

# Of Birthright Citizenship; 47’s Certiorari Petitions; the Tennessee Amicus Curiae Briefs; and the nbC Issue

by [Joseph DeMaio](#), ©2025

Nos. 25-364 & 25-365

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IN THE  
**Supreme Court of the United States**

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DONALD J. TRUMP, ET AL.,  
*Petitioners,*

v.

STATE OF WASHINGTON, ET AL.,  
*Respondents.*

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DONALD J. TRUMP, ET AL.,  
*Petitioners,*

v.

BARBARA, ET AL.,  
*Respondents.*

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ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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[https://www.supremecourt.gov/DocketPDF/25/25-365/380548/20251024141815387\\_SCOTUS%20Cert%20Amicus%20-%20Birthright%20-%20Final.pdf](https://www.supremecourt.gov/DocketPDF/25/25-365/380548/20251024141815387_SCOTUS%20Cert%20Amicus%20-%20Birthright%20-%20Final.pdf)

(Oct. 26, 2025) — **INTRODUCTION**

Well, well, well... some sanity and rational thought may at last be seeping into the question and analysis of the so-called “birthright citizenship” issue under the 14<sup>th</sup> Amendment. As discussed by your humble servant earlier this year [here](#), the 14<sup>th</sup> Amendment birthright citizenship issue is different, but closely related, to the “natural born Citizen” (“nbC”) issue under Art. 2, § 1, Cl. 5, the Constitution’s “Eligibility Clause.” Because that which follows may become convoluted, readers may wish to keep a supply of their favorite caffeinated beverage nearby.

As a preliminary matter, that clause, of course, restricts the presidency to a natural born Citizen for all but the first seven presidents – Washington through Jackson – each of whom served as president *only* by virtue of the “Citizen-grandfather” exception included in Art. 2, § 1, Cl. 5 at the inception of the Republic in 1789.

Parenthetically, the first true nbC president to serve was President Martin Van Buren in 1837. He was born in Kinderhook, New York on December 5, 1782 to U.S citizen parents Abraham Van Buren and Maria Hoes Van Alen (Van Buren), themselves born as foreigners, but becoming U.S citizens pursuant to the Declaration of Independence in 1776. See Edward S. Corwin, “*The President: Office and Powers, 1787 – 1984*” (5<sup>th</sup> Revised Ed. 1984),at 38.

But I digress: following adverse rulings in the lower federal courts, President Trump now seeks relief in the Supreme Court. He has filed (September 26, 2025) two petitions for *certiorari* (in the “CASA” case) and *certiorari before judgment* (usually reserved for facial constitutional challenges prior to final lower court decisions on the merits) in the “Barbara” case noted *post*. (Hereafter, for brevity: “SG Petitions”) The petitions are found [here](#).

The State of Tennessee, joined by 23 other sister states, has prepared and filed a “friend of the court” or “*amicus curiae*” brief in both consolidated cases. (Hereafter, for brevity: “Tennessee *Amicus*”) The *Amicus* [brief](#), unsurprisingly, supports granting President Trump’s *certiorari* petitions in both cases.

The core issues are the same in both cases, with both petitions and the Tennessee *amici* seeking vindication by the Supreme Court of President Trump’s January 20, 2025 Executive Order 14160 (“[EO 14160](#)”). That order, among other things, denies automatic 14<sup>th</sup> Amendment citizenship to babies born here to illegal alien or visa-overstaying mothers. Previously, both the Ninth Circuit and the First Circuit Courts of Appeal ruled on tangential threshold injunctive issues against the President, so he is now seeking relief before the Supreme Court.



<https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/>

As noted, the Tennessee *Amicus*, along with an earlier *amicus* [brief](#) filed by 18 members of the U.S. House of Representatives serving on the Committee on the Judiciary of the U.S. House of Representatives (spoiler alert: no Democrats signed on), advocates for an order of the Court granting President Trump’s *certiorari* petitions and reversal of the lower court rulings against EO 14160.

Both of the President’s petitions were filed September 26, 2025 and the responses to same are due October 29, 2025. Finally, to their credit in seeming recognition of the need for clarification of the issue by the Court, all opposition counsel consented to the *amicus* brief filing (*see* Tennessee *Amicus* at 1, fn. 1) and it was filed at the Court on October 24, 2025.

## **DISCUSSION AND ANALYSIS**

In a word, both of the President’s *certiorari* petitions – authored by Solicitor General John Sauer and his staff attorneys – are superb. They are essentially identical in both the “CASA” and “Barbara” cases, and present a well-researched and highly persuasive – even *compelling* – case for granting the petitions. The same can be said for the Tennessee *Amicus*, albeit from a slightly different perspective. If the Court accepts jurisdiction, even more compelling briefs on the merits from the Solicitor General and Tennessee Attorney General will surely follow.

