time to time, legislated in relation to the Indian tribes. We punish murder committed within the territorial limits in which the tribes are to be found. I think we punish the crime of murder committed by one Indian upon another Indian. I think my friend from Illinois is wrong in supposing that that is not done.

Mr. TRUMBULL. Not except where it is done under special provision—not with the wild Indians of the plains.

Mr. JOHNSON. By special provision of legislation. That I understand. I am referring to that.

Mr. TRUMBULL. We propose to make citizens of those brought under our jurisdiction in that way. Nobody objects to that, I reckon.

Mr. JOHNSON. Yes, I do. I am not objecting at all to their being citizens now; what I mean to say, is that over all the Indian tribes within the limits of the United States, the United States may—that is the test—exercise jurisdiction. Whether they exercise it in point of fact is another question; whether they propose to govern them under the treaty-making power is quite another question; but the question as to the authority to legislate is one, I think, about which, if we were to exercise it, the courts would have no doubt; and when, therefore, the courts come to consider the meaning of this provision, that all persons born within the limits of the United States and subject to the jurisdiction thereof are citizens, and are called upon to decide whether Indians born within the United States, with whom we are now making treaties are citizens, I think they will decide that they have become citizens by virtue of this amendment. But at any rate, without expressing any decided opinion to that effect, as I would not do when the honorable member from Illinois is so decided in the opposite opinion, when the honorable member from Wisconsin, to say nothing of myself, entertains a reasonable doubt that Indians would be embraced within the provision, what possible harm can there be in guarding against it? It does not affect the constitutional amendment in any way. That is not my purpose, and I presume is not the purpose of my friend from Wisconsin.

The honorable member from Illinois says that the terms which the member from Wis-

consin proposes to insert would leave it very uncertain. I suppose that my friend from Illinois agreed to the second section of this constitutional amendment, and these terms are used in that section. In apportioning the representation, as you propose to do by virtue of the second section, you exclude from the basis "Indians *not* taxed." What does that mean? The honorable member from Illinois says that that is very uncertain. What does it mean? It means, or would mean if inserted in the first section, nothing, according to the honorable member from Illinois. Well, if it means nothing inserted in the first section it means nothing where it is proposed to insert it in the second section. But I think my friend from Illinois will find that these words are clearly understood and have always been understood; they are now almost technical terms. They are found, I think, in nearly all the statutes upon the subject; and if I am not mistaken, the particular statute upon which my friend from Illinois so much relied as one necessary to the peace of the country, the civil rights bill, has the same provision in it, and that bill I believe was prepared altogether, or certainly principally, by my friend from Illinois. I read now from the civil rights bill as it passed:

"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."

What did these words mean? They meant something; and their meaning as they are inserted in that act is the same meaning which will be given to them if they are inserted in the first section of this constitutional amendment. But I conclude by saying that when we are trying to settle this, among other questions, for all time, it is advisable—and if my friend will permit me to say so, our clear duty—to put every provision which we adopt in such plain language as not to be capable of two interpretations, if we can. When Senators upon the floor maintain the opinion that as it now stands it is capable of an interpretation different from that which the committee mean, and the amendment proposed gets clear of that interpretation which the committee do not mean, why should we not adopt it?

I hope, therefore, that the friends—and I am the friend of this provision as far as we have gone in it—that the friends of this constitutional amendment will accept the suggestion of the honorable member from Wisconsin.

Mr. TRUMBULL. The Senator from Maryland certainly perceives a distinction between the use of the words "excluding Indians not taxed" in the second section and in the first. The second section is confined to the States; it does not embrace the Indians of the plains at all. That is a provision in regard to the apportionment of representation among the several States.

Mr. JOHNSON. The honorable member did not understand me. I did not say it meant the same thing.

Mr. TRUMBULL. I understood the Senator, I think. I know he did not say that the clause in the second section was extended all over the country, but he did say that the words "excluding Indians not taxed" were in the second section, and inasmuch as I had said that those words were of uncertain meaning, therefore, having gone for the words in the second section I was guilty of a great inconsistency. Now, I merely wish to show the Senator from Maryland that the words in the second section may have a very clear and definite meaning, when in the first section they would have a very uncertain meaning, because they are applied under very different circumstances. The second section refers to no persons except those in the States of the Union; but the first section refers to persons everywhere, whether in the States or in the Territories or in the District of Columbia. Therefore the criticism upon the language that I had used, it seems to me, is not a just one.

But the Senator wants to insert the words, "excluding Indians not taxed." I am not willing to make citizenship in this country depend on taxation. I am not willing, if the Senator from Wisconsin is, that the rich Indian residing in the State of New York shall be a citizen and the poor Indian residing in the State of New York shall not be a citizen. If you put in those words in regard to citizenship, what do you do? You make a distinction in that respect, if you put it on the ground of taxation. We had a discussion on the civil rights bill as to the meaning of these words, "excluding Indians not taxed." The Senator from Maryland, [Mr. JOHNSON,] I think, on that occasion gave this definition to the phrase "excluding Indians not taxed," that it did not allude to the fact of taxation simply but it meant to describe a class of persons; that is, civilized Indians. I was inclined to fall into that view. I was inclined to adopt the suggestion of the Senator from Maryland, that the words "excluding Indians not taxed" did not mean literally excluding those upon whom a tax was not assessed and collected, but rather meant to define a class of persons, meaning civilized Indians; and I think I gave that answer to the Senator from Indiana, [Mr. HENDRICKS,] who was disposed to give it the technical meaning that "Indians not taxed" meant simply those upon whom no tax was laid. If it does mean that, then it would be very objectionable to insert those words here, because it would make of a wealthy Indian a citizen and would not make a citizen of one not possessed of wealth under the same circumstances. This is the uncertainty in regard to the meaning of those words. The Senator from Maryland and myself, perhaps, would understand them alike as embracing all Indians who were not civilized; and yet, if you insert that language, "Indians not taxed," other persons may not understand them that way; and I remember that the Senator from Indiana was disposed to understand them differently when we had the discussion upon the civil rights bill. Therefore I think it better to avoid these words and that the language proposed in this constitutional amendment is better than the language in the civil rights bill. The object to be arrived at is the same.

I have already replied to the suggestion as to the Indians being subject to our jurisdiction. They are not subject to our jurisdiction in the sense of owing allegiance solely to the United States; and the Senator from Maryland, if he will look into our statutes, will search in vain for any means of trying these wild Indians. A person can only be tried for a criminal offense in pursuance of laws, and he must be tried in a district which must have been fixed by law before the crime was committed. We have had in this country, and have to-day, a large region of country within the territorial limits of the United States, unorganized, over which we do not pretend to exercise any civil or criminal jurisdiction, where wild tribes of Indians roam at pleasure, subject to their own laws and regulations, and we do not pretend to interfere with them. They would not be embraced by this provision.

For these reasons I think this language is better than the language employed by the civil rights bill.

Mr. HENDRICKS. Will the Senator from Illinois allow me to ask him a question before he sits down?

Mr. TRUMBULL. Certainly.

Mr. HENDRICKS. I wish to know if, in his opinion, it is not a matter of pleasure on the part of the Government of the United States, and especially of Congress, whether the laws of the United States be extended over the Indians or not; if it is not a matter to be decided by Congress alone whether we treat with the Indians by treaty or govern them by direct law; in other words, whether Congress has not the power at its pleasure to extend the laws of the United States over the Indians and to govern them.

Mr. TRUMBULL. I suppose it would have the same power that it has to extend the laws of the United States over Mexico and govern her if in our discretion we thought proper to extend the laws of the United States over the republic of Mexico, or the empire of Mexico, if you please so to call it, and had sufficient physical power to enforce it. I suppose you may say in this case we have the power to do it, but it would be a violation of our treaty obligations, a violation of the faith of this nation, to extend our laws over these Indian tribes with whom we have made treaties saying we would not do it.

Mr. FESSENDEN. We could extend it over Mexico in the same way.

Mr. TRUMBULL. I say we could extend it over Mexico just as well; that is, if we have the power to do it. Congress might declare war, or, without declaring war, might extend its laws, or profess to extend them, over Mexico, and if we had the power we could enforce that declaration; but I think it would be a breach of good faith on our part to extend the laws of the United States over the Indian tribes with whom we have these treaty stipulations, and in which treaties we have agreed that we would not make them subject to the laws of the United States. There are numerous treaties of that kind.

Mr. VAN WINKLE. If the Senator will permit me, I wish to remind him of a citation from a decision of the Supreme Court that he himself made here, I think, when the veto of the civil rights bill was under discussion; and if I correctly understood it, as he read it, the Supreme Court decided that these untaxed Indians were subjects, and distinguished between subjects and citizens.

Mr. TRUMBULL. I think there are decisions that treat them as subjects in some respects. In some sense they are regarded as within the territorial boundaries of the United States, but I do not think they are subject to the jurisdiction of the United States in any legitimate sense; certainly not in the sense that the language is used here. The language seems to me to be better chosen than it was in the other bill. There is a difficulty about the words, "Indians not taxed." Perhaps one of the reasons why I think so is because of the persistency with which the Senator from Indiana himself insisted that the phrase "excluding Indians not taxed," the very words which the Senator from Wisconsin wishes to insert here, would exclude everybody that did not pay a tax; that that was the meaning of it; we must take it literally. The Senator from Maryland did not agree to that, nor did I; but if the Senator from Indiana was right, it would receive a construction which I am sure the Senator from Wisconsin would not be for; for if these Indians come within our limits and within our jurisdiction and are civilized, he would just as soon make a citizen of a poor Indian as of the rich Indian.

Mr. HENDRICKS. I expected the Senator from Illinois, being a very able lawyer, at the head of the Judiciary Committee, to meet the question that I asked him and to answer it as a question of law, and not as a question of military power. I did not ask him the question whether the Government of the United States had the military power to go into the Indian territory and subjugate the Indians to the political power of the country; nor had he a right to understand the question in that sense. I asked him the question whether, under the Constitution, under the powers of this Government, we may extend our laws over the Indians and compel obedience, as a matter of legal right, from the Indians. If the Indian is bound to obey the law he is subject to the jurisdiction of the country; and that is the question I desired the Senator to meet as a legal question, whether the Indian would be bound to obey the law which Congress in express terms extended over him in regard to questions within the jurisdiction of Congress.

Now, sir, this question has once or twice been decided by the Attorney General, so far as he could decide it. In 1855 he was inquired of whether the laws of the United States regulating the intercourse with the Indian tribes, by the general legislation in regard to Oregon,

had been extended to Oregon; and he gave it as his opinion that the laws had been extended to Oregon, and regulated the intercourse between the white people and the Indians there. Subsequently, the Attorney General was asked whether Indians were citizens of the United States in such sense as that they could become the owners of the public lands where the right to acquire them was limited to citizens; and in the course of that opinion he says that the Indian is not a citizen of the United States by virtue of his birth, but that he is a subject. He says:

"The simple truth is plain that the Indians are the subjects of the United States, and therefore are not, in mere right of home-birth, citizens of the United States. The two conditions are incompatible. The moment it comes to be seen that the Indians are domestic subjects of this Government, that moment it is clear to the perception that they are not the sovereign constituent ingredients of the Government. This distinction between citizens proper, that is, the constituent members of the political sovereignty, and subjects of that sovereignty, who are not therefore citizens, is recognized in the best authorities of public law."

He then cites some authorities. Again, he says:

"Not being citizens of the United States by mere birth, can they become so by naturalization? Undoubtedly.

"But they cannot become citizens by naturalization under existing general acts of Congress. (2 Kent's Commentaries, page 72.)

"Those acts apply only to foreigners, subjects of another allegiance. The Indians are not foreigners, and they are in our allegiance without being citizens of the United States."

Mr. JOHNSON. Whose opinion is that?

Mr. HENDRICKS. That is the opinion of Mr. Cushing, given on the 5th of July, 1856. I did not intend to discuss this question, but I will make one further reply to the Senator from Illinois. When the civil rights bill was under consideration I was of the opinion that the term "not taxed" meant not taxed; and when words are plain in the law I take them in their natural sense. When there is no ambiguity the law says there shall be no construction; and when you say a man is not taxed I presume it means that he is not taxed. I do not know any words that express the meaning more clearly than the words themselves, and therefore I cannot express the meaning in any more apt words than the words used by the Senator from Wisconsin, "Indians not taxed." When I said that that was making citizenship to rest upon property I recollect, or I think I do, the indignant terms in which the Senator from Illinois then replied, conveying the idea that it was a demagogical argument in this body to speak of a subject like that; and yet to-day he says to the Senator from Wisconsin that it is not a statesmanlike proposition. He makes the same point upon the Senator from Wisconsin which he undertook to make upon me on the civil rights bill.

If it is the pleasure of Congress to make the wild Indians of the desert citizens, and then if three fourths of the States agree to it, I presume we will get along the best way we can; and what shall then be the relations between these people and the United States will be for us and for our descendants to work out. They are not now citizens; they are subjects. For safety, as a matter of policy we regulate our intercourse with them to a large extent by treaties, so as that they shall assent to the regulations that govern them. That is a matter of policy, but we need not treat with an Indian. We can make him obey our laws, and being liable to such obedience he is subject to the jurisdiction of the United States. I did not intend to discuss this question, but I got into it by the inquiry I made of the Senator from Illinois.

Mr. HOWARD. I hope, sir, that this amendment will not be adopted. I regard the language of the section as sufficiently certain and definite. If amended according to the suggestion of the honorable Senator from Wisconsin it will read as follows:

All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States, and of the State wherein they reside.

Suppose we adopt the amendment as suggested by the honorable Senator from Wisconsin, in what condition will it leave us as to the Indian tribes wherever they are found? According to the ideas of the honorable Senator, as I understand them, this consequence would follow: all that would remain to be done on the part of any State would be to impose a tax upon the Indians, whether in their tribal condition or otherwise, in order to make them citizens of the United States. Does the honorable Senator from Wisconsin contemplate that? Does he propose to leave this amendment in such a condition that the State of Wisconsin, which he so ably represents here, will have the right to impose taxes upon the Indian tribes within her limits, and thus make of these Indians constituting the tribes, no matter how numerous, citizens of the United States and of the State of Wisconsin? That would be the direct effect of his amendment if it should be adopted. It would, in short, be a naturalization, whenever the States saw fit to impose a tax upon the Indians, of the whole Indian race within the limits of the States.

Mr. CLARK. The Senator will permit me to suggest a case. Suppose the State of Kansas, for instance, should tax her Indians for five years, they would be citizens.

Mr. HOWARD. Undoubtedly.

Mr. CLARK. But if she refuse to tax them for the next ten years how would they be then? Would they be citizens or not?

Mr. HOWARD. I take it for granted that when a man becomes a citizen of the United States under the Constitution he cannot cease to be a citizen, except by expatriation or the commission of some crime by which his citizenship shall be forfeited.

Mr. CLARK. If it depends upon taxation.

Mr. HOWARD. The continuance of the quality of citizenship would not, I think, depend upon the continuance of taxation.

Mr. CLARK. But still he would be an "Indian not taxed."

Mr. HOWARD. He has been taxed once.

Mr. CLARK. The point I wish to bring the Senator to is this: would not the admission of a provision of that kind make a sort of shifting use of the Indians?

Mr. HOWARD. It might, depending upon the construction which would happen to be given by the courts to the language of the Constitution. The great objection, therefore, to the amendment is, that it is an actual naturalization, whenever the State sees fit to enact a naturalization law in reference to the Indians in the shape of the imposition of a tax, of the whole Indian population within their limits. There is no evading this consequence, but still I cannot impute to the honorable Senator from Wisconsin a purpose like that. I think he has misapprehended the effect of the language which he suggests. I think the language as it stands is sufficiently certain and exact. It is that "all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

I concur entirely with the honorable Senator from Illinois, in holding that the word "jurisdiction," as here employed, ought to be construed so as to imply a full and complete jurisdiction on the part of the United States, coextensive in all respects with the constitutional power of the United States, whether exercised by Congress, by the executive, or by the judicial department; that is to say, the same jurisdiction in extent and quality as applies to every citizen of the United States now. Certainly, gentlemen cannot contend that an Indian belonging to a tribe, although born within the limits of a State, is subject to this full and complete jurisdiction. That question has long since been adjudicated, so far as the usage of the Government is concerned. The Government of the United States have always regarded and treated the Indian tribes within our limits as foreign Powers, so far as the treaty-making power is concerned, and so far especially as the commercial power is concerned, for in the very Constitution itself there is a provision that Congress shall have power to regulate commerce, not only with foreign nations and among the States, but also with the Indian tribes. That clause, in my judgment, presents a full and complete recognition of the national character of the Indian tribes, the same character in which they have been recognized ever since the discovery of the continent and its occupation by civilized men; the same light in which the Indians were viewed and treated by Great Britain from the earliest commencement of the settlement of the continent. They have always been regarded, even in our ante-revolutionary history, as being independent nations, with whom the other nations of the earth have held treaties, and in no case, I believe, has either the Government of Great Britain or of the United States recognized the right of an individual Indian to transfer or convey lands. Why? If he was a citizen, in other words, if he was not a subject of a foreign Power, if he did not belong to a tribe whose common law is that land as well as almost every other description of property shall be held in common among the members of the tribe, subject to a chief, why is it that the reservation has been imposed and always observed upon the act of conveyance on the part of the Indian?

A passage has been read from an opinion given by Mr. Attorney General Cushing on this subject, in which, it seems to me, he takes great liberties with the Constitution in speaking of the Indian as being a subject of the United States. Certainly I do not so hold; I cannot so hold, because it has been the habit of the Government from the beginning to treat with the Indian tribes as sovereign Powers. The Indians are our wards. Such is the language of the courts. They have a national independence. They have an absolute right to the occupancy of the soil upon which they reside; and the only ground of claim which the United States has ever put forth to the proprietorship of the soil of an Indian territory is simply the right of preëmption; that is, the right of the United States to be the first purchaser from the Indian tribes. We have always recognized in an Indian tribe the same sovereignty over the soil which it occupied as we recognize in a foreign nation of a power in itself over its national domains. They sell the lands to us by treaty, and they sell the lands as the sovereign Power owning, holding, and occupying the lands.

But it is useless, it seems to me, Mr. President, to enlarge further upon the question of the real political power of Indians or of Indian tribes. Our legislation has always recognized them as sovereign Powers. The Indian who is still connected by his tribal relation with the government of his tribe is subject for crimes committed against the laws or usages of the tribe to the tribe itself, and not to any foreign or other tribunal. I believe that has been the uniform course of decision on that subject. The United States courts have no power to punish an Indian who is connected with a tribe for a crime committed by him upon another member of the same tribe.

Mr. FESSENDEN. Within the territory.

Mr. HOWARD. Yes, sir. Why? Because the jurisdiction of the nation intervenes and ousts what would otherwise be perhaps a right of jurisdiction of the United States. But the great objection to the amendment to the amendment is that it is an unconscious attempt on the part of my friend from Wisconsin to naturalize all the Indians within the limits of the United States. I do not agree to that. I am not quite so liberal in my views. I am not yet prepared to pass a sweeping act of naturalization by which all the Indian savages, wild or tame, belonging to a tribal relation, are to become my fellow-citizens and go to the polls and vote with me and hold lands and deal in every other way that a citizen of the United States has a right to do.

Mr. DOOLITTLE. Mr. President, the Senator from Michigan declares his purpose to be

not to include these Indians within this constitutional amendment. In purpose I agree with him. I do not intend to include them. My purpose is to exclude them: and the question between us is whether his language includes them and mine excludes them, or whether his language excludes them and mine includes them. The Senator says, in the first place, if the words which are suggested by me, "Indians not taxed," are to govern, any State has it in its power to naturalize the Indian tribes within its limits and bring them in as citizens. Can a State tax them unless they are subject to the State? Certainly not. My friend from Michigan will not contend that an Indian can be taxed if he is not subject to the State or to the United States; and yet, if they are subject to the jurisdiction of the United States they are declared by the very language of his amendment to be citizens.

Now, sir, the words which I have used are borrowed from the Constitution as it stands—the Constitution adopted by our fathers. We have lived under it for seventy years; and these words, "Indians not taxed," are the very words which were used by our fathers in forming the Constitution as descriptive of a certain class of Indians which should not be enumerated as a part of our population, as distinguished from another class which should be enumerated as a part of our population; and these are words of description used by them under which we have acted for seventy years and more. They have come to have a meaning that is understood as descriptive of a certain class of Indians that may be enumerated within our population as a part of the citizens of the United States, to constitute a part of the basis of the political power of the United States, and others not included within it are to be excluded from that basis. The courts of the United States have had occasion to speak on this subject, and from time to time they have declared that the Indians are subjects of the United States, not citizens: and that is the very word in your amendment where they are "subject to the jurisdiction" of the United States. Why, sir, what does it mean when you say that a people are subject to the jurisdiction of the United States? Subject, first, to its military power; second, subject to its political power; third, subject to its legislative power; and who doubts our legislative power over the reservations upon which these Indians are settled? Speaking upon that subject, I have to say that one of the most distinguished men who ever sat in this body, certainly that have sat in this body since I have been a member of it, the late Senator from Vermont, Judge Collamer, time and again urged upon me, as a member of the Committee on Indian Affairs, to bring forward a scheme of legislation by which we should pass laws and subject all the Indians in all the Territories of the United States to the legislation of Congress direct. The Senator from Ohio not now in his seat [Mr. SHERMAN] has contended for the same thing, and other members of Congress contend that the very best policy of dealing with the Indian tribes is to subject them at once to our legislative power and jurisdiction. "Subjects of the United States!" Why, sir, they are completely our subjects, completely in our power. We hold them as our wards. They are living upon our bounty.

Mr. President, there is one thing that I doubt not Senators must have forgotten. In all those vast territories which we acquired from Mexico, we took the sovereignty and the jurisdiction of the soil and the country from Mexico, just as Mexico herself had held it, just as Spain had held it before the Mexican republic was established; and what was the power that was held by Spain and by Mexico over the Indian tribes? They did not recognize even the possessory title of an Indian in one foot of the jurisdiction of those territories. In reference to the Indians of California, we have never admitted that they had sufficient jurisdiction over any part of its soil to make a treaty with them. The Senate of the United States expressly refused to make treaties with the Indians of California, on the ground that they had no title and no jurisdiction whatever in the soil; they were absolutely subject to the authority of the United States, which we derived from our treaty with Mexico.

The opinion of Attorney General Cushing, one of the ablest men who has ever occupied the position of Attorney General, has been read here, in which he states clearly that the Indians, though born upon our soil, owing us allegiance, are not citizens; they are our subjects; and that is the very word which is used in this amendment proposed to the Constitution of the United States, declaring that if they be "subject" to our jurisdiction, born on our soil, they are, *ipso facto*, citizens of the United States.

Mr. President, the celebrated civil rights bill which has been passed during the present Congress, which was the forerunner of this constitutional amendment, and to give validity to which this constitutional amendment is brought forward, and which without this constitutional amendment to enforce it has no validity so far as this question is concerned, uses the following language:

"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."

Why should this language be criticised any more now, when it is brought forward here in this constitutional amendment, than when it was in the civil rights bill? Why should the language be more criticised here than it is in the second section of this constitutional amendment, where the same words are used? The second section, in apportioning representation, proposes to count the whole number of persons in each State, "excluding Indians not taxed." Why not insert those words in the first section as well as in the second? Why not insert them in this constitutional amendment as well as in the civil rights bill? The civil rights bill undertook to do this same thing. It undertook to declare 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." But, sir, the committee of fifteen, fearing that this declaration by Congress was without validity unless a constitutional amendment should be brought forward to enforce it, have thought proper to report this amendment.

Mr. FESSENDEN. I want to say to the honorable Senator, who has a great regard for truth, that he is drawing entirely upon his imagination. There is not one word of correctness in all that he is saying, not a particle, not a scintilla, not the beginning of truth.

Mr. DOOLITTLE. I take a little issue with my friend from Maine on that point as a question of fact.

Mr. FESSENDEN. In the first place, this was not brought forward by the committee of fifteen at all.

Mr. DOOLITTLE. This proposition was first introduced into the House by a gentleman from Ohio by the name of BINGHAM.

Mr. FESSENDEN. I thought the Senator was speaking of this first part of the section, the amendment, not the whole.

Mr. DOOLITTLE. No, sir; that is proposed by the Senator from Michigan. As I understand, a member from Ohio, Mr. BINGHAM, who in a very able speech in the House maintained that the civil rights bill was without any authority in the Constitution, brought forward a proposition in the House of Representatives to amend the Constitution so as to enable Congress to declare the civil rights of all persons, and that constitutional amendment, Mr. BINGHAM being himself one of the committee of fifteen, was referred by the House to that committee, and from the committee it has been reported. I say I have a right to infer that it was because Mr. BINGHAM and others of the House of Representatives and other persons upon the committee had doubts, at least, as to the constitutionality of the civil rights bill that this proposition to amend the Constitution now appears to give it validity and force. It is not an imputation upon any one.

Mr. GRIMES. It is an imputation upon every member who voted for the bill, the inference being legitimate and logical that they violated their oaths and knew they did so when they voted for the civil rights bill.

Mr. DOOLITTLE. The Senator goes too far. What I say is that they had doubts.

Mr. FESSENDEN. I will say to the Senator one thing: whatever may have been Mr. BINGHAM'S motives in bringing it forward, he brought it forward some time before the civil rights bill was considered at all and had it referred to the committee, and it was discussed in the committee long before the civil rights bill was passed. Then I will say to him further, that during all the discussion in the committee that I heard nothing was ever said about the civil rights bill in connection with that. It was placed on entirely different grounds.

Mr. DOOLITTLE. I will ask the Senator from Maine this question: if Congress, under the Constitution now has the power to declare 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," what is the necessity of amending the Constitution at all on this subject?

Mr. FESSENDEN. I do not choose that the Senator shall get off from the issue he presented. I meet him right there on the first issue. If he wants my opinion upon other questions, he can ask it afterward. He was saying that the committee of fifteen brought this proposition forward for a specific object.

Mr. DOOLITTLE. I said the committee of fifteen brought it forward because they had doubts as to the constitutional power of Congress to pass the civil rights bill.

Mr. FESSENDEN. Exactly; and I say, in reply, that if they had doubts, no such doubts were stated in the committee of fifteen, and the matter was not put on that ground at all. There was no question raised about the civil rights bill.

Mr. DOOLITTLE. Then I put the question to the Senator: if there are no doubts, why amend the Constitution on that subject?

Mr. FESSENDEN. That question the Senator may answer to suit himself. It has no reference to the civil rights bill.

Mr. DOOLITTLE. That does not meet the case at all If my friend maintains that at this moment the Constitution of the United States, without amendment, gives all the power you ask, why do you put this new amendment into it on that subject?

Mr. HOWARD. If the Senator from Wisconsin wishes an answer, I will give him one such as I am able to give.

Mr. DOOLITTLE. I was asking the Senator from Maine.

Mr. HOWARD. I was a member of the same committee, and the Senator's observations apply to me equally with the Senator from Maine. We desired to put this question of citizenship and the rights of citizens and freedmen under the civil rights bill beyond the legislative power of such gentlemen as the Senator from Wisconsin, who would pull the whole system up by the roots and destroy it, and expose the freedmen again to the oppressions of their old masters.

Mr. DOOLITTLE. The Senator has made his answer, I suppose.

Mr. HOWARD. Yes, sir.

Mr. DOOLITTLE. Mr. President, when the Senator undertakes to say that I have any disposition to subject the freedmen to the despotism of their old masters, he says that which there is not a particle of foundation or excuse for saying. I say to that Senator——

Mr. HOWARD. I beg the Senator to allow me one word. I made no personal imputation against the Senator from Wisconsin.

Mr. DOOLITTLE. I desire to finish my sentence before being interrupted.

Mr. HOWARD. I will not be forced by the Senator into a false position.

Mr. DOOLITTLE. I do not desire to be interrupted until I finish one sentence. I say to that Senator that so far as the rights of the freedmen are concerned, I am willing to compare my course of action in this body or elsewhere with his. I say to that Senator that I labored as hard as he has labored to secure the rights and liberties of the freedmen, to emancipate the slaves of the South, and to put an end forever not only to slavery, but to the aristocracy that was founded upon it; and I have never, by word or deed, said or done anything, as a member of this body or elsewhere, tending to build up any oppression against the freedmen, tending to destroy any of their rights. I say to that honorable Senator, and I am ready at any time to meet him in argument upon it although it is drawing me now from the question in dispute, that I myself prepared and introduced here and urged a bill whose provisions defended every right of the freedmen just as much as the bill to which we have now made reference, and I am prepared to do so and to defend their rights with the whole power of the Government.

