

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

“BARBARA,” *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 1:25-cv-244-JL-AJ

MOTION FOR CLASSWIDE PRELIMINARY INJUNCTION;
REQUEST FOR EXPEDITED TREATMENT, LR 7.1(f)

This Court previously certified a nationwide class and enjoined the President’s first effort to strip children born in the United States of their citizenship. *See* Exec. Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, 91 Fed. Reg. 8,449 (2025) (“EO1”). The Supreme Court affirmed that injunction, confirming that the only exceptions to universal birthright citizenship are those set forth in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). *See Trump v. Barbara*, 146 S. Ct. 2438 (2026).

Despite that clear ruling, the President has now tried again, identifying a new (though significantly overlapping) set of people whose citizenship he seeks to deny in violation of the Fourteenth Amendment and 8 U.S.C. § 1401. *See* Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026) (“EO2”). Plaintiffs therefore respectfully move this Court to certify a class of those subject to EO2, and to issue a classwide preliminary injunction providing that Defendants are “enjoined and restrained from enforcing [EO2], and from taking any other actions to deny or infringe on the citizenship of class members.”

Time is of the essence. Despite their loss at the Supreme Court, **Defendants are poised to begin denying citizenship now**; nothing in their Interim Final Rule or the guidance documents they issued this past Friday indicates otherwise. *See Registration of Lawful Permanent Residence for Children Born to Foreign Government Employees in the United States* *7, DHS Doc. No. USCIS-2026-0496 (Sept. 9, 2026) (to be codified at 8 C.F.R. pts. 101, 264), <https://public-inspection.federalregister.gov/2026-18345.pdf> (“IFR”); Proposed Supplemental Complaint (collecting other guidance documents).¹ Pursuant to LR 7.1(f), Plaintiffs therefore respectfully

¹ Plaintiffs previously sought clarification or modification of the existing injunction, or issuance of a new injunction, protecting members of the existing EO1 class from EO1, EO2, and any other efforts to deny their birthright citizenship. ECF No. 80. That motion remains pending. In the meantime, in the parallel *CASA v. Trump* litigation, the court issued a preliminary injunction

request that Defendants be directed to respond to this motion, Plaintiffs' motion for class certification, and Plaintiffs' motion to supplement their Complaint by September 15th, Plaintiffs be directed to reply by September 17th, and the Court issue its ruling by September 21st. Defendants have indicated that they oppose the relief sought and object to expedited treatment of Plaintiffs' motion for preliminary injunction in light of the injunction currently in place in *CASA* and believe a normal briefing schedule is appropriate.

BACKGROUND

The Court is familiar with the general background of this case. On July 10, 2025, the Court provisionally certified a class of the children subject to EO1, defined as:

All current and future persons who are born on or after February 20, 2025, where (1) that person's mother was unlawfully present in the United States and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) that person's mother's presence in the United States was lawful but temporary, and the person's father was not a United States citizen or lawful permanent resident at the time of said person's birth.

Barbara v. Trump, 790 F. Supp. 3d 80, 105 (D.N.H. 2025). The Court also issued an order providing that Defendants "are enjoined and restrained from enforcing" EO1. ECF No. 64. The Supreme Court affirmed that injunction. *Trump v. Barbara*, 146 S. Ct. 2438 (2026).

On August 6, 2026, after the Court's mandate, the President issued the new Order, EO2. Purporting to exercise "authority vested in me as President by the Constitution and the laws of the United States of America," the Order "identifies, non-exhaustively, and prescribes action

against the application of EO2 to the class certified of those subject to EO1 in that case. No. 25-cv-201, 2026 WL 2592706 (D. Md. Sept. 2, 2026). The IFR indicates (at *7) that "DHS will not take actions to implement the rule specifically to any member of the certified class [in *CASA v. Trump*], or otherwise conflict with the preliminary injunction, unless and until the government obtains relief from the injunction." IFR at *7. Because EO2 applies to people outside that class (and the class in this case), including the children of lawful permanent residents, that statement does not indicate any intention to forbear enforcement of the IFR (much less EO2) overall. And the government may seek to stay or dissolve the *CASA* injunction at any time.

concerning certain categories of children of aliens who,” the President opined, “do not fall within the rule of birthright citizenship as announced by the Supreme Court.” EO2. It directs executive agencies not to recognize the citizenship of individuals “when neither parent of that person is a citizen” and who fall into one of the following categories:

- a) “either parent of that person is an alien enemy, defined to include” a member of certain designated terrorist organizations;
- b) “either parent of that person is a foreign government employee,” including not only ambassadors but various other employees of foreign governments or international organizations;
- c) “either parent of that person engaged in a commercial transaction to purchase or access birthright citizenship for the person, or engaged in fraudulent activity to obtain citizenship”;
- d) “the person is born in a territory or territorial waters of the United States where citizenship is not conferred by Federal statute.”

