

Don't Rock the Boat

by [Joseph DeMaio](#), ©2026

No. 25-365
In the Supreme Court of the United States
DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL., PETITIONERS
v.
BARBARA, ET AL.
ON WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
BRIEF FOR THE PETITIONERS

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https://www.supremecourt.gov/DocketPDF/25/25-365/392236/20260120203524283_25-365BarbaraGovtBr.pdf

(Feb. 22, 2026) — The Brief of the Barbara Respondents (“BRB”) in [Trump v. Barbara](#), the “birthright citizenship” case now pending in the Supreme Court, has been filed. Unsurprisingly, it regurgitates the same shopworn arguments already offered up in opposition to President Trump’s Executive Order (“EO”) [14160](#), *i.e.*, that virtually anyone born on U.S. soil, whether the offspring of illegal aliens or not, automatically becomes a U.S. citizen.

At bottom, the BRB in effect urges rejection of President Trump’s EO because, among other reasons, to validate it by revitalizing the original intent of the framers of the 14th Amendment would unduly “rock the boat” and disrupt the accepted status quo.

The core [claim](#) of the BRB is that virtually anyone born here is a 14th Amendment citizen, regardless of parental citizenship or domicile under the 14th Amendment as interpreted under the SCOTUS decision in [United States v. Wong Kim Ark](#) (“WKA”). According to the BRB, the WKA decision purportedly cements in place that proposition as axiomatic. No further examination or challenge is necessary..., or allowed.

Respectfully: rational minds will differ.

From its very beginning, *i.e.*, p. 2, the BRB – blithely and with shallow substantiation – adds an interesting twist to the issue. Specifically, it asserts that a New York state Chancery Court trial court decision – *Lynch v. Clarke*, 1 Sand. Ch. 583 (N.Y. Ch. Ct. 1844), — controlled the issue when the amendment was drafted. Moreover, that 182-year old decision should control now.

The BRB further contends that *Lynch* purportedly represented the “dominant American decision” of the era....” (Id.) The *Lynch* case, coupled with the majority decision in the *WKA* case, purportedly forecloses any different conclusion. Case closed.

The BRB also asserts (at 2) that the New York trial court ruling in *Lynch* supported, in a nationwide sweep, recognition of “citizenship by birth, regardless of parental nationality or immigration status. Domicile was irrelevant.” The brief then attempts to burnish the concocted artificial “status” of *Lynch* by calling it “the preeminent antebellum American case on birthright citizenship....” (BRB at 12)

Seriously?

This bold and manifestly hyperbolic assertion is *ipse dixit* (“it is so because I say it is so...”) on steroids. Seeking to fortify the faux “dominant” status of the *Lynch* decision, the brief refers to it 27 more times in its 55 pages of “affirm-the-district-court-so-as-to-not-rock-the-boat” meanderings.



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Underscoring the anemia of its reliance on *Lynch* and its purported “dominant” and “preeminent” nature, the BRB conveniently downplays the fact that a New York appellate court later rejected the claimed “dominant” *Lynch* theory, holding that children of “traveling” aliens fell within an exception to birthright citizenship. See [Ludlam v. Ludlam](#), 31 Barb. 486, 503 (N.Y. Gen. Term. 1860).

Moreover, as noted in President Trump’s [Merits Brief](#), Brief at 41, one David Dudley Field, a New York Congressman and attorney at the time, observed that *Lynch* “seems not to be entirely approved” and “probably would at the most be considered as authority only * * * within ... [New York]. David Dudley Field, *Outlines of an International Code* 132 n.1 (2d ed. 1876).”

The BRB attempts to rehabilitate *Lynch* as the purported “preeminent” and “dominant authority” at the time of the framing of the 14th Amendment by then claiming (BRB at 12-13) that it was “widely invoked by other American courts.”

By “widely invoked,” the brief cites only two (2) New York decisions (*q.v.* Congressman Field’s observation that *Lynch* would likely be considered authority *only* in New York); two (2) Oregon district court decisions and one (1) decision each from district courts in California, Connecticut and Minnesota.

If this list of seven (7) isolated, anecdotal decisions – including two (2) from *Lynch*’s New York – qualifies *Lynch* as “widely invoked,” “preeminent” and/or “dominant,” then the Barbara Respondents probably have a bridge in Brooklyn they’d offer for sale.

That said, it is indisputable that *Lynch* was cited and accepted by Supreme Court Justice Horace Gray in his *WKA* majority opinion, (169 U.S. at 664). Recall, however, that this is the same Justice Gray who, 8 pages later into his flawed opinion (169 U.S. at 672-73) claimed that Congress reenacted “in the same words” (in 1 Stat. 414) language in 1 Stat. 103 which instead it had *specifically repealed* ..., and never since reenacted.

Even the court in the *Ludlam* case recognized, unlike Justice Gray, that Congress did *not* reenact in 1 Stat. 414 “in the same words” the language of 1 Stat. 103, which instead it had *repealed*. This is “Gray’s Anomaly,” addressed by your humble servant [here](#); [here](#) and [here](#).

One is thus tempted to ask: if Justice Gray could make such an obvious “rookie” error as to actual congressional legislative action, might the wisdom of his acceptance of the reasoning in *Lynch* be similarly drawn into question? That argument could be made.

Stated otherwise, when all of the BRB’s obfuscating fog clears, the residue is simply this: since we’ve long accepted, as dogma, the argument – right or wrong – that if one is merely born here, regardless of parental status or domicile, one is a U.S. citizen, changing that practice would be unduly disruptive..., so don’t rock the boat.

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States Court of Appeals for the First Circuit*

**BRIEF OF AMICUS CURIAE PROFESSOR
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PETITIONERS AND REVERSAL**

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Finally, as noted [here](#), it should be kept in mind that the [amicus curiae brief](#) of New York University Law School professor Richard Epstein filed in support of President Trump’s birthright citizenship Executive Order 14160 cuts directly – and fearlessly – to the chase (Brief at 32): “*Wong Kim Ark* was wrongly decided.”). If the *WKA* case falls, as Professor Epstein might advocate, so too must its flawed recognition of *Lynch* as being probative, let alone “preeminent.”

Moreover, Professor Epstein’s *amicus* brief articulates additional reasons, separate and apart from those identified in President Trump’s Merits Brief, undermining the supposed “dominant” and “preeminent” reasoning of the *Lynch* decision. Interested and faithful *P&E* readers should take the time to read that *amicus* brief if they read no others.

Accordingly, short of overruling the *WKA* decision, the Supreme Court should “do the right thing” as opposed to doing that which the BRB urges it to do, *i.e.*, “do the safe and expedient thing.” At minimum, the Court should reject the BRB’s siren call of *Lynch* “preeminence.”

On the other hand, the BRB counsels that we should continue operating as before, even if to do so will only perpetuate past error by ignoring the intent of the 14th Amendment’s drafters. After all, those who drafted the language of the 14th Amendment are dead and gone, so let us just move along..., nothing to see here..., don’t rock the boat.



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On the contrary, it is long past time to rock the boat and put it back on course. The Founders are getting anxious.