

Birthright Citizenship, the 14th Amendment and the Inertia of Indifference

by [Joseph DeMaio](#), ©2026

(Jun. 30, 2026) — [**Author's Note:** A more detailed analysis will follow after the opinion (and the dissents) are more carefully reviewed.]

(Slip Opinion) OCTOBER TERM, 2025 1

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.
v. BARBARA ET AL.

CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 25–365. Argued April 1, 2026—Decided June 30, 2026

The question presented is whether the Constitution guarantees citizenship to children born in the United States of parents who are unlawfully or temporarily present in the country. Under the Citizenship Clause of the Fourteenth Amendment, “[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.” On January 20, 2025, President Trump issued Executive Order No. 14160, titled Protecting the Meaning and Value of American Citizenship. The Order provides that children born in the United States of parents who are unlawfully or temporarily present here are not “subject to the jurisdiction” of the United States—and thus do not qualify for citizenship under the Fourteenth Amendment or the Immigration and Nationality Act (INA), which uses the same language, 90 Fed. Reg. 8449. Several parents filed suit, some in the name of their children, arguing that the Executive Order violates the Fourteenth Amendment and the INA. The District Court agreed, provisionally certified a nationwide class of children who would be denied citizenship by the Order, and preliminarily enjoined the Order’s enforcement. This Court granted certiorari before judgment.

Held: 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 under the Fourteenth Amendment’s Citizenship Clause. Pp. 2–26.

https://www.supremecourt.gov/opinions/25pdf/25-365_4hdj.pdf

Heads up, faithful *P&E* readers: this is big. The Supreme Court has released its decision in *Trump v. Barbara*, the “birthright citizenship” case that has attracted much attention since President Trump issued his Executive Order 14160 immediately after assuming office for his second term. Cutting to the chase, the Court in an [opinion](#) authored by Chief Justice Roberts has today invalidated the Executive Order.

While the decision, of course, will have massive impact on 14th Amendment scholarship, it might well have an equal or greater impact on the different, yet related issue of who can be (or who cannot be) president or vice-president as a “natural born Citizen” (“nbC”) under the Constitution’s “Eligibility Clause,” Art. 2, § 1, Cl. 5.

The majority opinion concludes, in effect, that despite the fact that we've been misinterpreting the Framers' intent and doing so for so many years, because so many people have come to rely on that wrong interpretation – and by the way, without regard to the fact that **no one** already born here to illegal alien parents would lose his or her erroneously and improperly acquired citizenship, the Executive Order operating prospectively only, a fact overlooked and disregarded by its opponents, including SCOTUS – we, a majority of the Justices of SCOTUS, now ratify the continuation of wrongly interpreting the intent of the Framers of the 14th Amendment ..., but we now just change the label from “wrongly” to “correctly.” Easy peasey.

Besides, if the electorate doesn't care about adhering to the original intent ..., why should we? And since amending the amendment to specify that offspring born here to illegal aliens are nonetheless entitled to U.S. citizenship would be too time-consuming and cumbersome – and, lamentably, might not be ratified by the required states – let us, the Justices of SCOTUS, save some time and just invoke *ipse dixit*: “It is so because we say it is so.” Move along..., nothing to see here.

The dissenting opinion of Justice Thomas well identifies the perils now awaiting the Republic. Justice Robert Jackson (not to be confused with current Justice Ketanji Brown Jackson) once observed in his dissenting opinion in [*Terminiello v. Chicago*](#) that the Constitution is not a “suicide pact.” Today, the Court moves the Republic and its founding document closer to the day when Justice Robert Jackson's observation may be proven wrong.

At bottom, the decision is a pragmatic “go along to get along” sell-out of the original intent of the Framers of the amendment and, potentially, a preview of the fate awaiting the original intent of the Founders when they enacted the “natural born “Citizen” (“nbC”) clause in 1787. All one needs to do – not that it matters any longer – is read the *amicus curiae* [brief](#) of Law Professor Ilan Wurman filed in the case. With this decision, the Republic continues careening down the perilous path promised by Monsieur Obama when he launched his leftist pogrom to “fundamentally change America” in 2008.

Sir Isaac Newton – no “go along to get along” intellectual – postulated in 1687 as his first law of motion that an object at rest tends to remain at rest unless acted upon by an “outside force.” By analogy, the “go along to get along” or “at rest” inertia of the idea that the Framers of the 14th Amendment intended that the offspring of illegal aliens unlawfully present in this country – but being born here – were to be rewarded with automatic U.S. citizenship ..., is absurd. Yet the only “outside force” capable of changing the “inertia of indifference” infecting an accurate analysis of the birthright citizenship issue has today been sidelined and disregarded by SCOTUS. As proof of that, one need only read Justice Thomas's dissent.

That indifference would neither be approved by the Framers of the amendment, nor by the Founders of the original document creating the amendment option, the Constitution. To vastly understate the matter, the inertia of indifference now ratified and perpetuated by Chief Justice Roberts and the Court is most lamentable.

Your humble servant wishes he had better news ..., but he does not.