But, sir, the Senator has drawn me off from the immediate question before the Senate. The immediate question is, whether the language which he uses, "all persons subject to the jurisdiction of the United States," includes these Indians. I maintain that it does; and, therefore, for the purpose of relieving it from any doubt, for the purpose of excluding this class of persons, as they are, in my judgment, utterly unfit to be citizens of the United States, I have proposed this amendment, which I borrow from the Constitution as it stands, which our fathers adopted more than seventy years ago, which I find also in the civil rights bill which passed this present Congress, and which I find also in the second section of this constitutional amendment when applied to the enumeration of the inhabitants of the States. I insist that it is just, proper in every way, but reasonable, that we exclude the wild Indians from being regarded or held as citizens of the United States.

Mr. WILLIAMS. I would not agree to this proposed constitutional amendment if I supposed it made Indians not taxed citizens of the United States. But I am satisfied that, giving to the amendment a fair and reasonable construction, it does not include Indians not taxed. The first and second sections of this proposed amendment are to be taken together, are to be construed together, and the meaning of the word "citizens," as employed in both sections, is to be determined from the manner in which that word is used in both of those sections. Section one provides that—

> All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

If there be any doubt about the meaning of that paragraph, I think that doubt is entirely removed by the second section, for by the second section of this constitutional amendment Indians not taxed are not counted at all in the basis of representation. The words in the second section are as follows:

> Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

They are not to be regarded as persons to be counted under any circumstances. Indians not taxed are not even entitled to be counted as persons in the basis of representation under any circumstances; and then the section provides—

> But whenever, in any State, the elective franchise shall be denied to any portion of its male inhabitants, being citizens of the United States, &c.

Now, can any reasonable man conclude that the word "citizens" there applies to Indians not taxed, or includes Indians not taxed, when they are expressly excluded from the basis of representation and cannot even be taken into the enumeration of persons upon whom representation is to be based? I think it is perfectly clear, when you put the first and second sections together, that Indians not taxed are excluded from the term "citizens;" because it cannot be supposed for one moment that the term "citizens," as employed in these two sections, is intended to apply to Indians who are not even counted under any circumstances as a part of the basis of representation. I therefore think that the amendment of the Senator from Wisconsin is clearly unnecessary. I do not believe that "Indians not taxed" are included, and I understand that to be a description of Indians who maintain their tribal relations and who are not in all respects subject to the jurisdiction of the United States.

In one sense, all persons born within the geographical limits of the United States are subject to the jurisdiction of the United States, but they are not subject to the jurisdiction of the United States in every sense. Take the child of an embassador. In one sense, that child born in the United States is subject to the jurisdiction of the United States, because if that child commits the crime of murder, or commits any other crime against the laws of the country, to a certain extent he is subject to the jurisdiction of the United States, but not in every respect; and so with these Indians. All persons living within a judicial district may be said, in one sense, to be subject to the jurisdiction of the court in that district, but they are not in every sense subject to the jurisdiction of the court until they are brought, by proper process, within the reach of the power of the court. I understand the words here, "subject to the jurisdiction of the United States," to mean fully and completely subject to the jurisdiction of the United States. If there was any doubt as to the meaning of those words, I think that doubt is entirely removed and explained by the words in the subsequent section; and believing that, in any court or by any intelligent person, these two sections would be construed not to include Indians not taxed, I do not think the amendment is necessary.

Mr. SAULSBURY. I do not presume that any one will pretend to disguise the fact that the object of this first section is simply to declare that negroes shall be citizens of the United States. There can be no other object in it, I presume, than a further extension of the legislative kindness and beneficence of Congress toward that class of people.

> "The poor Indian, whose untutored mind,
> Sees God in clouds, or hears him in the wind,"

was not thought of. I say this not meaning it to be any reflection upon the honorable committee who reported the amendment, because for all the gentlemen composing it I have a high respect personally; but that is evidently the object. I have no doubt myself of the correctness of the position, as a question of law, taken by the honorable Senator from Wisconsin; but, sir, I feel disposed to vote against his amendment, because if these negroes are to be made citizens of the United States, I can see no reason in justice or in right why the Indians should not be made citizens. If our citizens are to be increased in this wholesale manner, I cannot turn my back upon that persecuted race, among whom are many intelligent, educated men, and embrace as fellow-citizens the negro race. I therefore, as at present advised, for the reasons I have given, shall vote against the proposition of my friend from Wisconsin, although I believe, as a matter of law, that his statements are correct.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Wisconsin to the amendment proposed by the Senator from Michigan.

Mr. DOOLITTLE. I ask for the yeas and nays on that question.

The yeas and nays were ordered.

Mr. VAN WINKLE. I desire to have the amendment to the amendment read.

The Secretary read the amendment to the amendment, which was to insert after the word "thereof" in the amendment the words "excluding Indians not taxed;" so that the amendment, if amended, would read:

> All persons born in the United States, and subject to the jurisdiction thereof, excluding Indians not taxed, are citizens of the United States and of the State wherein they reside.

The question being taken by yeas and nays, resulted—yeas 10, nays 30; as follows:

YEAS—Messrs. Buckalew, Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Norton, and Riddle—10.

NAYS—Messrs. Anthony, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, and Wilson—30.

ABSENT—Messrs. Brown, Chandler, Dixon, Lane of Indiana, Nesmith, Saulsbury, Sprague, Wright, and Yates—9.

So the amendment to the amendment was rejected.

The PRESIDENT *pro tempore*. The question now is on the amendment of the Senator from Michigan.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The next amendment proposed by the Senator from Michigan [Mr. HOWARD] will be read.

The Secretary read the amendment, which was in section two, line twenty-two, after the word "male," to strike out the word "citizens" and insert "inhabitants, being citizens of the United States;" so as to make the section read:

> SEC. 2. Representatives shall be apportioned among the several States which may be included within the Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever, in any State, the elective franchise shall be denied to any portion of its male inhabitants, being citizens of the United States, not less than twenty-one years of age, or in any way abridged, except for participation in rebellion or other crime, the basis of representation in such State shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens not less than twenty-one years of age.

Mr. JOHNSON. Is it supposed that that amendment changes the section as it was before? It appears to me to be the same as it was before, because, although the word "inhabitants" is used, it is in connection with the other words that they are to be citizens of the United States. As it originally stood it read:

> But whenever, in any State, the elective franchise shall be denied to any portion of its male citizens.

Mr. FESSENDEN. The object is the same as in the amendment already made, to prevent a State from saying that although a person is a citizen of the United States he is not a citizen of the State.

Mr. HOWARD. The object is to make section two conform to section one, to make them harmonize.

Mr. JOHNSON. I am satisfied.

The amendment was agreed to.

Mr. SAULSBURY. Is it in order now to offer an amendment to the first section?

The PRESIDENT *pro tempore*. There are several more amendments before the Senate, offered by the Senator from Michigan, [Mr. HOWARD,] not yet acted upon. The next amendment offered by him will be read.

The Secretary read the amendment, which was to add at the end of section two the words "in such State."

The amendment was agreed to.

The next amendment was to insert as section three the following:

> SEC. 3. That no person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

Mr. HENDRICKS. I move to amend the amendment by inserting after the word "shall" in the thirty-seventh line the words "during the term of his office." I presume I understand

Several SENATORS. Now let us vote on all the other amendments together.

The PRESIDING OFFICER. If such be the pleasure of the Senate, the question will be taken collectively on all the other amendments.

Mr. JOHNSON. I hope not. I want a separate vote on the third section.

The PRESIDING OFFICER. That is the next section.

Mr. HENDRICKS. I do not understand this. Can this resolution be adopted by voting on sections separately?

Mr. FESSENDEN. No.

The PRESIDING OFFICER. The Senate is now concurring in amendments made as in Committee of the Whole.

Mr. SHERMAN. No amendment was made to the third section.

Mr. HENDRICKS. That is what I want to understand. I understand that there is no amendment from the Committee of the Whole to the third section.

Mr. FESSENDEN. Yes, we struck out the third section as reported and inserted a substitute for it.

The PRESIDING OFFICER. The question is on the amendment made as in Committee of the Whole to the third section.

Mr. JOHNSON. I ask for the yeas and nays on that.

The yeas and nays were ordered.

Mr. SHERMAN. The third section was the original section that came from the House disfranchising the southern people from voting. That has been stricken out.

Mr. HOWARD. The question is on concurring in the amendment we made to the third section.

Mr. SHERMAN. That was to strike out the third section which came from the House and insert another.

The question was taken by yeas and nays, with the following result:

YEAS—Messrs. Anthony, Chandler, Clark, Conness, Cowan, Cragin, Creswell, Davis, Doolittle, Edmunds, Fessenden, Foster, Grimes, Guthrie, Harris, Henderson, Hendricks, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, McDougall, Morgan, Morrill, Norton, Nye, Poland, Pomeroy, Ramsey, Saulsbury, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, and Yates—42.

NAY—Mr. Johnson—1.

ABSENT—Messrs. Brown, Buckalew, Dixon, Nesmith, Riddle, and Wright—6.

Mr. HENDRICKS, (before the result was announced.) I think the vote just taken is not correctly understood.

The PRESIDING OFFICER. No discussion is in order; the vote has not been announced.

Mr. HENDRICKS. I am not going into any discussion, but I have a right to ask of the Chair the precise question in time to let any gentleman change his vote if he desires to do so. The motion was not originally to strike out the third section as it came from the House and to insert another. They were separate motions. Then ought there not to be two votes upon this section now?

Mr. SHERMAN. I suppose any Senator can call for a division.

Mr. HENDRICKS. There is no need to call for a division because there were two distinct motions. There was first a motion to strike out and afterward a motion to insert something else. Now, the precise question before the Senate is whether the third section as it came from the House shall be stricken out, and then there will be another question not yet voted upon by the Senate, whether we shall insert the third section which was agreed to as in Committee of the Whole. That is the way it stands.

Several SENATORS. Oh, no.

Mr. JOHNSON. Mr. President——

Mr. CONNESS. I object to discussion at this time.

The PRESIDING OFFICER. The discussion is not in order; the vote has not been announced.

Mr. JOHNSON. I am not about to discuss the question. The Senator from California need not suppose that I propose to occupy the time of the Senate unnecessarily. I proposed to strike out the original third section as it came from the House.

Mr. CONNESS. I rise to a question of order. It is not in order to discuss a question after the call of the roll has been commenced.

The PRESIDING OFFICER. The result of the vote has not been announced, but the roll has been called.

Mr. JOHNSON. If I am not in order I will take my seat; but it is barely possible that the Senator from California may not be in order.

Mr. CONNESS. I am quite aware of that; but I believe I have a right to raise the question of order.

Mr. JOHNSON. I do not object to that.

Mr. CONNESS. Very well; then let the Chair decide.

The PRESIDING OFFICER. No discussion is in order until after the vote is announced; but, by common consent, Senators may be allowed to explain their own votes, but no extended remarks can be allowed.

Mr. CONNESS. There is no right to explain a vote.

Mr. JOHNSON. I moved to strike out the third section as it came from the other House. That motion was carried, and afterward what now appears upon the face of the resolution as the third section was proposed and adopted as a separate amendment. I voted just this moment to strike out what was adopted. The effect of that would have been to restore the original third section, perhaps, but I meant when that was done to move to strike out the third section so as to leave no such section.

The PRESIDING OFFICER. On this question——

Mr. HENDRICKS. What question?

The PRESIDING OFFICER. The question was on concurring in the amendment made as in Committee of the Whole, which was to strike out the third section and insert other words in lieu of it. The result of that vote is 42 in the affirmative and 1 in the negative. So the amendment is concurred in. The Secretary will read the next amendment.

The Secretary read the next amendment, which was to strike out the fourth and fifth sections, and to insert the following section in lieu of them:

SEC. —. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

The amendment was concurred in.

The amendments were ordered to be engrossed and the joint resolution to be read a third time. The joint resolution was read the third time.

The PRESIDING OFFICER. This joint resolution having been read three times, the question is on its passage.

Mr. JOHNSON. I ask for the yeas and nays.

Several SENATORS. The yeas and nays must be taken, of course.

The yeas and nays were ordered; and being taken, resulted—yeas 33, nays 11; as follows:

YEAS—Messrs. Anthony, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Lane of Kansas, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Trumbull, Wade, Willey, Williams, Wilson, and Yates—33.

NAYS—Messrs. Cowan, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Norton, Riddle, Saulsbury, and Van Winkle—11.

ABSENT—Messrs. Brown, Buckalew, Dixon, Nesmith, and Wright—5.

The PRESIDING OFFICER. The joint resolution is passed, having received the votes of two thirds of the Senate.

ADJOURNMENT TO MONDAY.

Mr. HARRIS. I move that when the Senate adjourn to-day, it be to meet on Monday next.

The motion was agreed to.

FORTIFICATION BILL.

Mr. MORGAN. I submit the following report from the committee of conference on the fortification bill, and I move that the Senate concur in the report:

The committee of conference on the disagreeing votes of the two Houses on the amendment to the bill (H. R. No. 255) making appropriations for the construction, preservation, and repairs of certain fortifications and other works of defense for the year ending June 30, 1867, having met, after full and free conference have agreed to recommend, and do recommend, to their respective Houses as follows:

That the House of Representatives recede from their disagreement to the amendment of the Senate to said bill and agree to the same.

E. D. MORGAN,
L. M. MORRILL,
W. SAULSBURY,
Managers on the part of the Senate.

H. J. RAYMOND,
W. E. NIBLACK,
S. PERHAM,
Managers on the part of the House.

The report was concurred in.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the Speaker of the House of Representatives had signed the following enrolled bills; which were thereupon signed by the President *pro tempore* of the Senate:

A bill (H. R. No. 15) authorizing documentary evidence of title to be furnished to the owners of certain lands in the city of St. Louis; and

A bill (H. R. No. 281) to amend the postal laws.

REPORT FROM A COMMITTEE.

Mr. HOWE, from the Committee on Claims, to whom was referred the petition of George W. Tarlton, praying for the restoration of his property confiscated under proceedings instituted in the United States district court for the northern district of New York, submitted a written report and asked to be discharged from the further consideration of the subject. The committee was discharged and the report was ordered to be printed.

Mr. HENDERSON. I move that the Senate adjourn.

The motion was agreed to; and the Senate adjourned.

HOUSE OF REPRESENTATIVES.

FRIDAY, *June* 8, 1866.

The House met at twelve o'clock m. Prayer by the Chaplain, Rev. C. B. BOYNTON.

The Journal of yesterday was read and approved.

MUTILATED NOTES OF NATIONAL BANKS.

Mr. HUBBARD, of West Virginia, by unanimous consent submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Banking and Currency be instructed to inquire into the expediency of providing by law, either by the establishment of a Bureau of Redemption in connection with the Treasury Department, or such other mode as may be deemed most advisable, for the redemption of the worn-out, mutilated, altered, or disfigured bank notes issued under the national currency act, so as to obviate the necessity of sending such notes to each particular bank of issue for redemption; and that the committee have leave to report by bill or otherwise.

Mr. HUBBARD, of West Virginia, moved to reconsider the vote by which the resolution was agreed to; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MONUMENT TO LIEUTENANT GENERAL SCOTT.

Mr. HALE, by unanimous consent, submitted the following resolution; which was read, considered, and agreed to:

Resolved, That the Committee on Military Affairs be instructed to inquire into the expediency of providing by law for the erection of a monument at West Point to the memory of Lieutenant General Winfield Scott, and to report by bill or otherwise.

both branches of it, yet as we were compelled to unite on some measure—and we must all yield some of our opinions upon various questions involved—there are five sections in this proposed article—I feel bound to vote against this amendment offered by the Senator from Wisconsin, though in my judgment it would do more than any other to heal the difficulties by which we are surrounded."

There is an open confession that he is about to vote against an amendment which he entertains no doubt would do more to heal our difficulties than anything else!

Now, sir, no man can excuse himself for a thing of that kind; and while I admire the honesty of his confession, that he is doing it for party and political purposes, yet I utterly detest the odious principle that he avows for mere party purposes.

I ask the attention of the House to an extract from another speech, and, mark you, I am not now offering you "copperhead" testimony. The extract is from a speech made by one of your great northern lights, the celebrated Wendell Phillips. I ask the Clerk to read it.

The Clerk read as follows:

"Mr. Phillips hoped the Senate's amendment of the reconstruction plan would meet with an ignominious defeat, and that Massachusetts would reject it. He would welcome every Democrat and copperhead vote to help its defeat. He would go a step further and said, *I hope that the Republican party, if it goes to the polls next fall on this basis, will be defeated.* If this is the only thing that the party has to offer, it deserves defeat. The Republican party to-day seeks only to save its life. God grant that it may lose it!"

* * * * * * *

"The Republicans go to the people in deceit and hypocrisy, with their faces masked and their convictions hid; I hope to God they will be defeated! I want another serenade, not only to uncover the hidden sentiments of a Cabinet, but to smoke out the United States Senate, that we may see how many of them range by the side of Sumner, Ben. Wade, Judge Kelley, and Thad. Stevens."

Mr. HARDING, of Kentucky. Ay, sir, some of the men named there have since given way and fallen, and are no longer on Phillips's loyal list. As I said, sir, I am not reading southern testimony, or the testimony of copperheads; but from this great northern light, the man who has done more for the Republican party than any other man in the country. He was raised among them; he has affiliated with them; and he cannot be deceived as to their purposes. He charges that this Republican party is going before the country wearing a mask of hypocrisy, with its visage masked, and that its object is not to amend the Constitution, but, as Senator SHERMAN says, to save the life of the Republican party; and he says, "God grant they may lose it!" Now, sir, I cannot call in question such authority as this. He must know what he is talking about, and I have had read to you what he says.

[Here the hammer fell.]

Mr. STEVENS. I now, sir, move the previous question.

The previous question was seconded and the main question ordered.

ENROLLED BILL AND RESOLUTION SIGNED.

Mr. TROWBRIDGE, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled an act (S. No. 328) for the relief of Mrs. Abigail Ryan, and joint resolution (S. R. No. 51) respecting bounties to colored soldiers, and the pensions, bounties, and allowances to their heirs; when the Speaker signed the same.

RECONSTRUCTION—AGAIN.

Mr. STEVENS. Mr. Speaker, I do not intend to detain the House long. A few words will suffice.

We may, perhaps, congratulate the House and the country on the near approach to completion of a proposition to be submitted to the people for the admission of an outlawed community into the privileges and advantages of a civilized and free Government.

When I say that we should rejoice at such completion, I do not thereby intend so much to express joy at the superior excellence of the scheme, as that there is to be a scheme—a scheme containing much positive good, as well, I am bound to admit, as the omission of many better things.

In my youth, in my manhood, in my old age, I had fondly dreamed that when any fortunate chance should have broken up for awhile the foundation of our institutions, and released us from obligations the most tyrannical that ever man imposed in the name of freedom, that the intelligent, pure and just men of this Republic, true to their professions and their consciences, would have so remodeled all our institutions as to have freed them from every vestige of human oppression, of inequality of rights, of the recognized degradation of the poor, and the superior caste of the rich. In short, that no distinction would be tolerated in this purified Republic but what arose from merit and conduct. This bright dream has vanished "like the baseless fabric of a vision." I find that we shall be obliged to be content with patching up the worst portions of the ancient edifice, and leaving it, in many of its parts, to be swept through by the tempests, the frosts, and the storms of despotism.

Do you inquire why, holding these views and possessing some will of my own, I accept so imperfect a proposition? I answer, because I live among men and not among angels; among men as intelligent, as determined, and as independent as myself, who, not agreeing with me, do not choose to yield their opinions to mine. Mutual concession, therefore, is our only resort, or mutual hostilities.

We might well have been justified in making renewed and more strenuous efforts for a better plan could we have had the cooperation of the Executive. With his cordial assistance the rebel States might have been made model republics, and this nation an empire of universal freedom. But he preferred "restoration" to "reconstruction." He chooses that the slave States should remain as nearly as possible in their ancient condition, with such small modifications as he and his prime minister should suggest, without any impertinent interference from Congress. He anticipated the legitimate action of the national Legislature, and by rank usurpation erected governments in the conquered provinces; imposed upon them institutions in the most arbitrary and unconstitutional manner; and now maintains them as legitimate governments, and insolently demands that they shall be represented in Congress on equal terms with loyal and regular States.

To repress this tyranny and at the same time to do some justice to conquered rebels requires caution. The great danger is that the seceders may soon overwhelm the loyal men in Congress. The haste urged upon us by some loyal but impetuous men; their anxiety to embrace the representatives of rebels; their ambition to display their dexterity in the use of the broad mantle of charity; and especially the danger arising from the unscrupulous use of patronage and from the oily orations of false prophets, famous for sixty-day obligations and for protested political promises, admonish us to make no further delay.

A few words will suffice to explain the changes made by the Senate in the proposition which we sent them.

The first section is altered by defining who are citizens of the United States and of the States. This is an excellent amendment, long needed to settle conflicting decisions between the several States and the United States. It declares this great privilege to belong to every person born or naturalized in the United States.

The second section has received but slight alteration. I wish it had received more. It contains much less power than I could wish; it has not half the vigor of the amendment which was lost in the Senate. It or the proposition offered by Senator WADE would have worked the enfranchisement of the colored man in half the time.

The third section has been wholly changed by substituting the ineligibility of certain high offenders for the disfranchisement of all rebels until 1870.

This I cannot look upon as an improvement. It opens the elective franchise to such as the States choose to admit. In my judgment it endangers the Government of the country, both State and national: and may give the next Congress and President to the reconstructed rebels. With their enlarged basis of representation, and exclusion of the loyal men of color from the ballot-box, I see no hope of safety unless in the prescription of proper enabling acts, which shall do justice to the freedmen and enjoin enfranchisement as a condition-precedent.

The fourth section, which renders inviolable the public debt and repudiates the rebel debt, will secure the approbation of all but traitors.

The fifth section is unaltered.

You perceive that while I see much good in the proposition I do not pretend to be satisfied with it. And yet I am anxious for its speedy adoption, for I dread delay. The danger is that before any constitutional guards shall have been adopted Congress will be flooded by rebels and rebel sympathizers. Whoever has mingled much in deliberative bodies must have observed the mental as well as physical nervousness of many members, impelling them too often to injudicious action. Whoever has watched the feelings of this House during the tedious months of this session, listened to the impatient whispering of some and the open declarations of others; especially when able and sincere men propose to gratify personal predilections by breaking the ranks of the Union forces and presenting to the enemy a ragged front of stragglers, must be anxious to hasten the result and prevent the demoralization of our friends. Hence, I say, let us no longer delay; take what we can get now, and hope for better things in further legislation; in enabling acts or other provisions.

I now, sir, ask for the question.

The SPEAKER The question before the House is on concurring in the amendments of the Senate; and as it requires by the Constitution a two-thirds vote, the vote will be taken by yeas and nays.

Mr. DEFREES. I ask the consent of the House to print some remarks upon this question, which I have not had an opportunity of delivering.

No objection was made, and leave was granted. [The speech will be found in the Appendix.]

Mr. WRIGHT. I ask the same privilege.

No objection was made, and leave was granted. [The speech will be found in the Appendix.]

The joint resolution as amended by the Senate is as follows:

Joint resolution proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE —.

SEC. 1. 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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution

of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The question was put on concurring with the amendments of the Senate; and there were—yeas 120, nays 32, not voting 32; as follows:

YEAS—Messrs. Alley, Allison, Ames, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Bidwell, Bingham, Blaine, Boutwell, Bromwell, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Dodge, Donnelly, Driggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Hale, Abner C. Harding, Hart, Hayes, Henderson, Higby, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Jenckes, Julian, Kelley, Kelso, Ketcham, Kuykendall, Laflin, Latham, George V. Lawrence, Loan, Longyear, Lynch, Marvin, McClurg, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Perham, Phelps, Pike, Plants, Pomeroy, Price, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Smith, Spalding, Stevens, Stilwell, Thayer, Francis Thomas, John L. Thomas, Trowbridge, Upson, Van Aernam, Robert T. Van Horn, Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, and the Speaker—120.

NAYS—Messrs. Ancona, Bergen, Boyer, Chanler, Coffroth, Dawson, Denison, Eldridge, Finck, Glossbrenner, Grider, Aaron Harding, Hogan, Edwin N. Hubbell, James M. Humphrey, Kerr, Le Blond, Marshall, Niblack, Nicholson, Samuel J. Randall, Ritter, Rogers, Ross, Sitgreaves, Strouse, Taber, Taylor, Thornton, Trimble, Winfield, and Wright—32.

NOT VOTING—Messrs. Anderson, Benjamin, Blow, Brandegee, Broomall, Culver, Deming, Dixon, Goodyear, Harris, Hill, Demas Hubbard, Hulburd, James Humphrey, Ingersoll, Johnson, Jones, Kasson, William Lawrence, Marston, McCullough, McIndoe, Noell, Patterson, Radford, Rollins, Rousseau, Shanklin, Starr, Burt Van Horn, Elihu B. Washburne, and Woodbridge—32.

The SPEAKER. Two thirds of both Houses having concurred in the joint resolution (H. R. No. 127) proposing an amendment to the Constitution of the United States, the joint resolution has passed.

During the roll-call on the foregoing vote,

Mr. KELLEY said: I desire to announce that Mr. BROOMALL, and Mr. WASHBURNE of Illinois, are paired with Mr. SHANKLIN upon this question.

Mr. LAFLIN said: I wish to announce that my colleague, Mr. VAN HORN, is paired upon this question with Mr. GOODYEAR.

Mr. ANCONA said: My colleague, Mr. JOHNSON, is absent on account of sickness, and is paired upon this question with Mr. ROLLINS and Mr. MARSTON, of New Hampshire.

Mr. DARLING said: I desire to state that my colleague, Mr. JAMES HUMPHREY, is detained at home by sickness. If present he would have voted in the affirmative.

Mr. WINFIELD said: My colleague, Mr. RADFORD, is unavoidably detained from his seat. If here he would have voted against the Senate amendment.

Mr. ASHLEY, of Ohio, said: My colleague, Mr. LAWRENCE, has been called home in consequence of the death of his father. If present he would have voted "ay."

Mr. COBB said: Mr. MCINDOE is detained from his seat by illness. If here he would vote in the affirmative.

Mr. MOULTON said: My colleague, Mr. INGERSOLL, has gone home under leave of absence from the House.

Mr. HART said: Mr. HUBBARD, of New York, is absent on account of death in his family. If he had been here he would have voted "ay."

Mr. WASHBURN, of Indiana, said: My colleague Mr. HILL, is absent by leave of the House. If here he would have voted in the affirmative.

Mr. ELDRIDGE. I desire to state that if Messrs. Brooks and Voorhees had not been expelled, they would have voted against this proposition. [Great laughter.]

Mr. SCHENCK. And I desire to say that if Jeff. Davis were here, he would probably also have voted the same way. [Renewed laughter.]

Mr. WENTWORTH. And so would Jake Thompson.

The result of the vote having been announced as above recorded,

Mr. STEVENS moved to reconsider the vote by which the amendments of the Senate were concurred in; and also moved to lay the motion to reconsider on the table.

The latter motion was agreed to.

The SPEAKER. The House is now engaged in executing the order of the House to proceed to business upon the Speaker's table.

RIVER AND HARBOR BILL.

The next business upon the Speaker's table was the amendments of the Senate to House bill No. 492, making appropriations for the repair, preservation, and completion of certain public works heretofore commenced under authority of law, and for other purposes.

Mr. ELIOT. I move that the House nonconcur in the amendments of the Senate, and ask for a committee of conference on the disagreeing votes of the two Houses.

The motion was agreed to.

Mr. ELIOT moved to reconsider the vote just taken; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

STEAMBOAT INSPECTION LAW.

The next business upon the Speaker's table was the amendments of the Senate to House bill No. 477, further to provide for the safety of the lives of passengers on board of vessels propelled in whole or in part by steam, to regulate the salaries of steamboat inspectors, and for other purposes.

Mr. ELIOT. I move that the bill and amendments be referred to the Committee on Commerce.

The motion was agreed to.

EXAMINERS OF PATENTS.

The next business upon the Speaker's table was Senate bill No. 350, to authorize the Commissioner of Patents to pay those employed as examiners and assistant examiners the salary fixed by law for the duties performed by them; which was read a first and second time.