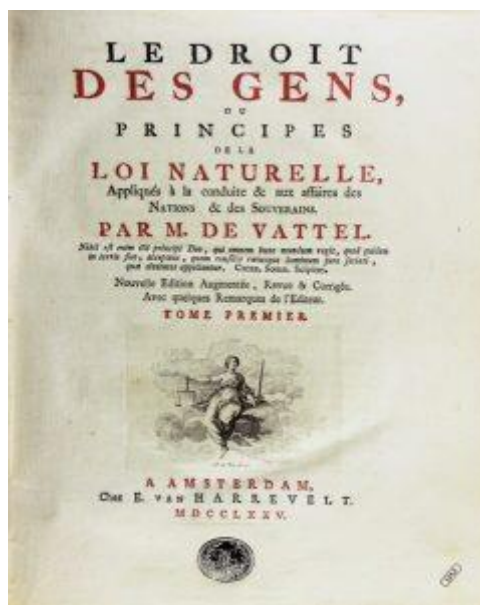
Insofar as the different but related nbC eligibility issue is concerned, the primary focus of this *P&E* offering you are reading will be the relationship of the “birthright citizenship” arguments being presented by Solicitor General Sauer and the 24 state attorneys general signing on to the Tennessee brief with respect to the separate nbC issue.

The President’s petitions and the Tennessee *Amicus* make a highly persuasive case for the granting of the *certiorari* petitions by addressing not only the textual infirmities of the opponents’ arguments, but also the historical and Supreme Court precedential impediments to their position. However, it is the citation in *all* of the briefs to and quotations from the Supreme Court’s decision in [Minor v. Happersett](#) (“*Minor*”) which forms the threshold focus of *this* offering.

As a brief refresher course, in discussing the Founders’ original understanding and intent in 1787 regarding the nbC presidential eligibility restriction of the Constitution, the Court in *Minor* addressed the issue thusly (88 U.S. 167-68):

“[t]he Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, *it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first.*” (bolding emphasis added)

As posited by your servant and many others here at *The P&E* for over a full decade, beginning with the blossoming of the nbC issue regarding one Barack Hussein Obama, this definition, recognized and ratified by the Court in *Minor*, mirrors precisely the definition of a “natural born citizen” as defined by 18<sup>th</sup> Century Swiss attorney, jurist, scholar and international law publicist Emer de Vattel in [Book 1, Ch. 19 § 212](#) of his 1758 treatise, *Le Droit des Gens*, or *The Law of Nations*. Moreover, it also tracks the definition seemingly adopted by Founder John Jay in his critical July 25, 1787 “hint” [letter](#) to the Chair of the Philadelphia Constitutional Convention, General George Washington.



[Wikimedia Commons](#), public domain

Specifically, these citations to *Minor* – along, significantly, within the *certiorari* petitions’ citations to and reliance upon the principles and definitions set out in *The Law of Nations* by Emer de Vattel, – seem to signal a long-delayed, broad and welcomed recognition not only by the Solicitor General, but as well by the attorneys general of nearly a solid majority of the states that the decision in *Minor* is not only relevant to the birthright citizenship issue, but relevant to the nbC issue as well. It never hurts to remind the Court of language it has used in the past in *unanimous* (as was *Minor*) case opinions.

Stated otherwise, it is one thing for private individuals – including your servant here at *The P&E* – to pontificate on the meaning of the nbC clause in the Constitution at an Internet newspaper, informative and important as it might be. On the other hand, it is quite another thing for the Solicitor General of the United States and 24 chief legal officers of nearly one-half of the nation’s states to bring those *same* arguments, *same* case precedents and *same* recognized authorities and publicists from the Founding Era to cases now pending in the Supreme Court. Plainly, while this development is not an outright “win” in the continuing nbC saga, it is a *significant* step in that direction.

