

THOMAS, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 25–365

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

[June 30, 2026]

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, dissenting.

This Court’s decision in *Dred Scott v. Sandford*, 19 How. 393 (1857), would have permanently denied citizenship to blacks as “a subordinate and inferior class.” *Id.*, at 404–405. After the Civil War, the Reconstruction Congress overruled *Dred Scott*, first with the Civil Rights Act of 1866, then with the Citizenship Clause of the Fourteenth Amendment. Both the Civil Rights Act and the Citizenship Clause guaranteed citizenship to persons born and domiciled in the United States regardless of their race. Neither guaranteed citizenship to persons who were not domiciled in the United States.

Blacks were entitled to citizenship because they were Americans. They had no other homeland, owed no allegiance to any foreign power, and were subject to no other authority. They “fought and bled in the same battles,” “gained and gloried in the same victories,” and were “liable to be called upon to defend [America] in time of war” alongside every other citizen. 2 *Life and Writings of Frederick Douglass* 256, 266 (P. Foner ed. 1950) (Douglass). The Citizenship Clause thus guaranteed them the “dignity and glory of American citizenship,” so as to ensure that they would never be treated as second class under the law.

THOMAS, J., dissenting

Plessy v. Ferguson, 163 U. S. 537, 555 (1896) (Harlan, J., dissenting).

The same could not be said for the children of foreign temporary visitors. Foreign temporary visitors were attached to their home country, lacked similar bonds to this country, and would not be called upon in time of war. Americans, consistent with their settler ethos, believed that citizens were the people who called a place home. Accordingly, domicile—a person’s legal home—played a key role in both state and national citizenship in America. A person was a “citizen” of the state where he had his “domicil.” *Barber v. Barber*, 21 How. 582, 599 (1859). When foreigners temporarily visited, their “national character” was unchanged. *The Venus*, 8 Cranch 253, 278–279 (1814). Such visitors were “strangers,” not “subjects.” *Id.*, at 278. A person born here but domiciled in a foreign land was therefore considered “as much a stranger to the country as his father.” 1 H. St. George Tucker, *Commentaries on the Laws of Virginia* 57 (1836) (Tucker).

That is why, when Dred Scott went to court, he argued that to be a “citizen,” “it is only necessary that he should have acquired a domicil.” Brief for Plaintiff in *Dred Scott v. Sandford*, D. T. 1855, No. 7, p. 6. (Brief for *Dred Scott*). After this Court held that Scott was not a citizen because he was black, Republicans in Congress, such as Representative John Bingham, stated that a person was a citizen if he was “born and domiciled” in the United States. Cong. Globe, 35th Cong., 2d Sess., 983 (1859). Scott was a citizen, in their view, because he was born to Americans, not to “temporary sojourners.” Cong. Globe, 35th Cong., 1st Sess., 210 (1858) (statement of Rep. Bliss). As Frederick Douglass had put it, the freedmen sought citizenship “*not* as aliens nor as exiles,” but as “Americans.” 2 Douglass 255 (emphasis added).

Congress implemented the principle that citizenship follows birth and domicile in the Civil Rights Act of 1866 and

THOMAS, J., dissenting

then in the Citizenship Clause of the Fourteenth Amendment. The Civil Rights Act guaranteed citizenship to persons who were both “born in the United States” and, as relevant here, “not subject to any foreign power.” Act of Apr. 9, 1866, 14 Stat. 27. The phrase “not subject to any foreign power” excluded from citizenship children of foreign temporary visitors, who were subject to the power of their home nation. See, e.g., *The Pizarro*, 2 Wheat. 227, 246 (1817); *The Venus*, 8 Cranch, at 278–279. The Citizenship Clause, which the same Congress passed shortly after the Civil Rights Act, was understood to have the same meaning. It guaranteed citizenship to persons who were both “born . . . in the United States” and “subject to the jurisdiction thereof.” Amdt. 14, §1.

A person was subject to the jurisdiction of the government of his domicile. “Domicil” was “the foundation of jurisdiction over persons.” 1 T. Twiss, *The Law of Nations* 239 (1861) (Twiss). The government of a person’s domicile had broad power over that person, including with respect to his personal affairs, his conduct abroad, his personal taxes, and the mutual duties of protection and allegiance. So, as the Senator who introduced the Citizenship Clause explained, “the word ‘jurisdiction,’ as here employed, ought to be construed so as to imply a full and complete jurisdiction . . . the same jurisdiction in extent and quality as applies to every citizen of the United States now.” Cong. Globe, 39th Cong., 1st Sess., 2895 (1866) (statement of Sen. Howard). After all, Congress “would have no right to make citizens” of “persons temporarily resident.” *Id.*, at 572 (statement of Sen. Trumbull).

The Citizenship Clause was consistently interpreted not to apply to the children of foreign temporary visitors, who were by definition not domiciled in the United States. Regardless of administration or party, the Federal Government for decades after ratification regularly denied claims to citizenship by children who were born in the United

THOMAS, J., dissenting

States but not domiciled here. When a child was “born” in the United States to parents “domiciled” abroad, he was “not, therefore, under the statute and the Constitution a citizen of the United States by birth.” Letter from Sec. of State T. Bayard to B. Winchester (Nov. 28, 1885), in 2 F. Wharton, *Digest of International Law* 399–400 (2d ed. 1887) (Wharton Digest). Scholars agreed: A child “born within the territory of the United States, of alien parents” was not a citizen unless his parents were “permanently domiciled within the United States.” W. Robinson, *Notes on Elementary Law* 70 (1875). This Court agreed: The Citizenship Clause “exclude[d] from its operation children of . . . citizens or subjects of foreign States born within the United States.” *Slaughter-House Cases*, 16 Wall. 36, 73 (1873). And, Congress agreed: The Citizenship Clause did not extend to a child born here but “subject to any foreign power.” See Enforcement Act of 1870, §18, 16 Stat. 144 (reenacting Act of Apr. 9, 1866, 14 Stat. 27). As Justice Harlan would write in his dissent in *Plessy v. Ferguson*, 163 U. S. 537, the Citizenship Clause “gave citizenship to all born or naturalized in the United States *and residing here.*” *Id.*, at 563 (emphasis added).

The Court offers a different account. American citizenship, the Court says, was based on a medieval English “feudal” principle, according to which each person “owed personal service to the lord of the soil” as his “master”—a perpetual servitude that was “born with the child and only ended in the grave.” 2 Cong. Rec. 3282 (1874) (statement of Rep. Cox). Americans, the Court says, adopted this feudal principle as a rule of American citizenship “with little fanfare.” *Ante*, at 4. Then, according to the Court, the Reconstruction Congress codified that feudal principle with the words “not subject to any foreign power” in the Civil Rights Act and “subject to the jurisdiction thereof” in the Citizenship Clause. Then, the Court says, the Clause’s meaning

THOMAS, J., dissenting

was definitively settled by dicta in *United States v. Wong Kim Ark*, 169 U. S. 649 (1898).

With due respect, the Court’s account is not historically accurate. The Court says that the Citizenship Clause incorporated the English feudal principle that subjects owed lifetime servitude to the King who owned the soil on which they were born, but Americans—unsurprisingly—rejected this feudal principle. The Court’s theory of American citizenship is based on the opinion of a New York assistant vice chancellor in an inheritance dispute called *Lynch v. Clarke*, 1 Sand. Ch. 583, 584–585 (N. Y. Ch. 1844). *Ante*, at 6–10. But, the assistant vice chancellor’s reasoning, whatever it was worth, was not even followed in New York by the time of the Citizenship Clause. Finally, the Court reasons that dicta in *Wong Kim Ark* settled the meaning of the Clause. But, *Wong Kim Ark* itself emphasized that its holding was limited to persons domiciled in the United States. And, scholars and government officials continued to agree after *Wong Kim Ark* that the Citizenship Clause did not extend to the children of foreign temporary visitors. The rule remained what it always was: A child born on American soil of “a stranger or traveler passing through the country, or temporarily residing here,” was “not a citizen.” H. Black, *Handbook of American Constitutional Law* 634 (3d ed. 1910).

The Court today takes the extraordinary step of holding facially unconstitutional the President’s Order excluding from citizenship the children of foreign temporary visitors and illegal aliens. In doing so, the Court adds to the sad history of the Fourteenth Amendment, which was designed and understood to secure equal rights for the freed blacks but has instead been repurposed for political projects that the Reconstruction Congress did not support. Because many potential applications of the President’s Order are consistent with the original public meaning of the Citizenship Clause, I respectfully dissent.

THOMAS, J., dissenting

I
A

I begin with early American practices related to citizenship and nationality, which inform what the Citizenship Clause means.

In America, you were generally a citizen if you were born here and this was your home. The legal word for home was domicile. The concepts were so linked as to be taken as effectively synonymous at times, such that Justice Bushrod Washington could say: “[C]itizenship means domicil—home—permanent residence.” *Gardner v. Sharp*, 9 F. Cas. 1196, 1199 (No. 5,236) (CC NJ 1826). The same correspondence has persisted throughout American history. See, *e.g.*, *Harding v. Standard Oil Co.*, 182 F. 421, 423 (CC ND Ill. 1910) (“‘Domicile’ and ‘citizenship’ are substantially synonymous terms, in most cases”). Citizens were not the people who were temporarily passing through a territory or who happened to be born within it. Citizens were the permanent members of the body politic—the people whose roots were in a place, who called that place home, and who would, if necessary, go to war for that place. The law of both state and national citizenship reflected this principle.

Domicile was critical for state citizenship. As Chief Justice Marshall explained, a person was “a citizen of that State” in which “he has a fixed and permanent domicil.” *Brown v. Keene*, 8 Pet. 112, 115 (1834); accord, *e.g.*, *Eberly v. Moore*, 24 How. 147, 157 (1861) (“citizens” if “domicil[ed]”); *Barber*, 21 How., at 599 (“citizenship” by “domicil”); 3 J. Story, *Commentaries on the Constitution of the United States* 565 (1833) (Story on Constitution) (“change of citizenship” by “change of domicil”). Temporary visitors, it followed, were not citizens. When a person went to a new State on “a mere temporary visit, for a transient purpose,” Justice Story explained, he could not thereby “claim to be a citizen of such state.” *Case v. Clarke*, 5 F. Cas. 254, 255 (No. 2,490) (R. I. 1828). Instead, to become a “citizen of the

THOMAS, J., dissenting

state to which he removes,” someone had to show “that he ha[d] his domicile there.” *Catlett v. Pacific Ins. Co.*, 5 F. Cas. 291, 296 (No. 2,517) (CC NY 1826). The same rule remains in place today: as a general matter, “an individual is deemed a citizen of the State of h[is] domicile.” *Wachovia Bank, N. A. v. Schmidt*, 546 U. S. 303, 318 (2006).

Domicile was also critical for national citizenship. As this Court stated the rule, when a person acquires a “domicil” in a nation, he “becomes a member of the new society, at least as a permanent inhabitant.” *The Venus*, 8 Cranch, at 278. Domicile played a role in determining someone’s “national character,” which would change whenever he “removes to a foreign country [and] settles himself there” with an “intention permanently to reside there.” *Id.*, at 279. He was a “subject” of the nation where he was “domiciled.” *The Pizarro*, 2 Wheat., at 246. He “follow[ed] the character of that country, in war as well as in peace.” *Ibid.*; accord, e.g., H. Halleck, *Elements of International Law and Laws of War* 144 (1866) (explaining that, in war, national character turns on domicile); *Hanger v. Abbott*, 6 Wall. 532, 535 (1868) (same).

Thus, the view of the Executive Branch was that when a person acquires an American “domicil,” the law “enjoins upon other nations to respect him, in regard to protection, as an American citizen.” Letter from Sec. of State W. Marcy to B. Hülsemann (Sept. 26, 1853), in *Correspondence Between the Secretary of State and the Charge D’Affaires of Austria Relative to the Case of Martin Koszta* 18 (1853) (Koszta); see also Report of the Committee on Foreign Affairs Concerning the Rights of American Citizens in Foreign States, in *Cong. Globe*, 40th Cong., 2d Sess., App. 100 (1868) (Report of 1868). “Domicil confers a national character; it does not allow any one who has a domicile to decline the national character thus conferred.” *Koszta* 18. His status “remains as long as the domicile is retained, and is

THOMAS, J., dissenting

changed with it.” *Id.*, at 20; see also Cong. Globe, 37th Cong., 3d Sess., 992 (1863) (statement of Sen. McDougall).

This approach was consistent with this country’s settler ethos. Daniel Webster wrote that “no government has carried th[e] general presumption f[ur]ther” than the United States that a person attains a new “national character” when he “settles” and “inten[ds] permanently to reside” in a nation. Report of Secretary of State D. Webster (Dec. 23, 1851), H. R. Exec. Doc. No. 10, 32d Cong., 1st Sess., 2 (1860) (Webster Report) (internal quotation marks omitted). Although some nations would lay claim to anyone born in their land or any descendant of their citizens, America viewed its people as the people who built their lives here. A person domiciled here “pays the same price for his protection as native-born or naturalized citizens pay for theirs”: “In war he shares equally with them in the calamities which may befall the country,” “his services may be required for its defence,” and “his life may be perilled and sacrificed in maintaining its rights and vindicating its honor.” *Kosztka* 20. See also, *e.g.*, *The Dos Hermanos*, 2 Wheat. 76, 98 (1817) (reasoning that “if upon his return to New-Orleans . . . he acquired a domicile there . . . he became a re[-]integrated American citizen”); *The Mary and Susan*, 1 Wheat. 46, 55, n. *f* (1816) (discussing “the effect of domicil . . . upon national character”).

The United States thus did not claim as a citizen every child born on its soil. Instead, pursuant to the principle that children followed their parents’ domicile, a child was a citizen of the place where his parents were domiciled. “[A] child born of foreign parents is not, on principles of natural reason, necessarily to be considered as a citizen of the country where he is born.” 1 Tucker 57 (emphasis deleted). If he was “born in the country,” but “both his parents were strangers not designing a permanent change of country,” then he was “as much a stranger to the country as his father.” *Ibid.* The rule was that “when a subject is traveling

THOMAS, J., dissenting

or sojourning abroad,” he “continues under the protection of” his home nation, so “his children” are “an exception to the rule which makes the place of birth the test of citizenship.” *Ludlam v. Ludlam*, 31 Barb. 486, 503 (N. Y. Gen. Term 1860); see also 37 Annals of Cong. 599 (1820) (statement of Rep. Hemphill) (for “citizenship” to be “acquired by birth,” a child must be born to “parents belonging to no other nation or tribe”); *Hardy v. De Leon*, 5 Tex. 211, 236–237 (1849) (a child born on American soil to parents domiciled in the then-Republic of Texas was a citizen of Texas); Political Code of New York §5 (1860) (citizenship requires “domicil[e]” and excludes “children of transient aliens”).

The relationship between citizenship and domicile was a matter of general law from which the political branches could depart by statute, but those statutes also typically tracked the domicile rule. So, Congress retained the prerogative to set the terms for becoming a naturalized citizen and could impose requirements beyond domicile. See Art. I, §8, cl. 4. But, when Congress enacted naturalization statutes, they too generally tracked the domicile requirement. See, e.g., Act of Mar. 26, 1790, §1, 1 Stat. 103–104 (requiring two years of residence for naturalization); Act of Jan. 29, 1795, 1 Stat. 414 (requiring five years of residence for naturalization). And, even when a person was domiciled here and not formally naturalized, he was already considered a citizen for some purposes. Before being naturalized, domiciliaries were “*de facto* though not *de jure* citizens of the country of their domicil,” 1 R. Phillimore, *International Law* 262 (1854), or “domiciled citizen[s],” *Kosztka* 20. Likewise, for other purposes, national citizenship was not an independent concept but simply derivative of state citizenship. “Every citizen of a state,” it was often said, was “*ipso facto* a citizen of the United States.” 3 J. Story, *Commentaries on the Constitution of the United States* 565 (1833). In these contexts, too, national citizenship required domicile

THOMAS, J., dissenting

because state citizenship required domicile. See Part I–A, *supra*.

Of course, birthplace closely correlated with domicile. Most children were born where their parents were domiciled and where, as a result, they were domiciled. The correlation was especially strong in the early 19th century, when crossing an ocean for a temporary visit was an unappealing prospect for pregnant women. Because birthplace was often a heuristic for domicile, it could be generally stated that children were citizens of their place of birth. See *ante*, at 3–6 (majority opinion). But, when the specific question arose, a “reasonable qualification” to that general statement excepted “children of parents, who were *in itinere* in the country, or abiding there for temporary purposes.” J. Story, *Commentaries on the Conflict of Laws* 48 (1834) (Story on Conflict of Laws).

B

The law of domicile is essential to understanding the citizenship provisions of the Civil Rights Act and the Fourteenth Amendment, so I briefly explain the relevant parts of the law of domicile here.

1

Domicile meant legal home. The most common definition of domicile was residence with the intent to permanently remain. *The Venus*, 8 Cranch, at 278; accord, Story on Conflict of Laws §44, at 42 (“residence” and the “intention of making it the home of the party”). A person’s residence was the place where he lived. R. Phillimore, *The Law of Domicil* 16–18 (1847) (Law of Domicil). He had the intent to permanently remain in that place if he planned to stay there indefinitely. *Ibid*.

A person was not domiciled in a place simply because he was temporarily present or born there. A person’s presence in a place was merely “*primâ facie*” evidence that he was

THOMAS, J., dissenting

domiciled there. *Bruce v. Bruce*, 2 B. & P. 229, 231, 126 Eng. Rep. 1251, 1252 (C. P. 1790); accord, *e.g.*, Story on Conflict of Laws 45. Because a person’s temporary visit to a place did not change his domicile, persons who were temporarily present in a place were regarded by the law not as “subjects,” but as “strangers.” *The Venus*, 8 Cranch, at 278. Accordingly, a person’s “place of birth” was only “*primâ facie* evidence of domicil.” *President and Fellows of Harvard College v. Gore*, 22 Mass. 370, 375 (1827); accord, *e.g.*, *Overseers of Readington v. Overseers of Tewksbury*, 2 N. J. L. 289 (1807) (“The place of the birth of a legitimate child is *prima facie* the place of his settlement”).

A child took on the domicile of his parents. Because any person incapable of establishing his own domicile had the domicile “of that person, on whom he depends for support,” it followed that generally “minor children ha[d] the settlement of their fathers.” *Inhabitants of Dedham v. Inhabitants of Natick*, 16 Mass. 135, 139 (1819); accord, 1 Twiss 238–239. So, if a child was born to foreigners who did not permanently reside here, the child was not domiciled here. See Law of Domicil 69; A. Dicey & J. Moore, Digest of the Law of England 103 (1896) (Dicey & Moore).

Finally, each person had one and only one domicile. “[E]very person must have a domicil somewhere,” and every person “can have only one domicil.” *Inhabitants of Abington v. Inhabitants of N. Bridgewater*, 40 Mass. 170, 177 (1839); accord, D. Field, *Outlines of an International Code* 147 (2d ed. 1876) (Field). “The supposition, that a man can have two domicils, would lead to the absurdest consequences.” *Inhabitants of Abington*, 40 Mass., at 177. A person can reside and intend to permanently remain in only one place at a time. And, “[n]o person according to the Law of Nations is without a Domicil.” 1 Twiss 239; accord, Field 147. So, if someone did not intend to remain where he was at the moment, the law ascribed that person his last such place as his domicile.

Because a person could have only one domicile, domicile was a natural criterion for citizenship. In the 19th century, dual citizenship was considered highly undesirable, if not a contradiction in terms. “[T]he general view was that ‘no one can have two countries.’” R. Mensel, *Jurisdiction in Nineteenth Century International Law and Its Meaning in the Citizenship Clause of the Fourteenth Amendment*, 32 *St. Louis U. Pub. L. Rev.* 329, 334 (2013) (alterations omitted). Dual citizenship led to a number of foreign-policy concerns, such as conflicting claims on the dual citizen during a war. Report of 1868, at 100; *Inhabitants of Abington*, 40 *Mass.*, at 177–178. Therefore, the United States did not “recogniz[e] a ‘double allegiance.’” H. R. Rep. No. 784, 43d Cong., 1st Sess., 23 (1874). Instead, under “our law” a citizen was “bound to be ‘true and faithful’ alone to our Government.” *Ibid.*; accord, *Savorgnan v. United States*, 338 U. S. 491, 500 (1950) (“The United States has long recognized the general undesirability of dual allegiances”). Because each person had one and only one domicile, domicile-based citizenship avoided the problems attendant to dual citizenship.

