

No. 25-365

In the Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL., PETITIONERS

v.

BARBARA, ET AL.

*ON WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT*

**BRIEF FOR CASA, THE LEAGUE OF UNITED LATIN
AMERICAN CITIZENS, OCA – ASIAN PACIFIC
AMERICAN ADVOCATES, THE ASYLUM SEEKER
ADVOCACY PROJECT, MAKE THE ROAD NEW
YORK, THE PRESIDENTS’ ALLIANCE ON HIGHER
EDUCATION AND IMMIGRATION, THE FAMILY
ACTION NETWORK MOVEMENT, AND THE
VENEZUELAN ASSOCIATION OF MASSACHUSETTS
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

CASA is a nonprofit, membership-based immigrant rights organization. Founded in 1985, CASA has more than 189,000 members across the United States, who are predominantly noncitizens holding a variety of immigration statuses. CASA's mission is to create a more just society by increasing the power of and improving the quality of life in working-class Black, Latine, Afro-descendant, Indigenous, and immigrant communities. To advance this mission, CASA offers a wide variety of social, health, job training, employment, and legal services to immigrant communities. These services include counseling individuals who are seeking to become U.S. citizens, including through citizenship education, mentoring, and interview preparation, application assistance, and post-naturalization support.

The **League of United Latin American Citizens** (LULAC) is the nation's oldest and largest Latino civil rights organization. Founded in 1929, LULAC's mission is to improve the lives of Latino families throughout the United States and to protect their civil rights in all respects. With more than 575,000 members nationwide, LULAC is committed to advancing the rights and opportunities of Latino Americans through advocacy, community building, and education.

OCA – Asian Pacific American Advocates (OCA) is a nonprofit, membership-based organization. OCA is a national Asian American and Pacific Islander civil rights organization dedicated to advancing the economic, political, and social well-being of Asian American and Native Hawaiian/Pacific Islanders (AANHPIs). Since its

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or *amici's* counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

founding in 1973, OCA and the Asian American community have been on the front lines of the legal fight to affirm birthright citizenship. OCA provides services to and advocates for the immigration rights of its members and the broader AANHPI community to ensure that AANHPIs can fully participate in our democracy, live without fear, and access critical resources.

The **Asylum Seeker Advocacy Project** (ASAP) is a national membership organization of asylum seekers in the United States. ASAP's members represent more than 175 countries and reside in all 50 U.S. states and several U.S. territories. ASAP's mission is to help its members build a more welcoming United States. ASAP provides members with legal and community support, including time-sensitive updates about immigration policies, and opportunities to work together for nationwide systemic reform.

Make the Road New York (MRNY) is a nonprofit, membership-based community organization. Founded in 2007, MRNY's mission is to build the power of immigrant and working-class communities to achieve dignity and justice. MRNY integrates adult and youth education, legal, health and survival services, and community and civic engagement, in a holistic approach to help low-income New Yorkers improve their lives and neighborhoods. MRNY has over 28,000 members.

The **Presidents' Alliance on Higher Education and Immigration** is a nonpartisan, nonprofit organization comprising close to 600 presidents and chancellors of public and private colleges and universities across 42 states, the District of Columbia, and Puerto Rico. The Presidents' Alliance works to advance policies and practices that support immigrant, refugee, and international students and graduates and ensure that higher education institutions can effectively serve their campus communities. Because its member institutions

enroll, educate, and employ individuals across a wide range of immigration statuses, the Presidents' Alliance has a strong interest in the frameworks governing citizenship and lawful presence.

The **Family Action Network Movement** supports low-income and immigrant families through wraparound services, advocacy, and grassroots organizing focused on housing, immigration, and economic justice.

The **Venezuelan Association of Massachusetts** is a nonprofit organization committed to supporting and integrating the Venezuelan community in Massachusetts.

* * * * *

Amici curiae include prominent immigrants' rights and advocacy organizations that fight every day for the dignity and legal rights of noncitizens in the United States. Five of the organizations—OCA, LULAC, ASAP, CASA, and MRNY—filed suit challenging the Order. Two—CASA and ASAP—were respondents in *Trump v. CASA*, 606 U.S. 831 (2025).

For decades, *amici* have worked to ensure that this nation remains faithful to its constitutional and statutory commitments to noncitizens in this country—and to its long tradition of welcoming noncitizens from around the world who seek to build their lives here and to share in the promise and opportunity that this nation embodies.

Executive Order 14160 repudiates these principles and this longstanding history. It forces countless families to make agonizing choices and threatens to divide citizen children from noncitizen relatives. Over the last thirteen months, several *amici* have devoted extensive resources to advising affected individuals and families and preparing to confront the Order's practical consequences and uncertainties.

Amici therefore have a pressing interest in the outcome of this case and urge this Court to affirm the injunction against the Order.

SUMMARY OF ARGUMENT

Executive Order 14160 (“Order”) reflects a unilateral effort by the Administration to recast the status of noncitizens and to marginalize immigrants who are not lawful permanent residents (“LPRs”) by targeting their children. The Order rests on a sweeping premise: that children born in the United States to parents who are neither citizens nor LPRs are not entitled to birthright citizenship, because their parents were not “domiciled” in the United States. To support that conclusion, the government theorizes that all noncitizens in this country who lack permanent resident status are “unlawful,” “temporary,” or both, and cannot establish “domicile” in this country.

That presumption has no basis in reality. Millions of noncitizens live and work in this country with the permission of the United States government, and their presence in the United States is not in any sense “unlawful.” Many noncitizens have been living in this country for years, even decades. They have formed families, built careers, and become integral members of their communities. They are not “temporary” residents in any ordinary sense of the word.

