

The Big Three Immigration Cases at the Supreme Court

A MIRC Analysis of the June 2026 Rulings: Temporary Protected Status, Asylum Access, Birthright Citizenship, and the Future of Federal Immigration Power

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July 2026

Executive Summary:

The Supreme Court (Court) issued three seismic immigration law decisions at the end of its October 2025 term. The Court ruled 6-3 in the Temporary Protection Status (TPS) and asylum cases, and issued a 6-3 judgment, with a 5-4 constitutional majority, in the birthright citizenship case. The first case, [Mullin v. Doe](#), overturns lower court decisions blocking the Trump administration's move to end [TPS](#) for roughly 350,000 Haitians and 4,000 Syrians. The second, [Mullin v. Al Otro Lado](#), endorses a policy dating back to the last months of the Obama administration, which permitted border officials to turn away asylum seekers arriving by land to ports of entry along the United States (U.S.)-Mexico border. In [Trump v. Barbara](#), the Court rejected the administration's attempt to restrict birthright citizenship by executive order, holding that children born in the U.S. to parents who are unlawfully or temporarily present are citizens at birth under the Fourteenth Amendment. Together, these decisions reshape key parts of immigration law, including humanitarian protections, asylum access, and the constitutional limits of executive power over citizenship.

Mullin v. Al Otro Lado Et. Al.

Background:

[Mullin v. Al Otro Lado](#) stemmed from concerns about the federal government's practice of "metering" asylum seekers at the United States (U.S.) - Mexico border. Under metering, Customs and Border Protection (CBP) officials limited how many people could approach a port of entry each day to be inspected and begin the asylum process. People who attempted to present themselves at official ports of entry were often told to wait on the Mexico side of the border before they could be processed.

Al Otro Lado and a class of asylum seekers challenged this practice, arguing that federal law requires the government to inspect and process people who present themselves at ports of entry to seek asylum. The lower courts agreed in significant part, finding that the government could not use metering to deny access to asylum processing for people who were in the process of arriving in the U.S. The federal government appealed, arguing that the statutory right to apply for asylum is triggered only once a person has physically crossed into the United States. The Supreme Court agreed with the government.

The Court's Decision

In a 6-3 decision, the Court ruled that a person standing on the Mexico side of the border has not "[arrived in the United States](#)" for purposes of federal immigration law, even if that person is at a port of entry, is speaking to or being blocked by U.S. officials, and is attempting to seek asylum through official channels. The Court held that an asylum seeker "arrives in the United States" only when they physically cross the border. Until that physical crossing occurs, the majority concluded that the [Immigration and Nationality Act \(INA\)](#) does not require the government to inspect the person or allow them to apply for asylum. The majority

opinion was written by Justice Alito, in which Chief Justice Roberts and Justices Thomas, Gorsuch, Barrett, and Kavanaugh joined. Justice Thomas filed a concurring opinion. Justice Sotomayor filed a dissenting opinion in which Justice Kagan and Jackson joined. Justice Jackson filed a separate dissenting opinion.

Opinion of the Court

The majority frames [*Mullin v. Al Otro Lado*](#) as a narrow statutory interpretation case. In Justice Alito's words, the case asks a "straightforward" question: whether someone who seeks to enter the U.S. from Mexico has "arrived in the United States" while still standing in Mexico? The majority answers no. In its view, a person "arrives in the United States" only when they physically cross the border.

I. Statutory and Procedural Background

A. The Immigration and Nationality Act Provisions at Issue

The majority begins by looking at two INA provisions that use the phrase "arrives in the United States." The first concerns inspection and admission. Under the INA, the government must inspect people who seek admission, but a person is not treated as an applicant for admission until they arrive in the United States.

The second concerns asylum. The majority explains that asylum processing is tied to the inspection process. In the Court's view, this means the legal right to inspection and the ability to apply for asylum do not begin until the person has physically arrived in the United States.

The majority's rule here is: until a person "arrives in the United States," they are not entitled to inspection, are not an applicant for admission, and cannot apply for asylum.

B. The Metering Policy

The majority then describes the government's metering policy, which limited how many asylum seekers could be processed at ports of entry each day. The policy was used across multiple administrations and was justified by the government as a response to capacity problems at the border.

One important point to flag here is footnote 5. Justice Alito explains that the Court's role is limited to interpreting and applying the law. In essence, the majority is declining to dig deeply into factual disputes about how metering worked in practice, moving many of the real-world consequences of metering outside the legal question the majority chooses to answer.

C. Respondents' Challenge

The majority then summarizes the respondents' argument. *Al Otro Lado* argued that people presenting themselves at ports of entry should be treated as arriving for purposes of inspection and asylum access, even if U.S. officials stopped them before they physically crossed the border. The majority rejects that argument and turns back to the statutory phrase "arrives in the United States."

II. When Does Someone "Arrive in the United States"?

The majority's central holding is that a person standing in Mexico does not "arrive in the United States" by attempting, but failing, to enter. A person arrives only when they physically cross the border.

A. The Majority's Reading of "Arrives"

1. Ordinary Meaning

Justice Alito begins with the ordinary meaning of the word "arrives." The majority reasons that someone does not arrive at a place until they actually reach that place. Applying that logic to the INA, the Court concludes that someone who is stopped before crossing the border has not arrived in the U.S.

The majority acknowledges that metering remains a contested policy, but treats that controversy as separate from the statutory question. In footnote 7, the Court recognizes that disputes over metering continue, but keeps the opinion focused on the meaning of "arrives in the United States."

2. Statutory Context

The majority then looks at the surrounding statutory language. Justice Alito emphasizes that Congress used different words in the INA, including "arrives," "attempts," "near," and "at a land border." For the majority, this means Congress knew how to refer to people attempting to enter, people near the border, or people at a land border, but chose not to use those broader phrases in the asylum provision at issue.

In plain terms, the majority's logic is: if Congress wanted people "at or near" the border, or people attempting to enter, to have the same asylum access as people physically inside the U.S., Congress could have said so. But since it did not, the Court refuses to read that broader meaning into the statute.

B. The Anti-Surplusage Argument

The respondents argued that the government's reading made parts of the statute redundant. This is where the majority discusses the anti-surplusage canon, a rule of statutory interpretation that says courts should avoid reading statutes in a way that makes words unnecessary or meaningless. Justice Alito gives some ground to the respondents' concern, but ultimately rejects their interpretation.

The majority says the anti-surplusage canon is useful, but subordinate to the basic rule that courts should read statutory words according to their ordinary meaning. In other words, the current makeup of the Court will accept some redundancy in the statute rather than adopt an interpretation it believes contradicts what the words usually mean.

This section is also worth flagging because Justice Alito relies on Justice Scalia's approach to statutory interpretation to make this point. For now, the takeaway is that the majority uses this interpretive rule to reject a broader reading of asylum access at ports of entry.

C. Presumption Against Extraterritoriality

The majority next relies on the presumption against extraterritoriality. This doctrine means courts generally assume U.S. statutes apply only within the territory of the U.S. unless Congress clearly says otherwise.

Applying that rule, the majority concludes that the INA does not clearly require U.S. officials to inspect or process asylum applications from people who are still outside the United States. The Court reads the statute as linking inspection and asylum processing to what happens on

the U.S. side of the border. For the majority, requiring inspection and asylum access for people still standing in Mexico would give the statute extraterritorial effect. Since Congress did not clearly require that result, the Court refuses to read the INA that way.

