

# Blood, Soil, and Race: The Perils of Shredding the Fourteenth Amendment

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*Trump v. Barbara is the Supreme Court's most significant interpretation of the Fourteenth Amendment's Citizenship Clause since United States v. Wong Kim Ark. The Supreme Court held Executive Order 14160 unconstitutional because it sought to restrict access to birthright citizenship based on parental immigration status. The litigation, however, reveals a deeper constitutional struggle over inherited legal status. As we grapple with the rise of white supremacy, Justice Jackson's concurrence reminds us that the Reconstruction Amendments were designed to dismantle systems of race-based subordination.*

*This Article draws on citizenism to explain how restricting access to birthright citizenship based on formally race-neutral immigration and citizenship status reproduces racial hierarchy. Drawing on national origin data for undocumented and temporary-status populations, it demonstrates that efforts to re-whiten U.S. citizenship, such as Executive Order 14160, fall disproportionately on mixed-status families of color. According to demographic evidence, Indigenous, Black, Latinx/e, and Asian and Pacific Islander communities would bear the greatest burden, with Mexican-origin families comprising the largest affected group. In doing so, the Article offers a constitutional and empirical account of how citizenship restrictions can perpetuate racial subordination without relying on explicit racial classifications.*

*This Article further demonstrates how these restrictions transmit legal vulnerability across generations. The foreseeable multigenerational harms include increased inequality within the family structure, heightened vulnerability to economic exploitation, worsening health disparities, and a greater risk of statelessness. Without intervention, as people of color become the majority of the U.S. population, racial hierarchy will be recreated under citizenism, thereby undermining the multiracial democratic foundations established by the Reconstruction Constitution.*

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INTRODUCTION<sup>1</sup>

Race remains a central organizing principle of U.S. citizenship.<sup>2</sup> By extending birthright citizenship across racial lines, the Reconstruction Constitution established the foundations of a fragile multiracial democracy.<sup>3</sup> That transformation also emerged from profound conflict. The sectional crisis was intensified by *Dred Scott v. Sandford*, and the Civil War culminated in the adoption of the Fourteenth Amendment's Citizenship Clause.<sup>4</sup>

However, Reconstruction did not eliminate racial hierarchy. Rather, systems of exclusion and subordination, such as citizenism, adapted to new legal and political conditions.<sup>5</sup> Citizenism distributes racialized rights and belonging through immigration and citizenship status, using formally race-neutral language.<sup>6</sup> Although primarily organized around immigration status,

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<sup>1</sup> This Article is accompanied by Brief of the Aoki Center for Critical Race and Nation Studies at the University of California, Davis School of Law, and Constitutional, Civil Rights and Other Scholars as Amici Curiae in Support of Respondents, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026), [https://www.supremecourt.gov/DocketPDF/25/25-365/399423/20260226162546254\\_Draft\\_Amicus\\_Brief\\_Trump\\_v.\\_Barbara.pdf](https://www.supremecourt.gov/DocketPDF/25/25-365/399423/20260226162546254_Draft_Amicus_Brief_Trump_v._Barbara.pdf) [<https://perma.cc/M38Y-TBJ3>]. The legal and factual landscape surrounding birthright citizenship continued to evolve throughout the editorial process. Accordingly, we have endeavored to incorporate significant legal developments throughout the publication timeline, including subsequent executive actions issued after *Trump v. Barbara*.

<sup>2</sup> See IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 10–12 (2d ed. 2006) (tracing how whiteness was legally constructed through U.S. citizenship law); Evelyn Marcelina Rangel-Medina, *Citizenism: Racialized Discrimination by Design*, 104 B.U. L. REV. 831, 847–64 (2024) (discussing the exclusionary history of U.S. citizenship based on race); see generally ANNA O. LAW, *MIGRATION AND THE ORIGINS OF AMERICAN CITIZENSHIP: AFRICAN AMERICANS, NATIVE AMERICANS, AND IMMIGRANTS* (2026) (situating racialized citizenship regimes at the intersection of slavery, settler colonialism, and migration law).

<sup>3</sup> The Fourteenth Amendment's Citizenship Clause was adopted in direct response to the specific conditions of slavery and was intended to eliminate race-based exclusions from fundamental rights. See KATE MASUR, *UNTIL JUSTICE BE DONE: AMERICA'S FIRST CIVIL RIGHTS MOVEMENT, FROM THE REVOLUTION TO RECONSTRUCTION* 305 (2021); see also AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 7–8 (2009) (conceptualizing citizenship as an inherited legal status).

<sup>4</sup> See U.S. CONST. amend. XIV, § 1 (decreeing “[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”); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404–05 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. Const. amend. XIV; see also ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* 1–5 (2019) (describing how the Reconstruction Amendments fundamentally transformed the Constitution by abolishing slavery and redefining national citizenship, federal power, and racial equality); MASUR, *supra* note 3, at 305 (situating the Civil Rights Act of 1866 and the Fourteenth Amendment within the effort to eradicate slavery and end racial discrimination).

<sup>5</sup> Rangel-Medina, *supra* note 2, at 843 (arguing that U.S. citizenship and immigration law operates under citizenism, a system that distributes legal belonging and exclusion along status, class, and race); see also LEE D. BAKER, *FROM SAVAGE TO NEGRO: ANTHROPOLOGY AND THE CONSTRUCTION OF RACE, 1896–1954* 1–7 (1998) (examining the production of racial categories through scientific and institutional practices); see generally BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* (2014) (documenting the persistence of racial hierarchy and legal systems that continue to subordinate marginalized racial groups after formal emancipation); Audrey Smedley & Brian D. Smedley, *Race as Biology Is Fiction, Racism as a Social Problem Is Real: Anthropological and Historical Perspectives on the Social Construction of Race*, 60 AM. PSYCH. 16 (2005) (arguing that race is not a biological reality but a socially constructed system historically used to structure inequality).

<sup>6</sup> Rangel-Medina, *supra* note 2, at 843–44 (defining the concept of citizenism).

citizenism operates alongside race, nationalism, xenophobia, and religion to produce hierarchies of membership and exclusion.<sup>7</sup>

Citizenism enshrined exclusionary measures in immigration and citizenship law, transmitting precarity across generations.<sup>8</sup> The Naturalization Act of 1790 restricted citizenship to “free white person[s],” and Congress did not fully eliminate racial restrictions on naturalization until 1952.<sup>9</sup> Other measures, including the Page Act of 1875,<sup>10</sup> the Chinese Exclusion Acts (1882–1902),<sup>11</sup> and the Undesirable Aliens Act of 1929,<sup>12</sup> used immigration law to regulate access to civil and political rights along racial lines. For example, the Undesirable Aliens Act criminalized entry into the country by specifically targeting Mexican migrants.<sup>13</sup>

Executive Order 14160 (hereinafter “the Order”) is a contemporary mechanism of citizenism.<sup>14</sup> By conditioning birthright citizenship on parental immigration status, the Order sought to reintroduce lineage-based restrictions into a constitutional framework that has long rejected them. The Order would have disproportionately burdened communities that are targeted by racialized

<sup>7</sup> *Id.* at 834–44, 878–81 (arguing that citizenism emerged after Reconstruction as a system of hierarchical rights organized through immigration and citizenship status that reproduces racial inequality through formally race-neutral classifications while operating alongside racism, nationalism, and xenophobia); *see also* Audra L. Savage, *The Religion of Race: The Supreme Court as Priests of Racial Politics*, 2021 UTAH L. REV. 569, 586–87 (conceptualizing the Supreme Court as a “priest[hood]” that reproduces racial hierarchy through constitutional interpretation); Khaled A. Beydoun, *Faith in Whiteness: Free Exercise of Religion as Racial Expression*, 105 IOWA L. REV. 1475, 1480–90 (2020) (examining religion as a key site for the construction and performance of racial identity, reinforcing hierarchies of social citizenship); *see generally* ERIC WEED, *THE RELIGION OF WHITE SUPREMACY IN THE UNITED STATES* (2017) (arguing that white supremacy operates as a structuring ideological system embedded in U.S. institutions).

<sup>8</sup> Rangel-Medina, *supra* note 2, at 836, 843.

<sup>9</sup> *See* Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103, 103, *repealed by* Naturalization Act of 1795, ch. 20, 1 Stat. 414 (limiting naturalization to “free white person[s]”); Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (eliminating the remaining racial qualifications for naturalization). Congress partially expanded eligibility in 1870 to include “aliens of African nativity and to persons of African descent,” but racial restrictions on naturalization remained for other groups until the Immigration and Nationality Act of 1952. *See* Naturalization Act of 1870, ch. 254, 16 Stat. 254, 256.

<sup>10</sup> *See* Page Act of 1875, ch. 141, §§ 1, 3, 18 Stat. 477, 477 (1875) (repealed 1974) (prohibiting the “importation into the United States of women for the purposes of prostitution” and the entering by immigrants from “China, Japan, or any Oriental country” into a contract for “lewd and immoral purposes”).

<sup>11</sup> Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (repealed 1943) (suspending the immigration of Chinese laborers and rendering them ineligible for naturalization); Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952) (establishing the “Asiatic barred zone” and expanding racialized exclusion); Immigration Act of 1924, ch. 190, 43 Stat. 153 (imposing national origin quotas and effectively excluding immigration from Asia); Scott Act, ch. 1064, 25 Stat. 504 (1888) (repealed 1943) (barring reentry of Chinese laborers); Geary Act, ch. 60, 27 Stat. 25 (1892) (repealed 1943) (extending Chinese exclusion and requiring registration of Chinese residents).

<sup>12</sup> Undesirable Aliens Act, Pub. L. No. 70-1018, ch. 690, 45 Stat. 1551 (1929) (criminalizing entry into the United States without status, a measure enacted in significant part to limit migration from Mexico).

<sup>13</sup> *See id.*; *see also* CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *WELCOME THE WRETCHED: IN DEFENSE OF THE “CRIMINAL ALIEN”* 44–70 (2024) (historicizing how, in the early 1920s, Coleman Blease, a white supremacist legislator—who publicly supported the lynching of Black people—successfully worked to enact the federal statute that criminalized entry and re-entry without status to curb the “Mexican loophole” in migration).

<sup>14</sup> *See* Exec. Order No. 14160, 90 Fed. Reg. 8449 (Jan. 29, 2025) (effective Jan. 20, 2025) (specifically stating that the federal government would no longer extend automatic citizenship by birth on U.S. soil to children born to parents with undocumented or temporary immigration statuses).

immigration policies and exclusionary citizenship law.<sup>15</sup> Efforts to restrict access to birthright citizenship, coupled with mass deportation campaigns, are implemented against a backdrop of demographic anxieties surrounding the increasingly multiracial composition of this country and the rise of white supremacist ideology in mainstream politics.<sup>16</sup>

Since the ratification of the Fourteenth Amendment, numerous unsuccessful congressional measures have sought to re-whiten birthright citizenship by conditioning access to it based on parental immigration status.<sup>17</sup> The Citizenship Clause limited such restrictions by overruling *Dred Scott v. Sanford* and invalidating the doctrine of *partus sequitur ventrem*, which used maternal lineage to deny citizenship to Black people.<sup>18</sup> Consistent with the common-law principle of

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<sup>15</sup> See Evelyn Marcelina Rangel-Medina, *Multigenerational Illegality: Transforming Indigenous People to “Illegal” Beings*, 16 U.C. IRVINE L. REV. (forthcoming 2026) (manuscript at 113–24) (on file with authors) (documenting how the author’s Indigenous and Mexican family has navigated multigenerational illegality, starting in 1905, across five to seven generations in the United States, while serving as an exploitable source of labor under various statuses, including informal undocumented status, temporary statuses—including *braceros*—and, most recently, legal permanent status and U.S. citizenship); CRISTINA BELTRÁN, CRUELTY AS CITIZENSHIP: HOW MIGRANT SUFFERING SUSTAINS WHITE DEMOCRACY 1–14 (2020) (placing contemporary immigration exclusion within a longer history of racialized governance that treats migrant suffering as integral to white democracy).

<sup>16</sup> See William H. Frey, *The Browning of America*, MILKEN INST. REV. (Oct. 19, 2015), <https://www.milkenreview.org/articles/charticle-3> [<https://perma.cc/4SXU-MBZQ>] (documenting the United States’ transition toward a majority-racially diverse population); Jason Wilson & Aaron Flanagan, *The Racist ‘Great Replacement’ Conspiracy Theory Explained*, S. POVERTY L. CTR. (May 17, 2022), <https://www.splcenter.org/resources/hate-watch/racist-great-replacement-conspiracy-theory-explained/> [<https://perma.cc/A9RF-7AUC>] (discussing the racist conspiracy theory of displacing the country’s white population with people of color); see also ROXANNE DUNBAR-ORTIZ, NOT “A NATION OF IMMIGRANTS”: SETTLER COLONIALISM, WHITE SUPREMACY, AND A HISTORY OF ERASURE AND EXCLUSION 1–18 (2021) (linking demographic anxiety, settler colonialism, and white supremacy to exclusionary immigration policies).

<sup>17</sup> See Sandra L. Rierson, *From Dred Scott to Anchor Babies: White Supremacy and the Contemporary Assault on Birthright Citizenship*, 38 GEO. IMMIGR. L.J. 1, 44–49 (2023) (analyzing modern legislative and executive attempts to end birthright citizenship); see, e.g., Birthright Citizenship Act of 2011, H.R. 140, 112th Cong. (2011) (proposing to condition birthright citizenship on parental immigration status); Birthright Citizenship Act of 2023, H.R. 6612, 118th Cong. (2023) (attempting to limit birthright citizenship on parental immigration status); Birthright Citizenship Act of 2025, H.R. 569, 119th Cong. (2025). Similar congressional and executive efforts have continued even after the Supreme Court’s decision in *Trump v. Barbara*. See Birthright Citizenship Clarification Act of 2026, H.R. 9633, 119th Cong. (2026) (proposing statutory amendments to 8 U.S.C. § 1401 that reflect the legislative approach discussed in Justice Kavanaugh’s concurrence in the judgment and dissent in part in *Trump v. Barbara*, which contemplated congressional legislation imposing additional statutory limits on birthright citizenship); Exec. Order No. 14419, 91 Fed. Reg. 51993 (Aug. 11, 2026) (effective Aug. 6, 2026) (directing federal agencies to prevent the use of immigration and visa programs to facilitate “birth tourism” and to strengthen enforcement against individuals who travel to the United States primarily to obtain citizenship for a child by birth); Exec. Order No. 14418, 91 Fed. Reg. 51991 (Aug. 11, 2026) (effective Aug. 6, 2026) (directing executive agencies to implement additional restrictions on the recognition of birthright citizenship in specified circumstances).

<sup>18</sup> See *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404–05 (1857) (enslaved party) (holding that persons of African descent could not be citizens of the United States), superseded by constitutional amendment, U.S. Const. amend. XIV; CONG. GLOBE, 39th Cong., 1st Sess. 2890 (1866) (statement of Sen. John Conness) (explaining that the Fourteenth Amendment would confer citizenship on all persons born in the United States, “of all parentage”); U.S. CONST. amend. XIV, § 1; see generally MARTHA S. JONES, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA (2018) (discussing Black activists who overcame opposition and racially discriminatory laws to ensure the Fourteenth Amendment’s birthright principles were realized); see, e.g., WILLIAM WALLER HENING, 2 THE STATUTES AT LARGE, BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN

birthright citizenship, Supreme Court precedent, and federal statutes, the Supreme Court in *Trump v. Barbara* rejected the government's argument that a child's citizenship status should depend on the immigration status of the parent.<sup>19</sup>

Trump signed the Order the day he took office a second time.<sup>20</sup> The following day, lawsuits across the country challenged the Order, including in Washington, Maryland, and Massachusetts.<sup>21</sup> Federal district and circuit courts consistently held that the Order conflicted with the Fourteenth Amendment, *United States v. Wong Kim Ark*, and federal citizenship statutes.<sup>22</sup> Despite the absence of a circuit split, the Supreme Court granted certiorari before judgment and consolidated the litigation under *Trump v. Barbara*.<sup>23</sup> The Court heard oral argument on April 1, 2026, and delivered its highly anticipated opinion on June 30, 2026.<sup>24</sup>

Although the Court ultimately invalidated the Order, the litigation reveals that this country's commitment to racial integration remains deeply contested, despite the Reconstructionists' greatest aspirations for ending racial subordination. The majority reaffirmed the holding of *Wong Kim Ark*, that the Fourteenth Amendment made territorial birth, rather than parental lineage, the

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THE YEAR 1619, at 170 (New York, NY, R. & W. & G. Bartow, 1823) (reproducing Act XII, passed in 1662, the first of many state statutes adopted under the doctrine of *partus sequitur ventrem* to maintain a race-based system of enslavement).

<sup>19</sup> See *Trump v. Barbara*, No. 25-365, slip op. at 2–26 (U.S. June 30, 2026) (Roberts, C.J.) (“What the Court held in *Wong Kim Ark* was simple: the Citizenship Clause incorporated the common law and granted citizenship to nearly all children born in the United States. Not surprisingly, then, in the 128 years since, we have repeatedly understood the rule of *Wong Kim Ark* to guarantee citizenship to all children born in the United States and subject to its power. See, e.g., *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U. S. 72, 73 (1957); *INS v. Rios-Pineda*, 471 U. S. 444, 446 (1985). We see no reason to depart from that view today.”).