Many immigrants come to the United States seeking shelter from political or religious persecution, escaping human trafficking and other crimes, or fleeing natural disasters. Many others arrive on student, work, or other visas and choose to establish lives here. This country has permitted these individuals and their families to live here and contribute to their communities. They have become part of American society, flourishing on American soil and exemplifying the vitality of this nation.

For generations, the children of immigrants born on U.S. soil have been citizens from birth. Yet the Order repudiates that settled understanding and commands that countless children born in this country be denied recognition of their citizenship.

If the Order is allowed to stand, the consequences will be far-reaching. The Order contravenes foundational assumptions of the U.S. immigration system. Denying birthright citizenship to the children of many noncitizens, including those with lawful or enduring connections to this country, would sow widespread legal chaos, separate families, and inflict profound harm on millions of people.

These problems, of course, all flow from the Order's fundamental defect: it is unconstitutional. Respondents have shown a likelihood of success on the merits of their claims that the Order violates both the Citizenship Clause and the Immigration and Nationality Act, 8 U.S.C. § 1401(a). The Court should affirm the injunction.

ARGUMENT

I. The Order's Denial of Citizenship to Children of Parents with "Unlawful" or "Temporary" Presence Broadly Impacts Immigrants with Long-Standing and Lawful Ties to the United States

Departing from 150 years of practice and settled precedent, the Order would deny citizenship to the children of mothers who were either "unlawfully present" or whose presence was "lawful but temporary," and whose fathers were neither citizens nor lawful permanent residents ("LPRs"). Proclamation No. 14160, 90 Fed. Reg. 8,449 (Jan. 20, 2026), § 2. Animating this policy choice is the assumption that anyone who is neither a citizen nor an LPR can only be present in the United States "unlawfully" or "temporarily." This premise also pervades the Government's opening brief: the Government repeatedly contends that individuals who are not citizens

or LPRs can neither establish “residence” or “domicile” in, nor can they owe “allegiance” to, the United States. U.S. Br. 2-4, 11, 14-15, 19-21, 29-31.²

As Respondents argue, those assertions are all baseless. The Fourteenth Amendment’s text says nothing of “domicile,” nor does that word appear anywhere else in the Constitution. Further, “domicile” has never been the test for whether someone is “subject to the jurisdiction.” “Domicile” is a subjective, common-law determination. And while the Government claims those parents targeted by the Order “lack[ed] the legal capacity to establish domicile in the United States,” U.S. Br. 29-31, this Court has (i) already determined that “illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within a State,” *Plyler v. Doe*, 457 U.S. 202, 227 n.22 (1982), and (ii) rejected the view that visa holders are categorically incapable of establishing domicile, *Elkins v. Moreno*, 435 U.S. 647, 666-68 (1978) (G-4 visa holders can establish domicile).³

² It is also evident in the Government’s implementation plan. See U.S. Citizenship and Immigration Services, *Implementation Plan* (Jul. 25, 2025) (“Implementation Plan”), available at perma.cc/G6UN-AJ33.

³ The Government cites two Ninth Circuit decisions—*Carlson v. Reed*, 249 F.3d 876 (9th Cir. 2001) and *Park v. Barr*, 946 F.3d 1096 (9th Cir. 2020)—but neither decision acknowledges or addresses *Plyler*’s contrary conclusion that immigrants (even undocumented ones) can be “domiciled” and are “within the jurisdiction” of the United States. 457 U.S. at 211-216. More importantly, such a reading of the INA would undercut the Government’s premise that there is a constitutional domicile requirement. If Congress could deny citizenship simply by declaring by statute that certain U.S.-born persons are not “domiciled,” that would undermine the Framers’ intent to preclude Congress from retracting the Clause’s citizenship guarantee. *Afroyim v. Rusk*, 387 U.S. 253, 262-63 (1967); *United States v. Wong Kim Ark*, 169 U.S. 649, 694 (1898).

Rather, this Court has long explained that ordinary foreign nationals—even those present for limited or defined purposes—are subject to the United States’ jurisdiction by virtue of their presence in the country, a status that historically sufficed to establish legally cognizable ties. *See Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 138-39 (1812); *see generally* Resp. Br.

Many families affected by the Order have not merely been present in the United States but have also established deep and enduring ties to this country. As the Government’s Implementation Plan acknowledges, federal immigration law “does not define” the Order’s key concept of “temporary.” Implementation Plan at 2. Indeed, federal law authorizes *tens of millions* of people who are neither citizens nor LPRs to reside lawfully in the United States for extended (and sometimes indefinite) periods of time—either through formal legal status authorizing their extended stay or permission to remain. Under these auspices, these noncitizens have become established community members: they have lived and worked here for years, paid federal and state taxes, purchased or leased homes, raised families, enrolled children in local schools, served in our military, participated in civic, religious, and economic institutions, and abided by our laws. Yet the Government’s position is

The historical treatises the Government cites do not help either. The Government cites Phillimore, suggesting that a person cannot retain domicile in a country from which he has been *exiled* or *deported*—but the parents and children at issue here have not been banished; they are physically present in this country. Likewise, the Restatements’ statement that a person must be “legally capable” of changing domicile refers to traditional incapacity doctrines such as minority or mental disability. It does not suggest that immigration status strips an adult person of the basic legal ability to form the intent necessary for domicile.

that these residents are somehow not “subject to the jurisdiction” of the United States.