Id. § 2. Agency heads were directed to “take all appropriate measures” to implement the Order, and were directed to issue public guidance. *Id.* § 3.

On August 11, Plaintiffs moved to lift the stay of proceedings in this Court; the First Circuit subsequently issued its judgment and mandate, and Defendants have not opposed lifting the stay. ECF Nos. 79, 87-1 at 7 n.1. Also on August 11, Plaintiffs moved the Court to clarify the existing preliminary injunction, to modify it, or to issue a new injunction making clear that, as to the existing class of children subject to EO1, Defendants are “enjoined and restrained from taking any actions to deny or infringe on the citizenship of class members, except for those born to a foreign diplomatic officer identified in the State Department ‘Blue List.’ See 8 C.F.R. § 101.3 (2025).” ECF No. 80 at 6. That motion remains pending.

On September 4, DHS issued the IFR, and other agencies issued guidance regarding EO2. The guidance documents assert that EO2 applies only prospectively; they do not attempt to explain that conclusion, nor why EO2 lacks any chronologically limiting language like that included in

EO1. *See CASA*, 2026 WL 2592706, at *9 (explaining that while EO1 limited its restrictions on citizenship to babies “‘born within the United States after 30 days from the date of this order,’” EO2 “says nothing like that,” and so “[t]he only fair reading of the plain language of the 2026 Executive Order is that it applies to any child who falls within any category in Section 2 of the order”).

Contemporaneously with this motion, Plaintiffs have filed a motion for leave to file a Supplemental Complaint, with new plaintiffs joining this lawsuit; a motion for the new plaintiffs to proceed under pseudonym; and a motion to certify a class of individuals subject to EO2. The proposed class definition is:

- All persons, and the parents (including expectant parents) of those persons, who:
- (1) are born in the United States as defined in 8 U.S.C. § 1101(a)(38);
 - (2) are not born to a foreign diplomatic officer accredited to the United States;
 - (3) for whom neither parent is a U.S. Citizen; and
 - (4) for whom either parent is or will be categorized by the government as falling within §§ 2(a)-(c) of Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026).

LEGAL STANDARD

“To be granted a preliminary injunction, a plaintiff ‘must establish’ that: (1) it is ‘likely to succeed on the merits’; (2) it is ‘likely to suffer irreparable harm in the absence of preliminary relief’; (3) ‘the balance of equities tips in [its] favor’; and (4) ‘an injunction is in the public interest.’” *Doe v. Trump*, 157 F.4th 36, 46 (1st Cir. 2025) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)) (alteration in original).

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

A. Plaintiffs have previously briefed the constitutional and statutory merits at length, and incorporate that briefing by reference. *See* ECF Nos. 6, 57, 80, 89. In short, Plaintiffs are

extremely likely to succeed on the merits; indeed, the Supreme Court has already reiterated in this very litigation that the Fourteenth Amendment guarantees citizenship to “all children born in the United States and subject to its power,” representing “nearly all children born” in this country. *Barbara*, 146 S. Ct. at 2453.

As *Barbara* explained, the Citizenship Clause constitutionalized the earlier common law of citizenship. In England, all persons born in the King’s territory and under his protection were natural-born subjects. *Id.* at 2445. “Because the sovereign’s power (and thus his duty) was limited in various respects, so too was the scope of this rule. He could not demand allegiance from—for he could not protect—those born in lands that he did not control.” *Id.* “And the same held true for ambassadors (and their families), who were considered—by a fiction of extraterritoriality—to remain on foreign soil and thus ‘under the ligeance’ of their home country.” *Id.* “[A]ll others born in Britain” were subjects—regardless of whether their parents had been present in the kingdom for just one day, or even had been ordered to leave those dominions on pain of “death.” *Id.* at 2446.