III. Refugee Convention and Non-Refoulement

The majority also rejects the argument that its interpretation conflicts with U.S obligations under the Refugee Convention and the 1967 Protocol. Respondents argued that metering violated the principle of non-refoulement, which prohibits returning refugees to places where they may face persecution.

The majority disagrees and reads Article 33 as applying to refugees who are already within a country's territory, not people who are still outside the border seeking entry. Since the asylum seekers in this case were standing in Mexico, the majority concludes that refusing to let them enter did not violate Article 33.

The majority also says Article 33 does not give refugees a right to enter a country at the time they prefer. In the Court's view, the Convention bars certain returns of refugees already within a country's borders; it does not require the U.S. to allow immediate entry to someone waiting outside the border.

The majority also rejects the concern that metering will push people to cross between ports of entry. Justice Alito writes that metering does not permanently bar someone from applying for asylum; it delays when they may enter and seek protection. The majority suggests that a person would need a powerful reason to risk unlawful entry rather than wait to be processed.

The Court further accepts the government's explanation that metering was used to manage overcrowding and improve conditions at ports of entry, including unsanitary, inhumane, or dangerous conditions. The majority thus treats metering not as a denial of asylum access, but as a temporary delay used to manage border processing.

The opinion closes by narrowing the decision to the statutory question before the Court. The majority states that it decides only that a person standing in Mexico has not "arrived in the United States." Because of that, the INA does not entitle that person to apply for asylum or require an immigration officer to inspect them.

Concurrence

Justice Thomas agreed with the majority's decision but wrote separately to raise two additional concerns. First, he argued that the district court lacked authority to issue the relief it ordered. Second, he suggested that the lower courts failed to give proper weight to the President's authority over the exclusion of noncitizens at the border.

On the remedial question, Thomas focused on limits Congress placed on courts in immigration cases. Relying on [*Garland v. Aleman Gonzalez*](#), he argued that the respondents sought a form of relief the statute does not allow. In his view, [*Gonzalez*](#) controls when courts may issue injunctive relief in this context. Although Thomas acknowledged that the Ninth Circuit identified the correct legal framework, he concluded that it applied that framework incorrectly. Thomas then extended the same concern to declaratory relief. He pointed to statutory language providing that "[no court](#)" may "[enjoin or restrain the operation of](#)" Section 1225 and suggested that courts cannot avoid that limit simply by changing the label from an

injunction to a declaration. For Thomas, the problem was not only the substance of the lower court's order, but the fact that the order interfered with how the executive branch operates the border-processing statute.

Finally, Thomas returned to a theme he has raised before: presidential authority over entry and exclusion. Citing his own concurrence in [*Trump v. Hawaii*](#), Thomas emphasized his view that the President has inherent authority to exclude noncitizens from the country. Thomas appears to be signaling continued skepticism toward lower-court orders that interfere with immigration enforcement and border control, especially where those orders affect the executive branch's ability to decide who may enter the U.S.

Thomas's concurrence points toward two future battlegrounds: limits on lower courts' ability to issue broad relief in immigration cases, and a broader theory of presidential power over the border.

The Dissents

Justice Sotomayor took the uncommon step of reading her dissent from the bench, signaling the strength of her disagreement with the majority's decision. Justice Sotomayor's dissent argues that the majority's decision allows the government to avoid mandatory inspection and asylum procedures by stopping people just before they physically cross the border. In her view, the INA created a required process for people who arrive at ports of entry seeking admission, including those seeking asylum. The dissent emphasizes the real-world operation of metering, arguing that asylum seekers were not merely delayed, but were blocked from accessing the process Congress created. It also warns that the majority's interpretation may push people away from lawful ports of entry and toward more dangerous crossings.

Justice Jackson's separate dissent focuses less on the meaning of the asylum statute and more on whether the Supreme Court should have decided the case at all. She argues that metering had been rescinded years earlier and that the Court was effectively issuing an advisory opinion about a policy no longer in place. For Jackson, the Court should have waited for a live dispute with a factual record showing how any future metering policy actually operates.

Together, the dissents frame the case as more than a technical dispute over the word "arrives." They argue that the majority's rule changes the practical meaning of asylum access at ports of entry and gives the government a way to prevent legal obligations from attaching by controlling where a person is allowed to stand.

Mullin v. Doe et al.

Background

[Mullin v. Doe](#) concerns the federal government's decision to terminate TPS for nationals of Haiti and Syria.

TPS is a humanitarian protection created by Congress for people already in the U.S. who cannot safely return to their home countries because of armed conflict, natural disaster, or other extraordinary and temporary conditions. TPS does not provide permanent immigration status. But while it remains in effect, it protects people from deportation and allows them to work lawfully.

Haiti was first designated for TPS in 2010 after a devastating earthquake. Syria was first designated for TPS in 2012 because of violence and instability connected to the country's civil conflict. Since then, both designations have been repeatedly extended after federal officials reviewed country conditions and determined that return remained unsafe.

In 2025, the Department of Homeland Security (DHS) moved to terminate TPS for Haiti and Syria. Haitian and Syrian TPS holders challenged the terminations in federal court. They argued that DHS failed to follow the process Congress required before ending TPS, including consultation with appropriate federal agencies and review of current country conditions. Haitian plaintiffs also argued that the Haiti termination was unlawfully influenced by racial animus, in violation of equal protection principles.

Lower courts temporarily blocked the terminations while the cases continued. The Court reversed those orders and allowed the terminations to move forward.

The Court's Decision

In a 6-3 decision, the Court ruled that the TPS statute bars judicial review of non-constitutional claims related to TPS termination decisions. This means TPS holders cannot use the courts to challenge whether DHS properly followed statutory procedures before ending TPS, at least when those challenges are framed as Administrative Procedure Act (APA) or other non-constitutional claims.

The Court also rejected the Haiti plaintiffs' equal protection claim at this stage of the case. The plaintiffs argued that the termination of Haiti's TPS designation was influenced by racial discrimination. The Court assumed for purposes of the case that the equal protection claim could be considered, but concluded that the plaintiffs were unlikely to prove that race was a motivating factor. The majority reasoned that the administration had a race-neutral explanation: it opposed TPS as the program had been implemented and had moved to terminate every TPS designation that came up for review.

The majority opinion was written by Justice Alito. Chief Justice Roberts and Justices Thomas, Gorsuch, Kavanaugh, and Barrett joined most of the opinion. Chief Justice Roberts and Justices Thomas and Kavanaugh also joined Part III-A, while Justices Gorsuch and Barrett did not. Justice Thomas filed a concurring opinion. Justice Kagan filed a dissenting opinion, joined by Justices Sotomayor and Jackson.

Opinion of the Court

Justice Alito frames *Mullin v. Doe* as a case about whether federal courts may pause TPS terminations while litigation continues. The majority answers no. It holds that the TPS statute blocks courts from reviewing non-constitutional challenges to TPS termination decisions and that the Haiti plaintiffs' equal protection claim is unlikely to succeed.