Mr. JENCKES. I ask that this bill be put upon its passage now.

Mr. RANDALL, of Pennsylvania. Let the bill be read. I want to know what it is.

The bill was read at length. It authorizes the Commissioner of Patents to pay those employed in the Patent Office from April 1, 1861, until August 1, 1865, as examiners and assistant examiners of patents, at the rate fixed by law for those respective grades, provided that the same be paid out of the Patent Office fund, the compensation thus to be paid not to exceed that paid to those duly enrolled as examiners and assistant examiners for the same period.

Mr. JENCKES. This matter has been considered by the House Committee on Patents, who have recommended it once during the last Congress and once during the present Congress. I call the previous question upon the passage of the bill.

Mr. HARDING, of Illinois. I move that the bill be laid upon the table.

Mr. RANDALL, of Pennsylvania. I suggest that this bill better be referred to the Committee on Patents.

Mr. FARNSWORTH. I understand that the Committee on Patents of this House have examined this bill and decided to report unanimously in its favor.

Mr. ROSS. Is a motion to refer the bill now in order?

The SPEAKER. That motion is not now in order, pending the motion to lay upon the table and the demand for the previous question.

Mr. STEVENS. I move that the House adjourn.

The SPEAKER. Will the gentleman from Pennsylvania [Mr. STEVENS] withdraw the motion to allow the Chair to lay before the House several executive communications?

Mr. STEVENS. I will withdraw the motion for that purpose.

DIRECT TAXES IN GEORGIA.

The SPEAKER laid before the House the following message from the President of the United States:

To the Senate and House of Representatives:

I communicate, and invite the attention of Congress to, a copy of joint resolutions of the Senate and House of Representatives of the State of Georgia, requesting the suspension of the collection of the internal revenue tax due from that State pursuant to an act of Congress of 5th of August, 1861.

ANDREW JOHNSON.

WASHINGTON, D. C., *June* 11, 1866.

The message, with accompanying documents, was referred to the Committee of Ways and Means and ordered to be printed.

AGRICULTURAL COLLEGE—GEORGIA.

The SPEAKER also laid before the House the following message from the President of the United States:

To the Senate and House of Representatives:

It is proper that I should inform Congress that a copy of an act of the Legislature of Georgia of the 10th of March last has been officially communicated to me, by which that State accepts the donation of land for the benefit of colleges for agriculture and the mechanic arts, which donation was provided for by the acts of Congress of 2d July and 14th April, 1864.

ANDREW JOHNSON.

WASHINGTON, D. C., *June* 11, 1866.

The message was laid upon the table and ordered to be printed.

DRAFT IN PENNSYLVANIA.

The SPEAKER also laid before the House a communication from the Secretary of War, in answer to a resolution of the House of Representatives of the 11th instant, in regard to the draft in the eighth congressional district of Pennsylvania.

Mr. ANCONA. I move that this communication be printed and referred to the Committee on Military Affairs.

The motion was agreed to.

BRITISH AMERICAN TRADE.

The SPEAKER also laid before the House a communication from the Secretary of the Treasury in answer to a resolution of the House of Representatives of March 28, 1866, calling for information in regard to commercial relations with British America.

The question was upon ordering the communication to be printed.

Mr. DAVIS. Can an objection be made at this time to the printing of this communication?

The SPEAKER. It is customary to order the printing of all executive communications without putting the question to the House, unless objections be made to the printing.

Mr. DAVIS. I object to the printing of this communication.

The SPEAKER. Objection being made, the question of printing will be submitted to the House.

Mr. DAVIS. Before the question is taken I desire to say a single word upon it. If I understand this communication——

Mr. WENTWORTH. What is the question before the House?

The SPEAKER. It is whether the communication from the Secretary of the Treasury in regard to commercial relations with British America shall be printed.

Mr. WENTWORTH. Before that question is voted upon, or even debated, I insist that the communication shall be read. I object to one

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

O. DOE, *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No. 1:25-cv-10135-LTS
STATE OF NEW JERSEY, *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No. 1:25-cv-10139-LTS

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY INJUNCTION

Pursuant to the Court's January 24, 2025 Order (ECF No. 71, *New Jersey, et al v. Donald J. Trump, et al,*, No. 1:25-cv-10139-LTS), Defendants submit this consolidated memorandum in opposition to the motions for preliminary injunction filed in the two above-referenced cases.

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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 one case, a group of states and other governmental entities, and in the other, an individual and two membership organizations—filed suit within hours of the EO's issuance. But their dramatic assertions about the supposed illegality of the EO cannot substitute for a showing that Plaintiffs are entitled to extraordinary emergency relief. And as to each factor of that analysis, 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. Indeed, 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—they cannot proceed under the Administrative Procedure Act (APA), nor can they bring these suits under the Citizenship Clause or the Immigration and Nationality Act (INA).

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 (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 render the Civil Rights Act of 1866 (which defined citizenship to cover

those born in the United States, not "subject to any foreign power") unconstitutional just two years after it was passed. But the Citizenship Clause was an effort to *constitutionalize* the Civil Rights Act. Plaintiffs also rely heavily on the Supreme Court's decision in *United States 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, 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 in both cases.

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* at 8-11 (2019).

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

> (1) when that person's mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States at the time of said person's birth was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father was not a United States citizen or lawful permanent resident at the time of said person's birth.

Citizenship EO § 1.

Section 2(a) of the EO directs the Executive Branch (1) not to issue documents recognizing U.S. citizenship to persons born in the United States under the conditions described in section 1, and (2) not to accept documents issued by state, local, or other governments purporting to recognize the U.S. citizenship of such persons. The EO specifies, however, that those directives "apply only to persons who are born within the United States after 30 days from the date of this order," or February 19. Citizenship EO § 2(b). The Citizenship EO makes clear that its provisions do not "affect the entitlement of other individuals, including children of lawful permanent residents, to obtain documentation of their United States citizenship." *Id*. § 2(c).

As for enforcement, the EO directs the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security to take "all appropriate

measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order," and not to "act, or forbear from acting, in any manner inconsistent with this order." *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

On January 20, 2025, the same day the EO issued, Lawyers for Civil Rights initiated a lawsuit on behalf of one individual (O. Doe, an expectant mother with Temporary Protected Status) and two membership organizations (the Brazilian Worker Center and La Colaborativa) (the private plaintiffs or *Doe* plaintiffs). *See* Compl. ¶¶ 13-15, *Doe, et al. v. Trump, et al.*, No. 1:25-cv-10135 ("*Doe*"), ECF No. 1. Both organizations allege that they have "numerous" members who "are undocumented or in the United States on temporary statuses and who are either pregnant or plan to grow their families in the future." *Id*. ¶¶ 14-15. The complaint asserts claims under the Citizenship Clause (Count I), the Equal Protection Clause (Count II), and the INA (Count III). It also asserts an APA claim challenging "arbitrary and capricious" agency actions (Count IV) and a claim pursuant to the Declaratory Judgment Act (Count V). The *Doe* plaintiffs moved for a preliminary injunction on January 23, *see* Mem. in Supp. of Pls.' Mot. for Prelim. Inj., *Doe* ECF No. 11 ("*Doe* Mem."), which is expressly limited to "their claims under the Citizenship Clause, 8 U.S.C. § 1401, and the APA" (Counts I, III, and IV). *Id*. at 2 n.2.

On January 21, 2025, 18 states (plus the District of Columbia and the City and County of San Francisco) (the state plaintiffs or the states), also filed suit against the EO. *See* Compl., *New*

Jersey, et al. v. Trump, et al., No. 1:25-cv-10139, ECF No. 1.[1] Claiming harm to "their residents," *id*. ¶ 4, 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), the separation of powers (Count 2), the INA (Count 3), and the APA, to the extent the EO "directs federal agencies . . . to take actions that are contrary to the constitution and federal statutes," *id*. (Count 4, ¶ 16). The states moved for a preliminary injunction the same day. *See* Mem. in Supp. of Pls.' Mot. for Prelim. Inj., *New Jersey* ECF No. 5 ("*New Jersey* Mem."). On January 24, the Court entered an order relating the *Doe* and *New Jersey* cases, setting a hearing for both cases on February 7, and authorizing Defendants to file this consolidated brief opposing both motions. *New Jersey* ECF No. 71.

STANDARD OF REVIEW

A preliminary injunction is "an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted). "A plaintiff seeking a preliminary injunction must establish 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 the injunction is in the public interest." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).

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

ARGUMENT

I. The State Plaintiffs Lack Standing.

The state plaintiffs' preliminary injunction 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 second, the state plaintiffs 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 "proprietary harms" and "fiscal injuries." *New Jersey* Mem. at 8. Those harms—which boil down to the contention that states will have to "assume a greater fiscal responsibility for providing critical services and assistance" to residents who are classified as aliens under the EO, *id*. at 4—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 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 (or municipality) 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 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.").

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 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), *New Jersey* Mem. at 6, 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 are also not traceable to the Citizenship EO. Nothing

in the EO requires the states to provide "low-cost health insurance," "certain educational services," or "child welfare services," *New Jersey* Mem. at 4, to aliens. Nor have the states identified any other source of federal law that compels them to provide the referenced services—indeed, as they recognize, federal law makes clear that if states choose to offer otherwise reimbursable services and benefits to individuals who are not citizens, the federal government will not provide reimbursement. *See, e.g.*, *id*. Because the states have *voluntarily* chosen to provide such benefits, 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) ("The injuries to the plaintiffs' fiscs were self-inflicted, resulting from decisions by their respective state legislatures. . . . No State can be heard to complain about damage inflicted by its own hand.").

The state plaintiffs likewise cannot rely on "administrative and operational burdens" that they claim will result from the Citizenship EO, *New Jersey* Mem. at 7, which does not require states to change their systems or impose any penalty for failing to do so. Thus, 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).

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 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)). The same principles apply to entities like San Francisco, which "derive their existence from the state and function as political subdivisions of the state." *Town of Milton v. FAA*, 87 F.4th 91, 96 (1st Cir. 2023) (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 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. Neither the states, nor the City and County of San Francisco, which is "organized and existing under and by virtue of the law of the State of California," *New Jersey* Compl. ¶ 66, "ha[ve] [any] [citizenship] rights of their own," and given established "limits on *parens patriae* standing," they also may not "assert [Citizenship Clause] 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. Plaintiffs cannot proceed under the APA because they fail to identify any final agency action and because the INA provides an adequate remedy. And Plaintiffs cannot assert the claims at issue in this lawsuit directly under the Citizenship Clause or the INA.

A. Plaintiffs' APA Claims Fail.

Both sets of Plaintiffs purport to assert APA challenges to agency action implementing the EO. But the 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 even 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 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).[2] 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

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

section 1503(a) 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); *Abuhajeb v. Pompeo*, 531 F. Supp. 3d 447, 455 (D. Mass. 2021); *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. 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"[3] 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 or organizations 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

[3] As discussed above, Plaintiffs assert 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 Plaintiffs have failed to assert a proper APA claim based on the defects described above.

(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 an individual like Ms. Doe, 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 Ms. Doe to file a facial challenge seeking to permanently enjoin enforcement of an executive order nationwide before any right has been denied to her. *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.[4]

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

[4] The *Doe* plaintiffs recognize that their statutory claim rises and falls with their constitutional claim, *see Doe* Mem. at 10, and while the states contend that the Citizenship EO "independently violate[s]" the INA, *New Jersey* Mem. at 14, they do not meaningfully explain how the two are distinct—nor do they identify any legal authority suggesting any intentional delta between the two sources of law. Rather, in using the exact text of the Citizenship Clause in the INA, Congress imported its exact scope. Because the two provisions are coterminous, Defendants focus here on the constitutional provision.

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 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 foreign parents whose presence is either unlawful or lawful but temporary.

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

"Jurisdiction . . . is a word of many, too many, meanings." *Wilkins v. United States*, 598 U.S. 152, 156 (2023) (citation omitted). Plaintiffs equate "jurisdiction" with something akin to regulatory power, arguing that anyone "to whom United States law applies" is subject to the jurisdiction of the United States. *Doe* Mem. at 7; *see also New Jersey* Mem. at 9-10. 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, Plaintiffs' understanding of the term "jurisdiction" conflicts with Supreme Court precedents identifying the categories of persons who are not subject to the United States' jurisdiction within the meaning of the Citizenship Clause. For example, the Supreme Court has held that children of members of Indian tribes, "owing immediate allegiance" to those tribes, do not acquire citizenship by birth in the United States. *Elk*, 112 U.S. at 102; *see Wong Kim Ark*, 169 U.S. at 680-82. Yet members of Indian tribes and their children are plainly subject to the United States' regulatory power. "It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations." *Winton v. Amos*, 255 U.S. 373, 391 (1921); *see*

[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, 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).

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

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

2. Instead of equating "jurisdiction" with regulatory authority, the Supreme Court has held that a person is "subject to the jurisdiction" of the United States under the Citizenship Clause

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

That reading of the Citizenship Clause reflects its statutory background. Months before Congress proposed the Fourteenth Amendment, it enacted the Civil Rights Act of 1866. That Act served as "the initial blueprint" for the Amendment, *Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 389 (1982), and the Amendment in turn "provide[d] a constitutional basis for protecting the rights set out" in the Act, *McDonald v. City of Chicago*, 561 U.S. 742, 775 (2010). The Act stated, as relevant here, that "all persons born in the United States and *not subject to any foreign power*, excluding Indians not taxed, are hereby declared to be citizens of the United States." Civil Rights Act § 1, 14 Stat. 27 (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. Similarly, during debates on the Amendment, Senator Trumbull explained: "What do we mean by 'subject to the jurisdiction of the United States?' Not owing allegiance to anybody else. That is what it means. . . . It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government that he is 'subject to the jurisdiction of the United States.'" *Id.* at 2893. Trumbull went on to equate "being subject to our jurisdiction" with "owing allegiance solely to the United States." *Id.* at 2894. And Senator Reverdy Johnson agreed that "all that this amendment provides is, that all persons born in the United States and not subject to some foreign Power . . . shall be considered as citizens." *Id.* at 2893.

The full text of the Citizenship Clause reinforces that reading of the Clause's jurisdictional element. The Clause provides that persons born in the United States and subject to its jurisdiction "are citizens of the United States and of the State 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'" (citations omitted) (emphasis added)). The Clause thus confirms that citizenship flows from lawful domicile.

Finally, as a decisive cross-check, the government's reading, unlike Plaintiffs' interpretation, is the only one that fully explains the Supreme Court's precedents on citizenship by birth in the United States. It was "never doubted" that "children born of citizen parents" owe allegiance to the United States and are subject to its jurisdiction. *Minor v. Happersett*, 88 U.S. 162, 167 (1874). In *Wong Kim Ark*, the Court held that a child born in the United States "of parents of Chinese descent, who at the time of his birth [were] subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity" by China are likewise subject to the jurisdiction of the United States. 169 U.S. at 653. The Court explained that "[e]very citizen or subject of another country, while domiciled here, is within the allegiance . . . of the United States." *Id*. at 693. By contrast, children of diplomats, children of certain alien enemies, and children born on foreign public ships are not subject to the jurisdiction of the United States because they all owe allegiance to foreign sovereigns under background principles of common law. *See id.* at 655. And the Court has held that certain children of members of Indian tribes are not subject to U.S. jurisdiction in the necessary sense because they "owe[] immediate allegiance to their several tribes." *Elk*, 112 U.S. at 99.

B. Children Born of Unlawfully Present Aliens or Lawful But 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*, 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) ("Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of their parents.").

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

requires. *Elk*, 112 U.S. at 101-02.

Indeed, the Citizenship EO follows directly from Supreme Court precedent recognizing that distinction, and the established exception to birthright citizenship for certain "children of members of the Indian tribes." *Wong Kim Ark*, 169 U.S. at 682. Indian tribes form "an intermediate category between foreign and domestic states." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 396 n.7 (2023) (citation omitted). The Supreme Court long ago determined that Indian tribes are not "foreign nations," instead describing them as "domestic dependent nations." *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (Marshall, C.J.). Yet the Court has held that "an Indian, born a member of one of the Indian tribes," has no constitutional birthright to U.S. citizenship given his "immediate allegiance" to his tribe. *Elk*, 112 U.S. at 99, 101-02; *see Wong Kim Ark*, 169 U.S. at 680-682.

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

2. The Fourteenth Amendment's historical background provides additional support for the conclusion that, while children born here of U.S. citizens and permanent residents are entitled to U.S. citizenship by birth, children born of parents whose presence is either unlawful or lawful but temporary 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* 2 James Kent, *Commentaries on American Law* 42 (6th ed. 1848) ("To create [citizenship] by birth, the party must be born, not only within the territory, but within the ligeance of the government"). 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. Such persons would instead owe allegiance to their parents' home countries, in accord with the principle that "children follow the condition of their fathers." *Id.* § 215, at 102.

Justice Story also understood that birthright citizenship required more than mere physical presence. He explained in a judicial opinion later quoted in *Wong Kim Ark* that "children of even aliens born in a country, *while the parents are resident there*," "are subjects by birth." *Inglis v.*

Trs. of Sailor's Snug Harbor, 28 U.S. (3 Pet.) 99, 164 (1830) (emphasis added) (quoted in *Wong Kim Ark*, 169 U.S. at 660). He also wrote in a treatise:

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

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

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

When Congress was considering the Civil Rights Act, Senator Trumbull, "who wrote [the Act's] citizenship language and managed the Act in the Senate, wrote a letter to President Andrew Johnson summarizing the bill." Mark Shawhan, Comment, *The Significance of Domicile in Lyman Trumbull's Conception of Citizenship*, 119 Yale L. J. 1351, 1352 (2010) (footnotes omitted). The Act, as noted above, provided that "all persons born in the United States and *not subject to any foreign power*, excluding Indians not taxed, are hereby declared to be citizens." Civil Rights Act § 1, 14 Stat. 27 (emphasis added). Senator Trumbull summarized that provision: "The Bill declares 'all persons' *born of parents domiciled in the United States*, except untaxed Indians, to be citizens of the United States." Shawhan, *supra*, at 1352-53 (emphasis added) (quoting Letter from Sen. Lyman Trumbull to President Andrew Johnson, (*in* Andrew Johnson Papers, Reel 45, Manuscript

Div., Library of Congress)). "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. Likewise, Senator Howard stated that the Clause "of course" would not include the children of "foreigners" or "aliens." *Id.* at 2890.

4. Contemporary understanding following ratification accords with that reading of the Fourteenth Amendment. Perhaps most telling, right on the heels of the Citizenship Clause, the Supreme Court described its scope as such: "The phrase, 'subject to its jurisdiction,' was intended to exclude from its operation children of ministers, consuls, *and citizens or subjects of foreign States* born within the United States." *The Slaughterhouse Cases*, 83 U.S. 36, 73 (1873) (emphasis added). That is wholly consistent with the Citizenship EO.

Contemporary commentators expressed similar views:

- "Indians are held not within this clause, not being 'subject to the jurisdiction of the United States.' The same reasoning, it may be argued, would exclude children born in the United States to foreigners here on transient residence, such children not being by the law of nations 'subject to the jurisdiction of the United States.'" 2 *A Digest of International Law of the United States* § 183, at 393-394 (Francis Wharton ed., 2d ed. 1887) (*Wharton's Digest*) (citation omitted).

- "The words 'subject to the jurisdiction thereof' exclude the children of foreigners transiently within the United States." Alexander Porter Morse, *A Treatise on Citizenship* 248 (1881).

- "If a stranger or traveller passing through, or temporarily residing in this country, who has not himself been naturalized, and who claims to owe no allegiance to our Government, has a child born here which goes out of the country with its father, such a child is not a citizen of the United States, because it was not subject to its jurisdiction." Samuel F. Miller, *Lectures on the Constitution of the United States* at 279 (1891).

- "Indians are no more 'born within the United States *and* subject to the jurisdiction thereof,' within the meaning of the XIVth amendment, than the children of foreign subjects, born while the latter transiently sojourn here." M.A. Lesser, *Citizenship and Franchise*, 4 Colum. L. Times 145, 146 (1891).

- "[I]f a stranger or traveler passing through the country, or temporarily residing here, . . . has a child born here, who goes out of the country with his father, such child is not a citizen of the United States, because he was not subject to its jurisdiction. But the children, born within the United States, of permanently resident aliens, . . . are citizens." Henry Campbell Black, *Handbook of American Constitutional Law* 458-459 (1895) (footnote omitted).

- "In the United States it would seem that the children of foreigners in transient residence are not citizens." Hall, *supra*, 236-237.

- "[T]he requirement of personal subjection to the 'jurisdiction thereof' . . . excludes Indians, the children of foreign diplomatic representatives born within the limits of the United States, and *the children of persons passing through or temporarily residing in this country*." Boyd Winchester, *Citizenship in its International Relation*, 31 Am. L. Rev. 504, 504 (1897) (emphasis added).

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 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 *Wharton's Digest* § 183, at 397. 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.' He was not, therefore, under the statute and the Constitution a citizen of the United States by birth." *Id.* at 400.

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

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

1. "[A]ny policy toward aliens is vitally and intricately interwoven with . . . the conduct of foreign relations." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). "Any rule of constitutional law that would inhibit the flexibility" of Congress or the President "to respond to changing world conditions should be adopted only with the greatest caution." *Trump v. Hawaii*, 585 U.S. 667, 704 (2018) (citation omitted).

The government's reading of the Citizenship Clause respects that principle, while

Plaintiffs' reading violates it. The Citizenship Clause sets a constitutional floor, not a constitutional ceiling. Although Congress may not deny citizenship to those protected by the Clause, it may, through its power to "establish an uniform Rule of Naturalization," extend citizenship to those who lack a constitutional right to it. U.S. Const. Art. I, § 8, Cl. 4; *see Wong Kim Ark*, 169 U.S. at 688. The government's reading would thus leave Congress with the ability to extend citizenship to the children of illegal aliens or of temporary visitors, just as it has extended citizenship to the children of members of Indian tribes. 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 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).

History shows that competing claims of allegiance can even lead to "problems for the governments involved." *Bellei*, 401 U.S. at 832. For instance, the War of 1812 resulted in part from the Royal Navy's impressment of sailors whom the United Kingdom viewed as British subjects, but whom the United States viewed as American citizens. *See* Robert E. Mensel, *Jurisdiction in Nineteenth Century International Law and Its Meaning in the Citizenship Clause of the Fourteenth Amendment*, 32 St. Louis U. L. Rev. 329, 345 (2012). And during the years preceding the adoption of the Fourteenth Amendment, the United States faced diplomatic clashes with the United Kingdom and other European powers "with respect to the allegiance of persons with links to both countries." *Id.* at 348.

Plaintiffs' reading of the Citizenship Clause invites just such problems. For centuries, countries have extended citizenship to the foreign-born children of their citizens. Vattel wrote that children born abroad "follow the condition of their fathers," so long as "the father has not entirely quitted his [home] country." Vattel, *supra*, § 215, at 102. England has extended citizenship to certain foreign-born children of 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 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 Doe* Mem. at 9-10; *New Jersey* Mem. at 10-11, 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 general rule, that *when the parents are domiciled here*, birth establishes the right to citizenship." *Id.* at 692 (emphasis added; citation omitted). It explained that "[e]very citizen or subject of another country, *while domiciled here*, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States." *Id.* at 693 (emphasis added). And it noted that "Chinese persons . . . owe allegiance to the United States, *so long as they are permitted by the United States to reside here*; and are 'subject to the jurisdiction thereof,' in the same sense as all other aliens *residing* in the United States." *Id.* at 694 (emphasis added).

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

> [A] child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the emperor of China, *but have a permanent domicile and residence in the United States*, . . . and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States.

Id. at 705 (emphasis added).

No doubt some statements in *Wong Kim Ark* could be read to support Plaintiffs' position. 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 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.'"); Henry Brannon, *A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States* 25 (1901) ("[M]ere birth within American territory does not always make the child an American citizen. . . . Such is the case with children of aliens born here while their parents are traveling or only temporarily resident, or of foreign ministers.").

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. Nor do Plaintiffs advance their argument by relying on *Plyler v. Doe*, 457 U.S. 202 (1982), a case they admit "involved the threshold question of which persons fall 'within [the United States's] jurisdiction' for purposes of the Fourteenth Amendment's Equal Protection Clause." *New Jersey* Mem. at 11 (quoting U.S. Const. amend. XIV, § 1). But the phrase "*within* its jurisdiction" in the Equal Protection Clause, which focuses on a person's 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. As Supreme Court cases illustrate, a person may fall outside the scope of the Citizenship Clause even if the person or his parents falls within the scope of the Equal Protection Clause. For example, certain children of

members of Indian tribes lack a constitutional right to U.S. citizenship by birth, *see Elk*, 112 U.S. at 102, but Indians *are* entitled to the equal protection of the laws, *see United States v. Antelope*, 430 U.S. 641, 647-650 (1977). Children of foreign diplomats also are not entitled to birthright citizenship, *see Wong Kim Ark*, 169 U.S. at 682, but Plaintiffs do not offer any authority suggesting such individuals are not subject to the Equal Protection Clause.

Plaintiffs also invoke the "common law view known as 'jus soli,'" *i.e.*, that "citizenship is acquired by birth within the sovereign's territory." *Doe* Mem. at 7-8; *see also New Jersey* Mem. at 12. 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 contract, premised on mutual consent between person and polity. *See, e.g.*, Cong. Globe, 40th Cong., 2nd Sess. 868 (1868) (statement of Rep. Woodward) (calling the British tradition an "indefensible feudal doctrine of indefeasible allegiance"); *id.* at 967 (statement of Rep. Bailey) (calling it a "slavish" doctrine); *id.* at 1130-31 (statement of Rep. Woodbridge) (saying it conflicts with "every principle of justice and of sound public law" animating America and its independent identity).

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

the Citizenship Clause in light of *American* common-law principles, and as shown above, those principles do not support birthright citizenship for children of illegal aliens or temporary visitors.

Plaintiffs also point to 20th century Executive Branch precedent that accords with their view. *See New Jersey* Mem. at 13. 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). Nor is it unusual for the Supreme Court, after fully exploring a legal issue, to reach a conclusion that conflicts with earlier assumptions. *See*, *e.g.*, *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 644-45 (2022) (holding that states may prosecute non-Indians for crimes against Indians in Indian country despite decades of contrary Supreme Court dicta); *District of Columbia v. Heller*, 554 U.S. 570, 624 n.24 (2008) (holding that the Second Amendment protects an individual right even though lower courts had long read it to protect a collective right); *INS v. Chadha*, 462 U.S. 919, 944-45 (1983) (holding the legislative veto unconstitutional even though Congress had enacted, and the President had signed, almost 300 legislative-veto provisions over the preceding 50 years).

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

As discussed above, the state plaintiffs lack standing to challenge the Citizenship EO; by definition, they cannot show that it will cause them irreparable harm. In any event, the states fail to establish that their claimed pecuniary harms are irreparable. The states' asserted "operational chaos" and costs associated with developing new citizenship "eligibility verification systems," *New Jersey* Mem. at 16, for example, are not directly attributable to the EO and hardly "threaten the existence of [their] business." *NACM-New England, Inc. v. Nat'l Ass'n of Credit Mgmt., Inc.*, 927 F.3d 1, 5 (1st Cir. 2019) (citation omitted). And even assuming *arguendo* that financial harms

could be irreparable if they were unable to be "recouped," *New Jersey* Mem. at 15, the state plaintiffs fail to show that their feared loss of federal funding and reimbursements are truly unrecoverable. 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 private plaintiffs similarly fail to establish any injury "of such imminence that there is a 'clear and present need for relief to prevent irreparable harm.'" *Sierra Club v. Larson*, 769 F. Supp. 420, 422 (D. Mass. 1991) (citation omitted). They claim that the EO would "render [covered] newborns . . . deportable at birth," *Doe* Mem. at 9, or "stateless," *id*. at 13. But the Citizenship EO does not, by its terms, mandate that outcome with certainty for any plaintiff in this case. 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 Ms. Doe or the organizational plaintiffs' identified members, much less initiate any deportation actions.

Indeed, Ms. Doe and her husband have "pending asylum applications." Decl. of O. Doe ¶ 2, *Doe* ECF No. 11-1. Were such applications to be granted, they would receive "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 children of any of the private plaintiffs at issue in this case, the subject of the action could assert their claim to citizenship as defense in that proceeding. *See* 8 U.S.C. § 1252(b)(5). Because the precise effects of the EO are yet to materialize, Plaintiffs must speculate at what specific harms the Citizenship EO might ultimately cause. *See, e.g.*, *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004) ("A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store.").

