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Abstract

This study examines *Trump v. Barbara* (2026) as a contemporary test of whether the President of the United States can narrow birthright citizenship through executive action. It addresses the long-standing disagreement between scholarship linking citizenship to parental allegiance or domicile and scholarship interpreting the Fourteenth Amendment Citizenship Clause as a predominantly territorial rule. Using a literature based and doctrinal legal research design, the study synthesizes judicial opinions, constitutional and statutory provisions, historical materials, and legal scholarship obtained through Google Scholar and recognized legal databases. The analysis focuses on the meaning of “subject to the jurisdiction thereof,” the continuing authority of *United States v. Wong Kim Ark*, the competing reasoning of the majority, concurring, and dissenting opinions, and the institutional limits of presidential control over citizenship recognition. The findings show that the Supreme Court treated jurisdiction as the ordinary governing power of the United States, reaffirmed the territorial principle associated with *Wong Kim Ark*, and rejected a parental domicile requirement. The Court nevertheless divided over the constitutional and statutory foundations of that conclusion. The study also finds that subsequent executive action and class litigation illustrate the continuing importance of administrative implementation and judicial remedies. It concludes that citizenship recognition must conform to constitutional status and that any lawful alteration of the governing rule must proceed through constitutionally authorized processes rather than unilateral executive instruction.

Keywords: *Birthright citizenship, Fourteenth Amendment, Citizenship Clause, Executive power, Constitutional interpretation, United States*

1.0 Introduction

Citizenship is the legal status through which individuals hold membership in the constitutional community of the United States. The Citizenship Clause of the Fourteenth Amendment provides that all persons born or naturalized in the United States, and subject to its jurisdiction, are citizens of the United States and of the state in which they reside (U.S. Const. amend. XIV, § 1). Congress adopted corresponding language in 8 U.S.C. § 1401(a), which declares a person born in the United States and subject to its jurisdiction to be a national and citizen at birth. Neither provision refers to the immigration status of a child's parents. The meaning of the jurisdiction phrase therefore determines whether parental status can affect citizenship at birth.

On 20 January 2025, President Trump issued Executive Order 14160, titled *Protecting the Meaning and Value of American Citizenship* (Executive Order No. 14160, 2025). The Supreme Court later summarized the order as declaring that citizenship does not automatically extend to a child born in the United States when the mother is unlawfully present, or lawfully but temporarily present, and the father is neither a citizen nor a lawful permanent resident (*Trump v. Barbara*, 2026). The order was directed to federal agencies responsible for recognizing citizenship. It therefore made the recognition of a child's citizenship depend on the legal status of both parents rather than on the circumstances of the child's birth.

In *Trump v. Barbara*, decided on 30 June 2026, the Supreme Court held that children born in the United States to parents unlawfully or temporarily present are subject to the jurisdiction of the United States and are citizens at birth (*Trump v. Barbara*, 2026). The Court affirmed a District Court order that had provisionally certified a nationwide class of affected children and preliminarily enjoined enforcement of the order. Chief Justice Roberts wrote for a majority that included Justices Sotomayor, Kagan, Barrett, and Jackson. Justice Kavanaugh concurred in the judgment and dissented in part, while Justices Thomas, Alito, and Gorsuch dissented (*Trump v. Barbara*, 2026; Benenson & Castellanos-Canales, 2026).

The decision resolved a question that had become contested in legal scholarship. Wurman (2026) argues that the common-law rule required birth to parents who were under the sovereign's protection and owed it allegiance, rather than birth on the soil alone. Schuck and Smith (2018) argue that the Constitution does not mandate citizenship for the American-born children of unauthorized immigrants and that Congress may decide the matter. Whittington (2026), by contrast, maintains that children born in the territory are citizens except under very narrow exceptions that do not include unauthorized migrants. Epps (2010) similarly concludes that proponents of a restrictive original intent have not carried their burden of proof.