I. TPS Background and Procedural History

A. Before TPS: Executive Discretion

The majority begins by explaining that, before TPS, the executive branch sometimes allowed people from unsafe countries to remain in the U.S. through a discretionary program called Extended Voluntary Departure. The Court emphasizes that this earlier form of humanitarian protection was largely controlled by the executive branch and treated as difficult for courts to review. By historically placing humanitarian protection in the context of executive discretion and foreign affairs, the majority lays the foundation for limited judicial oversight.

B. Congress Creates TPS

The majority then explains that Congress created TPS in 1990 to replace this less formal system with a statutory framework. The [TPS statute](#) allows the Secretary of Homeland Security to designate a country for temporary protection when conditions such as armed conflict, natural disaster, or extraordinary temporary conditions make return unsafe. The Court highlights three features of the statute.

- First, the Secretary has discretion over whether to designate a country for TPS.
- Second, the Secretary must review designations regularly and terminate TPS if the country no longer meets the statutory conditions.
- Third, Congress included a judicial-review bar stating that there is “no judicial review” of certain TPS designation, extension, or termination decisions. For the majority, that third point becomes the center of the case.

C. The Current TPS Terminations

The majority then turns to the current administration's approach. It notes that TPS designations, though meant to be temporary, have often lasted for decades. The Court describes the Trump administration as adopting a more restrictive approach to TPS and brushes away racial bias by pointing out that DHS terminated every TPS designation that came up for review.

The majority then walks through the Syria and Haiti terminations. For Syria, the Secretary pointed to changes after the fall of the Assad regime while acknowledging that serious problems remained. For Haiti, the Secretary pointed to instability, migration concerns, and the administration's view that U.S. immigration policy should support a “secure, sovereign, and self-reliant Haiti.” The lower courts paused both terminations. The Court reverses those orders.

II. The TPS Judicial-Review Bar

A. The Majority's Reading of “Determination”

The majority first considers the plaintiffs' non-constitutional claims, including their APA arguments that DHS failed to follow required procedures before ending TPS.

The key statutory language says there is “no judicial review” of any “determination” by the Secretary “with respect to” TPS designation, termination, or extension decisions. Justice Alito explains that “determination” can mean either the final decision itself or the process leading to that decision. Either way, the majority concludes that the plaintiffs’ non-constitutional claims are barred. If the claim challenges the final termination decision, it is barred. If the claim challenges the steps leading to the termination decision, it is also barred because those steps are “with respect to” the termination.

In plain terms, the majority says plaintiffs cannot get around the judicial-review bar by saying they are challenging the process rather than the final TPS termination.

B. Respondents’ Arguments Fail

The majority then rejects several arguments from the TPS holders and lower courts.

First, the respondents argued that the statute bars only review of substantive TPS decisions, not procedural violations. The majority rejects that distinction. It says procedural decisions, like how DHS consulted other agencies or reviewed country conditions, are still part of the Secretary’s TPS “determination.”

Second, the majority rejects the argument that “determination” refers only to country-conditions findings. Alito treats “determination” as an ordinary word and refuses to give it a narrower technical meaning.

Third, the majority rejects the idea that courts can review subsidiary decisions even if the final TPS termination is unreviewable. The Court says that, in administrative law, smaller agency decisions usually merge into the final agency action. If the final action cannot be reviewed, neither can the steps leading up to it.

The majority also addresses the concern that this reading could allow serious abuse, such as a Secretary terminating TPS without properly reviewing country conditions. The Court’s answer is that Congress, not the courts, is the proper body to respond to that kind of abuse. This is one of the most important signals in the opinion: the majority moves many TPS disputes out of the courts and into the political branches.

The Court’s holding in Section II is clear: the TPS statute bars judicial review of all non-constitutional claims challenging TPS termination decisions.

III. The Equal Protection Claim

The Haiti plaintiffs also argued that the termination of Haiti’s TPS designation was motivated by racial discrimination, violating equal protection principles.

A. Part III-A: Whether the Court Can Reach the Equal Protection Claim

In Part III-A, Justice Alito addresses whether the Court can evaluate the Haiti plaintiffs’ equal protection claim without first deciding whether the TPS statute’s judicial-review bar applies to constitutional claims. This part of the opinion was joined by Chief Justice Roberts and Justices Thomas and Kavanaugh, but not by Justices Gorsuch or Barrett.

Alito explains that the plaintiffs were seeking interim relief, meaning they were asking the courts to keep TPS in place while the case continued. To receive that kind of relief, plaintiffs

generally must show that they are likely to succeed on the merits of their claim. In Alito's view, the Court could deny interim relief by concluding that the equal protection claim was unlikely to succeed, without first resolving whether the courts had jurisdiction to hear the constitutional claim at all.

In other words, Part III-A says the Court does not need to answer the broader jurisdiction question if the plaintiffs would lose anyway on the likelihood-of-success analysis. However, only four Justices joined this part; as such, we should describe this as Alito's reasoning in Part III-A rather than as a holding of the full Court.

B. The Merits of the Equal Protection Claim

The majority then turns to whether the Haiti plaintiffs were likely to prove that racial discrimination motivated the TPS termination.

The parties disagreed about the proper legal test. The government wanted the Court to apply the deferential approach from *Trump v. Hawaii*, which gives the executive branch broad leeway in immigration and national-security-related decisions. The plaintiffs wanted the Court to apply [*Arlington Heights*](#), which asks whether discriminatory purpose was a motivating factor in the decision.

The majority does not choose between those tests; instead, it assumes for the sake of argument that the plaintiffs get the more favorable *Arlington Heights* standard and still concludes that they are unlikely to succeed.

The majority acknowledges that the plaintiffs cited statements by President Trump and former Secretary Noem, including statements criticizing immigration, TPS, Haiti, and Haitian immigrants. But the majority says none of the statements were overtly racial and that each could be understood as expressing race-neutral policy views.

The majority also relies heavily on the administration's broader TPS pattern. Since DHS had terminated every TPS designation that came up for review, covering countries across several regions, the majority concluded that the plaintiffs are unlikely to show that Haiti was singled out because of race. In the majority's view, the stronger explanation is that the administration opposed TPS as it had been used by prior administrations.

Ultimately, the Court did not say discriminatory statements are irrelevant. Rather, it concluded that the record at this stage did not show that race was likely a motivating factor in the Haiti TPS termination.

Concurrence

Justice Thomas joined the majority opinion in full but wrote separately to say he would go further in two ways.

First, he would hold that the TPS statute bars judicial review of the Haiti plaintiffs' equal protection claim, not just their statutory and procedural claims. The majority did not decide whether the judicial-review bar applies to constitutional claims. Thomas would answer that question directly. In his view, the statute's language is broad: it says there is "no judicial review" of TPS termination determinations, and it does not create an exception for constitutional claims. Since plaintiffs asked a court to set aside the Haiti TPS termination as unconstitutional, Thomas argues they were still asking for judicial review of a TPS

termination decision, which Congress barred. Thomas also argues that inferior federal courts only have the jurisdiction Congress gives them, and that the Constitution does not require federal courts to hear every constitutional challenge. In this section, Thomas again cites Justice Scalia's dissent in *Webster v. Doe* for the proposition that not every alleged constitutional violation must have a judicial remedy.

