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Supreme Court agrees to hear Trump’s challenge to birthright citizenship



By **Amy Howe**
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(Kevin Dietsch/Getty Images)

The Supreme Court will hear oral arguments early next year in the challenge to President Donald Trump’s Jan. 20 **executive order** seeking to end birthright citizenship – the guarantee of citizenship to almost everyone born in the United States. Under the order, which has never gone into effect, people born in the United States would not be

Skip to content

automatically entitled to citizenship if their parents are in this country either illegally or temporarily. The challengers argue that the order conflicts with both the text of the Constitution and the court's longstanding case law.

The announcement came in a **brief list of orders** from the justices' private conference on Friday morning. The court will release another list of orders, including the cases from Friday's conference in which it has denied review, on Monday at 9:30 a.m. EST.

The United States is one of roughly 30 countries, including Canada and Mexico, that offer automatic citizenship to nearly everyone born there. Birthright citizenship was added to the Constitution in 1868 when the 14th Amendment was adopted following the Civil War. The section of that amendment known as the citizenship clause provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The amendment was intended to overrule one of the Supreme Court's most notorious decisions, its 1857 ruling in *Dred Scott v. Sandford*, holding that a Black person whose ancestors were brought to the United States and enslaved was not entitled to any protection from the federal courts because he was not a U.S. citizen.

In a related case in 1898, the Supreme Court ruled in favor of Wong Kim Ark, who was born in California to parents of Chinese descent. By a vote of 6-2, **the court rejected** the government's argument that Wong Kim Ark was not a U.S. citizen, with Justice Horace Gray explaining that the 14th Amendment – although enacted to establish the citizenship of Black people – "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens."

In his dissent, Chief Justice Melville Fuller argued that Wong Kim Ark was not a U.S. citizen because he could not be "completely subject to the jurisdiction" of the United States: as Chinese citizens, his parents had a duty to the emperor of China, and a federal law barred them from becoming U.S. citizens.

Trump's executive order on birthright citizenship spurred multiple lawsuits. In Seattle, one federal judge temporarily barred the Trump administration from enforcing the order, while a federal judge in Maryland separately blocked the Trump administration from enforcing the order while a challenge by immigrants' rights groups and several individual pregnant women moved forward.

The Trump administration **came to the Supreme Court** in the spring. But U.S. Solicitor General D. John Sauer did not ask the justices to weigh in on the legality of the president's order. Instead, the issue before the court was the propriety of so-called "universal" or

Skip to content

"nationwide" injunctions – orders by federal district courts that bar the government from enforcing a law or policy anywhere in the country. After the Supreme Court **issued its ruling in late June**, holding that district court judges generally cannot issue such orders, challenges to Trump's order continued in the lower courts – and lower courts once again ruled for the challengers.

In *Barbara v. Trump*, a federal district judge in New Hampshire **issued a preliminary injunction** that barred the Trump administration from enforcing the executive order against a class of **babies born on or after Feb. 20, 2025**, who are or would be denied U.S. citizenship by Trump's order. And in *Trump v. Washington*, a divided panel of the U.S. Court of Appeals for the 9th Circuit **ruled** that the executive order "is invalid because it contradicts the plain language of the Fourteenth Amendment's grant of citizenship to 'all persons born in the United States and subject to the jurisdiction thereof.'"

The Trump administration came to the Supreme Court at the end of September, asking justices to take up both cases. In **its petition for review**, it argued that the 14th Amendment's citizenship clause was "adopted to confer citizenship on the newly freed slaves and their children, not on the children of aliens temporarily visiting the United States or of illegal aliens." The challengers and the lower courts cannot rely on the court's 1898 decision in *Wong Kim Ark*, it argues, because the parents in that case lived permanently in the United States even if they weren't U.S. citizens.

Opposing review, the challengers countered that the Supreme Court has already decided, more than a century ago in *Wong Kim Ark's* case, what the citizenship clause means. But in any event, they wrote, in 1940 (and again in 1952) Congress enacted a federal law that essentially codified the citizenship clause, and it did so with *Wong Kim Ark* in mind, so that Trump's executive order also violates federal law.

On Friday afternoon, the court granted the Trump administration's petition for review in the *Barbara case*. The justices apparently did not act on the administration's petition for review in *Trump v. Washington*. If, as seems likely, the court does not take up that case, it will presumably remain on hold until the court issues its decision in the New Hampshire case.

The court also did not indicate that it intends to fast-track the *Barbara* case, which means that the justices will likely hear oral arguments in the spring, with a decision to follow by late June or early July.

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Skip to content [Cases: Trump v. Washington, Trump v. Barbara \(Birthright Citizenship\)](#)

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