The same rule “crossed the Atlantic” and became the law in the American colonies and then the young United States. *Id.* “[T]he antebellum era’s foremost case on the topic” of citizenship by birth thus explained that such citizenship “extends to ‘all persons born within the jurisdiction of the United States.’” *Id.* at 2447 (quoting *Lynch v. Clarke*, 1 Sand.Ch. 583, 668 (N. Y. Ch. 1844)). After the Supreme Court “overruled the common law” in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), the people “overrule[d] the Court” by adopting the Fourteenth Amendment’s Citizenship Clause. *Barbara*, 146 S. Ct. at 2448.

The Court reiterated that the meaning of that Clause is clear and simple: “A child born on American soil and subject to American law was made an American citizen.” *Id.* at 2449. By requiring that a child born in this country be “subject to the jurisdiction” of the United States, the

Clause “uses jurisdiction in its ordinary sense—referring to the power of the United States to govern those within its territory.” *Id.* at 2450. “The scope of that power was well settled in 1868, largely by ‘the celebrated case’ of [*The Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812)],” which addressed the term “jurisdiction” in the context of immunity. *Id.*

Barbara thus reaffirmed the Court’s prior holding in *Wong Kim Ark*:

What the Court held in *Wong Kim Ark* was simple: the Citizenship Clause incorporated the common law and granted citizenship to nearly all children born in the United States. Not surprisingly, then, in the 128 years since, we have repeatedly understood the rule of *Wong Kim Ark* to guarantee citizenship to all children born in the United States and subject to its power. . . We see no reason to depart from that view today.

Id. at 2453.

Wong Kim Ark had explained that the Clause “affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country.” *Wong Kim Ark*, 169 U.S. at 693. That rule was absolute “with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes.” *Id.* The citizenship of “the children born within the territory of the United States of *all other persons*” is constitutionally guaranteed. *Id.* (emphasis added). That is the holding of *Wong Kim Ark*, and it is the holding of *Barbara*.

The First Circuit reached the same conclusion, holding that both *Wong Kim Ark*, and the subsequent enactment of § 1401, enshrined the rule that “the words in the Fourteenth Amendment to the Constitution, ‘and subject to the jurisdiction thereof,’ were meant to except three exclusive groups: the ‘children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and the single additional

exception of children of members of the Indian tribes owing direct allegiance to their several tribes.” *Doe*, 157 F.4th at 61 (citation modified).

Thus, as this Court, the First Circuit, and the Supreme Court have now all made clear, “*Wong Kim Ark* enumerated specific exceptions to the constitutional grant of birthright citizenship” and the President cannot add to or expand those exceptions. *N.H. Indonesian Cmty. Support v. Trump*, 765 F. Supp. 3d 102, 109 (D.N.H. 2025) (“*NHICS*”). As Justice Kavanaugh put it, both *Wong Kim Ark* and the *Barbara* majority were clear that these “exceptions were a closed set.” *Barbara*, 146 S. Ct. at 2471 (Kavanaugh, J., concurring in the judgment and dissenting in part).

Neither the hostile occupation nor the Native American Tribes exception is relevant today. *See id.* at 2466 n.52 (Jackson, J. concurring). The Clause incorporated the common-law exception for children born to “enemies within and during a hostile occupation of part of our territory.” *Wong Kim Ark*, 169 U.S. at 693; *see Barbara*, 146 S. Ct. at 2445. There is no such occupation today. Likewise, the citizenship of all children of Native Americans was recognized by statute in 1924, obviating any practical impact of that exception articulated in *Wong Kim Ark*. Indian Citizenship Act, ch. 233, 43 Stat. 253.

Thus, the only relevant exception is for the children of foreign ministers. Those children, like their parents, enjoy full diplomatic immunity. *See Moncada v. Rubio*, 153 F.4th 733, 739 (9th Cir. 2025); *Carrera v. Carrera*, 174 F.2d 496, 498 (D.C. Cir. 1949); *In re Look Tin Sing*, 21 F. 905, 906 (C.C.D. Cal. 1884) (Field, J.). Because such children are exempted from “the power of the United States to govern those within its territory” in order “to preserve its relationship with a foreign sovereign,” they are not “subject to the jurisdiction” of the United States. *Barbara*, 146 S. Ct. at 2450. Those children are excluded from the class definition (because they are born “to a

foreign diplomatic officer accredited to the United States,” *see* 8 C.F.R. § 101.3(a) (2025)), and are thus not at issue in this motion.