This same rationale undercuts the *Doe* plaintiffs' remaining arguments that "children subject to the EO" would be deprived of the benefits of citizenship and "suffer compromised health and decreased housing access." *See Doe* Mem. at 14 (capitalization normalized). Setting aside that some of these claimed harms (*e.g.*, denial of rights to vote or hold public office) could not happen to anyone for many years, the *Doe* plaintiffs generally describe the population-wide effects of the EO. They offer no concrete evidence that Ms. Doe's child or the children of any identified member of the organizational plaintiffs plans to travel internationally or will lose access to healthcare or housing as a result of the EO during the pendency of this litigation. *See Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of Bos.*, 996 F.3d 37, 44 (1st Cir. 2021) ("simply showing some possibility of irreparable injury" is insufficient) (citation omitted). 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; *Charlesbank Equity Fund II*, 370 F.3d at 162 (a party cannot show irreparable harm if it has an "adequate" "legal remedy").

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 extraordinary relief Plaintiffs request. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting that the balancing of harms and public interest requirement for 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 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) (citation omitted). Although the state plaintiffs suggest that a nationwide injunction is necessary because, in their view, "the issue [of the scope of birthright citizenship] has already been settled for this Nation," *New Jersey* Mem. at 19, the propriety of a plaintiff's remedy "must be tailored to redress the plaintiff's particular injury"—not to how correct a plaintiff believes his position to be. *See Gill v. Whitford*, 585 U.S. 48, 73 (2018). And while the states contend that allowing the EO to take effect in other states and

not theirs would have spillover effect on state expenditures, *see New Jersey* Mem. at 19, 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 an 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 Plaintiffs' facial challenges to the Citizenship EO so that its lawfulness can be determined in individual as-applied challenges, consistent with the process established by the INA. To mount a successful facial challenge, a plaintiff must show that "no set of circumstances exists" under which the challenged provision "would be valid," *Rahimi*, 602 U.S. at 693 (citation omitted), and as explained in the merits section of the brief, Plaintiffs have failed to do so here. *See supra* Sec. III.[6]

[6] Because Plaintiffs' claims are purely legal and fully addressed in the parties' briefing on the instant motions, Defendants request that the Court consolidate the February 7 preliminary injunction hearing with a trial on the merits, pursuant to Federal Rule of Civil Procedure 65(a)(2). *See also* Fed. R. Civ. P. 54(b)(2) (allowing a court to "direct entry of a final judgment as to one or more, but fewer than all, claims . . . if the court expressly determines that there is no just reason for delay").

CONCLUSION

For the foregoing reasons, the Court should deny the preliminary injunction motion that has been filed in each of the related cases.

Dated: January 31, 2025

BRETT A. SHUMATE
Acting Assistant Attorney General
Civil Division

LEAH B. FOLEY
United States Attorney

ALEXANDER K. HAAS
Branch Director

BRAD P. ROSENBERG
Special Counsel

/s/ R. Charlie Merritt
R. CHARLIE MERRITT (VA Bar No. 89400)
YURI S. FUCHS
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Phone: 202-616-8098
Fax: 202-616-8460
Email: robert.c.merritt@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF.

Dated: January 31, 2025

/s/ R. Charlie Merritt
R. Charlie Merritt

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY; COMMONWEALTH OF MASSACHUSETTS; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAI'I; STATE OF MAINE; STATE OF MARYLAND; ATTORNEY GENERAL DANA NESSEL FOR THE PEOPLE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEVADA; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN; and CITY & COUNTY OF SAN FRANCISCO,

Plaintiffs,

v.

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

Defendants.

No. 1:25-cv-10139-LTS

Leave to File Granted on January 24, 2025 [ECF No. 71]

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

* Automatically substituted for Benjamine Huffman pursuant to Fed. R. Civ. P. 25(d).

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INTRODUCTION

Defendants' responses all suffer the same fatal defect: they conflict with binding precedent. Defendants' claim that Plaintiffs lack standing to challenge a policy that works direct, predictable, and imminent fiscal harm contradicts both Supreme Court and First Circuit decisions. Their view that courts may not enjoin federal officials' unconstitutional acts absent an additional statutory cause of action has been repeatedly rejected. Their claim that the President can exclude, by executive fiat, children born on U.S. soil from the Constitution's promise of citizenship is contrary to caselaw, history, and a federal statute. And their remedial arguments are inconsistent with settled law. This Court need only cite binding and well-reasoned Supreme Court precedents to resolve this dispute—and to invalidate this unprecedented attack on an inviolable constitutional principle.

ARGUMENT

I. PLAINTIFFS HAVE STANDING UNDER SETTLED LAW.

Controlling decisions have consistently held that States may challenge federal actions that increase state spending or deprive the States of federal funds. Recently, for example, the Supreme Court allowed Missouri to challenge a federal student-debt relief plan because its instrumentality would collect fewer fees for servicing federal loans under the plan. *Biden v. Nebraska*, 600 U.S. ___, 143 S. Ct. 2355, 2366 (2023); *accord, e.g.*, *Dep't of Com. v. New York*, 588 U.S. 752, 767 (2019) (States could challenge proposed census question because it would cause them to "lose out on federal funds"). The First Circuit has likewise recognized Massachusetts' standing to challenge a federal regulation allowing health plans to opt out of contraceptive coverage because the Commonwealth would bear the cost of replacing some of that coverage. *Massachusetts v. HHS*, 923 F.3d 209, 222-27 (1st Cir. 2019). Plaintiffs here have established, with ample and undisputed evidence, that the Order will have a similarly direct and imminent effect on their budgets in light of their preexisting policies—an injury this Court can redress. *See* Doc. No. 5 at 14-15, 21-23.

Defendants' responses flout precedent. Defendants first claim that Plaintiffs lack standing because their injuries are "incidental" effects of the Order. They rely on *Texas v. United States*, 599 U.S. 670 (2023), but that case—as the Supreme Court held—was an "extraordinarily unusual lawsuit" in which two States asked "the Federal Judiciary to order the Executive Branch to … make more arrests." *Id.* at 674, 686. The Court ultimately found a lack of standing based on unique concerns about prosecutorial discretion that have no purchase here. *See id.* at 676-81. The *Texas* plaintiffs, moreover, had offered only a vague contention that "the[y] would incur additional costs because the Federal Government [was] not arresting more noncitizens." *Id.* at 676. Here, by contrast, the record shows direct and predictable links between the Order and Plaintiffs' impending financial loss. As *Nebraska* held, that satisfies Article III. *See* 143 S. Ct. at 2366.

Defendants' claim that Plaintiffs lack standing because their injuries are "self-inflicted" is likewise contrary to settled law. *See* Doc. No. 92 at 19-20 (arguing that Plaintiffs "voluntarily chose[] to provide" benefits to noncitizens). If Defendants' characterization were enough to defeat standing, the result in both *Nebraska* and *Massachusetts* would have been different: federal law did not force Missouri to service federal student loans, and Massachusetts had no federal obligation to cover contraceptive care. That both States nevertheless had standing—given the predictable harm to their treasuries based on their preexisting policies—shows that Defendants' sweeping conception of "self-inflicted" injury is inconsistent with settled law. *See, e.g.*, *New York v. Yellen*, 15 F.4th 569, 575-77 (2d Cir. 2021) (standing based on predictable fiscal harm to state taxes).

Finally, Defendants incorrectly argue that Plaintiffs improperly advance the rights of third parties under the Citizenship Clause. In fact, Plaintiffs press their *own* interests in avoiding fiscal harm from an unlawful executive order. Defendants' reference to *parens patriae* suits is thus a non sequitur. So is their reliance on *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), and *Haaland*

v. Brackeen, 599 U.S. 255 (2023): the States in those cases did not suffer concrete harm at all—much less the kind of quintessential fiscal harm here. *See, e.g.*, *Haaland*, 599 U.S. at 296 ("Texas is not injured by the [allegedly unequal] placement preferences [for Indian children].").[1]

II. PLAINTIFFS HAVE VALID CAUSES OF ACTION UNDER SETTLED LAW.

Plaintiffs properly seek declaratory and injunctive relief to avoid injury from an Order that is both *ultra vires* under the Constitution and INA (Counts I-III) and unlawful under the APA (Count IV). Defendants argue that "the Constitution does not generally provide a cause of action to pursue affirmative relief," Doc. No. 92 at 24, but the Supreme Court has repeatedly held that plaintiffs may pursue prospective equitable relief without a separate statutory cause of action to stop government officials from violating the Constitution or exceeding their lawful authority. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015) (describing "equitable relief that is traditionally available to enforce federal law"); *Free Enter. Fund v. PCAOB*, 561 U.S. 477, 491 n.2 (2010) (recognizing, "as a general matter," a "private right of action directly under the Constitution"); *Harmon v. Brucker*, 355 U.S. 579, 581-82 (1958) (similar); *Bell v. Hood*, 327 U.S. 678, 684 (1946) (similar).[2] Indeed, the case Defendants cite confirms the point: even as the Court

[1] That one of Plaintiffs' claims rests on the violation of an individual constitutional right does not change that conclusion. Indeed, *Massachusetts* arose in the same posture: the Commonwealth asserted (among other things) that the regulation violated the Equal Protection Clause, *see* 301 F. Supp. 3d 248, 250 (D. Mass. 2018), and the First Circuit held that it had standing to seek relief for its pocketbook injuries, 923 F.3d at 222. Moreover, Plaintiffs are not challenging the constitutionality of federal statutes, as in *Katzenbach* and *Haaland*, but an executive action that violates federal law. *Cf. Massachusetts v. EPA*, 549 U.S. 497, 520 n.17 (2007) (explaining "critical difference between allowing a State 'to protect her citizens from the operation of federal statutes' … and allowing a State to assert its rights under federal law (which it has standing to do)").

[2] This logic also applies to the INA claim, which is a separation-of-powers claim positing that the Executive contravened the limits Congress placed on it. Notably, the plaintiff states in *Nebraska* brought exactly that kind of *ultra vires* claim. *See* J.A. 36-37, 143 S. Ct. 2355 (2023), www.bit.ly/40YajdR. Nor is there any basis to claim Plaintiffs have some alternative remedy here, *see* Doc. No. 92 at 23-25, because they cannot file challenges to adjudicate an individual's

declined to address whether the Takings Clause permits *damages* claims, it cited numerous cases allowing *injunctive relief* under the Clause. *DeVillier v. Texas*, 601 U.S. 285, 292 (2024).

Defendants also err in arguing that Plaintiffs' APA claims fail on the ground that any agency action is nonfinal. Even assuming Defendants' premise, the APA permits judicial review of nonfinal agency action in the event of an "outright violation of a clear statutory provision." *Ticor Title Ins. Co. v. FTC*, 814 F.2d 731, 749 (D.C. Cir. 1987). Such a clear violation exists here. The President ordered defendant agencies to take blatantly unlawful action by February 19. The illegality of those actions does not depend on any forthcoming decisions. For example, whether the SSA may deny Social Security cards to children born on U.S. soil does not turn on the precise denial process that SSA implements. In those circumstances, an APA suit is appropriate.

III. PLAINTIFFS' CLAIMS PREVAIL ON THE MERITS UNDER SETTLED LAW.

Defendants' interpretation of birthright citizenship is contrary to Supreme Court precedent, centuries of history, and a longstanding federal statute.

While Defendants seek to distinguish *Wong Kim Ark* on its facts, *see* Doc. No. 92 at 30-32, that case provided a considered and detailed analysis of the Fourteenth Amendment's text, common-law backdrop, and originalist sources in holding that U.S.-born children of foreigners have birthright citizenship subject only to certain precisely defined exceptions—none of which is based on the duration or lawfulness of their parents' presence in the country. *See* Doc. No. 5 at 16-17; *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898).[3] Indeed, while Defendants' core premise is that whether one is "subject to the jurisdiction" of the United States does not turn on

citizenship. *Cf. South Carolina v. Regan*, 465 U.S. 367, 373 (1984); *New York*, 15 F.4th at 577-79 (rejecting argument that Anti-Injunction Act bars suits by States, who cannot bring their own tax-refund suits and thus lack adequate alternative remedies).

[3] The exception for "alien enemies in hostile occupation," Doc. No. 92 at 38, is plainly inapplicable: neither undocumented nor temporary immigrants exert hostile territorial control.

whether a person must obey U.S. laws, Doc. No. 92 at 26, *Wong Kim Ark* is explicit: "[A]n alien is completely subject to the political jurisdiction of the country in which he resides" because "for so long a time as he continues within the dominions of a foreign government," he "owes obedience to the laws of that government." 169 U.S. at 693-94. Similarly, though Defendants contend that a person is "subject to the jurisdiction" if he is born "in the allegiance" of the United States, Doc. No. 92 at 27-28, the Court explained that "allegiance" in this context means "nothing more than the tie or duty of obedience" to the sovereign's laws. 169 U.S. at 659.[4] Because no one could dispute that noncitizens here with temporary status or without authorization have a "duty of obedience" to U.S. laws, they are subject to U.S. jurisdiction—and their children are citizens.

Defendants seek support from *Elk v. Wilkins*, 112 U.S. 94 (1884), but that case confirms Plaintiffs' position. *Elk* explained that the "evident meaning" of the phrase "subject to the jurisdiction" is "not merely subject *in some respect or degree* to the jurisdiction of the United States, but *completely* subject to their political jurisdiction." *Id.* at 102 (emphasis added); *Wong Kim Ark*, 169 U.S. at 680 (same). That distinction refutes Defendants' surplusage argument, Doc. No. 92 at 27 (asserting that Native Americans and foreign diplomats are "subject, at least to some extent" to the nation's legal authority). The children of Native Americans and diplomats are not "subject to the jurisdiction" within the meaning of the Citizenship Clause because they enjoy substantial—even if not unlimited—immunity. *Elk*, 112 U.S. at 99-100 (Native Americans generally exempt from taxation and federal laws); *Wong Kim Ark*, 169 U.S. at 678-79 (various "immunities" to which foreign ambassadors and ministers are "entitled by the law of nations"). By

[4] *See also id*. at 708 (Fuller, J., dissenting) (using "allegiance" and "obedience" interchangeably); Noah Webster, *An American Dictionary of the English Language* 35 (George & Charles Merriam 1860) (Ex. A) (defining "allegiance" as "[t]he tie or obligation of a subject to his prince or government; the duty of fidelity to a king, government, or state," and noting "[e]very native or citizen owes *allegiance* to the government under which he is born").

contrast, those here without legal authorization or with temporary status are not afforded such broad immunity from our laws—and so are "subject to the jurisdiction" of the United States. Moreover, *Elk* emphasized that the petitioner was born into an "alien nation" within the United States, effectively "within the domain of a foreign government," 112 U.S. at 99—a singular distinction applicable to tribal members that does not apply to the children excluded by the Order.

Defendants' efforts to equate jurisdiction with "domicile" also fail. *See* Doc. No. 92 at 30-31 (claiming "temporary visitors and unlawfully present aliens" lack "allegiance" to the United States absent "domicile"). As *Wong Kim Ark* noted, the English common-law and Founding-era understandings of jurisdiction on which its holding was based were entirely distinct from domicile. *See* 169 U.S. at 657 (noting at common law that "every person born within the dominions of the crown … whether the parents were settled, or merely temporarily sojourning, in the country, was an English subject"); *id.* at 686 (discussing C.J. Marshall's explication of "jurisdiction" in *Schooner Exch. v. McFaddon*, 11 U.S. 116 (1812), when concluding that "private individuals of another nation" who visit a country "for purposes of business or pleasure" are not "exempt[] from the jurisdiction of the country in which they are found"); 11 U.S. at 144 (holding "merchant vessels enter[ing] for the purposes of trade" must "owe temporary and local allegiance" and be "amenable to the jurisdiction of the country," or else they would "subject the laws" of that country "to continual infraction"). As *Wong Kim Ark* put it, whether a person "within the dominions of a foreign government" is subject to that government's jurisdiction operates "[i]ndependently of" their "intention to continue such residence" or "domiciliation." 169 U.S. at 693-94.[5] While *Wong*

[5] Defendants' reliance on a hodgepodge of historical sources at odds with *Wong Kim Ark*'s clear rejection of their "domicile" theory, *see* Doc. No. 92 at 32-38, is simply an attempt to relitigate binding precedent. All of these sources predate *Wong Kim Ark*, most are considered in that opinion, and several are featured by the dissent. *Compare* Doc. No. 92 at 32-38 *with Wong Kim Ark*, 169

Kim Ark notes that domicile in a nation would be *sufficient* to require their allegiance and subject that person to the nation's jurisdiction, Doc. No. 92 at 30-31, Defendants make a logical error in claiming domicile is therefore *necessary*. Nor does *Wong Kim Ark* stand alone. *See INS v. Rios-Pineda*, 471 U.S. 444, 446 (1985) (unanimously noting child of undocumented resident was a citizen); *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (noting U.S.-born child was "of course, an American citizen by birth," despite parents' "illegal presence").[6]

Defendants cannot overcome Supreme Court precedent, and the text and history underlying it, by citing the 1866 Civil Rights Act, which granted statutory citizenship to persons born in the United States "not subject to any foreign power." Doc. No. 92 at 28-29. Even leaving aside that "one version of a text is shoddy evidence of the public meaning of an altogether different text," *Gamble v. United States*, 587 U.S. 678, 684 (2019), Defendants do not explain why immigrants here with temporary status or without lawful status are subject to a foreign power. Their argument again appears predicated on a vague understanding of "allegiance," *see* Doc. No. 92 at 28-29, but there is no dispute that these groups owe allegiance to—*i.e.*, have a duty to obey the laws of—the United States while here, like lawful permanent residents. In any event, *Wong Kim Ark* carefully considered how the earlier statutory language differed from the Citizenship Clause, and determined that the difference reaffirmed the drafters' intent broadly to confer citizenship to those born on

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U.S. at 661, 679 (citing Story, *Conflict of Laws* § 48); *id.* at 666 (citing Hall, *International Law* § 68 (4th ed.)); *id.* at 692-93 (citing *Benny v. O'Brien*, 32 A. 696 (N.J. 1895)); *id.* at 708 (dissent) (citing Vattel, *Law of Nations* § 212); *id.* at 718 (dissent) (quoting Story); *id.* at 718-19 (dissent) (citing Miller, *Lectures on Constitutional Law* at 279); *id.* at 719 (dissent) (discussing Hausding and Greisser passport denials). The *Wong Kim Ark* majority soundly rejected Defendants' view.

[6] *Plyler v. Doe* also makes clear that there is "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." 457 U.S. 202, 211 n.10 (1982). The fact that tribal members are entitled to equal protection when States exercise their limited jurisdiction against them, Doc. No. 92 at 44-45, even though they are not "completely subject" to U.S. jurisdiction under the Citizenship Clause, does not negate *Plyler*'s holding.

U.S. soil. *See* 169 U.S. at 688; *see also* James C. Ho, *Defining "American:" Birthright Citizenship & the Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 373 (2006).

Even if this Court were convinced that it could contravene precedent in its construction of the Constitution, Plaintiffs would still prevail on their statutory claim. *See* Doc. No. 1 at 44 (Count III). Although Defendants claim there is no basis to treat the Constitution and statutes differently, laws take their meaning from how they would have been understood at the time of enactment. And as of 1940, *see* Nationality Act of 1940, ch. 876, § 201, 54 Stat. 1137, 1138, there was no doubt that "subject to the jurisdiction" codified birthright citizenship, regardless of the immigration status of the child's parents. *See Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018) (presuming the enacting Congress is "aware of the longstanding judicial interpretation of [a] phrase" that it codifies "and intend[s] for it to retain its established meaning"); *United States v. Place*, 693 F.3d 219, 229 (1st Cir. 2012). Indeed, when a member of Congress inquired whether the bill could be amended to exclude persons living abroad "who happen to have been born here" to "alien parents" and departed the country "in early infancy" to be "brought up in the countries of their parents," all agreed that "it is not a matter we have any control over" because there was "no proposal … to change the Constitution." Hrgs. Before Comm. on Imm. & Naturalization on H.R. 6127, 76th Cong. 37, 38 (1940) (Ex. B). The INA thus codified Congress's understanding that the length of a parent's stay does not impact a child's birthright citizenship.

Defendants' resort to policy arguments cloaked as "interpretive principles," Doc. No. 92 at 38-41, fares no better. First, Defendants' plea to the President's authority over "status of aliens" begs the question: under the Citizenship Clause, the affected children are not "aliens" in the first place. Nor is the President empowered to re-define them as such because he believes punishing the children of "wrongdoers" will deter illegal entry—a belief neither the Order nor Defendants'

brief substantiates with facts. Second, while Congress may consider various policy concerns when exercising its authority over naturalization rules, *see* Doc. No. 92 at 39-41, no branch can nullify a *constitutional* right to citizenship. *See Nishikawa v. Dulles*, 356 U.S. 129, 138 (1958) (because the "Constitution has conferred" birthright citizenship, "neither the Congress, nor the Executive, nor the Judiciary, nor all three in concert, may strip [it] away"). That was, indeed, the purpose of the Citizenship Clause: having learned the painful lessons of *Dred Scott*, the Framers of the Fourteenth Amendment understood "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." *Legislation Denying Citizenship at Birth to Certain Children Born in the United States*, 19 Op. O.L.C. 340, 1995 WL 1767990, *6 (1995). Defendants' effort to upend that core principle must be rejected.

IV. PLAINTIFFS' REMEDY FOLLOWS FROM SETTLED LAW.

This Court should grant a preliminary and/or permanent injunction to prevent Defendants from violating the Citizenship Clause and the INA, as they have been directed to do on February 19. Aside from their incorrect argument that Plaintiffs' impending injuries are not attributable to the Order, *but see* Doc. No. 5 at 14-15, 21-23, Defendants' only response to Plaintiffs' irreparable harm is to baselessly speculate that Plaintiffs might remedy their fiscal injuries via administrative processes. Doc. No. 92 at 47. But no such process could compensate Plaintiffs for (i) the burdens and costs incurred to re-design Plaintiffs' eligibility verification systems, (ii) extra payments for at-risk children due to their ineligibility for federal assistance, or (iii) the EAB funding they lose when families do not obtain an SSN at birth. Doc. No. 5 at 11-13.[7] Nor do Defendants offer a legitimate public interest that can outweigh these harms. Any interest in protecting the statutory

[7] And though an HHS appeals board considers specific cost disallowances in certain programs, it does not adjudicate constitutional claims regarding the eligibility of large swaths of the population. *See ChildCareGroup v. Dep't of Health & Human Servs.*, DAB No. 3010, at 11 (2020).

"discretion exercised by immigration officials," *Arizona v. United States*, 567 U.S. 387, 396 (2012), is not at issue here, where the Executive seeks to trample over constitutional and statutory dictates—on the precise issue the Fourteenth Amendment's framers removed from the political process entirely. *See OLC Op.* at *6. And on the other side of the ledger is the abrogation of a 127-year-old precedent and practice, the loss of citizenship for millions of American-born children, and the chaotic disruption of Plaintiffs' critical child health and welfare programs.[8]

Plaintiffs' injuries could only be remedied with a nationwide injunction because children and families can and do move from one jurisdiction to another—a key factual point Defendants do not deny. Doc. No. 5 at 25-26. Defendants brush this aside, without any explanation, as a "spillover effect." Doc. No. 92 at 49-50. But the harms to Plaintiffs from allowing the Order to take effect in other jurisdictions are the exact same harms of allowing it to take effect within their borders—the loss of federal funding for serving the affected children and the administrative cost and burdens of standing up new eligibility verification systems. Thus, if the Court concludes that injunctive relief is needed to remedy Plaintiffs' injuries, that injunction necessarily must be nationwide. Nor is that burdensome for Defendants, as the Federal Government has for over a century (and until just weeks ago) complied with this understanding nationwide—just as *Wong Kim Ark* commands.

CONCLUSION

For the above reasons, the Court should grant Plaintiffs' motion for injunctive relief.

[8] Defendants are also wrong that Plaintiffs may not obtain declaratory relief against the President. *See CREW v. Trump*, 302 F. Supp. 3d 127, 139 n.6 (D.C. Cir. 2018) (rejecting government's claim). Courts routinely enjoin the enforcement of executive orders. *See, e.g.*, *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022) (enjoining enforcement of EO mandating certain vaccinations); *State v. Nelson*, 576 F. Supp. 3d 1017, 1040 (M.D. Fla. 2021) (granting injunction "prohibiting enforcement of" EO). And when an injury cannot be "redressed fully" by enjoining other federal defendants, an injunction against the President can also be appropriate. *Hawai'i v. Trump*, 859 F.3d 741, 788 (9th Cir. 2017); *Missouri v. Biden*, 738 F. Supp. 3d 1113, 1145 (E.D. Mo. 2024).

February 4, 2025

Respectfully submitted.