That contention is difficult to reconcile with reality. Noncitizens have made immeasurable contributions to this country, playing substantial roles in the economy, workforce, and public life. Immigrants comprise 17.7% of the labor force. American Immigration Council, *New Americans in the United States* at 1, 3 (2023), map.americanimmigrationcouncil.org/locations/national/#. They are more likely than native-born citizens to start businesses, which employ millions of workers nationwide. *Id.* at 3. Immigrants are disproportionately represented in critical industries, including agriculture (26.1% of workers), construction (25.7%), transportation and warehousing (22.4%), and healthcare, where health workers are disproportionately foreign-born. *Id.* at 3-4. Immigrants contribute hundreds of billions of dollars annually in taxes, supporting public programs that benefit citizens and noncitizens alike. *Id.* at 2.

Immigrants’ contributions to and sacrifices for this country extend beyond the economic sphere. In 2024, approximately 40,000 noncitizens were serving in the U.S. Armed Forces. Cong. Rsch. Serv., R48163, *Foreign Nationals in the U.S. Armed Forces: Immigration Issues* (Aug. 19, 2024), at 1. While the current Administration limits enlistment to LPRs, the Department of Defense can and has authorized enlistment of other noncitizens. See 10 U.S.C. § 504(b)(2); Cong. Rsch. Serv., R48163, *Foreign Nationals in the U.S. Armed Forces: Immigration Issues* at 3-5. Noncitizens have served this country with distinction: over twenty percent of recipients of the Congressional Medal of Honor have been immigrants. Cong. Medal of Honor Society, *Frequently Asked Questions*, available at bit.ly/4aSIgAg. As the late-Senator John McCain said: “our Nation cannot survive as a leader in this world without the life blood and vitality

provided by immigrants.” *Contributions of Immigrants to the United States Armed Forces*: Hearing Before the Comm. on Armed Services, U.S. Senate, 109th Cong. 884 (2006).

Despite those contributions—and notwithstanding that millions of noncitizens reside and intend to remain here—the Order would deny citizenship to the children of broad categories of parents, including parents admitted or permitted to remain with the federal government’s consent, and parents who are on the pathway to, but have not yet achieved, LPR status or citizenship. These parents cannot reasonably be described as “temporarily” or “unlawfully” present. Yet the Order purports to deprive their children of the citizenship prior generations of Americans have received under the Constitution.

A. The Order’s Impact on “Temporary” Noncitizens with Long Ties to the United States

The Order would deny citizenship to the children of people who do not yet have a path to LPR status or citizenship, but who have remained in the country for decades, held jobs, paid taxes, and raised families here with the Government’s consent—and thus are certainly subject to the jurisdiction of the United States. These parents include, among others, recipients of Deferred Action for Childhood Arrivals (“DACA”) and humanitarian parole, as well as holders of Temporary Protected Status (“TPS”) and individuals admitted on various types of visas.

1. Deferred Action for Childhood Arrivals. The Order would deny the children of DACA recipients citizenship, even though the federal government itself has permitted recipients’ continued presence, many for well over a decade. Deferred action is a long-used practice in which the federal government decides, as a matter of prosecutorial discretion, not to pursue deportation—allowing the person to remain in the United States. Since

2012, DHS has, on a case-by-case basis, granted deferred action to certain noncitizens who were brought to the United States as children. *See generally Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 2-4 (2020).

The vast majority of DACA recipients arrived in the United States at a young age, have been educated in American schools, and have spent most of their lives in this country. *Id.* As this Court has acknowledged, many have “enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children”—including 200,000 U.S.-citizen children—in the United States. *Id.* at 24.

As of December 2024, an estimated 533,280 individuals held active DACA status. Migration Policy Institute, *Deferred Action for Childhood Arrivals (DACA) Data Tools* (Dec. 31, 2024), bit.ly/4qSnoyP.

One such DACA recipient is “**Jessica**,” who arrived in the United States from El Salvador when she was six years old and has lived here for over 20 years. Since receiving DACA ten years ago, she has been authorized to work and is employed as the operations manager for a construction company. She has no memory of living in El Salvador. All her immediate family live in the United States. She and her husband (who is undocumented) have a three-year-old son who is a U.S. citizen. They plan to have additional children, but fear that any such children would not have the same rights or opportunities as their older sibling.

Another DACA recipient is “**Faith**,” who came to the U.S. at age 9 and has lived in the United States for over two decades. She received DACA while she was in college. She has worked in public health, and currently assists people with applying for healthcare. She had her first child after the Order’s effective date. She has been anxious about her child’s future, particularly given the

limitations that lack of citizenship would place on her educational and professional opportunities and her access to healthcare. And she worries about her future children not having U.S. citizenship.

Similarly, “**Hector**” came to the United States from Mexico at age four. Having lived in the United States for over three decades, he has spent the vast majority of his life here. Since receiving DACA, he has earned a bachelor’s degree and a J.D. His partner is a licensed attorney and a registered nurse. He and his partner had their first child in early 2025. Before her birth, Hector and his partner feared their daughter would face the same uncertainty and structural exclusions that have long prevented them from enjoying equal stability and security. While his daughter is a U.S. citizen, Hector remains fearful that any future children would grow up with the fear of deportation and separation from their family and without the certainty and stability that citizenship provides.

In treating DACA recipients’ presence as “unlawful” or “temporary,” the Order disregards both the federal government’s own determination that DACA recipients are permitted to remain in the United States and the reality that many of these individuals have spent most of their lives here and call the United States home.