<sup>20</sup> See Exec. Order No. 14160, 90 Fed. Reg. 8449, 8449–50 (Jan. 29, 2025) (effective Jan. 20, 2025).

<sup>21</sup> See Complaint for Declaratory and Injunctive Relief, *Washington v. Trump*, 765 F. Supp. 3d 1142 (W.D. Wash. 2025) (No. 25CV00127); Complaint for Declaratory and Injunctive Relief, *New Jersey v. Trump*, 800 F. Supp. 3d 180 (D. Mass. 2025) (No. 25-cv-10139); *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723, 728–29 (D. Md. 2025) (noting that the Central American Solidarity Association (CASA) and the Asylum Seeker Advocacy Project filed suit on January 21, 2025).

<sup>22</sup> See *Washington v. Trump*, 145 F.4th 1013, 1019 (9th Cir. 2025) (holding that the Order was “invalid because it contradicts the plain language of the Fourteenth Amendment’s grant of citizenship”); *New Hampshire Indonesian Community Support v. Trump*, 157 F.4th 29, 33–36 (1st Cir. 2025) (affirming a preliminary injunction after concluding that plaintiffs were likely to succeed on claims that the Executive Order violated the Citizenship Clause and 8 U.S.C. § 1401); *United States v. Wong Kim Ark*, 169 U.S. 649, 705 (1898) (holding that a child born in the United States to parents of Chinese descent who were “subjects of the Emperor of China” but had “a permanent domicile [sic] and residence in the United States” was a birthright U.S. citizen).

<sup>23</sup> See *Trump v. Barbara*, No. 25-365, slip op. at 2 (U.S. June 30, 2026). This litigation reached the Supreme Court through two distinct procedural paths. First, the Court granted certiorari before judgment in *Trump v. Barbara*, bypassing the ordinary appellate process. *Id.* Second, in *Trump v. CASA, Inc.*, 606 U.S. 831, 837–39 (2025), the Court exercised its emergency docket jurisdiction to consider the scope of universal injunctions while leaving the Order’s merits unresolved. See also YALE LAW SCHOOL, *Justice Ketanji Brown Jackson: James A. Thomas Lecture*, at 42:55 (Vimeo, Apr. 14, 2026), <https://vimeo.com/1183042359?share=copy&fl=sv&fe=ci> (arguing “if we are not careful, the emergency docket can and will become an end run around the standard review process, a special avenue that certain, privileged litigants can utilize selectively”).

<sup>24</sup> Transcript of Oral Argument, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026); *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026).

principal constitutional rule of birthright citizenship.<sup>25</sup> The concurrence rooted its argument in “the entire point of the Second Founding: The Reconstruction Amendments were an anticaste, antisubordination reset for the Nation, not a mere spot treatment for the dark stain of slavery.”<sup>26</sup> The dissents, by contrast, advanced competing understandings of allegiance and political membership that would have effectively reintroduced lineage-based restrictions into our constitutional framework.<sup>27</sup>

This Article argues that the competing opinions articulated across the lengthy *Trump v. Barbara* decision illuminate the continuing operation of citizenism even after the Court invalidated the Order.<sup>28</sup> Indeed, the Trump Administration’s continued efforts to restrict birthright citizenship, including its subsequent Executive Orders, demonstrate the fragility of our multiracial democracy.<sup>29</sup> This Article then contends that the Order and similar mechanisms to curtail birthright citizenship seek to racially subordinate mixed-status families of color by perpetuating “multigenerational illegality.”<sup>30</sup>

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<sup>25</sup> *Barbara*, slip op. at 2–26 (tracing the Citizenship Clause from English common law through *Dred Scott*, Attorney General Bates’s opinion, the Civil Rights Act of 1866, and *United States v. Wong Kim Ark*, and concluding that the Fourteenth Amendment repudiated inherited legal status in favor of the common-law principle that citizenship ordinarily follows birth within United States territory).

<sup>26</sup> *Id.*, slip op. at 1 (Jackson, J., concurring) (addressing the dissenters’ claims that the Fourteenth Amendment was intended only to extend citizenship to formerly enslaved people).

<sup>27</sup> *Id.*, slip op. at 42–83 (Thomas, J., dissenting) (arguing that the Citizenship Clause turns on allegiance and domicile rather than territorial birth alone); *id.*, slip op. at 1–28 (Alito, J., dissenting) (advancing a similar interpretation of “subject to the jurisdiction”); *id.*, slip op. at 1–9 (Kavanaugh, J., concurring in the judgment and dissenting in part) (concluding that the Executive Order conflicted with current federal statutes but suggesting that Congress could enact additional limits on birthright citizenship).

<sup>28</sup> *See id.*, slip op. at 2–26 (majority opinion); *id.*, slip op. at 1–16 (Jackson, J., concurring); *id.*, slip op. at 17–29, 65–90 (Thomas, J., dissenting); *id.*, slip op. at 1–42 (Alito, J., dissenting).

<sup>29</sup> *See* Jasper Ward & Nate Raymond, *Trump Says He Will Ask Supreme Court to Rehear Birthright Citizenship Case*, REUTERS (July 8, 2026, at 17:31 ET), <https://www.reuters.com/world/trump-says-he-will-ask-supreme-court-rehear-birthright-citizenship-case-2026-07-08/> (reporting that Trump would seek rehearing after *Barbara* and continue pursuing restrictions on birthright citizenship); Allan Smith, *After His Supreme Court Loss, Trump Calls on Congress to Pass a Law Banning Birthright Citizenship*, NBC NEWS (June 30, 2026, at 16:13 ET), <https://www.nbcnews.com/politics/supreme-court/supreme-court-loss-trump-congress-birthright-citizenship-rca352418> [<https://perma.cc/6Z2B-YV4H>] (describing Trump’s call for congressional legislation restricting birthright citizenship); Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (July 8, 2026, at 17:24 ET), <https://truthsocial.com/@realDonaldTrump/posts/116886461770041376> [<https://perma.cc/3JMK-TVLS>] (calling the Supreme Court’s birthright-citizenship decision a “miscarriage of justice” and saying he would ask the Court to reconsider); FOX NEWS, *Stephen Miller: This is a ‘Deep Knife Wound’ in the Heart of the American Republic*, at 00:04:45 (June 30, 2026), <https://www.foxnews.com/video/6399862611112> (stating that, following *Trump v. Barbara*, the administration would “have to take a hard look” at immigration programs in light of so-called “birth tourism”); Birthright Citizenship Clarification Act of 2026, H.R. 9633, 119th Cong. (2026); Exec. Order No. 14419, 91 Fed. Reg. 51993 (Aug. 11, 2026) (effective Aug. 6, 2026) (directing federal agencies to prevent the use of immigration and visa programs to facilitate “birth tourism” and to strengthen enforcement against individuals who travel to the United States primarily to obtain citizenship for a child by birth); Exec. Order No. 14418, 91 Fed. Reg. 51991 (Aug. 11, 2026) (effective Aug. 6, 2026) (directing executive agencies to implement additional restrictions on the recognition of birthright citizenship in specified circumstances).

<sup>30</sup> Rangel-Medina, *supra* note 15 (manuscript at 107) (defining “‘multigenerational illegality,’ [as] an anti-Indigenous and race-based system of immigration law and enforcement that promulgates structural inequity through complex

The Article’s argument proceeds accordingly. Part I briefly summarizes the historical and legal underpinnings that led to the adoption of the Fourteenth Amendment’s Citizenship Clause. Considering this context, it examines the litigation in *Trump v. Barbara* and the Supreme Court’s decision. This Part argues that although race-making was central to the Order, explicit mentions of race were largely absent from the litigation record, except for the Solicitor General referring to immigrants as “illegal aliens.”<sup>31</sup>

Part II explores the racialized principles of birthright citizenship through the lens of citizenism. By disaggregating national origin data for undocumented and temporary-status populations targeted by the Order, the data show that restrictions on birthright citizenship primarily affect communities of color originating from the Global South.<sup>32</sup> At the national level, people of Mexican origin constitute the largest affected population. At the broader regional and racial-group levels, Latinx/e<sup>33</sup> populations constitute the largest affected group, while Asian-origin populations likewise comprise a significant affected population.<sup>34</sup> This Part also shows that comparable congressional or constitutional restrictions on birthright citizenship would produce similar racialized outcomes upon mixed-status communities of color.

Part III examines the multigenerational harms this constitutional regression would inflict on mixed-status families of color. These harms include building inequality within the family structure, facilitating economic exploitation, exacerbating health disparities, and increasing the risk of statelessness. In outlining these harms, this Part analyzes how restricting birthright citizenship based on parental immigration status would transmit multigenerational illegality across generations for mixed-status families of color.<sup>35</sup>

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trauma, deportable wealth, political disenfranchisement, and ‘illegal’-ization through criminalization” (footnote omitted)); see Brief of The Aoki Center for Critical Race and Nation Studies at the University of California, Davis, School of Law, and Constitutional, Civil Rights and Other Scholars as Amici Curiae in Support of Respondents at 22–24, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026) (arguing that Executive Order 14160 reintroduces lineage-based citizenship and recreates a racially stratified system of inherited legal status, contrary to the Fourteenth Amendment); Brief of Federal Indian Law Scholars Gregory Ablavsky & Bethany Berger as Amici Curiae in Support of Respondents at 2–4, 14–20, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026) (arguing that the Citizenship Clause rejected inherited legal status and that “jurisdiction” meant subjection to U.S. law).

<sup>31</sup> Brief for the Petitioners at 2, 4, 6–10, 12–13, 29–32, 35, 42, 44, 47, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026); Transcript of Oral Argument at 3–4, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026).

<sup>32</sup> See *infra* Section II.A, Charts 1 and 2 and accompanying notes.

<sup>33</sup> “Latinx/e” is a multiracial, multiethnic, and multinational, gender-expansive and inclusive term used to refer to people who live in the United States and have Latin American heritage, including Black, Indigenous, Asian, and white people. This population is not a monolith; segments of the population are racialized differently, mainly depending on their race, class, linguistic abilities, languages spoken, immigration status, and mode of incorporation into the United States. See generally LAURA E. GÓMEZ, *INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM* (2020) (summarizing the historical and contemporary racialization of Latinxs/es in the United States); TANYA KERERÍ HERNÁNDEZ, *RACIAL INNOCENCE: UNMASKING LATINO ANTI-BLACK BIAS AND THE STRUGGLE FOR EQUALITY* (2022) (examining how anti-Blackness operates within Latinx/e communities in the United States).

<sup>34</sup> See *infra* Section II.A, Charts 1 and 2 and accompanying notes.

<sup>35</sup> See LUCÍA FÉLIX BELTRÁN, ROSARIO MAJANO, AHMAD ISMAIL, JIE ZONG, SILVIA R. GONZÁLEZ & ARTURO VARGAS BUSTAMANTE, UCLA LATINO POL’Y & POL. INST., *BORN INTO UNCERTAINTY: THE HEALTH AND SOCIAL COSTS OF ENDING BIRTHRIGHT CITIZENSHIP* 9 (Feb. 12, 2025), <https://latino.ucla.edu/wp-content/uploads/2025/02/UCLA-LPPI-Birthright-Costs-02132025.pdf> [<https://perma.cc/A3MB-YU55>] (finding “Latino noncitizens . . . would be the most affected racial and ethnic group if birthright citizenship ends,” further destabilizing immigrant and mixed-status



## I. RE-WHITENING BIRTHRIGHT CITIZENSHIP

For more than three centuries, the U.S. colonies and later the United States enforced the doctrine of *partus sequitur ventrem*, under which Black children inherited their mothers' enslaved status.<sup>36</sup> The Reconstruction Amendments repudiated the transmission of enslaved status through maternal lineage embodied in this doctrine.<sup>37</sup> To that end, the Fourteenth Amendment's Citizenship Clause overturned *Dred Scott v. Sanford*, rejecting inherited racial legal status as the basis for birthright citizenship.<sup>38</sup>

Reconstruction established territorial birth as the constitutional rule of citizenship. Even so, racialized exceptions remained embedded in citizenship law.<sup>39</sup> *Elk v. Wilkins* denied birthright citizenship to Native Americans who were registered members of tribal nations,<sup>40</sup> and the Chinese Exclusion Acts restricted Chinese immigrants' access to naturalized citizenship.<sup>41</sup> Subsequent constitutional case law and statutory developments, including *United States v. Wong Kim Ark*, the

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families and increasing the risk of statelessness for future generations); Rangel-Medina, *supra* note 15 (manuscript at 103–04) (examining how mixed-status families of color are branded as “illegal” and systematically denied opportunities to obtain immigration status or U.S. citizenship, leading to marginalization across generations); AUDREY SMEDLEY & BRIAN SMEDLEY, *RACE IN NORTH AMERICA: ORIGIN AND EVOLUTION OF A WORLDVIEW* 17–29 (4th ed. 2012) (explaining how race is socially constructed to organize political and economic hierarchy).

<sup>36</sup> See FONER, *supra* note 4, at 3–8 (documenting that the Reconstruction Amendments were adopted to abolish slavery, a system of inherited status transmitted through parentage); EVELYN NAKANO GLENN, *UNEQUAL FREEDOM: HOW RACE AND GENDER SHAPED AMERICAN CITIZENSHIP AND LABOR* 34–36 (2002) (describing how slavery and early U.S. citizenship regimes were shaped by race, gender, and inherited status transmitted through family lineage); see also *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 572–76 (1857) (enslaved party) (Curtis, J., dissenting) (explaining that free Black people were recognized as citizens in several states at the Founding before the Supreme Court rejected that view), *superseded by constitutional amendment*, U.S. Const. amend. XIV.

<sup>37</sup> See, e.g., HENING, *supra* note 18, at 170.

<sup>38</sup> See U.S. CONST. amend. XIV, § 1; *Dred Scott*, 60 U.S. (19 How.) at 404–05; see also César Cuauhtémoc García Hernández, *Misusing History to Limit Birthright Citizenship*, SCOTUSBLOG (Oct. 21, 2025), <https://www.scotusblog.com/2025/10/misusing-history-to-limit-birthright-citizenship/> [<https://perma.cc/P2WM-H38N>] (explaining that originalist arguments against birthright citizenship selectively read Reconstruction-era sources while ignoring the Fourteenth Amendment's core purpose of abolishing inherited status and racial exclusion).

<sup>39</sup> This Article does not attempt to provide a comprehensive history of citizenship or exclusion. Instead, it focuses on those legal developments most directly relevant to the repudiation of inherited status and the questions presented in *Trump v. Barbara*. Other important histories—including territorial citizenship, nationality in the unincorporated territories, gender-based derivative citizenship, and exclusion affecting additional racialized communities—likewise shaped citizenship law but fall beyond the scope of this Article. For example, individuals born in American Samoa are generally U.S. nationals rather than U.S. citizens at birth, illustrating another historically contingent exception to the principle of birthright citizenship.

<sup>40</sup> See *Elk v. Wilkins*, 112 U.S. 94, 102 (1884) (holding that Native Americans registered as tribal members were not automatically citizens under the Fourteenth Amendment).

<sup>41</sup> See Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (repealed 1943); Immigration Act of 1917, ch. 29, 39 Stat. 874 (establishing the “Asiatic barred zone” and expanding racialized exclusion); Immigration Act of 1924, ch. 190, 43 Stat. 153 (imposing national origin quotas and effectively excluding immigration from Asia); Scott Act, ch. 1064, 25 Stat. 504 (1888) (repealed 1943) (barring reentry of Chinese laborers); Geary Act, ch. 60, 27 Stat. 25 (1892) (repealed 1943) (extending Chinese exclusion and requiring registration of Chinese residents).

Indian Citizenship Act of 1924, and the Immigration and Nationality Act of 1952, gradually expanded the common-law principle of birthright citizenship across racial lines.<sup>42</sup>

The Order, which reached the Supreme Court in *Trump v. Barbara*, sought to overturn that well-established precedent by conditioning citizenship on parental immigration status rather than on birth on U.S. soil.<sup>43</sup> For instance, the district court in *New Hampshire Indonesian Community Support v. Trump* found that the Order made citizenship contingent on parental immigration status.<sup>44</sup> The Order attempted to depart from the longstanding constitutional framework established during Reconstruction.