One of the reasons it is an important step in the right direction lies in the *specific* citation to § 212 in the Solicitor General’s Petition. See SG Petition at 17. The SG Petition prefaces its citation to § 212 with the signal “*see*,” meaning it is the direct substantiating source for the assertion to which it relates. That assertion is the brief’s prior statement (*id.*) that:

As Justice Story wrote, a person “owes allegiance” to the country in which he is “domiciled.” *The Pizarro*, 2 Wheat. 227, 246 (1817) (Story, J.). Such an individual “places him[self] out of the protection” of his former country, *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 120 (1804), and “becomes a member of the new society, at least as a permanent inhabitant, and is a kind of citizen of an inferior order \* \* \* but is, nevertheless, united and subject to the society.” *The Venus*, 8 Cranch 253, 278 (1814); see *Emmerich de Vattel, The Law of Nations* §§ 212, 213, 215, at 101-102 (1797 ed.). As a result, once someone “has fixed his abode” in another country, he becomes “a member of [that] society, at least as a perpetual inhabitant; and his children will be members of it also.” Vattel § 215, at 102. (Emphasis added).

Significantly, not only does the SG Petition cite § 212, it also brings to the Court’s attention § 215 of the de Vattel treatise. That section, entitled “Children of citizens born in a foreign country,” contains a specific linked reference to the “natural born citizen” language of § 212, stating: “By the law of nature alone, *children follow the condition of their fathers*, and enter into all their rights (§ 212).”

remain—establishes the relevant political allegiance. As Justice Story wrote, a person “owes allegiance” to the country in which he is “domiciled.” *The Pizarro*, 2 Wheat. 227, 246 (1817) (Story, J.). Such an individual “places him[self] out of the protection” of his former country, *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 120 (1804), and “becomes a member of the new society, at least as a permanent inhabitant, and is a kind of citizen of an inferior order \* \* \* but is, nevertheless, united and subject to the society.” *The Venus*, 8 Cranch 253, 278 (1814); see *Emmerich de Vattel, The Law of Nations* §§ 212, 213, 215, at 101-102 (1797 ed.). As a result, once someone “has fixed his abode” in another country, he becomes “a member of [that] society, at least as a perpetual inhabitant; and his children will be members of it also.” Vattel § 215, at 102.

That understanding—linking domicile with political jurisdiction—prevailed in this Court’s cases in the decades following the Clause’s enactment. The Court held that “foreigners who have become domiciled in a country other than their own, acquire rights and must discharge duties in many respects the same as possessed by and imposed upon the citizens of that country.” *Law Ow Bew v. United States*, 144 U.S. 47, 61-62 (1892). As the Court explained, “aliens residing in a country, with the intention of making it a permanent place of abode, acquire, in one sense, a domicile there, and, while they

This statement – and the SG Petition’s citation to it – strongly cuts against the claim that *jus soli* principles alone or *only* a mother’s citizenship status (*qv.*, Barack Obama and Ted Cruz) would have guided the Founders when they adopted the nbC term restricting presidential eligibility to birth here to two parents, both of whom were U.S. citizens at the moment of birth.

But wait..., there’s more. The “cherry on the top,” so to speak, in the SG Petition is its inclusion of a citation to the Supreme Court’s decision in *The Venus*. There, Supreme Court Justice Bushrod Washington (a nephew of George Washington) quoted (12 U.S. at 289) – and with *direct* attribution to de Vattel – § 212 as articulating, in French – the original version of the de Vattel treatise which Justice Washington understood – the then-acknowledged definition of persons born in a country to *two* “*parens cityons*” (in English, “citizen parents”) of that country as being the “natives” or “indigènes.”

This term was later defined in the 1760 London translation of the treatise as “natural born citizens,” the term specifically used by John Jay in his “hint” letter to George Washington – notably, with a capital “C,” as it also appears in the Caslon cursive final Constitution as now preserved at the National Archives in Washington, D.C.

In his opinion for the Court, Justice Washington identified de Vattel, *by name*, as an authority on the law of nations and his treatise as being more “explicit” and “satisfactory” on the topics addressed therein, including definitions, “than any other such works” which had come into his possession.

Stated otherwise, *The Venus* appears to be the likely first U.S. Supreme Court case recognizing, or at minimum suggesting, Emer de Vattel as the source for the definition of a “natural born citizen” as commonly understood and accepted in the general nomenclature of the Founding Era. That “nomenclature” of the day, of course, was repeated and recognized years later when the Court decided *Minor*, noting that the Founders were familiar and conversant with the term.

And although Chief Justice Marshall dissented “in part” in *The Venus* as to the substantive maritime law portions regarding the seizure and confiscation of an American citizen’s property before that citizen’s knowledge of a war (the War of 1812 with Great Britain), he “entirely concurred” (12 U.S. at 288) in that portion of the opinion which cited with approval the de Vattel § 212 definition of what the *Minor* Court later recognized as being a “natural born citizen.”