2. Temporary Protected Status. The Order would also deny citizenship to children born to parents present under Temporary Protected Status (“TPS”). TPS is a form of humanitarian protection that permits nationals of designated countries to remain lawfully in the United States when conditions in their countries of origin—such as armed conflict, natural disasters, or other “extraordinary and temporary conditions in the foreign state”—prevent safe return. 8 U.S.C. § 1254a(b)(3). Individuals who hold this status are legally present, 8 C.F.R. § 1.3(a)(4)(i), are eligible for work authorization, 8

U.S.C. § 1254a(a)(1)(B), and are not subject to removal or detention on the basis of immigration status, *id.* § 1254a(a)(1)(A), (d)(4). Although TPS designations are generally issued for periods up to eighteen months, in practice they are frequently extended, with recipients staying in the United States for periods ranging from years to decades.⁴ As of March 31, 2025, approximately 1.3 million individuals from 17 countries were in the United States protected by TPS. *See* Cong. Rsch. Serv., RS20844, *Temporary Protected Status and Deferred Enforced Departure* 8 (Aug. 28, 2025).

During their extended periods of lawful residence, TPS recipients work, raise families, purchase homes, and integrate into their communities. *Id.* The “TPS population has a strong record as workers, earners, and taxpayers.” American Immigration Council, *The Contributions of Temporary Protected Status Holders to the U.S. Economy* (Sept. 2023), perma.cc/L9PN-PC9Q.

For example, “**Monica**” came to the United States over six years ago from Venezuela, where she was a physician. Monica and her husband left Venezuela due to severe persecution. Monica applied for asylum in 2019 and for TPS in 2021. Monica’s husband has been employed as a plumber for several years. The family are active members of their local church, where they hope to have their newborn son—who was born after the Order was issued—baptized. They are concerned that if the Order

⁴ For example, Sudan was first designated in 1997 and El Salvador in 2001; each designation was renewed multiple times over the subsequent decades. *See Designation of El Salvador Under Temporary Protected Status Program*, 66 Fed. Reg. 49,404 (Oct. 1, 2001); *Extension of the Designation of El Salvador for Temporary Protected Status*, 90 Fed. Reg. 5,953 (Jan. 17, 2025); *Extension of the Designation of Sudan for Temporary Protected Status*, 90 Fed. Reg. 5,946 (Jan. 17, 2025).

goes into effect, their child could lose his citizenship and that any future children will not be citizens.

Another TPS recipient, “**Emmanuel**,” fled Cameroon after being detained and beaten for his participation in community organizing. He and his wife have lived in the U.S. since 2021, and have pending asylum applications. With the work authorization they received through TPS, both became caregivers in an assisted living facility. Emmanuel is active in his community here, advocating for the rights of immigrants. They have three children, two of whom are U.S. citizens. They wish to have another child, but are concerned that child would not be a citizen.

Nationally, TPS holders are employed at a 94.6% rate, and TPS households earned nearly \$10.3 billion in total income in 2021, paying \$1.3 billion in federal taxes and \$966.5 million in state and local taxes. *Id.* Current TPS holders live with more than 260,000 U.S.-citizen children. See [fwd.us](https://www.fwd.us), *Temporary Protected Status protects families while also boosting the U.S. economy* (Mar. 21, 2025), perma.cc/SMM8-GMSQ. The Order would thus deny citizenship to children born into families whose ties to the United States are deep, enduring, and the product of years—often decades—of continuous, lawful, and congressionally sanctioned residence.

3. Humanitarian Parole. The Order would deny citizenship to children born to parents admitted on humanitarian parole, even though parolees are present in the United States with the federal government’s express authorization and have been allowed to develop deep and lasting ties to the United States.

The INA authorizes the Secretary of Homeland Security to allow noncitizens to enter or remain in the United States on a case-by-case basis for urgent humanitarian reasons or significant public benefit. 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 1.3(a)(3). Humanitarian

parole processes were first established in 1956 to assist Hungarians fleeing Soviet repression; since that time, there have been over 125 processes. David Bier, *126 Parole Orders over 7 Decades: A Historical Review of Immigration Parole Orders*, Cato Inst. (Jul. 17, 2023), perma.cc/NX9K-ZF2Q. In recent years, parole has primarily been granted through programs such as Operation Allies Welcome for Afghan nationals and Uniting for Ukraine. As of July 2025, more than 800,000 individuals in the United States had been granted parole through these processes. *See* Jeanne Batalova, *Refugees and Asylees in the United States*, Migration Policy Institute (Jan. 8, 2026), bit.ly/3P2OiXt.

Although parole does not constitute a formal admission or confer an immigration status, 8 U.S.C. § 1182(d)(5), parolees are considered lawfully present and are often authorized to work. 8 C.F.R. § 1.3(a)(3). Hundreds of thousands of parolees work in the U.S. labor force, filling critical worker shortages in numerous industries. *See* fwd.us, *Industries with critical labor shortages added hundreds of thousands of workers through immigration parole* (Mar. 26, 2025), perma.cc/BB8N-URDE.

While humanitarian parole is initially granted for a limited period, many recipients may seek re-parole, and many pursue asylum, family-based adjustment, employment-based visas, or special immigrant visas that can lead to LPR status. *See* Cong. Rsch. Serv., R47654, *Immigration Options for Immigration Parolees* (Aug. 17, 2023). Congress has, on multiple occasions, adopted “adjustment acts” allowing certain parolees to transition to permanent status. *See, e.g.*, Cuban Adjustment Act of 1966, Pub. L. No. 89-732, 80 Stat. 1161 (1966); Indochinese Parole Adjustment Act of 2000, Pub. L. No. 106-429, 114 Stat. 1900 (2000). Under various programs, many parolees can and have remained in the United States for years.

During this time, parolees form families, integrate into local communities, and reasonably expect to remain while seeking longer-term immigration solutions.

In sum, many parolees quickly integrate into American society and contribute to the country's economy. But the Order treats parolees as though they were "temporary" and would deny their children citizenship.