“All others [are] citizens at birth[.]” *Barbara*, 146 S. Ct. at 2452. This rule is guaranteed by both the Citizenship Clause, *see id.*, and § 1401, *see Doe*, 157 F.4th at 58-64 (statute enshrined “the same broad understanding of birthright citizenship” as was reflected in *Wong Kim Ark* and longstanding administrative practice). Accordingly, Plaintiffs are entitled to an injunction precluding the application of EO2—or any other Executive Order, guidance, or action—to strip away their citizenship.

B. Nothing in EO2 warrants any contrary conclusion. It purports to “identif[y], non-exhaustively . . . categories of children of aliens who do not fall within the rule of birthright citizenship.” EO2 § 1. As to each of the three categories at issue in this motion, EO2 is illegal in the same fundamental way: It tries to exclude people from birthright citizenship beyond the specific exceptions set forth in *Wong Kim Ark*. But the *Wong Kim Ark* exceptions are enshrined in the constitutional and statutory phrase, “subject to the jurisdiction,” and, per *Barbara*, there is no space for the President to either expand them or fashion new ones.

First, § 2(a) purports to strip citizenship from the children of supposed “alien enem[ies].” That is not an exception in *Wong Kim Ark*. Rather, the common-law exception applied only to “an alien enemy *in hostile occupation* of the place where the child was born.” *Wong Kim Ark*, 169 U.S. at 658 (emphasis added); *see id.* at 693 (“enemies within and during a hostile occupation of part of our territory”); *id.* at 655 (“hostile occupation”); 657-58 (same); *id.* at 665 (same); *id.* at 682 (same); *id.* at 688 (same). That “hostile occupation” condition is the reason this exception exists at all. *See Barbara*, 146 S. Ct. at 2445 (discussing exception in *Calvin’s Case* for territory “temporarily outside [king’s] control”). In the case of “conquest and military occupation,” “[t]he

sovereignty of the [nation] over the [occupied] territory was, of course, suspended, and the laws of the [nation] could no longer be rightfully enforced” in it. *United States v. Rice*, 17 U.S. 246, 254 (1819). As such, the occupied town would be “deemed a foreign port,” and “the inhabitants” “passed under a temporary allegiance to the [occupying] government, and were bound by such laws, and such only, as it chose to recognize and impose.” *Id.*; see *Wong Kim Ark*, 169 U.S. at 683 (extensively discussing *Rice*). Thus, a child born to enemies in occupied territory was not “born ‘under the protection of’ the United States,” and so not subject to its jurisdiction. *Barbara*, 146 S. Ct. at 2449. There is no occupied territory today, nor any realistic prospect for such territory; the British occupation of U.S. cities in the War of 1812 (as described in *Rice*) is a distant memory. EO2 cannot create this new exception to birthright citizenship. See ECF No. 80 at 12-13 (explaining that children of interned “enemy aliens” during World War II were citizens).²

Second, §§ 2(b)(ii)-(iv) purport to exclude the children of various employees of foreign governments and “international organization[s] that possess international-organization immunity,” but who are not themselves entitled to full diplomatic immunity. EO2 cannot create this new exception to birthright citizenship either.³

Only children with full diplomatic immunity are outside the “power” and therefore “jurisdiction” of the United States. *Barbara*, 146 S. Ct. at 2450. That is not the case for the vast

² EO2 defines the term “alien enemy” to include certain groups on the Administration’s list of designated terrorist organizations. However, this also lacks any constitutional anchor: As used in *Wong Kim Ark*, “alien enemy” is a legal term of art meaning the national of a nation at war with the United States. See, e.g., *Johnson v. Eisentrager*, 339 U.S. 763, 769 n.2 (1950) (explaining that “an alien enemy is the subject of a *foreign state at war* with the United States” and collecting sources) (emphasis added); see ECF No. 80 at 12.