This paper examines *Trump v. Barbara* through a literature based case study of the United States. It connects the judicial opinions with the scholarship on the original meaning of the Citizenship Clause and with the record of executive action after the decision. The central question is whether the executive branch can alter the class of citizens at birth by instructing agencies to withhold recognition. The question remains practical because the President issued a second order on 6 August 2026 that sought to enlarge the recognized exceptions to birthright citizenship (Howe, 2026b). The paper therefore evaluates both the constitutional rule and its administrative implementation.

2.0 Problem Statement

The Citizenship Clause states a rule of status but does not prescribe a procedure for recognizing that status. In practice, citizenship is evidenced through documents that federal agencies issue and accept. Executive Order 14160 operated through that administrative channel. According to the Supreme Court, the order provided that the affected children were not subject to the jurisdiction of the United States and therefore did not qualify for citizenship under either the Fourteenth Amendment or the Immigration and Nationality Act (*Trump v. Barbara*, 2026). If such an instruction were valid, the scope of a constitutional status would depend on the interpretive position of the executive branch at any given time.

A second problem concerns the interpretive foundation of the order. The federal government argued that references to the domicile of Wong Kim Ark's parents were central to the 1898 decision and that the Court should apply a domicile analysis to the Citizenship Clause (Congressional Research Service, 2026). The government's briefs drew on the scholarship of Wurman, whose article was also cited three times in the principal dissent (University of Minnesota Law School, 2026). Critics such as Whittington (2026) and Magliocca (2026) dispute that historical account. The problem is therefore interpretive: whether the jurisdiction requirement incorporates parental allegiance or domicile.

A third problem concerns remedies and implementation. In *Trump v. CASA, Inc.* (2025), the Supreme Court held that universal injunctions likely exceed the equitable authority of federal courts, without deciding whether the order was lawful. Challengers then proceeded through class litigation, which produced the relief affirmed in *Trump v. Barbara* (2026). After the decision, the President issued a new order narrowing the exceptions to birthright citizenship, and a federal district court preliminarily enjoined it (Howe, 2026b). This paper addresses these problems by integrating the judicial record with the scholarly debate. The purpose is to identify the legal limits on executive control of citizenship and the conditions for its effective protection.

3.0 Objectives of the Study

The general objective of the study is to evaluate *Trump v. Barbara* as a statement of the constitutional limits on executive power over birthright citizenship in the United States. The specific objectives are to examine the theoretical foundations of territorial and consent-based citizenship, analyze the Supreme Court's interpretation of "subject to the jurisdiction thereof" and its reliance on *United States v. Wong Kim Ark*, compare the majority opinion with the concurring and dissenting opinions, assess the implications of the decision for executive administration and subsequent executive action, situate the United States rule within comparative citizenship regimes, and develop recommendations for policy and further research.

4.0 Literature Review

4.1 Territorial and Consent-Based Theories of Citizenship

The territorial theory of citizenship originates in the English common law. The Supreme Court in *Trump v. Barbara* (2026) explained that, under that law, children born within the sovereign's dominions owed a natural allegiance to the sovereign who protected them at birth, regardless of how brief their parents' presence was. The exceptions were

narrow. They covered children born in lands the sovereign did not control, children born in areas temporarily held by enemies, and children of foreign ministers. The Court further explained that this rule of *jus soli*, or right of the soil, crossed the Atlantic and prevailed in the American states after independence.

The American territorial tradition was interrupted by *Dred Scott v. Sandford*. The Court in *Trump v. Barbara* (2026) described that decision as a departure from the common law, because it made descent rather than birthplace the basis of citizenship and excluded those descended from slaves. The Court also recorded that Attorney General Bates rejected hereditary citizenship in 1862 and that Congress enacted the Civil Rights Act of 1866 to restore the common-law rule by statute. According to the Court, the Fourteenth Amendment then placed the question of citizenship beyond the reach of ordinary legislation.

A competing theory treats political membership as a matter of consent. Schuck and Smith (1985) developed this argument in *Citizenship Without Consent: Illegal Aliens in the American Polity*. In a later restatement, Schuck and Smith (2018) maintain that, under the best reading of the Citizenship Clause, the citizenship of the American-born children of unauthorized immigrants is not constitutionally mandated. They argue that the Clause instead empowers Congress to decide the matter as a question of policy. The consent theory therefore locates any authority to limit birthright citizenship in the legislature rather than in the executive branch.