Second, Thomas argues that the equal protection claim fails for a more fundamental reason: in his view, noncitizens do not have equal protection rights against the federal government in immigration-status decisions. He notes that the Fourteenth Amendment's Equal Protection Clause applies to states, not the federal government, and criticizes the Court's modern doctrine reading an equal-protection component into the Fifth Amendment's Due Process Clause. Even if the Fifth Amendment contains some nondiscrimination principle, Thomas says TPS is a government-created immigration privilege rather than a core right to life, liberty, or property. He therefore concludes that terminating Haiti's TPS designation does not implicate due process or equal protection.

The concurrence closes by pushing this point into immigration law more broadly. Thomas argues that immigration law has always treated people differently based on nationality and that applying modern equal protection doctrine to immigration decisions would call much of immigration law into question. For our purposes, the concurrence is worth flagging because Thomas is not merely agreeing with the result but also signaling a much narrower view of court review, constitutional remedies, and equal protection protections for noncitizens challenging federal immigration decisions.

The Dissent

Justice Kagan dissented, arguing that the majority gets two major issues wrong: the scope of the TPS judicial-review bar and the strength of the Haiti plaintiffs' equal protection claim.

On the statutory issue, Kagan reads the TPS statute as allowing courts to review whether DHS followed required procedures before terminating TPS. In her view, the statute bars courts from second-guessing the Secretary's final country-conditions determination, but it does not bar courts from asking whether the Secretary completed the mandatory steps Congress required before making that decision. She emphasizes that the statute says the Secretary "*shall*" consult with appropriate agencies, review country conditions, determine whether the statutory conditions continue to be met, and publish notice. For Kagan, those procedural requirements are not optional, and courts should be able to review whether DHS followed them.

Kagan also disagrees with the majority's treatment of the Haiti plaintiffs' equal protection claim. She argues that the plaintiffs presented serious evidence that racial animus may have influenced the Haiti termination, including statements by President Trump about Haitians and Haiti. In her view, the majority minimizes that evidence and treats the administration's general opposition to TPS as enough to defeat the claim. Kagan responds that, under equal protection doctrine, racial animus does not need to be the only reason for a government action. It only needs to be a motivating factor.

The dissent also focuses on practical consequences. Kagan notes that the lower courts granted interim relief because TPS holders faced severe harm if protections were terminated before the litigation ended. Without TPS, people who have lived and worked lawfully in the U.S. for years may lose work authorization, become vulnerable to detention or removal, and face

possible return to countries the State Department still warns are dangerous. For Kagan, the plaintiffs were not asking courts to create permanent protection. They were asking to preserve the status quo while courts determined whether DHS followed the law.

In short, the dissent views the case as a dispute over legal accountability. Kagan accepts that TPS is temporary and that the executive branch has authority to terminate it when statutory conditions are no longer met. But she argues that when Congress creates mandatory procedures, courts should be able to ensure the government followed them before hundreds of thousands of people lose protection.

Trump v Barbra et al.

Background

Trump v. Barbara concerns President Trump's attempt to restrict birthright citizenship by executive order. The Fourteenth Amendment provides that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof," are citizens of the U.S. and of the state where they reside. President Trump's executive order argued that children born in the U.S. are not "subject to the jurisdiction" of the U.S. if their parents are unlawfully present or only temporarily present in the country.

The order would have denied citizenship to children born in the U.S. when the child's mother was unlawfully present, and the father was not a U.S. citizen or lawful permanent resident, or when the mother was lawfully but temporarily present, and the father was not a U.S. citizen or lawful permanent resident. Several parents sued, including some on behalf of their children, arguing that the executive order violated the Fourteenth Amendment and the INA. The district court agreed, provisionally certified a nationwide class of children who would be denied citizenship under the order, and preliminarily blocked the order from taking effect. The Court granted certiorari before judgment.

The Court's Decision

In a 6-3 judgment, the Supreme Court affirmed the district court's order blocking enforcement of President Trump's birthright citizenship executive order against the certified class. The Court's constitutional holding, however, was 5-4. Chief Justice Roberts wrote the majority opinion, joined by Justices Sotomayor, Kagan, Barrett, and Jackson. That 5-Justice majority held that children born in the U.S. to parents who are unlawfully or temporarily present are "subject to the jurisdiction" of the U.S. and are citizens at birth under the Fourteenth Amendment's Citizenship Clause.

Justice Kavanaugh concurred in the judgment and dissented in part, meaning he agreed the executive order could not be enforced against the class but did not join the majority's constitutional reasoning. Justice Jackson filed a concurring opinion, with Justice Sotomayor joining the introduction and Part I. Justice Thomas dissented, joined by Justice Gorsuch. Justices Alito and Gorsuch also filed separate dissents.

Opinion of the Court

Chief Justice Roberts begins with the question presented: whether the Constitution guarantees citizenship to children born in the U.S. to parents who are unlawfully or temporarily present. The Court answers yes. Under the Fourteenth Amendment's Citizenship Clause, children born in the U.S. to parents who are unlawfully or temporarily present are "subject to the jurisdiction" of the U.S. and are citizens at birth.

I. The Executive Order and the Challenge

The Court starts with the text of the Fourteenth Amendment: "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."

President Trump's executive order, titled *Protecting the Meaning and Value of American Citizenship*, argued that children born in the U.S. are not "subject to the jurisdiction" of the U.S. if their parents are unlawfully or temporarily present. Since the INA uses the same

language as the Fourteenth Amendment, the order also treated those children as outside the INA's citizenship guarantee.

The plaintiffs challenged the order under both the Fourteenth Amendment and the INA. The Court turns to the historical meaning of birthright citizenship and the phrase "subject to the jurisdiction." to make its opinion.

II. The Historical Foundation of Birthright Citizenship

A. English Common Law and Jus Soli

Roberts begins the historical analysis with English common law. Under that tradition, citizenship, or subjectship, generally followed the place of birth. A child born within the sovereign's territory owed allegiance to that sovereign because the sovereign protected the child at birth.

This rule is known as *jus soli*, or right of the soil. The Court emphasizes that this rule did not depend on a parent's permanent residence or long-term allegiance. A foreign mother could enter British territory, give birth, and leave soon after, and the child would still be treated as a natural-born subject because the child was born under the sovereign's protection.

Roberts uses this history to establish that birthright citizenship was not a new concept created in 1868. It was an inherited legal principle rooted in common law and carried into American law after independence.

B. Dred Scott and the Rejection of the Common Law Rule

The Court then turns to *Dred Scott v. Sandford*. Roberts explains that *Dred Scott* departed from the common law rule by denying citizenship to Black Americans even when they were born in the U.S. and owed allegiance to the government. Instead of soil and allegiance, *Dred Scott* made race and ancestry central to citizenship.

For the Court, the Fourteenth Amendment was written against the backdrop of *Dred Scott* and, as such, the Citizenship Clause was not adopted in a vacuum but as a part of Reconstruction's effort to repudiate *Dred Scott* and settle who belongs to the national political community.

C. The Civil Rights Act and the Fourteenth Amendment

The Court next explains how the political branches responded. Roberts highlights Attorney General Edward Bates's Civil War-era opinion declaring that every person born in the country is, at the moment of birth, a citizen without regard to race, color, or other accidental circumstances.

Congress then passed the Civil Rights Act of 1866, which recognized citizenship for "all persons born in the U.S. and not subject to any foreign power, excluding Indians not taxed." The Court reads this statute as invoking the common law rule of birthright citizenship.