³ Individuals under subsection (2)(b)(i), which addresses the children of “ambassadors,” are outside the proposed class (and are not birthright citizens independently of EO2 under longstanding law, see 8 C.F.R. § 101.3(a) (2025)). The “narrow set of diplomatic officials” entitled to full diplomatic immunity, *Barbara*, 146 S. Ct. at 2507 (Thomas, J., dissenting) (internal quotation marks omitted), has long been enumerated in the State Department’s “Blue List,” see 8 C.F.R. § 101.3 (2025); *Moncada*, 153 F.4th at 740 (discussing list from 1950); Restatement (Third)

majority of employees of foreign governments and international organizations. Thus, as *Wong Kim Ark* specifically explained, “consuls, as such, and unless expressly invested with a diplomatic character in addition to their ordinary powers, are not . . . entitled by the law of nations to the privileges and immunities of ambassadors or public ministers, but are subject to the jurisdiction, civil and criminal, of the courts of the country in which they reside.” 169 U.S. at 678-79; *Moncada*, 153 F.4th at 739 (other officials, like consuls, “are subject to the local law in the same manner with other foreign residents owing a temporary allegiance to the state”) (*quoting Coppel v. Hall*, 74 U.S. 542, 553 (1869)).

While some other foreign-government officials enjoy limited immunity for certain official acts, *Moncada*, 153 F.4th at 739, neither they nor their families enjoy “full diplomatic immunity.” *Id.* at 737; *see Barbara*, 146 S. Ct. at 2507 (Thomas, J., dissenting) (“diplomatic immunity extends to only a narrow set of diplomatic officials, not to all foreign representatives”) (citation altered). Indeed, even in the IFR Defendants continue to recognize that only “[f]oreign diplomatic officers accredited to the United States” are outside the “jurisdiction of the United States” in the sense of enjoying full diplomatic immunity. *See* IFR at *9 & n.2 (explaining that even after their regulatory changes, the State Department will continue to determine “whether any particular person enjoys diplomatic agent-level immunity and *is therefore not subject to the jurisdiction of the United*

of Foreign Relations Law § 464 (1987). The IFR indicates that Defendants no longer “publish[]” the Blue List and have removed references to it from their regulations. IFR at *10. It does not indicate whether the government still maintains such a list, but suggests that the State Department is in a position to provide “confirmation” of whether individuals are “foreign diplomatic officers.” *Id.* at *9 n.2, 10.

States, or whether they enjoy lesser status-based immunity, on any particular date . . . in accordance with relevant international and domestic law”) (emphasis added) (citing 22 C.F.R. § 150.2).

That concession makes sense; even if Defendants could do so, expanding full diplomatic immunity to the “more than 124,000 foreign mission members and dependents” in the United States, IFR at *18, “would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation,” *Wong Kim Ark*, 169 U.S. at 685 (quoting *The Schooner Exchange*, 11 U.S. at 144). But that leaves Defendants with a fatal contradiction. They want a broad meaning for “subject to the jurisdiction of the United States” when it comes to who is subject to our laws, IFR at *9 n.2, but a narrow meaning when it comes to who is “subject to the jurisdiction of the United States *for purposes of birthright citizenship*,” *id.* at 11 (emphasis added). However, *Barbara* and *Wong Kim Ark* are clear that the Fourteenth Amendment uses that phrase “in the same sense in which the like words had been used” in *The Schooner Exchange*. *Barbara*, 146 S. Ct. at 2452 (quoting *Wong Kim Ark*, 169 U.S. at 687). *The Schooner Exchange* is a case *about immunity*; thus, lesser foreign officials cannot be both “subject to the jurisdiction of the United States” under *The Schooner Exchange*’s principles (as Defendants concede they are), and also *not* subject to that jurisdiction for purposes of the Fourteenth Amendment. *See id.* at 2456 (relying again on *The Schooner Exchange*).

The relevant *Wong Kim Ark* exception here is for “foreign ministers,” *Barbara*, 146 S. Ct. at 2450 (quoting *The Schooner Exchange*, 11 U.S. at 139), because they and their children are immune from U.S. jurisdiction—not for any foreign national employed by a foreign government

or international organization. EO2 cannot craft a new, broader exception for all foreign government employees.