4.2 The Citizenship Clause and Wong Kim Ark

United States v. Wong Kim Ark (1898) is the principal precedent on the Citizenship Clause. Wong Kim Ark was born in San Francisco to Chinese parents. The Supreme Court in *Trump v. Barbara* (2026) summarized the 1898 holding as treating the Fourteenth Amendment as declaratory of the common-law rule of citizenship by birth. The only exclusions recognized were the children of ambassadors and those born in the nations of Indian tribes. According to the same summary, all other persons born in the United States were citizens at birth, whether their parents were permanent residents or temporary visitors.

Historical scholarship has largely supported this territorial reading. Epps (2010) examined the legislative history of the Clause and concluded that the argument for a restrictive original intent misapprehends the intellectual background of the Clause. He further argues that this position mischaracterizes the relationship between the Civil Rights Act of 1866 and the Clause and distorts the tenor of the congressional debates. Epps (2010) also acknowledges that the precise situation of undocumented migrants did not exist in 1866. His conclusion is therefore that proponents of a restrictive reading have failed to carry their burden of proof, rather than that the framers addressed the modern question directly.

Magliocca (2026) relies on a specific exchange in the 1866 Senate debates. Senator Cowan asked whether the Civil Rights Act would naturalize the children of Chinese and Gypsy parents born in the United States, and Senator Trumbull replied that it would. Magliocca (2026) notes that President Andrew Johnson shared this understanding in his veto message, which rejected the Act partly because Roma children would become citizens by birth. Magliocca argues that this evidence binds both sides of the modern debate, because the Roma were then understood to lack both

domicile and allegiance. The Supreme Court majority also cited the Trumbull exchange (*Trump v. Barbara*, 2026).

4.3 The Allegiance and Domicile Revival

Executive Order 14160 was accompanied by a revival of scholarship questioning the territorial reading. Wurman (2026) argues that the common-law rule centered on parental status. In his account, the relevant status was not the citizenship of the parents but whether they were under the protection of the sovereign and owed allegiance to it. Wurman (2026) further argues, from medieval safe-conducts and English statutes, that the sovereign's consent to an alien's presence was necessary to extend that protection. On this reading, the modern belief that the rule depended solely on the place of birth is mistaken.

This scholarship shaped the litigation. The University of Minnesota Law School (2026) reports that the federal government's merits briefs and oral argument drew on Wurman's research, and that Justices Thomas and Gorsuch cited his article three times in dissent. The Congressional Research Service (2026) records that the government argued that the repeated references to domicile in *Wong Kim Ark* were central to that decision. The same report records that the Solicitor General did not ask the Court to overrule *Wong Kim Ark* and instead asked it to treat domicile as central to both cases.

The consent and allegiance theories differ in an important respect. Schuck and Smith (2018) argue that the Constitution leaves the status of children of unauthorized immigrants to Congress. Wurman (2026) grounds the limitation in the original meaning of the Constitution itself. The first position implies that a legislative choice is required, whereas the second implies that the Constitution already excludes certain children. Neither position, as stated in these sources, depends on a claim that the President may create new exclusions without a constitutional or statutory basis. This distinction becomes significant in evaluating the institutional reasoning of *Trump v. Barbara*.

4.4 Critical Responses to the Revival

Whittington (2026) defends the conventional understanding against the new defenders of the executive order. He maintains that children born within the territory of the United States are natural-born citizens except under very narrow exceptions. He further argues that the historically recognized exceptions do not include unauthorized aliens and that nothing in the logic of those exceptions makes them analogous to the modern situation of unauthorized migrants. Wurman (2026) responds that describing the common-law rule as birth on the soil alone is only an approximation that usually produces the correct result.

The scholarly exchange shows that the debate turns on one question. The question is whether allegiance at common law attached to a child through birth under the sovereign's governing power, or through the legal relationship between the parents and the sovereign. Whittington (2026) and Magliocca (2026) support the first view, while Wurman (2026) supports the second. The Supreme Court majority adopted the first view and described the domicile-based account as dramatically revisionist (*Trump v. Barbara*, 2026). The literature therefore provides the historical framework within which the opinions in *Trump v. Barbara* must be evaluated.