Writing for the majority, Chief Justice Roberts concluded that the Citizenship Clause repudiated inherited legal status by reaffirming the common-law principle that citizenship ordinarily follows birth within U.S. soil.<sup>45</sup> The Court emphasized that the Clause makes no distinction based on whether one's parents have formal immigration or citizenship status.<sup>46</sup> In the majority's words, "to understand the Citizenship Clause of the Fourteenth Amendment, it is first necessary to understand the context in which it arose—and the opinion of this Court, *Dred Scott v. Sanford*, 19 How. 393 (1857), that it rejected."<sup>47</sup> That historical framing reinforces this Article's central premise that the Order sought to revive principles of inherited legal status that the Reconstruction Constitution expressly aimed to abolish.<sup>48</sup>

The Order differed from *Dred Scott* in that it was formally race-neutral and would not have categorically denied citizenship on the basis of race, but it revived a similar logic by conditioning constitutional membership on inherited parental immigration status.<sup>49</sup> Writing for the majority in *Dred Scott*, Chief Justice Taney concluded that the Framers did not intend Black people, free or enslaved, to be part of the national political community.<sup>50</sup> Taney's remarks were rife with racial bias and white supremacist logic, describing Black people as "beings of an inferior order . . . altogether unfit to associate with the white race," and therefore outside the constitutional confines of U.S. citizenship.<sup>51</sup> The majority in *Trump v. Barbara* emphasized that *Dred Scott* abandoned

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<sup>42</sup> See *United States v. Wong Kim Ark*, 169 U.S. 649, 698 (1898); Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253; Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952).

<sup>43</sup> See Exec. Order No. 14160, 90 Fed. Reg. 8449, 8449 (Jan. 29, 2025) (effective Jan. 20, 2025).

<sup>44</sup> See *N.H. Indonesian Cmty. Support v. Trump*, 765 F. Supp. 3d 102, 109–10 (D.N.H. 2025) (characterizing Executive Order No. 14160 as conditioning citizenship on parental immigration status rather than territorial birth and rejecting the government's attempt to analogize the policy to historical limits on birthright citizenship); see also *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723, 738 (D. Md. 2025) (treating Executive Order No. 14160 as a parentage-based restriction on birthright citizenship).

<sup>45</sup> *Trump v. Barbara*, No. 25-365, slip op. at 2–17 (U.S. June 30, 2026) (Roberts, C.J.) (tracing the Citizenship Clause to the common-law rule of *jus soli* and relying on Attorney General Bates's rejection of the premise that "citizenship is ever hereditary"); *id.* at 17–26 (holding that children born in the United States to parents who are undocumented or temporarily present satisfy both requirements of the Citizenship Clause and are citizens at birth).

<sup>46</sup> *Id.*, slip op. at 17–26.

<sup>47</sup> *Id.*, slip op. at 2.

<sup>48</sup> *Id.*, slip op. at 1 (Jackson, J., concurring).

<sup>49</sup> See Zamir Ben-Dan, "Today, the Constitution Prevails": A History and Legacy of Constitutional Racism, 45 CARDOZO L. REV. 1653, 1688–95 (2024) (explaining how formally race-neutral legal frameworks can produce racial hierarchy through forms of exclusion rooted in anti-Blackness).

<sup>50</sup> See *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404–05 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. Const. amend. XIV.

<sup>51</sup> *Id.* at 404–05, 407.

the common-law principle of citizenship by making “blood, not soil” the rule of constitutional membership.<sup>52</sup>

In defending the Order, the Trump Administration argued that children born to parents with undocumented or temporary status are not “subject to the jurisdiction” of the United States because their parents lack permanent allegiance or political membership.<sup>53</sup> The Solicitor General referred to migrants as “illegal aliens” on at least four occasions during oral argument and thirty-two times in the government’s brief.<sup>54</sup> Scholars and civil rights advocates contend that this term is a racialized legal category that associates undocumented status with particular racial and ethnic groups.<sup>55</sup> Moreover, akin to the language and ideology described by Chief Justice Taney in the *Dred Scott* opinion, the first and second Trump Administrations have repeatedly described immigrants as “rapists,” “animals,” “illegals,” “aliens,” “not humans,” “criminals,” and “invaders,” who are “eating . . . pets.”<sup>56</sup> The Administration also frames the growing population of Brown people and people of color as a biological and demographic threat to the United States.<sup>57</sup>

The government’s argument in *Trump v. Barbara* echoed an important feature of *Dred Scott*: that constitutional membership depends on parental immigration status rather than on birth within U.S. territory. Had the Order been implemented, it would have reinforced a system in which people with undocumented or temporary immigration statuses—and their children—would remain especially vulnerable to exploitation and exclusion and susceptible to multigenerational illegality.

<sup>52</sup> *Barbara*, slip op. at 6–8.

<sup>53</sup> Reply in Support of Application for a Partial Stay at 16–17, *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) (No. 24A884).

<sup>54</sup> Transcript of Oral Argument at 3–4, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026); see Brief for the Petitioners at 2, 4, 6–10, 12–13, 29–32, 35, 42, 44, 47, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026).

<sup>55</sup> See Cecilia Menjivar, *The Racialization of “Illegality,”* Spring 2021 DÆDALUS 91, 91–92, 94 (explicating that illegality is socially and legally constructed through racialized stereotypes that associate Latinx/e identity with undocumented status); Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION & DEV. REV. 1, 5–8 (2012); Nicholas De Genova, *The Legal Production of Mexican/Migrant “Illegality,”* 2 LATINO STUD. 160, 161–62 (2004).

<sup>56</sup> See, e.g., *Here’s Donald Trump’s Presidential Announcement Speech*, TIME (June 16, 2015, at 14:32 ET), <https://time.com/3923128/donald-trump-announcement-speech/> [<https://perma.cc/CN55-WNLY>]; *Remarks by President Trump at a Roundtable Discussion on Immigration | Bethpage, NY*, THE WHITE HOUSE ARCHIVES (May 23, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-roundtable-discussion-immigration-bethpage-ny/> [<https://perma.cc/JH3H-2KFF>]; *President Donald J. Trump’s Address to the Nation on the Crisis at the Border*, THE WHITE HOUSE ARCHIVES (Jan. 8, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trumps-address-nation-crisis-border/> [<https://perma.cc/EGZ3-ZKHE>]; Zolan Kanno-Youngs, *A ‘Ticklish Subject’: Trump’s Words on Immigration Often Collide and Contradict*, N.Y. TIMES (Jan. 10, 2026), <https://www.nytimes.com/2026/01/10/us/politics/a-ticklish-subject-trumps-words-on-immigration-often-collide-and-contradict.html> (documenting the use of dehumanizing and militarized rhetoric to describe immigrants); *Fact-checking Over 12,000 of Donald Trump’s Quotes About Immigrants*, THE MARSHALL PROJECT (Oct. 21, 2024, at 6:00 ET), [https://www.themarshallproject.org/2024/10/21/fact-check-12000-trump-statements-immigrants#eating\\_the\\_pets](https://www.themarshallproject.org/2024/10/21/fact-check-12000-trump-statements-immigrants#eating_the_pets) [<https://perma.cc/X73K-BXM9>]; *Trump on Immigration*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/trump-on-immigration> [<https://perma.cc/3HNN-33S7>] (last visited June 28, 2026); Andres Oppenheimer, *Trump Branding Immigrants as ‘Foreign Invaders’ is Legally False, Morally Rotten | Opinion*, MIA. HERALD (Dec. 3, 2025, at 12:43 ET); see also *Aliens*, THE WHITE HOUSE, <https://www.whitehouse.gov/aliens/> [<https://perma.cc/DEL8-DHKF>] (last visited June 28, 2026) (using the term “aliens” to describe noncitizens and framing undocumented migration as an “invasion”).

<sup>57</sup> See DUNBAR-ORTIZ, *supra* note 16, at 1–18.

The critical difference is that *Dred Scott* categorically relied on race, whereas the Order operated through formally race-neutral categories that nonetheless produce racialized effects under citizenship.

In *Trump v. Barbara*, the Supreme Court held that the Citizenship Clause does not distinguish among children born to parents with undocumented or temporary status.<sup>58</sup> The Court emphasized that President Lincoln's Attorney General, Edward Bates, rejected the premise that "citizenship is ever hereditary," concluding instead that virtually every person born in the United States is presumptively a citizen.<sup>59</sup> The Court relied on Bates's opinion as an important precursor to the Citizenship Clause and to the Reconstruction Constitution's repudiation of inherited legal status.<sup>60</sup>

Justice Jackson's concurrence, joined in part by Justice Sotomayor, further situated the Citizenship Clause within the broader constitutional transformation of Reconstruction.<sup>61</sup> She rejected the view that the Fourteenth Amendment served only to secure citizenship for formerly enslaved Black people.<sup>62</sup> Instead, she explained, the Reconstruction Amendments constituted an "anticaste, antistatutory reset," grounded in "universalist appeals" and "universal principles" that gave the Citizenship Clause "universal application."<sup>63</sup> She further emphasized that Reconstructionists rejected divisions that pit Black people against migrants and that, in fact, free Black people fought for the "shared humanity of *all* people."<sup>64</sup> Justice Jackson also explained that the Reconstruction Congress understood the Citizenship Clause to protect citizenship across racial and national origin lines, rather than as a limited remedy confined to a single group.<sup>65</sup> That historical account reinforces this Article's argument that the Order represented an attempt to revive forms of inherited legal status that the Reconstruction Constitution was expressly designed to abolish.<sup>66</sup>

The dissenting opinions, however, show that the debate over birthright citizenship remains. Justice Thomas argued that the Citizenship Clause should be understood in terms of political allegiance, thereby making parental status relevant.<sup>67</sup> Justice Alito similarly contended that the Clause does not confer citizenship on the children of all noncitizens.<sup>68</sup> Justice Kavanaugh agreed that the Order could not take effect but concluded that the case should have been resolved on statutory rather than constitutional grounds.<sup>69</sup> In his view, Congress could, consistent with the Fourteenth Amendment, enact legislation establishing additional exceptions to birthright

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<sup>58</sup> *Trump v. Barbara*, No. 25-365, slip op. at 2–26 (U.S. June 30, 2026) (Roberts, C.J.) (holding that children born in the United States to parents with undocumented and temporary status are citizens at birth under the Citizenship Clause).

<sup>59</sup> *Id.*, slip op. at 8 (quoting 10 Op. Att'y Gen. 382, 394, 397, 399 (1862)).

<sup>60</sup> *Id.*, slip op. at 8–9.

<sup>61</sup> *Id.*, slip op. at 1–4 (Jackson, J., concurring).

<sup>62</sup> *Id.*, slip op. at 1–3, 15–20.

<sup>63</sup> *Id.*, slip op. at 8–10.

<sup>64</sup> *Id.*, slip op. at 19.

<sup>65</sup> *Id.*, slip op. at 2.

<sup>66</sup> *Id.*, slip op. at 1–20.

<sup>67</sup> *Id.*, slip op. at 17–29, 37, 75–89 (Thomas, J., dissenting) (maintaining that citizenship turns on political allegiance rather than mere territorial birth and disputing the majority's reading of *Wong Kim Ark*).

<sup>68</sup> *Id.*, slip op. at 25–35 (Alito, J., dissenting).

<sup>69</sup> *Id.*, slip op. at 1–5 (Kavanaugh, J., concurring in the judgment and dissenting in part) (concluding that Executive Order No. 14160 conflicts with 8 U.S.C. § 1401 and that the Court should resolve the case on statutory grounds).

citizenship beyond those recognized in *Wong Kim Ark*.<sup>70</sup> The dissenting opinions reveal continuing disagreement over whether the Reconstruction Constitution permanently rejected inherited legal status as the basis for constitutional membership.

The Supreme Court's repudiation of the Order resolves only the immediate controversy. It does not eliminate the broader political project to re-whiten birthright citizenship by making it contingent on inherited parental immigration status. Rather, *Trump v. Barbara* shows that contested understandings of Reconstruction and of the relationship among birth, parentage, and race remain central to ongoing debates over birthright citizenship. As Part II shows, restrictions on birthright citizenship based on parental status have disparate consequences for Indigenous, Black, Latinx/e, and Asian and Pacific Islander (API) communities, whose access to formal immigration and citizenship status has been historically conditioned on race and ancestry.

## II. MEASURING THE IMPACT OF CITIZENISM ACROSS GENERATIONS

By situating the Order within the context of citizenism and examining its demographic consequences, this Part reveals that restrictions on birthright citizenship based on parental status disproportionately affect mixed-status communities of color. National origin data indicate that undocumented and temporary-status populations would bear the greatest consequences of parentage-based citizenship restrictions.<sup>71</sup> The ensuing discussion focuses on Indigenous, Black, Latinx/e, and Asian and Pacific Islander (API) populations, whose experiences most clearly illustrate how the Order would distribute legal vulnerability across generations.

These communities are illustrative rather than exhaustive.<sup>72</sup> The same dynamics affect many other racial, religious, ethnic, and national origin groups not included in this analysis. That scope limitation does not imply that these communities experience citizenism in the same way. Rather, each exemplifies a distinct mechanism through which citizenism produces enduring patterns of exclusion and subordination.

The demographic disparities shown in Charts 1 and 2 below stem from a much longer history. Since Reconstruction, citizenism has operated through multiple legal regimes governing citizenship and immigration law.<sup>73</sup> These regimes structure political membership by race, religion, ancestry, and immigration status. The uneven recognition of citizenship among Native Americans,

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<sup>70</sup> *Id.*, slip op. at 5–9 (arguing that *Wong Kim Ark* incorrectly treated its exceptions as a “closed set” and that Congress could recognize additional exceptions through legislation); see Birthright Citizenship Clarification Act of 2026, H.R. 9633, 119th Cong. (2026).

<sup>71</sup> See *infra* Section II.A, Charts 1 and 2 and accompanying notes; *infra* app.

<sup>72</sup> Parentage-based restrictions on birthright citizenship would have affected all children born to parents with undocumented and temporary statuses, regardless of race or national origin. The communities highlighted in this Part are those for which the available historical and demographic evidence most clearly demonstrates the operation of citizenism and its impact on limiting birthright citizenship. Other affected populations include immigrants from the Middle East and North Africa, Eastern Europe, South Asia, Sub-Saharan Africa, and the Caribbean, as well as mixed-status families across racial and ethnic groups. See *infra* Section II.A, Charts 1 and 2 and accompanying notes; *infra* app.

<sup>73</sup> See Rangel-Medina, *supra* note 2, at 834–44, 878–81; ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY 309–12 (1997) (describing the persistence of exclusionary citizenship regimes following Reconstruction).

Mexican-Americans, and Asian-Americans, together with exclusionary immigration law, illustrates how citizenship operates under these regimes.

Specifically, the Supreme Court held in *Elk v. Wilkins* that Native Americans who were members of recognized tribal nations were not U.S. citizens under the Fourteenth Amendment.<sup>74</sup> Congress did not broadly extend birthright citizenship to Native Americans until the Indian Citizenship Act of 1924, while racial restrictions persisted until the Immigration and Nationality Act of 1952.<sup>75</sup> Citizenship likewise shaped the legal status of Mexican-Americans, particularly those who lived in the Southwest before it was incorporated into the United States. Although the Treaty of Guadalupe Hidalgo formally extended U.S. citizenship to Mexican citizens residing in the ceded territories, state and local governments frequently denied access to citizenship to persons of mixed ancestry.<sup>76</sup>

Citizenship also permeates exclusionary immigration law and racialized enforcement. Beginning with the Page Act<sup>77</sup> and continuing through the Chinese Exclusion Acts,<sup>78</sup> the Undesirable Aliens Act,<sup>79</sup> and related legislation, Congress restricted migration and foreclosed pathways to citizenship for Asian, Pacific Islander, and Mexican communities.<sup>80</sup> Collectively, these intersecting regimes explain how citizenship structures membership along the lines of race, ancestry, religion, national origin, and immigration status.<sup>81</sup>

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<sup>74</sup> See *Elk v. Wilkins*, 112 U.S. 94, 102, 109 (1884); see also Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787, 1810–18 (2019) (describing the federal government’s treatment of tribal nations as separate political communities and the colonial exclusion of tribal members from citizenship).

<sup>75</sup> Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253 (extending U.S. citizenship to all noncitizen Native Americans born in the United States); Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (eliminating the remaining racial restrictions in naturalization law).

<sup>76</sup> Rangel-Medina, *supra* note 2, at 855 (“[T]he Treaty of Guadalupe Hidalgo effectively denied citizenship rights to almost all new Mexican residents. . . . [L]ocal, state, and federal entities refused to recognize the citizenship of mixed-race Mexicans.”).

<sup>77</sup> Page Act of 1875, ch. 141, 18 Stat. 477 (1875) (repealed 1974) (targeting the entry of Chinese women and effectively restricting family formation within Chinese immigrant communities).

<sup>78</sup> Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882) (repealed 1943) (suspending the immigration of Chinese laborers and barring their naturalization); Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952) (establishing the “Asiatic barred zone” and expanding racialized exclusion); Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1965) (imposing national origin quotas and effectively excluding immigration from Asia); Scott Act, ch. 1064, 25 Stat. 504 (1888) (repealed 1943) (barring reentry of Chinese laborers); Geary Act, ch. 60, 27 Stat. 25 (1892) (repealed 1943) (extending Chinese exclusion and requiring registration of Chinese residents).

<sup>79</sup> Undesirable Aliens Act, Pub. L. No. 70-1018, ch. 690, 45 Stat. 1551 (1929) (criminalizing unauthorized entry into the United States and unauthorized reentry after deportation).

<sup>80</sup> See, e.g., *United States v. Thind*, 261 U.S. 204, 214–15 (1923) (holding that Asian Indians were not “white persons” for purposes of naturalization); LUCY E. SALYER, *LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* 1–20 (1995) (describing the expansion of exclusionary immigration regimes targeting Chinese and other Asian populations).