Roberts then frames the Fourteenth Amendment as completing what the Civil Rights Act began. The Civil Rights Act recognized the principle by statute, while the Fourteenth Amendment constitutionalized it. In the Court's reading, the Citizenship Clause carried forward the common law rule and made it part of the Constitution.

III. The Text of the Citizenship Clause

A. Born in the U.S. and Subject to Its Jurisdiction

The Court explains that the Citizenship Clause has two requirements: a person must be born in the U.S., and subject to the jurisdiction of the U.S. Roberts reads both requirements through the historical rule he just laid out.

The first requirement is territorial: the child must be born in the U.S. The second requirement is sovereign authority: the child must be subject to U.S. law. A child born on American soil and subject to American law satisfies both parts of the Clause.

B. What “Subject to the Jurisdiction” Means

Roberts then focuses on the phrase “subject to the jurisdiction.” The Court reads “jurisdiction” in its ordinary legal sense: the power to govern or legislate. To be “subject to” U.S. jurisdiction means to live under the authority of U.S. law.

The Court relies on [*Schooner Exchange v. McFaddon*](#) to explain that a nation generally has full jurisdiction over people within its territory. There are recognized exceptions, including foreign diplomats, occupying armies, and certain tribal contexts. But those exceptions prove the rule: nearly everyone physically present in the U.S. is subject to U.S. law.

Since the order tries to make citizenship depend on the parents’ lawful status or temporary presence, the executive order fails, and Roberts rejects that approach. For the majority, the Citizenship Clause asks whether the child was born in the U.S. and subject to U.S. jurisdiction. It does not ask whether the child’s parents were citizens, lawful permanent residents, temporarily present, or unlawfully present.

IV. Wong Kim Ark

A. Citizenship Fixed by Birthplace, Not Parentage

The Court then turns to [*United States v. Wong Kim Ark*](#), the leading Supreme Court precedent on birthright citizenship. Roberts reads *Wong Kim Ark* as confirming that citizenship at birth is generally fixed by place of birth, not by parentage.

The Court notes that, after the Fourteenth Amendment, federal officials repeatedly understood children born in the U.S. to alien parents as citizens by birth. This history supports the Court’s view that the rule was not unsettled or newly invented.

B. Wong Kim Ark Confirms the Citizenship Clause Rule

Roberts emphasizes that *Wong Kim Ark* rejected the same basic argument the government advances here: that children born in the U.S. to noncitizen parents are not fully “subject to the jurisdiction” of the U.S.

In *Wong Kim Ark*, the Court held that the Fourteenth Amendment was declaratory of the common law rule of birthright citizenship. The phrase “subject to the jurisdiction” was understood to mean subject to U.S. legal authority, not permanent political allegiance or parental domicile.

Roberts reads *Wong Kim Ark* as controlling law. People temporarily present in the U.S. are still subject to U.S. law while they are here. If their children are born in the U.S., those children are citizens at birth. The Court states that it sees no reason to depart from that rule.

V. The Government's and Dissents' Arguments

The Court then addresses the government and principal dissent directly. Roberts notes that the dissents agree with several starting points: the Citizenship Clause incorporated common law principles, citizenship turns on allegiance, and *Dred Scott* wrongly departed from the traditional allegiance-based view of citizenship.

The disagreement is over what “allegiance” means. The government and principal dissent argue that natural allegiance based on birth is not enough. They claim something more is required, often tying that “something more” to domicile, lawful status, or a deeper form of political allegiance.

Roberts rejects that argument as unsupported by the historical record. The Court says the government and dissent identify no persuasive source from the Founding through Reconstruction showing that citizenship at birth depended on parental domicile. The opinion also rejects the idea that domicile and citizenship are the same. A person can live in a country without automatically becoming a citizen of that country or losing citizenship elsewhere.

The Court also points to the text of the Citizenship Clause itself. Words that appear throughout the executive order, including “mother,” “father,” “lawful,” and “temporary,” do not appear in the Clause. For Roberts, that absence means the Constitution does not make birthright citizenship turn on those categories.

Roberts also rejects efforts to narrow *Wong Kim Ark*. The dissent's preferred reading, he says, was a dissenting view in 1898 and has never become law. The majority therefore, treats the executive order as an attempt to revive an argument the Court has already rejected.

The opinion closes by returning to the meaning of citizenship after Reconstruction. Citizenship was the “right to have rights,” and the Fourteenth Amendment extended that promise to persons born in the United States and subject to U.S. jurisdiction. The Court holds that children born in the United States to parents who are unlawfully or temporarily present fall within that constitutional guarantee.

Concurrences

Kavanaugh's Concurrence

Justice Kavanaugh agreed that President Trump's executive order could not stand, but he would have decided the case on narrower statutory grounds. In his view, the INA already provides the rule needed to resolve the case. The INA uses the same “subject to the jurisdiction” language as the Fourteenth Amendment, and Congress enacted that language against the backdrop of *Wong Kim Ark*. Kavanaugh reads the statute as incorporating the existing birthright citizenship rule and its recognized exceptions. Since the executive order tried to add new exceptions for children born to parents who are unlawfully or temporarily present, he concludes that the order went beyond what the statute allows. On that ground, he agreed with the judgment blocking the order.

Kavanaugh disagreed, however, with the majority's broader constitutional analysis. He believes the Court did not need to decide the full Fourteenth Amendment question because the statutory issue was enough. He also disagrees with treating *Wong Kim Ark*'s recognized exceptions as a permanently closed constitutional set. In his view, constitutional principles do not change without amendment, but courts may apply old constitutional rules to modern circumstances if they were unknown or unanticipated at the time of ratification.

Applying that framework, Kavanaugh argues that new exceptions to birthright citizenship may be recognized when two conditions are met: first, the situation must involve circumstances largely unknown or unanticipated by the Framers of the Fourteenth Amendment; second, the proposed exception must be relevantly similar to one of the historical exceptions recognized in *Wong Kim Ark*. Applying that principle to the executive order, Kavanaugh suggests that modern unlawful and temporary immigration were not the kind of circumstances the Framers of the Fourteenth Amendment specifically contemplated, and he reasons that excluding children covered by the executive order could fit within the spirit of the historical exceptions.

Kavanaugh closes by laying out a possible path for future action. He states that Congress could, consistent with the Fourteenth Amendment, amend the INA or enact new legislation creating exceptions to birthright citizenship for children born to foreign citizens who are unlawfully or temporarily in the country. Until Congress does so, however, the executive branch cannot create those exceptions on its own. Kavanaugh also adds that he is not taking a position on birthright citizenship as a policy matter. Kavanaugh's opinion is that he agrees the executive order fails, but he leaves open a legislative path to test narrower birthright citizenship restrictions in the future.