The principle that citizenship followed domicile also made it more likely that citizens would be attached to their country. As Alexander Hamilton envisioned it, the citizenry were the people who would join together against any threat—“a large body of citizens . . . who stand ready to defend their own rights and those of their fellow-citizens.” *The Federalist* No. 29, p. 185 (C. Rossiter ed. 1961); see also Report of 1868, at 95. As Frederick Douglass saw it, citizenship belonged to those who “fought and bled in the same battles,” and “gained and gloried in the same victories.” 2 *Douglass* 266. And, as this Court put it, it is to “the citizen” that “the country must look for its safety.” *United States v. Gettysburg Electric R. Co.*, 160 U. S. 668, 682 (1896). The “dignity and glory of American citizenship,” *Plessy*, 163

THOMAS, J., dissenting

U. S., at 555 (Harlan, J., dissenting), belongs to people who have a meaningful “tie [to] this country,” *Tuan Anh Nguyen v. INS*, 533 U. S. 53, 68 (2001). A domiciliary had, by definition, the sort of permanent attachment to a place that befitted him to citizenship. See, e.g., Law of Domicil 17; Koszta 20. A temporary visitor whose homeland was somewhere else, although he had legal rights and was entitled to dignified treatment, lacked the ties to this country that would make him fit for citizenship. He therefore was generally not eligible for naturalization, and his children were likewise not naturally citizens of their birthplace.¹

b

Once a person became domiciled in a place, he was considered no longer subject to any foreign power. A person was “subject” to the government of where he was “domiciled.” *The Pizarro*, 2 Wheat., at 246; see also *Gilman v. Gilman*, 52 Me. 165, 174 (1863); *Inhabitants of Abington*, 40 Mass., at 177–178. When a person traveled abroad, he remained subject to the power of his home nation—much like an American who travels abroad today remains subject to the power of this Government. As this Court explained,

¹Perhaps for this reason, although the United States welcomed settlers with its domicile-based approach, the baseline in most of the western world was often that only the children of citizens could be citizens. See, e.g., Aristotle’s *Politics* 102 (B. Jowett transl. 1920) (“[A] citizen is defined to be one of whom both the parents are citizens”); 2 T. Aquinas, *Summa Theologica*, Part I, 2d Part, Question 105, Art. 3, pp. 316–317 (Fathers of Eng. Dominican Province transl. 1952) (foreigners “were not at once admitted to citizenship” because “if foreigners were allowed to meddle with the affairs of a nation as soon as they settled down in its midst, many dangers might occur, since the foreigners not yet having the common good firmly at heart might attempt something hurtful to the people”); E. de Vattel, *Law of Nations* 101–102 (1797) (“[I]n order to be of the country, it is necessary that a person be born of a father who is a citizen; for if he is born there of a foreigner, it will be only the place of his birth, not his country”); P. Webster, *Law of Citizenship* 103–108 (1891) (collecting examples).

THOMAS, J., dissenting

if a person “goes into a foreign country” on a “temporary” visit, he remains subject to the power of his home country. *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 120 (1804); accord, *The Venus*, 8 Cranch, at 278. When a person moved to a country permanently, by contrast, he was no longer subject to the power of the country from which he originated: “[T]hose who reside[d]” in a new nation “from a permanent cause” became “subject to” the new nation. *Ibid.*; see also *Schooner Charming Betsy*, 2 Cranch, at 120; Cong. Globe, 37th Cong., 3d Sess., at 992 (statement of Sen. McDougall).

c

American legal authorities described a person as “subject to the jurisdiction” of the government of his domicile. *Hood v. Hood*, 93 Mass. 196, 199–200 (1865). Then, as now, governments exercised different types of authority over temporary visitors and permanent residents. A government “do[es] not apply the same Laws in all matters to persons who are only temporarily resident, as it applies to persons who are permanently resident within its territory.” 1 Twiss 217. So, while a government applied, among other things, its ordinary criminal laws to temporary visitors, it had a wide range of further powers only with respect to persons domiciled within it. For that reason, when someone was present in a territory but had a domicile elsewhere, although he was still amenable to the laws of the host government, that government would describe him as not “subject to our jurisdiction.” *Dorsey v. Dorsey*, 7 Watts 349, 351–352 (Pa. 1838). In contrast, when a party made “his habitual and usual domicile” in a place, he became (in 1860 parlance) “subject to the jurisdiction” thereof. *Mandeville v. Huston*, 15 La. Ann. 281, 282 (1860).²

²This characterization of jurisdiction as a function of domicile was common. See, e.g., *Harteau v. Harteau*, 31 Mass. 181, 182–183 (1833) (when parties “changed their domicile,” they were “not then subject to

THOMAS, J., dissenting

A person was “subject to the jurisdiction” of the government of his domicile because of the legal relationships that followed from domicile. “The fact of domicil” was “one of the highest importance to a person.” *Inhabitants of Abington*, 40 Mass., at 176. It was said that domicile “determines [a person’s] civil and political rights and privileges, duties and obligations; it fixes his allegiance; it determines his belligerent and neutral character in time of war; it regulates his personal and social relations, whilst he lives, and [it] furnishes the rule for the disposal of his property when he dies.” *Ibid.*

The legal relationships that followed from domicile—which collectively made a person subject to the jurisdiction of the government of his domicile—could be grouped into four categories.

First, domicile determined which government had the power to declare the law as to an individual’s most important personal affairs. Story on Conflict of Laws 51–52. The law governing personal affairs included the laws of marriage and divorce, which followed a couple’s domicile. *E.g.*, *Hood*, 93 Mass., at 199–200; *Ditson v. Ditson*, 4 R. I. 87, 93–94 (1856). It included laws governing the succession of a person’s estate, which was distributed “according to the law of distribution of the place of his domicil.” 2 J. Kent, Commentaries on American Law 67 (1848); accord, Wharton Treatise 1872, §20, at 34–35. And, it included laws governing a person’s age of majority, his capacity to contract, his right to sue, and his rights with respect to moveable property. See, *e.g.*, 1 W. Burge, Commentaries on Colonial and Foreign Laws 32 (1832); 1 Twiss 217–237; *Inhabitants of Abington*, 40 Mass., at 176; *Ditson*, 4 R. I., at 93–94. Jurisdiction over these personal affairs had “exclusive

the jurisdiction” of their original State); 1 Twiss 239 (“Domicil” was “the foundation of jurisdiction over persons”); F. Wharton, Conflict of Laws §35, p. 44 (1872) (Wharton Treatise 1872) (“domicil . . . fixes . . . the jurisdiction that attaches to the child”).

THOMAS, J., dissenting

operation given to it only with respect to persons domiciled.” 1 Twiss 237. Mere territorial presence was not enough. See, *e.g.*, Wharton Treatise 1872, §32, at 42–43; H. Wheaton, *Elements of International Law* 140–142 (8th ed. 1836).

Second, domicile determined which government had plenary jurisdiction over a person to regulate his actions anywhere. The law governing domiciliaries (unlike the law governing temporary visitors) had “effect given to it beyond the limits of [the] territory.” 1 Twiss 223; see also, *e.g.*, *Inhabitants of Hanover v. Turner*, 14 Mass. 227, 231 (1817); Wharton Treatise 1872, at 34–44, 519–521. And, as now, a government could exercise personal jurisdiction over domiciliaries while the domiciliaries were abroad and for their conduct abroad. See *id.*, at 519–521 (*in personam* judgment has “extra-territorial force” when rendered by government where “domiciled”); accord, *e.g.*, *id.*, at 481–482; *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U. S. 915, 924 (2011).

Third, domicile determined which government had the power to impose personal taxes on a person. The power to impose “personal and income taxes” depended on “the party’s domicil.” Wharton Treatise 1872, at 68; see also *id.*, at 34. A sovereign could tax the property in its territory belonging to anyone, but it could impose personal taxes—such as a capitation tax—only on persons domiciled within it. A person “not domiciled, is not within the jurisdiction of the assessors.” *Preston v. Boston*, 29 Mass. 7, 12 (1831). He “was not liable to taxation in the city for his poll, income and personal property” because “his residence and domicile was not in the city.” *Id.*, at 10; accord, *In re Hood’s Estate*, 21 Pa. 106, 115 (1853) (describing the “rule” of “great antiquity and of high obligation” that “taxation follows the domicil”). So, while “transient travellers” were “not liable for ordinary governmental or municipal taxes,” such taxes could “be collected from domiciled aliens.” Wharton

THOMAS, J., dissenting

Treatise 1872, at 48, 78. A nondomiciliary could recover taxes as improperly collected because he was—regardless of his territorial presence—“not subject to the jurisdiction” of the taxing authority. *Christ Church Hospital v. Philadelphia County*, 24 Pa. 229, 231 (1855).

Fourth, domicile determined which government owed a person protection when he went abroad. As this Court explained, “[t]he American citizen who goes into a foreign country, although he owes a local and temporary allegiance to that country, is yet, if he performs no other act changing his condition, entitled to the protection of our government.” *Schooner Charming Betsy*, 2 Cranch, at 120 (emphasis deleted); accord, Webster Report 2–3. So, before the Civil War, the Federal Government intervened to protect Americans abroad based on their domicile. See, e.g., *Kosztka* 8–27. A nonnaturalized domiciliary abroad was entitled to “protection as an American citizen.” *Id.*, at 18. The Department of State throughout the 19th century repeatedly confirmed “the right of persons domiciled in the United States, but not naturalized therein, to maintain internationally their status of domicil, and to claim protection from this Government in the maintenance of such status.” 2 Wharton Digest 487 (quoting 1885 Department of State instructions).

This protection abroad corresponded to the primary allegiance that the domiciliary owed his home government. When a person went “abroad for a time,” “his own state still possess[e]d a right to his allegiance.” W. Hall, *The Foreign Powers and Jurisdiction of the British Crown* 1–2 (1894). He “continue[d] under the obligations of [his home] allegiance, and his children, though born in a foreign country, [we]re not born under foreign allegiance.” *Ludlam*, 31 Barb., at 503. Although he owed a partial and temporary allegiance to his host nation, he was excused from military service and other obligations “distinctively associated with natural allegiance” because he owed “a prior and more binding allegiance to his own sovereign.” P. Hamburger,

THOMAS, J., dissenting

Beyond Protection, 109 Colum. L. Rev. 1823, 1847 (2009). Domicile was for that reason typically a prerequisite to, among other things, compulsory service in the militia. See H. Halleck, *International Law* 385 (1861); Cong. Globe, 37th Cong., 3d Sess., at 991 (statement of Sen. Doolittle); A. Swearer, *Interpreting the Citizenship Clause Within the Context of Contemporaneous Political Debates on Alien Conscription and Expatriation*, 2 *Tex. A & M J. L. & Civ. Gov.* 73, 86, 95–96 (2025). And, although America more than other nations supported the right to change that allegiance, it held that doing so required a change of domicile. See Webster Report 2–3.³

C

When Dred Scott sued for his freedom, he claimed to be a citizen of Missouri, the State of his domicile. Scott, a black man held in slavery, sued in a federal court, which could hear the case only if it was between “Citizens of different States.” U. S. Const., Art. III, §2. Scott argued that he was a citizen of Missouri and that the defendant, Sandford, was a citizen of New York. Scott, though, was not born in Missouri; he was born in Virginia but domiciled in Missouri.

³The Court claims that “the Government and the dissent identify no source that defined allegiance at birth as being based on domicile in the period from 1776 to 1868.” *Ante*, at 18. It is the Court that focuses on “allegiance,” but, in any event, many sources disprove the Court’s claim. See, e.g., *Ludlam v. Ludlam*, 31 Barb. 486, 503 (N. Y. Gen. Term 1860) (He “continues under the obligations of [his home] allegiance, and his children, though born in a foreign country, are not born under foreign allegiance”); *Inhabitants of Abington v. Inhabitants of N. Bridgewater*, 40 Mass. 170, 176 (1839) (“domicil . . . fixes his allegiance”); *The Santissima Trinidad*, 7 Wheat. 283, 347 (1822) (Story, J., for the Court) (a person cannot “throw off his own allegiance” without a “change of domicile”); *Hodgson v. DeBeauchesne*, 14 Eng. Rep. 920, 932 (Privy Council 1858) (“a settled domicile in a country, imports an allegiance to the country, very different, from a mere obedience to its laws during a temporary residence”); *Inhabitants of Calais v. Inhabitants of Marshfield*, 30 Me. 511, 520 (1849) (“consent or change of domicile” required for “allegiance”).

THOMAS, J., dissenting

See D. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* 240 (1978); Tr. of Record in *Dred Scott v. Sandford*, D. T. 1854, No. 137, p. 10. He alleged that he was a Missouri citizen because he and his family were brought there in 1838, “where they have ever since resided.” *Ibid.* He argued that the term “citizen” described “persons identified with the communities where they reside.” Brief for *Dred Scott* 5–6. In response to the argument that blacks could not vote and therefore were not citizens, Scott explained that “a person need not have acquired all these rights, it is only necessary that he should have acquired a domicile to enable him to sue as a ‘citizen.’” *Id.*, at 6. “[C]itizenship,” Scott argued—in terms that would have been familiar at the time—“means nothing but residence.” *Ibid.* (internal quotation marks omitted).

Nobody disagreed with the premise that Scott was domiciled in Missouri. Black slaves and freedmen alike were unambiguously Americans. They were “not foreigners.” Cong. Globe, 39th Cong., 1st Sess., at 1160 (statement of Rep. Shellabarger). They were not “aliens.” *Id.*, at 1117 (statement of Rep. Wilson). They “owed no foreign allegiance.” *Id.*, at 530 (statement of Sen. Johnson); accord, *Dred Scott*, 19 How., at 420. It was the dissimilarity of American blacks to foreigners that Frederick Douglass emphasized in his call for recognizing the citizenship of blacks: “We address you *not* as aliens nor as exiles, humbly asking to be permitted to dwell among you in peace.” 2 Douglass 255 (emphasis added). Instead, “We are Americans.” *Ibid.* So, “speaking the same language and being of the same religion, worshipping the same God, owing our redemption to the same Savior, and learning our duties from the same Bible,” Douglass reasoned, “we shall not be treated as barbarians.” *Id.*, at 256. American blacks were “liable to perform all the duties and support all the obligations of citizens.” Cong. Globe, 39th Cong., 1st Sess., at 1117 (statement of Rep. Wilson). They were domiciled in the United States,

THOMAS, J., dissenting

whether in slavery or freedom. See, *e.g.*, 4 R. Phillimore, Commentaries Upon International Law 96–97 (1861); accord, Law of Domicil 45; Brief for *Dred Scott* 6; Cong. Globe, 39th Cong., 1st Sess., at 1160 (statement of Rep. Shellabarger). *Dred Scott* was therefore a citizen of Missouri.

This Court disagreed. It held that Scott was not a citizen of Missouri—and therefore could not sue as a citizen—because of his race. According to the Court, blacks could not be citizens because they were “considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.” 19 How., at 404–405. As a result, the Court said, blacks were denied the basic privileges of citizenship—including the right to “keep and carry arms wherever they went” and to exercise the “full liberty of speech in public and in private.” *Id.*, at 417. They could not sue in federal court as state “citizens.” *Ibid.*

Justices McLean and Curtis dissented. Justice McLean would have ruled that Scott was “a citizen of Missouri” because he had a “permanent domicil in the State.” *Id.*, at 531. As he stated the law of citizenship, “[b]eing a freeman, and having his domicil in a State different from that of the defendant, he is a citizen.” *Ibid.* Likewise, Justice Curtis took the position, common at the time, see Part I–A, *supra*, that national citizenship was simply based on state citizenship. 19 How., at 581–582. He said that birthplace alone is not sufficient to be a national citizen, but that a person must be both born here and a citizen of a State. “[T]hose persons born within the several States, who . . . are citizens of the State, are thereby citizens of the United States.” *Id.*, at 582. State citizenship, of course, was based on domicile. See Part I–A, *supra*. Justice Curtis thus agreed that Scott was a citizen of Missouri. 19 How., at 588.

THOMAS, J., dissenting

Critics of the *Dred Scott* decision consistently took the position that citizenship should be based on birth and domicile regardless of race. Domicile, after all, was colorblind. In the words of Representative John Bingham of Ohio, soon to become a central figure in the crafting of the Fourteenth Amendment: “[A]ll free persons born and domiciled within the jurisdiction of the United States, are citizens of the United States from birth.” Cong. Globe, 35th Cong., 2d Sess., at 983. Blacks such as Dred Scott called America home, so they were citizens despite having been subordinated based on their race. As Representative Shellabarger would explain, “persons of African descent whose ancestors were slaves” were entitled to “citizenship” because they were “domiciled in our own country and continu[ed] here to reside.” Cong. Globe, 39th Cong., 1st Sess., at 1160. Likewise, Representative Philemon Bliss condemned *Dred Scott* and explained that all persons born here were citizens regardless of their race—“except” for children born to “temporary sojourners.” Cong. Globe, 35th Cong., 1st Sess., at 210.

Chief among the critics of *Dred Scott* was Abraham Lincoln. Soon after the Court released the decision, Lincoln declared that “[t]he Dred Scott decision is erroneous” and did “obvious violence to the plain unmistakable language of the Declaration [of Independence].” His Speeches and Writings 355, 360 (R. Basler ed. 1946). The case exacerbated national division over the issue of slavery and contributed to Lincoln’s election as President. See, e.g., 2 C. Warren, *The Supreme Court in United States History* 279–357 (1928). Lincoln vowed not to “acquiesce in it as a precedent,” but instead to “do what we can” to have it “overruled.” Lincoln, His Speeches and Writings, at 355.

During the Civil War, Union officials continued to define citizenship based on birth and domicile. Lincoln’s Attorney General Edward Bates wrote that the place of birth was “*prima facie*” evidence of citizenship, *Citizenship*, 10 Op.

THOMAS, J., dissenting

Atty. Gen. 382, 396 (1862), a rule that corresponded with the familiar rule that “place of birth” was “*prima facie*” evidence of domicile, *President and Fellows of Harvard College*, 22 Mass., at 375; see also 10 Op. Atty. Gen., at 388 (“[E]very citizen of the United States is a citizen of the particular State in which he is domiciled”). The Lincoln Administration deemed persons citizens if they were born and domiciled in the United States. See 10 Op. Atty. Gen. 321, 322 (1862) (“Mrs. Preto . . . was born in New Jersey, and, no doubt, at her father’s domicil,” so she was “therefore, born a citizen of the United States”). Congress’s discussion of who could be subject to a wartime conscription law focused on the distinction between temporary “sojourners” and those who settled here “with the intention of making their home” here—only the latter were “fully and completely subject to the law.” Cong. Globe, 37th Cong., 3d Sess., at 992 (statement of Sen. McDougall). For the purposes of conscription, children of foreigners born here were “American Citizens” if “permanently domiciled in the U. S.,” and could avoid conscription if their parents had not established a long-term residence in the United States.⁴ Even at a memorial service for Lincoln, prominent statesman George Bancroft confirmed that “every one born on [American] soil, with the few exceptions of the children of travellers and transient residents, owes [it] a primary allegiance.” Hon.