<sup>81</sup> See ERIKA LEE, *THE MAKING OF ASIAN AMERICA: A HISTORY* 89–108 (2015) (describing how exclusion laws restricted migration and limited family formation); *Chae Chan Ping v. United States*, 130 U.S. 581, 589, 609 (1889) (upholding federal authority to exclude Chinese laborers under the Scott Act of 1888); *Fong Yue Ting v. United States*, 149 U.S. 698, 731–32 (1893) (upholding deportation of Chinese noncitizens and reinforcing their precarious legal status); *Ozawa v. United States*, 260 U.S. 178, 195–98 (1922) (holding that Japanese immigrants were ineligible for naturalization as “free white persons”); see also MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 17–55 (2004) (analyzing how immigration law constructed Asian populations as permanently foreign).

Against this historical backdrop, the Order is a mechanism of citizenism deployed as part of a broader mass-deportation strategy modeled on “Operation Wetback.”<sup>82</sup> Although these are distinct legal mechanisms, both disproportionately burden mixed-status communities of color by disrupting the multigenerational transmission of legal status.<sup>83</sup> Ultimately, restrictions on birthright citizenship and mass-deportation campaigns aim to limit the projected demographic growth of people of color in this country.

Understanding how citizenism affects mixed-status communities of color by status requires examining the demographic composition of the populations targeted by the Order. Chart 1 analyzes the national and the regional origins of the undocumented population, and Chart 2 examines migrants with various temporary immigration statuses.<sup>84</sup> Using national origin data for these populations, the analysis in Charts 1 and 2 demonstrates that the Order would have overwhelmingly affected Indigenous, Black, Latinx/e, and API communities.

#### A. POPULATIONS WITH UNDOCUMENTED AND TEMPORARY STATUSES

This Section examines the demographic composition of undocumented and temporary-status populations that the Order would have most likely affected. According to the most recent

<sup>82</sup> See STRICT SCRUTINY: *How SCOTUS Is Making Project 2025 a Reality* (Spotify, Sep. 15, 2025) (discussing how coordinated conservative legal movement strategies seek to retrench Reconstruction-era constitutional protections through executive action); KELLY LYTLE HERNÁNDEZ, *MIGRA!: A HISTORY OF THE U.S. BORDER PATROL 181–88* (2010) (documenting that Operation Wetback resulted in the deportation and coerced removal of hundreds of thousands of people of Mexican descent, including U.S. citizens); Kate Linthicum, *The Dark, Complex History of Trump’s Model for His Mass Deportation Plan*, L.A. TIMES (Nov. 13, 2015, at 3:00 PT), <https://www.latimes.com/nation/la-na-trump-deportation-20151113-story.html> (describing how U.S. citizens of Mexican descent were swept up in enforcement operations of Operation Wetback and demonstrating the explicit influence of Operation Wetback on Trump’s immigration strategy by highlighting his quote referencing it where he said “[t]hey moved 1.5 million out” in response to critiques that his immigration plan was infeasible); see generally MARLA A. RAMÍREZ, *BANISHED CITIZENS: A HISTORY OF THE MEXICAN AMERICAN WOMEN WHO ENDURED REPATRIATION* (2025) (explaining the cyclical history of racialized deportation operations that have devastated Mexican-American families across generations throughout the 1900s).

<sup>83</sup> See RANDY CAPPS, MICHAEL FIX & JIE ZONG, MIGRATION POL’Y INST., *A PROFILE OF U.S. CHILDREN WITH UNAUTHORIZED IMMIGRANT PARENTS* 1–4 (2016), <https://www.migrationpolicy.org/sites/default/files/publications/ChildrenofUnauthorized-FactSheet-FINAL.pdf> [<https://perma.cc/FX8H-DF2N>] (finding that approximately 5.1 million children live with an unauthorized immigrant parent, nearly 80% of whom are U.S. citizens, and describing the prevalence of mixed-status families); Laura E. Enriquez, *Multigenerational Punishment: Shared Experiences of Undocumented Immigration Status Within Mixed-Status Families*, 77 J. MARRIAGE & FAM. 939, 939–55 (2015) (explaining how parental immigration status shapes the legal and social experiences of children across generations).

<sup>84</sup> The estimates in the charts are approximations because no single federal dataset captures all affected populations. See *About the Foreign-Born Population*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/foreign-born/about.html> [<https://perma.cc/QJ5Z-WRKS>] (last visited July 9, 2026) (stating that the Census Bureau does not collect data on the legal status of the foreign-born population and that it is not possible to tabulate separate estimates by legal status); ABIGAIL F. KOLKER, CONG. RSCH. SERV., R47218, *UNAUTHORIZED IMMIGRANTS: FREQUENTLY ASKED QUESTIONS 2* (2022) (describing how estimates of the undocumented population are derived from survey and administrative data because major federal population surveys do not collect respondents’ immigration status).

estimates, approximately fourteen million undocumented immigrants live in the United States.<sup>85</sup> Millions more hold temporary or provisional immigration protections.<sup>86</sup> These populations fall into distinct legal categories and are therefore analyzed separately, using the best available data.

This Section relies on national origin data to assess the demographic effects of the Order because federal datasets do not report the racial composition of undocumented and temporary-status populations.<sup>87</sup> National origin and race are not synonymous, and individuals from the same country may identify with different racial or ethnic groups.<sup>88</sup> Nevertheless, national origin is the best available proxy because migrants from the Global South are disproportionately racialized as people of color in the United States.<sup>89</sup> Immigration status itself further contributes to this process by producing legal and social exclusion that often reshapes racial meaning regardless of prior racial classification in the country of origin.<sup>90</sup> Chart 1 applies this national origin methodology to the undocumented population, establishing the demographic baseline for the analysis that follows.

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<sup>85</sup> These figures are presented as approximate ranges because the Migration Policy Institute (MPI) and the Pew Research Center rely on different survey years and regional categorizations. The Charts aggregate these data for analytical clarity. The Pew Research Center's 2024 estimates, based primarily on 2022–2023 American Community Survey data, provide the most recent estimate of the total undocumented population but do not include a sufficiently detailed national origin breakdown for tabular presentation. See Jeffrey S. Passel & Jens Manuel Krogstad, *What We Know About Unauthorized Immigrants Living in the U.S.*, PEW RSCH. CTR. (July 22, 2024), <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/> [<https://perma.cc/WFZ8-DBTS>]. Moreover, the MPI often provides national origin estimates of the undocumented population that are widely regarded as reliable in legal research and policy analysis. See Ariel G. Ruiz Soto, Julia Gelatt & Jennifer Van Hook, *Diverse Flows Drive Increase in U.S. Unauthorized Immigrant Population*, MIGRATION POL'Y INST. (July 2024), <https://www.migrationpolicy.org/news/us-unauthorized-population-diversifying> [<https://perma.cc/CRK4-Q7KR>]. For a full explanation of the data sources and methodology used for Charts 1 and 2, see *infra* app.

<sup>86</sup> See, e.g., *Asylum in the United States*, AM. IMMIGR. COUNCIL (May 9, 2025), <https://www.americanimmigrationcouncil.org/fact-sheet/asylum-united-states/> [<https://perma.cc/P4L8-ZCTD>] (describing the asylum process and pending applicants); JILL H. WILSON, CONG. RSCH. SERV., RS20844, TEMPORARY PROTECTED STATUS AND DEFERRED ENFORCED DEPARTURE 7–9 (2025) (reporting on Temporary Protected Status beneficiaries); *DACA Recipients & Eligible Population, by State*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/data-tool/daca-recipients-eligible-population-state> [<https://perma.cc/7A9Q-92UX>] (last visited July 20, 2026) (reporting Deferred Action for Childhood Arrivals (DACA) recipients); ANDORRA BRUNO, CONG. RSCH. SERV., R46570, IMMIGRATION PAROLE 5, 15–17 (2025) (describing humanitarian parole populations).

<sup>87</sup> See *About the Foreign-Born Population*, U.S. CENSUS BUREAU, <https://www.census.gov/topics/population/foreign-born/about.html> [<https://perma.cc/QJ5Z-WRKS>] (last visited July 9, 2026) (explaining that the Census Bureau does not collect data on the legal status of foreign-born populations and that it is not possible to tabulate separate estimates by legal status); KOLKER, *supra* note 84, at 2 (explaining that major federal population surveys, including the decennial census and the American Community Survey, do not collect respondents' immigration status and that estimates of the undocumented population must therefore be imputed from survey and administrative data).

<sup>88</sup> See, e.g., MARA LOVEMAN, NATIONAL COLORS: RACIAL CLASSIFICATION AND THE STATE IN LATIN AMERICA 1–8 (2014) (explaining how racial classification systems differ across Latin America and often diverge from U.S. racial categories).

<sup>89</sup> See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES 106–09 (3d ed. 2015) (theorizing that racial meanings are socially constructed and can shift as groups enter new political and legal contexts).

<sup>90</sup> For example, Latinxs/es are multi-racial and multi-ethnic, and some segments of the population are racialized as white in Latin America. See Rangel-Medina, *supra* note 15 (manuscript at 124–28) (discussing historical racial composition and formation in Latin America, particularly surrounding Indigeneity); GÓMEZ, *supra* note 33; HERNÁNDEZ, *supra* note 33; DOUGLAS S. MASSEY, JOAQUÍN ARANGO, GRAEME HUGO, ALI KOUAOUCCI, ADELA PELLEGRINO & J. EDWARD TAYLOR, *WORLDS IN MOTION: UNDERSTANDING INTERNATIONAL MIGRATION AT THE END*



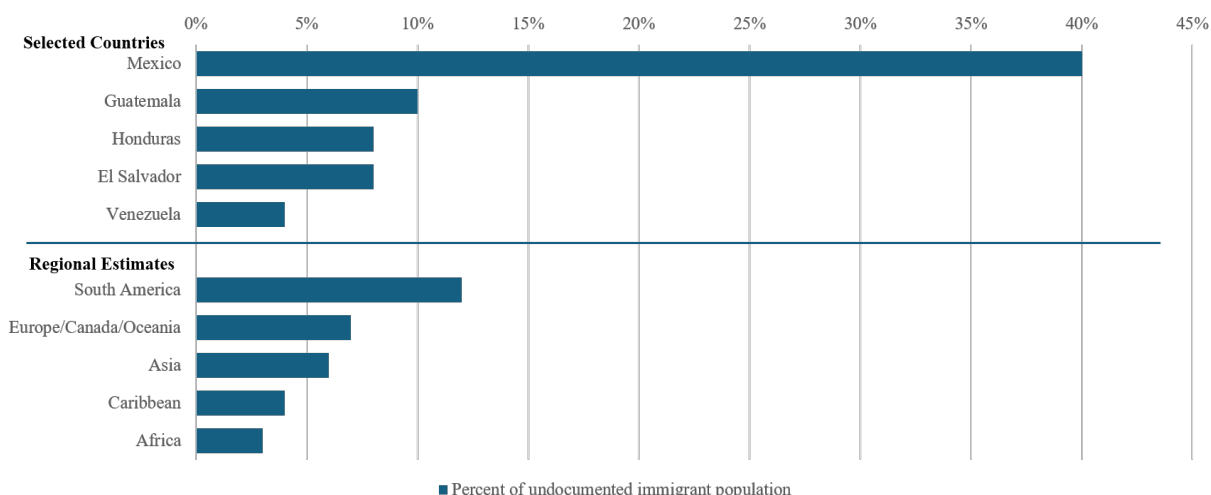
Chart 1. National and Regional Origin of the Undocumented Population as of 2023<sup>91</sup>

Chart 1 reveals that the undocumented population is concentrated among a relatively small number of national origin groups. Mexico alone accounts for approximately forty percent of the undocumented population, while Guatemala, Honduras, El Salvador, and Venezuela together account for an additional thirty percent. When viewed by broader region rather than by individual country, the Chart also shows that substantial undocumented migration originates from South America (12%), followed by Asia (6%), the Caribbean (4%), and Africa (3%).<sup>92</sup> By contrast,

OF THE MILLENNIUM 42–45 (1998) (showing that legal migration channels tend to favor migrants with greater economic and social resources); *see also* SHACHAR, *supra* note 3, at 4–10 (examining how citizenship regimes and migration pathways privilege already advantaged populations and reproduce global inequalities).

<sup>91</sup> Chart 1 presents selected country- and regional-origin estimates for the undocumented immigrant population residing in the United States in mid-2023. The country figures (Mexico (40%), Guatemala (10%), Honduras (8%), El Salvador (8%), and Venezuela (4%)) and regional figures (South America (12%), Europe, Canada, and Oceania (7%), Asia (6%), the Caribbean (4%), and Africa (3%)) are derived from estimates published by the MPI and rounded to the nearest whole percentage. Country-level percentages are reported directly from the MPI's estimates of the undocumented immigrant population residing in the United States as of mid-2023, published in October 2025. Regional origin percentages were calculated by the authors from the underlying country-level data for illustrative purposes. MPI reports Asia separately from its combined Europe/Canada/Oceania category; accordingly, Pacific Island countries are not included in the Asia bar. Because the regional categories include countries listed individually (for example, Venezuela is included within South America), the national and regional origin percentages represent overlapping views of the same population and therefore should not be added together. *See* Julia Gelatt, Ariel G. Ruiz Soto & James D. Bachmeier, *Changing Origins, Rising Numbers: Unauthorized Immigrants in the United States*, MIGRATION POL'Y INST. (Oct. 2025), <https://www.migrationpolicy.org/publication/changing-origins-rising-numbers-unauthorized-immigrants-united-states> [<https://perma.cc/W8VS-RHPH>]; *infra* app. at Part I.

<sup>92</sup> The most recent complete data available on the undocumented population only cover until mid-2023. *See* *Unauthorized Immigrant Population Profiles*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/programs/us-immigration-policy-program-data-hub/unauthorized-immigrant-population-profiles> [<https://perma.cc/8KH2-BS37>] (last visited Apr. 11, 2026); Passel & Krogstad, *supra* note 85; *see*

Europe, Canada, and Oceania together account for only a small share (7%) of the undocumented population.

The Order would also have affected migrants with temporary statuses or provisional immigration protections,<sup>93</sup> including asylum applicants, humanitarian parole recipients, Temporary Protected Status (TPS) beneficiaries, and Deferred Action for Childhood Arrivals (DACA) recipients, among others.<sup>94</sup> Unlike the undocumented population, temporary-status populations encompass humanitarian, family-based, and employment-based immigration pathways.<sup>95</sup> The Order did not expressly identify all affected temporary statuses, but its language created uncertainty about whether children born to parents with these statuses or provisional protections would acquire U.S. citizenship at birth.<sup>96</sup> Chart 2 illustrates the relative regional representation across the temporary-status categories the Order would likely have affected.

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also Evin Millet, *A Demographic Profile of Undocumented Immigrants from Asia and the Pacific Islands*, CTR. MIGRATION STUD. (June 14, 2022), <https://cmsny.org/undocumented-aapi-millet-061322/> [<https://perma.cc/CB38-F49W>] (estimating that approximately 1.7 million undocumented immigrants originate from Asia and the Pacific Islands).

<sup>93</sup> See Ming H. Chen, Jennifer M. Chacón & Shannon M. Gleeson, *Exclusion by Design: Immigrant Racialization and Temporary Legal Status*, 59 U.C. DAVIS L. REV. 2543, 2546–48 (2026) (discussing how “immigration status categories,” like temporary visas and humanitarian work authorization programs, “though formally race neutral, are dominated by particular nationalities that correspond to racial categories historically excluded and subordinated in the United States: Asian, Latine, and Black” (footnotes omitted)).

<sup>94</sup> See ANDORRA BRUNO, CONG. RSCH. SERV., R47654, IMMIGRATION OPTIONS FOR IMMIGRATION PAROLEES 1–5 (2023) (discussing humanitarian parole populations, including programs for Cubans, Haitians, Nicaraguans, and Venezuelans, Afghan parolees, Ukrainian parolees under *Uniting for Ukraine*, and other case-by-case humanitarian parole categories); Chen et al., *supra* note 93, at 2576 (“On their face, the legal categories that define and delimit temporary status distinguish their holders from permanent residents such as green card holders and citizens. When these laws on the books operate on the ground, their legal eligibility requirements interact with social forces to exacerbate the inevitable uncertainty of temporary status.”).

<sup>95</sup> See Chen et al., *supra* note 93, at 2571.

<sup>96</sup> The Trump Administration has swiftly implemented policies to dismantle the asylum and refugee system. See Noem v. Svitlana Doe, 145 S. Ct. 1524, 1524–25 (2025) (granting the application for stay to the Department of Homeland Security to terminate humanitarian parole programs for Cubans, Haitians, Nicaraguans and Venezuelans); see also Securing Our Borders, Exec. Order 14165, 90 Fed. Reg. 8467, 8468 (Jan. 30, 2025) (directing the Secretary of Homeland Security to “[t]erminate all categorical parole programs” inconsistent with “policies of the United States . . . including the program known as the ‘Processes for Cubans, Haitians, Nicaraguans, and Venezuelans’”); Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13618 (Mar. 25, 2025) (announcing that the temporary parole period for approximately 532,000 individuals “will terminate on [April 24, 2025] unless the Secretary makes an individual determination to the contrary”); see also Mullin v. Doe, Nos. 25-1083 and 25-1084, slip op. at 1–2 (U.S. June 25, 2026) (holding that most challenges to TPS terminations are not judicially reviewable and permitting the termination of TPS protections for Haiti and Syria to take effect during litigation).