4. Work and Study Visa Holders. The Order treats parents admitted under a range of visa programs as only temporarily present. That characterization bears little resemblance to reality. Millions of people receive visas to study and work (F-1 student), to pursue specialty occupations (H-1B), and for intracompany transfers (L-1). Many remain here for years, often decades, while building deep personal, economic, and community ties in the United States. These ties mirror those of LPRs, citizens, and others with similar legal rights. Although technically classified as "temporary," these visa categories facilitate—and even encourage—extended residence in the United States, through which individuals meaningfully contribute to American society and establish permanent roots.

Visa holders are certainly not, in the Order's terminology, "unlawful." Nor are they necessarily "temporary." Many of the most common visa programs authorize multi-year stays in the United States at the outset and provide pathways to longer-term or permanent residence. *See, e.g.*, 8 C.F.R. §§ 214.2(b), 214.2(e)(19)(i), 214.2(k)(8); 8 U.S.C. § 1182(a)(9)(B)(iv); 8 U.S.C. § 1255(a).

Congress has provided that many visas—including H-1B and L-1A visas—are "dual intent," meaning holders of these visas can lawfully remain while seeking permanent residence. 8 C.F.R. §§ 214.2(H)(16)(i), 214.2(I)(16). Under these programs, specialty occupation

workers like computer scientists, engineers, and doctors (H-1B), or executives and managers (L-1A) whose initial visas may be for six or seven years respectively, *see* 8 C.F.R. §§ 214.2(h)(15)(ii)(B)(1), 214.2(l)(12)(i), may reside here much longer due to extensions and long backlogs for consideration of their LPR applications. *See* American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313, § 106(a)-(b). These visas reflect Congress’s recognition that many H-1B and L-1A workers are not transient visitors, but long-term contributors expected to integrate permanently into the U.S. workforce and society. These visa holders contribute to essential industries, pay taxes, raise children, and participate in their communities.

Other visas, such as F-1 student visas, are “single intent” issued for “duration of status,” tied to the length of their academic or training program. 8 C.F.R. § 214.2(f)(5)(i). After their programs, many F-1 holders remain in the country for authorized post-graduation employment under the Optional Practical Training (OPT) programs, and employers may petition to change the student’s status to an H-1B classification which, as discussed above, may permit pursuit of LPR status. *See* 8 C.F.R. § 214.2(f)(10)(ii); 8 U.S.C. § 1255(a). Longstanding authority recognizes that domicile turns on presence and intent—not immigration compliance. *See, e.g.,* Clement Bouvé, *A Treatise on the Laws Governing the Exclusion and Expulsion of Aliens in the United States* 340 (1912) (“[A]n alien who, . . . entering in violation of the Immigration acts, . . . takes up his residence here with intent to remain has done all that is necessary for the acquisition of a domicile.”). That is why courts have repeatedly held that people admitted under “single

intent” programs can—and have—established domicile in the United States.⁵

To summarize, many visa programs are structured to permit sustained residence in the United States and provide a pathway to permanent status. For many individuals, during these extended periods of residence, the United States becomes their primary home long before any formal transition to permanent status. And these programs represent a large and stable population. In fiscal year 2023 alone, the Government admitted nearly five million temporary workers and their family members and over 1.7 million students. U.S. Dep’t of Homeland Sec. Office of Homeland Statistics, *U.S. Nonimmigrant Admissions: 2023* (Aug. 2024), perma.cc/LQD5-N5K2.

The Order identifies those on “student [and] work . . . visa[s]” as examples of people whose presence is “lawful but temporary,” Proclamation No. 14160, 90 Fed. Reg. 8,449 § 1 (Jan. 20, 2026), and denies citizenship to children born to such parents, *id.* § 2. By categorically designating as “temporary” immigration programs that authorize multi-year residence for defined purposes, the Order ignores the deep ties to this country established through extended periods of residence.

⁵ *E.g.*, *Sahu v. Sahu*, 306 So. 3d 59, 62 (Ala. Civ. App. 2020) (“persons already in the United States on visas . . . may seek to apply for permanent-resident status, . . . a person holding a visa might form an intent to change his or her domicile to the United States.”); *Abou-Issa v. Abou-Issa*, 189 S.E.2d 443, 445 (Ga. 1972) (“[T]he . . . contention that the plaintiff lacked the legal capacity to establish a domicile in the United States because she was here on a temporary visa is without merit.”); *Bustamante v. Bustamante*, 645 P.2d 40, 42 (Utah 1982) (similar); *Maghu v. Singh*, 181 A.3d 518, 524 (Vt. 2018) (similar); *Nagaraja v. Comm’r of Revenue*, 352 N.W.2d 373, 378 (Minn. 1984) (similar).

B. The Order’s Impact on Noncitizens on a Pathway to LPR Status or Citizenship

1. Asylum Applicants. The Order would deny citizenship to the children of asylum applicants—individuals for whom Congress has mandated a pathway to LPR status if their claims are granted. Federal law provides asylum to individuals who demonstrate past persecution or a well-founded fear of future persecution on account of their race, religion, nationality, political opinion, and/or membership in a particular social group. 8 U.S.C. § 1158(b); 8 U.S.C. § 1101(a)(42)(A). Once asylum is granted, asylees may apply for LPR status after residing in the country for just one year, and for citizenship five years after receiving LPR status. 8 U.S.C. § 1159. The Government regularly adjusts the status of asylees: in 2023, adjustments of status were granted to 99,360 asylum seekers. Approximately 88% of those receiving asylum become LPRs, and approximately 56% naturalize as U.S. citizens within six years of obtaining asylum. *See* U.S. Dep’t of Homeland Sec., Yearbook of Immigration Statistics 2023, Table 10, perma.cc/GE5C-3LBJ; Noah Schofield & Amanda Yap, *Asylees: 2023*, at 11, U.S. Dep’t of Homeland Sec. (2024), perma.cc/66CJ-VPKS.