⁴Note of Major Gen. Hurlbut (Feb. 5, 1865), microformed on Microcopy No. 53, Roll 16, Vol. 27–29, Mar. 19, 1865–Feb. 4, 1867, NAID: 188124588, p. 70 National Publications, <https://catalog.archives.gov/id/188124588?objectPage=70> (archived at <https://perma.cc/N47D-V2NP>); see Letter from A. Atocha, Judge of the Provost Court, to Brig. Gen. Bowen (Nov. 12, 1863), microformed on NARA Record Group 94: Records of the Adj. Gen.’s Office, Series: Letters Received, 1863–Atocha, A A–File No. G480, NAID: 85651033, pp. 3–5 (National Archives & Records Admin), <https://catalog.archives.gov/id/85651033?objectPage=3> (archived at <https://perma.cc/6VN3-9L4W>); see I. Wurman, Jurisdiction and Citizenship, 49 Harv. J. L. Pub. Pol’y 315, 370–372 (2026).

THOMAS, J., dissenting

G. Bancroft’s Oration at the Obsequies of Abraham Lincoln (Apr. 25, 1865) *The Pulpit and Rostrum*, Nos. 34 & 35, p. 5.

D

After the Civil War, Congress vindicated Lincoln’s vow to overrule *Dred Scott*—first with the Civil Rights Act, then with the Citizenship Clause of the Fourteenth Amendment.

1

“Congress enacted the Civil Rights Act of 1866” to “repudiate *Dred Scott*.” *United States v. Vaello Madero*, 596 U. S. 159, 174 (2022) (THOMAS, J., concurring); see also E. Foner, *The Second Founding* 63 (2020). The Civil Rights Act of 1866 confirmed that former slaves were citizens, but it did not extend citizenship to foreign temporary visitors or Indians who were still within their tribes.

a

The Civil Rights Act guaranteed citizenship only to persons born here and “not subject to any foreign power.” In full, the citizenship provision of the Civil Rights Act, which formed the basis for the Citizenship Clause at issue in this case, stated:

“That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.” 14 Stat. 27.

Temporary visitors domiciled in a foreign country remained subject to a foreign power. See Part I–B–2, *supra*. The Civil Rights Act therefore “intentionally excluded” children of foreign temporary visitors. Brief for Former United States Attorney General Edwin Meese III as *Amicus Curiae* 4.

The congressional debates were clarifying on this score. When Senator Trumbull introduced the Civil Rights Act’s citizenship provision, he stated that the language excluded “persons temporarily resident” in the United States, whom

THOMAS, J., dissenting

“we would have no right to make citizens.” Cong. Globe, 39th Cong., 1st Sess., at 572. He had considered limiting the Civil Rights Act’s citizenship provision to persons “owing allegiance” to the United States, but he abandoned that terminology because temporary visitors owed a *partial* allegiance to the United States—and he wanted to make clear that the Act excluded them. *Ibid.* Likewise, when Representative James Wilson spoke in support of the Act in the House, he explained “that every person born in the United States is a natural-born citizen,” except, “it may be,” “children born on our soil to temporary sojourners.” *Id.*, at 1117.

Others confirmed that the Civil Rights Act excluded the children of temporary visitors. Representative Bingham described the Civil Rights Act as “simply declaratory” of pre-existing law, *id.*, at 1291, which, he had already explained, required that a citizen be both “born and domiciled” in the United States, Cong. Globe, 35th Cong., 2d Sess., at 983. Bingham understood the Act to grant citizenship only to children “of parents not owing allegiance to any foreign sovereignty.” Cong. Globe, 39th Cong., 1st Sess., at 1291. Representative Martin Thayer agreed that the Act required that a person “not ow[e] allegiance to a foreign Power.” *Id.*, at 1152. Of course, temporary visitors and their children owed allegiance to their home country. See Part I–B–2–c, *supra*. Unsurprisingly, then, the public interpreted the Act to guarantee citizenship to “all persons born in the United States,” except “those subject to foreign governments,” a class which included those born to “foreign parents temporarily sojourning in this country.” The Chicago Republican, Mar. 30, 1866, p. 4; see also K. Lash, *Prima Facie Citizenship*, 101 Notre Dame L. Rev. 101, 147 (2026).

b

The Civil Rights Act also excluded from citizenship “Indians not taxed.” This provision was intended to exclude

THOMAS, J., dissenting

Indians in tribes, but to recognize the citizenship of Indians who had left those tribes and joined the body politic. In Senator Trumbull’s words, it excluded Indians who “belong to the Indian tribes.” See Cong. Globe, 39th Cong., 1st Sess., at 572 (statement of Sen. Trumbull). But, it included Indians who were “no longer connected with their tribes” and instead lived and “earn[ed] a livelihood in the white settlements.” *Ibid.* (statement of Sen. Ramsey). Tribal Indians were “[c]onsidered virtually as foreigners,” but “[w]henver they [we]re separated from those tribes, and c[a]me within the jurisdiction of the United States so as to be counted, they [we]re citizens of the United States.” *Ibid.*

Like temporary visitors, tribal Indians were not completely subject to the jurisdiction of the United States. The United States did not have the right to impose personal taxes on them—hence, “Indians not taxed.” See, e.g., *Elk v. Wilkins*, 112 U. S. 94, 99 (1884); *Goodell v. Jackson*, 20 Johns. 693, 710 (N. Y. 1823). Their personal affairs remained subject to the jurisdiction of their tribal nation. “The right of self-government” was “secured to each tribe, with jurisdiction over all persons and property within its limits, subject to certain exceptions, founded on principles somewhat analogous to the international laws among civilized nations.” H. R. Rep. No. 474, 23d Cong., 1st Sess., p. 18 (1834); accord, 7 Op. Atty. Gen. 174–175 (1855). The United States did not interfere “with the disposition, or descent, or tenure of their property, as between themselves,” or “prove their wills,” or subject them to the “laws of marriage and divorce,” or subject them to the “laws of the *United States*, against high treason.” *Goodell*, 20 Johns., at 710. Tribal Indians did not owe the United States primary allegiance and did not receive from it complete protection. See *ibid.*; T. Cooley, General Principles of Constitutional Law 243 (1880); *Elk*, 112 U. S., at 99; *id.*, at 119 (Harlan, J. dissenting); H. R. Rep. No. 474, at 18–20; see also B. Tennant, “Excluding Indians Not Taxed”: *Dred Scott*, *Standing*

THOMAS, J., dissenting

Bear, Elk and the Legal Status of Native Americans in the Latter Half of the Nineteenth Century, 86 Int'l Soc. Sci. Rev. 24, 29 (2011) ("Native Americans were comparable to foreigners because they did not fall completely under U. S. jurisdiction").

Indians in tribes were not covered by the Civil Rights Act's exclusion of persons "subject to any foreign power" because Indian tribes were not "foreign." They were "domestic dependent nations." *Cherokee Nation v. Georgia*, 5 Pet. 1, 17 (1831). Thus, to preserve the status quo that tribal Indians were not citizens, Congress used the clause "not subject to any foreign power, excluding Indians not taxed." 14 Stat. 27.

2

Although the Civil Rights Act by its terms overruled *Dred Scott*, the Reconstruction Congress could not be sure that it would endure. Some questioned whether Congress had the constitutional power to enact the Civil Rights Act and thus feared that a hostile court might neuter it. See *Vaello Madero*, 596 U. S., at 175 (THOMAS, J., concurring). Others worried that "as soon as the Democrats came into power," they would repeal the Act. H. Flack, *The Adoption of the Fourteenth Amendment* 95 (1908); accord, Foner, *The Second Founding*, at 68–71. Thus, when it passed the Civil Rights Act, the Reconstruction Congress was already drafting the Fourteenth Amendment. See *id.*, at 55–92; K. Lash, *The Origins of the Privileges or Immunities Clause, Part II*, 99 *Geo. L. J.* 329, 349 (2011). Two months later, Congress would formally propose the Citizenship Clause of the Fourteenth Amendment to the States. See *Hurd v. Hodge*, 334 U. S. 24, 32, n. 11 (1948). The States ratified the Amendment in 1868.

The Citizenship Clause of the Fourteenth Amendment constitutionalized the Civil Rights Act's citizenship provision. The "main object" of the Clause was to settle "the

THOMAS, J., dissenting

citizenship of freed [slaves].” *Elk*, 112 U. S., at 101. In full, the Citizenship Clause provided:

“All 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.” Amdt. 14, §1.

This language, all agreed, “unambiguously overruled this Court’s contrary holding in *Dred Scott v. Sandford*, 19 How. 393 (1857), that the Constitution did not recognize black Americans as citizens of the United States or their own State.” *McDonald v. Chicago*, 561 U. S. 742, 807–808 (2010) (THOMAS, J., concurring in part and concurring in judgment); see also *Slaughter-House Cases*, 16 Wall., at 73. The “Citizenship Clause ‘forever closed the door on *Dred Scott*’ and ‘constitutionalized the Civil Rights Act of 1866’” by foreclosing a racial criterion for citizenship. *Vaello Madero*, 596 U. S., at 175 (THOMAS, J., concurring) (quoting K. Lash, *The Fourteenth Amendment and the Privileges and Immunities of American Citizenship* 171 (2014)); see also *Slaughter-House Cases*, 16 Wall., at 73; *id.*, at 94–95 (Field, J., dissenting).

The Citizenship Clause did not change the Civil Rights Act’s rule. The Clause and the Act were passed by the same Congress during the same session. See *Hurd*, 334 U. S., at 32. Senator Howard, who proposed the Citizenship Clause, believed that it hardly warranted discussion because Congress had just enacted the same rule in the Civil Rights Act. The Senate had “so fully discussed” “the question of citizenship” as “not to need any further elucidation.” Cong. Globe, 39th Cong., 1st Sess., at 2890. He also stated that the Citizenship Clause “is simply declaratory of what I regard as the law of the land already.” *Ibid.* Senator Trumbull, who had introduced the Civil Rights Act’s citizenship provision, confirmed that “[t]he object to be arrived at is the same.” *Id.*, at 2893–2894. Senator Johnson had “no doubt” that “all

THOMAS, J., dissenting

that this amendment provides is, that all persons born in the United States and not subject to some foreign Power” are “citizens of the United States.” *Id.*, at 2893. To be a “citizen,” Senator Howard said, meant to be “not a subject of a foreign Power.” *Id.*, at 2895.

The phrase “subject to the jurisdiction” was a familiar way to describe the relation of a domiciliary to his home nation. See Part I–B–2–c, *supra*. Lawyers in America would have known that a person was “subject to the jurisdiction” of the place of his domicile. *Hood*, 93 Mass., at 199–200. Congressmen confirmed that the Clause should not be construed to refer to the bare territorial power that a sovereign exercises over all persons in its territory. “I understand the words here, ‘subject to the jurisdiction of the United States,’” Senator Reverdy Williams said, “to mean fully and completely subject to the jurisdiction of the United States.” Cong. Globe, 39th Cong., 1st Sess., at 2897. “[T]he word ‘jurisdiction,’ as here employed,” Senator Howard explained, “ought to be construed so as to imply a full and complete jurisdiction”—“the same jurisdiction in extent and quality as applies to every citizen of the United States now.” *Id.*, at 2895. The Citizenship Clause, Senator Trumbull agreed, “means ‘subject to the *complete* jurisdiction thereof.’” *Id.*, at 2893 (emphasis added). So, although, “in one sense, all persons born within the geographical limits of the United States are subject to the jurisdiction of the United States,” Senator Williams explained, some were not covered by the Citizenship Clause because they “are not subject to the jurisdiction of the United States in every sense.” *Id.*, at 2897. Each of these descriptions precluded applying the Citizenship Clause to the children of temporary visitors, who—unlike children domiciled here—were not subject to the jurisdiction of the United States in every sense.

It was on this basis that Congressmen believed that the Clause fixed in place the rule of the Civil Rights Act.

THOMAS, J., dissenting

Senator Trumbull stated that the Citizenship Clause, like the Civil Rights Act, would still exclude all persons subject to a foreign power: “What do we mean by ‘subject to the jurisdiction of the United States?’ Not owing allegiance to anybody else. That is what it means.” *Id.*, at 2893. Senator Howard agreed that the Citizenship Clause “w[ould] not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States.” *Id.*, at 2890. And, shortly before the Citizenship Clause was introduced, Senator William Fessenden, a supporter of the Amendment, explained that “persons may be born in the United States and not be citizens of the United States,” then gave the example of “a person [who] is born here of parents from abroad temporarily in this country.” *Id.*, at 2769; see Lash, 101 Notre Dame L. Rev., at 151–152.

The Citizenship Clause, just like the Civil Rights Act, also excluded from citizenship the children of tribal Indians—meaning Indians whose tribes retained sovereign authority over them. “Certainly,” Senator Howard said, “gentlemen cannot contend that an Indian belonging to a tribe, although born within the limits of a State, is subject to this full and complete jurisdiction.” Cong. Globe, 39th Cong., 1st Sess., at 2895. As Senator Trumbull saw it, tribal Indians were excluded because they, like temporary visitors, retained a primary allegiance to, and therefore were subject to, their tribal nation: “It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government that he is ‘subject to the jurisdiction of the United States.’” *Id.*, at 2893. He concluded: “It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens.” *Ibid.* Congress was satisfied that its language accomplished that result with the phrase “subject to the jurisdiction thereof.” As Senator Williams explained, “I would

THOMAS, J., dissenting

not agree to this proposed constitutional amendment if I supposed it made Indians not taxed citizens of the United States. But I am satisfied that, giving to the amendment a fair and reasonable construction, it does not.” *Id.*, at 2897.

The Citizenship Clause used different wording from the Civil Rights Act only to resolve an uncertainty that had arisen out of the Act’s “Indians not taxed” language. Senator Trumbull explained that the category of “Indians not taxed” was an attempted proxy for the Indians over whom the United States lacked complete jurisdiction: The Civil Rights Act was supposed to “designate a class of persons who were not a part of our population,” so it was supposed to exclude tribal Indians while including Indians who “come within the jurisdiction of the United States.” *Id.*, at 572. The former could not be “taxed,” in the sense of personal taxes. See Parts I–B–2–c, I–D–1–b, *supra*. But, the phrase “excluding Indians not taxed,” Trumbull realized, could be misunderstood to encompass Indians who had left their tribal community and permanently settled outside of it, but were not taxed for other reasons—such as because they were “not possessed of wealth.” Cong. Globe, 39th Cong., 1st Sess., at 2894. Similarly, making citizenship depend on taxation could allow States to manipulate citizenship eligibility by changing their tax practices. *Id.*, at 2895 (statement of Sen. Howard).

The phrase “subject to the jurisdiction” solved the problem because it avoided excluding from citizenship the children of nontribal Indians who for whatever reason were not taxed. Tribal Indians were not in “any sense” “subject to the complete jurisdiction of the United States.” Cong. Globe, 39th Cong., 1st Sess., at 2893 (statement of Sen. Trumbull). Like temporary visitors, tribal Indians were “not subject to our jurisdiction in the sense of owing allegiance solely to the United States.” *Id.*, at 2894. Their internal affairs—including marriages, family matters, intestacy, and payment of personal taxes—were regulated by

THOMAS, J., dissenting

their tribes. See Part I–D–1–b, *supra*. Thus, “members of Congress understood [the Fourteenth Amendment’s] language to be more precisely describing, not substantively altering, the set of individuals excluded from birthright citizenship by the Civil Rights Act.” M. Shawhan, Comment, The Significance of Domicile in Lyman Trumbull’s Conception of Citizenship, 119 Yale L. J. 1351, 1353 (2010); accord, Lash, 101 Notre Dame L. Rev., at 159.

With respect to temporary visitors from foreign nations, the phrase was believed to accomplish the same object as the Civil Rights Act’s exclusion of those “subject to” a foreign power. Children born to temporary visitors owed allegiance to another government—the country of their domicile—so they were not subject to the jurisdiction of the United States. “[T]he Citizenship Clause simply states in positive terms (‘subject to the jurisdiction thereof’) what the Act stated in negative terms (‘not subject to any foreign power’).” Brief for Sen. Eric Schmitt et al. as *Amici Curiae* 18.

E

1

The evidence from the decades following ratification confirms that the Citizenship Clause was understood to exclude the children of temporary visitors. There was frequently expressed, enduring, and widespread agreement, from the Reconstruction Congress through the end of the 19th century (and even into the 20th), that the Citizenship Clause did not guarantee citizenship to persons not domiciled here. The Executive Branch, Congress, courts, States, lawyers, scholars, and commentators generally shared this understanding.

a

The Executive Branch understood the Citizenship Clause to exclude the children of temporary visitors. In 1873,

THOMAS, J., dissenting

President Grant’s Attorney General George Williams interpreted it to apply only to persons over whom the United States had complete jurisdiction: “[T]he word ‘jurisdiction’ must be understood to mean absolute or complete jurisdiction, such as the United States had over its citizens before the adoption of this amendment.” 14 Op. Atty. Gen. 295, 300. It therefore excluded “[a]liens” over whom the United States had “only” a “limited” jurisdiction, even if they were “born here.” *Ibid.*⁵

Across administrations, the Executive Branch took the same position. A child born on American soil was not an American citizen when he was “domiciled in” a foreign country. Letter from Sec. of State T. Bayard to B. Winchester (Nov. 28, 1885), in 2 Wharton Digest 399–400. By virtue of his foreign domicile, he was “on his birth ‘subject to a foreign power’ and ‘not subject to the jurisdiction of the United States.’” *Ibid.* “A child born in this country to a foreign father, when taken by his father abroad, acquires the father’s domicil and nationality.” Letter from Sec. of State F. Frelinghuysen to M. Cramer (June 4, 1883), in *id.*, at 397. These statements were not mere abstract positions, but the Executive Branch’s operating rule of decision for decades.

When the children of temporary visitors born on American soil claimed to be citizens based on the Citizenship Clause, the Executive Branch repeatedly denied their claims to citizenship:

- Joseph Speck was denied citizenship after being born in the United States to parents domiciled in Switzerland. In 1878, Speck claimed to be a citizen after his

⁵This interpretation was shared by Ebenezer Hoar, a prior Attorney General for President Grant. Hoar too believed that, under the Citizenship Clause, “a child born within the United States of parents who are not citizens” is not himself a citizen unless “domiciled” in the United States. 2 Cong. Rec. 3279 (1874); see also J. Lollman, Note, The Significance of Parental Domicile Under the Citizenship Clause, 101 Va. L. Rev. 455, 474–475 (2015).

THOMAS, J., dissenting

father returned with him to Switzerland. President Hayes’s Acting Secretary of State Frederick Seward rejected his claim. Although Speck may have been able to claim citizenship had he been domiciled in the United States, Seward denied his claim because “his status, as well as his domicil, according to the well-understood principles of international and municipal law, follows that of the father until the boy attains his majority.” Letter from Acting Sec. of State F. Seward to H. Fish (Aug. 20, 1878), in *id.*, at 396.

- Ludwig Hausding was denied citizenship after being born in the United States to parents domiciled in Saxony. Hausding’s parents were “Saxon subjects, temporarily in the United States.” Letter from Sec. of State F. Frelinghuysen to J. Kasson (Jan. 15, 1885), in *Papers Relating to the Foreign Relations of the United States* 395 (1886). President Cleveland’s Secretary of State Frederick Frelinghuysen explained in 1885 that Hausding was not constitutionally entitled to citizenship. Because Hausding’s parents were not domiciled here, he remained “subject to any foreign power.” *Ibid.* Therefore, his attempt to “assert citizenship on the ground of birth in the United States” was “untenable.” *Ibid.*; see also 2 Wharton Digest 397–399.
- Richard Greisser was denied citizenship after being born in the United States to parents domiciled in Germany. He was “born in 1867 in the State of Ohio.” Letter from Sec. of State T. Bayard to B. Winchester (Nov. 28, 1885), in *id.*, at 399. His father was “domiciled in Germany.” *Ibid.* According to President Cleveland’s Secretary of State Thomas Bayard in 1885, Greisser therefore “was on his birth ‘subject to a foreign power’ and ‘not subject to the jurisdiction of the United States.’” *Id.*, at 400. He was “not, therefore, under the statute and the Constitution a citizen of the United

THOMAS, J., dissenting

States by birth.” *Ibid.* The State Department thus denied Greisser’s claim to citizenship. *Ibid.*

- Freiderich de Bourry was denied citizenship after being born in the United States to parents domiciled in Austria. When de Bourry sought protection as an American citizen in 1886 after returning to Europe, Secretary Bayard denied his claim to citizenship. Although de Bourry was “born in the city of New York,” Secretary Bayard explained, his parents were “temporarily resident” and returned to Europe a few years later. Letter from Sec. of State T. Bayard to J. Lee (July 24, 1886), in *id.*, at 401. He then remained in Europe, showing that “an Austrian domicile was chosen.” *Id.*, at 402. Secretary Bayard concluded that De Bourry’s “passport must therefore be refused.” *Ibid.*
- The child of a woman named Mary Deveraux was denied citizenship after being born in the United States in 1889. Deveraux was an Irish woman who arrived in New York and promptly went to the hospital to give birth the next day. She was not yet, however, lawfully admitted to the country. Although the baby was undoubtedly “born on American soil,” it was not an American citizen because Deveraux had not yet been lawfully admitted. See Letter from F. Reeve, Acting Solicitor of the Treasury, to W. Windom, Secretary of the Treasury (Mar. 4, 1890), in 11 Documents of the Assembly of the State of New York, pp. 47–48 (1890). President Harrison’s Administration denied the baby citizenship: “I am, therefore, of the opinion that the child in controversy born during the temporary removal of the mother from the importing vessel to a lying-in hospital for her own comfort, pending further examination as to whether she belongs to the prohibited class of immigrants, did not become, by reason of its birth, under such circumstances, an American citizen.”