President Trump’s *certiorari* petitions today cite *Minor* for the proposition that, as originally understood, the 14<sup>th</sup> Amendment’s “Citizenship Clause” was intended to extend birthright citizenship to the children born of *citizens*, or foreigners lawfully domiciled in the United States, citing (Petition at 7) *Minor* at 168. The Tennessee *Amicus* brief goes into additional detail, stating (*Amicus* at 15-16):

“[T]his Court’s precedent [does not] mandate plaintiffs’ maximalist reading of the Citizenship Clause. Quite the contrary: Case law emphasizes the importance of *parental domicile* to birthright citizenship and shuns mere-physical-presence rules in the immigration context.... The earliest cases interpreting the Fourteenth Amendment point towards a domicile-based approach. In 1872, the Court’s decision in the [Slaughter-House Cases](#) stated that the Citizenship Clause “was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States.” 83 U.S. 36, 73 (emphasis added).

Admission might always be made to the citizenship of the United States in two ways—first by birth and second by naturalization. This is apparent from the Constitution itself, for it provides (Art. 3, Sec. 1) that “no person except a natural born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President,” and (Art. 1, Sec. 8) that Congress shall have power “to establish a uniform rule of naturalization.” Thus, new citizens may be born or they may be created by naturalization.

The Constitution does not in words say who shall be natural-born citizens. Reason must be had elsewhere to ascertain that. At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves upon their birth citizens also. These were natives, or natural-born citizens as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction, without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words “all children” are certainly as comprehensive when used in this connection as “all persons,” and if females are included in the list, they must be in the first. That they are included in the list is not denied. In fact, the whole argument of the plaintiffs proceeds upon that idea.

[Minor v. Happersett](#), decided March 29, 1875

“Two years later, the Court observed that **“common-law” principles informed “who shall be natural-born citizens” and noted “doubts” as to whether children of “aliens or foreigners” born in the United States constituted “natural-born citizens.”** *Minor v. Happersett*, 88 U.S. 162, 167-68 (1874). The Court recognized that “it was **never doubted** that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also.” *Id.* at 167. [Curiously, the *amicus* brief omits the rest of the Court’s “recognition”: “These were natives, **or natural-born citizens, as distinguished from aliens or foreigners.**”] After observing that “[s]ome authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents,” the Court noted that “[a]s to this class **there have been doubts.**” *Id.* at 168.

As faithful *P&E* readers well know, this is precisely what has been repeatedly explained and defended against from the nbC “citizen at/by birth” crowd. And now, the Tennessee *Amicus* brings those arguments front and center before the Supreme Court. This is getting interesting,

## CONCLUSION



<https://www.supremecourt.gov/opinions/relatingtoorders/25>

This offering is already too long, so the time has come to pause. That word is used instead of “stop,” because unless and until the Court itself discovers the courage to directly address the nbC issue, the debate will continue. The “CASA” and “Barbara” cases present a great opportunity for the Court – perhaps in dictum or potentially via the “[Opinions Relating to Orders](#)” mechanism – to address and clarify what the definition of an nbC was as understood by the Founders as opposed to today’s “experts” and pontificators.

Concededly, the SG Petition and the Tennessee *Amicus* are not precedent or even decisions of the Court. Far from it. That said, the Court could do the Republic a big favor if it granted the President’s petitions, adjudicated the 14<sup>th</sup> Amendment “birthright citizenship” question and, with any luck through dictum or an opinion relating to orders, give interested parties a “hint” as to the answer regarding the nbC restriction.

Finally, citing the Court’s recent decision in *United States v. Rahimi*, 602 U.S. 680 (2024), the Tennessee *Amicus* reminds everyone (*Amicus* at 21-22) that “The first and most important rule in constitutional interpretation is to heed the text – that is, the actual words of the Constitution – and to interpret that text according to its **ordinary meaning as originally understood.**” [(Emphasis added)] *Rahimi*, 602 U.S. at 715 (Kavanaugh, J., concurring). That fixation principle is plank one of originalism; the second rule speaks to interpretive constraint – that “the discoverable historical meaning ... has legal significance and is authoritative in most circumstances.”*Id.* at 737 (Barrett, J., concurring). Tethering meaning to the ratified text reflects that “[t]he text of the Constitution is the ‘Law of the Land’” that controls “unless and until it is amended.” *Id.* at 715 (Kavanaugh, J., concurring.”

That parting advice in the Tennessee *Amicus* is as relevant to the analysis of the nbC issue under the Constitution’s Eligibility Clause as it is to the birthright citizenship question under the 14<sup>th</sup> Amendment.

To reiterate: this is getting interesting, so stay tuned.