4.5 Executive Order 14160 and the Litigation Path

Executive Order 14160 was published at 90 Fed. Reg. 8449 (Executive Order No. 14160, 2025). Litigation began shortly after its issuance. In *Trump v. CASA, Inc.* (2025), the Supreme Court addressed the scope of the universal injunctions that lower courts had entered against the order. The Court held that universal injunctions likely exceed the equitable authority conferred on federal courts, but it did not decide whether the order itself was constitutional. The decision therefore limited one remedy without resolving the underlying entitlement to citizenship.

Challengers then pursued class relief. The District Court for the District of New Hampshire provisionally certified a nationwide class of children who would be denied citizenship under the order and preliminarily enjoined its enforcement (*Trump v. Barbara*, 2026). The Supreme Court granted certiorari before judgment and heard argument on 1 April 2026 (*Trump v. Barbara*, 2026). The two decisions answer different questions. *CASA* concerned the reach of a judicial remedy, while *Trump v. Barbara* resolved the constitutional question that the earlier case left open.

4.6 Comparative Perspectives

Comparative practice shows that several common-law jurisdictions have narrowed citizenship by birth through legislation. Section 1 of the British Nationality Act 1981 provides that a person born in the United Kingdom is a British citizen only if a parent is a British citizen or is settled in the United Kingdom at the time of the birth. The same section deems an abandoned newborn found in the United Kingdom to meet these conditions unless the contrary is shown (British Nationality Act 1981, s. 1). Ireland followed a similar legislative route. Section 4 of the Irish Nationality and Citizenship Act 2004 requires, subject to exceptions, that a parent have resided on the island of Ireland for at least three of the four years before the birth.

Kenya follows a descent-based model. Article 14(1) of the Constitution of Kenya (2010) provides that a person is a citizen by birth if either parent is a citizen on the day of birth, whether or not the person is born in Kenya. Article 14(4) presumes that a child found in Kenya who appears to be under eight years of age, and whose nationality and parents are unknown, is a citizen by birth. At the regional level, Article 6(4) of the African Charter on the Rights and Welfare of the Child requires States Parties to recognize that a child acquires the nationality of the state of birth if no other state grants nationality (Organization of African Unity, 1990).

The existing literature on *Trump v. Barbara* consists largely of case summaries, advocacy explainers, and scholarship written before the decision on original meaning. Less attention has been given to the decision's institutional dimension. That dimension concerns whether the executive branch can alter a constitutional status through documentary administration and how the decision allocates authority between the President, Congress, and the courts. Comparative practice has also not been used to test the institutional reasoning of the opinions. This study addresses that gap.

5.0 Methodology

5.1 Research Design

The study uses a literature based research design to synthesize judicial opinions, legislation, and legal scholarship on birthright citizenship in the United States. Snyder

(2019) explains that a literature review can function as a research methodology when it follows a transparent process for source selection, synthesis, and evaluation. The design is combined with doctrinal legal analysis. Hutchinson and Duncan (2012) describe doctrinal research as the method at the core of common-law legal practice, through which legal rules are identified, analyzed, and synthesized. The United States is treated as the focal case because *Trump v. Barbara* is the leading contemporary decision on executive power over citizenship at birth.

5.2 Source Selection

Source selection was restricted to scholarly works indexed in Google Scholar and to primary legal materials available on official or recognized legal databases, including the Legal Information Institute, the Federal Register, legislation.gov.uk, the Irish Statute Book, and Kenya Law. Searches were completed in September 2026. The review prioritized judicial opinions, statutes, constitutional texts, peer reviewed law review articles, and academic books that directly address the Citizenship Clause, birthright citizenship, or Executive Order 14160. Reports of the Congressional Research Service and established legal news sources were used only to verify procedural and post-decision developments.