Jackson's Concurrence

Justice Jackson joined the majority opinion in full but wrote separately to respond to Justice Thomas's dissent. Justice Sotomayor joined the introduction and Part I of Jackson's concurrence. Jackson's central point is that Thomas reads the Fourteenth Amendment too narrowly. In her view, the Citizenship Clause was not a limited fix for formerly enslaved people alone. It was part of Reconstruction's broader "antidisubordination" and "anticaste" project: a constitutional reset meant to reject systems that rank people's belonging and rights by race, ancestry, or inherited status. Jackson argues that the Fourteenth Amendment's history does not support pitting Black Americans against immigrants. She emphasizes that the people who fought for Reconstruction citizenship used universal language and understood citizenship as a protection of shared personhood and equal belonging. For Jackson, the government and Thomas's dissent distort that history by treating the Citizenship Clause as though it protects only those who fit a narrow historical mold, rather than all people born in the U.S. and subject to its jurisdiction. Jackson also warns against historical revisionism. She argues that the government and dissent are not preserving the original meaning of the Fourteenth Amendment, but repurposing its history to justify a rule that would make citizenship turn on bloodline or parental status. That, in Jackson's view, echoes the core logic the Citizenship Clause was designed to reject: the idea that birth on American soil is not enough for certain disfavored groups to belong. Her concurrence therefore reinforces the majority's holding while making explicit the broader Reconstruction principle behind it: the Fourteenth Amendment was written to break caste-based citizenship, not recreate it in a new form.

The Dissents

Thomas' Dissent

Justice Thomas dissented, joined by Justice Gorsuch. His dissent argues that the majority reads the Citizenship Clause too broadly. In Thomas's view, the Fourteenth Amendment was designed primarily to overrule *Dred Scott* and settle the citizenship of formerly enslaved people and their descendants, not to guarantee citizenship to every child born on U.S. soil regardless of the parents' status. Thomas reads the phrase "subject to the jurisdiction" as requiring more than being physically present and subject to U.S. law. He ties citizenship to domicile and a fuller allegiance to the U.S., arguing that temporary visitors and some unlawfully present parents remain subject to a foreign power in a way that prevents their children from receiving constitutional citizenship at birth. He also argues that the plaintiffs brought a facial challenge, meaning they had to show the executive order was invalid in every possible application. Since Thomas believed the order could be valid and at least as applied to children of temporary visitors, he would have rejected the challenge.

Alito's Dissent

Justice Alito also dissented. He begins by calling the case one of the most important in the Court's history and argues that the majority makes a serious mistake by constitutionalizing a broad rule of birthright citizenship. Alito rejects the majority's historical account, arguing that the British common law rule of birthright subjecthood did not carry over wholesale into American constitutional citizenship. In his view, the Fourteenth Amendment protects citizenship only for children who, at birth, owe allegiance solely to the U.S. Alito also reads *Wong Kim Ark* narrowly, arguing that its holding concerned a child born to parents who were lawfully and permanently domiciled in the U.S., not children born to parents who are unlawfully or temporarily present. He therefore treats the majority as extending *Wong Kim Ark* beyond what that case decided.

Alito's dissent also emphasizes policy consequences, while insisting those consequences should not control constitutional interpretation. He argues that Congress can address the situation of people who have long understood themselves to be citizens or who have strong moral claims to remain in the U.S. But he rejects the idea that concern over disruption should cause the Court to adopt what he views as an incorrect interpretation of the Fourteenth Amendment. His dissent repeatedly returns to the idea that citizenship is precious and should not be extended by what he sees as a mistaken reading of constitutional text and history.

Gorsuch's Dissent

Justice Gorsuch wrote separately while also joining Thomas's dissent. His dissent is narrower and focuses on two points. First, he agrees that *Wong Kim Ark* protects children born in the U.S. to parents who made this country their lawful and permanent home, even if those parents were not citizens. But he does not read *Wong Kim Ark* as resolving the status of children born to temporary visitors. Second, Gorsuch focuses on the posture of the case. Since plaintiffs brought a facial challenge, he argues the executive order should survive if it has even one lawful application. In his view, the order could lawfully apply at least to children born to temporary visitors, so the plaintiffs should not have received broad relief against the order as a whole.

Gorsuch also leaves open a harder question: whether children born in the U.S. to parents who have made this country their permanent home, but whose presence violates immigration law,

are citizens at birth. He expresses doubt about the government's position that such parents cannot be domiciled here because their presence is unlawful. Gorsuch agrees the executive order should not have been struck down on its face, but he does not fully endorse every possible application of the order.

Key concepts explained:

Majority, Concurrence, and Dissenting Opinions:

A majority opinion explains the legal rule that controls the case, so long as at least five Justices agree on that part of the reasoning. A concurrence is written by a Justice who agrees with the result but wants to add different or additional reasoning. A dissent is written by a Justice who disagrees with the result.

Concurrences and dissents are not controlling law, but they still matter. They can show where Justices are frustrated, what arguments they may accept in future cases, and where litigants or lawmakers may see an opening. For example, in *Trump v. Barbara*, the judgment was 6-3, but the constitutional majority was 5-4 because Justice Kavanaugh agreed with the result without joining Chief Justice Roberts's full constitutional reasoning.

Plurality Reasoning:

Sometimes part of a Supreme Court opinion does not receive five votes, even if the Court reaches a majority result. That part is not treated the same way as a full holding of the Court.

For example, in *Mullin v. Doe*, Part III-A of Justice Alito's opinion was joined by only four Justices. We can describe that section as the Plurality Reasoning, but not as a holding of the full Court.

Judicial Review:

Judicial review is the courts' power to decide whether government action complies with the Constitution and federal law. It is rooted in the courts' role as interpreters of law and is famously associated with [*Marbury v. Madison*](#).

In these cases, the fight is not whether judicial review exists generally. The fight is over when Congress or immigration statutes limit the courts' ability to use it. That issue is central in *Mullin v. Doe*, where the Court held that TPS holders could not use the courts to bring non-constitutional challenges to TPS termination decisions.

Judicial-Review Bar:

A judicial-review bar is a provision Congress writes into a statute limiting when courts may review certain agency decisions.

In *Mullin v. Doe*, the Court read the TPS judicial-review bar broadly. The majority held that courts could not review either the final TPS termination decision or the process DHS used to reach that decision.

Constitutional and Non-Constitutional Claims:

A non-constitutional claim argues that the government violated a statute, regulation, procedure, or the Administrative Procedure Act. A constitutional claim argues that the government violated the Constitution itself.

This distinction can be found in *Mullin v. Doe*, where the Court held that the TPS statute bars non-constitutional challenges to TPS terminations. The Haiti plaintiffs' equal protection claim was different because it was constitutional.

Statutory Interpretation:

Statutory interpretation is how courts determine what a law passed by Congress means. Courts may look to the text, structure, surrounding words, prior uses of similar language, and background legal rules called canons of interpretation.

Ordinary Meaning:

Ordinary meaning is a textualist approach where courts ask how a word or phrase would normally be understood, rather than starting with broader policy goals or practical consequences.

In *Mullin v. Al Otro Lado*, Justice Alito uses ordinary meaning to define “arrives,” “in,” and “arrives in the United States.” He reasons that someone does not arrive “in” a place until they actually reach and enter that place. That ordinary-meaning analysis allows the majority to treat physical crossing as the key legal event.

“Arrives in the United States”:

In *Mullin v. Al Otro Lado*, the phrase “arrives in the United States” became the central legal issue. The INA uses that phrase to determine when inspection and asylum-processing duties begin. Justice Alito reads the phrase physically and territorially.

In the majority’s view, a person does not “arrive” in the U.S. by approaching a port of entry, speaking to U.S. officials, attempting to enter, or being blocked at the border. A person “arrives in the United States” only when they physically cross into U.S. territory.

This definition is now the controlling rule from the case. For asylum access at land ports of entry, being at the border is not enough. Being in line, presenting oneself, or being turned away by U.S. officials from the Mexico side does not trigger the INA’s inspection or asylum-application requirements.