THOMAS, J., dissenting

Id., at 48; see A. Swearer, Subject to the [Complete] Jurisdiction Thereof, 24 Tex. Rev. L. & Pol. 135, 171 (2020).

These children were not born to diplomats. They were not part of invading armies or Indian tribes. They were simply foreigners, born on American soil but not domiciled here. And, they were all denied citizenship under the Citizenship Clause—by those in a better position to know its original meaning than we are today. See also 2 Wharton Digest 393–402; P. Webster, Law of Citizenship in the United States: Treated Historically 109–129 (1891).⁶

Even the most expansive executive interpretation of the Citizenship Clause ultimately denied citizenship to a child born here but domiciled abroad. When Francois Heinrich, born of parents who ultimately returned to their native Austria, claimed to be an American citizen, President Grant’s Executive Branch did say that he was “‘originally clothed with American nationality.’” *Ante*, at 13 (majority opinion). But, it then promptly denied Heinrich’s claim to American citizenship. Heinrich was instead—despite being born in the United States—a citizen of Austria, where he was domiciled: “Francois A. Heinrich should be held by the United States to be an Austrian subject, and treated as such; . . . he is not an American citizen.” Letter from Sec. of State H. Fish to Baron Lederer (Dec. 24, 1872), in 2 Wharton Digest 395–396.

b

Congress understood the Citizenship Clause to exclude the children of temporary visitors. Just two years after the

⁶Sometimes, children born to lawful foreigners could “elect one allegiance and repudiate the other” upon “reaching full age” by becoming domiciled in the United States. F. Wharton, Conflict of Laws 35 (2d ed. 1880) (Wharton Treatise 1880). But, they were not guaranteed citizenship by birth alone, and they were not guaranteed citizenship without domicile.

THOMAS, J., dissenting

Fourteenth Amendment was ratified, Congress passed the Enforcement Act of 1870. The Act implemented the Citizenship Clause with the same language that the Civil Rights Act had used, limiting the right to citizenship to persons born here and “not subject to any foreign power.” Enforcement Act of 1870, §18, 16 Stat. 144 (reenacting Act of Apr. 9, 1866, 14 Stat. 27). The 1870 Act thus incorporated language that expressly excluded the children of temporary foreign visitors, who were subject to the power of the foreign countries in which they were domiciled. See Part I–B–2, *supra*. If the Citizenship Clause included the children of temporary visitors—who clearly fall outside the reach of the Enforcement Act—then the Reconstruction Congress would have violated its own Citizenship Clause in an Act designed to enforce it. See Brief for Professor Richard Epstein as *Amicus Curiae* 8. The parties point to no one who suggested that the 1870 Act was unconstitutional.

c

This Court long agreed that the Citizenship Clause did not apply to persons born here to children of temporary visitors. Just five years after the Citizenship Clause was ratified, this Court explained that the phrase “subject to the jurisdiction” excluded persons not domiciled here: “The phrase ‘subject to its jurisdiction,’” the Court explained, “was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states born within the United States.” *Slaughter-House Cases*, 16 Wall., at 73.

Then, in *Elk*, the Court again interpreted the Clause to require complete jurisdiction, not just bare territorial authority. The Court held that to satisfy the Citizenship Clause, a person must not only be “born within the territorial limits of the United States,” but must be “completely subject” to the United States’ “political jurisdiction” at birth. 112 U. S., at 102. The Citizenship Clause’s “evident

THOMAS, J., dissenting

meaning,” this Court said, “is, not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to [its] political jurisdiction, and owing [it] direct and immediate allegiance.” *Ibid.* The Citizenship Clause thus granted citizenship at birth only to persons who “ow[ed] no allegiance to any alien power.” *Id.*, at 101. Of course, the children of temporary visitors were not completely subject to the United States’ political jurisdiction, did not owe the United States direct and immediate allegiance, and did owe allegiance to an alien power. See Part I–B–2, *supra*.

Justice Harlan dissented in *Elk*, but he agreed that the Citizenship Clause referred to the same “complete jurisdiction.” *Id.*, at 117. He dissented only because he thought that someone born in the territorial United States could become a citizen even if he became subject to its complete jurisdiction later in life. On Justice Harlan’s view, which was not uncommon at the time, the Citizenship Clause did not require that the person be born *while* subject to the complete jurisdiction of the United States. *Id.*, at 116–121. Instead, a person could be born in the United States while not subject to its jurisdiction—as John Elk was because he was a member of an Indian tribe at birth—but become subject to its jurisdiction later—as Elk did by “abandoning his tribe.” *Id.*, at 122. On Justice Harlan’s view, following the law of domicile, persons became subject to the jurisdiction of the United States “by becoming bona fide residents of States” and “subject to taxation” there. *Id.*, at 120–122; see also *id.*, at 122 (explaining that one becomes “subject to the complete jurisdiction of the United States” “by residence in one of the States”). Every Justice in *Elk* thus agreed that the Citizenship Clause did not refer to bare territorial authority.

The most celebrated Fourteenth Amendment opinion is Justice Harlan’s dissent in *Plessy v. Ferguson*. In that dissent, Justice Harlan disagreed with the *Plessy* Court’s

THOMAS, J., dissenting

conclusion that the Constitution tolerated state-imposed segregation. Justice Harlan took the position, to be vindicated decades later, that “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens.” 163 U. S., at 559. He also took a view on whom the Citizenship Clause applied and did not apply to. According to Justice Harlan, the Citizenship Clause did not apply to persons born here who resided abroad. Instead, it “gave citizenship to all born or naturalized in the United States *and residing here.*” *Id.*, at 563 (emphasis added).

d

State officials likewise agreed that the Citizenship Clause excluded persons not domiciled here. Although the Citizenship Clause guaranteed both national and state citizenship, States excluded from citizenship “children of transient aliens.” Political Code of California §51(1) (1872); accord, *e.g.*, Rev. Codes of N. D. §11(1), p. 64 (1895) (“The citizens of the state are: All persons born in this state and residing within it, except the children of transient aliens”); The Complete Codes and Statutes of the State of Montana §71(1), p. 5 (W. Sanders ed. 1895) (“The citizens of the State are: All persons born in this State and residing within it, except the children of transient aliens”). Nobody seemed to suggest that these state laws violated the Fourteenth Amendment.

Likewise, state judicial precedent held that the Citizenship Clause included children born of foreign parents only “when the parents are domiciled here.” *Benny v. O’Brien*, 58 N. J. L. 36, 40 (1895). To qualify for citizenship, “[t]wo facts must concur[:] the person must be born here, and he must be subject to the jurisdiction of the United States according to the fourteenth amendment, which means, according to the Civil Rights act, that the person born here is not subject to any foreign power.” *Id.*, at 39. The

THOMAS, J., dissenting

Citizenship Clause thus “excepted” those “born in this country of foreign parents who are temporarily traveling here.” *Ibid.*

2

Scholars agreed, as well, that the Citizenship Clause required domicile. As early as 1875, Yale Law School Professor William Robinson wrote that a “native-born citizen” was “one who was born within the jurisdiction and allegiance of the United States.” Notes on Elementary Law, at 70. And, to be born within the jurisdiction and allegiance of the United States, a person “born within the territory of the United States, of alien parents,” had to show that those parents were “permanently domiciled within the United States.” *Ibid.*

A long list of eminent 19th-century legal scholars—including Thomas Cooley, Francis Wharton, Henry Campbell Black, and Justice Samuel Miller—agreed. Cooley wrote that “a citizen by birth must not only be born within the United States, but he must also be subject to the jurisdiction thereof; and by this is meant that full and complete jurisdiction to which citizens generally are subject, and not any qualified and partial jurisdiction, such as may consist with allegiance to some other government.” General Principles of Constitutional Law 243. Francis Wharton explained that children “born in the United States” of “parents not being here domiciled, are not citizens.” Wharton Treatise 1880, at 41; see also 2 Wharton Digest 393–394 (Citizenship Clause “exclude[d] children born in the United States to foreigners here on transient residence, such children not being by the law of nations ‘subject to the jurisdiction of the United States’”). Henry Campbell Black—of Black’s Law Dictionary—wrote: “[I]f a stranger or traveler passing through the country, or temporarily residing here, . . . has a child born here, who goes out of the country with his father, such child is not a citizen of the United States,

THOMAS, J., dissenting

because he was not subject to its jurisdiction.” Handbook of American Constitutional Law 458 (1895). By contrast, “the children, born within the United States, of permanently resident aliens, . . . are citizens.” *Id.*, at 458–459. And, Justice Samuel Miller confirmed in his lectures on constitutional law that if a “traveller . . . temporarily residing in this country . . . has a child born here which goes out of the country with its father, such child is not a citizen of the United States, because it was not subject to its jurisdiction.” Lectures on the Constitution of the United States 279 (1891).

Scholar after scholar confirmed that domicile was required for citizenship. “The words ‘subject to the jurisdiction thereof,’ exclude[d] the children of foreigners transiently within the United States.” A. Morse, *Treatise on Citizenship* 248 (1881). The Citizenship Clause excluded the “children of foreign subjects, born while the latter transiently sojourn here.” M. Lesser, *Citizenship and Franchise*, 4 *Colum. L. Times* 113, 146 (1891). “[T]he children of foreigners, in transient residence, are not citizens, their fathers being subject to the jurisdiction less completely than Indians.” Hall, *The Foreign Powers and Jurisdiction of the British Crown*, at 63; see also W. Hall, *International Law* 236–237 (4th ed. 1895) (“In the United States it would seem that the children of foreigners in transient residence are not citizens”). “[T]he requirement of personal subjection to the ‘jurisdiction thereof’” excludes “children of persons passing through or temporarily residing in this country.” B. Winchester, *Citizenship in Its International Relation*, 31 *Am. L. Rev.* 504 (1897).

As immigration laws became more restrictive, some adopted the view that children must be born to citizens to obtain citizenship by birth. In contesting that view, its detractors spoke in terms of domicile. Prominent jurist Henry C. Ide, for example, published an article arguing that whether “the very fact of birth in our country render[s] one

THOMAS, J., dissenting

‘subject to the jurisdiction thereof’” depends on “the question of domicile.” *Citizenship By Birth—Another View*, 30 *Am. L. Rev.* 241, 248 (1896). The “‘jurisdiction’ referred to in the amendment means political national jurisdiction and not merely the jurisdiction of our laws.” *Id.*, at 247. “One born of parents temporarily in our country” is not constitutionally guaranteed citizenship because he “is not born with the stamp of domicile,” so the “elements of national jurisdiction are wanting.” *Id.*, at 248. By contrast, Ide contended, persons “domiciled but not naturalized” are “*de facto* though not *de jure* citizens of the country of their domicile,” so “[t]heir children should be deemed *de jure* as well as *de facto* citizens.” *Id.*, at 249 (internal quotation marks omitted).⁷

3

In *United States v. Wong Kim Ark*, 169 U. S. 649, this Court interpreted the Citizenship Clause to apply to a person born and domiciled here.

The case, and the arguments made in it, arose out of the unique circumstances of Chinese immigration in the late-19th century. Hundreds of thousands of Chinese immigrated to the United States during this time. They were met with considerable hostility. By statute, Chinese settlers could not be naturalized. See *In re Ah Yup*, 1 F. Cas.

⁷Throughout this time, Indians in tribes born on American soil continued to be viewed as noncitizens. Their citizenship evolved not through any changes to the interpretation of the Citizenship Clause, but through changes in statutory law. Congress in 1887, effectively adopting Justice Harlan’s dissent in *Elk v. Wilkins*, 112 U. S. 94 (1884), as a matter of policy, granted citizenship to “every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life.” Act of Feb. 8, 1887, §6, 24 Stat. 390. And, Congress declared Indians in tribes citizens in the 1924 Indian Citizenship Act. See Act of June 2, 1924, ch. 233, 43 Stat. 253.

THOMAS, J., dissenting

223, 223–225 (CC Cal. 1878); *Fong Yue Ting v. United States*, 149 U. S. 698, 724 (1893). Congress then banned Chinese immigration in the Chinese Exclusion Act of 1882. See Act of May 6, 1882, ch. 126, 22 Stat. 58–61. Meanwhile, if a Chinese person renounced his allegiance to China, the Chinese Government could behead him upon his return, sell his family as slaves, and banish his relatives. See *Wong Kim Ark*, 169 U. S., at 725, n. 1; Justice John Marshall Harlan: Lectures on Constitutional Law, 1897–98, Lecture No. 27 (May 7, 1898), in 81 Geo. Wash. L. Rev. Arguendo 12, 345 (B. Frye, J. Blackman, & M. McCloskey eds. 2013). Given the era’s concern with dual citizenship, see Part I–B–2–a, *supra*, this policy made it even more difficult for Chinese immigrants to fully settle in the United States. See *Wong Kim Ark*, 169 U. S., at 725–726 (Fuller, C. J., dissenting).

Unlike other settlers, then, the Chinese—even those who lived here and wished to remain—had no path to citizenship and no means of freeing themselves from the grasp of China. The Executive Branch took the view that because domicile no longer ensured full integration into the American body politic, the Citizenship Clause’s phrase “subject to the jurisdiction” must require more than domicile. That view would entail that a child born to Chinese parents domiciled in this country was not a citizen. Instead, the Executive Branch sought to replace the requirement of domicile, which would make any child of domiciled Chinese immigrants a citizen, with the requirement that a person’s parents already be citizens. See Brief for United States in *United States v. Wong Kim Ark*, O. T. 1895, No. 904, pp. 23–34; see also, *e.g.*, *In re Look Tin Sing*, 21 F. 905, 906 (Cal. 1884). Acting on this view, the Government in 1895 denied citizenship to a man domiciled in the United States from birth.

The stipulated facts were these. See *Wong Kim Ark*, 169 U. S., at 652–653. *Wong Kim Ark* was born in San

THOMAS, J., dissenting

Francisco in 1873, and his legal home was California. His parents were not temporary visitors. They were not illegal aliens. See Tr. of Record in *United States v. Wong Kim Ark*, O. T. 1897, No. 132, p. 6. Instead, Wong’s parents “had done everything within their power to express their desire and intent to become Americans.” *Post*, at 27 (ALITO, J., dissenting). They came to settle in America. After Wong traveled to China in 1890, he returned and was admitted to the United States as a citizen. But, after his second trip to China in 1894, the American customs collector denied him permission to re-enter. The Government claimed, for the first time, that Wong was not a citizen.

This Court’s decision in *Wong Kim Ark* concerned only persons already domiciled in the United States. As stated in the Government’s brief, the “question presented by this appeal” was: “Is a person born within the United States of alien parents domiciled therein a citizen thereof by the fact of his birth?” Brief for Appellant in *Wong Kim Ark*, O. T. 1895, No. 904, p. 2 (emphasis deleted). The Government agreed that Wong was born and domiciled in the United States. *Id.*, at 23; see also Brief for United States in *Wong Kim Ark*, O. T. 1896, No. 449, pp. 2–3. In fact, the thrust of the Government’s opening brief was that birth and domicile were insufficient. The Government lamented “the mistakes made and the misunderstanding arising from failing to distinguish between nationality and domicile.” Brief for Appellant in *Wong Kim Ark*, O. T. 1895, No. 904, at 13; see also Reply Brief in *Wong Kim Ark*, O. T. 1896, No. 449, at 9–10. It disapproved of the decisions of “some of our Attorneys-General and Secretaries of State” for their “error of failing to distinguish between nationality and domicile.” *Id.*, at 10. It acknowledged that state citizenship was based on domicile, but argued that a different rule should govern national citizenship to “preserve the distinction between State and national sovereignty.” *Id.*, at 17. “The Constitution does not countenance,” the Government argued,

THOMAS, J., dissenting

making “*domicile* an element of nationality.” *Id.*, at 29. The Court was not persuaded and ruled that Wong, born in the United States to parents domiciled here, was a citizen.

The Court found it so important that Wong and his parents were domiciled in the United States at the time of his birth that it gratuitously insisted upon that fact throughout its opinion. The Court’s introductory paragraph stated seven different ways that Wong was domiciled in the United States: He was born to parents who were “at the time of his birth *domiciled residents* of the United States.” 169 U. S., at 652 (emphasis added). His parents were “enjoying a *permanent domicile* and *residence* therein at San Francisco.” *Ibid.* (emphasis added). His parents “continued to *reside and remain* in the United States.” *Ibid.* (emphasis added). He “ever since his birth, has had but *one residence*, to wit, in California, within the United States.” *Ibid.* (emphasis added). He “ha[d] there *resided*.” *Ibid.* (emphasis added). He “never lost or changed that *residence*.” *Ibid.* (emphasis added). And, he never “gained or acquired another *residence*.” *Ibid.* (emphasis added).

Two paragraphs later, the Court confirmed that its decision was limited to persons born and domiciled in the United States. “The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, *but have a permanent domicil and residence in the United States*, . . . becomes at the time of his birth a citizen of the United States.” *Id.*, at 653 (emphasis added). Then, if that were not enough, the Court reiterated the same limits to its opinion in its final paragraph: This case “present[ed] for determination *the single question*, stated at the beginning of this opinion, namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a *permanent domicil and residence*

THOMAS, J., dissenting

in the United States . . . becomes at the time of his birth a citizen of the United States.” *Id.*, at 705 (emphasis added).

The opinion itself was filled with meandering dicta. The Court’s interpretation of the Citizenship Clause evolved over the course of the opinion, before landing on an interpretation that limited citizenship at birth to persons domiciled here. At first, the opinion stated that the rule of American citizenship was the feudal principle of birth on the soil with only two exceptions: (1) “the child of an ambassador or other diplomatic agent of a foreign State” and (2) the child of “an alien enemy in hostile occupation.” *Id.*, at 658. Then, after considering more evidence and arguments, the opinion reformulated the rule to include a third exception: (1) “children of members of the Indian tribes,” (2) “children born of alien enemies in hostile occupation,” and (3) “children of diplomatic representatives of a foreign State.” *Id.*, at 682. Then, after discussing more “considerations and authorities,” the opinion reformulated the rule with at least five exceptions and a residence requirement: “[A]ll children here born of *resident* aliens,” with “the exceptions or qualifications” of (1) “children of foreign sovereigns,” (2) children of foreign “ministers,” (3) children “born on foreign public ships,” (4) children “of enemies within and during a hostile occupation of part of our territory,” and (5) “children of members of the Indian tribes owing direct allegiance to their several tribes.” *Id.*, at 693 (emphasis added). Then, the Court concluded by reiterating an explicit domicile requirement: Outside of these five categories, the Citizenship Clause covers “all other persons, of whatever race or color, *domiciled within the United States.*” *Ibid.* (emphasis added). So, although these various statements are both dicta and irreconcilable—as is much of the opinion’s reasoning—the Court’s most complete rule statement was limited to persons, like Wong, born and domiciled in the United States.