By definition, asylum seekers have fled their homelands due to persecution and have sought refuge in the United States, reflecting their intent to live and resettle here. Many courts have thus determined that asylum seekers can establish domicile in this country.⁶

⁶ *See, e.g., Tanyike v. United States*, 603 F. Supp. 3d 572, 576-79 (S.D. Ohio 2022) (asylum seekers “lawfully domiciled” because they have the ability under immigration laws to form intent to remain in the United States indefinitely); *Coyoy v. United States*, 526 F. Supp. 3d 30, 35-42 (D.N.J. 2021) (same).

Asylum applicants have long-established ties to the United States. Administrative and legal constraints have created a backlog of over three million unadjudicated asylum applications, which is now exacerbated by an indefinite processing pause on all affirmative asylum adjudications. See TRAC Reports, *Immigration Court Quick Facts*, perma.cc/EM5L-QE6D (last visited Feb. 26, 2026); U.S. Dep’t of Homeland Sec. Citizenship & Immigr. Servs. Ombudsman, *Annual Report 2024* (2024), perma.cc/6A8S-6LJ5. This backlog means the overwhelming majority of individuals who apply for asylum remain in the United States for years—sometimes more than a decade—before even receiving a decision on their asylum application. See Ayelet Parness, *Asylum Backlog Presents Anguish, Uncertainty for Seekers*, HIAS (Apr. 4, 2024), perma.cc/PU7A-U54B.

During the multi-year wait for an asylum determination, asylum seekers integrate into their communities. Many attend school and obtain lawful employment, allowing them to pay taxes and support themselves, their families, and their communities. 8 C.F.R. § 208.7(a); U.S. Citizenship & Immigr. Servs., *Asylum*, perma.cc/M3K2-DMMR (last visited Feb. 26, 2026). Asylum applicants also often marry and start families in the United States. In short, asylum applicants carry on their lives with the intention and hope of obtaining asylum and eventually LPR status and citizenship.

One such asylum seeker is “**Henry**,” who arrived in the United States from Kenya in 2019 and applied for asylum. His asylum application has been pending for six years. He fears persecution if he returned to Kenya because of his political views. Since arriving in the United States, Henry has built his life here. He received a college degree in cybersecurity and networking, and for the last four years, has worked as an IT specialist for his county

911 emergency center, supporting public safety, law enforcement, fire departments, and emergency medical services. Henry is active in his local church, where he serves as a lay mini-pastor. Henry and his wife had a daughter born after the Order's effective date. She was born prematurely and will require specialized medical care and education that is available to her in the United States. Henry is concerned her citizenship could be revoked if the Order goes into effect, and that any future children born to Henry and his wife will be denied that same citizenship.

Another asylum seeker is "**Alicia**," who fled Mexico with her children in 2024 after being raped by a member of a powerful gang. After she reported the incident, law enforcement refused to help her. She cannot safely return to Mexico. She came to the United States because her husband, parents, and siblings all live here. Since coming to the United States, she has been able to reunite with her family, received authorization to work, and been gainfully employed as a housekeeper. She and her husband would like to have another child, but are afraid of the consequences if their child is denied citizenship.

In short, many asylum applicants reside in the United States for extended periods while their claims are adjudicated—all while working lawfully, raising families, and integrating into their communities—and eventually obtain LPR status and citizenship. The Order's treatment of asylum applicants as categorically "temporary" ignores this reality.

2. Immigrant Visa Petitioners Subject to the Green Card Backlog. The Order would deny citizenship to the children of individuals currently residing in the United States while awaiting LPR status through the immigrant-visa system. Millions of individuals who have submitted a complete, and approved, petition for an immigrant visa remain in multi-year backlogs to obtain a

green card because federal law limits the number of family-sponsored and employment-based immigrant visas that may be issued in a given year to 226,000 and 140,000, respectively, and imposes per-country caps.⁷ 8 U.S.C. §1151(c)-(d). Wait times are particularly lengthy for nationals of foreign countries that generate a high volume of immigration petitioners, such as Mexico, China, India, and the Philippines. As of February 2026, certain Mexican nationals petitioning for a family visa faced a 25-year waiting period. *See* U.S. Dep’t of State, *Visa Bulletin for Feb. 2026* (Jan. 5, 2026), perma.cc/7AYV-38JF.

During these extended waiting periods, immigrant visa petitioners may live and work in the United States under any number of other lawful, alternative visas while they await their turn in the backlog, known as their priority dates. For example, someone seeking LPR status through a family-preference visa may lawfully live, work, raise children, own property, and pay taxes in the United States for years while their priority date approaches.

Many of the noncitizens in this category told the Government they intended to immigrate to the United States and are seeking LPR status. Their presence is neither “unlawful” nor “temporary.” The Order nevertheless denies citizenship to their U.S.-born children.

3. Victims of Human Trafficking and Other Crimes. The Order denies citizenship to the children of victims of human trafficking and other serious crimes—individuals for whom Congress has also created a structured pathway to LPR status. Since the passage of

⁷ *See generally* David Bier, *Green Card Approval Rate Reaches Record Lows*, Cato Inst. (Feb. 15, 2024), bit.ly/4rgIdEB (estimating the green card backlog to be approximately 34.7 million people in fiscal year 2024, and noting there are 5.6 million green card applicants living in the United States).

the Victims of Trafficking and Violence Protection Act in 2000, T and U visas are issued for victims of domestic violence, sexual assault, severe forms of human trafficking, and other serious crimes that occurred in the United States or violated U.S. law, in order to remove barriers to reporting and to assist law enforcement in investigating and prosecuting crimes. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, 1533-1534, § 1513(a). Both classifications provide a pathway to LPR status, with recipients of T and U visas eligible for adjustment of status three years after receiving their visa. 8 C.F.R. §§ 245.23, 245.24.

