



Written by [Paul Dragu](#) on April 2, 2026

The Citizenship Clause on Trial: Allegiance, or Just Being Born Here?

Should everyone who is born in the United States automatically be an American citizen?

The first line of the 14th Amendment says, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens.” This is known as the “Citizenship Clause.” And its intended meaning, especially the “subject to the jurisdiction thereof” part, is at the center of *Trump v. Barbara*, a class-action lawsuit filed by the ACLU against President Donald Trump’s [executive order](#) aiming to end automatic citizenship for babies born in the U.S. to illegal immigrants or people who are here temporarily.



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The United States Supreme Court heard [oral arguments](#) in the case on Wednesday. Trump made an in-person appearance, long enough to hear his lawyer’s arguments. Another celebrity who attended was actor Robert De Niro, who’s been hypercritical of the president. De Niro told reporters after the hearing the reason Trump showed up was to “intimidate some of the justices.” If that was his intent, there was no indication that it worked. The judges, including the ones Trump nominated during his first term, asked several piercing questions and made critical comments toward the government’s positions.

History of the Citizenship Clause

Solicitor General D. John Sauer [began by arguing](#), on behalf of the government, that the Citizenship Clause “was adopted just after the Civil War to grant citizenship to the newly freed slaves and their children, whose allegiance to the United States had been established by generations of domicile here.” The clause “did not grant citizenship to the children of temporary visitors or illegal aliens, who have no such allegiance.”

The notion of *allegiance* is a key argument among proponents of ending birthright citizenship, Sauer said. “Allegiance is what the word ‘jurisdiction’ means,” he said.

He noted that the allegiance-less view of the Citizenship Clause in effect today has created “a sprawling industry of birth tourism,” referring to the “thousands of foreigners from potentially hostile nations” who’ve created a whole generation of U.S. citizens abroad “with no meaningful ties” to America. He said the Department of Homeland Security estimates that birth tourism may have spawned up to 1.5 million people from China alone thanks to 500 Chinese companies who specialize in exactly this sort of business.

Sauer also argued that the current interpretation of the Citizenship Clause incentivizes illegal migration and devalues citizenship. “Unrestricted birthright citizenship contradicts the practice of the overwhelming majority of modern nations,” he pointed out. “It demeans the priceless and profound gift



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of American citizenship. It operates as a powerful pull factor for illegal immigration and rewards illegal aliens who not only violate the immigration laws but also jump in front of those who follow the rules.”

Domicile

The definition of *domicile* became a major point of debate during the hearing. Sauer defined it this way:

When they say “subject to the jurisdiction” and then they go on to say you’re a citizen of the United States and the state in which they reside, the very text of the clause presupposes that the citizen is domiciled in the United States. ... The domiciliaries are people who are lawfully present and have an intent to remain permanently.

He emphasized that domicile is the single most important factor in determining the true meaning of citizenship status. But Justice Elena Kagan wasn’t convinced:

Where does this principle come from, allegiance, domicile? ... It’s certainly not what we think of when we think of the word “jurisdiction.” ... One doesn’t say, oh, what that means is a certain kind of allegiance that domiciliaries have and nobody else does. ... You’re using some pretty obscure sources to get to this concept.

Justice Neil Gorsuch also had questions about the meaning of *domicile*:

How are we going to determine domicile? ... Would we use contemporary sources on what qualifies as domicile in a state, or do we look in 1868 [the year the 14th Amendment was ratified], and do we have to do this for every single person?

Justice Amy Coney Barrett cast Sauer’s argument that the children of slaves were citizens as inconsistent with his allegiance argument. Slaves were brought here illegally, she said, and their children were likely not loyal to the nation. Sauer replied that while their entry was illegal, “Antebellum law never treated their presence as unlawful.”

Wong Kim Ark

Advocates of unrestricted birthright citizenship cite *United States v. Wong Kim Ark* as the quintessential case to support their position. In *Wong Kim Ark*, SCOTUS held that a man born in San Francisco to Chinese parents was a citizen. Justice Sonia Sotomayor said the government was asking the Court to overrule the decision regarding Wong Kim Ark, whose “parents were domiciled in the U.S., but ... owed loyalty to China.” Sotomayor pointed out that Wong Kim Ark’s parents “eventually returned to China, so they didn’t have a primary allegiance to the United States.”

Kagan called the government’s view on the Citizenship Clause a “revisionist theory.”

ACLU’s View

Cecillia Wang of the American Civil Liberties Union defended the current understanding of the Citizenship Clause. “Virtually everyone born on U.S. soil is subject to its jurisdiction and is a citizen,” Wang said, adding that the only ones excluded are “those cloaked with a fiction of extraterritoriality because they are subject to another sovereign’s jurisdiction even when they’re in the United States.”



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She was referring to children of foreign ambassadors and children of hostile invaders.

She tried to dismiss the domicile argument, saying the issue “is irrelevant under common law,” referring to English common law, which designated anyone born within English territory a citizen. Chief Justice John Roberts, however, pointed out that the word “domicile” appears in the *Wong Kim Ark* majority opinion 20 times. Even Kagan, who already made it clear she believed the current interpretation of the Citizenship Clause, couldn’t overlook the many mentions of it. “Why did they sprinkle that in the opinion?” she asked. Justice Samuel Alito went so far as to call it “the holding of the case.”

Wang’s defense wasn’t very convincing. She said the majority in *Wong Kim Ark* mentioned domicile so many times because “it was a stipulated fact” and because the decision has “binding precedential effect.”

Wang also warned the court of what would happen if they sided with the government and overturned the current interpretation of the Citizenship Clause:

Swaths of American laws would be rendered senseless, thousands of American babies will immediately lose their citizenship, and if you credit the government’s theory, the citizenship of millions of Americans, past, present, and future, could be called into question.

Author’s Intent

For two hours, the justices heard an array of views on the meanings and contexts of these few terms and phrases. *Wall Street Journal* reporter Louise Radnofsky [suggested](#) the “problem for both sides is that it’s not definitively clear what ‘domiciled’ meant in 1873, the year of Wong Kim Ark’s birth, or what it meant in 1898, when the court issued its opinion — or whether it’s the equivalent of being a citizen or lawful permanent resident of the United States in 2026.” She added that “immigration law has changed a lot since the 19th century.”

Senator Jacob Howard of Michigan authored the Citizenship Clause. Here’s how [he addressed](#) the immigrant question:

This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.

SCOTUS is expected to issue its decision this summer.



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