THOMAS, J., dissenting

Chief Justice Fuller’s dissent, joined by Justice Harlan, did not accept the Government’s primary theory that, to qualify for birthright citizenship, a child born in this country must also be born to citizen parents. Such a position, after all, was in tension with Justice Harlan’s twice-stated view that the Citizenship Clause turned on “complete jurisdiction,” *Elk*, 112 U. S., at 116–117 (dissenting opinion), or “resid[ence],” *Plessy*, 163 U. S., at 563 (dissenting opinion)—two terms that corresponded to domicile. Chief Justice Fuller’s dissent instead took the position that the Citizenship Clause “recognize[d] an essential difference between birth during temporary, and birth during permanent, residence.” *Wong Kim Ark*, 169 U. S., at 729; accord, Comment, 7 *Yale L. J.* 365, 367 (1898). On his account, the Citizenship Clause excluded children “born of aliens whose residence was merely temporary.” 169 U. S., at 729.

Chief Justice Fuller nonetheless dissented because he rejected the premise that Wong’s parents were domiciled here at the time of his birth. He explained that because Chinese law purported to bind Wong’s family even after they had settled here, the family “cannot . . . acquire a permanent home here, no matter what the length of their stay may be.” *Id.*, at 731; see also *id.*, at 725, and n. 1; see also Justice John Marshall Harlan: *Lectures on Constitutional Law*, in 81 *Geo. Wash. L. Rev. Arguendo*, at 345. Thus, Chief Justice Fuller and Justice Harlan dissented because, in their view, Wong and his parents were not actually domiciled in the United States at the time of his birth.

4

Wong Kim Ark left in place the same rule that existed before: A child of a domiciliary was a citizen, but a child of a temporary visitor was not.

“The effect of [*Wong Kim Ark*],” a legal scholar explained shortly after it was published, “is to make citizens of the United States by virtue of the Fourteenth Amendment all

THOMAS, J., dissenting

persons born in the United States of alien parents *permanently domiciled and residing here.*” W. Guthrie, Lectures on the Fourteenth Article of Amendment to the Constitution of the United States 57 (1898) (emphasis added). As a Fourteenth Amendment treatise published in 1901 explained, it remained the case that “mere birth within American territory does not always make the child an American citizen.” H. Brannon, Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States 25 (Brannon). The Citizenship Clause excluded “children of aliens born here while their parents are traveling or only temporarily resident.” *Ibid.* *Wong Kim Ark* was limited to “alien parents, not temporarily resident here, but permanently domiciled.” Brannon 29.

On this understanding of *Wong Kim Ark*, temporary visitors’ children were still excluded from citizenship. “In the United States,” William Edward Hall wrote six years after *Wong Kim Ark*, “it would seem that the children of foreigners in transient residence are not citizens.” International Law 227 (5th ed. 1904). A 1901 international-law treatise explained that “children born in the United States to foreigners here on transient residence are not citizens, because by the law of nations they were not at the time of their birth ‘subject to the jurisdiction’” of the United States. H. Taylor, International Public Law 220. When a “father has domiciled himself in the Union,” John Westlake wrote in 1904, his children “are citizens.” International Law 219–220. But, when he is “in the Union for a transient purpose,” his children “born within it have his nationality.” *Ibid.*

This understanding was widespread after *Wong Kim Ark*: “A person born in this country of alien parents” was a “citizen” only if those parents were “domiciled.” 1 Bouvier’s Law Dictionary 492 (1914). A child born in the United States is a “citizen” when “domiciled,” but not when his parents left after being “temporarily resident.” 1 F. Wharton, Conflict of Laws 44–45 (1905). A child born on American

THOMAS, J., dissenting

soil to “a stranger or traveler passing through the country” was not a citizen, but a child “born within the United States, of permanently resident aliens” was a citizen. Black, *Handbook of American Constitutional Law*, at 634 (3d ed. 1910). The rule remained, in other words, that “children . . . of foreigners in transient residence” were “excluded from citizenship, even though born in the United States.” 1 H. Bellott, *Leading Cases on International Law* 183 (4th ed. 1922).

Government officials generally agreed. In 1910, a Department of Justice report explained that “it has never been held, and it is very doubtful whether it will ever be held, that the mere act of birth of a child on American soil, to parents who are accidentally or temporarily in the United States, operates to invest such child with all the rights of American citizenship.” Spanish Treaty Claims Comm’n, *Final Report of William Wallace Brown* 124. The Citizenship Clause did “not mean that jurisdiction to which the bodily form of the child is subject from the moment of its birth . . . but that larger jurisdiction, which, though difficult to define, is well known and understood, the difference between the jurisdiction which is exercised over a visitor and that over one domiciled, which difference may be seen at a glance.” *Id.*, at 125.

Even this Court described *Wong Kim Ark* in limited terms. It read *Wong Kim Ark* to apply to aliens with a “permanent domicil and residence in the United States.” *Chin Bak Kan v. United States*, 186 U. S. 193, 200 (1902) (internal quotation marks omitted). *Wong Kim Ark*, in its telling, covered children born to parents “permanently domiciled in the United States.” *Kwock Jan Fat v. White*, 253 U. S. 454, 457 (1920).

5

Throughout this period, Congress left in place the same statutory language that it originally enacted in 1866 and

THOMAS, J., dissenting

then re-enacted in 1870, so American citizenship was limited to persons “not subject to any foreign power.” See Enforcement Act of 1870, §18, 16 Stat. 144 (reenacting Act of Apr. 9, 1866, 14 Stat. 27); see also Rev. Stat. §1992 (1875) (“All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States”); 8 U. S. C. §1 (1934 ed.) (“All persons born in the United States and not subject to any foreign power are declared to be citizens of the United States”).

The Nationality Act of 1940 replaced that language with the same language (in relevant part) as the Citizenship Clause itself: a “person born in the United States, and subject to the jurisdiction thereof,” is a citizen. 54 Stat. 1138. Congress reenacted that provision verbatim in the 1952 Immigration and Nationality Act (INA). 66 Stat. 235–236. It remains the governing statute today. See 8 U. S. C. §1401.

F

1

In the 20th century, executive practice repurposed the Citizenship Clause to treat the children of temporary visitors and illegal aliens as citizens.

An assistant solicitor named Richard Flournoy prominently argued that the Citizenship Clause does include the children of temporary visitors. See *Dual Nationality and Election*, 30 *Yale L. J.* 545, 546 (1921). He disagreed with “a number of writers” who held that “in order that a person born in the United States of alien parents may have American citizenship, his parents must have been domiciled in this country at the time of his birth.” *Id.*, at 552. Although he acknowledged that “*Wong Kim Ark* did not directly decide the precise point,” he said that the Citizenship Clause should be read to incorporate a rule that “originated with the feudal system, under which all persons, with certain limited exceptions, born within the fief of an over lord were

THOMAS, J., dissenting

held to owe fealty to him and allegiance to the sovereign.” *Id.*, at 546, 552. Flournoy acknowledged that some consequences of his theory were “[a]bsurd.” *Id.*, at 553.

President Franklin D. Roosevelt’s administration adopted the view that the Citizenship Clause applied to the children of temporary visitors. See Brief for Citizenship Law Scholars as *Amici Curiae* 10–18; 1 House Committee on Immigration and Naturalization, 76th Cong., 1st Sess., 7 (Comm. Print 1939). In 1995, some 127 years after the Citizenship Clause was enacted, President Clinton’s Office of Legal Counsel endorsed the same view. 19 Op. OLC. 340. It explained that the right to American citizenship for the children of illegal aliens and temporary visitors “is fundamental to our liberty as we understand it.” *Id.*, at 349.

Many in Congress disagreed with the Executive Branch’s view. As late as the 1990s, Senator Harry Reid sponsored bipartisan legislation to clarify that the child of an illegal alien or temporary visitor would “not be a citizen of the United States or of any State solely by reason of physical presence within the United States at the moment of birth.” S. 1351, 103d Cong. 1st Sess., §1001 (1993). “No sane country,” Senator Reid argued, would offer a “reward for being an illegal immigrant.” R. Igielnik, *Most Americans Favor Birthright Citizenship. That Wasn’t Always True*, N. Y. Times, Mar. 31, 2026. Others supported similar legislation. *Ibid.*

The question was not prominent in judicial opinions in the 20th century. One of the first substantial discussions arose 105 years after *Wong Kim Ark*, when Judge Posner treated the matter as unsettled. “A constitutional amendment may be required to change the rule whereby birth in this country automatically confers U. S. citizenship,” he wrote, “but I doubt it.” *Oforji v. Ashcroft*, 354 F. 3d 609, 621 (CA7 2003) (concurring opinion). “The purpose of the rule was to grant citizenship to the recently freed slaves,” and it

THOMAS, J., dissenting

“would not be flouting the Constitution” to “put an end to the nonsense.” *Ibid.*

2

Some took advantage of the Executive Branch’s recent policy of granting citizenship to anyone born on American soil. The policy encouraged “birth tourism”—the practice of traveling here with temporary authorization solely to give birth and obtain citizenship for one’s children, then returning to raise them in another country.

Today, “birth tourism companies” reportedly collect large fees from wealthy foreigners to facilitate their trips to give birth in the United States. Senate Committee on Homeland Security and Governmental Affairs, Report on Birth Tourism in the United States: Minority Staff Report 25–33 (2022). Large numbers of children are born in the United States each year to parents who are temporarily present here in order to obtain citizenship for their children. J. Pak, Why Chinese Parents Come To America to Give Birth, Marketplace (Mar. 7, 2019), <https://www.marketplace.org/story/2019/03/06/why-chinese-parents-come-america-give-birth>; see also Brief for Tennessee et al. as *Amici Curiae* 28–29.

G

1

Upon taking office, President Trump issued an Executive Order that expressed the Executive Branch’s interpretation of the Citizenship Clause. See Exec. Order No. 14160, 90 Fed. Reg. 8449 (2025).

The Citizenship Order adopts the view that the Fourteenth Amendment does not guarantee citizenship at birth to the children of temporary visitors and illegal aliens. Section 1 of the Order interprets the scope of the Citizenship Clause. It states that someone born in the United States is not guaranteed citizenship if that person is born here to

THOMAS, J., dissenting

lawful temporary foreign visitors or to illegal aliens. By contrast, a person is guaranteed citizenship if he is born here to lawful permanent residents or citizens. Section 2 of the Order then directs the Executive Branch to implement this interpretation by not issuing documents recognizing the citizenship of persons in the two excluded categories and by not accepting documents issued by state, local, or other governments purporting to recognize the citizenship of such persons. Those directives are prospective. They “apply only to persons who are born within the United States after 30 days from the date of this order.” *Ibid.* Section 3 of the Order directs executive officials to implement the Order with appropriate regulations, policies, and guidance. *Id.*, at 8449–8450.

The President’s initiative generated a groundswell of new scholarship into the original meaning of the Citizenship Clause. A wide range of originalist scholars have concluded that the 20th century executive practice was mistaken and that the Order has substantial lawful applications. See generally, *e.g.*, Lash, 101 Notre Dame L. Rev. 101; R. Epstein, *The Myth of Birthright Citizenship* (2026); I. Wurman, *Jurisdiction and Citizenship*, 49 Harv. J. L. Pub. Pol’y 315 (2026); Swearer, 2 Tex. A & M J. L. & Civ. Gov. 73; R. Barnett, *Trump Is Right on Birthright Citizenship*, *Wall Street Journal*, Mar. 31, 2026; P. Hamburger, *Allegiance, Birthright, and Citizenship*, *Law and Liberty* (Apr. 9, 2026), <https://lawliberty.org/allegiance-birthright-and-citizenship> (archived at perma.cc/S9JB-ZNEP).

2

Before the Order went into effect or executive agencies implemented it, several District Courts universally enjoined its implementation.⁸ This Court partially stayed

⁸See *CASA, Inc. v. Trump*, 763 F. Supp. 3d 723, 747 (Md. 2025); *Washington v. Trump*, 765 F. Supp. 3d 1142, 1154 (WD Wash. 2025); *Doe v.*

THOMAS, J., dissenting

those injunctions in *Trump v. CASA, Inc.*, 606 U. S. 831 (2025), because they exceeded the District Courts’ remedial authority. *Id.*, at 861. Several plaintiffs immediately filed new actions, and several District Courts again enjoined the Executive Branch from implementing the Order.⁹

This case arises from one of those actions. Three plaintiffs sued on behalf of a putative class. The plaintiffs, who proceed under pseudonyms, are each illegal aliens or lawful temporary visitors. The first plaintiff, a Honduran citizen, was expecting a baby due in October 2025. The other two plaintiffs, one Taiwanese citizen and one Brazilian citizen, did not allege that they were expecting a baby. None alleged that any of their children will be domiciled in the United States. As a right of action, plaintiffs invoked the Citizenship Clause itself, the INA, and the Administrative Procedure Act. They sued on behalf of a putative class of all children who would be ineligible for citizenship under the President’s Order, as well as those children’s parents. And, they sought to have the Order declared “unconstitutional and unlawful in its entirety.” Complaint in No. 25–cv–244 (NH), ECF Doc. 1, p. 16.

The District Court ruled for the plaintiffs. It interpreted the Citizenship Clause to guarantee citizenship to the children of all lawful temporary visitors and illegal aliens. As to relief, the District Court certified a provisional universal class under Federal Rule of Civil Procedure 23(b)(2), which states that class actions may be maintained if the defendant “has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole.” The certified class consisted of “[a]ll current and future persons . . . born on or after February 20, 2025” who fall within the two

Trump, 766 F. Supp. 3d 266, 290 (Mass. 2025); *New Hampshire Indonesian Community Support v. Trump*, 765 F. Supp. 3d 102, 112 (NH 2025).

⁹See, e.g., 790 F. Supp. 3d 80, 101, 105–106 (NH 2025); *CASA, Inc. v. Trump*, 793 F. Supp. 3d 703, 710 (Md. 2025).

categories covered by the President’s order. 790 F. Supp. 3d 80, 105 (NH 2025). The District Court entered a class-wide preliminary injunction prohibiting enforcement of the Citizenship Order against anyone in the class—meaning anyone at all.

3

The Court today affirms the District Court’s universal-class injunction. It holds that the Fourteenth Amendment guarantees citizenship to all children born here to lawful temporary visitors or illegal aliens. On the Court’s telling, the law of citizenship in the United States was fixed to an English rule that everyone born on the soil was permanently bound to serve the sovereign. *Ante*, at 2–3. This principle of permanent feudal allegiance, according to the Court, was repurposed into a rule of citizenship and adopted by “all of the states.” *Ante*, at 4 (internal quotation marks omitted). The rule’s universal acceptance was embodied by an 1844 state equity decision called *Lynch v. Clarke*, 1 Sand. Ch. 583. See *ante*, at 6. The rule extended citizenship to all persons born within United States territory, except three categories: children of foreign representatives, children over whom the Government lacked “actual power,” and children of Indians in tribes. *Ante*, at 3, 4–6. Those three exceptions were then adopted in the Civil Rights Act and the Enforcement Act by the phrase “not subject to any foreign power,” and in the Citizenship Clause by the phrase “subject to the jurisdiction thereof.” *Ante*, at 8–10. This Court’s *Wong Kim Ark* opinion three decades later, the Court says, confirmed the same rule. *Ante*, at 13–16.

II

Before proceeding to the merits, I briefly note three threshold impediments to the Court’s decision today that the Court leaves unaddressed.

THOMAS, J., dissenting

First, the Court has an “independent obligation,” *Summers v. Earth Island Institute*, 555 U. S. 488, 499 (2009), to ensure that every single recipient of “‘class action’” relief has standing, *TransUnion LLC v. Ramirez*, 594 U. S. 413, 431 (2021). But, today it affirms an injunction on behalf of a class that includes “all current or future persons” subject to the Order indefinitely into the future. 790 F. Supp. 3d, at 105. Contra, *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 564 (1992); see *CASA*, 606 U. S., at 855, n. 1 (explaining that class judgment “binds the whole class”).

Second, the Court cannot grant relief to any party without a right of action. See *Whole Woman’s Health v. Jackson*, 595 U. S. 30, 52 (2021) (THOMAS, J., concurring in part and dissenting in part). But, it grants relief here on the basis of a suit brought under the Citizenship Clause, the INA, and the APA. The Citizenship Clause and the INA’s equivalent, by their terms, create no right of action. The APA authorizes suits challenging “final agency action,” but the plaintiffs did not allege any final agency action. See 5 U. S. C. §704; *Bennett v. Spear*, 520 U. S. 154, 177–178 (1997).

Third, because respondents sought to invalidate the Citizenship Order in its entirety and the District Court granted facial relief, the plaintiffs bear the burden to show that all applications of the Order are unlawful. See *post*, at 2 (GORSUCH, J., dissenting). Under this Court’s precedent, facial challenges require plaintiffs to establish “that ‘no set of circumstances exists under which the [Order] would be valid.’” *Moody v. NetChoice, LLC*, 603 U. S. 707, 765 (2024) (THOMAS, J., concurring in judgment) (quoting *United States v. Salerno*, 481 U. S. 739, 745 (1987)). To prevent federal courts from invading the political branches’ interest in effectuating policies “enacted by representatives of [the] people,” *Maryland v. King*, 567 U. S. 1301, 1303 (2012) (ROBERTS, C. J., in chambers) (internal quotation marks omitted), facial invalidation must remain rare and “hard to win.” *Moody*, 603 U. S., at 723.

THOMAS, J., dissenting

The Court's decision to hold the Citizenship Order facially unconstitutional, in other words, makes it unlawful for the President to enforce the Order against a single person. He cannot enforce the Order against a child of an alien enemy or a child of a foreign spy. He cannot even enforce the Order against children who are raised in foreign countries, join foreign armies, and fight wars against the United States. The Court, without considering any of these individual circumstances, holds unconstitutional the application of the Citizenship Order in all of them.

III

In my view, the Citizenship Order is not facially unconstitutional. The Order is consistent with the original meaning of the Citizenship Clause, at least insofar as it applies to children born to parents, here lawfully or unlawfully, who are not domiciled in the United States.

The Citizenship Clause was enacted for people who were born in this country and called it home. It was enacted for freed slaves such as Dred Scott, who had "a domicile" here and therefore were entitled to sue as citizens. Brief for *Dred Scott* 6. It was enacted for men such as Frederick Douglass, who demanded citizenship "not as aliens nor as exiles," but as "Americans." 2 Douglass 255. Its authors and supporters promised, over and over again, that it would exclude the children of "persons temporarily resident" here, whom "we would have no right to make citizens." Cong. Globe, 39th Cong., 1st Sess., at 572 (statement of Sen. Trumbull). In Senator Trumbull's words: "What do we mean by 'subject to the jurisdiction of the United States?' Not owing allegiance to anybody else. That is what it means." *Id.*, at 2893. And, for decades after ratification, it was interpreted by all three branches of Government and by a wide range of legal authorities to be limited to people who were already Americans.

THOMAS, J., dissenting

The ordinary principles of constitutional interpretation—the ones on which this Court typically relies when presented with a constitutional question such as this one—support the conclusion that the Citizenship Clause requires domicile. That conclusion is supported by the constitutional text, contemporaneous evidence, early executive practice, early legislative practice, judicial precedent, and all of the other indicators of original public meaning. The Court’s alternative account does not have a similar degree of support.

The Citizenship Order is therefore, insofar as it applies to persons not domiciled here, consistent with the Citizenship Clause. It is consistent with the Citizenship Clause in its exclusion of the children of lawful temporary visitors, such as birth tourists. The exclusion of the children of lawful temporary visitors—who are, by definition, not domiciled here—was originally a matter of widespread agreement. As to them, the Citizenship Order does exactly what the Executive Branch did for most of the rest of the 19th century, what this Court said that it could do, and what scholars for decades confirmed that it could do. And, the Order is at least facially consistent with the Citizenship Clause in its exclusion of the children of illegal aliens because at least some such persons are not domiciled here, and therefore also are not citizens.¹⁰

¹⁰Because this case presents a facial challenge and no one disputes that lawful temporary visitors and some illegal aliens are not domiciled here, I would reserve for another day the question whether the children of illegal aliens *can* be domiciled here.