Third, § 2(c) purports to exclude children whose parent “engaged in a commercial transaction to purchase or access birthright citizenship for the person, or engaged in fraudulent activity to obtain citizenship.” There is no such exception in *Wong Kim Ark*. The government sought to push alarmist ideas about so-called birth tourism in its briefing and argument at the Supreme Court. *See* Br. for the Pet’rs, *Trump v. Barbara*, No. 25-365 (U.S. Jan. 20, 2026), at 9. The Court was unpersuaded, and instead reaffirmed *Wong Kim Ark*’s analysis: The children of those “recognized as exempt ‘from the jurisdiction of this country’” were carved out of the Clause, and “[a]ll others were citizens at birth.” 146 S. Ct. at 2452 (quoting *Wong Kim Ark*, 169 U.S. at 683). That leaves no space for the new purported exception. After all, even if an individual “engaged in a commercial transaction” or committed “fraud[],” EO2 § 2(c), they remain “subject to [the] power” of the government, including any criminal or civil enforcement, as of course do their children, *Barbara*, 146 S. Ct. at 2453. That is why, for example, even the children of Roma people, who were required to leave England on pain of imprisonment or death, were nevertheless natural-born subjects. *Id.* at 2446. Once again, EO2 cannot create this new exception to birthright citizenship.⁴

In sum, the merits are straightforward. The Supreme Court has twice confirmed that all children born in this country are U.S. citizens, save only the specific exceptions articulated in *Wong*

⁴ EO2 § 2(d) purports to strip citizenship from a person born “in a territory or territorial waters of the United States where citizenship is not conferred by Federal statute.” That provision is irrelevant to the proposed class and the relief sought. Plaintiffs seek to represent the class of children born “in the United States as defined in 8 U.S.C. § 1101(a)(38).” That statutory definition is “the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.” Under 8 U.S.C. § 1401(a), all persons born in the United States—as defined in § 1101(a)(38)—“and subject to the jurisdiction thereof,” are citizens. Because EO2 § 2(d) applies to territories only “where

Kim Ark. The only relevant exception today is for children of foreign ministers with full diplomatic immunity. EO2 seeks to strip citizenship from class members in violation of the Citizenship Clause, § 1401, *Barbara*, *Wong Kim Ark*, and First Circuit precedent. Plaintiffs are thus likely to succeed on the merits.

II. THE EQUITIES STRONGLY FAVOR AN INJUNCTION.

The equities are likewise straightforward, and “tip decisively toward the” Plaintiffs. *Doe*, 157 F.4th at 79 (citation modified).

“The putative class would suffer irreparable harm without a preliminary injunction enjoining the Executive Order.” *Barbara v. Trump*, 790 F. Supp. 3d 80, 103 (D.N.H. 2025). This Court previously had “little difficulty concluding that the denial of citizenship status to newborns, even temporarily, constitutes irreparable harm.” *NHICS*, 765 F. Supp. 3d at 111. That alone is enough to establish irreparable injury: “[T]he rapid adoption by executive order, without legislation and the attending national debate, of a new government policy of highly questionable constitutionality that would deny citizenship to many thousands of individuals previously granted citizenship under an indisputably longstanding policy, constitutes irreparable harm[.]” *Barbara*, 790 F. Supp. 3d at 103.

In addition, “[t]he loss of birthright citizenship—even if temporary, and later restored at the conclusion of litigation—has cascading effects that would cut across a young child’s life (and the life of that child’s family), very likely leaving permanent scars.” *Id.* at 103 (citation modified). Plaintiffs and putative class members will be denied passports and other documents and programs

citizenship is not conferred by Federal statute,” it has no application to the territories enumerated in § 1101(a)(38). There is an existing legal dispute about whether American Samoa, which is not covered by such a statute, is “within the United States for purposes of the Fourteenth Amendment.” *Compare Fitisemanu v. United States*, 1 F.4th 862, 872 (10th Cir. 2021), *with id.* at 883-98 (Bacharach, J., dissenting). Given the class definition, that distinct question concerning the territorial scope of the Citizenship Clause is beyond the scope of this case.

to which they are entitled as U.S. citizens. Decl. of Clara ¶ 9, ECF No. 91-1 (“Clara Decl.”); Decl. of Edward ¶¶ 22-23, 26, 39, ECF No. 91-2 (“Edward Decl.”); Decl. of Patricia ¶ 11, ECF No. 91-3 (“Patricia Decl.”). And the federal government’s denial of their citizenship exposes babies to “deportation to countries they have never visited.” *NHICS*, 765 F. Supp. 3d at 111; *see* Clara Decl. ¶ 8; Edward Decl. ¶ 29. Indeed, Defendants concede as much. *See* IFR at *14 (explaining that children stripped of citizenship under EO2 may be “subject to removal from the United States,” and providing for a system to obtain status only for children falling into EO § 2(b) (foreign government parents) born on or after September 9, 2026, not other individuals covered by EO2).