Chart 2. Illustrative Regional Origins Across Selected Temporary-Status Categories<sup>97</sup>

| Immigration Status   | Latin America | Asia | Africa | Europe |
|----------------------|---------------|------|--------|--------|
| Pending Asylum*      | ●●●           | ●●   | ●●     | —      |
| Humanitarian Parole* | ●●●           | ●    | ●      | ●      |
| TPS                  | ●●●           | —    | ●      | ●●     |
| DACA                 | ●●●           | ●    | —      | —      |

| Legend<br>Symbol | Meaning                         |
|------------------|---------------------------------|
| ●●●              | Predominant regional origin     |
| ●●               | Substantial regional presence   |
| ●                | Smaller but meaningful presence |
| —                | Minimal representation          |

\* Qualitative characterization only based on publicly available nationality data; these categories are not derived from a single harmonized dataset.

Chart 2 reveals a consistent regional pattern across the examined temporary and humanitarian immigration categories. The populations represented in these temporary-status categories are disproportionately composed of persons originating from the Global South. Latin America constitutes the primary region of origin for every major category,<sup>98</sup> while Asian nationals are also well represented among asylum cases and certain humanitarian parole populations, including

<sup>97</sup> Chart 2 summarizes the regional origins of individuals in selected temporary and humanitarian immigration categories. Because these categories are administered through different statutory programs and reported using different dates, administrative systems, and population definitions, the Chart does not compare a single harmonized dataset. For purposes of illustration, the Chart groups countries into four broad regional categories (Latin America, Asia, Africa, and Europe). Accordingly, Oceania/Pacific Island countries are not displayed as a distinct regional category. TPS percentages are derived from United States Citizenship and Immigration Services (USCIS) country-level data reported by the Congressional Research Service as of March 31, 2025. DACA entries are based on USCIS country-of-birth data for active recipients as of September 30, 2024. Asylum and humanitarian-parole entries are qualitative summaries because publicly available data are reported using different legal classifications, reporting dates, and population definitions that do not permit the calculation of directly comparable regional percentage estimates. The symbols represent qualitative assessments of the relative prominence of origins in publicly available nationality data rather than calculated regional percentage estimates. The populations shown are not mutually exclusive and should not be aggregated. See WILSON, *supra* note 86, at tbl. 1 (reporting country-level TPS beneficiaries as of Mar. 31, 2025); *Active DACA Recipients – (Fiscal Year 2024, Quarter 4)*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 16, 2024), [https://www.uscis.gov/sites/default/files/document/data/active\\_daca\\_recipients\\_fy2024\\_q4.xlsx](https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy2024_q4.xlsx) [https://perma.cc/5ELZ-TM3P]; Exec. Off. for Immigr. Rev., *Asylum Statistics*, DOJ, <https://www.justice.gov/eoir/file/asylum-statistics/download> [https://perma.cc/R34C-VGKL] (last visited July 30, 2026); BRUNO, *supra* note 94, at 15–17; *infra* app. Part II.

<sup>98</sup> WILSON, *supra* note 86, at tbl. 1 (showing approximately 89.4% of TPS beneficiaries originate from Latin America and the Caribbean); Exec. Off. for Immigr. Rev., *Asylum Statistics by Nationality*, DOJ (2026), <https://www.justice.gov/eoir/page/file/1107366/download> [https://perma.cc/2QCK-ZKJ2] (reporting that approximately 90% of active DACA recipients were born in Mexico, El Salvador, Guatemala, or Honduras).

Afghan parolees.<sup>99</sup> African nationals likewise appear across multiple immigration categories,<sup>100</sup> whereas Europe's representation varies by immigration status, reflecting, in part, Ukraine's designation under TPS.<sup>101</sup> The precise regional composition varies across temporary immigration categories, but the overall pattern remains consistent with Chart 1: Latin America constitutes the largest share of every major category, while the relative representation of other regions varies according to the statutory program at issue.<sup>102</sup>

Charts 1 and 2 highlight which populations the Order would have affected. The data reveal that the Order's practical consequences would have fallen disproportionately on undocumented and temporary-status populations from the Global South. The following Sections examine how these demographic patterns would have translated into distinct forms of legal vulnerability for Indigenous, Black, Latinx/e, and API communities.

## B. INDIGENOUS, BLACK, AND LATINX/E COMMUNITIES

Migrants of Mexican origin constitute the single largest national origin undocumented population in the United States, while Latin Americans also comprise substantial portions of temporary-status populations.<sup>103</sup> As a result, restrictions on birthright citizenship would fall most heavily on mixed-race Indigenous, Black, and Latinx/e families.<sup>104</sup> Situating the Order within the longer history of racialized immigration enforcement directed toward Mexican and Latin American communities provides important context for this disproportionate impact.<sup>105</sup>

During the early twentieth century, restrictions on Mexican migration emerged from racial anxieties concerning demographic change.<sup>106</sup> Early efforts to close the "Mexican loophole" were

<sup>99</sup> EXEC. OFF. FOR IMMIGR. REV., U.S. DOJ, ASYLUM DECISIONS BY NATIONALITY (2024), <https://www.justice.gov/eoir/media/1344846/dl> [<https://perma.cc/B2GA-QNQ2>]; ANDORRA BRUNO, CONG. RSCH. SERV., R47165, PERMANENT IMMIGRATION OPTIONS FOR AFGHANS WITH IMMIGRATION PAROLE 1 (2022) (reporting that more than 70,000 Afghan evacuees were granted immigration parole).

<sup>100</sup> See EXEC. OFF. FOR IMMIGR. REV., *supra* note 99; BRUNO, *supra* note 86, at 15–17.

<sup>101</sup> See WILSON, *supra* note 86, at tbl. 1 (reporting approximately 101,150 Ukrainian TPS beneficiaries).

<sup>102</sup> Compare Gelatt et al., *supra* note 91, with *Count of Active DACA Recipients: By Country of Birth as of September 30, 2024*, U.S. CITIZENSHIP & IMMIGR. SERVS. (2024), [https://www.uscis.gov/sites/default/files/document/data/active\\_daca\\_recipients\\_fy2024\\_q4.xlsx](https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy2024_q4.xlsx); see EXEC. OFF. FOR IMMIGR. REV., *supra* note 99.

<sup>103</sup> See *supra* Section II.A, Charts 1 and 2.

<sup>104</sup> See Rangel-Medina, *supra* note 15 (manuscript at 124–28); GÓMEZ, *supra* note 33; HERNÁNDEZ, *supra* note 33.

<sup>105</sup> Citizenship restrictions affecting communities of Latin American descent were not limited to immigration law. Puerto Rican citizenship likewise developed under a distinct statutory and territorial framework rather than under the Fourteenth Amendment's Citizenship Clause. See Jones Act of 1917 (Jones–Shafroth Act), Pub. L. No. 64-368, § 5, 39 Stat. 951, 953 (codified as amended at 8 U.S.C. § 1402) (extending statutory U.S. citizenship to persons born in Puerto Rico); *Downes v. Bidwell*, 182 U.S. 244, 287 (1901) (holding that Puerto Rico was an unincorporated territory to which the Constitution did not fully apply *ex proprio vigore*); *Balzac v. Porto Rico*, 258 U.S. 298, 305–06, 313 (1922) (holding that statutory U.S. citizenship did not incorporate Puerto Rico or extend all constitutional protections to the territory); SAM ERMAN, ALMOST CITIZENS: PUERTO RICO, THE U.S. CONSTITUTION, AND EMPIRE 1–7, 161 (2019) (detailing how the United States developed the doctrine of territorial incorporation and conferred statutory citizenship without extending the full constitutional rights associated with statehood).

<sup>106</sup> See SMITH, *supra* note 73, at 309–12 (1997) (explaining how U.S. citizenship law has been repeatedly structured to preserve white national identity through exclusionary legal regimes); see also OMI & WINANT, *supra* note 89, at 55–

explicitly justified through racialized narratives portraying Mexican migration as a threat to the country's political and racial composition.<sup>107</sup> These efforts reflected anti-Indigenous and anti-Mexican ideologies that later expanded into broader forms of anti-Latinx/e racism.<sup>108</sup>

The Order aimed to extend these historical patterns into the contemporary immigration system. The Trump Administration embraced a mass-deportation agenda modeled on “Operation Wetback,” framing Mexican and Latin American immigration as both a demographic and political threat.<sup>109</sup> Because immigration enforcement has long relied upon racial profiling, these policies burden not only undocumented migrants but also U.S. Latinx/e citizens who are racialized as “illegal.”<sup>110</sup>

Moreover, the Order would have disproportionately burdened Latinx/e families not only because they constitute the largest affected populations, but also because anti-Indigeneity and anti-Blackness have historically concentrated legal vulnerability within these communities.<sup>111</sup> Indigenous and/or Black migrants from Latin America experience overlapping forms of racial exclusion that shape migration, access to formal immigration pathways, and treatment within the U.S. immigration system. In Latin America, longstanding ideologies of *mestizaje* privilege proximity to European ancestry while marginalizing Indigenous and Afro-descendant populations.<sup>112</sup> These colonial hierarchies continue to influence access to education, employment, land ownership, and economic opportunity, primarily affecting who has the privilege of obtaining visas in their home countries that can lead to formal immigration pathways to migrate.<sup>113</sup>

Once in the United States, those inequalities are compounded by immigration enforcement. Approximately six million Latinx/e people of all statuses identify as Afro-Latinx/e in the United

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56 (describing how political institutions and state action can maintain racial hierarchy through exclusionary policies benefiting white people).

<sup>107</sup> GARCÍA HERNÁNDEZ, *supra* note 13, at 44–70.

<sup>108</sup> See Rangel-Medina, *supra* note 15 (manuscript at 110); LEO R. CHAVEZ, *THE LATINO THREAT: CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* 1–25, 87 (2d ed. 2013) (analyzing narratives of demographic threat, including the “browning of America,” in immigration discourse).

<sup>109</sup> See Interview by Norah O'Donnell with Donald J. Trump, President, U.S., in Palm Beach, Fla. (Oct. 31, 2025) (transcript available at <https://www.cbsnews.com/news/read-full-transcript-norah-odonnell-60-minutes-interview-with-president-trump/> [<https://perma.cc/L6FZ-8QBU>]).

<sup>110</sup> César Cuauhtémoc García Hernández, *Justice Brett Kavanaugh and Racial Proxies*, SCOTUSBLOG (Sep. 23, 2025), <https://www.scotusblog.com/2025/09/justice-brett-kavanaugh-and-racial-proxies/> [<https://perma.cc/5JQZ-2BY2>] (describing immigration enforcement practices that have targeted U.S. citizens who “look[] Mexican”); see also Nicholas De Genova, *The Legal Production of Mexican/Migrant “Illegality,”* 2 *LATINO STUD.* 160–61, 174–77 (2004) (explaining how immigration enforcement practices, including raids, operate as mechanisms of racialized social control that produce fear and vulnerability in migrant communities).

<sup>111</sup> See GÓMEZ, *supra* note 33, at 29–34, 45–47, 69–72 (explaining how Latin American anti-Indigenous and anti-Black racial hierarchies—such as *mestizaje*—shape the racialization of Latinxs/es in the United States).

<sup>112</sup> See *id.* at 70–71 (describing Spanish colonial practices which sought to erase and detribalize most of Latin American Indigenous and Black populations through policies of *blanqueamiento* [whitening], among others); see also Maylei Blackwell, Floridalma Boj Lopez & Luis Urrieta Jr., *Critical Latinx Indigeneities*, 15 *LATINO STUD.* 126, 130 (2017) (complicating theoretical frameworks like illegality and arguing they should be understood through an intersectional approach that includes indigeneity); LORGIA GARCÍA PEÑA, *TRANSLATING BLACKNESS: LATINX COLONIALITIES IN GLOBAL PERSPECTIVE 2* (2022) (noting that “Black Latinidad is . . . a point of entry and a set of methods that move us beyond homogeneous concepts of racial and citizenship exclusion”).

<sup>113</sup> See GÓMEZ, *supra* note 33, at 62–97 (explaining how ideologies of *mestizaje* in Latin America promoted racial mixing while simultaneously reinforcing anti-Indigenous and anti-Black hierarchies).

States.<sup>114</sup> Yet Black migrants, particularly those from Latin America and the Caribbean, are disproportionately subjected to immigration detention, deportation, and other enforcement actions despite representing a comparatively small share of the noncitizen population.<sup>115</sup> Parentage-based citizenship restrictions, like the ones contained in the Order, would have compounded systems of anti-Black and anti-Indigenous legal vulnerability.

The cumulative operation of how citizenism designs vulnerability across generations is perhaps best illustrated by Professor Rangel-Medina's family history. Her Indigenous and mixed-race Mexican family began migrating to the United States in 1905, only twenty years before Donald Trump's grandfather settled in the country.<sup>116</sup> Moreover, her *Wixárika*/Indigenous ancestors have inhabited the Southwest United States and Northern/Central Mexico since at least 200 A.D., almost two thousand years before either country existed.<sup>117</sup> For over a century, her family has survived multigenerational illegality while working in the most exploitative industries in the United States without the prospect of attaining formal status and citizenship until very recently.<sup>118</sup> Her family's experience represents a common thread in how Indigenous and mixed-race Mexican families are illegalized across generations through citizenism.<sup>119</sup>

If the Order had been deemed constitutional, or if similar restrictions on birthright citizenship are adopted, Professor Rangel-Medina's family and families like hers would remain subject to legal precarity across generations.<sup>120</sup> Their experience illustrates why the demographic concentration of undocumented migration among Latin American populations would have translated into especially severe burdens for these communities. The demographic evidence also demonstrates, however, that these burdens would not have been confined to undocumented migrants from Latin America. API migrants are substantially represented across temporary, humanitarian, and employment-based immigration pathways, exemplifying how citizenism operates across communities. The following Section examines how those distinct forms of legal vulnerability impact API communities.

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<sup>114</sup> Ana Gonzalez-Barrera, *About 6 Million U.S. Adults Identify as Afro-Latino*, PEW RSCH. CTR. (May 2, 2022), <https://www.pewresearch.org/short-reads/2022/05/02/about-6-million-u-s-adults-identify-as-afro-latino/> [https://perma.cc/Z9UY-KQHE] (reporting that approximately six million U.S. adults identify as Afro-Latinx/e, representing about 12% of the adult Latinx/e population). Afro-Latinx/e identity is distinct from other identities and can encompass a variety of racial groups, but at least some Afro-Latinxs/es identify as Black. *See id.* ("When asked about their race on a Census Bureau-style question, about three-in-ten Afro-Latinos selected White as their race, 25% chose Black and 23% selected 'some other race,' according to the Center survey.").

<sup>115</sup> *See* Reema Ghabra, *Black Immigrants Face Unique Challenges*, HUM. RTS. FIRST (Feb. 17, 2022), <https://www.humanrightsfirst.org/library/black-immigrants-face-unique-challenges> [https://perma.cc/KK7K-NW7D].

<sup>116</sup> Rangel-Medina, *supra* note 15 (manuscript at 115).

<sup>117</sup> *Id.* (manuscript at 115–16).

<sup>118</sup> *Id.*

<sup>119</sup> *See generally* PEOPLE OF THE PEYOTE: HUICHO INDIAN HISTORY, RELIGION, & SURVIVAL (Stacy B. Schaeffer & Peter T. Furst eds., 1996) (describing the history, territorial continuity, and cultural survival of the *Wixárika* (Huichol) people across what is now considered the Southwest portion of the United States, along with Northern and Central Mexico).

<sup>120</sup> *See* JOANNA DREBY, *DIVIDED BY BORDERS: MEXICAN MIGRANTS AND THEIR CHILDREN* 1–24, 163–65 (2010) (documenting how immigration enforcement and legal status fragmentation undermine family stability and children's access to social and civic institutions); *see generally* Beltrán et al., *supra* note 35 (identifying the social, health, educational, and political harms of restricting birthright citizenship).

## C. ASIAN AND PACIFIC ISLANDER COMMUNITIES

The Order would have substantially affected API families with undocumented and temporary immigration statuses. After the adoption of the Chinese Exclusion Acts, *United States v. Wong Kim Ark* reaffirmed birthright citizenship for virtually all children born on U.S. soil.<sup>121</sup> However, many API families remain legally vulnerable because citizenship places them in prolonged temporary, humanitarian, and employment-based statuses that do not generally provide pathways to permanent immigration or citizenship status.<sup>122</sup> The Order, therefore, would have extended the legal precarity to API families who have navigated a multigenerational history of exclusion and racialized immigration enforcement.