The Government and several scholars have suggested some reasons why, they believe, illegal aliens can never be domiciled here. An illegal alien’s entry and presence violate federal law. See *INS v. Lopez-Mendoza*, 468 U. S. 1032, 1038 (1984). He is subject to potential removal at any time. 8 U. S. C. §§1182(a)(2)(6)(A)(i), 1229a(a)(2). And, some authorities have suggested that domicile requires permission to remain. Cf. *Fong Yue Ting v. United States*, 149 U. S. 698, 724 (1893); 1 Z. Swift, *A System of the Laws of Connecticut* 167 (1795). Therefore, when

A

The constitutional text supports the conclusion that the Citizenship Clause requires domicile.

1

The Citizenship Clause guarantees citizenship to persons who were both born in the United States and “subject to the jurisdiction thereof.” Amdt. 14, §1. At the time that the Citizenship Clause was adopted, the phrase “subject to the jurisdiction” referred to the legal relationship that a person had to the government of his domicile. See Part I–B–2–c, *supra*. That legal relationship included the government’s power over the domiciliary’s personal affairs, power to regulate his conduct everywhere, and power to impose personal taxes on him. See Story on Conflict of Laws 51–52; *In re Hood’s Estate*, 21 Pa., at 115. It also included the reciprocal relationship of protection abroad and primary allegiance. *Schooner Charming Betsy*, 2 Cranch, at 120. A government lacked the powers associated with this relationship, and thus lacked complete jurisdiction, over temporary visitors. See *The Venus*, 8 Cranch, at 278. Temporary visitors remained subject to the jurisdiction of their

presented with variations on this question in other contexts, some courts have concluded that an alien who wishes to remain in the United States in violation of federal law cannot be “domiciled” here because he “lacks the legal capacity to establish domicile.” *Carlson v. Reed*, 249 F. 3d 876, 881 (CA9 2001) (O’Scannlain, J., for the court); cf. *Kaplan v. Tod*, 267 U. S. 228, 230 (1925); Letter from F. Reeve, Acting Solicitor of the Treasury, to W. Windom, Secretary of the Treasury (Mar. 4, 1890), in 11 Documents of the Assembly of the State of New York, pp. 47–48 (1890); Wurman, 49 Harv. J. L. Pub. Pol’y, at 324, 448, and n. 503.

That said, many others understandably have suggested that long-term resident illegal aliens satisfy the elements of domicile because they reside here with the intent to permanently remain. As JUSTICE GORSUCH explains, the children of such aliens may be domiciled here because they are “born here to parents who have long chosen to make this Nation their permanent home.” *Post*, at 3 (dissenting opinion). Such questions are best resolved in the context of as-applied challenges. See *ibid.*

THOMAS, J., dissenting

home country. See *The Pizarro*, 2 Wheat., at 246. Hence, a person was “subject to the jurisdiction” of the government where he was domiciled. *Hood*, 93 Mass., at 199–200.

This interpretation accords with the contemporaneous evidence that would have informed the public meaning of the text. It is consistent with the Civil Rights Act’s requirement that citizens be “not subject to any foreign power.” 14 Stat. 27. A person born in the United States to temporary visitors was subject to a foreign power—namely, the power of his home country in which he retained his domicile. See *The Venus*, 8 Cranch, at 277–279; *The Pizarro*, 2 Wheat., at 246. It is consistent with the early American law of state and national citizenship, which turned on domicile. *Brown*, 8 Pet., at 115; *The Venus*, 8 Cranch, at 277–278; Webster Report 2–3. It overrules *Dred Scott* because it restores the rule of decision under which Scott should have won—namely, that he was entitled to sue as a “citizen” of Missouri because he had a “permanent domicil in the State.” *Dred Scott*, 19 How., at 531 (McLean, J., dissenting); accord, Brief for *Dred Scott* 6. It excludes tribal Indians because they remained first and foremost subject to their separate nations, which alone had complete jurisdiction over them. See *Elk*, 112 U. S., at 101–102. And, it ensures that the freedmen, who were clearly American, would not be denied citizenship based on a racial caste system.¹¹

¹¹Some have asked whether freed slaves were domiciled here given that their ancestors were brought here against their wills. It was firmly established that freed slaves were domiciled here. See, e.g., 4 R. Phillimore, Commentaries Upon International Law 96–97 (1861); accord, Law of Domicil 45; Cong. Globe, 39th Cong., 1st Sess. 1160 (1866) (statement of Rep. Shellabarger); *id.*, at 1117 (statement of Rep. Wilson); *id.*, at 530 (statement of Sen. Johnson); 2 Douglass 255. Those who argue that blacks were not domiciled in the United States would have concurred in the judgment in Chief Justice Taney’s opinion in *Dred Scott*, the outcome of which turned on whether Dred Scott was domiciled in Missouri. See Brief for *Dred Scott* 6.

THOMAS, J., dissenting

In other words, the phrase “subject to the jurisdiction” meant what the drafters and ratifiers said that it meant: “complete jurisdiction,” Cong. Globe, 39th Cong., 1st Sess., at 2893 (statement of Sen. Trumbull); “fully and completely subject to the jurisdiction of the United States,” *id.*, at 2897 (statement of Sen. Williams); “the jurisdiction of the United States in every sense,” *ibid.*; and a “full and complete jurisdiction,” “coextensive in all respects with the constitutional power of the United States, whether exercised by Congress, by the executive, or by the judicial department; that is to say, the same jurisdiction in extent and quality as applies to every citizen of the United States now,” *id.*, at 2895 (statement of Sen. Howard).

The phrase thus also had the implication that the drafters and ratifiers said that it had: The children of temporary visitors were not citizens. The Citizenship Clause, they said, “w[ould] not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers.” *Id.*, at 2890 (statement of Sen. Howard). After all, “we would have no right to make citizens” of “persons temporarily resident” in the United States. *Id.*, at 572 (statement of Sen. Trumbull).

2

The Court’s alternative theory is more difficult to square with the text.

a

The Court defines the phrase “subject to the jurisdiction” of the United States to refer to “the power of the United States to govern those within its territory.” *Ante*, at 11. It then says that at least three categories of persons born within United States territory are not subject to its jurisdiction.

First, a person is not subject to the jurisdiction of the United States when the Government “impliedly waive[s]”

THOMAS, J., dissenting

its regulatory power over him. *Ante*, at 11; see also *ante*, at 15. The Court understands this category to exempt all children of “representatives of foreign sovereigns,” endeavoring to capture a longstanding principle that such children were not entitled to citizenship. *Ante*, at 15. Although the Court gestures toward diplomatic immunity as a basis for this exception, diplomatic immunity extends to “only a narrow set” of “diplomatic official[s],” not to all foreign representatives. Brief for Sen. Ted Cruz et al. as *Amici Curiae* 28–29. Most foreign officials receive a partial immunity, such as immunity for their official acts. See Dept. of State, Diplomatic and Consular Immunity (July 2019), www.state.gov/wp-content/uploads/2019/07/2018-DipConImm_v5_Web.pdf (archived at perma.cc/LK63-C3YL). But, partial immunity cannot render a person not “subject to the jurisdiction” of the United States for Fourteenth Amendment purposes. After all, a variety of clearly American government officials—such as judges, prosecutors, and police officers—have similar partial official immunity.¹² Furthermore, if the political branches can deny someone citizenship by “waiv[ing]” their regulatory power over him, then they can deny citizenship to any child in America, even if his family has lived here for generations and has no other home. The better explanation for excluding the children of foreign representatives is that they were not domiciled in the United States.¹³

¹²See *Pierson v. Ray*, 386 U. S. 547, 553 (1967); *Van de Kamp v. Goldstein*, 555 U. S. 335, 340–341 (2009); *Rivas-Villegas v. Cortesluna*, 595 U. S. 1, 5 (2021) (*per curiam*); *Tenney v. Brandhove*, 341 U. S. 367, 378–379 (1951); *Trump v. United States*, 603 U. S. 593, 642 (2024); Brief for Sen. Ted Cruz et al. as *Amici Curiae* 29.

¹³Diplomats and other foreign officials were likely mentioned specifically in accounts of the scope of citizenship for another reason. They shared much in common with domiciliaries—they were often not transient visitors, but instead stayed in the country for long indefinite periods (and were likely to have and raise children here)—but the law treated them uniquely and presumed that they were not domiciled regardless of

THOMAS, J., dissenting

Second, the Court says, a person is not subject to the jurisdiction of the United States when the Government lacks “actual power” over him. *Ante*, at 3. This category, presumably, is an attempt to accommodate the consensus that citizenship would not have been granted to the children of foreign invaders. See Brief for Respondents 1 (recognizing exception for a person in an “occupying arm[y]”); *CASA*, 606 U. S., at 884 (SOTOMAYOR, J., dissenting) (recognizing exception for a person “born of alien enemies in hostile occupation” (internal quotation marks omitted)). But, while the child of a foreign invader is of course not constitutionally entitled to citizenship, it is not because America lacks “actual power” over him. If it were, then citizenship could be denied to any American over whom the Government happened to lack “actual power” at birth. The more likely reason why foreign invaders are not citizens is that they too are foreign and not domiciled here.

Third, the Court says, a person is not subject to the jurisdiction of the United States when he is a “membe[r]” of an “alien and sovereign” nation. *Ante*, at 5 (internal quotation

the duration of their residence. See, *e.g.*, 1 Twiss 239 (“[T]he residence of Ambassadors and Political Envoys in a foreign country, even if such residence continue up to the time of their death, being a residence ‘sine animo manendi,’ should not operate to change their Domicil”); H. Halleck, *Elements of International Law* 310 (1866) (“The national character of an ambassador, or public minister, is not affected by his residence in a foreign country, no matter what may be its duration, or the circumstances indicative of the intent of the party to render it permanent”); Dicey & Moore 146 (“Official residence in a country is not in itself evidence of an intention to settle there, because all that can (in general) be inferred from such residence is that the official resides during the time and for the purpose of his office. . . . The presumption is strongly (if not conclusively) in favor of [the official] intending to retain his [original] domicil”); Brannon 25 (“Children born here of foreign representatives . . . under international law and common law . . . have transient residence here, not permanent domicile”); Story on Conflict of Laws §48, at 47 (6th ed. 1865) (“Ambassadors and other foreign ministers retain their domicil in the country, which they represent, and to which they belong”).

THOMAS, J., dissenting

marks omitted). This category reflects the Court’s attempt to accommodate the historical record that the Citizenship Clause excluded the children of Indians in tribes. See Part I–D–1–b, *supra*. But, the Court cannot explain why tribal Indians were not “subject to the jurisdiction” of the United States if they happened to be born outside Indian lands while foreign temporary visitors were. It is true that tribal Indians belonged to “alien and sovereign” nations and that the United States’ relations with them implicated “inter-sovereign concerns.” *Ante*, at 12. But, temporarily visiting foreigners also belong to “alien and sovereign” nations, and the United States’ relations with them also implicate “inter-sovereign concerns.” It is difficult to understand why China, for example, would be less alien or less sovereign than the Cherokee Nations. It is also difficult to understand why tribal Indians would be less entitled to American citizenship if born on non-Indian land within the United States than children of birth tourists who immediately returned to China.

b

The Court’s definition also cannot be reconciled with the contextual evidence that would have informed the meaning of the Citizenship Clause.

The Court does not attempt to explain how its reading of the Citizenship Clause comports with the Civil Rights Act’s citizenship provision. The Court does not present evidence that the children of temporary visitors were “not subject to any foreign power,” as the Civil Rights Act required. Temporary visitors *were* subject to the foreign power of the government of their domicile. See Part I–B–2, *supra*; see also Brief for Tennessee et al. as *Amici Curiae* 8–9. The Court also does not present any evidence that the Citizenship Clause had a different meaning from the Civil Rights Act. As no party here disputes, the two provisions were agreed to have been synonymous with respect to foreigners. See

THOMAS, J., dissenting

Cong. Globe, 39th Cong., 1st Sess., at 2890. As the plaintiffs' counsel put it, "the Framers were trying to do the same thing with the language in both." Tr. of Oral Arg. 106–107; accord, *id.*, at 120.

The Court likewise cannot explain the evidence that citizenship in this country was instead based on domicile. See Part I–A–1, *supra*. It does not meaningfully engage with the congressional debates, during which this provision was extensively discussed. See Part I–D, *supra*. And, it has no account of why so many legislators made so many statements irreconcilable with its view. See *ibid.*

In fact, the Court does not even identify anyone who expressed the feudal principle in the relevant language—"not subject to any foreign power" or "subject to the jurisdiction" of the United States. The closest that it comes is *Lynch v. Clarke*'s use of the phrase "within the jurisdiction," see *ante*, at 6, 10, language that denotes "territorial jurisdiction," *Schooner Exchange v. McFaddon*, 7 Cranch 116, 137 (1812). But, Congress conspicuously chose not to use that broader territorial phrase in the Citizenship Clause. Notably, the Fourteenth Amendment elsewhere says that no State may "deny to any person *within its jurisdiction* the equal protection of the laws." §1 (emphasis added). The Citizenship Clause does not use that territorial phrase. See Brief for Professor Richard A. Epstein as *Amicus Curiae* 6–7 (explaining that the Equal Protection Clause refers to all persons "*within its jurisdiction*" and that "the phrase 'subject to the jurisdiction thereof' means something other than 'within the jurisdiction'"). Thus, while "jurisdiction" can refer to mere territorial jurisdiction, see *ante*, at 22–23, which a government of course exercises over temporary visitors, *Schooner Exchange*, 7 Cranch, at 137, the Citizenship Clause did not adopt that sense of jurisdiction.

THOMAS, J., dissenting

* * *

I would not interpret “subject to the jurisdiction” to refer to the exclusion of three bespoke categories of persons whose relationship to the sovereign was not described in those terms. There is a simpler interpretation of the text that was expressly endorsed by those closer in time to ratification: Children born to diplomats, hostile alien occupiers, and Indians in tribes were not citizens because they were not subject to the complete jurisdiction of the United States. For the same reason, the children of foreign temporary visitors, who were also not subject to the complete jurisdiction of the United States, were also not citizens.

B

Practice and precedent immediately and long following ratification support the same conclusion. In constitutional law, this Court often pays close attention to how government officials interpreted and applied a constitutional provision shortly after its enactment. See *Stuart v. Laird*, 1 Cranch 299, 309 (1803); *Trump v. Slaughter*, 609 U. S. ____, ____–____ (2026) (slip op., at 9–13). Here, the Executive Branch, Congress, and the Judiciary all largely interpreted the Citizenship Clause to require domicile in the decades following ratification.

1

The Executive Branch regularly denied citizenship to the children of temporary visitors under the Citizenship Clause.

The Executive Branch’s position, from the outset, was that the Citizenship Clause excluded the children of aliens who were not subject to the “complete jurisdiction” of the United States. See 14 Op. Atty. Gen., at 300. Therefore, a child born in the United States but “domiciled” abroad was “on his birth ‘subject to a foreign power’ and ‘not subject to the jurisdiction of the United States.’” Letter from Sec. of

THOMAS, J., dissenting

State T. Bayard to B. Winchester (Nov. 28, 1885), in 2 Wharton Digest 399–400. Many executive decisions under the Citizenship Clause denied citizenship to children born but not domiciled here. See Part I–E–1–a, *supra*. In recorded, reasoned decisions, the Hayes, Cleveland, and Harrison administrations—in accordance with the opinion of President Grant’s Attorney General—all denied citizenship to children born in the United States but not domiciled here (who also did not satisfy any of the exceptions to the Court’s rule). See Part I–E–1–a, *supra*; 2 Wharton Digest 393–402. On the Court’s account, each of these administrations—Republican and Democratic, over the course of multiple decades, and close in time to ratification—acted in defiance of the Constitution, seemingly without objection.

Against this settled course of practice, the Court can find only a single executive decision from the entire 19th century that it believes supports its interpretation. *Ante*, at 13. But, in that case, the Executive Branch ultimately ruled that the claimant—Francois Heinrich—was not a citizen. Heinrich was born on American soil and did not fall into any of the Court’s three exceptions, but Secretary of State Hamilton Fish still concluded that he was “not an American citizen” because he resided in Austria. Letter to Baron Lederer (Dec. 24, 1872), in 2 Wharton Digest 395–396. The Court understands the Executive Branch to have concluded that Heinrich was “originally clothed with American nationality” but then lost that citizenship upon returning to his domicile abroad. *Ante*, at 13 (internal quotation marks omitted). Even the Court is thus forced to embrace an interpretation of the Citizenship Clause that allows the political branches to deny citizenship to persons born here to temporary visitors. On that interpretation, the political branches can deny citizenship to such persons once they return home.

Beyond that single case, the Court does not dispute that the many other 19th-century executive decisions were

THOMAS, J., dissenting

incompatible with its view. And, it has found no examples of the Executive Branch actually affording the privileges of citizenship under the Citizenship Clause to a person born here while domiciled abroad. The Executive Branch instead repeatedly took the position that the Citizenship Clause required domicile.¹⁴

2

Congressional practice supports the same conclusion. “[E]arly congressional enactments provide contemporaneous and weighty evidence of the Constitution’s meaning.” *Utah v. Evans*, 536 U. S. 452, 503 (2002) (THOMAS, J., concurring in part and dissenting in part) (internal quotation marks and alterations omitted). Congress could have enacted a statute that referred to the Court’s three categories of exceptions. Instead, in 1870, the Reconstruction Congress reenacted the Civil Rights Act, which expressly excluded all persons “subject to any foreign power.” 16 Stat. 144 (reenacting Act of Apr. 9, 1866, 14 Stat. 27). Once again, a foreigner who was not domiciled here remained subject to a foreign power—namely, his home country. See

¹⁴One *amicus* brief tried to identify a decision recognizing the citizenship of a person born but not domiciled here, but it hurt more than it helped. See Brief for Charitable Irish Society of Boston et al. as *Amici Curiae* 5, n. 2. That person was named Joseph Mogridge. Mogridge made a claim against the United States in 1872 that required him to be a British subject. See 22 British and American Mixed Comm’n, Memorials, Demurrers, Briefs, and Decisions, No. 345 (1873) (Mixed Comm’n). The United States prevailed on the argument that Mogridge was an American citizen because he was “born within the United States” and he was “at the time of the alleged injuries, domiciled within the United States.” *Ibid.* Before *Elk*, some believed that the domicile required by the Citizenship Clause could be acquired after birth. See 112 U. S., at 121–122 (Harlan, J., dissenting). The Government apparently took that view. What was not an open question was whether the Citizenship Clause required that a person, as the Mogridge case shows, be “domiciled within the United States.” Demurrer to Memorial, 22 Mixed Comm’n No. 345. For good reason, the plaintiffs and the Court chose not to invoke Mogridge’s case.

THOMAS, J., dissenting

Part I–B–2, *supra*. Nobody in Congress, as far as I am aware, argued that this exclusionary language violated the Citizenship Clause.

Congress left the language excluding persons “subject to any foreign power” in place until 1940. See, *e.g.*, Rev. Statutes §1992 (1875) (“All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States”); 8 U. S. C. §1 (1934 ed.) (“All persons born in the United States and not subject to any foreign power are declared to be citizens of the United States”). It was the governing rule for the first 72 years after ratification. “[S]uch contemporaneous legislative exposition of the Constitution . . . , acquiesced in for a long term of years, fixes the construction to be given its provisions.” *Printz v. United States*, 521 U. S. 898, 905 (1997) (internal quotation marks omitted).

The Court has no explanation for the Reconstruction Congress’s 1870 decision to exclude from citizenship all persons “subject to any foreign power.” It appears to concede that it cannot reconcile its interpretation of the Citizenship Clause with that statute. See *ante*, at 23–25. And, the Court recognizes that “every child born to” temporary visitors was subject to a foreign power. See *ante*, at 24; see also Part I–B–2–b, *supra*. According to the Court, then, Congress defied the Citizenship Clause immediately after enacting it.