Applicant for Admission:

An applicant for admission is someone whom immigration law treats as seeking permission to enter the United States.

In *Mullin v. Al Otro Lado*, the majority ties this status to physical arrival. A person stopped on the Mexico side of the border is not yet an applicant for admission, even if they are trying to present themselves at a port of entry. Inspection and asylum-processing duties attach only after the person legally “arrives” in the United States.

Physical Crossing:

The majority holds, in *Mullin v. Al Otro Lado*, that approaching a port of entry, speaking with U.S. officials, or being blocked by U.S. officials is not enough. The person must physically cross into U.S. territory before the INA requires inspection or allows the asylum claim at issue. For asylum access, this makes geography decisive: standing at the border is legally different from crossing the border.

Anti-Surplusage Canon:

The anti-surplusage canon is a rule of statutory interpretation that says courts should avoid reading a law in a way that makes Congress’s words unnecessary or meaningless.

In *Mullin v. Al Otro Lado*, Al Otro Lado argued that the government's reading made parts of the INA redundant. Justice Alito acknowledged the canon but treated it as secondary to ordinary meaning. Relying on Justice Scalia's approach, the majority reasoned that courts do not have to avoid redundancy "at all costs" if doing so would stretch the statutory text.

After this case, arguments based on statutory purpose, practical effect, or avoiding surplusage may carry less weight when the Court believes the ordinary meaning points the other way.

Presumption Against Extraterritoriality:

The presumption against extraterritoriality is a background rule courts use when reading statutes. Unless Congress clearly says otherwise, courts presume federal laws apply within U.S. territory, not outside it.

In *Mullin v. Al Otro Lado*, the majority used this doctrine to reject the argument that U.S. officials had to inspect or process asylum seekers still standing in Mexico. The analysis turns heavily on geography: because the asylum seekers had not physically crossed the border, the Court treated their claim as asking the INA to operate outside the United States.

Non-Refoulement:

Non-refoulement comes from international refugee law, including the Refugee Convention and the 1967 Protocol. It generally prohibits sending refugees back to places where they may face persecution.

In *Mullin v. Al Otro Lado*, the asylum seekers argued that metering violated this principle. The majority rejected that argument, reading the treaty obligation as applying to refugees already within a country's territory, not people blocked from entering at the border. Under the majority's reading, refusing entry is not the same as returning someone already inside the country.

Injunctive and Declaratory Relief:

Injunctive relief and declaratory relief are types of court remedies. An [*injunction*](#) orders a party to do something or stop doing something. [*Declaratory relief*](#) states what the law requires or whether a party's conduct is unlawful.

In *Mullin v. Al Otro Lado*, Justice Thomas argued that the lower courts lacked authority to issue relief that interfered with the operation of the border inspection statute. He also argued that courts cannot avoid statutory limits on injunctions by issuing declaratory relief that has the same practical effect.

Interim Relief:

Interim relief is temporary court protection while a case is still pending. Courts usually consider whether plaintiffs are likely to succeed and whether they will suffer serious harm without temporary protection.

In *Mullin v. Doe*, TPS holders sought interim relief to keep protections in place while litigation continued. The Court concluded the plaintiffs were unlikely to succeed and allowed the TPS terminations to move forward.

Likelihood of Success:

Likelihood of success is part of the test courts use when deciding whether to grant temporary relief before a case is fully resolved. A plaintiff usually must show that their legal claim is strong enough to justify pausing the government action while litigation continues.

In *Mullin v. Doe*, the Court did not fully resolve every jurisdictional question. Instead, it concluded the plaintiffs were unlikely to succeed on the equal protection claim.

“Determination”:

In *Mullin v. Doe*, the word “determination” controls the judicial-review issue. The TPS statute bars judicial review of certain TPS “determinations.” The plaintiffs argued that this meant only the final decision to terminate TPS, not the process DHS used to reach that decision.

The majority rejected that distinction. It read “determination” to include both the final TPS termination and the steps leading to it. That reading is what blocks statutory and procedural challenges to the Haiti and Syria TPS terminations.

Equal Protection:

Equal protection comes from the Fourteenth Amendment, which says that no state may “deny to any person within its jurisdiction the equal protection of the laws.” At its core, the principle means the government cannot treat people differently because of race or other protected characteristics without a sufficient legal justification.

Since the Fourteenth Amendment applies to states, equal protection claims against the federal government usually come through the Fifth Amendment’s Due Process Clause. Courts have long treated the Fifth Amendment as containing an equal-protection component, meaning the federal government also cannot engage in unconstitutional discrimination.

In *Mullin v. Doe*, Haitian TPS holders argued that the Haiti termination violated equal protection principles because it was influenced by racial discrimination. The majority assumed the claim could be considered but concluded the plaintiffs were unlikely to prove that race was a motivating factor. Justice Kagan’s dissent emphasized that race does not need to be the only reason for government action; it can be enough if race was one motivating factor.

Arlington Heights:

Refers to [*Village of Arlington Heights v. Metropolitan Housing Development Corporation*](#), a Supreme Court case that provides a framework for evaluating whether racial discrimination was a motivating factor behind government action. It does not require plaintiffs to prove that race was the only reason for the government’s decision.

In *Mullin v. Doe*, the plaintiffs wanted the Court to apply this framework to the Haiti TPS termination. The majority assumed, without deciding, that the plaintiffs could receive the benefit of that more favorable standard and still concluded they were unlikely to succeed.

Motivating Factor:

In equal protection cases, plaintiffs do not always need to prove race was the only reason for the government's action. They may argue that race was one motivating factor that helped drive a government decision.

In *Mullin v. Doe*, the majority concluded the Haitian plaintiffs were unlikely to prove that race motivated the TPS termination. Justice Kagan's dissent emphasized that the plaintiffs did not need to show that racial animus was the only reason, only that it was part of the reason.

Race-Neutral Explanation:

A race-neutral explanation is the government's argument that its action was based on a lawful policy reason, not race or another protected characteristic.

In *Mullin v. Doe*, the majority accepted the administration's explanation that it opposed TPS as the program had been implemented and had moved to terminate every TPS designation that came up for review.

Trump v. Hawaii Deference:

Trump v. Hawaii is a Supreme Court case that applied a highly deferential standard to presidential action in the immigration and national security context.

In *Mullin v. Doe*, the government wanted the Court to use that more deferential approach when reviewing the Haiti equal protection claim. The majority did not choose between *Trump v. Hawaii* and *Arlington Heights* because it concluded the plaintiffs were unlikely to succeed even under the more favorable standard.

Facial Challenge:

A [facial challenge](#) argues that a law or policy is unlawful as written. An [as-applied challenge](#) argues that a law may be valid generally but unlawful in a specific situation.

In *Trump v. Barbara*, some dissenting Justices emphasized that the plaintiffs brought a facial challenge. Their argument was that the executive order should survive if it had even one lawful application. The majority's ruling shows that the facial-challenge label does not automatically save a policy when the challenged action conflicts with a constitutional rule across the class before the Court.

Certiorari Before Judgment:

Certiorari is the process by which the Supreme Court agrees to hear a case. Certiorari before judgment means the Court takes the case before the court of appeals has issued a final decision.