Along with constituting approximately six percent of the undocumented population, as shown in Chart 1, API migrants are one of the fastest growing undocumented populations in the United States.<sup>123</sup> Chart 2 further demonstrates that API migrants are likewise substantially represented across several temporary immigration pathways, particularly pending asylum and humanitarian parole, illustrating that legal vulnerability within API communities extends well beyond undocumented immigration.<sup>124</sup> That vulnerability likewise appears in employment-based immigration, where visa backlogs are particularly severe for nationals from China and India, while asylum and humanitarian programs include substantial populations from China, Afghanistan, the Philippines, and other Asian countries.<sup>125</sup> These immigration pathways demonstrate that legal vulnerability within API communities extends well beyond undocumented migration.

Immigration enforcement actions demonstrated how legal vulnerability beyond formal status subjects API communities to fear, disruption, and racial profiling.<sup>126</sup> Earlier this year, immigration operations targeting Hmong communities in Minnesota disrupted local businesses and discouraged

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<sup>121</sup> See *supra* Part I at note 22 and accompanying text.

<sup>122</sup> See ASIAN AMS. ADVANCING JUST., MASS DEPORTATION AND THE ASIAN AMERICAN COMMUNITY 1 (2025), <https://www.advancingjustice-aajc.org/sites/default/files/2025-08/Mass%20Deportation%20and%20the%20Asian%20American%20Community.pdf> [https://perma.cc/ERF4-VCXJ]; Brief of the Fred T. Korematsu Center for Law and Equality et al. as Amici Curiae in Support of Respondents, *Trump v. Barbara*, No. 25-365 (U.S. June 30, 2026) (detailing how restrictions on birthright citizenship would disproportionately burden Asian-American communities because many families rely on temporary immigration statuses and because such restrictions echo historical exclusionary regimes); Ruiz Soto et al., *supra* note 85; *supra* Chart 2 and accompanying note.

<sup>123</sup> See Millet, *supra* note 92 (estimating that undocumented immigrants from Asia and the Pacific Islands comprise approximately seventeen percent of the total undocumented population in the United States); Karthick Ramakrishnan, Connie Tan, Akil Vohra & Lisa Ocampo, *By the Numbers: Immigration*, AAPI DATA (Jan. 9, 2025), <https://aapidata.com/featured/by-the-numbers-immigration/> [https://perma.cc/MH8T-SP5S] (reporting that the undocumented Asian and Pacific Islander population increased from approximately 1.4 million in 2010 to 1.7 million in 2022).

<sup>124</sup> See *supra* Chart 2 and accompanying note 98.

<sup>125</sup> See *Visa Bulletin for February 2026*, U.S. DEP'T OF STATE (Jan. 5, 2026), <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-february-2026.html> [https://perma.cc/YR8Y-FVY7]; Ruiz Soto et al., *supra* note 85.

<sup>126</sup> See, e.g., Rangel-Medina, *supra* note 2, at 869–72 (discussing the internment of mixed-status Japanese families, which included U.S. citizens during the 1940s).

residents from appearing in public because of fears of racial profiling.<sup>127</sup> Likewise, the largest workplace immigration raid in United States history resulted in the detention of hundreds of South Korean workers at a Georgia manufacturing facility in 2025.<sup>128</sup> Many of these workers had temporary immigration statuses.<sup>129</sup> These incidents demonstrate that immigration enforcement frequently reaches mixed-status API families through racial profiling, workplace enforcement, and temporary immigration regimes.<sup>130</sup>

The historical, doctrinal, and demographic evidence demonstrates that the Order would have reinforced citizenism through ostensibly race-neutral legal classifications. As the demographic data show, the practical consequences would have fallen disproportionately on Black, Indigenous, Latinx/e, and API communities. Part III examines how these patterns of legal vulnerability extend beyond immigration status itself, shaping family relationships, economic opportunity, political participation, and social belonging across generations.

### III. MULTIGENERATIONAL HARMS TO MIXED-STATUS FAMILIES

Restrictions on birthright citizenship would reverberate through millions of mixed-status households, not only among the children who would be denied citizenship at birth on U.S. soil. Approximately 16.7 million people in the United States live in mixed-status families.<sup>131</sup> Roughly 11.3 million U.S. citizens and 2.4 million lawful permanent residents live in mixed-status households with at least one undocumented migrant.<sup>132</sup> An estimated 6.3 million children, most of

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<sup>127</sup> See Nicole Sganga, *St. Paul Mayor Says Fear Among Immigrant Communities is Apparent in Once-Busy Hmong Village*, CBS NEWS (Jan. 21, 2026, at 21:12 ET), <https://www.cbsnews.com/news/saint-paul-mayor-kaohly-her-fear-among-immigrant-communities> [https://perma.cc/FRA6-Q9WA].

<sup>128</sup> Camilo Montoya-Galvez, *475 People Detained in Georgia Hyundai Raid by ICE, Other Agencies, Officials Say*, CBS NEWS (Sep. 6, 2025, at 9:26 ET), <https://www.cbsnews.com/news/hyundai-georgia-ice-raid-450-detained-electric-vehicles-batteries/> [https://perma.cc/B667-5Q26].

<sup>129</sup> See *id.*

<sup>130</sup> JONATHAN ONG, PAUL ONG, MELANY DE LA CRUZ-VIESCA & CINDY QUACH, *ASIAN ICE ARRESTS, DETENTIONS AND REMOVALS DATA & RESEARCH BRIEF SERIES UPDATES*, UCLA ASIAN AM. STUD. CTR. 1 (Apr. 2026), <https://www.aasc.ucla.edu/resources/policyreports/AsianICEArrestsDetentionsRemovalsData.pdf> [https://perma.cc/9SNE-WMQ9] (confirming that immigration raids in API communities have caused a significant rise in arrests, detentions, and deportations. They also increasingly target non-criminal individuals and have instilled fear among community members through aggressive and questionable tactics); see, e.g., Astghik Hairapetian & Hiroshi Motomura, *Anti-AAPI Racism in Immigration and Criminal Law*, UCLA ASIAN AM. STUD. CTR. 17 (Feb. 2023) (finding deportations have a “profound impact on California AAPI families and communities”).

<sup>131</sup> Silva Mathema, *State-by-State Estimates of the Family Members of Unauthorized Immigrants*, CTR. FOR AM. PROGRESS (Mar. 16, 2017), <https://www.americanprogress.org/article/state-state-estimates-family-members-unauthorized-immigrants/> [https://perma.cc/5AGZ-X96M].

<sup>132</sup> Phillip Connor, *New Data Analysis Shows 28 Million People, Including Nearly 20 Million Latinos, Are at Risk of Family Separation in 2025*, FWD.US (Oct. 24, 2024), <https://www.fwd.us/news/mixed-status-families-oct/> [https://perma.cc/6ARG-4BF8].



whom are U.S. citizens, live in households with at least one undocumented parent.<sup>133</sup> Most of these households are families of color.<sup>134</sup>

Against this demographic backdrop, this Part examines how unequal distributions of legal vulnerability translate into multigenerational harms for mixed-status families of color. These harms unfold across multiple domains of familial, social, economic, and political life. They begin within the family itself, where citizenship already structures unequal legal statuses among family members. From there, these inequalities extend outward, facilitating economic exploitation, generating measurable health disparities, and increasing the risk of statelessness across generations. Together, these multigenerational harms outline how the Order and similar mechanisms to curtail birthright citizenship based on parental status seek to racially subordinate mixed-status families of color by perpetuating multigenerational illegality.

#### A. BUILDING INEQUALITY WITHIN THE FAMILY STRUCTURE

The Order sought to reconfigure the boundary between citizens and noncitizens to reinforce existing racial hierarchies under citizenship.<sup>135</sup> By making parental immigration status a criterion for birthright citizenship, the Order risked reinstating a system that legalizes exclusion across generations.<sup>136</sup> This form of stratification resembles caste-like legal structures, in which social, political, and economic position is determined by birth.<sup>137</sup> The majority in *Trump v. Barbara* emphasized that the Fourteenth Amendment rejected inherited legal status as the constitutional basis for citizenship.<sup>138</sup> However, the contestation over birthright citizenship has not ended. Trump and his Administration have indicated they intend to continue pursuing restrictions on birthright citizenship, both inside and outside the courtroom.<sup>139</sup>

If comparable restrictions on birthright citizenship are ultimately adopted, existing forms of multigenerational illegality will deepen for mixed-status families.<sup>140</sup> Children raised in households affected by immigration enforcement already face constrained educational and labor-market

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<sup>133</sup> Gelatt et al., *supra* note 91, at 2, 5 (reporting 6.3 million children under the age of eighteen lived with at least one unauthorized parent, and “the great majority—5.3 million—were U.S. citizens”); *see also* Regina Day Langhout et al., Soc’y for Cmty. Rsch. & Action: Div. 27 of the Am. Psych. Ass’n, *Statement on the Effects of Deportation and Forced Separation on Immigrants, Their Families, and Communities*, 62 AM. J. CMTY. PSYCH. 3, 5 (2018) (“Nearly 10% of US families with children have at least one member without citizenship, and 5.9 million US citizen children have at least one caregiver who does not have authorization to reside in the United States.”).

<sup>134</sup> *See infra* Section II.A, Charts 1 and 2 and accompanying notes.

<sup>135</sup> *See* Rangel-Medina, *supra* note 2, at 867–69.

<sup>136</sup> *See* SMITH, *supra* note 73, at 309–12.

<sup>137</sup> *See* Carol Nackenoff, *Caste and American Citizenship in the Trump Era*, 85 MD. L. REV. 178, 203–05 (2025) (arguing that citizenship restrictions can create caste-like legal hierarchies based on inherited status).

<sup>138</sup> *See* *Trump v. Barbara*, No. 25-365, slip op. at 9–12 (U.S. June 30, 2026); *see also* *United States v. Wong Kim Ark*, 169 U.S. 649, 693–94 (1898) (describing the Fourteenth Amendment’s rejection of hereditary allegiance as the basis for citizenship).

<sup>139</sup> *See* Ward & Raymond, *supra* note 29; Smith, *supra* note 29; Birthright Citizenship Clarification Act of 2026, H.R. 9633, 119th Cong. (2026).

<sup>140</sup> *See* NGAI, *supra* note 81, at 58–66 (describing how immigration law produced populations living within the United States while excluded from full political and social membership); PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* 164–71 (1977) (theorizing about how social structures reproduce inequality across generations through everyday practices and institutions).

opportunities and reduced access to political participation.<sup>141</sup> The Order would have magnified those burdens by extending legal vulnerability to children born on U.S. soil who would otherwise have acquired citizenship at birth. Depending on the timing of a child's birth and their parents' immigration status, children born to the same parents could have different immigration statuses, with one recognized as a citizen and the other denied citizenship.<sup>142</sup> The litigation surrounding the Order thus illustrates how restricting birthright citizenship would have extended existing systems of legal subordination across generations.<sup>143</sup>

The lived consequences of parentage-based exclusion are evident among the litigants challenging the Order. One plaintiff, Nivida, a Honduran asylum seeker, had one U.S.-citizen child and was pregnant at the time of filing.<sup>144</sup> She feared that her second child would be denied citizenship solely because of the timing of the Order.<sup>145</sup> Nivida worried that, even if her second child was born in the United States, the child might be forced to reside in Honduras or Mexico, countries she and her partner fled because of violence and persecution.<sup>146</sup>

Nivida's account illustrates how restrictions on birthright citizenship produce intra-family stratification through legally arbitrary yet socially devastating temporal cutoffs.<sup>147</sup> Under the Order's framework, birthright citizenship would cease to be a stable constitutional guarantee and instead become a contingent status, unevenly distributed within households. The results would be family fragmentation and the perpetuation of legal inequality at birth. These multigenerational harms extend beyond the family to broader economic structures that have long relied on a legally precarious, exploitable, and racialized labor force.

#### B. FACILITATING ECONOMIC EXPLOITATION

People of color, historically and today, constitute the overwhelming majority of undocumented and temporary-status populations in this country.<sup>148</sup> This is by design.<sup>149</sup> Millions of undocumented and temporary-status migrants fulfill critical labor needs in the U.S. economy.<sup>150</sup>

<sup>141</sup> See HIROKAZU YOSHIKAWA, IMMIGRANTS RAISING CITIZENS: UNDOCUMENTED PARENTS AND THEIR YOUNG CHILDREN 44–73 (2011) (discussing the effects of immigration enforcement on children's educational and developmental outcomes); Catalina Amuedo-Dorantes & Mary J. Lopez, *Interior Immigration Enforcement and Political Participation of U.S. Citizens in Mixed-Status Households*, 54 DEMOGRAPHY 2223, 2224–26, 2238–41 (2017) (finding that immigration enforcement reduces political participation among U.S. citizens in mixed-status households); Nackenoff, *supra* note 137, at 201–05 (arguing that citizenship restrictions create a multigenerational caste-like hierarchy that marginalizes affected families).

<sup>142</sup> See Luis H. Zayas, Sergio Aguilar-Gaxiola, Hyunwoo Yoon & Guillermina Natera Rey, *The Distress of Citizen-Children with Detained and Deported Parents*, 24 J. CHILD & FAM. STUD. 3213, 3213 (2015) (examining the consequences of differing immigration statuses within the same family).

<sup>143</sup> Rangel-Medina, *supra* note 15 (manuscript at 107).

<sup>144</sup> See Amended Complaint at ¶ 39, *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723 (D. Md. 2025) (No. 25-201).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> See YOSHIKAWA, *supra* note 141, at 1–20 (describing how immigration status is distributed unevenly within mixed-status households, differently shaping the opportunities of family members).

<sup>148</sup> See *infra* Section II.A, Charts 1 and 2.

<sup>149</sup> See generally Rangel-Medina, *supra* note 2 (discussing the exclusionary history of U.S. citizenship based on race).

<sup>150</sup> See Passel & Krogstad, *supra* note 85 (estimating the size of the undocumented immigrant population); KOLKER, *supra* note 84, at 2 (reporting that undocumented immigrants have high labor-force participation rates and are concentrated in agriculture, construction, leisure and hospitality, manufacturing, and services); *Immigrant Essential*

Following the abolition of slavery, these migrant populations partially stepped in to fulfill exploitable labor demands in industries, such as agriculture, infrastructure, and domestic work.<sup>151</sup> Citizenism operates as a successor system in certain respects, reproducing key features of legally structured labor exploitation.<sup>152</sup>

Rooted in a labor system historically shaped by slavery and racial exclusion, the U.S. economy remains stratified along racial lines, while immigration and citizenship status function as central axes organizing labor markets.<sup>153</sup> Citizenship restrictions, in turn, exacerbate the legal vulnerability of a workforce particularly susceptible to exploitation under citizenism.<sup>154</sup> Immigration status determines who may work with a valid work permit, under what conditions, and to what extent workers can resist coercion, discrimination, and wage theft.<sup>155</sup> In doing so, citizenism structures labor hierarchies and distributes risk unevenly across populations.<sup>156</sup>

These dynamics are historically rooted. Systems of labor and control in the United States have long relied on status-tied legal distinctions to discipline and exploit racialized populations.<sup>157</sup> This was central to slavery.<sup>158</sup> Contemporary restrictions on immigration and citizenship extend this logic by creating and maintaining a class of workers whose precarity is legally produced.<sup>159</sup>

Citizenship restrictions also reshape family economies by limiting access to stable employment, public benefits, and long-term planning.<sup>160</sup> The litigation in *Trump v. Barbara* likewise illustrates the immediate economic consequences of uncertainty about citizenship.

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*Workers: Crucial to COVID-19 Recovery*, FWD.US (Dec. 16, 2020), <https://www.fwd.us/news/immigrant-essential-workers/> [<https://perma.cc/2XKP-NK64>] (documenting the substantial role of undocumented and temporary-status immigrants in essential industries, including agriculture, health care, food services, construction, and logistics).

<sup>151</sup> See generally Jennifer J. Lee, *Legalizing Undocumented Work*, 42 CARDOZO L. REV. 1893 (2021) (arguing that the immigration system mirrors the enslaved system by forcing workers into legally vulnerable and unprotected labor arrangements).

<sup>152</sup> See Jennifer J. Lee, *Redefining the Legality of Undocumented Work*, 106 CALIF. L. REV. 1617, 1624 (2018) (describing how the “federal prohibition of undocumented work creates a situation that is rife for worker abuse and exploitation while circumscribing the rights of undocumented workers”); Geoffrey Heeren, *The Immigrant Right to Work*, 31 GEO. IMMIGR. L.J. 243, 248 (2017) (arguing “that immigrants’ right to work ought to be revived because it is deeply rooted in United States history and because immigrant workers have experienced subordination”); Chen et al., *supra* note 93, at 2546 (discussing how “[t]he U.S. workforce is . . . bolstered by migrants who have received work authorization as part of their temporary authorization to remain in the country for humanitarian reasons”).

<sup>153</sup> See WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 18–27 (1996) (documenting how racial inequality structures labor-market opportunity and economic stratification).

<sup>154</sup> See Ruth Milkman, *Immigrant Workers, Precarious Work, and the US Labor Movement*, 8 GLOBALIZATIONS 361, 364–65 (2011) (analyzing how immigration status contributes to labor precarity and workplace exploitation); see generally Lee, *supra* note 151.

<sup>155</sup> See Milkman, *supra* note 154, at 364 (explaining that undocumented immigrants are disproportionately concentrated in precarious jobs and “particularly vulnerable” to employer coercion, discrimination, and wage theft).