ANDREA JOY CAMPBELL
ATTORNEY GENERAL OF MASSACHUSETTS

Gerard J. Cedrone (BBO No. 699674)
Deputy State Solicitor
Jared B. Cohen (BBO No. 689217)
Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108
(617) 963-2282
gerard.cedrone@mass.gov

Counsel for the Commonwealth of Massachusetts

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

Viviana M. Hanley (BBO No. 707266)
Deputy Attorney General
Jeremy M. Feigenbaum*
Solicitor General
Shankar Duraiswamy*
Deputy Solicitor General
Shefali Saxena*
Elizabeth R. Walsh*
Deputy Attorneys General
Office of the Attorney General
25 Market Street
Trenton, NJ 08625
(862) 350-5800
viviana.hanley@njoag.gov

Counsel for the State of New Jersey

ROB BONTA
ATTORNEY GENERAL OF CALIFORNIA

Denise Levey*
Deputy Attorney General
Michael L. Newman
Senior Assistant Attorney General
Marissa Malouff*
Irina Trasovan*
Supervising Deputy Attorneys General
Lorraine López*
Delbert Tran*
Annabelle Wilmott*
Deputy Attorneys General
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
(213) 269-6269
denise.levey@doj.ca.gov

Counsel for the State of California

PHIL WEISER
ATTORNEY GENERAL OF COLORADO

Shannon Stevenson*
Solicitor General
Office of the Colorado Attorney General
1300 Broadway, #10
Denver, CO 80203
(720) 508-6000
shannon.stevenson@coag.gov

Counsel for the State of Colorado

WILLIAM M. TONG
ATTORNEY GENERAL OF CONNECTICUT

William M. Tong*
Attorney General
Janelle Rose Medeiros*
Assistant Attorney General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5020
janelle.medeiros@ct.gov

Counsel for the State of Connecticut

KATHLEEN JENNINGS
ATTORNEY GENERAL OF DELAWARE

Ian R. Liston**
Director of Impact Litigation
Vanessa L. Kassab**
Deputy Attorney General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8899
vanessa.kassab@delaware.gov

Counsel for the State of Delaware

BRIAN L. SCHWALB
ATTORNEY GENERAL
FOR THE DISTRICT OF COLUMBIA

Nicole S. Hill*
Assistant Attorney General
Public Advocacy Division
Office of the Attorney
General for the District of Columbia
400 Sixth Street, N.W.
Washington, D.C. 20001
(202) 727-4171
nicole.hill@dc.gov

Counsel for the District of Columbia

ANNE E. LOPEZ
ATTORNEY GENERAL OF HAWAIʻI

Kalikoʻonālani D. Fernandes*
Solicitor General
425 Queen Street
Honolulu, Hawai'i 96813
(808) 586-1360
kaliko.d.fernandes@hawaii.gov

Counsel for the State of Hawai'i

AARON M. FREY
ATTORNEY GENERAL OF MAINE

Sean D. Magenis (BBO No. 658578)
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800
sean.d.magenis@maine.gov

Counsel for the State of Maine

ANTHONY G. BROWN
ATTORNEY GENERAL OF MARYLAND

Adam D. Kirschner*
Senior Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
akirschner@oag.state.md.us
(410) 576-6424

Counsel for the State of Maryland

DANA NESSEL
ATTORNEY GENERAL OF MICHIGAN

Toni L. Harris*
Stephanie Service*
Neil Giovanatti*
Assistant Attorneys General
Michigan Department of Attorney General
525 W. Ottawa
Lansing, Michigan 48909
(517) 335-7603
harrist19@michigan.gov

Counsel for Attorney General Dana Nessel on behalf of the People of Michigan

KEITH ELLISON
ATTORNEY GENERAL OF MINNESOTA

John C. Keller*
Chief Deputy Attorney General
445 Minnesota Street, Suite 1200
St. Paul, MN 55101-2130
651-757-1355
john.keller@ag.state.mn.us

Counsel for the State of Minnesota

AARON D. FORD
ATTORNEY GENERAL OF NEVADA

Heidi Parry Stern*
Solicitor General
Office of the Nevada Attorney General
1 State of Nevada Way, Ste. 100
Las Vegas, NV 89119
(702) 486-5708
hstern@ag.nv.gov

Counsel for the State of Nevada

RAÚL TORREZ
ATTORNEY GENERAL OF NEW MEXICO

James W. Grayson*
Chief Deputy Attorney General
New Mexico Department of Justice
408 Galisteo St.
Santa Fe, NM 87501
(505) 218-0850
jgrayson@nmdoj.gov

Counsel for the State of New Mexico

LETITIA JAMES
ATTORNEY GENERAL OF NEW YORK

Zoe Levine*
Special Counsel for Immigrant Justice
Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
zoe.levine@ag.ny.gov
(212) 416-8329

Counsel for the State of New York

JEFF JACKSON
ATTORNEY GENERAL OF NORTH CAROLINA

Daniel P. Mosteller*
Associate Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602
(919) 716-6026
dmosteller@ncdoj.gov

Counsel for the State of North Carolina

PETER F. NERONHA
ATTORNEY GENERAL OF RHODE ISLAND

Katherine Connolly Sadeck (BBO No. 681501)
Solicitor General
Leonard Giarrano IV*
Special Assistant Attorney General
Rhode Island Office of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400, Ext. 2480
ksadeck@riag.ri.gov

Counsel for the State of Rhode Island

CHARITY R. CLARK
ATTORNEY GENERAL OF VERMONT

Julio A. Thompson**
Co-Director, Civil Rights Unit
109 State Street
Montpelier, VT 06509
(802) 828-5519
julio.thompson@vermont.gov

Counsel for the State of Vermont

JOSHUA L. KAUL
ATTORNEY GENERAL OF WISCONSIN

Gabe Johnson-Karp*
Assistant Attorney General
Wisconsin Department of Justice
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857
(608) 267-8904
johnsonkarpg@doj.state.wi.us

Counsel for the State of Wisconsin

DAVID CHIU†
CITY ATTORNEY, CITY AND COUNTY
OF SAN FRANCISCO

Yvonne R. Meré†
Chief Deputy City Attorney
Sara J. Eisenberg†
Chief of Complex and Affirmative Litigation
Mollie M. Lee†
Chief of Strategic Advocacy
David S. Louk*
Molly J. Alarcon*
Deputy City Attorneys
1390 Market Street, 6th Floor
San Francisco, CA 94102-5408
(415) 505-0844
david.louk@sfcityatty.org

Counsel for the City and County of San Francisco

* admitted *pro hac vice*
** admitted *pro hac vice*; notice of appearance forthcoming
† motion for admission *pro hac vice* pending

EXHIBIT B

TO REVISE AND CODIFY THE NATIONALITY LAWS OF THE UNITED STATES INTO A COMPREHENSIVE NATIONALITY CODE

HEARINGS

BEFORE THE

COMMITTEE ON IMMIGRATION AND NATURALIZATION HOUSE OF REPRESENTATIVES

SEVENTY-SIXTH CONGRESS

FIRST SESSION

ON

H. R. 6127

SUPERSEDED BY

H. R. 9980

A BILL TO REVISE AND CODIFY THE NATIONALITY LAWS OF THE UNITED STATES INTO A COMPREHENSIVE NATIONALITY CODE

JANUARY 17, FEBRUARY 13, 20, 27, 28, MARCH 5, APRIL 11, 16, 23
MAY 2, 3, 7, 9, 13, 14, AND JUNE 5, 1940

Printed for the use of the
Committee on Immigration and Naturalization

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II

TO REVISE AND CODIFY THE NATIONALITY LAWS OF THE UNITED STATES INTO A COMPREHENSIVE NATIONALITY CODE

WEDNESDAY, JANUARY 17, 1940

HOUSE OF REPRESENTATIVES,
COMMITTEE ON IMMIGRATION AND NATURALIZATION,
Washington, D. C.

The Committee on Immigration and Naturalization met in the hearing room, Old House Office Building, at 10:55 a. m., Hon. Samuel Dickstein (chairman of the committee) presiding.

The CHAIRMAN. The committee now has under consideration H. R. 6127, a bill to revise and codify the nationality laws of the United States into a comprehensive nationality code.

Without objection the bill will be made a part of the record and inserted at this point.

(The bill above referred to is as follows:)

[H. R. 6127, 76th Cong., 1st sess.]

A BILL To revise and codify the nationality laws of the United States into a comprehensive nationality code

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the nationality laws of the United States are revised and codified as follows:

TITLE I

SECTION 1. This Act may be cited as the Nationality Act of 1939.

CHAPTER I—DEFINITIONS

SEC. 101. For the purposes of this Act—

(a) The term "national" means a person owing permanent allegiance to a state.

(b) The term "national of the United States" means (1) a citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(c) The term "naturalization" means the conferring of nationality of a state upon a person after birth.

(d) 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.

(e) The term "outlying possessions" means all territory, other than as specified in subsection (d), over which the United States exercises rights of sovereignty.

(f) The term "parent" includes in the case of a posthumous child a deceased parent.

(g) The term "minor" means a person under twenty-one years of age.

SEC. 102. For the purposes of chapter III of this Act—

(a) The term "State" includes (except as used in subsection (a) of section 301), Alaska, Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands of the United States.

(b) The term "naturalization court," unless otherwise particularly described, means a court authorized by subsection (a) of section 301 to exercise naturalization jurisdiction.

(c) The term "clerk o fcourt" means a clerk of a naturalization court.

(d) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(e) The term "Secretary" means the Secretary of Labor.

(f) The term "Service" means the Immigration and Naturalization Service of the United States Department of Labor.

(g) The term "designated examiner" means an examiner or other officer of the Service designated under section 332 by the Commissioner.

(h) The term "child" includes a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; also a child adopted in the United States, provided such legitimation or adoption takes place before the child reaches the age of sixteen years and the child is in the legal custody of the legitimating or adopting parent or parents.

SEC. 103. For the purposes of subsections (a) and (b) of section 402 of this Act, the term "foreign state" includes outlying possessions of a foreign state, but does not include self-governing dominions or territory under mandate, which, for the purposes of these subsections, shall be regarded as separate states.

SEC. 104. For the purposes of section 201, 402, 403, 404, and 405 of this Act, the place of general abode shall be deemed the place of residence.

CHAPTER II—NATIONALITY AT BIRTH

SEC. 201. 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;

(b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

(c) A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

(d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

(e) A person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person;

(f) A child of unknown parentage found in the United States, until shown not to have been born in the United States;

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has had ten years' residence in the United States or one of its outlying possessions, the other being an alien: *Provided*, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years, and must within six months after his twenty-first birthday take an oath of allegiance to the United States: *Provided further*, That if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally to represent the Government of the United States or a bona fide American educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation;

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934.

SEC. 202. All persons born in Puerto Rico on or after April 11, 1899, subject to the jurisdiction of the United States, residing on the effective date of this Act in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States.

SEC. 203. Unless otherwise provided in section 201, the following shall be nationals, but not citizens, of the United States at birth:

(a) A person born in an outlying possession of the United States of parents one of whom is a national, but not a citizen, of the United States;

(b) A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person;

(c) A child of unknown parentage found in an outlying possession of the United States, until shown not to have been born in such outlying possession.

SEC. 204. The provisions of section 201, subsections (c), (d), (e), and (g), and section 203, subsections (a) and (b), hereof apply, as of the date of birth, to a child, born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.

In the absence of such legitimation or adjudication, the child, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status.

CHAPTER III—NATIONALITY THROUGH NATURALIZATION

GENERAL PROVISIONS

JURISDICTION TO NATURALIZE

SEC. 301. (a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing, or which may hereafter be established by Congress in any State, District Courts of the United States for the Territories of Hawaii and Alaska, and for the District of Columbia and for Puerto Rico, and the District Court of the Virgin Islands of the United States; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions of such courts, except as otherwise specifically provided in this chapter.

(b) A person may petition for naturalization in any court within the State judicial district or State judicial circuit in which he resides, whether or not he resides within the county in which the petition for naturalization is filed.

(c) The courts herein specified, upon request of the clerks of such courts, shall be furnished from time to time by the Commissioner or a Deputy Commissioner with such blank forms as may be required in naturalization proceedings.

(d) A person may be admitted to become a citizen of the United States in the manner and under the conditions prescribed in this chapter, and not otherwise.

SUBSTANTIVE PROVISIONS

ELIGIBILITY FOR NATURALIZATION

SEC. 302. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of sex or because such person is married.

SEC. 303. The right to become a naturalized citizen under the provisions of this chapter shall extend only to white persons and persons of African nativity and persons of African descent, except that this section shall not apply to descendants of races indigenous to the Western Hemisphere, nor to native-born Filipinos hav-

ing we have thousands of persons living in foreign countries, usually in the foreign countries where they were born, or where their parents were born, having all their interests there, and their family connections, and yet they are citizens of the United States, and they may call on our Government for protection.

I refer not only to the naturalized citizens who have gone back to their native lands or gone to other countries—and there are many thousands of them—but to their children, born in those countries, who are alien in all their characteristics and connections and interests, yet have the right to enter the United States as citizens. We cannot keep them out; they are born citizens.

Another class is composed of those persons who are born in the United States of alien parents and are taken by their parents to the countries from which the parents came and of which they are nationals. That is a dual nationality.

Many of them are taken in early infancy. There are hundreds of thousands of those persons living around different parts of the world who happen to have been born here and acquire citizenship under the fourteenth amendment, but they are brought up in the countries of their parents and they are in no true sense American, and yet they may not only enter this country themselves as citizens, but may marry aliens in those countries and have children and those children are born citizens.

Mr. REES. Pardon me. Do I understand that a person born of alien parentage who goes abroad before he reaches the age of majority, lives in a foreign country for many, many years, marries a native of that country, can come to the United States and bring his family here?

Mr. FLOURNOY. Yes, sir.

Mr. REES. As a citizen of the United States?

Mr. FLOURNOY. Certainly. He can live all he pleases in his father's country, and if he does not take the oath of allegiance, if he avoids doing that, he remains a citizen of the United States.

Furthermore, if he marries a woman of that country he breeds citizens of the United States. In reality they are no more citizens, in character, than all the other inhabitants of that country.

There are not a few of these cases; there are hundreds of thousands of them.

Mr. REES. Is there anything in this measure before us to change that situation?

Mr. FLOURNOY. We have tried to do it. We have done something I think. We might have done more, probably, but we could not get complete agreement. We have gotten something, I think, better than what the law is now.

Mr. POAGE. Isn't that based on the constitutional provision that all persons born in the United States are citizens thereof?

Mr. FLOURNOY. Yes.

Mr. POAGE. In other words, it is not a matter we have any control over.

Mr. FLOURNOY. No; and no one wants to change that.

Mr. POAGE. No one wants to change that, of course.

Mr. FLOURNOY. We have control over citizens born abroad, and we also have control over the question of expatriation. We can provide

for expatriation. No one proposes to change the constitutional provisions.

Mr. REES. We cannot change the citizenship of a man who went abroad, who was born in the United States.

Mr. FLOURNOY. You can make certain acts of his result in a loss of citizenship.

Mr. REES. Surely, that way.

Mr. FLOURNOY. For instance, the act of 1907 has a provision that if he takes the oath of allegiance to a foreign state, he loses his citizenship.

Then we have a provision in the old act with regard to desertion from the Army, conviction of desertion, which results in loss of citizenship, although there again there is some question as to what the law meant. But we have construed it in the State Department to mean loss of citizenship. There is no proposal, as I say, to change the Constitution.

Mr. REES. No; of course not.

Mr. FLOURNOY. That would be absurd.

If you want me to, I think we will get along better with the various provisions if we take them up seriatim.

Mr. REES. I think that would be better.

Mr. FLOURNOY. I don't think it is necessary, unless you think so, Mr. Chairman, to go into these various provisions of chapter I which are definitions and are self-explanatory.

Mr. POAGE. Any of them you think you ought to discuss, do so, and if we want to ask you about any of the others when you get through, we can.

Mr. BUTLER. How about the specific changes? Do you care to have those discussed?

Mr. REES. I think if you can tell us just what changes have been made as you go along it would be well.

Mr. FLOURNOY. That begins with chapter II.

Mr. REES. Go ahead.

Mr. FLOURNOY. Chapter II is "Nationality at birth". Section 201 provides 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.

That is taken of course from the fourteenth amendment to the Constitution.

(b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such persons to tribal or other property.

It is probable the court held years ago that provisions of the fourteenth amendment did not apply to Indians living in their tribal relationship, but this does not give them citizenship.

Mr. REES. Tell us how this law is changed insofar as it affects the people of Alaska, Hawaii, and Puerto Rico.

Mr. FLOURNOY. Those people in Alaska and Hawaii are citizens of the United States under the law as it now exists. We have not changed that at all.

Mr. REES. And (b) is just with reference to Indians and Eskimos.

Mr. FLOURNOY. Yes, sir.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

O. DOE, et al.,

Plaintiffs,

Civil Action No.
1:25-cv-10135-LTS

v.

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

Defendants.

and

STATE OF NEW JERSEY, et al.,

Plaintiffs,

Civil Action No.
1:25-cv-10139-LTS

v.

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

Defendants.

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

MOTION HEARING

Friday, February 7, 2025
9:58 a.m.

John J. Moakley United States Courthouse
Courtroom No. 13
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
raeufp@gmail.com

A P P E A R A N C E S

On behalf of the 10135 Plaintiffs Doe, Brazilian Worker Center, and La Colaborativa:

LAWYERS FOR CIVIL RIGHTS
BY: OREN M. SELLSTROM, MIRIAN ALBERT, AND JACOB LOVE
61 Batterymarch Street
Boston, Massachusetts 02110
(617) 988-0608
osellstrom@lawyerscom.org
malbert@lawyersforcivilrights.org
jlove@lawyersforcivilrights.org

On behalf of the 10139 Plaintiffs State of New Jersey, Commonwealth of Massachusetts, and State of California:

MASSACHUSETTS ATTORNEY GENERAL'S OFFICE
BY: GERARD J. CEDRONE AND JARED B. COHEN
One Ashburton Place
20th Floor
Boston, Massachusetts 02108
(617) 963-2282
gerard.cedrone@mass.gov
jared.b.cohen@mass.gov

NEW JERSEY OFFICE OF THE ATTORNEY GENERAL
BY: SHANKAR DURAISWAMY
33 Washington Street
Newark, New Jersey 07102
(908) 507-2949
shankar@duraiswamy@njoag.gov

OFFICE OF THE ATTORNEY GENERAL
BY: IRINA TRASOVAN
300 S. Spring Street
Suite 1702
Los Angeles, California 90013
(213) 269-6261
irina.trasovan@doj.ca.gov

A P P E A R A N C E S, Cont.

On behalf of the Defendants:

US DEPARTMENT OF JUSTICE
BY: ERIC HAMILTON
950 Pennsylvania Avenue, NW
Washington, D.C., 20530
(202) 514-3301
eric.hamilton@usdoj.gov

DEPARTMENT OF JUSTICE - CIVIL DIVISION
BY: BRAD P. ROSENBERG
1100 L Street, NW
Washington, D.C., 20005
(202) 514-3374
brad.rosenberg@usdoj.gov

UNITED STATES ATTORNEY'S OFFICE - MASSACHUSETTS
BY: MICHAEL FITZGERALD
John Joseph Moakley Courthouse
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3266
michael.fitzgerald2@usdoj.gov

P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: The United States District Court for the District of Massachusetts is now in session, the Honorable Leo T. Sorokin presiding.

THE COURT: Please be seated.

THE COURTROOM CLERK: Today is Friday, February 7, 2025, and we are on the record in Civil Case Number 25-cv-10135, O. Doe, et al., versus Donald J. Trump, et al., and 25-cv-10139, The State of New Jersey, et al., versus Donald J. Trump, et al.

Will counsel please state your name for the record.

THE COURT: Hold on one second. Give me one moment just to get set up, and I want to make a note of one thing.

Okay. Go ahead.

MR. SELLSTROM: Good morning, Your Honor. Oren Sellstrom from Lawyers for Civil Rights on behalf of Plaintiffs O. Doe, La Colaborativa, and Brazilian Workers Center.

THE COURT: Good morning.

MR. CEDRONE: Good morning, Your Honor. Gerard Cedrone from the Massachusetts Attorney General's Office, on behalf of the Commonwealth.

I'll let my colleagues at counsel table introduce themselves, but note that we have co-counsel from several

other jurisdictions in the courtroom today, as well.

THE COURT: Okay.

MR. DURAISWAMY: Good morning, Your Honor. Shankar Duraiswamy from the State of New Jersey here on behalf of the plaintiffs in the 10139 action.

THE COURT: Good morning.

MS. ALBERT: Good morning, Your Honor, Mirian Albert on behalf of the Doe plaintiffs, La Colaborative, and Brazilian Workers Center.

THE COURT: Good morning.

MR. LOVE: Good morning, Your Honor. Jacob Love from Lawyers for Civil Rights on behalf of the Doe plaintiffs.

THE COURT: Good morning.

MS. TRASOVAN: Good morning, Your Honor. Irina Trasovan on behalf of The State of California.

MR. COHEN: Good morning, Your Honor. Jared Cohen on behalf of The Commonwealth of Massachusetts.

THE COURT: Just say it again. I didn't catch your name.

MR. COHEN: Jared Cohen on behalf of The Commonwealth of Massachusetts. Good morning.

THE COURT: Good morning.

MR. HAMILTON: Good morning, Your Honor. Eric Hamilton, deputy assistant attorney general in the Civil

Division of the US Department of Justice for defendants.

THE COURT: Good morning.

MR. ROSENBERG: Good morning, Your Honor. Brad Rosenberg, special counsel with the Federal Programs Branch in the Department of Justice's Civil Division, on behalf of the federal defendants.

THE COURT: Good morning. Okay.

All right. So I have read all the papers that you've all submitted and all the amicus briefs that I've authorized that I've allowed to file.

Who's arguing on -- for the plaintiffs?

MR. SELLSTROM: Your Honor, with the Court's permission, we've spoken with the state's counsel, as well, and we would propose to consolidate the arguments. From the plaintiffs' side in the two cases, I would go first on behalf of the Doe plaintiffs. The state's counsel can then pick up from there on some of the shared arguments, as well as some that are unique to the State.

THE COURT: Okay.

MR. SELLSTROM: We'd also like some rebuttal time after the government's argument, as well.

THE COURT: All right. And just one person from the states?

MR. CEDRONE: So I think you'll be hearing from two of us, with the Court's leave. I'll be addressing the

standing and threshold questions, and Mr. Duraiswamy will address the PI factors, so the merits in the case.

THE COURT: I see. So just the two of you?

MR. CEDRONE: Correct.

THE COURT: Okay. All right. And then one or both of you on the defense side?

MR. HAMILTON: Yes, Your Honor.

THE COURT: Who's with you at the table, who you didn't introduce?

MR. FITZGERALD: Oh. Good morning, Your Honor, Michael Fitzgerald from the US Attorney's Office for the defendants.

THE COURT: Okay. Good morning. Sorry, I couldn't see you right there behind them. Washington looms large over the US Attorney's Office, I guess.

Okay. That's fine. I'm not going to set time limits. I'll hear from you; then I'll hear from the government. I'll hear something more in response from you, and then we might be done, or maybe depending whether you want to say anything else. But you don't -- just as sort of a guide post, you don't need to say everything in your briefs. If you walked out right now, you will have waived nothing. Okay? If you say, "I waive," everything that follows is gone. Right? But if you don't use those words, right, you have whatever is in your briefs. So if you walked

out and you hadn't said part two of your brief, or what have you, it's not gone. I have it; I've read it. I'm going to think about it. I'll consider it; I'll address it. So in that sense, you know, I don't -- just keep that in mind in terms of the -- what you have to say. Okay?

Go ahead.

MR. SELLSTROM: Thank you, Your Honor, and we will try and hit the highlights.

As the Supreme Court has said, it would be difficult to exaggerate the value and importance of American citizenship. Citizenship carries with it a full array of rights and privileges and makes one a full member of the United States community.

Given that importance, the Supreme Court has also said that stripping someone of citizenship amounts to, quote, "A total destruction of the individual status in organized society."

The declarations that we have submitted show clearly how that harm would be visited upon children and families if the executive order were to go into effect. That momentous act of denaturalization cannot be done by the stroke of a pen, and that is because the concept of birthright citizenship that anyone born on American soil is an American citizen is so fundamental to the fabric of our nation that it's expressly written into the Constitution.

That, of course, is through the 14th Amendment, passed as a means to mend a broken nation and make clear in the citizenship clause that the government never again can decide who among disfavored classes is entitled to citizenship. That is why the citizenship clause was enacted, and it makes clear that all who are born here, subject only to very rare exceptions, like the children of diplomats, are automatically American citizens. That basic concept has been definitively endorsed and upheld by the Supreme Court, by the First Circuit, and by courts around this country for generations. It permeates federal agency and state agency practice and has for 150 years and more. It cannot be changed with the stroke of a pen.

In many ways, the Court's inquiry this morning need go no further than that. The defendants may wish that the Supreme Court revisit this issue. But at this point in time, First Circuit and Supreme Court jurisprudence is clear and unequivocal, the citizenship clause does not turn on the immigration status of one's parents, and, therefore, the executive order is unconstitutional.

The seminal case, of course, is *Wong Kim Ark*, decided by the Supreme Court at the turn of the century, which outlines a long line of English history and common law to arrive at its conclusion.

THE COURT: Turning back, sorry, just to one thing

from earlier, the -- from the papers that you've submitted with respect to the associations, I draw the conclusion or it's established that the associations have members in Massachusetts.

MR. SELLSTROM: That's correct.

THE COURT: But do they have members in -- elsewhere?

MR. SELLSTROM: The members are primarily in Massachusetts, Your Honor.

THE COURT: And what about -- is it -- should I view them as just having members in Massachusetts? Or should I view them as having members beyond Massachusetts?

MR. SELLSTROM: I think viewing them as having members in Massachusetts is what's supported by the affidavits that we submitted.

THE COURT: Okay.

MR. SELLSTROM: And is fully sufficient for granting the relief that we are asking for.

THE COURT: All right. Okay.

MR. SELLSTROM: Which I'm happy to address, if it's something that Your Honor would like to probe deeper.

THE COURT: Well, one -- certainly you can address that. I intend to address all of the issues that are put to me in this case, the way I would in any case. And so one of the issues, it's just, as you know, a series of steps, but

one of the issues, if I get there, is what, if any, form of relief should be granted, and what's the scope of that relief. So if you want to talk -- you've talked about it in your papers, but you can talk about it.

MR. SELLSTROM: Yes, absolutely. Let me get to it, Your Honor. As you said, the Doe plaintiffs are an individual, an expectant mother whose unborn child would be subject to the executive order, and two membership organizations, each of whom have members, as the declarations attest, who are essentially similarly situated to Ms. Doe. That, as Your Honor alluded to, gives them membership, associational standing, something that is quite clear from Supreme Court First Circuit jurisprudence, the *Hunt vs. Washington State Apple* case, and many others that say, essentially, membership organizations can bring the action on behalf of individual members.

THE COURT: I wasn't really asking about standing. I was asking about what other members there were, in terms of thinking about scope of relief.

MR. SELLSTROM: That gets, then, to the question of relief, Your Honor. And I raise that because -- and we went into a little bit of detail about this in our -- at the end of our reply brief, citing in particular the Supreme Court's decision in the *Trump vs. IRAP* case, because it is so similar to the issue before Your Honor today in terms of those

issues. In that case, that was also brought, the Fourth Circuit case that was later consolidated with the Ninth Circuit case, was brought on behalf of individuals and membership organizations who were affected by the travel ban. And the Supreme Court there upheld a nationwide injunction. It did so by refusing a stay request from the government, but it made clear that it was endorsing the nationwide relief that had been granted in that case, and it did so on a number of different grounds. One, probably the most important, is because it involved issues of immigration, which the Court said, and the lower courts in both the Fourth and Ninth Circuit also said is, you know, needs to be uniform throughout the country. That's, you know, a part of the Constitution and the naturalization clause saying it has to be a uniform system of naturalization. And everyone thinks of it that way, that the immigration laws, in particular, the same rules need to apply to everyone. And so for that reason, there's a necessity of granting nationwide relief on a facial challenge like this, that is -- that is challenging, again, the analogy is clear -- an executive order that is, on its face, unconstitutional.

There are other grounds for that same relief. Again, this is in our reply brief. We are running out of room a little bit, so it's in a footnote, but the Administrative Procedure Act also makes clear that nationwide

relief is the appropriate relief under that act, that the statute says that if an enactment or an agency action is found unconstitutional, the remedy is to set it aside, and that, by its nature, has nationwide impact. And that's something that has -- you know, there are a number of cases that we've cited that, in the regulatory context, that's the case, an individual challenges something like a regulation is facially unconstitutional, the result under the APA is that it is set aside and nationwide relief is granted.

So for all of those reasons, should Your Honor find in our favor, that, we believe, is the appropriate relief.

THE COURT: Okay.

MR. SELLSTROM: I do want to also address the merits of the issue, as well, to make sure that that is laid out. And again, my brother counsel will pick up on that. But the main case, going back to *Wong Kim Ark*, is cited so much, because it is so decisive and so authoritative. As Your Honor knows, it is a very lengthy opinion that really traverses a lot of territory, from English common law to, you know, the enactments after the Revolution. But it's important not only for background, but also because it shows just how wrong defendants are in their interpretation today.

The idea of birthright citizenship goes back to the English common law, the idea that anyone born within the king's dominion is automatically subject to his protection

and is owed allegiance to him. And the important thing about those two concepts, protection and allegiance, is that they are not, in any way, subjective. They're automatic. It's not as if the king is deciding, you know, who should I bring under my protection. It automatically adheres, at birth, to anyone who is born in the king's dominion. And on the other side, the allegiance that is talked about in those cases is not something that is subjective, like we think of, you know, today, the Pledge of Allegiance, where somebody stands up and makes that allegiance. It's really much more fundamental than that. It is talked about in terms of the duty that is owed to the king, to be subject to the king, and that is what makes it automatic, that that happens whenever, you know, someone is born on the country's soil. And that is the basic framework of birthright citizenship that came over to the United States in the colonies, and then through the constitution after the revolution. And that's what the Court in *Wong Kim Ark* makes so clear, and then takes those principles and applies them to the facts of that particular case.

Wong Kim Ark was born here in the United States, in San Francisco, to parents who were Chinese citizens. And he -- then the question before the Court was he a citizen, when he left the country, and then was trying to reenter. And that's where the Court went into the whole concept of

birthright citizenship and held that, yes, because he is born on American soil, he is subject to the jurisdiction of the United States, under the citizenship clause.

The Court then illustrated that by the exceptions. There are very few exceptions to that, but the Court went into detail about those exceptions to essentially prove the rule, to show why that rule existed. And so, for example, the Court talked about children of foreign diplomates, you know, what we know today as diplomatic immunity that has long existed both in England and here, the idea that those individuals are not subject to the country's laws, because they have that diplomatic immunity.

The other example given is the children of invading armies during hostile occupations, who are clearly not, again, subject to the country's laws.

The other exception that the Court raised in *Wong Kim Ark* was something that was unique to the United States, not something that existed in England, which is the case of what was then referred to as Indian tribes. The idea -- and this is drawing on the earlier case, the *Elk vs. Wilkins* case, authored by the same justice, by the way, who came along later in *Wong Kim Ark* to then explain that in more detail, that because at the time, Indian tribes, Native Americans were viewed as quote/unquote, "alien nations," that was essentially the same as the children of foreign

diplomats; that the idea, there again, is it's the exception that shows the basic rule that if you are born in the United States, you are subject to the United States laws. You are a citizen. That's what the 14th Amendment was about. That's exactly what the citizenship clause was enacted to ensure, and that is what *Wong Kim Ark* held.

