

# The Birthright Citizenship Homestretch

by [Joseph DeMaio](#), ©2026

## SUMMARY OF THE ARGUMENT

This brief explains the common law of birthright subjectship and its application to unlawfully present aliens and temporary sojourners. It further explains the connection between the common-law rule and the jurisdictional language of the Fourteenth Amendment. It makes four principal points.

First, mere birth on the sovereign's soil has never been the rule for birthright subjectship or citizenship. Rather, the rule has always been birth in the realm to *parents under the sovereign's protection*, in exchange for which the parents owed the sovereign allegiance. "Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country, *while the parents are resident there*

[https://www.supremecourt.gov/DocketPDF/25/25-365/392842/20260127175852031\\_Trump%20v%20Barbara%20-%20Wurman%20Amicus%20Brief%20-%20FINAL.pdf](https://www.supremecourt.gov/DocketPDF/25/25-365/392842/20260127175852031_Trump%20v%20Barbara%20-%20Wurman%20Amicus%20Brief%20-%20FINAL.pdf)

(Mar. 20, 2026) — As we enter the final days leading up to the oral arguments in [Trump v. Barbara](#), it may be prudent to review the briefs on the merits of President Trump and his opponents, as well as the myriad *amicus curiae* (“friend of the court”) briefs that have been filed.

To begin with, as your humble servant has posited [here](#), the merits Opening Brief of the President, authored by Solicitor General D. John Sauer, is not merely persuasive, it is compelling. [Read it](#) for yourself. And as for the opposition's merits brief, your servant has made his views known [here](#). To summarize the opposition's position: “Since we've been doing it wrong for so long, it would be inconvenient and unreasonable to make us do it right into the future.”

In plain English, General Sauer's merits Opening Brief clearly articulates what the authors of the 14<sup>th</sup> Amendment meant and intended when they conditioned the creation of “birthright citizenship” in children born here to be “subject to the complete political jurisdiction” of the United States. They did *not* intend mere birth here to a non-resident, non-domiciled illegal alien mother to be all that was needed. Indeed, the crucial element of domicile is further emphasized – and with identical compelling impact – in General Sauer's just filed merits [Reply Brief](#).

While various other *amici curiae* opposing President Trump seek to perpetuate the mistaken, unconstitutional and even disingenuous policy of “birth tourism” fostered and exacerbated by the regime of “Robinette the Marionette” – aka “Dr. Jill’s meal ticket” – General Sauer’s Opening Brief explains why precisely the *opposite* intent was at the core of the amendment’s authors..., and it isn’t even close.

Confirming the “not even close” gibberish of most of the *amicus* briefs opposing President Trump are the sob story fabrications of the SEIU *amicus curiae*, dismantled [here](#). While your servant has suggested that, under Supreme Court Rules, the SEIU brief might well qualify to be stricken, leaving it as part of the record in the case could instead serve the purpose of underscoring the desperation and intellectual flailing of those opposing President Trump’s [Executive Order 14160](#). Your servant calls it “intellectual flailing;” General Sauer calls it “gerrymandering the definition of jurisdiction...” (See Reply Brief at 14).

Standing in stark contrast to the gibberish masquerading as logic of the SEIU *amicus* brief are, in particular, the *amicus* briefs of three entities and individuals. Your servant has previously noted the excellent [brief](#) of the State of Tennessee (joined in by twenty-three other “red” states) as well as that of NYU Law School Professor Richard Epstein, [authored](#) by his legal counsel, one Benjamin Flowers, a former solicitor general of the State of Ohio. Both the Tennessee+ and Epstein briefs are true “friend of the court” briefs and, with any sort of luck, will guide the Court in its deliberations.

In the meantime, one additional *amicus* brief supporting President Trump has been filed, and it too is an excellent exposition of the issues and of the intent of the authors of the 14<sup>th</sup> Amendment, particularly with regard to the “subject to the jurisdiction” element. That brief (authored, BTW, on his own behalf) is that of University of Minnesota Law School Professor [Ilan Wurman](#).

Not only does the brief identify and precisely define the historical “lay of the land” regarding the intent of the drafters of the 14<sup>th</sup> Amendment, it is noteworthy that General Sauer has taken note of Professor Wurman’s work. Specifically, both in General Sauer’s merits Opening Brief and his Reply Brief, he cites and favorably references Professor Wurman’s scholarship on the issues. Parenthetically, such references in *both* General Sauer’s Opening Brief and Reply Brief cannot (or should not) be lost on the Supreme Court Justices.

Long story short: the upcoming oral arguments, slated for April 1, 2026, will be extremely interesting, particularly for those who think the intent of the authors of the 14<sup>th</sup> Amendment in 1868 – as opposed to result-oriented talking head prognosticators in 2026 – should prevail.

As the saying goes: “May you live in interesting times.”