The parent class members experience these harms on behalf of their children, and their own harms as well. For example, under 8 U.S.C. § 1302(b), “[i]t shall be the duty of every parent or legal guardian of any alien now or hereafter in the United States, who [] is less than fourteen years of age . . . to apply for the registration of such alien before the expiration of [] thirty days.” Willful failure to do so is a misdemeanor. *Id.* § 1306(a). Defendants have made clear that they believe children stripped of their citizenship under EO2 are subject to this registration requirement. *See* IFR at *11 (person stripped of citizenship under EO2 “must register as an alien when required to do so by” § 1302 *et seq.*). That means their parents must either effectively concede the denial of their child’s citizenship (and expose their child to the threatened immigration enforcement) by registering, or themselves face criminal prosecution.

All this is irreparable injury. *NHICS*, 765 F. Supp. 3d at 111.

By contrast, any interest the government might have in enforcing “an unlawful executive order” is outweighed by the harm to Plaintiffs and the public, which “has a substantial interest in ensuring that those entitled to be recognized as United States citizens are not unlawfully deprived of that recognition.” *Doe*, 157 F.4th at 79. “A continuation of the status quo during the pendency

of this litigation will only shortly prolong the longstanding practice and policy of the United States government, while imposition of the Executive Order would impact the plaintiffs and similarly situated individuals and families in numerous ways, some of which—in the context of balancing equities and the public interest—are unnecessarily destabilizing and disruptive.” *NHICS*, 765 F. Supp. 3d at 111-12.

Indeed, the public interest in favor of an injunction extends even beyond the class of those denied citizenship by EO2 and their families. For example, “[i]f neither parent of a minor [passport] applicant is a U.S. citizen, an attestation *from each parent*, under penalty of perjury, must be submitted as part of the determination whether either parent meets any of the EO conditions.” U.S. Dep’t of State, *Executive Order 14418: Continuing to Protect the Meaning and Value of American Citizenship* *1 (2026), <https://perma.cc/8JJJ-XD94> (emphasis added). “Any misrepresentations made under penalty of perjury could subject the individual(s) to legal liability, including potential federal criminal prosecution.” *Id.* at *3.

This attestation requirement now applies to *any* minor seeking a passport, if neither parent is a U.S. citizen. But being forced to make such an attestation is itself harmful, particularly where the EO2 categories are so malleable; as previously noted, for example, “[m]any a mother might be found to have ‘engage[d] in a commercial transaction to ensure that’ she ‘is present in the United States . . . to give birth.’” ECF No. 80 at 14 (quoting EO2 § 2(c)(i) and discussing Plaintiff Barbara’s payment for a bus ticket in fleeing to the United States). Parents should not be forced to parse this vague and threatening language, and make high-stakes attestations about it under penalty of perjury, just to obtain recognition of their children’s constitutionally guaranteed citizenship.

Moreover, this new attestation requirement will likely lead to denial of passports even for children who fall outside of EO2's categories. For example, "[t]here are many U.S. Citizen children who do not know who their biological father is." Br. of Project Rousseau as Amicus Curiae in Support of Respondents 4, *Trump v. Barbara*, No. 25-365 (Sup. Ct. Feb. 26, 2025) (citing study indicating that "11.7% of all births nationwide were registered with an unknown father"). In such cases, an attestation from that father would be unobtainable. In other situations, the father may be known but abusive. *See, e.g., id.* at 5-6, 12-13. Again, attestation from such an abuser may be unavailable, or obtaining it may impose grave harms in its own right. EO2's new efforts to strip citizenship will inevitably spill over in this way to deprive even more members of the public of their constitutional birthright.

III. THE REQUESTED CLASSWIDE RELIEF IS APPROPRIATE.

In the motion for provisional class certification filed contemporaneously with this motion, Plaintiffs explain why the putative class should be certified. The court previously granted provisional class certification in tandem with the prior preliminary injunction, explaining that "this situation warrants emergency injunctive relief and class certification" and that it did "not hesitate to certify a class that may include members in all fifty states." *Barbara*, 790 F. Supp. 3d at 98, 100. It should do the same now.