Because these visas are subject to annual caps, there are significant backlogs. Applicants must currently wait more than two years for T visas and 15 years for U visas. U.S. Citizenship & Immigr. Servs., *Number of Form I-914, Application for T Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status (Fiscal Years 2008-2025)*, bit.ly/4cfGyLs (last visited Feb. 26, 2026); U.S. Citizenship & Immigr. Servs., *Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status (Fiscal Years 2009-2025)*, bit.ly/3MP99wI (last visited Feb. 26, 2026); *see* 8 C.F.R. § 214.210(a)-(b); 8 C.F.R. § 214.14(d). And even after obtaining a visa, obtaining LPR status requires additional waiting periods of up to six years. U.S. Citizenship & Immigr. Servs., *Case Processing Times*, egov.uscis.gov/processing-times/home (last visited Feb. 26, 2026).

During these extended periods of federally authorized presence, these survivors are rebuilding their lives, including finding employment and deepening their connections to the communities that they have made safer by reporting the crimes committed against them. One survivor is “**Jonathan**,” who arrived in the United States from El Salvador nine years ago when he was 15 years old

as an unaccompanied minor. Jonathan was a victim of sex trafficking when he was a minor. He obtained his T-1 visa in 2021 and has since applied for adjustment of status. Jonathan and his partner (who is undocumented) welcomed a baby girl last year. Their baby girl is a U.S. citizen. Jonathan and his partner plan to have another child in the future, but fear that their younger child will not have the same rights or opportunities as their older sibling.

Another survivor is “G,” who came from El Salvador almost 15 years ago. Following violent assaults from her ex-partner over the course of many years, she reported him to the police. She filed a U visa application in 2017 and recently received deferred action. She has two U.S. citizen children. Although she is planning to grow her family soon with her new partner, she fears that any future child may not have the same rights as her U.S.-born children have.

Under the Order, U.S.-born children of T and U visa applicants and visa holders will not acquire citizenship. Implementation Plan at 3.

* * * * *

The Order’s categorical denial of citizenship to the children of all noncitizens and immigrants who lack LPR status misconceives the values embodied in federal law. By treating every non-LPR as only “temporarily” or “unlawfully” present, the Order disregards millions of parents who have established deep and longstanding ties to the United States, often over years or decades.

II. The Order Poses Many Practical Problems for U.S. Citizens and Immigrant Families

The Order will sow widespread confusion, including for U.S. citizens who must prove their legal status to obtain passports, Social Security Numbers (“SSN”), or critical benefits. The uncertainty will deter eligible individuals from seeking benefits to which they are

entitled. And the Order will force some immigrant families to face the agonizing prospect of separation.

A. The Order Will Unleash Confusion and Uncertainty

If allowed to go into effect, the Order will pose serious problems even for children considered citizens under its parameters. Most importantly, the Order means that birth certificates would no longer constitute proof of citizenship; instead, all U.S.-born individuals would face a complex process of proving their parents' citizenship status at the time of their birth. And children denied citizenship by the Order would face a Kafkaesque regulatory patchwork in their dealings with federal and state governments.

Some of the children who cannot establish U.S. citizenship or obtain any other lawful status here may not be able to establish citizenship in any other country, leaving them stateless.⁸ For example, “**Monica**” has a pending application for asylum based on the persecution she experienced in Venezuela. Under Venezuelan law, her U.S.-born child cannot apply for Venezuelan citizenship from the United States, which would force Monica to either return to Venezuela or appear at a Venezuelan embassy or consulate (of which there are none operating in the United States) to confer her citizenship on her child.

⁸ Statelessness can arise when there is a gap between the citizenship laws of the place of birth and the country or countries of the parents' nationality or nationalities. Some countries restrict “citizenship by descent,” meaning that a child born abroad will not necessarily inherit their parents' nationality. If such a child is born in a country that does not grant citizenship by birth, they will be stateless. *See generally* Melissa Stewart, *Birthright Citizenship, Denaturalization, and the Specter of Statelessness*, 73 U.C.L.A. L. Rev. 170, 189-196 (2026); Polly J. Price, *Stateless in the United States: Current Reality and a Future Prediction*, 46 Vand. J. Transnat'l L. 443 (2013).

She is not able to leave the United States without abandoning her asylum claim. Thus, any child she has who is subject to the Order would be neither a citizen of the United States, Venezuela, nor anywhere else, *i.e.*, they would be stateless.

The Government's own guidance illustrates the problem. Currently, to prove their citizenship, a U.S. citizen by birth applying for a passport need only provide a U.S. birth certificate, something which 91% of adult U.S. citizens possess. YouGov, *The Economist/YouGov Poll 13* (Feb. 6-9, 2026), perma.cc/48PW-U72B. But the State Department's Implementation Plan (which would govern passports if the Order takes effect) provides that "Passport Acceptance agents and Passport Agency staff will request original proof of parental citizenship or immigration status to determine the citizenship status of the applicant." U.S. Dep't of State, *Executive Order 14160: Protecting the Meaning and Value of American Citizenship* (Jan. 20, 2025), perma.cc/9NBF-ZEJ2. The guidance does not specify what documentation would suffice, but applicants would need to prove their parents' status *at the time of the applicant's birth*, which is certainly more challenging than *ex ante* requirements.

