

April Fool's Day, 2026

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(Feb. 7, 2026) — **INTRODUCTION**

The Supreme Court has set April 1, 2026 as the date the Justices will hear oral arguments in [Trump v. Barbara](#), the much anticipated “birthright citizenship” case. With any kind of luck, the Court will uphold President Trump’s efforts to end automatic “birthright citizenship” for every child born here to illegal aliens or temporarily or unlawfully present foreign mothers.

As addressed [here](#), that case is the one involving challenges to President Trump’s January 20, 2025 Executive Order (“EO”) [14160](#).

That EO provides, among other things, for the termination of the grant and automatic recognition by federal agencies of U.S. citizenship – prospectively only from and after February 20, 2025 – in persons “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.”

Stated otherwise, the offspring of illegal aliens or aliens unlawfully in this country, or where the mother's presence was lawful but temporary, would no longer be granted automatic "birthright citizenship." The "birth tourism" industry would be crippled, a good thing for the Republic.

Those who oppose the EO contend that it violates the 14th Amendment and its "subject to the jurisdiction thereof" requirement. Several lower federal court (woefully confused) judges agreed, prompting the President to seek review in the Supreme Court.

The President's [Merits Brief](#) has been addressed [here](#) and, in your humble servant's opinion, is not merely persuasive, but compelling.

However, as noted, your servant's interest is primarily in how the 14th Amendment "birthright citizenship" issue relates to the "natural born Citizen" ("nbC") issue under the Constitution's presidential "Eligibility Clause," Art. 2, § 1, Cl. 5. Depending on how the Court rules on the 14th Amendment issue now pending before it, the opinion could shed useful light on how the Court might rule on the related but separate nbC issue, should that one ever make it in the future to the Court "on the merits."

Such an event is one which many lawyers, "scholars" and judges – primarily on the left and far left of the political spectrum – seek to prevent and foreclose, lest among other inconvenient facts, the highly questionable purported nbC bona fides of, for example, Barack Hussein Obama or Kamala Devi Harris, would be exposed to examination. Their house of cards could come tumbling down, along with their shallow "legacies," and they cannot risk that..., right?

ANALYSIS

The following offering will address the arguments made by numerous *amici curiae* thus far filed in the case. Each of the *amici* briefs supporting the President's position well-articulate why EO 14160 does *not* violate the 14th Amendment or its "subject to the jurisdiction thereof" provision. The *amici* arguments are well organized and based not only on the plain language of the Amendment and prior Supreme Court precedent, but on the legislative history leading up to its enactment and ratification.

As noted in several of the briefs, the intent and understanding of the amendment's drafters – as existing in 1868 as opposed to now – controls the analysis. That recognition, of course, has at minimum equivalent relevance with regard to any analysis of the nbC presidential eligibility issue.

That said, one *amicus curiae* brief supporting President Trump's EO, however, stands out in particular, at least in your servant's view. That brief is filed on behalf of NYU Law School professor [Richard Epstein](#) and was authored by the professor's *amicus* legal counsel, one Benjamin Flowers, an attorney in private practice in Cincinnati.

As a side-note, Mr. Flowers' legal career has included a clerkship for Supreme Court Justice Antonin Scalia and a five-year stint (2019 –2023) as the tenth Solicitor General of Ohio. Side-note #2: it is likely a safe bet that he knows current U.S. Solicitor General D. John Sauer, who also clerked for Justice Scalia and served for seven years (2017—2023) as Missouri's Solicitor General before President Trump appointed him as U.S. Solicitor General in 2024.

The Epstein *amicus* brief stands out, in your humble servant's view, for a number of reasons, not the least of which is that it rejects "beating around the bush" with regard to the purported "controlling precedent" of the Supreme Court's decision in *United States v. Wong Kim Ark* ("[WKA](#)").

The Epstein *amicus* brief bluntly – and correctly, in your servant's view – states: (Brief at 29) "***Wong Kim Ark was wrongly decided***, as Chief Justice Fuller capably showed in his dissent. Indeed, the opinion rests on ***numerous faulty premises***. Among them [a term of example, not limitation], the Court wrongly—and without any plausible justification—assumed that the Citizenship Clause must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. *See* [[WKA](#)] at 654. This makes little sense. The phrase 'subject to the jurisdiction thereof' did not arise from the common law. There is, therefore, no reason to think the ratifying generation understood this novel phrase to incorporate common-law doctrine." (Emphasis added)

One could stop there and skip to the Brief's recommendation (Brief at 32): "***Wong Kim Ark was wrongly decided. If it cannot be overruled, it must at least be cabined***, lest the Citizenship Clause be neutered by judicial amendment." (Emphasis added)

While the brief does not, understandably, address the nbC "faulty premise" issue implicated by "Gray's Anomaly," which your servant has addressed [here](#), [here](#) and [here](#), much like President Trump's brief on the merits, the Epstein *amicus* nonetheless comes very close to being not only persuasive, but compelling as well.

Accordingly, if *P&E* readers don't have the time or inclination to read all 18 *amicus* briefs supporting President Trump (as can be done [here](#)), at least read the Epstein brief. It well captures how the Supreme Court should rule. No April Fool's Day joke there.