<sup>156</sup> See Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, 18 SIGNS: J. WOMEN CULTURE & SOC’Y 1, 2–8 (1992) (linking contemporary racialized local hierarchies to systems of slavery and servitude); see also GLENN, *supra* note 36, at 1–18 (2004) (situating U.S. labor markets and citizenship regimes within histories of slavery, settler colonialism, and other racialized labor systems).

<sup>157</sup> See Glenn, *supra* note 156, at 2–7.

<sup>158</sup> See *id.* at 36; GLENN, *supra* note 36, at 1–18.

<sup>159</sup> See Kevin R. Johnson, *Systemic Racism in the U.S. Immigration Laws*, 97 IND. L.J. 1455, 1460–68 (2022).

<sup>160</sup> See TANYA MARIA GOLASH-BOZA, *DEPORTED: POLICING IMMIGRANT, DISPOSABLE LABOR AND GLOBAL CAPITALISM* 94–133 (2015) (analyzing how immigration enforcement creates intergenerational economic insecurity and exploitability).

Adelina, a plaintiff in *CASA, Inc. v. Trump*, is an undocumented mother with one U.S.-citizen child.<sup>161</sup> She gave birth to another child after February 19, 2025, and feared that her child would be denied citizenship under the Order.<sup>162</sup> Adelina's declaration illustrates how the potential denial of citizenship can immediately destabilize family planning, financial decision-making, and long-term economic security.

The Supreme Court's decision prevented those immediate outcomes, but the litigation underscores the broader economic consequences of the Order. Had it taken effect, it would have expanded the population subject to this form of managed precarity, producing measurable long-term economic consequences for affected families and the broader U.S. economy.<sup>163</sup> Children denied citizenship at birth would predictably enter adulthood with fewer employment options, reduced bargaining power, and greater exposure to exploitation in informal sectors.<sup>164</sup> Over time, these constraints would deepen existing patterns of occupational stratification and economic inequality.<sup>165</sup> Labor precarity would become a predictable feature of a citizenship regime that conditions belonging on parentage.<sup>166</sup>

This historical dynamic reflects broader patterns through which racialized populations have been incorporated into the U.S. economy as workers without political rights.<sup>167</sup> From systems of enslavement and indenture to guest worker programs and contemporary undocumented labor, legal exclusion has repeatedly secured a racially stratified workforce.<sup>168</sup> Citizenship restrictions decouple economic participation from political belonging, allowing labor to be extracted without extending the protections and claims associated with citizenship.<sup>169</sup> These traceable multigenerational harms extend beyond the economic realm into the social realm.

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<sup>161</sup> See Amended Complaint, *supra* note 144, at ¶ 28. CASA, Inc. was one of the organizational plaintiffs challenging Executive Order 14160. The declarations discussed here were submitted in support of the plaintiff's request for preliminary relief.

<sup>162</sup> See *id.*

<sup>163</sup> See SETH M. HOLMES, FRESH FRUIT, BROKEN BODIES: MIGRANT FARMWORKERS IN THE UNITED STATES 109–11 (2013) (explaining how legal precarity disciplines labor through everyday fear and compliance); see also Phillip Connor, Matthew Hall & Francesc Ortega, *Multi-Trillion Dollar and Multi-Million Worker Contributions: An Economic Accounting of Birthright Citizenship*, CTR. FOR MIGRATION STUD. (Mar. 23, 2026), <https://cmsny.org/publications/jmhs-birthright-citizenship-econ/> [<https://perma.cc/EGU4-P8AR>] (estimating that restrictions on birthright citizenship would reduce labor force participation, increase poverty, and generate significant economic costs).

<sup>164</sup> See Jennifer Van Hook, Michael Fix & Julia Gelatt, *Repealing Birthright Citizenship Would Significantly Increase the Size of the U.S. Unauthorized Population*, MIGRATION POL'Y INST. (May 2025), <https://www.migrationpolicy.org/news/birthright-citizenship-repeal-projections> [<https://perma.cc/5W6Y-BYV6>].

<sup>165</sup> See Lee, *supra* note 151, at 1902–07, 1910–15.

<sup>166</sup> See *id.* (arguing that federal immigration law creates a legally vulnerable subclass of workers by tying the legality of employment to immigration status, thereby facilitating labor exploitation); Johnson, *supra* note 159, at 1460–68.

<sup>167</sup> Clear examples of this dynamic within immigrant populations are *braceros* and Chinese workers, among others. See Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525, 528–52.

<sup>168</sup> See NGAI, *supra* note 81, at 56–90 (explaining how immigration law historically constructed “illegal alien” status to regulate and discipline racialized labor forces).

<sup>169</sup> See AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 6–8 (2010).

## C. MAGNIFYING NEGATIVE HEALTH OUTCOMES

The health consequences of restricting birthright citizenship underscore how legal status operates beyond the formal allocation of rights.<sup>170</sup> Citizenship structures access to a dignified life, and policies that destabilize citizenship at birth reverberate through bodies, families, and communities over time.<sup>171</sup> Negative health outcomes are central to a governance regime that distributes vulnerability along legally and racially stratified lines.<sup>172</sup>

Moreover, the system of immigration law and enforcement inflicts complex trauma on mixed-status families of color across generations.<sup>173</sup> Citizenship restrictions thus produce health harms that are transmitted as early-life disadvantages compound over time.<sup>174</sup> Legal status is a significant social determinant of health, influencing exposure to risk, access to care, and long-term well-being.<sup>175</sup> People without citizenship face increased chronic stress linked to legal uncertainty, fear of detection, and preoccupation with future residence and family stability.<sup>176</sup> This stress is ingrained in daily choices about work, housing, healthcare, and interactions with public

<sup>170</sup> See Beltrán et al., *supra* note 35, at 6 (finding that “[h]ostile immigration policies contribute to delayed and inadequate prenatal care among immigrant Latina mothers. For example, infants born to citizen and immigrant Latina mothers after an immigration raid had a higher risk of low birth weight than those born to non-Latina white mothers.” (footnotes omitted)); Maria-Elena De Trinidad Young et al., *Beyond “Chilling Effects”: Latinx and Asian Immigrants’ Experiences with Enforcement and Barriers to Health Care*, 61 MED. CARE 306, 307 (2023).

<sup>171</sup> See Krista M. Perreira & Juan M. Pedroza, *Policies of Exclusion: Implications for the Health of Immigrants and Their Children*, 40 ANN. REV. PUB. HEALTH 147, 148–49 (2019); Zayas et al., *supra* note 142, at 3213–23.

<sup>172</sup> See, e.g., Grace Fay Cooper, *Pursuing Medical Sanctuary in Philadelphia: An Ethnography of Care on the Immigration-Status Spectrum* (2023) (Ph.D. dissertation, Temple University), <https://scholarshare.temple.edu/server/api/core/bitstreams/d7edb448-6ab5-4582-ab9b-5770bd035845/content>; *Ending Statelessness*, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/us/what-we-do/protect-human-rights/ending-statelessness> [<https://perma.cc/448X-DMPB>] (last visited July 19, 2026) (noting barriers to healthcare access for stateless populations).

<sup>173</sup> See Jessica P. Cerdeña, Luisa M. Rivera & Judy M. Spak, *Intergenerational Trauma in Latinxs: A Scoping Review*, 270 SOC. SCI. & MED. 113662, 113664 (2021) (discussing how Latinxs/es continue to experience articulations of colonization through white supremacist power structures that include violations of Indigenous land and water rights, violence against women and gender sexual minorities, racialized state violence and incarceration, and unequal access to opportunity, housing, education, and healthcare); Rangel-Medina, *supra* note 15 (manuscript at 135–40) (outlining the impacts of undocumented structural trauma for mixed-status families).

<sup>174</sup> See Jacqueline Bhabha, *Arendt’s Children: Do Today’s Migrant Children Have a Right to Have Rights?*, 31 HUM. RTS. Q. 410, 445 (2009) (explaining that exclusion from legal membership during childhood produces cumulative disadvantages that persist across a lifetime); Luz M. Garcini et al., *Undocumented Immigrants and Mental Health: A Systematic Review of Recent Methodology and Findings in the United States*, 4 J. MIGRATION & HEALTH 100058, 100058 (2021) (reviewing evidence that immigration-related legal uncertainty is associated with adverse mental-health outcomes and chronic stress among undocumented immigrants and their families).

<sup>175</sup> See Perreira & Pedroza, *supra* note 171, at 148–51 (identifying legal status as a central social determinant of health affecting access to resources, exposure to stressors, and long-term health outcomes); Omar Martinez et al., *Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review*, 17 J. IMMIGRANT MINORITY HEALTH 947, 966–67 (2015).

<sup>176</sup> See Mark L. Hatzenbuehler et al., *Immigration Policies and Mental Health Morbidity Among Latinos: A State-Level Analysis*, 174 SOC. SCI. & MED. 169, 170 (2017) (linking restrictive immigration regimes to chronic stress, anxiety, and depression); Cecilia Menjivar & Leisy J. Abrego, *Legal Violence: Immigration Law and the Lives of Central American Immigrants*, 117 AM. J. SOCIO. 1380, 1409–10 (2012) (documenting stress arising from fear of detection, deportation, and family separation).

institutions.<sup>177</sup> Over time, this ongoing stress leads to adverse physical and mental health effects, including cardiovascular disease and weakened immune functioning.<sup>178</sup>

Immigration and citizenship status also affect access to healthcare.<sup>179</sup> Undocumented people are less likely to receive preventive care, routine screenings, and early treatment for chronic conditions.<sup>180</sup> Obstacles include eligibility restrictions for public benefits, a lack of employer-sponsored insurance, and concerns that using healthcare systems may result in immigration scrutiny, including the risk of deportation.<sup>181</sup> These obstacles lead to delayed diagnoses, reliance on emergency services, and avoidable deterioration of health conditions that could be prevented with early care.<sup>182</sup>

Lack of legal status also heightens the risk of developing mental and physical health conditions. Studies on the mental health of undocumented people have identified specific symptoms of depression, including decreased self-esteem, feelings of helplessness, loss of motivation, self-blame, and diminished sleep and appetite.<sup>183</sup> Symptoms of anxiety manifest as hypervigilance, excessive worry, fear, and uncertainty.<sup>184</sup> Legal status and the precarity of legality can even affect women's birth outcomes.<sup>185</sup>

The *Trump v. Barbara* litigation provides a concrete illustration of these broader findings. Marta, a CASA member from Guatemala who was expecting a child at the time, explained that when she learned she was pregnant, she envisioned her child's future "free from the hardships she experienced in Guatemala."<sup>186</sup> She believed her child would be born a U.S. citizen, but that sense

<sup>177</sup> See Kathleen R. Page & Sarah Polk, *Chilling Effect? Post-Election Health Care Use by Undocumented and Mixed-Status Families*, 376 N. ENGL. J. MED. 20, 20–22 (2017) (describing avoidance of healthcare due to immigration fears).

<sup>178</sup> See Martinez et al., *supra* note 175, at 967–70; Perreira & Pedroza, *supra* note 171, at 154–58; Hatzenbuehler et al., *supra* note 176, at 170.

<sup>179</sup> See Perreira & Pedroza, *supra* note 171, at 155–56 (explaining how immigration status structures access to healthcare, insurance coverage, and preventive services).

<sup>180</sup> See Martinez et al., *supra* note 175, at 964, 967 (finding undocumented immigrants are less likely to access preventive care and more likely to delay treatment).

<sup>181</sup> See Abigail S. Friedman & Atheendar Venkataramani, *Chilling Effects: U.S. Immigration Enforcement and Health Care Seeking Among Hispanic Adults*, 40 HEALTH AFFS. 1056, 1061–62 (2022) (finding that intensified immigration enforcement reduced health-care use among Latinx/e adults, including U.S. citizens); URBAN INST., IMMIGRANT ACCESS TO HEALTH AND HUMAN SERVICES 7–8, 11–14 (Julia Gelatt & Heather Koball eds., 2014) (describing how eligibility restrictions, lack of insurance, language barriers, and fear of immigration consequences limit immigrant access to health care and public benefits).

<sup>182</sup> See Friedman & Venkataramani, *supra* note 181, at 1056 (linking immigration enforcement to reduced health-care utilization); Scott D. Rhodes et al., *The Impact of Local Immigration Enforcement Policies on the Health of Immigrant Hispanics/Latinos in the United States*, 105 AM. J. PUB. HEALTH 329, 332–34 (2015) (finding that local immigration enforcement policies were associated with delayed care, reduced service utilization, and heightened fear of seeking health services among immigrant Latinx/e communities).

<sup>183</sup> See Luz Maria Garcini, Kate E. Murray, A. Zhou, Elizabeth A. Klonoff, Mark G. Myers & John P. Elder, *Mental Health of Undocumented Immigrant Adults in the United States: A Systematic Review of Methodology and Findings*, 14 J. IMMIGR. & REFUGEE STUD. 1, 2–3 (2016) (identifying that emotional distress is pervasive among undocumented immigrants and linked to marginalization, deportation fears, and limited access to employment and health care).

<sup>184</sup> *Id.* at 13.

<sup>185</sup> Nicole L. Novak, Arline T. Geronimus & Aresha M. Martinez-Cardoso, *Change in Birth Outcomes Among Infants Born to Latina Mothers After a Major Immigration Raid*, 46 INT'L J. EPIDEMIOLOGY 839, 843 (2017) (suggesting that immigration enforcement acts as significant sociological stressor, impacting the in-utero development of children with the community).

<sup>186</sup> See Amended Complaint, *supra* note 144, at ¶ 27.

of security would disappear if the child were denied citizenship.<sup>187</sup> Her experience also demonstrates that these harms extend beyond immediate psychological distress. Even where alternative citizenship may exist in theory, the denial of U.S. citizenship at birth exposes children to prolonged legal uncertainty during critical developmental periods.

Citizenship insecurity also causes harm in advance, reshaping parental decision-making and psychological well-being before any formal legal determination is made.<sup>188</sup> This anticipatory harm illustrates how citizenship insecurity functions as a social determinant of health.<sup>189</sup> The stress associated with uncertain legal recognition, experienced by parents and transmitted to children, produces tangible mental and physical health effects that compound over time. The litigation surrounding the Order demonstrates that citizenship insecurity itself functions as a social determinant of health. These health consequences are only one manifestation of the broader harms produced by citizenship insecurity. At its outer limit, the denial of citizenship at birth threatens to leave children without a formal immigration or citizenship status across generations.

#### D. HEIGHTENING THE RISK OF GENERATIONAL STATELESSNESS

Although *Trump v. Barbara* foreclosed the Order, the litigation highlighted why birthright citizenship functions as a structural safeguard against generational statelessness. Restricting citizenship at birth risks producing cumulative legal and social disadvantages that extend across generations.<sup>190</sup> Children raised without citizenship face cumulative constraints on education, employment, mobility, and civic participation, which frequently shape the legal and social conditions under which they form their own families.<sup>191</sup> Comparative experience illustrates the consequences that can follow when legal systems condition citizenship on ancestry or parentage rather than birth.<sup>192</sup>

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<sup>187</sup> *Id.*

<sup>188</sup> See *id.* at ¶ 27 (describing Marta's fear that her newborn child would be denied citizenship and the resulting uncertainty regarding her family's future); see also YOSHIKAWA, *supra* note 141, at 18–24 (explaining that the threat of immigration enforcement and legal insecurity reshapes parental decision-making, family relationships, and child development even before formal legal action occurs).

<sup>189</sup> See Celso Pérez, *We Are Dominican: Arbitrary Deprivation of Nationality in the Dominican Republic*, HUM. RTS. WATCH (July 1, 2015), <https://www.hrw.org/report/2015/07/01/we-are-dominican/arbitrary-deprivation-nationality-dominican-republic> [<https://perma.cc/42UL-W5VW>] (documenting the retroactive denial of citizenship to Dominicans of Haitian descent that resulted in statelessness); see also Sonia Ryang, *Introduction: Between the Nations: Diaspora and Koreans in Japan*, in *DIASPORA WITHOUT HOMELAND: BEING KOREAN IN JAPAN* 3–9 (Sonia Ryang & John Lie eds., 2009) (describing the long-term legal exclusion of ethnic Koreans from Japanese citizenship regimes).

<sup>190</sup> See HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 295–97 (1951) (arguing that statelessness is the loss of the “right to have rights”).

<sup>191</sup> See *id.* (arguing that statelessness deprives individuals of the “right to have rights” by excluding them from the political community); Pérez, *supra* note 189.