The principal search concepts were birthright citizenship, Citizenship Clause, subject to the jurisdiction thereof, *Wong Kim Ark*, domicile and allegiance, Executive Order 14160, *Trump v. Barbara*, *Trump v. CASA*, and comparative citizenship by birth. Sources were excluded when their central subject did not address the research question or when bibliographic details could not be verified on a legitimate academic, governmental, or publisher website. Each source in the reference list includes a direct link and, for scholarly works and judicial decisions, a Google Scholar search link for verification. The final analytical corpus contains twenty-six sources.

5.3 Method of Analysis

The selected materials were analyzed thematically. The first theme concerned the theoretical foundations of territorial and consent-based citizenship. The second concerned the meaning of the jurisdiction requirement and the authority of *Wong Kim Ark*. The third examined the allegiance and domicile scholarship and the responses to it. The fourth examined the executive order and the litigation path. The fifth examined comparative citizenship regimes. Findings were compared across these themes to identify areas of agreement, disagreement, and policy relevance. Claims in the findings section are limited to propositions supported by the selected sources and are presented with author and year citations.

5.4 Study Limitations

The study has three main limitations. First, it relies on published judicial opinions and scholarship and does not collect original empirical data on the administration of citizenship documents. Second, the focus on the United States limits direct generalization to jurisdictions whose citizenship rules rest on different constitutional texts. Third, litigation over the August 2026 executive order remained at the preliminary injunction stage when the searches were completed (Howe, 2026b). Conclusions about that order are therefore provisional and should be revisited as the litigation develops.

6.0 Key Results and Findings

6.1 Jurisdiction Refers to the Governing Power of the United States

The first finding is that the majority interpreted “subject to the jurisdiction thereof” as a reference to the power of the United States to govern persons within its territory (*Trump v. Barbara*, 2026). The Court relied on dictionaries from the ratification period and on *Schooner Exchange v. McFaddon*, in which Chief Justice Marshall described jurisdiction as the full and complete power of a nation within its own territory. According to the Court, the exceptions to that power arose where its exercise would affront a foreign sovereign, most often in the case of foreign ministers. Private foreign individuals present for business or pleasure remained amenable to the jurisdiction of the country.

On that basis, the majority identified only two groups excluded by both the common law and the ordinary meaning of jurisdiction. These were the children of foreign ministers and members of nineteenth-century Indian tribes over whom the United States had ceded part of its territorial jurisdiction (*Trump v. Barbara*, 2026). The Court reasoned that no comparable intersovereign concern applies to children of parents unlawfully or temporarily present, because no foreign sovereign would wish those children to be outside the authority of the United States. The children therefore satisfy both elements of the Clause: birth in the United States and subjection to its jurisdiction.

6.2 Wong Kim Ark Controls and the Domicile Requirement Fails

The second finding is that the majority treated *Wong Kim Ark* as confirming the territorial rule and rejected the domicile argument. The Court acknowledged that the 1898 opinion repeatedly referred to the domicile of Wong’s parents. It held, however, that the reasoning of that decision could not be reconciled with a domicile requirement, because the 1898 Court canvassed the text and history of the Clause without identifying evidence that the ratifiers intended such a limitation (*Trump v. Barbara*, 2026). The majority added that the domicile-based view had commanded only a dissent in 1898 and had never become the law.

The majority advanced several further reasons. It found scant evidence that American law had replaced natural allegiance with a domicile-based conception between 1776 and 1868 (*Trump v. Barbara*, 2026). It stated that domicile and national citizenship are distinct concepts, because establishing a domicile neither confers a new nationality nor removes a prior one. It observed that the word domicile appeared only twice in the relevant debates on the Civil Rights Act and in only one speech on the Citizenship Clause. Finally, it noted that the words mother, father, lawful, and temporary appear in the executive order but not in the Clause.

The textual argument is reinforced by the structure of the Clause. The Court observed that the Clause refers to residence only for state citizenship, which highlights the absence of any residence requirement for national citizenship (*Trump v. Barbara*, 2026). The Court also reasoned that a Congress seeking to settle the question of citizenship permanently would not have adopted a domicile rule, because domicile depends on the circumstances of each case and would introduce significant uncertainty. This reasoning is consistent with the conclusion of Whittington (2026) that the recognized exceptions are narrow, and with the account of the 1866 debates presented by Magliocca (2026).