That's not the only case, certainly. It's cited to so much, because it's authoritative, but there's a long line of Supreme Court First Circuit cases and other cases since then that make that exact same point and cite back to *Wong Kim Ark*. So that is the basic framework that says that you cannot -- a President cannot, with the stroke of a pen, add additional qualifications to that. It's written in the Constitution, and the President cannot overturn that through executive order.

THE COURT: Okay. Thank you.

MR. SELLSTROM: I do want to make sure that my colleagues from the State have time to argue. I did want to touch, just briefly, on the equities. Your Honor, we think that on the merits, there's a high likelihood of success, and that the balance of equities tips sharply in plaintiffs' favor. The declarations that we set forth go into detail about that, about babies being born stateless, subject to immediate deportation, all of the other consequences that flow from stripping someone of citizenship, whether it's

health ramifications and others. This is serious, serious business to strip someone of citizenship in that way. And the Supreme Court comes back to not only that, but what the Supreme Court talks about as a dignitary harm, the idea that taking away someone's national identity is a grave and irreparable threat. And that's what this executive order does, and that's why the balance of equities tips sharply in plaintiffs' favor.

THE COURT: Thank you.

Mr. Cedrone?

MR. CEDRONE: Good morning, Your Honor, Gerard Cedrone for the Commonwealth of Massachusetts and the plaintiff States. As I mentioned at the outset, I'll address standing and the federal government's threshhold arguments, and then Mr. Duraiswamy will address any additional points on the merits and the equities of the PI.

THE COURT: Just to clarify one thing, you're not asserting *parens patriae* standing?

MR. CEDRONE: We are not asserting that as a basis here.

THE COURT: I thought so, but I just wanted to be sure.

Go ahead.

MR. CEDRONE: And there are obviously weighty interests here, but I'll take a moment in my portion to

explain why we are obviously the right plaintiffs or why we obviously are proper plaintiffs to vindicate those interests. Mindful of Your Honor's request that we keep it short, I'll try to keep it concise, because in our view, this is not a close case on standing, both on the facts before the court, in the record, and on settled law in the First Circuit and Supreme Court. We are clearly proper plaintiffs. I'm here on behalf of 18 states, the District of Columbia, and the City and County of San Francisco, who will all suffer immediate, direct, and predictable injury if this executive order goes into effect.

So let me maybe take a moment to address the facts that are before the Court, and then a moment to explain why, under settled precedent, we clearly have standing. We've put in front of Your Honor declarations explaining the harms that the jurisdictions will suffer if this order goes into effect. I'll focus on the financial harms, because economic harm is in the heartland of an Article III injury, and we've put forward declarations showing the types of federal funding that the plaintiff jurisdictions receive today, that they will no longer receive if this order goes into effect.

And I think it's helpful to think about it in that but-for way, to consider what federal funding are we receiving now, what federal funding will the plaintiffs' jurisdictions not receive if this order goes into effect.

And Your Honor has declaration after declaration explaining those injuries.

Just speaking for the Commonwealth, millions of dollars in Medicaid funding, thousands of dollars from the Social Security Administration for processing Social Security applications will be lost if a whole class of children are considered undocumented or without lawful status. That's just what the Commonwealth has put forward. Our colleagues in other states have addressed Title IV-E funding, school-based health services, really vital programs that are assisted by federal dollars to help some of our most vulnerable citizens, where the states will receive less funding if this order goes into effect.

I don't take the federal defendants to dispute that that federal funding will be lost. They simply dispute whether this rises to the level of an Article III injury, and whether we have standing. For the reasons we said in our papers, we clearly do. The two points that I'll just reiterate today are that, essentially, every objection to standing that the federal defendants make is resolved by the *Biden vs. Nebraska* case in the Supreme Court, and the *Massachusetts vs. HHS* case in the First Circuit. In the first case, the Biden case was a state-led challenge to then President Biden's plan to forgive student loans. The argument for standing there was that this quasi-governmental

entity of the state --

THE COURT: You view yourselves as in similar shows to the Missouri entity.

MR. CEDRONE: That's exactly right. I think we're actually in a stronger position. In that case there was a question of whether that quasi-governmental entity, MOHELA, was really an arm of the state, such that injuries to MOHELA counted as injuries to Missouri. Here we don't even have that question. The money that we're talking about comes directly to the Treasury of the Commonwealth and the plaintiff jurisdictions, and will be lost otherwise.

So I don't think there's a way to find no standing in this case, without -- without directly conflicting with that case and with the *Massachusetts vs. HHS* case in the First Circuit.

And I will note that just yesterday a judge in the Western District of Washington agreed on this exact standing question on exactly those grounds.

I think the only other point that I would like to emphasize --

THE COURT: Am I right that there are certain state laws that turn on citizenship?

MR. CEDRONE: That's right, Your Honor. There are a number of state laws about participation in civic life that turn on state citizenship. There are --

THE COURT: On US citizenship?

MR. CEDRONE: That's right. For jury service, for example. And also in these joint federal state programs that we've talked about, things like Medicaid, there's obviously federal law that implements Medicaid, and state law that implements Medicaid that tracks federal law or has to comply with federal law. But that's correct.

So we think this is a straightforward case on standing. I'll just mention briefly, the government -- the federal government's argument that we lack a proper cause of action. Our argument on that, I think, is addressed by the papers. I'll just mention two things that are new since we submitted our reply brief. One is that, again, a judge in the Western District of Washington found that --

THE COURT: I read his decision.

MR. CEDRONE: Exactly. And the only other thing I'll mention is that the government -- the federal government is talking a little bit out of both sides of its mouth on this. The government just filed a complaint yesterday in the Northern District of Illinois, the case is 25-cv-1285, the *United States vs. Illinois*, and it challenges so-called sanctuary policies seeking to enjoin state and city officers in Illinois and Chicago and Cook County from implementing those policies. As I read that complaint, it relies on the exact same *ultra vires* cause of action that we bring in

Count 1 and 2 of our complaint. So I would submit that even the federal government, by its actions in other cases, recognizes that this cause of action to enjoin unconstitutional actions by executive office holders clearly exists and is recognized.

Unless Your Honor has further questions, I'll --

THE COURT: No. Thank you.

MR. DURAISWAMY: Good morning, Your Honor. On behalf of the 18 plaintiff states, the District of Columbia, and the City of San Francisco, we ask for a nationwide injunction to remedy the profoundly harmful effects of the President's executive order, not only the effect on millions of children who will now be born without any legal status, but the immense disruption to the operation of plaintiffs, child health and welfare programs, and the loss of millions and millions of dollars in federal funding to support those programs.

I want to touch on the merits, Your Honor, briefly. But before I get to that, with respect to the Court's earlier question about the scope of relief, I want to be clear that in order to remedy the harms to the plaintiffs that Mr. Cedrone identified, nationwide relief is absolutely essential, for the simple reason that those harms will not be remedied if children living in states outside of the plaintiffs' jurisdiction are denied birthright citizenship,

because those families can move into plaintiffs' jurisdictions, and, in fact, there may be families who live, for example, in Massachusetts, who, for whatever reason, give birth in New Hampshire. So for that fundamental reason that people are mobile, the harms cannot be remedied without full, nationwide relief.

Let me start with the merits. And I don't intend to repeat everything that Mr. Sellstrom said, but with the Court's indulgence, I do think it's critical to reiterate the historical context for this executive order.

150 years ago, in the wake of the civil war, the framers of the 14th Amendment enshrined the right to birthright citizenship in the Constitution as a reaction to the *Dred Scott* decision, which itself was an aberration from the well-recognized common law rule that a person born on American soil was an American citizen. Moreover, the reason the framers chose to enshrine birthright citizenship as a constitutional right was to ensure that it would never again be subject to the vicissitudes of fleeting political considerations. In the years since, as Mr. Sellstrom has explained, the Supreme Court has made explicit that birthright citizenship is subject only to certain very narrow and precisely defined exceptions, exceptions that were articulated in *Wong Kim Ark*. And it has also been explicit that these exceptions do not include the children of

undocumented immigrants or those who are here on a temporary basis.

And for the more than 100 years, the executive branch has acted in accordance with this bedrock constitutional principle, recognizing citizenship for all children born here without regard to the lawfulness or duration of their parents' presence in the United States. In the face of this century-plus of unbroken precedent and practice, the President issued an executive order summarily declaring that these children are not, in fact, entitled to birthright citizenship, and directing every federal agency to execute his order by stripping them of that right.

The order is flatly unconstitutional and *ultra vires*. Not only does it directly conflict with the longstanding understanding of the scope of the citizenship clause, it conflicts with a congressionally enacted statute that codified that understanding into law. And although defendants attempt to justify the executive order by resorting to purported policy concerns, those must be addressed through lawful means, not by disregarding the Constitution and statutory limits. And indeed, the very purpose of the citizenship clause was, as the office of legal counsel said, 30 years ago, to remove the right of citizenship by birth from transitory political pressures.

Mr. Sellstrom discussed *Wong Kim Ark* in depth, so I

won't repeat that, but I do want to focus on defendants' argument that *Wong Kim Ark* is not controlling because it involved the child of permanent residents, not undocumented immigrants or individuals here on a temporary basis. And they premised this argument on the distinction between whether parents are domiciled here long-term or they're not.

This argument is flawed for multiple reasons, Your Honor, but first start with Supreme Court case law. *Plyler v. Doe* held that undocumented immigrants fell within the jurisdiction of the United States for the purposes of the 14th Amendment because they were subject to the full range of obligations imposed by the State's civil and criminal laws. The Court further explained that there was no distinction in that regard between those who resided here lawfully and those who resided here unlawfully. And in several cases, the Court has specifically recognized the citizenship of children born to undocumented immigrants, as well as those here temporarily.

In 1957, in *Hintopoulos vs. Shaughnessy*, the Court considered a case involving two crew members of a foreign ship who had been granted temporary permission into the United States and who overstayed. They gave birth to a child, and the Court explained that, quote, "Of course, the child is an American citizen by birth."

In *INS v. Rios-Pineda*, which also involved a

petition for suspension of deportation proceedings, the Supreme Court stated plainly that the undocumented immigrant in that case had given birth to a child who, quote, "Born in the United States, was a citizen of this country."

In *Hamdi v. Rumsfeld,* the Supreme Court considered the legality of the government's detention of a person born in the United States on the ground that he was an enemy combatant. An amicus brief argued that the individual in question was not actually a citizen because his parents were on temporary visas in the country when he was born. The Court did not adopt that view, and they proceeded to analyze his due process rights as a, quote/unquote, "citizen detainee."

The First Circuit has also recognized this. In 2011, in *Mariko v. Holder* -- Your Honor, I identified this case after the close of briefing, so I'll give the cite. It's 632 F.3d 1. The Court considered the case of a child born in the United States to parents who had entered unlawfully and had removal proceedings initiated against them and noted that the child simply, quote, "is a United States citizen."

So defendants' domicile theory is squarely at odds with binding Supreme Court case law.

Second, it's at odds with the plain language of *Wong Kim Ark*. And I won't repeat all of these quotations,

because we discussed them at length in our reply brief. But the Court there made clear that whether one is subject to the jurisdiction is independent of their intention to continue such residence or domiciliation; that one is subject to the jurisdiction even if they are, quote/unquote, "merely temporarily sojourning"; that one is subject to the jurisdiction even if they are here, quote/unquote, "for business or pleasure."

And for that proposition, they point to Chief Justice Marshall's explication of jurisdiction in the seminal case *The Schooner Exchange,* where he explained that even a merchant vessel that is here for purposes of trade is subject to the jurisdiction of the United States, because if they were not, it would subject the nation's laws to continual infraction.

No one, Your Honor, least of all the federal defendants, would suggest that individuals who are here undocumented or are here on a temporary bases are free to disregard the full range of civil and criminal laws of the United States simply because of their status.

Although there are parts of *Wong Kim Ark* that refer to the fact that the parents of Wong Kim Ark were here as permanent residents, that discussion is applying the holding of the case to the facts before the Court. In no way did it qualify the court holding and the precisely defined

exceptions that Mr. Sellstrom identified.

Finally, Your Honor, if you unpack the reasoning of defendants' domicile argument, it falls apart pretty quickly. It hinges on references in both *Wong Kim Ark* and *Elk v. Wilkins* to owing allegiance, and they never explain what that means. They never explain what they think it means to owe allegiance or why one has to be domiciled here to owe allegiance. By contrast, *Wong Kim Ark* makes very clear what they mean -- what allegiance means and what it means simply is a duty to obey the law.

Finally, Your Honor, if domicile were a proxy for allegiance as defendants posit, that would not explain why Native Americans were found not to be subject to the jurisdiction. They are, after all, domiciled long term within the territorial boundaries of the United States.

One more point on defendants' arguments, Your Honor, with respect to this issue. The notion of consent. They attempt to rely on *Elk's* comment that no one can become a citizen of the nation without its consent. That statement is taken out of context clearly. Because *Elk* involved a situation where someone who -- a Native American who had been born within the jurisdiction of a tribal nation, subsequently attempted, through his own volition, to subject himself to the jurisdiction of the United States. And the Court treated that, essentially, as a naturalization

question. And their point was that you cannot naturalize yourself, only the nation can consent to your naturalization.

At bottom, Your Honor, defendants are not really litigating the scope of Supreme Court precedents. They're seeking to relitigate those precedents directly. That's clear from the recitation of historical sources that were largely cited in the dissent in *Wong Kim Ark* that were known to and considered by the majority, and that were rejected in the majority's holding. It's clear from the defendants' attempt to rely on the language of the 1866 Civil Rights Act, which *Wong Kim Ark* expressly discussed and explained the language of which was no different than the meaning of subject to jurisdiction as they articulated it in that opinion. And it's clear from the policy argument that defendants advance that dual citizenship is problematic, that the government must have tools to address unlawful entry, and the like.

To be clear, Your Honor, the executive branch does have some discretion when it comes to the enforcement of immigration laws with respect to the entry, admission, and removal of noncitizens. But this is not a case about the entry, admission, or removal of noncitizens. This is a case about children who are born in the United States. And the executive branch has no more power to take away their constitutional rights to birthright citizenship because they

believe it will disincentivize unlawful entry than they have the power to take away their First Amendment rights, their due process rights, or their equal protection rights because they believe it may disincentivize illegal reentry.

Finally, Your Honor, even if the Court believed that *Wong Kim Ark* was wrongly decided and even if it had the power to overturn that precedent, plaintiffs would still prevail on their *ultra vires* claims based on the Immigration and Nationality Act, because Congress, at the time of enacting that statute, codified the then existing understanding of what it meant to be subject to the jurisdiction, which was articulated in *Wong Kim Ark*.

Let me move quickly, Your Honor, to the equities. Mr. Cedrone has already explained the harms to the states. There's no serious argument that they are not irreparable. I think it's undisputed that many of the harms could not be addressed, many of the fiscal harms could not be remedied through any administrative channel. And even as to the ones that involve reimbursement programs, like Medicaid, defendants ask the question as to whether they could be recovered through administrative processes, but the fact that they don't answer that question is very telling. They don't actually identify any administrative process they have where plaintiffs could recover those funds.

On the public interest, I think it's quite

straightforward, Your Honor. I think this is really derivative of the merits. Once the Court answers the merits, the government has no public interest in violating a constitutional principle in order to address policy concerns.

So finally, as I mentioned, Your Honor, we are seeking nationwide relief for the reasons I mentioned before. And I would say that the government raises, in their opposition brief, in a footnote or request that the PI proceedings be consolidated on the merits and that the Court proceed to a final judgment, plaintiffs' position is -- Your Honor, is that if the Court is inclined to grant relief, then the record is complete in terms of supporting that relief, and we fully support granting a full and final permanent injunction.

THE COURT: So are you saying that you support me consolidating -- that this is the trial on the merits? You support that?

MR. DURAISWAMY: We do. Obviously to the extent the Court believes that there's some defect in the record that would not support --

THE COURT: If I think that everything -- if I think I don't need -- there isn't any -- are you asking for the possibility of more? Are you saying that if I don't think there's anything else needed, I should just proceed to enter final judgment?

MR. DURAISWAMY: I think what we're saying, Your Honor, is if you're prepared to enter relief, then certainly we think that that relief can proceed by way of a permanent injunction.

THE COURT: I see. So if you persuade me that a preliminary injunction is appropriate, then what you're saying is I should enter a permanent final injunction.

MR. DURAISWAMY: That's exactly right, Your Honor, because to reach that conclusion, I think that would -- the record would be sufficient to support a permanent injunction, as well. And I would also point out that nothing that we've submitted in the factual record has been disputed by the defendants in any way. So we really are here on legal arguments.

THE COURT: Okay. Thank you.

Is it Mr. Hamilton or Mr. Rosenberg?

MR. HAMILTON: Good morning, Your Honor. Eric Hamilton again for the defendants.

This Court should deny the plaintiffs' motion for a preliminary injunction. Our brief identifies a number of threshold problems with plaintiffs' claims. I want to start by highlighting just one. That is the lack of standing of the New Jersey plaintiffs. The New Jersey case is a group of 18 states, the District of Columbia, and the City and County of San Francisco. They lack standing under the

United States vs. Texas case of the Supreme Court. In that case, two states, Texas and Louisiana, challenge a federal immigration policy, and they premised their challenge on incidental economic harms.

Now, plaintiffs respond that *United States vs. Texas* dealt with what the Court called an unusual lawsuit seeking the enforcement of federal law, and that's true. But it is also true that there's language in *Texas* that is specific to issues of state standing. We highlight Footnote 3 of that opinion, which calls out the problem of states resting theory on incidental economic harms, which we view as an identical problem to that here.

If plaintiffs --

THE COURT: Is direct injury, financial injury enough, or not?

MR. HAMILTON: A direct injury would be different. And that distinguishes *Biden vs. Nebraska*, as well as the Department of Commerce case. In *Biden vs. Nebraska* that's actually --

THE COURT: But why isn't the injury they advance direct?

MR. HAMILTON: Well, it's an incidental one, because it sort of depends on a chain of --

THE COURT: Well, you -- the President determines or directs that person -- Doe's child -- nowhere in your

brief challenged Doe's standing, right?

MR. HAMILTON: That's right. That's right.

THE COURT: So actually, the lack of standing is not a basis to deny the injunction.

MR. HAMILTON: Well, you're talking about the --

THE COURT: I can't -- it would be wrong for me to deny both motions for injunction for lack of standing. Do you agree with that?

MR. HAMILTON: Well, I'm not sure, Your Honor, because we have two separate cases right now --

THE COURT: I asked for both. So you made a challenge to standing of the state plaintiffs' case, right?

MR. HAMILTON: Exactly. The argument I'm making right now has nothing to do with the --

THE COURT: So it's not a basis to deny both motions for injunction.

MR. HAMILTON: Right. Right.

THE COURT: In fact, it would be wrong for me to deny injunctive relief only on standing grounds, if I applied that to both cases.

MR. HAMILTON: For the Doe case, yes. For the New Jersey case --

THE COURT: Right.

MR. HAMILTON: Yes. No -- yes, though.

THE COURT: So you agree with me that I would

commit legal error if I denied both motions for injunctive relief and the only reason I cited was the lack of standing.

MR. HAMILTON: That's right. That's right.

THE COURT: So the reason the Doe plaintiff, if I understand it correctly, has standing, given the -- her pregnancy and the birth of her child anticipated to occur after the effective date of the executive order, is that that would cause her direct injury.

MR. HAMILTON: Exactly. Exactly.

THE COURT: All right. So my question is, since the executive order would -- what follows from the executive order is that Doe's child is not a citizen under the executive order, right?

MR. HAMILTON: Yes.

THE COURT: And so -- and that causes her direct injury sufficient for Article III, right?

MR. HAMILTON: Yes.

THE COURT: So why -- and since what the states point to is various monies they get based on people being citizens, right?

MR. HAMILTON: Yes.

THE COURT: And so the money they would get for Doe's child being a citizen, they're not going to get if the executive order is in place, right?

MR. HAMILTON: Yes. But there's more steps

involved to get there. And again, it's a problem that *United States vs. Texas* addressed. States are unique kinds of plaintiffs, and if these incidental economic harms were sufficient to confer standing --

THE COURT: I guess that's my question. What does it mean to you, or what do you think it meant to the Supreme Court to be incidental?

MR. HAMILTON: Well, I think it means where there's -- there's kind of a leap you have to take, and it's not a direct regulation. I think, again, the *Nebraska* against *Biden* case is actually unhelpful for plaintiffs, because there there was multiple states that were challenging the policy. And the Court didn't hold that all the states had standing --

THE COURT: Didn't Justice Roberts say that the standing of one state was sufficient for him to proceed in his opinion to address the merits?

MR. HAMILTON: It is, but the standing that was sufficient there was specific to a very unique state program, where the state --

THE COURT: Well, but wasn't the standing there that the Supreme Court said that the elimination of the program -- the elimination -- the forgiveness, rather, of the loans would mean that the entity, as a downstream effect, would no longer receive fees for managing those loans, right?

MR. HAMILTON: Yes, but it was unusual that Missouri --

THE COURT: But it wasn't that the federal regulation said anything directly to that entity. It was just a consequence of the -- forgiving the loans, right?

MR. HAMILTON: Yes. But it had a direct effect on federal loan servicers, which is the business that the State of Missouri decided to get into.

THE COURT: So but why is that a direct -- you concede that's a direct effect in that case.

MR. HAMILTON: Yes.

THE COURT: And so if that's a direct effect, why isn't it a direct effect to say that we will -- the number of people we're going to pay you for processing Social Security numbers, for example, is going to be less, because there's going to be, under this order, less birthright citizens.

MR. HAMILTON: Because the persons directly affected are people like O. Doe, people whose citizenship hinges on the executive order.

THE COURT: Well, no, but they get money for submitting the applications, just the way the servicer got money for servicing the loans. What's the difference?

MR. HAMILTON: Well, there's still that extra step between the individuals within the states and then the incidental effects that the states --

THE COURT: What's the extra step?

MR. HAMILTON: Well, the extra step is that the states are claiming that they're going to receive certain funds or not --

THE COURT: Well, you haven't disputed that.

MR. HAMILTON: We haven't disputed that.

THE COURT: So that's a fact. That's a fact that you conceded, essentially.

MR. HAMILTON: Yes. But there's still --

THE COURT: Yes, you conceded it.

MR. HAMILTON: Yes. Yes.

THE COURT: Right. So that is a fact that they will lose that money.

MR. HAMILTON: We're not challenging that on the present record. But Your Honor --

THE COURT: Or seeking to expand the record.

MR. HAMILTON: Correct. Correct.

THE COURT: So if they are losing that, why isn't that direct? I'm just misunderstanding -- I'm just not understanding what is this extra step? I mean, because what seems like the analogy is you would agree with me that in the *Nebraska* case, the loans that were forgiven were not the -- were the loans owed by borrowers, right?

MR. HAMILTON: Right.

THE COURT: And not loans owed by that Missouri

entity.

MR. HAMILTON: Yes. I think, though, that the boundaries and standing are frequently fuzzy, but we have *Biden vs. Nebraska* and *United States vs. Texas*. Those are two very recent state standing cases in the US Supreme Court. In the end, we think this case is more analogous to the *United States vs. Texas* case.

But even aside from state standing, the Court should also deny the motion for preliminary injunction, because none of the plaintiffs have shown --

THE COURT: Can I ask one other question before -- you're moving on to something else, right?

MR. HAMILTON: I am.

THE COURT: Just before you go on to that, one other question about standing.

You would agree with me, or do you agree with me, is maybe a better way to ask the question, do you agree with me that a person who acquires birthright -- in birthright United States citizenship, under the Section 1 of the 14th Amendment, by virtue of that clause, automatically acquires citizenship in the state in which they reside?

MR. HAMILTON: I do, yes.

THE COURT: Which means that a person who has birthright -- who is born, say, in Massachusetts, Massachusetts -- that person, if they are a person who

gets -- you concede there are people who get birthright citizenship, even after the EO, right?

MR. HAMILTON: Yes, of course.

THE COURT: Right. Of course. Okay. So somebody is born, let's just say Massachusetts, and they're born in Massachusetts, and they're a person who acquires birthright citizenship. Okay? They -- Massachusetts has to give them, recognize them as citizens of Massachusetts. As a citizen of Massachusetts, right?

MR. HAMILTON: It does.

THE COURT: And so why doesn't that fact that -- so in that sense, that clause operates directly on the states. Right?

MR. HAMILTON: It does. And candidly, I think Your Honor has articulated a theory of standing that is stronger than anything the plaintiffs have suggested. They did not make that argument. Arguments in favor of standing are forfeited. But even then, I would still question the state standing, because the 14th Amendment would just set a floor for state citizenship. It isn't necessarily the case that the --

THE COURT: But it severs the unitary connection. The 14th Amendment established this unification between citizenship of the United States and a state.

MR. HAMILTON: It did.

THE COURT: And your interpretation severs that, to some degree, because it, first of all, narrows it, right?

MR. HAMILTON: Yes.

THE COURT: It puts it in a narrower interpretation than theirs.

MR. HAMILTON: It would affect who becomes a citizen of the State, but, again, this is a forfeited argument by the state and plaintiffs.

Turning, though, to the likelihood of success on the merits --

THE COURT: Well, I just -- okay. I understand. Go ahead.

MR. HAMILTON: Plaintiffs -- none of the plaintiffs show a likelihood of success on the merits, which, of course, is also a requirement for a preliminary injunction. That's because all of the plaintiffs arguments rest on a misreading of the 14th Amendment of the Constitution. The 14th Amendment was enacted to repudiate the US Supreme Court's shameful decision in *Dred Scott vs. Sanford*, and ensure it would never again be the law of this country that an African-American might be denied American citizenship based on his or her race. But the framers of that amendment did not intend to, and did not, in fact, create a loophole to be exploited by temporary visitors to the country and illegal aliens. The 14th Amendment says that all persons --

THE COURT: So just to stop you there. So your position is that the definition of who is and who is not a birthright citizen, articulated in the EO is what the 14th Amendment always meant?

MR. HAMILTON: Yes.

THE COURT: And so to the extent it's been construed, understood, or applied differently, those are, as you put it, misimpressions or misreadings?

MR. HAMILTON: Yes.

THE COURT: And am I correct that prior to -- well, even up to today, people who the EO says don't -- are not birthright citizens have been recognized by the United States government as birthright citizens?

MR. HAMILTON: Yes. This would be a change in policy.

THE COURT: And so those people, under this Trump administration, have been recognized as birthright citizens, right?

MR. HAMILTON: Yes, the policy was not slated to take effect until the future.

THE COURT: Right. So even before -- putting aside the injunctions issued by the other judges, the -- this administration has been recognizing people who fall into the -- who otherwise, executive order applied to, they have been recognized as US citizens, right?

MR. HAMILTON: Correct. Nothing has changed in executive practice.

THE COURT: I'm not asking about change. I'm asking about --

MR. HAMILTON: Yeah.

THE COURT: The federal government has been recognizing them as citizens, right?

MR. HAMILTON: Yes.

THE COURT: And that was true under the Biden administration, right?

MR. HAMILTON: Yes.

THE COURT: And that was true under the first Trump administration, right?

MR. HAMILTON: Yes.

THE COURT: And that was true at least back to World War II, if not earlier.

MR. HAMILTON: Yes.

THE COURT: And so my question then is -- and your interpretation is that -- or your view is that all of those -- those are wrong. Correct?

MR. HAMILTON: Yes.

THE COURT: So that, in fact, in law, really, the people who were born -- who were born in the United States -- forgetting about the injunctions, but prior to February 19th, okay, who are children of -- who would fall within the two

categories of executive orders, they are not -- the proper reading of the clause one of the 14th Amendment, they are not birthright citizens.

MR. HAMILTON: That's right.

THE COURT: So if that's true, then how do they have citizenship?

MR. HAMILTON: Well, this --

THE COURT: And how do you lawfully -- like you have just told me, essentially, that people that the federal government is now recognizing as US citizens, even putting before -- putting aside the injunctions, before the injunctions were into place, whatever it was the other day, that they were not -- they were -- you were recognizing people as citizens who are not birthright citizens under the United States Constitution, right?

MR. HAMILTON: Right. So the executive order is forward looking only, and that is consistent with how the US Supreme Court has handled the misapplication of constitutional law in the immigration context previously. The *Sessions vs. Morales-Santana* case corrected a -- a -- it corrected a constitutional rule of law, and at the end of that opinion, the Court announces that it is applying its rule prospectively only, and so the path that this executive order takes is consistent with that.