In *Trump v. Barbara*, the Court granted certiorari before judgment after the district court blocked the birthright citizenship executive order. This is unusual and usually signals that the Court views the issue as urgent or nationally significant.

Certified Class:

A certified class is a group of people formally recognized by a court as sharing common legal claims in a class action.

“Subject to the Jurisdiction”:

The phrase “subject to the jurisdiction” comes from the Fourteenth Amendment’s Citizenship Clause. In *Trump v. Barbara*, the majority read it to mean subject to the power and authority of U.S. law. That reading is why the executive order failed. People who are unlawfully or temporarily present in the United States are still subject to U.S. law while they are here. Their children, if born in the United States, satisfy both parts of the Citizenship Clause: born in the United States and subject to U.S. jurisdiction. This case reaffirms, rather than changes, the traditional birthright citizenship rule.

Jus Soli:

[*Jus soli*](#), or “right of the soil,” means citizenship by place of birth. In *Trump v. Barbara*, the majority traced this principle from English common law into American law and Reconstruction. The Court treated the Fourteenth Amendment as constitutionalizing that birthright rule, not creating a brand-new principle. Under this reading, birth on U.S. soil remains the central rule unless a recognized historical exception applies.

Allegiance:

In *Trump v. Barbara*, allegiance refers to the legal relationship between a person and the sovereign government. Under the common law rule discussed by the majority, a child born under the protection of a sovereign owed allegiance to that sovereign. The government and dissenting opinions argued that a deeper form of allegiance, tied to domicile or lawful status, was required. The majority rejected that view.

Domicile:

Domicile generally means a person’s fixed or permanent home. In *Trump v. Barbara*, the government and dissenting Justices argued that citizenship should depend more heavily on parental domicile or deeper allegiance. The majority rejected that approach, emphasizing that the Citizenship Clause does not use words like “lawful,” “temporary,” “mother,” or “father.”

Wong Kim Ark:

[*United States v. Wong Kim Ark*](#) is the leading Supreme Court case on birthright citizenship. It held that a child born in the United States to noncitizen parents was a citizen at birth under the Fourteenth Amendment.

In *Trump v. Barbara*, the majority treats *Wong Kim Ark* as confirming the birthright citizenship rule. The government and dissenting opinions tried to narrow that precedent, but the majority rejected that effort and reaffirmed that birth on U.S. soil, combined with being subject to U.S. law, generally means citizenship at birth.

Dred Scott:

[*Dred Scott v. Sandford*](#) was the Supreme Court decision holding that Black people could not be citizens under the Constitution. In *Trump v. Barbara*, the majority treats the Fourteenth Amendment as a direct repudiation of *Dred Scott*.

The birthright citizenship case looks not only at immigration status but also at the Reconstruction Amendments’ effort to reject inherited caste and make citizenship turn on constitutional birthright rather than race, ancestry, or bloodline.

General Takeaways: What These Cases Tell Us:

Taken together, these cases show a Court that is willing to give the political branches significant control over immigration policy, especially when Congress has written broad discretion into the statute or limited judicial review. In *Mullin v. Doe*, the Court's answer to TPS holders was effectively that the courts are not the place to challenge most TPS termination decisions. If Congress wants stronger protections, Congress must write them. That is a frustrating answer for affected communities, but the Court also points us towards a concrete path forward: public pressure on Congress.

After the Court allowed the Haiti and Syria TPS terminations to move forward, advocates and lawmakers pointed to legislation that would extend TPS protections for Haiti. The House passed [H.R. 1689](#) to extend Haiti TPS for three years, and Senate partners introduced related legislation in June 2026. For coalition members who are concerned about the TPS ruling, one immediate civic response is outreach to Maine's congressional delegation, especially senators, urging action on legislation that protects Haitian TPS holders ([Senate Bill S.4814](#)). At the time of writing this report, Senator King has [cosponsored](#) Senate Bill S.4814, while Representatives Golden and Pingree [voted to support](#) the passage of H.R. 1689.

It is also important to note that the same lesson cuts both ways. The Court's deference to Congress and the executive branch can produce harmful results when those branches move to restrict protection. That deference is also extended to elected officials who choose to expand protections. If Congress creates stronger statutory protections, or if a future administration redesignates, extends, or expands humanitarian relief programs within statutory authority, courts may have less room to interfere. The asylum case shows a different version of the same problem. In *Mullin v. Al Otro Lado*, the Court treated access to asylum at ports of entry as turning on physical crossing. That means public officials can shape legal access by controlling geography: who gets to step forward, who gets stopped, and where legal obligations begin. For advocates, the response requires oversight, public education, and pressure on Congress and DHS to ensure that lawful pathways are real in practice, not only on paper.

The birthright citizenship case is the clearest constitutional limit in the set. In *Trump v. Barbara*, the Court rejected the administration's attempt to rewrite birthright citizenship by executive order. Six Justices agreed the order could not be enforced against the certified class, and five Justices joined the constitutional holding that children born in the U.S. to parents who are unlawfully or temporarily present are citizens at birth. That decision reaffirms that some protections are not simply policy choices left to the executive branch. Citizenship under the Fourteenth Amendment is one of them.

The separate writings also tell us where future fights may go. Justice Thomas's concurrences continue to press for narrower judicial review, fewer remedies from lower courts, and broader presidential authority in immigration. Justice Kavanaugh's concurrence and dissent in *Trump v. Barbara* rejected the executive order but left open a difficult but possible congressional path for future birthright citizenship restrictions. The dissents in the TPS and asylum cases, meanwhile, warn that the majority's approach may leave major humanitarian decisions with little meaningful court review.

These cases tell advocates, service providers, and community members where their attention needs to be directed: toward Congress when statutory protections are too weak; toward the executive branch when agencies have discretion; toward state and local governments when

federal protection narrows; and toward public education when fear and confusion spread faster than legal information.

For MIRC and our coalition, these decisions clarify the policy terrain ahead. The Court has narrowed some legal pathways, but it has also shown where political responsibility now sits: with Congress, federal agencies, state government, and local institutions. Our task is to meet that responsibility with policy demands that protect people: stronger statutory protections of immigration pathways, state and local safeguards, and public narratives that refuse to let immigrant communities be reduced to legal abstractions. These cases change the terrain, but they do not end the work. They tell us where the work must move next.

Further Reading:

- American Immigration Council
 - [The Asylum Turnback Case: From the First Filing to the Supreme Court](#)
 - [Birthright Citizenship: The 14th Amendment Lives On](#)
 - [Supreme Court Allows Trump to Strip TPS, Turn Away Asylum Seekers Arriving at the Border in Pair of New Immigration Rulings](#)
- SCOUTUS Blog
 - This [animated explainer](#), the third in [a series](#), guides you through which justices dominated this term, which judicial alliances mattered most, and whether the court's so-called ideological divide is more hype than reality.
 - If you prefer to read, here's the [written version](#).
 - [Majority writing breakdown](#)
 - [“Supreme Court strikes down Trump’s order ending birthright citizenship”](#)
 - [Breaking down the birthright-citizenship decision](#)
- Forum Together
 - [Explainer: Supreme Court Reaffirms Birthright Citizenship in Trump v. Barbara](#)
- [A practical guide based on Haitian leaders’ emergency response to the Supreme Court TPS ruling](#), detailing what TPS holders, Haitian Americans, allies and community organizations can do.