<sup>192</sup> See *About Statelessness*, U.N. HIGH COMM’R FOR REFUGEES, <https://www.unhcr.org/us/what-we-do/protect-human-rights/ending-statelessness/about-statelessness> [<https://perma.cc/AY59-JJYZ>] (last visited July 20, 2026) (identifying restrictive nationality laws as a principal cause of statelessness); PIA M. ORRENIUS & MADELINE ZAVODNY, *BESIDE THE GOLDEN DOOR: U.S. IMMIGRATION REFORM IN A NEW ERA OF GLOBALIZATION* 7–37 (2019) (examining the relationship between nationality law, immigration policy, and political membership); Hiroshi Motomura, *Immigration Outside the Law*, 108 COLUM. L. REV. 2037, 2052–55 (2008) (analyzing how immigration

Japan and the Dominican Republic, for Koreans and Haitians, respectively, illustrate how nationality regimes can institutionalize generational statelessness.<sup>193</sup> Following Japan's colonization of Korea, many Koreans remained in Japan after World War II, but were stripped of Japanese nationality and excluded from automatic citizenship under a nationality regime grounded in *jus sanguinis*.<sup>194</sup> As a result, generations of ethnic Koreans born and raised in Japan have remained outside full legal and political membership despite longstanding residence.<sup>195</sup> In the Dominican Republic, a 2013 constitutional court decision—motivated by anti-Black animus—retroactively stripped citizenship from tens of thousands of Dominicans of Haitian descent, rendering many effectively stateless despite being born in the country.<sup>196</sup> These examples illustrate that citizenship exclusion can become self-enforcing. Once a population is denied membership at birth, subsequent generations inherit legal and social disadvantages that accumulate over time. Statelessness, therefore, functions as an intergenerational structure of exclusion.

The Supreme Court rejected the Order before it could produce these consequences, as the doctrine of *partus sequitur ventrem* once did under the system of enslavement. Nevertheless, the litigation underscores that the contestation of birthright citizenship underlying the Order remains significant. Had citizenship been conditioned on parental immigration status, the United States would have departed from a constitutional tradition that has largely protected against the intergenerational transmission of statelessness since the Fourteenth Amendment's adoption. As the experiences of Koreans in Japan and Haitians in the Dominican Republic demonstrate, once citizenship exclusion becomes institutionalized, this form of racial subordination persists across time and space.

If the Order had been deemed constitutional, the risk of indefinite statelessness would not have been merely hypothetical. Trinidad Garcia, a Venezuelan asylum seeker, feared that if her U.S.-born child were denied citizenship, it would be impossible to obtain Venezuelan nationality for the child because of the collapse of consular services and ongoing political instability in

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law creates durable forms of legal marginalization outside formal citizenship); Lindsey N. Kingston, *Statelessness as a Lack of Functioning Citizenship*, 19 TILBURG L. REV. 127, 129–33 (2014) (conceptualizing statelessness as the absence of secure citizenship that produces enduring legal and social exclusion); LAURA VAN WAAS, NATIONALITY MATTERS: STATELESSNESS UNDER INTERNATIONAL LAW 70–75 (2008) (tracing how nationality regimes based on parentage or restrictive citizenship rules contribute to statelessness); see generally INST. ON STATELESSNESS & INCLUSION, THE WORLD'S STATELESS CHILDREN (2017) (documenting the effects of nationality laws on children denied citizenship at birth).

<sup>193</sup> Compare AMNESTY INT'L, 'WITHOUT PAPERS, I AM NO ONE': STATELESS PEOPLE IN THE DOMINICAN REPUBLIC 11, 15–18 (2015), <https://www.amnesty.org/en/documents/amr27/2755/2015/en/> [<https://perma.cc/7CSM-XX5U>] (describing the Dominican Republic's denial of nationality and identity documents to Dominicans of Haitian descent), with Federica Cidale, *Zainichi Koreans in Japan: Exploring the Ethnic Minority's Challenges*, CENT. EUR. INST. OF ASIAN STUD. (Feb. 26, 2024), <https://ceias.eu/zainichi-koreans-in-japan-exploring-the-ethnic-minoritys-challenges/> [<https://perma.cc/P9V6-JZL3>] (noting the citizenship challenges that generations of Koreans living in Japan continue to face).

<sup>194</sup> See ERIN AERAN CHUNG, IMMIGRATION AND CITIZENSHIP IN JAPAN 23–52 (2010) (describing Japan's *jus sanguinis* nationality regime and the exclusion of generations of ethnic Koreans born in Japan from automatic citizenship).

<sup>195</sup> See Ryang, *supra* note 189, at 3–9 (discussing the lived consequences of nationality exclusion for Zainichi Koreans and their continuing marginalization despite longstanding residence in Japan).

<sup>196</sup> See *Expelled Dominicans and Haitians v. Dominican Republic*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 282, ¶¶ 194, 253–64, 449 (Aug. 28, 2014) (holding that the Dominican Republic's retroactive denial of nationality to persons of Haitian descent born in the country violated international human rights protections against statelessness).



Venezuela.<sup>197</sup> Her concern was grounded in the reality that the transmission of citizenship depends on functioning state institutions which, in some contexts, no longer reliably exist.

Trinidad's account illustrates how statelessness can arise from the interplay between restrictions on birthright citizenship and gaps in nationality regimes. When the United States conditions citizenship on parental status, children denied citizenship at birth may not automatically acquire another nationality. Some countries do not automatically transmit citizenship by descent, while others require registration or satisfaction of additional statutory conditions before nationality is recognized.<sup>198</sup> This risk is especially concerning given the rise of statelessness worldwide.<sup>199</sup> The existence of stateless populations raises questions about democratic legitimacy because individuals may be governed by a state in which they lack recognized political membership.<sup>200</sup>

The risk of generational statelessness spans multiple forms of humanitarian and temporary immigration statuses. Monica, a Venezuelan national with Temporary Protected Status, likewise feared that her U.S.-born child could be denied citizenship under the Order while lacking access to Venezuelan nationality.<sup>201</sup> Her experience underscores that provisional lawful status offers no meaningful protection when citizenship is constrained as a constitutional guarantee.

Monica's case reveals how the Order collapses the distinction between undocumented presence and provisional legality, extending precarity even to families who have had the privilege of migrating with formal immigration status. When citizenship at birth is withheld even in these circumstances, legal insecurity becomes structurally durable. Over time, this framework risks producing generations who remain embedded in U.S. society yet are excluded from fundamental civil, political, and economic rights.<sup>202</sup>

The foregoing analysis demonstrates that restricting birthright citizenship restructures the conditions of political belonging across generations. By producing populations that are present yet excluded from recognized political membership, such restrictions create conditions in which generational statelessness can emerge. The Order was one attempt to restrict birthright citizenship based on parental immigration status, but the debate over the Fourteenth Amendment's Citizenship Clause endures. As a result, the broader project of citizenism continues to present a profound challenge to the present and future of our fragile multiracial democracy.

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<sup>197</sup> See Amended Complaint, *supra* note 144, at ¶ 43.

<sup>198</sup> See U.N. High Comm'r for Refugees, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality Through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness, ¶¶ 20–34, U.N. Doc. HCR/GS/12/04 (Dec. 21, 2012) (explaining that some children do not automatically acquire nationality at birth because citizenship laws require descent, registration, or satisfaction of additional statutory conditions).

<sup>199</sup> Seyla Benhabib, "The Right to Have Rights": Hannah Arendt on the Contradictions of the Nation-State, in *THE RIGHTS OF OTHERS: ALIENS, RESIDENTS, AND CITIZENS* 49, 49–70 (2004) (arguing that the absence of recognized citizenship deprives individuals of secure political membership and the effective enjoyment of fundamental rights).

<sup>200</sup> See *id.* at 50.

<sup>201</sup> See Amended Complaint, *supra* note 144, at ¶ 44.

<sup>202</sup> See NGAI, *supra* note 81, at 58–66 (tracing how immigration law produced durable populations living within the United States while excluded from full legal and political membership); LÓPEZ, *supra* note 2, at 27–31 (demonstrating how citizenship and racial classification historically operated together to deny equal civil and political rights); JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 63–69 (1991) (conceptualizing citizenship as the foundation of meaningful civil, political, and economic participation); VAN WAAS, *supra* note 192, at 70–77 (examining how restrictive nationality regimes can produce intergenerational statelessness and the denial of fundamental rights).

## CONCLUSION

*Trump v. Barbara* resolved the immediate challenge to birthright citizenship, but it did not resolve the broader constitutional conflict over citizenship that citizenism seeks to reconstruct.<sup>203</sup> The litigation itself illustrates why Reconstructionists sought to place the “great question of citizenship” beyond ordinary political contestation.<sup>204</sup> The majority concluded that the Fourteenth Amendment rejected inherited legal status and reaffirmed territorial birth as the constitutional foundation of birthright citizenship.<sup>205</sup> The separate opinions advanced competing historical accounts that would make parental allegiance, rather than territorial birth, constitutionally significant.<sup>206</sup> Yet, as Justice Jackson’s concurrence observed, Reconstructionists did not conceive of citizenship as a zero-sum contest between formerly enslaved people and immigrants.<sup>207</sup> Instead, “Freed Blacks fought for the shared humanity of *all* people,” and the Reconstruction Constitution ultimately linked “the fates of all” in rejecting systems of inherited subordination.<sup>208</sup> That understanding reinforces the central premise of this Article: the Citizenship Clause was designed to dismantle lineage-based systems of racial subordination that would be reinstituted if restrictions on birthright citizenship are determined by parental immigration status.

Although the Supreme Court foreclosed the Order’s implementation, the broader project of citizenism remains. Indeed, the Trump Administration’s subsequent actions demonstrate that efforts to restrict birthright citizenship continue notwithstanding *Trump v. Barbara*.<sup>209</sup> The demographic evidence presented in this Article shows that conditioning citizenship on parental immigration status would disproportionately affect communities of color. Moreover, the multigenerational harms examined in this Article—including the manufacturing of family inequality, exacerbating economic exploitation, magnifying adverse health outcomes, and increasing the risk of statelessness—show that birthright citizenship is a structural safeguard against the perpetuation of multigenerational illegality.

The constitutional stakes, therefore, extend well beyond the Order. As the population of people of color continues to increase, citizenist projects are likely to continue relying on formally race-neutral mechanisms to reproduce racial hierarchy through immigration and citizenship status. The

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<sup>203</sup> See *Trump v. Barbara*, No. 25-365, slip op. at 2–26 (U.S. June 30, 2026); *id.*, slip op. at 17–29 (Thomas, J., dissenting); *id.*, slip op. at 13–37 (Alito, J., dissenting); *id.*, slip op. at 4–10 (Kavanaugh, J., concurring in the judgment and dissenting in part); Ward & Raymond, *supra* note 29; Smith, *supra* note 29; Trump (@realDonaldTrump), *supra* note 29; FOX NEWS, *supra* note 29; Birthright Citizenship Clarification Act of 2026, H.R. 9633, 119th Cong. (2026); Exec. Order No. 14419, 91 Fed. Reg. 51993 (Aug. 11, 2026) (effective Aug. 6, 2026); Exec. Order No. 14418, 91 Fed. Reg. 51991 (Aug. 11, 2026) (effective Aug. 6, 2026).

<sup>204</sup> *Id.*, slip op. at 9–10 (Roberts, C.J.) (explaining that the Fourteenth Amendment sought to put the “great question of citizenship” “beyond the legislative power” and “settle the issue once and for all” (quoting Cong. Globe, 39th Cong., 1st Sess. 2891, 2896 (1866) (statement of Sen. Howard))).

<sup>205</sup> *Id.*, slip op. at 3–17.

<sup>206</sup> *Id.*, slip op. at 17–29 (Thomas, J., dissenting); *id.*, slip op. at 13–37 (Alito, J., dissenting); *id.*, slip op. at 4–10 (Kavanaugh, J., concurring in the judgment and dissenting in part).

<sup>207</sup> *Id.*, slip op. at 18–20 (Jackson, J., concurring).

<sup>208</sup> *Id.*

<sup>209</sup> See, e.g., Trump (@realDonaldTrump), *supra* note 29; Ward & Raymond, *supra* note 29; Birthright Citizenship Clarification Act of 2026, H.R. 9633, 119th Cong. (2026); Exec. Order No. 14419, 91 Fed. Reg. 51993 (Aug. 11, 2026) (effective Aug. 6, 2026); Exec. Order No. 14418, 91 Fed. Reg. 51991 (Aug. 11, 2026) (effective Aug. 6, 2026).

enduring promise of the Reconstruction Constitution and of preserving the foundations of a multiracial democracy demands vigilance to prevent the reemergence of hereditary hierarchy in new legal forms.

## APPENDIX: DATA SOURCES AND METHODOLOGY FOR CHARTS 1 AND 2

## OVERVIEW

Charts 1 and 2 summarize the national and regional origins of selected immigrant populations discussed in the Article. Because these populations are administered through different statutory programs and reported by different federal agencies, the charts do not represent a single harmonized dataset. Instead, each chart reproduces the most recent publicly available, citable data for the relevant immigration category using consistent regional classifications where quantitative aggregation is possible.

Unless otherwise indicated, all percentages reported in this Appendix were calculated from the underlying population estimates published by the cited sources. Regional totals were obtained by assigning each country to one geographic region and dividing the resulting regional total by the published population denominator. Percentages are rounded to the nearest whole percentage unless otherwise noted.

## I. CHART 1: UNDOCUMENTED POPULATION

Chart 1 presents selected country- and region-of-origin estimates for the undocumented immigrant population residing in the United States as of mid-2023. These estimates are drawn from the Migration Policy Institute's (MPI) October 2025 report *Changing Origins, Rising Numbers: Unauthorized Immigrants in the United States*. Although the MPI uses the term "unauthorized immigrant," this Appendix uses "undocumented immigrant" to maintain consistency with the terminology used throughout the Article. The underlying data and calculations remain unchanged.

The Chart presents both country-level estimates and regional totals to illustrate national and regional patterns. Countries shown individually are included in the regional totals; accordingly, the country and regional bars represent overlapping, rather than additive, shares of the same population. Percentages were calculated by dividing each population estimate by the 13.7 million denominator and rounding to the nearest whole percentage.

| Entry                 | Published estimate | Calculation    | Rounded share |
|-----------------------|--------------------|----------------|---------------|
| Mexico                | 5.5 million        | $5.5 / 13.7$   | 40%           |
| Guatemala             | 1.4 million        | $1.4 / 13.7$   | 10%           |
| Honduras              | 1.1 million        | $1.1 / 13.7$   | 8%            |
| El Salvador           | 1.1 million        | $1.1 / 13.7$   | 8%            |
| Venezuela             | 486,000            | $0.486 / 13.7$ | 4%            |
| Asia                  | 851,000            | $0.851 / 13.7$ | 6%            |
| South America         | 1.7 million        | $1.7 / 13.7$   | 12%           |
| Europe/Canada/Oceania | 896,000            | $0.896 / 13.7$ | 7%            |
| Caribbean             | 575,000            | $0.575 / 13.7$ | 4%            |
| Africa                | 415,000            | $0.415 / 13.7$ | 3%            |

## II. CHART 2: TEMPORARY AND HUMANITARIAN IMMIGRATION CATEGORIES

Chart 2 summarizes the regional origins of persons in selected temporary and humanitarian immigration categories. Unlike Chart 1, these categories arise under different statutory authorities and are reported through different administrative systems; publicly available data do not permit construction of a single harmonized regional dataset. The Chart therefore combines quantitative regional calculations where reproducible with qualitative summaries where only descriptive comparisons are supported by published data. For consistency across the underlying datasets, the Chart uses four broad regional categories (Latin America, Asia, Africa, and Europe); Oceania/Pacific Island countries are not displayed separately.

### A. TEMPORARY PROTECTED STATUS

Temporary Protected Status regional percentages were calculated from U.S. Citizenship and Immigration Services (USCIS) country-level data reported by the Congressional Research Service as of March 31, 2025. For purposes of Chart 2, countries were assigned to one of four broad geographic regions (Latin America, Asia, Africa, or Europe) to facilitate comparison across the different immigration categories. Haiti was grouped with Latin America because the Chart does not contain a separate Caribbean category. Oceania/Pacific Island countries are not separately displayed because the underlying published data do not report a meaningful Pacific Island population within the categories examined.

### B. DEFERRED ACTION FOR CHILDHOOD ARRIVALS

Deferred Action for Childhood Arrivals entries are based on USCIS country-of-birth data for active recipients as of September 30, 2024. Because USCIS publishes country-level rather than regional tables, the Chart reflects qualitative regional representation except where regional conclusions are directly supported by the published data.

### C. PENDING ASYLUM

Pending asylum statistics are administered through multiple agencies and reported through different administrative systems. Publicly available sources do not provide a single contemporaneous dataset that combines affirmative and defensive asylum populations using common regional classifications. Accordingly, Chart 2 presents qualitative regional summaries rather than calculated regional percentages.

### D. HUMANITARIAN PAROLE

Humanitarian parole encompasses multiple statutory programs reported using different legal classifications, reporting dates, and population definitions. Published sources frequently report admissions, grants, authorizations, or program participation rather than a single contemporaneous population. Consequently, the Chart summarizes regional representation qualitatively rather than presenting calculated regional percentages.

### III. LIMITATIONS

This Appendix relies exclusively on publicly available government publications and reports. Reporting dates differ because each agency publishes data according to its own statutory and administrative schedule. The immigration categories summarized in Chart 2 are not additive or mutually exclusive, and differences across categories should be understood as descriptive rather than statistically harmonized. Where regional percentages are reported, they were calculated by assigning countries to common geographic regions based on the reporting framework used in this Article. Where publicly available sources do not permit reproducible regional percentage calculations, this Appendix does not infer quantitative estimates.