The Social Security Administration's ("SSA") guidance is even more byzantine. Currently, proof of birth in a U.S. hospital can establish citizenship for obtaining an SSN. Under the Order, however, the SSA would also need to verify the parents' status. The guidance provides that SSA will first "check [SSA] records" on "immigration status information [SSA] obtained at the time we issued the parents' SSNs," or failing that, the DHS Systematic Alien Verification for Entitlements (SAVE) program, or failing that, engaging in direct outreach to the parents. Soc. Sec. Admin., *Guidance on Protecting the Meaning and Value of American Citizenship (Executive Order 14160) for Verification Requirements under the Personal*

Responsibility and Work Opportunity Reconciliation Act of 1996 (July 26, 2025), bit.ly/3OyXCCo.

Each verification step presents complications. For the SSN database, “approximately one quarter of SSA records lack citizenship information,” and naturalized citizens are under “no duty to update [their] citizenship information with the Social Security Administration” after obtaining citizenship. *Mi Familia Vota v. Fontes*, 719 F. Supp. 3d 929, 956 (D. Ariz. 2024), *aff’d in part, vacated in part, remanded*, 129 F.4th 691 (9th Cir. 2025). SAVE is not a database of citizenship or immigration status, and contains no “information on native-born citizens.” *Id.* at 955. Direct outreach may also prove ineffective, given low response rates, low trust in government, and bureaucracy. Thus, it may be exceedingly difficult for many people to document their U.S. citizenship to SSA.

Given the unprecedented nature of this regime, many otherwise-eligible U.S. citizen children may be unable to establish their citizenship to the Government’s satisfaction. As a result, their families may be denied access to social safety-net or other benefits to which they are legally entitled. There are no systems in place for children born on U.S. soil to document their status. *See generally* Implementation Plan at 3 (acknowledging lack of processes). If the Order is upheld, U.S.-born children would be thrust into an unprecedented thicket of eligibility determinations for federal and state benefits, and many would likely not receive some benefits.

B. The Order Harms Family Integrity and Will Present Countless Families With Agonizing Choices

This Court has long recognized the right “to raise one’s children” as “essential,” and that the Constitution protects “the integrity of the family unit.” *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *see also Troxel v.*

Granville, 530 U.S. 57, 65 (2000) (“[T]he interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.”). The Order stands to dismantle that right and tear families apart.

The U.S. immigration system assumes that children living in the United States who are noncitizens were born abroad—a premise that flows directly from the Citizenship Clause. Federal immigration law has never contemplated that children born on U.S. soil would need to obtain legal status through the U.S. immigration system. Accordingly, families who pursue legal status for their children will face considerable burdens.

For instance, a child born to visa-holder parents, such as an H-1B worker, would not be considered a U.S. citizen at birth. To remain lawfully in the United States, that child would need to attempt to derive immigration status from a parent. *See* 8 U.S.C. § 1101(a)(15)(H). But federal law provides that dependent children are eligible if they are “accompanying or following to join” the primary visa holder, neither of which can be the case for children born after the visa holder arrives in the United States. There is no mechanism for children already in the United States to obtain status deriving from a parent visa holder. *See* 8 U.S.C. § 1201(a)(1)(B) (nonimmigrant visas are issued by consular officers); 8 U.S.C. § 1201(d) (nonimmigrant visa issuance requires in-person examination by consular officer).

For other families, the path is even less clear. For example, TPS status is based in part on presence in the United States on a particular country’s designation date. *See* 8 U.S.C. § 1254a(c)(1)(A)(i). A child born to a TPS holder, like “Emmanuel’s” children, would not have been alive on the relevant designation date, and thus would not be statutorily eligible for TPS. Thus, TPS-holders’ future children could be subject to removal to a country to which

the federal government has recognized their parents cannot safely return.

The Order and the Government's Implementation Plan confront none of this complexity. Families are denied the ability to protect themselves, leaving their children open to deportation even when the parents have legal status. Immigration officers and judges, and ultimately the federal courts, will be forced to make countless sensitive decisions with no clear guidance.

In the meantime, as families attempt to secure status for their children, the children remain unprotected. If the Order is upheld, parents lawfully present in this country could face the prospect of losing their children to immigration enforcement. While the Implementation Plan expresses an intent to protect certain U.S.-born children from "negative immigration consequences," it offers no comparable assurances for children of parolees, DACA recipients, visa holders, asylum seekers, or other immigrants with longstanding ties. *See* Implementation Plan at 3 & n.5.

There is no precedent for immigration enforcement against children born in the United States because they have always been U.S. citizens. By the time their parents, DHS, and the immigration and federal courts decide the appropriate process and overcome the barriers and backlogs to effective immigration adjudication, these U.S.-born children could have spent months in detention, separated from their families and suffering immense trauma. *Cf. APF v. United States*, 492 F. Supp. 3d 989, 992-993 (D. Ariz. 2020) (discussing prior government policy that "separated thousands of families"). The prospect of detaining children is not theoretical: the government is currently detaining about 500 children. *See* Miriam Jordan et al., *'I Just Want to Get Out of Here': ICE Is Detaining Hundreds of Children*, N.Y. Times (Feb. 13,

2026), [nytimes.com/2026/02/13/us/migrant-children-ice-detention.html](https://www.nytimes.com/2026/02/13/us/migrant-children-ice-detention.html).

The Order, in short, stands to “tear[] at the sacred bond between parent and child.” *Ms. L. v. U.S. Immigr. & Customs Enf’t*, 302 F. Supp. 3d 1149, 1167 (S.D. Cal. 2018). Denying citizenship to U.S.-born children forces their families into agonizing choices, betraying the promise made to immigrants drawn to this country for generations, and the values underlying that promise.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted.

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