3

Early judicial precedent supports the same conclusion. In 1873—five years after ratification—this Court described the Citizenship Clause in a manner that is, on the Court’s view, indefensible. It stated that the Clause “exclude[d] from its operation children of . . . citizens or subjects of foreign states born within the United States.” *Slaughter-House Cases*, 16 Wall., at 73. The Court rejects that position today, but declines to address its previous interpretation.

THOMAS, J., dissenting

Likewise, in 1884, this Court interpreted the Citizenship Clause to require that a person be “not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to [its] political jurisdiction,” “owing [it] direct and immediate allegiance,” and “owing no allegiance to any alien power.” *Elk*, 112 U. S., at 101–102; accord, *id.*, at 117–122 (Harlan, J., dissenting); *Plessy*, 163 U. S., at 563 (Harlan, J., dissenting). The Court also rejects that position today. See *ante*, at 25.

C

Decades of postratification scholarship interpreting the Citizenship Clause confirmed this view.

Most interpreters of the Citizenship Clause concluded that it required domicile. The Citizenship Clause, scholars said, required that a child born here of alien parents show that those parents were “permanently domiciled within the United States.” Robinson, Notes on Elementary Law, at 70. It excluded those with “allegiance to some other government.” Cooley, General Principles of Constitutional Law, at 243. Children born in the United States, their “parents not being here domiciled, are not citizens.” Wharton Treatise 1880, at 41. “The words ‘subject to the jurisdiction thereof,’ . . . exclude[d] the children of foreigners transiently within the United States.” Morse, Treatise on Citizenship, at 248. Children “born in the United States to foreigners here on transient residence” were not “subject to the jurisdiction of the United States.” 2 Wharton Digest 393–394. A “child born here” to parents “temporarily residing” was “not a citizen of the United States, because it was not subject to its jurisdiction.” S. Miller, Lectures on the Constitution of the United States, at 279.

Many more agreed: The Citizenship Clause excluded the “children of foreign subjects, born while the latter transiently sojourn here.” Lesser, Citizenship and Franchise, 4 Colum. L. Times, at 146. The “children of foreigners, in

THOMAS, J., dissenting

transient residence, are not citizens.” Hall, *Foreign Powers and Jurisdiction of the British Crown*, at 63. “[I]f a stranger or traveler passing through the country” has “a child born here, who goes out of the country with his father, such child is not a citizen.” Black, *Handbook of American Constitutional Law* 458 (1895). “[C]hildren of foreigners in transient residence are not citizens.” Hall, *International Law*, at 236–237 (1895). “One born of parents temporarily in our country” is not constitutionally guaranteed citizenship because he “is not born with the stamp of domicile,” so the “elements of national jurisdiction are wanting.” *Ide*, *Citizenship By Birth—Another View*, 30 *Am. L. Rev.*, at 248. The Citizenship Clause excludes “children of persons passing through or temporarily residing in this country.” Winchester, *Citizenship in Its International Relation*, 31 *Am. L. Rev.*, at 504.

* * *

The Court does not attempt to match this postratification evidence. To the contrary, the Court acknowledges that—at least by the 1880s—the Citizenship Clause was understood to require domicile by the “Government,” the “Executive Branch,” the “State Department,” “scholars,” and “treatises.” *Ante*, at 14, 21. The Court, though, proposes that this widespread understanding was not evidence of the original public meaning of the Citizenship Clause, but a rebellion against it. *Ibid.* The scholars, courts, and government officials who held that domicile was required, the Court says, were engaged in a law-reform effort. Their motive, the Court seems to say, was to deny citizenship to Chinese immigrants, especially around “the election of President Cleveland, the first Democrat to hold the office since the Civil War.” *Ibid.* On this basis, the Court suggests ignoring the considerable postratification practice and scholarship that is incompatible with its view. *Ibid.*

THOMAS, J., dissenting

The Court’s account does not make sense. To begin, the postratification evidence against the Court’s view begins not “nearly two decades after the Fourteenth Amendment’s ratification,” but immediately. *Ante*, at 13. Well before the Court has any explanation for a departure from its view, all three branches of the Federal Government had already rejected it. In 1870, Congress interpreted the Citizenship Clause to require that a child born here be “not subject to any foreign power.” See 16 Stat. 144 (reenacting Act of Apr. 9, 1866, 14 Stat. 27). In 1873, the Supreme Court interpreted the Citizenship Clause to “exclude from its operation children of . . . citizens or subjects of foreign States born within the United States.” *Slaughter-House Cases*, 16 Wall., at 72–73. And, the same year, President Grant’s Attorney General interpreted the Citizenship Clause to exclude the children of “[a]liens” over whom the United States had “limited” jurisdiction even though they were “born here.” 14 Op. Atty. Gen., at 300.

If all three branches of the Federal Government were not enough, many others concurred during these first two decades. The Court cannot explain why, in the 1870s, William Robinson wrote that children “born within the territory of the United States, of alien parents” were not citizens unless “permanently domiciled within the United States,” Robinson, *Notes on Elementary Law* 70; why California excluded from citizenship “children of transient aliens,” Political Code of California §51(1); why Representative Ebenezer Hoar—President Grant’s first Attorney General and one of the nation’s most eminent jurists—interpreted the Citizenship Clause to require domicile, 2 Cong. Rec. 3279; see 3 C. Warren, *The Supreme Court in United States History* 223–226 (1924); and why the Executive Branch denied citizenship to a child born here but domiciled abroad, see Letter from Acting Sec. of State F. Seward to H. Fish (Aug. 20, 1878), in 2 Wharton Digest 396. The Court likewise cannot explain why, in 1880, Thomas Cooley wrote that the

THOMAS, J., dissenting

Citizenship Clause excluded children who had any “allegiance to some other government.” General Principles of Constitutional Law in the United States of America 243.

The Court’s theory does not even explain the later evidence that it characterizes as a revisionist project. If, as the Court suggests, various government officials and scholars were trying to prevent the children of Chinese immigrants from being citizens, then they would not have proposed a domicile requirement alone. They would have needed to propose a citizenship requirement. As *Wong Kim Ark* exemplifies, many Chinese immigrants were already domiciled here; they simply were ineligible for formal naturalization. See 169 U. S., at 652; Part I–E–3, *supra*. Accordingly, when the Executive Branch did attempt to exclude the Chinese in the 1890s, it argued against the domicile rule. See Part I–E–3, *supra*. Meanwhile, as far as I can tell, the people excluded by the domicile requirement were not Chinese, *contra*, *ante* at 21, n. 7, but mostly European. Children such as Joseph Speck of Switzerland, Ludwig Hausding of Saxony, Richard Greisser of Germany, Freiderich de Bourry of Austria, and the child of Mary Deveraux of Ireland are unlikely targets of a campaign of anti-Chinese discrimination. See Part I–E–1–a, *supra*.

The more likely explanation for why so many Americans stated that the Citizenship Clause required domicile is that the Citizenship Clause required domicile.

D

Many other indicators of original public meaning support the domicile requirement. I briefly address three.

First, if the Court were right that the Citizenship Clause did not require domicile, then it would have increased dual nationality, which would have provoked concern among 19th-century Americans. “The United States has long recognized the general undesirability of dual allegiances.” *Savorgnan*, 338 U. S., at 500. “[A]t the time of ratification,

THOMAS, J., dissenting

exclusive loyalty to the United States had long been a fundamental element of American citizenship.” Brief for Professor Richard Epstein as *Amicus Curiae* 12; see also Part I–B–2–a, *supra*. The view at the time was that a nation should “as soon tolerate a man with two wives as a man with two countries.” Letter from G. Bancroft to Lord Palmerston (Jan. 26, 1849), S. Exec. Doc. No. 38, 36th Cong., 1st Sess., at 164 (1860); see also P. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 *Emory L. Rev.* 1411, 1430 (1997).

Opposition to dual nationality was especially strong after the Civil War. “The country had just emerged from a civil war that cost the lives of over 600,000 men due to a treasonous denial of allegiance to the Union—the United States. Going forward, there would be no national citizenship absent a reasonable expectation of national allegiance.” Lash, 101 *Notre Dame L. Rev.*, at 141 (emphasis deleted). An 1868 congressional report explained that if a person was a national of both his home country and the country of his birthplace, it could “expos[e]” him to competing claims for “compulsory military service,” or could cause him to be “summoned to fight for Governments with which [he] ha[s] no connections, and against those with which [his] fortunes are indissolubly united.” Report of 1868, at 100; accord, *Kawakita v. United States*, 343 U. S. 717, 733, 736 (1952). “The intimate association of those who are claimed as subjects of foreign Governments is such as to put in peril the rights or peace of all.” Report of 1868, at 100. Accordingly, this Court has long resisted reading the Citizenship Clause to inhibit the political branches’ ability to address “problems attendant on dual nationality.” *Rogers v. Bellei*, 401 U. S. 815, 831 (1971).

A rule that recognized the citizenship of children born to temporary visitors would have increased dual nationality. At the adoption of the Citizenship Clause, as today, most nations treated the children of their citizens born while

THOMAS, J., dissenting

temporarily abroad as citizens. See Spiro, 46 Emory L. J., at 1426; 1 W. Blackstone, Commentaries on the Laws of England 373 (1768). As a result, a child born in the United States of a temporary visitor would have immediately been a citizen of his home nation. If the Court's interpretation were correct, the child would immediately also become a dual citizen. It is unlikely that the Reconstruction Congress constitutionalized such a rule. By contrast, the domicile requirement mitigated the problem of dual nationality. Each person had one and only one domicile, so tying citizenship to domicile avoided dual citizenship. See *Inhabitants of Abington*, 40 Mass., at 177; accord, Field 147.

Second, the domicile rule aligns national citizenship with the longstanding rule for state citizenship. Even after the Court's decision today, Americans are citizens of only the State of their domicile, even if it is not the State of their birth. *Wachovia Bank*, 546 U. S., at 318. No one doubts that a child born to New Yorkers on vacation in Florida would be treated as domiciled in, and a citizen of, New York. Brief for Sen. Eric Schmitt et al. as *Amici Curiae* 7, n. 2. For the same reason, one would think that a child born to Canadians on vacation in Florida should not be a citizen of the United States. The Court, in other words, rejects and is bewildered by an approach to citizenship that is in fact the one we still know best.

Third, the domicile rule would make the Citizenship Clause accord with America's treatment of its own domiciliaries abroad. America itself has long taken the position that children of American citizens born on temporary visits abroad are American citizens. See, e.g., 8 U. S. C. §§1401(c), (g); Act of Feb. 10, 1855, 10 Stat. 604; Act of Apr. 14, 1802, 1 Stat. 155; *Ludlam*, 31 Barb., at 503–504; Cooley, Principles of Constitutional Law 243, n. 1. Such children were long considered American citizens because their parents were domiciled in America. See, e.g., *United States v. Gordon*, 25 F. Cas. 1364, 1368 (No. 15,231) (SDNY 1861).

THOMAS, J., dissenting

It is unclear why the same reasoning should not apply in the other direction.

IV

The Court’s alternative history is mistaken.

A

The Court’s theory of the Citizenship Clause stands on three main pillars: *Calvin’s Case*, *Lynch v. Clarke*, and *Wong Kim Ark*. None can justify the Court’s decision today.

1

The first pillar of the Court’s theory is *Calvin’s Case*, a 418-year-old English common-law decision. *Calvin’s Case* held that a child born in Scotland could hold land in England. See 7 Co. Rep. 1a, 77 Eng. Rep. 377 (K. B. 1608). According to the Court, Sir Edward Coke’s separate opinion in *Calvin’s Case* established the “common law” principle called “*jus soli*,” pursuant to which people owed perpetual feudal allegiance to the King of England if they were “born within the dominions” that he owned. *Ante*, at 3–4. This principle applied to all persons born on the land, not just those domiciled there. As the Court tells it, the 1608 feudal principle as described by Coke was adopted as the law of citizenship in America and then incorporated by reference in the Citizenship Clause. *Ante*, at 2–9.

The English principle was a rule of feudal servitude, not a rule of citizenship. “[I]n England there was no such thing as a citizen.” Hamburger, *Allegiance, Birthright, and Citizenship*. The English principle instead determined a person’s permanent feudal bondage to the King, which he could not unilaterally abandon. It was based on the notion that “[a] man owed personal service to the lord of the soil, the same as his master owed it to the king; and it was born with the child and only ended in the grave”—a relation of “master and servant.” 2 Cong. Rec 3279 (statement of Rep. Cox). “Under the feudal system, every owner of lands held them

THOMAS, J., dissenting

in subjection to some superior or lord.” 1 Blackstone, Commentaries on the Laws of England, at 367–368. The lord would “protect the vassal in the enjoyment of the territory granted him,” while the vassal would “be faithful to the lord, and defend him against all his enemies.” *Ibid.*; see also P. Schuck & R. Smith, *Citizenship Without Consent* 12–18 (1985).¹⁵

The English feudal principle “was not accepted by the American governments.” Report of 1868, at 95. As JUSTICE ALITO explains, the principle that birth on the soil made a person perpetually bound to the King was premised on the theory that the King was anointed by God to rule the people like children. *Post*, at 4–5 (dissenting opinion). John Adams famously wrote that the feudal theory meant that “the common people were held together, in herds and clans, in a state of *servile* dependence on their lords” in “a state of total ignorance of every thing divine and human.” 1 Papers of John Adams 113 (1977) (Adams). Americans “emphatically rejected” this theory. *Post*, at 5 (ALITO, J., dissenting). “[T]hey began their settlements, and formed their plan both of ecclesiastical and civil government, in *direct opposition* to . . . the *feudal syste[m]*.” 1 Adams 114. They then dissolved “all Allegiance to the British Crown.” Declaration of Independence ¶32. And, they set up a new system of government in which the people were not regarded as servile dependents. Instead, the people were sovereign, and the government derived its legitimacy from them. Declaration of Independence ¶2. In this new system of government, feudalism had no place. See 1 Adams 111–115; M. Rothbard, *Conceived in Liberty* 532–573 (2011). The soil did not belong to the government, but to the people. And, those who

¹⁵The English feudal principle was also a product of the “isolated position of th[e] island” nation of England, which meant that temporary visits from childbearing foreigners were rare. A. Cockburn, *Nationality: The Law Relating to Subjects and Aliens, Considered With a View to Future Legislation* 7 (1869); cf. *Law of Domicil* 5–6.

THOMAS, J., dissenting

were born on it did not owe the government a lifetime of obeisance or servitude.

The Reconstruction Congress expressly opposed the feudal principle that the Court claims that it adopted. *Contra, ante*, at 25–26 (majority opinion). As its Committee on Foreign Affairs saw the matter, “[t]here is nothing American in the oath of the land barons of England.” Report of 1868, at 99. It described the English rule’s “claim of indefeasible allegiance and perpetual service” as “the symbol of feudalism and force.” *Id.*, at 96. Instead of the feudal principle, the congressional Report explained that American law viewed people as taking on a new citizenship, as relevant here, when they changed their “domicile.” *Id.*, at 100. The same year that the Citizenship Clause was ratified, Congress passed a statute rejecting the feudal principle and explaining that it supported the right of all persons to expatriate and change their citizenship. Act of July 27, 1868, 15 Stat. 223–224; see Spiro, 46 Emory L. J., at 1427–1428.

In fact, by the 1840s, even English law had evolved. England had moved on from “the darkness of the middle ages” and—as the “subjects of one kingdom began to migrate into and reside in other countries”—had begun to attach a newfound “importance to the Law of Domicil.” Law of Domicil 14. Well before the Citizenship Clause, this Court explained that “the Courts of England ha[d] decided, that a person who removes to a foreign country, settles himself there, and engages in the trade of the country, furnishes, by these acts, such evidence of an intention permanently to reside there, as to stamp him with the national character of the state where he resides.” *The Venus*, 8 Cranch, at 279. A year after the Citizenship Clause, a renowned English case declared that a person’s civil status, “by virtue of which he has ascribed to him the character of a citizen of some particular country,” is “governed universally by one single principle, namely, that of domicil.” *Udny v. Udny*, (1869) SC (HL) 441, 457 (Scot).

The second pillar of the Court's theory is *Lynch v. Clarke*—a “single state-court case about citizenship,” *ante*, at 19–20, from 1844. Thomas Lynch was a successful businessman in New York. When he died, he had no will and no children. Shortly after he died, his brother Bernard and his niece (through another brother) Julia moved to New York from Ireland. The New York Legislature then passed a special statute giving Lynch's property to Julia Lynch, subject only to the rights of the “heirs at law of Thomas Lynch.” 1 Sand. Ch., at 586. The legislature then passed another special statute giving Lynch's property to Bernard Lynch, save for “the claims of heirs of Thomas, and the existing rights of Julia Lynch.” *Ibid.* Lynch's business partner, John Clarke, also claimed a right to property in his estate.

Bernard then brought a bill in equity against both Julia and Clarke. Julia cited the special statute giving her inheritance rights, but also argued that because she was born in the United States, she inherited all of Thomas's property and had other equitable entitlements. That argument turned on a state-law bar on aliens inheriting real property, so Julia argued that she was not an alien. She argued, among other things, that she was not an alien because she was in fact domiciled in the United States at the time of her birth: Her father “came here with an intention to remain, and thereby changed his domicil.” *Id.*, at 632.

The assistant vice chancellor who was assigned the case held six days of argument, during which Julia Lynch's citizenship “was not then made a very prominent point.” *Id.*, at 588. After argument, the assistant vice chancellor “became so impressed with the importance of the question upon the citizenship of Julia Lynch” that he asked for supplemental briefing on the issue. *Ibid.* He then wrote a long opinion explaining his theory of American citizenship, which concluded that Julia Lynch was not an alien, but a

THOMAS, J., dissenting

citizen, and therefore entitled to inherit the property. Within a year, New York replaced the law that the assistant vice chancellor interpreted with a new law that simply made aliens eligible to inherit property. See 1845 N. Y. Laws p. 94. The State shut down his court two years later. See N. Y. Const., Art. XIV, §8 (1846) (“The offices of Chancellor, . . . Vice-Chancellor, Assistant Vice-Chancellor . . . are abolished”); 2 Lincoln, *The Constitutional History of New York From the Beginning of the Colonial Period to the Year 1905*, p. 152 (1905).

The Court’s reverence for *Lynch v. Clarke* is not commensurate with its importance. *Lynch* was not a precedent of this Court, or any federal court, or any state appellate court, or even a court of law. Instead, it was decided by a New York “assistant vice-chancellor” in a court of equity’s equivalent to a trial court. The assistant vice chancellor, much like a magistrate judge, had the power to hear “preliminary motion[s] for the suppression of testimony” and cases “refer[red]” to him by the chancellor. See 1845 New York Laws p. 263. The assistant vice chancellor’s opinion on Julia’s citizenship was apparently not reviewed by any appellate court. See W. Mayton, *Birthright Citizenship and the Civic Minimum*, 22 *Geo. Immigration L. J.* 221, 239–240 (2008).

Lynch also did not interpret the Citizenship Clause, a statute using the same language as the Citizenship Clause, or even a statute that remained in effect at the time of the Citizenship Clause. Instead, it interpreted a New York state law. The state law was replaced immediately after *Lynch*. See 1 Sand. Ch., at 583, n. a., 620; 1845 N. Y. Laws p. 94. If a “single, expressly limited opinion from a specialized intermediate [federal] court” does not establish a well-settled meaning that the Court can assume Congress incorporated into a federal statute that uses the same language, *Learning Resources, Inc. v. Trump*, 607 U. S. 229, 252

THOMAS, J., dissenting

(2026), then a single state trial equity-court decision interpreting a different law certainly does not do so.¹⁶

Lynch also lacked staying power. By the time of the Citizenship Clause, New York’s higher courts had all but abrogated it. In *Ludlam v. Ludlam*, a New York appellate court held that the children of those “traveling or sojourning abroad,” “though born in a foreign country, are not born under the allegiance, and are an exception to the rule which makes the place of birth the test of citizenship.” 31 Barb., at 503. That decision was affirmed by the New York Court of Appeals, which stated: “By the law of nature alone, children follow the condition of their fathers, and enter into all their rights. The place of birth produces no change in this particular.” *Ludlam v. Ludlam*, 26 N.Y. 356, 368 (1863) (emphasis deleted); see also Mayton, 22 Geo. Immigration L. J., at 240 (“shortly thereafter, in *Ludlam v. Ludlam*, that state’s highest court with all justices concurring spoke differently, saying that birthright citizenship depended on parentage rather than the ‘boundaries of the place’”). When the New York Legislature authorized a committee to codify its laws in 1860, the codification defined birthright “citizens” as “[a]ll persons born in this state and domiciled within it, except the children of transient aliens and of alien public ministers and consuls.” Political Code of New York §5.