And I'd also note --

THE COURT: So you're suggesting that when you identify -- when -- the President's not the Supreme Court, right? They're different.

MR. HAMILTON: Of course.

THE COURT: Right. So you're suggesting that that principle, then, that you're articulating on behalf of the executive branch, is that the executive branch identifies an error in the application of constitutional law, that's what we're talking about, that's the executive branch's position, right?

MR. HAMILTON: Yes.

THE COURT: And that then the executive branch can choose or must apply it prospectively?

MR. HAMILTON: Yeah, I don't know that we've taken a position on that, but in this case, it was the President's judgment that a forward-looking policy was --

THE COURT: I'm asking what the law is.

MR. HAMILTON: We haven't taken a position on that.

THE COURT: So -- as you stand here now, you don't know whether or not the executive branch has the authority to make it not prospective or -- I'm sorry. That's a bad question.

Is it -- you don't know whether that you must make it, under the law, prospective?

MR. HAMILTON: Yeah, it's not something that we've

taken a position on, but the executive order's path is consistent with the line that the US Supreme Court drew in that *Sessions* case in recent turns.

THE COURT: So you're not taking a position, either way, as to whether or not it would be either required to say to people who prior -- who are born prior to February 19th that they don't have citizenship. You're not taking a position whether or not it's required for you to do that, assuming you prevail on your view.

MR. HAMILTON: Well, that is certainly not the policy of the executive order.

THE COURT: I understand. Right. The executive order doesn't say that. But my question is whether the law -- you're not taking a position on whether the law, if you're correct on the meaning of the Constitution, would require to apply it to people before February 19th.

MR. HAMILTON: Oh, no. That is not something that we're arguing. We do not think of that as a requirement under the *Sessions* case.

THE COURT: You don't think the law requires you to do that.

MR. HAMILTON: Exactly.

THE COURT: Okay.

MR. HAMILTON: Apologies if I misunderstood Your Honor's questions.

THE COURT: No problem.

So -- and whether you have discretion to do that is something that you're not taking a position on now.

MR. HAMILTON: That's right.

THE COURT: Okay. So your view is -- I don't want to put words in your mouth, I just want to make sure I understand. You're not required -- your view is the law does not require, when you're correcting a constitutional interpretation, to apply it to all people who would be subject to it. You can apply it instead prospectively.

MR. HAMILTON: That's right.

THE COURT: So the law doesn't require that and you're not taking a -- that is, you're not saying you do have discretion to apply it retroactively -- or not retroactively. You're saying you do -- you're not -- you're taking no position as to whether or not you -- the executive branch has the discretion to say to someone born before February 19th, you're not a United States citizen, because you're not under the proper interpretation of the clause.

MR. HAMILTON: Correct, but it definitely is not a requirement to do that. The executive orders forward-looking policy is consistent with law.

And I'd also note, because Your Honor referenced that recent executive practice has been something different. That recent Supreme Court decisions have -- have not been

afraid to chart a different course, despite recent practice. For example, in the *Chadha* case, the legislative veto was on the books --

THE COURT: So your position is that -- well, that's for the Supreme Court, right? It's not for me to chart a different course under constitutional law than the Supreme Court has chartered, right?

MR. HAMILTON: Supreme Court precedent is, of course, binding, but we think that the language that plaintiffs are leaning into is *dicta*.

THE COURT: Right. So your position is that the -- I can deny the injunction because this case is not controlled by the Supreme Court precedent?

MR. HAMILTON: Exactly.

THE COURT: Okay. I got it. Go ahead.

MR. HAMILTON: So I'll return to the 14th Amendment citizenship clause, and specifically that subject to the jurisdiction thereof clause, because that is what is at issue --

THE COURT: By the way, one of your arguments for the subject, too, is that -- that it's premised on mutual consent between the person and the polity, right?

MR. HAMILTON: Yes.

THE COURT: Okay. That's that the polity, that's that the government, right, consents to the person's

citizenship, right?

MR. HAMILTON: Right.

THE COURT: And that the person consents to being a citizen, right?

MR. HAMILTON: Yes.

THE COURT: And you agree that the 14th Amendment, that when it became -- the moment it became part of the Constitution, the moment it was enacted and became law, that the children born to enslaved people in the United States, at that moment, they became citizens. The US born, natural born, born in the United States children of enslaved peoples, they became citizens at that moment.

MR. HAMILTON: Yes.

THE COURT: But their parents, you agree, came to the United States or many of them, in chains.

MR. HAMILTON: (Nods head.)

THE COURT: Yes?

MR. HAMILTON: Yes.

THE COURT: And they did not consent to come to the United States, those people who came in chains.

MR. HAMILTON: No.

THE COURT: Any hesitation?

MR. HAMILTON: Well --

THE COURT: As to whether they consented to come to the United States?

MR. HAMILTON: No, they certainly did not.
THE COURT: And they didn't consent to become part of this polity, correct?
MR. HAMILTON: No.
THE COURT: So -- okay. Well, that's just what I wanted to understand the theory. Go ahead.
MR. HAMILTON: Yeah, I mean, obviously --
THE COURT: But they did -- but their children became citizens of the United States, if they were born in the United States.
MR. HAMILTON: Yes. Yes.
THE COURT: And that was one of the points of the 14th Amendment.
MR. HAMILTON: Absolutely. Absolutely. Repudiating *Dred Scott vs. Stanford* was the central purpose of the citizenship clause.
THE COURT: But those people didn't consent.
MR. HAMILTON: That's -- that's right, but it was -- I mean, slavery --
THE COURT: That is right, isn't it?
MR. HAMILTON: Yes. Yes. *Elk vs. Wilkins* and *Wong Kim Ark*.
THE COURT: So consent wasn't a part of the meaning of the 14th Amendment.
MR. HAMILTON: Well, I don't think it's the sole

meaning of the subject to the jurisdiction thereof. I'd start with --

THE COURT: But you've advanced that as an argument that if you didn't -- if they didn't have those consents, you were outside the scope of the 14th Amendment, but you just agreed with me that there's a whole swath of people they had in mind, who, in law, became citizens and that was their intent. That was the purpose of those words, and they didn't consent.

MR. HAMILTON: Right. I think consent is frequently relevant, but, perhaps, not with every application.

Being born into the allegiance of the country is the concept that *Elk vs. Wilkins* and *Wong Kim Ark* both identify as -- as --

THE COURT: Were those children, when they were born in the United States, and they were enslaved, were they born into allegiance to the United States?

MR. HAMILTON: I'm sorry, I missed the first part.

THE COURT: Were the children who were born in the United States, who became citizens under the 14th Amendment, when they were born, the relevant time is birth, right?

MR. HAMILTON: Yes.

THE COURT: When they were born, were they born into allegiance to the United States?

MR. HAMILTON: I think it would have to be understood that way to reconcile that with *Wong Kim Ark* and *Elk vs. Wilkins*.

I'd also want to highlight the Civil Rights Act of 1866, which is important because it was drafted by the Congress at, basically, the same time that the 14th Amendment was drafted by Congress, both were passed in the first half of 1866. And that act uses slightly different language. It says that all persons born in the US and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens. And it was just a few months later that the 14th Amendment was passed by the Congress and sent out for ratification.

I know Your Honor has read our briefs. I do want to highlight one piece of legislative history in our briefs, it's from Senator Lyman Trumbull who was one of the principle authors of the 14th Amendment. He said during the congressional debates, what do we mean by subject to the jurisdiction of the United States not owing allegiance to anybody else. That is what it means. And that understanding of subject to the jurisdiction thereof is --

THE COURT: Owing no allegiance to anyone else. That's your position, right?

MR. HAMILTON: Right.

THE COURT: Complete, with no allegiance to anyone

else, to another country.

MR. HAMILTON: And that's what *Elk vs. Wilkins* says. It talks about direct and immediate allegiance and that's language that reappears --

THE COURT: So how can the -- you agree with me that lawful permanent residents are obviously not citizens of the United States, right?

MR. HAMILTON: That's right.

THE COURT: And they are, in most, if not all cases, citizens of another country, right?

MR. HAMILTON: Yes.

THE COURT: And they owe allegiance, in some form, to those other countries.

MR. HAMILTON: Yes. Yes.

THE COURT: And yet their children -- you agree that their children, if born in the United States, are birthright citizens?

MR. HAMILTON: Yes. Because the common law recognizes that --

THE COURT: But they owe allegiance to other people, their parents owe allegiance to another country.

MR. HAMILTON: Right.

THE COURT: But even if you owe allegiance to another country, your child can be a birthright citizen.

MR. HAMILTON: That's right. The allegiance.

THE COURT: So why is it complete.

MR. HAMILTON: The allegiance inquiry doesn't turn on whether there exists another allegiance based on some foreign body of law, it turns on whether there's an allegiance to the United States or not, under controlling American law. And the common law recognized that individuals owe an allegiance to the country where their domicile is. And so lawful permanent residents do have a domicile in the United States, and so they have that allegiance to the United States, as well.

I also want to say a few words about plaintiffs' theory of the clause, because it makes subject to the --

THE COURT: So if lawful permanent residents were here and they -- the -- one of them was -- the mother was pregnant, and then they went overseas, like, what is the child's domicile -- you're saying it's the domicile of the parents?

MR. HAMILTON: Yes. Well, if the parents went overseas, then the child would not be born in the United States.

THE COURT: (Nods head.)

MR. HAMILTON: But I do want to address plaintiffs' theory. The Doe plaintiffs say that subject to the jurisdiction thereof means anyone --

THE COURT: I'm sorry, wait. So Canadians who

cross the border to give birth in an American hospital, they're not birthright US citizens?

MR. HAMILTON: Well, it would depend on whether they were a citizen or lawful permanent resident.

THE COURT: No, they're Canadian citizens, like in some places, Canadians, the border is close. They live -- many Canadians live close to the border. If they happen to either be in the United States for the day, for shopping, or whatever, and went into labor, and went to a US hospital, or maybe the closest medical facility is a US medical facility, but for whatever reason -- a Canadian citizen who -- not lawful permanent resident, just Canadian citizens, came over to the hospital, gave birth there, then they wouldn't be birthright citizens.

MR. HAMILTON: That's right. Temporary visitors to the United States do not have a domicile in the United States. They do not owe an allegiance to the United States.

THE COURT: So the allegiance comes from the domicile of the parents.

MR. HAMILTON: It does. It does, as well as the citizenship.

THE COURT: Okay. Go ahead.

MR. HAMILTON: Again, the Doe plaintiffs say that this clause applies to anyone to whom United States law applies. The states say that it means being subject to US

authority. That would render subject to the jurisdiction thereof redundant, because anyone who is in the United States that would be true for.

Plaintiffs' theory also does not explain the categories of individuals that *Elk* and *Wong Kim Ark* say are not subject to the jurisdiction thereof. *Elk* holds that Indians are not subject to the jurisdiction thereof, but the US can regulate Indian commercial activities, property, and adoptions, can also punish Indians for crimes. Foreign diplomats are also subject to US law. It's true that they do have a limited immunity, but foreign diplomats can still be sued in civil courts and that immunity is subject to abrogation. Surely it isn't the case that the citizenship clause turns on Congress's expansion and contraction of diplomatic immunity.

I also want to address the Plyler against --

THE COURT: So that's not really the immunity that they're talking about, right?

MR. HAMILTON: I understood them to --

THE COURT: I mean, police officers have qualified immunity, right?

MR. HAMILTON: Yes.

THE COURT: Nobody is suggesting that because a police officer has qualified immunity that if he has a child -- the plaintiffs aren't suggesting that if he has a

child, that that's the kind of immunity that they're talking about with respect to subject to the jurisdiction, assuming the police officer is a citizen and has a child born in the United States. That's not the kind of immunity they're talking about. They're talking about --

MR. HAMILTON: I agree. They're talking about diplomatic immunity, but that is still something that Congress has the authority to alter.

THE COURT: Yes. But they were talking about its understanding of what they were -- what they meant by those words then, not whether there was any possibility of that shifting. I mean, in fairness, like their argument, you're transforming their argument into a regulatory argument that anybody to whom US law has any sort of application to. That's not what their interpretation of what the subject to means.

MR. HAMILTON: I respectfully disagree. I'll just read from page 10 of the State's briefs. They say that subject to the jurisdiction thereof means, quote, "subject to US authority." And I think that's very difficult to square at least with the *Elk vs. Wilkins* case, holding with respect to Indians.

THE COURT: If you interpret authority to mean the application of any civil law to the person.

MR. HAMILTON: Well, but also criminal. There are

statutes.

THE COURT: Well, civil or criminal.

MR. HAMILTON: Yes. Also, I'll say a few words on scope of relief issues, since Your Honor asked my friends on the other side about that.

THE COURT: Yes, of course.

Before you get to that, I have one other, just, question.

So this -- under the EO, citizenship turns -- you agree with me that, before the EO, whether right or wrong, misimpression, misreading or not, the way citizenship, birthright citizen was applied was you just looked at where the person was born, correct? At least for within the United States -- the 50 states.

MR. HAMILTON: Well, no, because you do have *Elk vs. Wilkins* and then the categories of individuals in *Wong Kim Ark* that are recognized as not being subject to the jurisdiction thereof.

THE COURT: So there's a few people -- so in that sense, you're saying even before the EO, or -- and the way it's been done, a birth certificate alone -- determining the fact that you were born here did not necessarily completely resolve the question of whether you were a birthright citizen.

MR. HAMILTON: Yes. And let me add one point to

the answer. There is a statute, 8 USC 1401, that expands citizenship --

THE COURT: Sure.

MR. HAMILTON: -- beyond the citizenship clause. That is the reason that Indians have birthright citizens in the United States.

THE COURT: So but my -- under the EO, there is a -- you are expanding the number of people who fall into the category, who, merely looking at their birth certificate doesn't establish their citizenship.

MR. HAMILTON: That's right. The EO mandates the change of --

THE COURT: So you would have to have -- in order to have -- to determine whether someone is a citizen going forward, not just on February 25th, but as this goes -- because the intent is to have this be -- this is the proper -- the intent of the executive branch is that this is how it should be forever, because that is how it was established in 1868, right?

MR. HAMILTON: Exactly. The executive order wants to align executive practice with what the law requires.

THE COURT: Well, what the clause says.

MR. HAMILTON: Yes, which is what the law and 8 USC 1401 requires. Both are relevant authorities in determining citizenship.

THE COURT: So to then determine who's a citizen, you have to look into who the parents are going forward, right?

MR. HAMILTON: Yes.

THE COURT: In almost every case, more so -- more and more as time goes forward?

MR. HAMILTON: Yes. Yes.

THE COURT: And so -- well, one, doesn't that make citizenship more like bloodline citizenship as a general proposition?

MR. HAMILTON: I don't think so. The rule that we're proposing is both citizenship and domicile and --

THE COURT: And to sort of, just as a practical matter, to effectuate that, aren't you going to need a list of people?

MR. HAMILTON: I -- so the executive order directs federal agencies to work through implementation issues during the 30-day period. That has not happened because of the temporary restraining order.

THE COURT: Well, presumably they started that before. Those orders only went into effect 48 hours ago.

MR. HAMILTON: Oh, Your Honor, a federal judge in Seattle entered --

THE COURT: Oh, the TRO. Right. I forget about that. I'm sorry. Yes, I forgot.

MR. HAMILTON: So I'm not able to answer questions about implementation. That's something that the executive order excepted.

THE COURT: So you have no idea, for example, whether or not this would require the federal government or whether the -- what comes out of this is the federal government would require every person -- keep a list of every person, whether they were citizen or not, so that it could be determined when the State Department was issuing passports or whether there was any other question that they would need to reference that list. You have no idea whether or not that that's what's contemplated?

MR. HAMILTON: Correct. It's Section 3 of the EO that directs agencies to work on guidance and work through the implementation issues. That work was not allowed to go forward under the TRO issued in Seattle just days after the EO was signed.

THE COURT: It doesn't prevent -- the TRO or the PIs don't prevent thinking about that issue, right?

MR. HAMILTON: I don't know that we've taken a position on that, but it did -- it did enjoin Section 3, as well as other portions of the executive order --

(Counsel confers.)

MR. HAMILTON: And we've interpreted it as a pencils down executive order -- or sorry. A pencils down

temporary restraining order.

THE COURT: I see. Okay. Go ahead.

MR. HAMILTON: On the scope of relief, so the state standing issue that I began with is important because the --

THE COURT: So just turning back to that, it may be or it may be not, but it may be that it would require everybody to register, or maybe not. You just don't know and haven't addressed it.

MR. HAMILTON: I can't --

THE COURT: You can't answer.

MR. HAMILTON: I can't answer any implementation questions.

THE COURT: Okay. Go ahead.

MR. HAMILTON: To the extent the Court is inclined to enter injunctive relief, there should not be a nationwide injunction. The plaintiff states lack standing, and the associational plaintiffs have acknowledged that their members are limited to Massachusetts. And so there's no justification for a nationwide injunction, which also is inconsistent with Article III authority, which is limited to resolving cases and controversies not to setting nationwide rules of policy applicable to parties not before the Court.

THE COURT: When just circling -- I'm sorry. Do you have something else?

MR. HAMILTON: No, Your Honor.

THE COURT: Okay. One last question about forfeiting. Does that principle come into play in the PI when there hasn't been an answer, there hasn't been a motion to dismiss?

MR. HAMILTON: I think so. I don't know how we could --

THE COURT: When did -- so at what point do people forfeit standing arguments?

MR. HAMILTON: Well, standing arguments are --

THE COURT: There's a different question -- I'm sorry to interrupt. Let me just divide it. I understand it to say hey, they didn't address it, Judge, I didn't get a chance to respond to it. That's not a forfeit argument. That's just an argument that it's not fair, either you shouldn't consider it, or I should get a chance to respond, but a forfeit argument is it's gone from the case. That's what you mean by forfeit.

MR. HAMILTON: Right. Right.

THE COURT: And so my question is then do you forfeit it if you don't articulate it in the complaint, or like if they had -- when -- when are you locating it under the federal rules that they forfeited it.

MR. HAMILTON: For purposes of deciding this motion, it is forfeited because it doesn't appear anywhere in the papers, but I suppose Your Honor would have to anticipate

that the states would have a different standing theory in the future that they haven't taken yet. But again, even if that happened, we don't think that theory of standing is sufficient, because the citizenship clause is just setting a floor for citizenship. We don't see anything in there that would prevent states.

THE COURT: Well, doesn't it affect, for example, if you lower the floor, that's essentially what you're doing. You're saying you're lowering the floor back to what it should be. But you certainly -- however you characterize it, you're lowering it, but it's a narrower floor, or a lower floor than what they've articulated or what was previously was misimpressed or --

MR. HAMILTON: Yes. Yes.

THE COURT: So that effects states in terms of the number of citizens in the state, right?

MR. HAMILTON: In a sense. But at bottom.

THE COURT: Well, not in a sense. I mean, the Doe's child born here, without the executive order, would have been treated as a birthright citizen, right?

MR. HAMILTON: Yes.

THE COURT: And so with the executive order, if it's enforced, she would not be treated as a citizen, Doe's child.

MR. HAMILTON: That's right. That's right.

THE COURT: And so that -- actually, not in a sense, that actually reduces by one the number of US citizens in Massachusetts, right?

MR. HAMILTON: Yes. But, again, we're talking about a theory of standing that plaintiffs have not argued.

THE COURT: Right, but then you were explaining to me why it didn't work as a theory. That's what I'm wondering about.

MR. HAMILTON: Right. Right. And it also doesn't work because the states would be able to still extend citizenship to --

THE COURT: But not United States citizenship --

MR. HAMILTON: That's right.

THE COURT: -- which would matter for various things -- for example, apportionment -- aren't representative's apportionment based on the population, right?

MR. HAMILTON: Yes.

THE COURT: Or just population. But aren't there provisions in the Constitution, I think, that relate to the number of citizens?

MR. HAMILTON: There are provisions in the constitution that relate to the number of citizens. I'm not prepared to spell them out all here.

THE COURT: Right. Okay. Thank you.

MR. HAMILTON: Thank you, Your Honor.

THE COURT: Anything you want to say in response?

MR. SELLSTROM: Thank you, Your Honor, and I'll be brief, just a couple of points to respond to. I think, in particular, the colloquy between the Court and defense counsel about the retroactive nature of the executive order really highlights what the defendants are asking to do and wanting to do, which is to take the place of what the Supreme Court does. The whole idea that there is an effective date to the executive order and the particular categories that are called out really shows that this is something that is not executing laws and Constitution that exists now by asking to change that. The similar -- very similar in the arguments that defense counsel was making about the *Wong Kim Ark* case and domicile and subject to the jurisdiction of, all of those arguments are specifically addressed by the *Wong Kim Ark* case that domicile is not the controlling factor there, and that the consent is not what is at issue here. These are issues that are addressed to the Supreme Court and are not controlling law that exists today. And that's from *Wong Kim Ark*, along to the *Hintopoulos* case that we cited in note 11, and all of the other cases that have since -- come since then.

Finally, I just wanted to go to the point where the state had said that they would consent to converting the

preliminary injunction hearing into a permanent injunction. The Doe plaintiffs also agree with that, that on the record that Your Honor has, should the Court be inclined to issue a preliminary injunction, we believe a permanent injunction would also be appropriate.

THE COURT: Okay.

Anything else you want to add?

MR. CEDRONE: Two brief points on standing, Your Honor. First on the question of whether we've forfeited standing on the basis of the sovereign harms to the plaintiffs, we don't think we have, for the reason that your question highlighted. This is a preliminary posture, there hasn't been an answer, there hasn't been a motion to dismiss. We put forward in our PI papers what we think was the clearest and most straightforward path to finding standing in this case, with the limited space we had to do so. I don't think we forfeited other arguments.

Your Honor has heard fulsome argument on it here today, and to the extent you were -- had questions about the basis for standing that we included in the papers, but thought that there was another more straightforward path, we could also put in supplemental briefing on that issue.

I don't -- that brings me to my second point, which is I don't think the Court needs to go down that path, because the grounds for standing in the briefing make this a

very straightforward case. The federal defendants rely on *United States vs. Texas* to try to make this seem like a muddy or fuzzy, in their words, issue. This is not that case. That case, the opinion of the Supreme Court was infused with the fact that the plaintiff states in that case had a really *sui generis* request. They were asking federal courts to issue a mandatory injunction to the federal government to arrest more people. And the Court's opinion made clear that that was such an unprecedented request that it bore on the state's standing. Even assuming there's some kind of fuzzy line between what's direct and what's indirect, this case is clearly on the direct side of the line.

Your Honor can take everything that Mr. Hamilton said about why the government views this case as not direct and apply it to the situation in *Biden vs. Nebraska*, and apply it to the situation in *Massachusetts vs. HHS*. You're familiar with the facts in *Biden vs. Nebraska*. There were student loans. The President had a policy to forgive them. That policy was obviously immediately directed at the student loan holders, but it had a direct financial impact on MOHELA, that state entity.

We're in the same position here. We have a contract with the federal government, for example, to process Social Security numbers, and the federal government doesn't dispute the factual premise that that contract, other

arrangements with the federal government, will result in a direct financial harm -- or result in a financial harm to the plaintiffs, and that is clearly direct within the meaning of both *Biden vs. Nebraska*, and *Mass. vs. HHS* in the First Circuit.

THE COURT: Thank you.

MR. CEDRONE: Thank you.

MR. DURAISWAMY: Just one point, Your Honor, on this issue of allegiance and owing allegiance to a foreign power. So again, I think it's unclear what the government thinks allegiance means. They don't -- what it means to owe allegiance, they don't really say that. To the extent that it just means having a tie of some sort to another foreign power, then that would apply equally to people who are lawful permanent residents, and it would convert the citizenship clause into something that absolute -- that prohibits dual citizenship or dual nationality, which we know it does not.

What allegiance means, as *Wong Kim Ark* has explained, is a duty to obey, and so owing allegiance to a foreign power is problematic from the standpoint of the citizenship clause only when, while you are in the United States, you have a principal duty to a foreign power that is effectively operating with the express or implied consent of the United States, as Chief Justice Marshall explained in the *Schooner Exchange*, where that foreign power is effectively

operating within the territorial boundaries of the United States.

So that is the case with respect to tribal nations, which were considered in the 19th Century to be alien powers within the United States. That is the case when there is a hostile entity that is occupying part of the territory of the United States, and that is the case when you have foreign representatives of a foreign government, who are allowed into the country, and are acknowledged to be essentially operating within the United States as emissaries of their foreign government. It is not the case with respect to lawful permanent residents, as -- which defendants do not dispute, and there is no reason, if it's not the case with respect to lawful permanent residents that it should be the case with respect to those who are here long term, short term, whatever, but who are not here under the domain and under the auspices, or as representatives of a foreign power.

THE COURT: Thank you.

You didn't have anything else, right?

MR. HAMILTON: I'll just make one comment on Rule 65, consolidation of trial on the merits with the PI. We agree with that, with the Doe plaintiffs' concession that their members are only in Massachusetts.

Thank you, Your Honor.

THE COURT: That is your position, right? They're

only in Massachusetts? The members of the associations, for purposes of preliminary and permanent relief.

MR. SELLSTROM: That's right.

THE COURT: Just one last question, Mr. Hamilton.

One of the things, just so I understand correctly, that you're urging that I do is conclude that -- on the merits, putting aside standing and cause of action, but on the merits, deny the injunction, because the -- I have the -- you think I have the authority to do that within the case law from the Supreme Court?

MR. HAMILTON: Exactly.

THE COURT: And you've read -- I'm not going to get the name of the case right, there's a lot of cases that I've read in the last two weeks, it's a 1985 decision by unanimous Supreme Court, so nine to zero, Justice White, I think, wrote the opinion for the Court *INS v.* -- I think it was *Rios*. Are you familiar with that case?

MR. HAMILTON: I am not, Your Honor.

THE COURT: Let me explain it to you and then just -- I want to understand the position that you're urging on me.

In that case, according to the Supreme Court, the only opinion that they issued, the father and mother paid a professional smuggler to illegally bring them into the United States, and they came into the United States without

inspection. So they would be undocumented, or illegal aliens, or whatever term you want to use, right? You agree?

MR. HAMILTON: That sounds right.

THE COURT: It seems right. I'm just telling you what they said as I read it, as I understand it.

And they then had a child in the United States, according, again, to the opinion from the Supreme Court. And they, in immigration proceedings, asserted that to deport them, the parents, was to *de facto* deport their child. And they lost that claim in the immigration proceedings and they went to the Supreme Court. And I think the question in the Supreme Court turned on whether they were entitled to have -- it was a question of just the scope of the attorney general's discretion to reopen that proceeding, given that was what they were urging, and so that's the context of the case.

And you're in all of these cases, right? Or are you just in the case before me?

MR. HAMILTON: You're asking about my role in the different cases?

THE COURT: Yeah.

MR. HAMILTON: I --

THE COURT: It doesn't matter. You don't have to tell me, but I would assume that all of you are talking to each other, but you don't have to tell me that, either.

So in any event, the Supreme Court called that

child a United States citizen, born in the United States and, therefore, was a citizen. And so I guess my question is, I know one answer you'll give me is the express holding of that case was not -- the question -- I'm sorry, the question presented to the Supreme Court was not was that child a United States citizen, so, therefore, there's not a four corners. So that's one answer I'm sure you would give me, right?

MR. HAMILTON: Yes. Yes.

THE COURT: And so my related, follow-up question is you're telling me that in the face of that context of that case, where citizenship -- the underlying claim turned on the citizenship of the child, that -- and the unanimous Supreme Court saying those things, nonetheless, as a district judge, I have the authority to say they're wrong, effectively.

MR. HAMILTON: We read comments like that to be *dicta*. And *dicta* is something that even *Wong Kim Ark* talks about. *Wong Kim Ark* cites the *Cohens* case and warns against overreading *dicta*.

THE COURT: So your position is, (a), that statement, assuming I've accurately described it to you, is wrong --

MR. HAMILTON: Yes.

THE COURT: -- that the person was a United States citizen. The nine justices when they said that, they were

wrong.

MR. HAMILTON: From my understanding of --

THE COURT: From the way I've described it, assuming if I've described it fairly.

MR. HAMILTON: Yes.

THE COURT: Then they would be wrong.

MR. HAMILTON: Yes. And I --

THE COURT: And then I have -- because it's *dicta*, in your view, as I've described it, then I have the authority to disregard that?