6.3 The Court Divided on Rationale

The third finding is that the judgment rested on more than one rationale. Justice Jackson joined the majority and wrote separately to reject the principal dissent's description of the Clause as a race-conscious remedy limited to freed slaves. She argued that the Reconstruction Amendments were an anticaste and antisubordination reset for the nation and that the Clause adopted a universalist approach to citizenship (*Trump v. Barbara*, 2026). Justice Kavanaugh concurred only in the judgment. He would have held the order invalid under 8 U.S.C. § 1401(a) and would not treat the exceptions recognized in *Wong Kim Ark* as a closed set, so that Congress could legislate new exceptions (Oyez, n.d.).

The dissenting opinions adopted allegiance-based readings. Justice Thomas, joined by Justice Gorsuch, argued that the jurisdiction phrase requires more than physical presence and that much of the discussion in *Wong Kim Ark* was dicta (Benenson & Castellanos-Canales, 2026). Justice Alito read the Civil Rights Act of 1866 and the Clause as extending citizenship only to children of persons owing complete political allegiance. Justice Gorsuch concluded that the order could validly apply to children of temporary visitors, but expressed doubt about its application to children of undocumented parents who intend to remain permanently (Benenson & Castellanos-Canales, 2026). Table 1 summarizes the six opinions.

Table 1: Summary of Opinions in *Trump v. Barbara* (2026)

Opinion	Justices	Position on the order	Principal reasoning
Opinion of the Court	Roberts, C.J.; Sotomayor, Kagan, Barrett, Jackson, JJ.	Unconstitutional	Jurisdiction means the governing power of the United States; <i>Wong Kim Ark</i> controls; no domicile requirement
Concurrence	Jackson, J. (Sotomayor, J., in part)	Unconstitutional	Reconstruction Amendments adopted a universalist, anticaste approach
Concurrence in the judgment, dissent in part	Kavanaugh, J.	Unlawful under statute	Order conflicts with 8 U.S.C. § 1401(a); exceptions are not a closed set; Congress may legislate new ones
Dissent	Thomas, J. (Gorsuch, J.)	Would uphold	Jurisdiction requires more than presence; much of <i>Wong Kim Ark</i> is dicta
Dissent	Alito, J.	Would uphold	Citizenship limited to children of persons owing complete political allegiance
Dissent	Gorsuch, J.	Would uphold at least as to temporary visitors	Doubts about applying the order to children of undocumented parents intending to remain

Source: Compiled from *Trump v. Barbara* (2026), Oyez (n.d.), and Benenson and Castellanos-Canales (2026).

The division has practical consequences. Under the majority's rationale, an ordinary statute could not remove citizenship from the children covered by the decision. Under Justice Kavanaugh's rationale, the order fails, but a future statute of similar content

might be upheld (Oyez, n.d.). The majority criticized that approach, observing that Justice Kavanaugh would need an ad hoc exception to explain why Wong Kim Ark himself was a citizen, even though his parents were not citizens (*Trump v. Barbara*, 2026). The divided reasoning among the dissenters also shows that the allegiance theory did not produce a single answer for the children covered by the order.

6.4 Executive Power Cannot Redefine Constitutional Citizenship

The fourth finding is that *Trump v. Barbara* limits executive control over the recognition of citizenship. The executive order did not purport to amend the Fourteenth Amendment or 8 U.S.C. § 1401(a). It instead declared that certain children were not subject to the jurisdiction of the United States and therefore did not qualify for citizenship (*Trump v. Barbara*, 2026). The majority rejected that interpretation. It stated that the Fourteenth Amendment was intended to place the question of citizenship beyond legislative power altogether, drawing on the statement of Senator Howard in the ratification debates. If the Clause places the rule beyond ordinary legislation, it also places the rule beyond executive instruction.

This finding has an administrative implication. Documents such as passports and birth records evidence citizenship, but under the reasoning of *Trump v. Barbara* they record a status that the Constitution has already conferred. An agency that withholds recognition from a child covered by the decision does not change that child's status; it misapplies the law. This conclusion is an inference from the holding rather than an express statement of the Court. The opinions did not prescribe a documentation procedure, which leaves the design of accessible correction mechanisms to Congress and the executive agencies.