¹⁶New York also stood apart from the rest of the United States in its affinity for the feudal system on which the assistant vice chancellor’s theory was based. See D. Ellis, Land Tenure and Tenancy in the Hudson Valley, 1790–1860, 18 Agricultural Hist. 75 (1944) (explaining that the Hudson Valley, with its “large manors and estates owned by a closely knit and politically powerful aristocracy,” was “distinctive, if not unique, in American history”); Rothbard, Conceived in Liberty 534 (“As early as the turn of the eighteenth century, New York, in its large Hudson River manors, was the only colony where feudal landholding retained an important foothold”); C. Spencer, The Land System of Colonial New York, 16 Proceedings of N. Y. State Hist. Assn. 150, 151 (1917) (noting the “quasi-feudal tendency” in New York prior to the American Revolution).

THOMAS, J., dissenting

Then, “during the Fourteenth Amendment debates of the Thirty-Ninth Congress, *Lynch* went unmentioned. It was only during the Civil Rights Act [debates] that *Lynch* appeared—a single mention by a member who played no role in drafting the Fourteenth Amendment.” Lash, 101 Notre Dame L. Rev., at 119 (footnote omitted); see Epstein, *The Myth of Birthright Citizenship*, at 80 (“At the time of the debates over the ratification of the Fourteenth Amendment, moreover, *Lynch v. Clarke* appeared to play no role”). So, while this Court’s opinion invokes *Lynch* 13 times in 26 pages, the entire Reconstruction Congress in the combined course of deliberations over the Civil Rights Act and the Citizenship Clause mentioned it only once.

3

The third pillar of the Court’s theory is *Wong Kim Ark*. The question before the Court today—whether the Citizenship Clause requires the President to recognize citizenship for the children of all lawful temporary visitors and illegal aliens—was not before the Court in *Wong Kim Ark*. Instead, the *Wong Kim Ark* Court held that someone born in America to parents domiciled in the United States was a citizen. It rejected the Government’s argument that Wong’s parents had to be citizens for him to be a citizen at birth.

The Citizenship Order is fully consistent with this decision. Under the Order, people like Wong remain citizens, and the Government today nowhere urges the position that it took in *Wong Kim Ark*. To the contrary, it invokes authorities that the Government in *Wong Kim Ark* opposed. Compare Brief for Petitioner 13–43 (arguing for domicile rule) with Brief for Appellant in *Wong Kim Ark*, O. T. 1895, No. 904, at 13–31 (arguing against domicile rule). The Court nonetheless leans heavily on dicta from the majority opinion in *Wong Kim Ark*, which it takes to have established that Wong’s domicile was irrelevant, and that he—a

THOMAS, J., dissenting

lifelong American—was indistinguishable from a person who had no meaningful ties to America.

The Court does not ordinarily put so much weight on past decisions' discussion of matters not before the Court. "It is a maxim not to be disregarded," this Court has always admonished, "that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." *Cohens v. Virginia*, 6 Wheat. 264, 399 (1821). Thus, if they "go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision." *Ibid.* "Instead, we emphasize, our opinions dispose of discrete cases and controversies and they must be read with a careful eye to context." *National Pork Producers Council v. Ross*, 598 U. S. 356, 373–374 (2023). After all, "[t]he question actually before the Court is investigated with care, and considered in its full extent," but "[o]ther principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." *Cohens*, 6 Wheat., at 399–400. Cf. *Trump v. Cook*, 609 U. S. ___, ___, n. 3 (2026) (slip op., at 17, n. 3) ("[W]e review judgments, not statements in opinions" (internal quotation marks and alterations omitted)).

Nor is *Wong Kim Ark*'s dicta so clearly on the Court's side. After a long discussion with many internally inconsistent statements, *Wong Kim Ark*'s final statement of the rule comported more closely with the Citizenship Order's application to temporary visitors than with the Court's view. The *Wong Kim Ark* Court concluded that the Citizenship Clause grants citizenship to "all children here born of *resident* aliens, with the exceptions or qualifications" of (1) "children of foreign sovereigns," (2) children of foreign "ministers," (3) children "born on foreign public ships," (4) children "of enemies within and during a hostile occupation of part of our territory," and (5) "children of members of the

THOMAS, J., dissenting

Indian tribes owing direct allegiance to their several tribes.” 169 U. S., at 693 (emphasis added). It then reaffirmed that “[t]he Amendment, in clear words and manifest intent, includes the children born within the territory of the United States, of all other persons, of whatever race or color, *domiciled* within the United States.” *Ibid.* (emphasis added).

Wong Kim Ark also repeatedly emphasized that its holding was limited to domiciliaries. See Part I–E–3, *supra*. It did so seven times in the first paragraph and repeatedly after that. *Id.*, at 652. And, presciently, *Wong Kim Ark* itself invoked this Court’s oft-repeated reminder that “general expressions” that “go beyond the case” should not “control the judgment in a subsequent suit when the very point is presented for decision.” *Id.*, at 679 (internal quotation marks omitted). “This is not quite ‘no, no, a thousand times no,’ but should have sufficed to dissuade the [Court] from invoking the case with respect to the distinct legal and factual issues presented here.” *Learning Resources*, 607 U. S., at 254–255, n. 6 (citation omitted).

It is not surprising that *Wong Kim Ark* limited its holding to domiciliaries. The Government in *Wong Kim Ark* stipulated that Wong was domiciled in the United States and argued that domicile was irrelevant. See Part I–E–3, *supra*; Brief for Appellant, O. T. 1895, No. 904, at 13–29. The Court thus had little reason to consider what rule would apply to a temporary visitor. The Court was hardly likely to upset the consensus that the Citizenship Clause required domicile in a case where the issue was irrelevant given Wong’s domicile in this country. See Part I–E, *supra*.

If *Wong Kim Ark* were so “simple” in establishing the Court’s rule as to temporary visitors, *ante*, at 16, that meaning was seemingly lost on many. As a Department of Justice report confirmed in 1910, a dozen years after *Wong Kim Ark*, “it has never been held, and it is very doubtful whether it will ever be held, that the mere act of birth of a child on

THOMAS, J., dissenting

American soil, to parents who are . . . temporarily in the United States, operates to invest such child with all the rights of American citizenship.” Spanish Treaty Claims Comm’n, Final Report of William Wallace Brown, Assistant Attorney-General, p. 124. The Citizenship Clause’s reference to “jurisdiction” “does not mean that jurisdiction to which the bodily form of the child is subject from the moment of its birth,” but instead that “larger jurisdiction, which, though difficult to define, is well known and understood, the difference between the jurisdiction which is exercised over a visitor and that over one domiciled.” *Id.*, at 125.

In the years following *Wong Kim Ark*, the Citizenship Clause was generally understood as limited to children born of “alien parents, not temporarily resident here, but permanently domiciled.” Brannon 29. Nothing in *Wong Kim Ark* changed the consensus that “children born in the United States to foreigners here on transient residence are not citizens, because by the law of nations they were not at the time of their birth ‘subject to the jurisdiction’” of the United States. Taylor, *International Public Law*, at 220; accord, *e.g.*, Hall, *International Law*, at 227 (1904) (“[I]t would seem that the children of foreigners in transient residence are not citizens”); 1 Wharton, *Conflict of Laws* 42–45 (1905) (“citizens” must be “domiciled”); Guthrie, *Lectures*, at 57 (“permanently domiciled and residing here”); Westlake, *International Law*, at 220 (when a father is “in the Union for a transient purpose,” his children “born within it have his nationality”); Black, *Handbook of American Constitutional Law*, at 634 (3d ed. 1910) (no citizenship for child of “a stranger or traveler passing through the country, or temporarily residing here”); 1 Bellott, *Leading Cases on International Law*, at 183 (“[C]hildren . . . of foreigners in transient residence . . . are excluded from citizenship, even though born within the United States”).

THOMAS, J., dissenting

4

As for the remainder of the Court’s reasoning, much of it is self-defeating.

To begin, the Court invokes Frederick Douglass’s statement that “[t]he Constitution knows all the human inhabitants of this country as ‘the people.’” *Ante*, at 7 (quoting 2 Douglass 415). But, temporary visitors are not “inhabitants”; to be an inhabitant, a person must be domiciled. See T. Cooley, *Constitutional Limitations* 661 (2d ed. 1871) (“[O]ne is an inhabitant, resident, or citizen at the place where he has his domicile”); *Crawford v. Wilson*, 4 Barb. 504, 520 (NY 1848) (“Inhabitant is defined to be one who has his domicil in a place,” “as distinguished from an occasional lodger or visitor”); *Sears v. Boston*, 42 Mass. 250, 251 (1840) (“the domicil, or the fact of being an inhabitant”); *Littlefield v. Inhabitants of Brooks*, 50 Me. 475, 478 (1862) (“where he was an inhabitant—where he had a domicil”). And, Frederick Douglass himself argued that blacks were citizens because they were not comparable to temporary visitors—they were not “aliens”; they were not “exiles”; and they were not “strangers.” 2 Douglass 255–256. Instead, they were “Americans,” he said, who—unlike temporary visitors—“owe equal allegiance to the same government.” *Id.*, at 255, 265.

Likewise, the Court invokes Attorney General Bates’s statement that persons born here were “*prima facie*” citizens. See *ante*, at 8. But, the Court does not seem to be aware that this phrase corresponds to the rule of domicile that the Court rejects. See *President and Fellows of Harvard College*, 22 Mass., at 375 (“[T]he place of birth” is “*prima facie* evidence of domicil”); see also, *e.g.*, *Overseers of Readington v. Overseers of Tewksbury*, 2 N. J. L., at 289; Story on Conflict of Laws 45. If a person’s parents were domiciled abroad, then the *prima facie* case was overcome. See Part I–B, *supra*.

THOMAS, J., dissenting

Beyond these statements, the Court mainly emphasizes that the children of temporary visitors owed a partial “allegiance” to and were owed partial “protection” from the sovereign. See, *e.g.*, *ante*, at 10, 17–19. That (undisputed) fact does not demonstrate that the children of these visitors were citizens. See Part I–B–2–b, *supra*. To the contrary, Senator Trumbull explained that the Civil Rights Act was written to avoid this very misunderstanding: The Act said “not subject to any foreign power” instead of “owing allegiance” to the United States precisely because temporary visitors owed a partial allegiance to the United States, and he did not want anyone to mistakenly conclude that the Act included the children of temporary visitors. Cong. Globe, 39th Cong., 1st Sess., at 572. The language chosen thus excluded temporary sojourners, who “continue[d] to owe allegiance to [their] native country.” 1 Z. Swift, *A System of the Laws of the State of Connecticut* 164 (1795); accord, *Ludlam*, 31 Barb., at 503.

Finally, the Court relies on general statements without recognizing that those statements are also compatible with my view of the Citizenship Clause. The Citizenship Clause indeed followed the pre-existing law, see, *e.g.*, *ante*, at 9, but the pre-existing law was based on domicile, see Part I–A, *supra*; children born here to foreign parents indeed were generally citizens, see *e.g.*, *ante*, at 5, but that is because they were generally domiciled here, see Part I–A, *supra*; and citizenship did indeed almost always follow birthplace, see, *e.g.*, *ante*, at 8–9, but that is because birthplace almost always followed domicile, see Part I–A, *supra*.

B

The Court’s responses to my view also undermine its own. The Court criticizes my view for depending on “the *parents’* status, not the *child’s*.” *Ante*, at 14. But, the Court’s view depends on the “parents’ status,” too. The Court, for example, excludes from citizenship the children of

THOMAS, J., dissenting

“representatives of foreign sovereigns” or enemy invaders. *Ante*, at 3, 15. Unless newborn babies are serving as international diplomats, the Court’s account thus turns on parents’ status. Along the same lines, the Court asks why “[w]ords appearing frequently in the Executive Order—‘mother,’ ‘father,’ ‘lawful,’ ‘temporary’—are absent from the Clause.” *Ante*, at 22. But, again, if that is a problem, then it is one for the Court’s theory as well. After all, the Court’s exceptions—for “foreign representatives,” “Indians,” and invading “enemies”—do not appear in the Clause, either. Finally, the Court suggests that “domicile” is a difficult concept to apply. See *ante*, at 20. But, “[d]omicile’ is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-laws purposes, and its meaning is generally uncontroverted.” *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U. S. 30, 48 (1989). And, the Court’s concept poses its own administrability questions. The Court never explains, for example, what happens when a child is born to a citizen and a diplomat or to a citizen and a member of an invading army.

The Court also suggests that my interpretation of the Citizenship Clause is not consistent with the Civil Rights Act’s “not subject to any foreign power” requirement because a foreign nation can purport to exercise power over its original citizens even after they establish a domicile here. *Ante*, at 23–24. But, the Court’s interpretation of the Citizenship Clause does not even attempt to be consistent with the Civil Rights Act’s requirement, since the children of temporary visitors are clearly subject to the foreign power of their homeland. See Part I–B–2, *supra*. Regardless, the Court is wrong about domiciliaries’ remaining “subject to” the foreign power of their country of birth. Although their nation of origin might purport to exercise jurisdiction over them, the United States would not have had to recognize that authority as lawful once those persons were domiciled here. See Part I–B–2, *supra*.

THOMAS, J., dissenting

The Court ultimately denigrates the evidence in support of my position as “scant.” *Ante*, at 18. I see it differently. The Court cites little evidence from the Reconstruction Congress that gave us the Citizenship Clause. And, its other 19th-century evidence is slim in comparison. As for the evidence in support of my position, it is substantial. Representative Bingham, the architect of the Fourteenth Amendment, believed that the Citizenship Clause would not apply to the children of temporary visitors. Senator Trumbull, a principal champion of the Amendment, agreed. Jacob Howard, who introduced the Citizenship Clause, agreed. Congressman after Congressman during the legislative debates agreed. Congress in 1870 agreed. President Grant’s Attorney General agreed. President Grant’s Attorney General before that agreed. The Supreme Court in 1873 agreed. State legislatures agreed. Executive Branch decisionmakers over the course of multiple decades agreed. Justice Miller agreed. Thomas Cooley agreed. A battery of other eminent scholars agreed. And, the great Justice John Marshall Harlan, on three separate occasions, agreed. Once again, “I am quite comfortable in the company I keep.” *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U. S. 701, 772 (2007) (THOMAS, J., concurring).

V

Before concluding, I briefly address plaintiffs’ argument that even if the Citizenship Order has at least some lawful applications consistent with the Citizenship Clause, it is not consistent with the statutory citizenship provision in force today. The Court gives no independent import to the statutory citizenship provision, and I would not, either.

From 1866 until 1940, the statutory citizenship provision required that a person claiming citizenship based on birth in the United States be “not subject to any foreign power.” See 16 Stat. 144; 14 Stat. 27. That language from the Civil Rights Act, like the language of the Citizenship Clause,

THOMAS, J., dissenting

required that a person claiming citizenship have a domicile in the United States. See Part I–B–2–b, *supra*. So, both the statute and the Constitution required domicile until at least 1940. See Part I, *supra*.

The Nationality Act of 1940 codified the existing law by enacting the Citizenship Clause’s text. “By the early 1930’s, the American law on nationality . . . was expressed in a large number of provisions scattered throughout the statute books.” *Perez v. Brownell*, 356 U. S. 44, 52 (1958). President Roosevelt designated a committee to review existing nationality laws and, as relevant here, “to codify those laws into one comprehensive nationality law.” Revision and Codification of the Nationality Laws of the United States, Exec. Order No. 6115 (Apr. 25, 1933). As a result of that process, Congress enacted the Nationality Act in 1940. 54 Stat. 1137; see *Perez*, 356 U. S., at 56. The Nationality Act was the “first attempt ever made since the founding of our Republic to codify and unify all the laws of the United States relating to the important subjects of nationality and naturalization.” G. Knight, Nationality Act of 1940, 26 A. B. A. J. 938 (1940).

A codification of existing law does not change the law unless it does so clearly. When legislatures “consolidate their statutes at large into a code,” they “often revise the wording of the prior statute to provide for consistency of expression. But that revision does not result from legislative reconsideration of the substance of codified statutes.” A. Scalia & B. Garner, *Reading Law* 257 (2012). The same is true for “legislative restyling exercises short of codification.” *Ibid.* Such “new language does not amend prior enactments unless it does so clearly.” *Ibid.*; see also, e.g., *Walters v. National Assn. of Radiation Survivors*, 473 U. S. 305, 318 (1985); *Wingo v. Wedding*, 418 U. S. 461, 469, and n. 9 (1974); *Rainbow Nav., Inc. v. Department of Navy*, 783 F. 2d 1072, 1076 (CA DC 1986) (Scalia, J., for the court).

The Nationality Act’s citizenship provision codified the Civil Rights Act’s “not subject to any foreign power” requirement and the Citizenship Clause’s “subject to the jurisdiction” requirement. It did so by borrowing language from the Citizenship Clause, which granted citizenship to all persons “born in the United States, and subject to the jurisdiction thereof.” 54 Stat. 1138. By using language that tracked the Citizenship Clause, Congress did not clearly change the law. “It would be surprising to discover that Congress departed from the constitutional standard by enacting the exact constitutional language.” S. Menashi, *The Birthright Citizenship Debate*, 49 Harv. J. L. & Pub. Pol’y 301, 313 (2026).

VI

The Fourteenth Amendment was enacted in the wake of the Civil War, “with the one pervading purpose” of securing equal citizenship for the freed slaves. *Slaughter-House Cases*, 16 Wall., at 71. It was enacted, as Justice Harlan wrote, “to secure to a race recently emancipated” the “civil rights” that other citizens enjoyed. *Plessy*, 163 U. S., at 555–556.

This Court has time and again denied Americans that promise. Shortly after the Amendment was ratified, this Court deprived black citizens of the right to peaceably assemble and to keep and bear arms. See *United States v. Cruikshank*, 92 U. S. 542 (1876); see *McDonald*, 561 U. S., at 808–809 (THOMAS, J., concurring in part and concurring in judgment). A little later, in *Plessy*, the Court upheld the subjugation of black citizens in the form of state-coerced racial segregation. 163 U. S. 537. When it had an opportunity to correct that profound error, it did so narrowly. See *Brown v. Bd. of Ed.*, 347 U. S. 483, 494, and n. 11 (1954). It then used that very decision to justify busing American children to different schools based on their race. See *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1 (1971).

THOMAS, J., dissenting

And, until recently, this Court continued to selectively enforce our colorblind Constitution, including by allowing state-coerced racial discrimination in public education, *e.g.*, *Grutter v. Bollinger*, 539 U. S. 306 (2003), and compelling States to draw political districts on the basis of race, *e.g.*, *Allen v. Milligan*, 599 U. S. 1 (2023).

Meanwhile, the Court has repurposed the Fourteenth Amendment to protect its own set of preferred rights that the Reconstruction Congress never contemplated and that cannot find support in its text. Today, the Court does so again by recognizing a constitutional right to citizenship for the children of all foreign birth tourists and illegal aliens.

VII

I am not sure that today’s opinion will stand the test of time. The Citizenship Clause “added greatly to the dignity and glory of American citizenship.” *Plessy*, 163 U. S., at 555 (Harlan, J., dissenting). Today’s opinion devalues that citizenship. I respectfully dissent.