MR. HAMILTON: Yes. But if I could add, our brief does cite some post-*Wong Kim Ark* cases of the Supreme Court decided in 1902 and 1920. This is page 32 of our brief, that include the domicile condition we've identified in stating *Wong Kim Ark's* rule. So I think there are conflicting --

THE COURT: But the power of the 1985 decision would be more -- since it's more recent since the 1902 decision, might have more -- neither -- not necessarily binding. I don't think it's a binding holding about that question. I'm only asking you, just a narrow question, and I think your answer is yes, that I -- I think the answer is, A, those nine justices were wrong when they said that, assuming my recitation of the facts is correct. They were wrong, and B, I'm not bound by that.

MR. HAMILTON: Yes.

THE COURT: And therefore, I would be -- it would be appropriate for me to not follow that statement.

MR. HAMILTON: That's right.

THE COURT: Okay.

MR. HAMILTON: Thank you, Your Honor.

THE COURT: Thank you.

MR. SELLSTROM: Your Honor, could I raise one more point on the issue of the membership?

THE COURT: So just to be clear, so I'm only bound -- in the view of the Department of Justice, I am only bound to the four corners of holdings of the United States Supreme Court?

MR. HAMILTON: Well, I think the rules are also applicable, but I don't think plaintiffs --

THE COURT: No, no. I'm just asking, am I bound -- I think what you're saying to me is I'm only bound by the holdings?

MR. HAMILTON: Yes.

THE COURT: And not anything more.

MR. HAMILTON: Yes. Yes.

THE COURT: And then I'm -- not -- so just the holdings, that's all that binds me, in any case.

MR. HAMILTON: And *dicta* can be disregarded.

MR. SELLSTROM: The final point that I wanted to make, Your Honor, on that was just to make sure the record is

clear, that the membership is primarily Massachusetts residents. I don't want to represent to the Court all of the membership, but it is certainly primarily --

THE COURT: I think the question -- what Mr. Hamilton meant by that, and you'll correct me, Mr. Hamilton, if I'm not reciting it accurately. I think what he meant by that is for purposes of this case in deciding all of the issues in play, by the motion, I should decide it as if the members were only from Massachusetts, not that that -- and that assumption would not be binding in any other case involving the association, simply that we would be deciding that that's what this case was deciding.

That's -- is that what you were saying, Mr. Hamilton?

MR. HAMILTON: Yes, Your Honor.

THE COURT: That's how I understand.

MR. SELLSTROM: That is correct in terms of primarily membership that is residents of Massachusetts, correct.

THE COURT: So if I proceed to final determination, I should -- I would be assuming and accepting, just for purposes of this case, that the only association members are in Massachusetts.

MR. SELLSTROM: That's correct, Your Honor.

THE COURT: Okay. And that just to be clear, so,

like, that wouldn't bind -- you could come forward in the next case, filed in four minutes or in four years, or whenever, and take the position that members of the association, some, many, lots of them, are elsewhere, and you wouldn't be bound by this assumption or this determination that I made, even if it's necessary to the judgment, right?

MR. SELLSTROM: Yes, Your Honor.

THE COURT: You agree with that, Mr. Hamilton?

MR. HAMILTON: Yes, Your Honor.

THE COURT: Okay. All right. So I'll take it under advisement. I intend to issue a written decision promptly, but I don't think you should expect it today, and I want to think about all the issues. They're important and serious, and I thank you very much. You have a good day.

(Court in recess at 11:29 a.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 7th day of February, 2025.

/s/ RACHEL M. LOPEZ

_____

Rachel M. Lopez, CRR
Official Court Reporter

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW JERSEY, *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No. 1:25-cv-10139-LTS

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

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 62, Defendants respectfully move for a stay pending appeal of the Court's February 13, 2025 Order, ECF No. 145, which preliminarily enjoins Defendants on a nationwide basis from implementing and enforcing Executive Order No. 14160, Protecting the Meaning and Value of American Citizenship (Jan. 20, 2025) ("EO"). Defendants have appealed the Court's injunction and expect to ultimately prevail on their merits arguments. But those arguments are not at issue here: irrespective of the Court's views on the merits, it should stay the injunction because it provides relief to parties—both in this litigation and across the country—who have not demonstrated their entitlement to the extraordinary remedy of a preliminary injunction.

On appeal, Defendants are likely to succeed on their argument that the states lack standing. Fundamentally, the states lack any rights under the Citizenship Clause and cannot assert such claims on behalf of their third-party residents. And they cannot otherwise claim standing based on their own purported financial injuries because the downstream effects of federal immigration policies on voluntary state expenditures do not inflict an Article III injury. Even setting that aside, the Court's extension of relief to non-party individuals across the nation 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). At minimum, the Court should stay the injunction insofar as it applies beyond the plaintiff states.

The equities similarly weigh in favor of staying an injunction that intrudes into internal executive branch affairs, preventing Defendants from taking even preparatory steps to implement the EO in the event that it is eventually permitted to take effect, and extends to states and non-parties who have not demonstrated a likelihood of irreparable harm or entitlement to injunctive

relief.

Defendants respectfully request a ruling by the close of business on February 26, 2025. After that time, if relief has not been granted, Defendants intend to seek relief from the U.S. Court of Appeals for the First 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); *Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo*, 18 F.4th 38, 43 (1st Cir. 2021). When the government is a party, its interests and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

I. Defendants Are Likely to Prevail On The Merits Of Their Argument That The Preliminary Injunction Was Improperly Issued.

"At the preliminary injunction stage, . . . the plaintiff must make a 'clear showing' that she is 'likely' to establish each element of standing." *Murthy v. Missouri*, 603 U.S. 43, 58 (2024); *see also, e.g., Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (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* Doc. No. 92 at 18-22. The Court disagreed, but it 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 id*. at 20-22.

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). 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. In *Kowalski v. Tesmer*, for example, the Supreme Court assumed that the criminal defense attorney plaintiffs had established Article III standing through allegations that the challenged state law "reduced the number of cases in which they could be appointed and paid as assigned appellate counsel." 543 U.S. 125, 129 n.2 (2004) (citation omitted). But the Court held that notwithstanding that pocketbook injury, the attorneys could not sue to assert their putative clients' constitutional right to have the government pay for their services. *Id*. at 134. Here, for the same reason that states lack standing to assert claims that individuals' Due Process and Equal Protection rights are harmed, *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.

While the Court did not address Defendants' third-party standing arguments, it found that the plaintiff states had standing because they were able to "articulate various forms of federal funding that will be diminished as a direct result of the EO." Doc. No. 144 at 8-9. But the challenged EO does not directly regulate the states, set standards for determining federal funding, or otherwise require that states provide any services or incur any expenditures. It merely regulates how the federal government will approach certain individuals' immigration status. Whatever impacts that federal policy might have on state programs are necessarily the kind of "indirect effects on state revenues or state spending" that the Supreme Court recently warned should not confer standing in "cases brought by States against an executive agency or officer." *United States v. Texas*, 599 U.S. 670, 680 n.3 (2023).

This Court found the standing analysis in *Texas* "inapt," Doc. No. 144 at 10, but its rejection of state standing based on the downstream effects of a federal policy on state budgets is based on "bedrock Article III constraints," *Texas*, 599 U.S. at 680 n.3, that courts have consistently applied to deny similar attempts at state standing as are at issue here. *See, e.g.*, *Florida v. Mellon*, 273 U.S. 12, 17-18 (1927); *Washington v. FDA*, 108 F.4th 1163, 1175-76 (9th Cir. 2024); *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1002 (9th Cir. 2024); *Arizona v. Biden*, 40 F.4th 375, 386 (6th Cir. 2022). To find standing here would imply that every state has Article III standing to litigate the citizenship status of every person residing within its borders, but that is not the law and the Court should decline to adopt such a "boundless conception of Article III's injury requirement." *Washington*, 108 F.4th at 1176.[1]

2. Defendants are also likely to prevail on their argument that nationwide relief is improper. *See* Doc. No. 92 at 49-50. 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

[1] Without fully resolving the issue, the Court suggested in a footnote that the states "also probably have standing based on their sovereign interests" that were not asserted in their preliminary injunction briefing. *See* Doc. No. 144 at 10 n.7. But the Court cited no authority for the proposition that states have a sovereign interest in "which persons are U.S. citizens," *id*., and indeed federal citizenship status is an issue over which the federal government has plenary control. *See, e.g.*, *Foley v. Connelie*, 435 U.S. 291, 312 n.5 (1978) ("For it is the Federal Government that exercises plenary control over naturalization and immigration."); *cf. Arizona*, 40 F.4th at 386-87 ("The key sovereign with authority and 'solicitude' with respect to immigration is the National Government, not the States.").

U.S. 667, 713 (2018) (Thomas, J., concurring). These general principles foreclose relief to anyone in this case, and that is especially true for individuals outside of the plaintiff states who are not only non-parties but do not even live in the states that are parties to this case.

The Court acknowledged that "universal relief" is not generally necessary to "provide complete relief to" parties affected by the EO. Doc No. 144 at 28. But it nonetheless fashioned nationwide relief in this case because of the possibility that "children born in states that are not parties to this lawsuit" would move to a plaintiff state, "seek[] various services," and necessitate state funding. *Id*. at 29. But the mere prospect of such remote future impacts on state revenue streams is insufficient to justify 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* Doc. No. 122 (amicus brief filed by 18 states); Doc. No. 127 (Tennessee amicus brief); *Arizona*, 40 F.4th at 396 (Sutton, C.J., concurring) ("Nationwide injunctions … sometimes give States victories they do not want.").

The Court also suggested that an injunction limited to the plaintiff states would "risk[] creating a new set of constitutional problems." Doc. No. 144 at 29. But the authority on which the Court relied—recognizing a Fourteenth Amendment "right to travel" allowing a United States citizen traveling to a new state to enjoy therein the "same privileges and immunities enjoyed by

other citizens of the same State," *Saenz v. Roe*, 526 U.S. 489, 502 (1999)—provides no basis for nationwide relief to non-parties here. That line of cases prevents states from discriminating against U.S. citizens from other states; it does not have anything to say about the United States' recognition of citizenship under the Citizenship Clause. *See, e.g.*, *id.*; at 502-04; *Hope v. Comm'r of Ind. Dep't of Corrs.*, 9 F.4th 513, 525 (7th Cir. 2021) (noting that the Supreme Court's right to travel decisions each involved a state "rule that explicitly discriminated between old and new residents"). It would not violate anyone's right to travel for the Court, for the limited period of time until this case can be resolved and in accordance with traditional equitable principles, to limit any preliminary injunctive relief to the parties before it.

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

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

The balance of the equities likewise favors staying injunctive relief to parties who have not demonstrated their entitlement to it. Providing relief to states that lack standing and individuals in all 50 states who have not demonstrated their entitlement to such relief conflicts with the principles articulated above and allows "one district court [to] make a binding judgment for the entire country." *Louisiana v. Becerra*, 20 F.4th 260, 263 (5th Cir. 2021). That is especially inappropriate

in the context of this litigation, where multiple states have argued that the EO should not be universally enjoined. *See* Doc Nos. 122, 127 (state amicus briefs).

In addition, an injunction that interferes with the President's ability to carry out his broad authority over immigration matters is "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS v. Legalization Assistance Project of L.A. County Fed'n of Lab.*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers). Indeed, any injunction that prevents the President from exercising his core authorities is "itself an irreparable injury." *Doe #1 v. Trump*, 957 F.3d 1050, 1084 (9th Cir. 2020) (Bress, J., dissenting) (citing *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

As noted above, the injunction causes further harm to the Defendants because its breadth—applying to all implementation and enforcement—prevents the executive branch as a whole from even beginning the process of formulating relevant policies and guidance for implementing the EO. If Defendants are successful on their appeal and the EO is eventually allowed to take effect, but the injunction is not stayed in its overbroad applications while that appeal is pending, the Defendants will be unable to make preparations necessary to implement the EO, thus further delaying its implementation.[2] Such a delay in effectuating a policy enacted by a politically

[2] The EO is also subject to two other preliminary injunctions preventing implementation and enforcement of the EO on a nationwide basis. *See Washington v. Trump*, No. 2:25-cv-0127-JCC, 2025 WL 415165 (W.D. Wash. Feb. 6, 2025); *CASA, Inc. v. Trump*, No. 8:25-cv-201-DLB, 2025 WL 408636 (D. Md. Feb. 5, 2025). Defendants have appealed both preliminary injunctions and, in both cases, filed motions to stay their overbroad applications in both district court and with the relevant courts of appeal. *See Washington v. Trump*, No. 25-807, ECF No. 21.1 (9th Cir. Feb. 12, 2025); *Casa, Inc. v. Trump*, No. 25-1153, ECF No. 9 (4th Cir. Feb. 19, 2025). Two narrower injunctions have also been entered against the EO. *See N. H. Indonesian Comm. Supp. v. Trump* ("*NHICS*"), No. 1:25-CV-38-JL-TSM, 2025 WL 457609 (D.N.H. Feb. 11, 2025); *Doe v. Trump*, No. 25-CV-10135-LTS, ECF No. 47 (D. Mass. Feb. 13, 2025). Defendants have sought clarification regarding the NHICS injunction's scope, *see NHICS*, ECF No. 81, and filed a notice of appeal in the *Doe* case, *see Doe*, ECF No. 48.

accountable branch of the government imposes its own "form of irreparable injury." *King*, 567 U.S. at 1303 (Roberts, C.J., in chambers) (citation omitted). This is especially harmful in this context where, as Defendants have explained, the challenged EO is part of a larger immigration policy designed to combat the "significant threats to national security and public safety" posed by unlawful immigration. *See* Doc. No. 92 at 14.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Defendants' opposition to Plaintiffs' motions for preliminary injunction, Doc. No. 92, Defendants respectfully request that this Court stay its preliminary injunction. Defendants respectfully request a ruling on this motion by no later than the close of business on February 26, 2025, after which time, if relief has not been granted, Defendants intend to seek relief from the First Circuit.

Dated: February 19, 2025

Respectfully submitted

BRETT A. SHUMATE
Acting Assistant Attorney General
Civil Division

LEAH B. FOLEY
United States Attorney

ALEXANDER K. HAAS
Branch Director

BRAD P. ROSENBERG
Special Counsel

/s/ R. Charlie Merritt
R. CHARLIE MERRITT (VA Bar No. 89400)
YURI S. FUCHS
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005

Phone: 202-616-8098
Fax: 202-616-8460
Email: robert.c.merritt@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF.

Dated: February 19, 2025

/s/ R. Charlie Merritt
R. Charlie Merritt
Trial Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

New Hampshire Indonesian
Community Support, et al.

v.

Civil No. 25-cv-38-JL-TSM
Opinion No. 2025 DNH 014 P

Donald J. Trump, President of the
United States, in his official capacity, et al.

PRELIMINARY INJUNCTION ORDER

Plaintiff nonprofit groups—New Hampshire Indonesian Community Support, League of United Latin American Citizens, and Make the Road New York—ask this court to enjoin the enforcement of an executive order that would exclude certain groups of individuals from receiving birthright citizenship. They sue the President, the Secretary and Department of Homeland Security, the Secretary and Department of State, the Secretary and Department of Agriculture, and the Administrator of and Centers for Medicare and Medicaid Services (the persons in their official capacities).[1] The plaintiffs allege that a recent executive order involving birthright citizenship violates the Fourteenth Amendment of the United States Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. *See* U.S. Const. amend. XIV, § 1; Immigration and Nationality Act, 8 U.S.C. § 1401; Administrative Procedure Act, 5 U.S.C. § 706(B).[2]

[1] *See* Compl. (doc. no. 1).
[2] *Id.* at ¶¶ 86-97.

After reviewing the parties' submissions and holding oral argument, the court grants the preliminary injunction. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

Applicable legal standard. "A preliminary injunction is an extraordinary equitable remedy that is never awarded as of right." *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (quotations omitted)).

> "When a party seeks a preliminary injunction, the district court considers four long-established elements: (1) the probability of the movant's success on the merits of their claim(s); (2) the prospect of irreparable harm absent the injunction; (3) the balance of the relevant equities (focusing upon the hardship to the movant if an injunction does not issue as contrasted with the hardship to the nonmovant if it does); and (4) the effect of the court's action on the public interest."

Santiago v. Mun. of Utuado, 114 F.4th 25, 34–35 (1st Cir. 2024) (quoting *Rosario-Urdaz v. Rivera-Hernandez*, 350 F.3d 219, 221 (1st Cir. 2003) (quotations omitted)). "The movant's likelihood of success on the merits weighs most heavily in the preliminary injunction calculus." *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020). The third and fourth factors "merge when the [g]overnment is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The Executive Order. On January 20th, 2025, the President issued Executive Order No. 14160, titled "Protecting the Meaning and Value of American Citizenship."[3] It provides that the Fourteenth Amendment of the Constitution "has never been interpreted to extend citizenship universally to everyone born within the United States" and that it "has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof.'"[4]

It then orders 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" in two circumstances:

> "(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."[5]

By its terms, the Executive Order takes effect on February 19th, 2025.[6]

Procedural history. The plaintiff organizations include pregnant members who will give birth after the Executive Order becomes operative.[7] For various reasons, the

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[3] Protecting the Meaning and Value of American Citizenship, Executive Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025).
[4] *Id.*
[5] *Id.*
[6] *Id.* In similar suits in other federal district courts, at least two other courts have preliminarily enjoined the order nationwide. *See State v. Trump*, No. C25-0127-JCC, 2025 WL 415165, at *7 (W.D. Wash. Feb. 6, 2025); *CASA, Inc. v. Trump*, No. CV DLB-25-201, 2025 WL 408636, at *17 (D. Md. Feb. 2, 2025).
[7] *See* Decl. of Rev. Sandra Pontoh, Director of the New Hampshire Indonesian Community Support (doc. no. 24-2) at ¶¶ 8-10; Decl. of Juan Proaño, Chief Executive Officer of League of

plaintiffs' members' children born on or after that date risk deprivation of birthright citizenship under the Executive Order.[8] The parties jointly submitted a briefing and hearing schedule at the outset of the litigation and requested oral argument only, as opposed to an evidentiary hearing. Counsel for both parties confirmed at oral argument that their disputes in the litigation are legal rather than factual.

The plaintiffs allege that the Executive Order violates the Fourteenth Amendment and § 1401 of the INA because it "denies citizenship to children of noncitizens who are born in the United States and subject to the jurisdiction of the United States."[9] They also claim that the Executive Order violates the APA.[10]

The defendants disagree. They do not challenge the plaintiffs' standing to sue, but argue that they lack a cause of action.[11] They also argue that the plaintiffs are unlikely to succeed on the merits primarily because the phrase "subject to the jurisdiction of the United States" in the Fourteenth Amendment does not refer to the groups affected by the Executive Order, the plaintiffs have misinterpreted Supreme Court precedent regarding the phrase, and the defendants have offered a better interpretation of the phrase.[12] In addition, the defendants contend that illegal immigration to the United States justifies invoking the exception to birthright citizenship for "children born of alien enemies in

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United Latin American Citizens (doc. no. 24-3) at ¶¶ 11-14; Decl. of Sienna Fontaine, General Counsel, Make the Road New York (doc. no. 24-4) at ¶¶ 10-20.

[8] *Id.* The court uses the term "deprivation" here in the sense that, currently and for many generations leading up to the issuance of the Executive Order, the United States government has conferred birthright citizenship on children born under the same circumstances.

[9] *See* Compl. (doc. no. 1) at ¶¶ 86-93.

[10] *Id.* at ¶¶ 94-97.

[11] *See* Defs.' Obj. to Mot. for Prelim. Inj. (doc. no. 58-1) at 15.

[12] *See generally id.*

hostile occupation."[13] *See United States v. Wong Kim Ark*, 169 U.S. 649, 682 (1898). The defendants finally assert that because § 1401 has the same scope as the same phrase in the Fourteenth Amendment, the plaintiffs' argument based on § 1401 should also fail.[14] As to irreparable harm, the defendants argue that the plaintiffs' claimed harm would be hypothetical and speculative.[15]

Analysis. The court grants the motion because the plaintiffs have satisfied the requirements for preliminary injunctive relief.

First, the plaintiffs have a cause of action to seek injunctive relief to redress certain governmental actions that contravene the Constitution or a federal statute. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952) ("decid[ing] whether the President was acting within his constitutional power when he issued an executive order directing the Secretary of Commerce to take possession of and operate most of the Nation's steel mills"); *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1332 (D.C. Cir. 1996) (adjudicating a "claim that [an] Executive Order is in conflict with the [National Labor Relations Act]").[16] "The 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

[13] *Id.* at 29.
[14] *Id.* at 36-37.
[15] *Id.* at 38-39.
[16] Again, the defendants do not challenge the plaintiffs' standing. Much of the defendants' argument about § 1401 refers to challenging the statute under the APA. Because the court does not assess the APA claims for the purpose of this motion, it does not address the defendants' arguments.

judicial review of illegal executive action, tracing back to England." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015).

1. Likelihood of success on the merits

The plaintiffs have demonstrated a likelihood of success on the merits of their constitutional claim and at least one statutory claim. The Fourteenth Amendment and § 1401 both state 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; 8 U.S.C. § 1401. As the statute tracks the Fourteenth Amendment, the court views the claims as parallel, and the parties agreed as much at oral argument.

The court need not presume the Executive Order's constitutionality. "A legislative enactment carries with it a presumption of constitutionality." *Dutra v. Trs. of Bos. Univ.*, 96 F.4th 15, 20 (1st Cir. 2024) (citations and quotations omitted). The defense has not argued, or cited binding or persuasive authority, that executive orders enjoy a similar presumption, and the court does not know of any.

As to plaintiffs' constitutional claim, the Executive Order contradicts the text of the Fourteenth Amendment and the century-old untouched precedent that interprets it. The Supreme Court in *United States v. Wong Kim Ark* enumerated specific exceptions to the constitutional grant of birthright citizenship: "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." *Wong Kim*

Ark, 169 U.S. at 693.[17] The categories of people affected by the Executive Order do not fit into those exceptions.

The Executive Order adds two other groups of people excluded from birthright citizenship, groups not listed in the Fourteenth Amendment or recognized in *Wong Kim Ark*. As the defendants offer no First Circuit Court of Appeals or Supreme Court authority to support their reasoning, the plaintiffs have a high likelihood of success on the merits. There is no reason to delve into the amendment's enactment history (or as explained below, § 1401's legislative history) or employ other tools of interpretation to discern that "subject to the jurisdiction thereof" refers to all babies born on U.S. soil, aside from the enumerated exceptions because the amendment and statute do so *unambiguously*. Finally, the defendants have not established, and court does not find or rule, that the plaintiffs' members' children born on or after February 19 subject to this Executive Order are "enemies within and during a hostile occupation." *Id.*

The Executive Order also likely violates § 1401, which codified the pertinent language from the Fourteenth Amendment. A court "normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment" because "only the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). Congress passed § 1401 fifty years after *Wong Kim Ark*. *See* 8 U.S.C. § 1401 (original version at ch. 1, § 301, 66 Stat. 235 (1952)). The court interprets the statute to incorporate the public meaning of

[17] A "person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe" is now a United States citizen at birth. 8 § U.S.C. 1401(b).

the reasoning and holding in *Wong Kim Ark*, which provided the public meaning of the same language in the Fourteenth Amendment.

> "Where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed."

Morissette v. United States, 342 U.S. 246, 263 (1952). In other words, "[w]here Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it." *George v. McDonough*, 596 U.S. 740, 746 (2022) (cleaned up).

The plaintiffs advocate for the most natural reading of the phrase "subject to the jurisdiction thereof" employed by the Fourteenth Amendment and § 1401. "[I]t's a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary ... meaning ... at the time Congress enacted the statute." *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (citations and quotations omitted). The amendment and statute are unambiguous, and the plaintiffs argue for the ordinary meaning of the phrase as understood by reasonable American English speakers at the time of enactment.

The defendants advance nonfrivolous arguments in support of a different meaning, primarily focusing on the concepts of "allegiance" and "domicile," the scope of the government's regulatory "jurisdiction," the status of Native Americans under the Fourteenth Amendment, and the precedent of *Elk v. Wilkins*, 112 U.S. 94 (1884), but in the face of an unambiguous constitutional amendment and unambiguous statute, they do

not persuade.[18] "As our Court of Appeals has stated, 'genuine ambiguity requires more than a possible alternative construction.'" *United States v. Potter*, 610 F. Supp. 3d 402, 415 (D.N.H. 2022), *aff'd*, 78 F.4th 486 (1st Cir. 2023) (quoting *United States v. Jimenez*, 507 F.3d 13, 21 (1st Cir. 2007)).

Nothing in the text, precedent, history, or tradition of the Fourteenth Amendment or § 1401 persuasively suggests any other interpretation than the unambiguous ordinary meaning of "subject to the jurisdiction" of the United States advanced by the plaintiffs.

> "In any event, canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and in interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete."

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253–54 (1992) (internal citations and quotations omitted). The plaintiffs have demonstrated a likelihood of success on the merits.

2. Irreparable harm

"'Irreparable injury' in the preliminary injunction context means an injury that cannot adequately be compensated for either by a later-issued permanent injunction, after

[18] The defendants also argue that courts should determine the Executive Order's constitutionality in individual, as-applied challenges, rather than the facial challenge here. "A facial challenge to a legislative [a]ct is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which [an act] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). The plaintiffs have demonstrated a likelihood of success, whether the Executive Order is analyzed on its face or as applied to the plaintiffs as alleged in their complaint.

a full adjudication on the merits, or by a later-issued damages remedy." *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005). The court has little difficulty concluding that the denial of citizenship status to newborns, even temporarily, constitutes irreparable harm. The denial of citizenship to the plaintiffs' members' children would render the children either undocumented noncitizens or stateless entirely.[19] Their families would have more trouble obtaining early-life benefits especially critical for newborns, such as healthcare and food assistance.[20] The children would risk deportation to countries they have never visited.[21] Although the defendants argue that the harm would be hypothetical and speculative, the court disagrees.

3. Equities and public interest

These final merged factors—*see Nken*, 556 U.S. at 435, *supra*—weigh in favor of granting the requested injunction. A preliminary injunction's "purpose 'is merely to preserve the relative positions of the parties until a trial on the merits can be held.'" *Starbucks*, 602 U.S. at 346 (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, (1981)). A continuation of the status quo during the pendency of this litigation will only shortly prolong the longstanding practice and policy of the United States government, while imposition of the Executive Order would impact the plaintiffs and similarly

[19] *See* Pontoh Decl. (doc. no. 24-2) at ¶¶ 12-13; Proaño Decl. (doc. no. 24-3) at ¶¶ 14-15; Fontaine Decl. (doc. no. 24-4) at ¶ 27.
[20] *See* Pontoh Decl. (doc. no. 24-2) at ¶¶ 14-16; Proaño Decl. (doc. no. 24-3) at ¶¶ 17-19; Fontaine Decl. (doc. no. 24-4) at ¶¶ 24-26.
[21] *See* Pontoh Decl. (doc. no. 24-2) at ¶¶ 12; Proaño Decl. (doc. no. 24-3) at ¶ 15; Fontaine Decl. (doc. no. 24-4) at ¶ 28.

situated individuals and families in numerous ways, some of which—in the context of balancing equities and the public interest—are unnecessarily destabilizing and disruptive.

The defendants have "no interest in enforcing an unconstitutional law, [and] the public interest is harmed by the enforcement of laws repugnant to the United States Constitution." *Tirrell v. Edelblut*, No. 24-CV-251-LM-TSM, 2024 WL 3898544, at *6 (D.N.H. Aug. 22, 2024) (McCafferty, C.J.) (quotations omitted) (quoting *Siembra Finca Carmen, LLC v. Sec'y of Dep't of Agric. of P.R.*, 437 F. Supp. 3d 119, 137 (D.P.R. 2020)).

"When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Youngstown*, 343 U.S. at 637-38 (Jackson, J., concurring). The ultimate lawfulness of the Executive Order will surely be determined by the Supreme Court. This is as it should be. As the Executive Order appears to this court to violate both constitutional and statutory law, the defendants have no interest in executing it during the resolution of the litigation.

Conclusion. The motion is granted. The court enjoins the defendants from enforcing the Executive Order in any manner with respect to the plaintiffs, and with respect to any individual or entity in any other matter or instance within the jurisdiction of this court, during the pendency of this litigation.

SO ORDERED.

Joseph N. Laplante
United States District Judge

Dated: February 11, 2025
cc: Counsel of Record