6.5 Post-Decision Executive Action Confirms the Constitutional Baseline

The fifth finding is that the decision has already functioned as a standard for reviewing further executive action. Howe (2026a) reported in late July 2026 that the administration appeared not to have sought rehearing. On 6 August 2026, the President issued a new order titled *Continuing to Protect the Meaning and Value of American Citizenship* (The White House, 2026). Howe (2026b) reports that the order would deny automatic citizenship to children of foreign embassy employees and employees of international organizations, to children of parents designated as alien enemies, and to children whose parents engaged in a commercial transaction to secure the mother's presence in the United States for the birth.

On 2 September 2026, Judge Deborah Boardman of the United States District Court for the District of Maryland preliminarily enjoined enforcement of the new order against the plaintiff class (*CASA, Inc. v. Trump*, 2026). Howe (2026b) reports that the judge found the order almost certainly unconstitutional as applied to that class, because the Supreme Court had already decided that such children are citizens at birth. The judge also found that the new carve-outs bore little resemblance to the narrow exceptions recognized in *Trump v. Barbara*. The plaintiffs had argued that the vague categories, particularly the alien enemy and commercial transaction provisions, created confusion and a risk of arbitrary application (Howe, 2026b).

This development confirms that *Trump v. Barbara* has moved the dispute from the definition of the rule to the definition of its exceptions. The Supreme Court described those exceptions as covering the children of foreign ministers and members of certain

nineteenth-century Indian tribes (*Trump v. Barbara*, 2026). That description supplied the lower court with a concrete standard for evaluating the new order. The episode also shows the continuing importance of remedies, because relief was again obtained through class litigation, which *Trump v. CASA, Inc.* (2025) left available.

6.6 Comparative Practice Locates Change in Legislatures

The sixth finding is that comparable jurisdictions that narrowed citizenship by birth did so through legislation rather than executive instruction. The United Kingdom adopted its parental citizenship or settlement condition in the British Nationality Act 1981, and Ireland adopted its parental residence condition in the Irish Nationality and Citizenship Act 2004. Kenya's descent-based rule is set out in Article 14 of its Constitution (Constitution of Kenya, 2010). Table 2 compares these regimes with the position in the United States after *Trump v. Barbara*.

Table 2: Citizenship by Birth in Selected Jurisdictions

Jurisdiction	Rule on citizenship by birth	Principal source	How the rule was set
United States	Birth in the territory confers citizenship, subject to narrow historical exceptions	U.S. Const. amend. XIV, § 1; 8 U.S.C. § 1401(a)	Constitutional text as construed in <i>Wong Kim Ark</i> and <i>Trump v. Barbara</i>
United Kingdom	Birth in the UK confers citizenship if a parent is a British citizen or settled	British Nationality Act 1981, s. 1	Act of Parliament
Ireland	Birth on the island confers entitlement if a parent meets residence or status conditions	Irish Nationality and Citizenship Act 2004, s. 4	Act of the Oireachtas
Kenya	Citizenship by descent from a citizen parent, wherever born; foundling presumption for children under eight	Constitution of Kenya, 2010, art. 14	Constitutional text

Source: Compiled from the cited constitutional and statutory provisions.

Two implications follow. First, the comparative record is consistent with the institutional line drawn by both the majority and Justice Kavanaugh, because in none of these systems was the rule changed by executive action alone. Second, descent-based systems pair their rules with safeguards against statelessness. The British Nationality Act 1981 deems abandoned newborns to satisfy the conditions for citizenship, the Constitution of Kenya (2010) presumes foundlings to be citizens, and the African Charter on the Rights and Welfare of the Child requires a state-of-birth safeguard (Organization of African Unity, 1990). Any restriction of territorial citizenship without such safeguards would increase the risk of statelessness.

7.0 Summary

The study reviewed judicial opinions, legislation, and scholarship on birthright citizenship, the jurisdiction requirement of the Citizenship Clause, executive power, and comparative citizenship regimes. The literature shows a sustained disagreement between territorial accounts, represented by Epps (2010), Whittington (2026), and Magliocca (2026), and allegiance or consent-based accounts, represented by Wurman (2026) and Schuck and Smith (1985, 2018). *Trump v. Barbara* (2026) adopted the

territorial account, reaffirmed *Wong Kim Ark*, and rejected a domicile requirement. The Court nevertheless divided on its rationale, and the dissenting justices did not agree among themselves on the treatment of all children covered by the order.

The review also shows that the decision has immediate institutional effects. The executive order sought to change the recognition of citizenship through agency instruction, and the Supreme Court held that the affected children are citizens at birth. The August 2026 order sought to enlarge the recognized exceptions and was preliminarily enjoined on the authority of *Trump v. Barbara* (Howe, 2026b). Comparative practice in the United Kingdom, Ireland, and Kenya shows that rules on citizenship by birth have been changed through legislation or constitutional text rather than through executive action (British Nationality Act 1981; Irish Nationality and Citizenship Act 2004; Constitution of Kenya, 2010).

8.0 Conclusion

Trump v. Barbara establishes that children born in the United States to parents unlawfully or temporarily present are citizens under the Fourteenth Amendment. The majority understood jurisdiction as the ordinary governing power of the United States, confirmed by constitutional history and by *United States v. Wong Kim Ark*. It rejected an unexpressed parental domicile condition. The strongest conclusion from the literature is therefore that citizenship at birth in the United States is a constitutional status defined by birthplace and subjection to law, subject only to narrow historical exceptions (*Trump v. Barbara*, 2026; Whittington, 2026).

The sustainability of this rule depends on administration as well as doctrine. The executive order sought to narrow citizenship through agency instruction, and a second order sought to expand the exceptions after the decision (Howe, 2026b). These developments show that the constitutional rule requires consistent agency implementation and accessible judicial review. The divided rationale of the Court and the continuing scholarly debate also show that future disputes may shift toward the scope of congressional power and the definition of the historical exceptions. Citizenship should therefore be treated as a status conferred by the Constitution, which federal documentation records but cannot create or withdraw.

9.0 Recommendations

Federal agencies responsible for citizenship documentation should issue public guidance confirming that birth certificates, passports, and Social Security numbers will be issued to all children covered by *Trump v. Barbara*. This recommendation follows from the holding that the affected children are citizens at birth (*Trump v. Barbara*, 2026). Guidance should also withdraw any internal instructions premised on Executive Order 14160. Clear guidance reduces the risk that families will be required to litigate a status that the Supreme Court has already determined.

Congress and the executive agencies should establish a prompt and accessible administrative procedure, subject to judicial review, for correcting wrongful denials of citizenship documents. *Trump v. CASA, Inc.* (2025) limited universal injunctions, and relief in both *Trump v. Barbara* (2026) and the Maryland litigation depended on class certification (Howe, 2026b). An administrative correction procedure would protect individual children without requiring class litigation in each dispute.

Congress should assess any proposal to limit citizenship by birth against the constitutional holding of the majority rather than against the separate view of Justice Kavanaugh. The majority stated that the Fourteenth Amendment placed the question of citizenship beyond ordinary legislative power (*Trump v. Barbara*, 2026). Proposals that rely on the consent theory of Schuck and Smith (2018) should therefore be evaluated as questions of constitutional amendment rather than ordinary legislation.

Courts reviewing the August 2026 executive order and similar measures should apply the characterization of the historical exceptions in *Trump v. Barbara* as narrow. Howe (2026b) reports that the district court already found that the new carve-outs bear little resemblance to those exceptions. Courts should also consider whether vague categories, such as the alien enemy and commercial transaction provisions, create a risk of arbitrary denial of citizenship.

Further research should examine how documentation agencies implement *Trump v. Barbara*, including processing times and error rates for children of noncitizen parents. Future studies should analyze the outer limits of the diplomatic exception in light of the August 2026 order. Comparative research should also examine citizenship by birth in African constitutions, including the implementation of Article 6(4) of the African Charter on the Rights and Welfare of the Child (Organization of African Unity, 1990) and the foundling presumption in Article 14(4) of the Constitution of Kenya (2010).

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