The terms of the proposed preliminary injunction are also appropriate. This is now the second Executive Order the President has issued purporting to strip away birthright citizenship guaranteed by the Citizenship Clause and § 1401. But the Supreme Court just reiterated that the Clause "guarantee[s] citizenship to all children born in the United States and subject to its power," with only those exceptions set forth in *Wong Kim Ark*. *Barbara*, 146 S. Ct. at 2453. And the First Circuit held the same is true of § 1401. *Doe*, 157 F.4th at 61-64. Because the only exception

relevant today is for children of foreign ministers with full diplomatic immunity, and because those children are expressly carved out of the putative class, all members of the class are guaranteed birthright citizenship. And given the ongoing campaign to strip away that citizenship, the Court should afford a clear and indisputable statement that Defendants are barred from “taking any actions to deny or infringe on the citizenship of class members.” That would protect the class from EO2 and from any future variations on the President’s campaign to unilaterally rewrite our fundamental national commitment to birthright citizenship, eliminating the need for class members to repeatedly relitigate the citizenship that the Supreme Court has already explained is their constitutional birthright.

Consistent with the First Circuit’s decision in *NHICS*, Plaintiffs respectfully request that the injunction run against the agency official defendants, but not the President or “the agencies themselves.” *N.H. Indonesian Cmty. Support v. Trump*, 157 F.4th 29, 35 (1st Cir. 2025).

IV. THE COURT SHOULD REQUIRE ONLY NOMINAL BOND.

Finally, the Court should again require nominal bond of \$1. *See Barbara*, 790 F. Supp. 3d at 104. “[T]he provisions of Rule 65(c) are not mandatory and a district court retains substantial discretion to dictate the terms of an injunction bond.” *Int’l Assoc. of Machinists & Aerospace Workers v. E. Airlines*, 925 F.2d 6, 9 (1st Cir. 1991). “[N]o bond is required in suits to enforce important federal rights or public interests.” *Crowley v. Local No. 82, Furniture & Piano Moving*, 679 F.2d 978, 1000 (1st Cir. 1982) (collecting cases) (citation modified), *rev’d on other grounds*, 467 U.S. 526 (1984). “Here, where it is the government’s sudden action, rapidly changing a longstanding policy, and not any conduct by the petitioners, that has created the litigation conditions that require petitioners to seek injunctive relief to preserve the long-established

citizenship rights of children born in this country . . . a nominal bond of \$1 is appropriate.”

Barbara, 790 F. Supp. 3d at 104 (collecting cases).

CONCLUSION

The Court should grant a preliminary injunction.

Dated: September 9, 2026

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

“BARBARA,” *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 1:25-cv-244-JL-AJ

**PLAINTIFFS’ ASSENTED-TO MOTION FOR LEAVE TO FILE A SUPPLEMENTAL
COMPLAINT PURSUANT TO FED. R. CIV. P. 15(d)**

Plaintiffs move for leave to file a Supplemental Complaint pursuant to Federal Rule of Civil Procedure 15(d). The proposed Supplemental Complaint is attached as Exhibit A. Plaintiffs seek to add (1) plaintiffs and (2) claims and allegations arising from a second Executive Order issued by the President on August 6, 2026, as well as associated agency actions. *See* Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026) (“EO2”). The second Executive Order is a post-complaint event that could not have been included within Plaintiffs’ operative Complaint. Plaintiffs have conferred with Defendants regarding this Motion and Defendants have indicated that they do not oppose Plaintiffs’ request for leave.

BACKGROUND

Plaintiffs filed the present action on June 27, 2025. The Complaint alleges four causes of action: one under the Fourteenth Amendment to the U.S. Constitution; one under 8 U.S.C. § 1401; and two under the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(B)-(C), alleging that the actions permitted by Exec. Order No. 14,160, *Protecting the Meaning and Value of American Citizenship*, 90 Fed. Reg. 8449 (2025) (“EO1”), were contrary to the U.S. Constitution and § 1401. *See* ECF No. 1 ¶¶ 73-83.

This Court certified a nationwide class and enjoined the enforcement of EO1. *See* ECF Nos. 64, 65. The Supreme Court affirmed this Court’s injunction, confirming that the only exceptions to universal citizenship are those recognized in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). *See Trump v. Barbara*, 146 S. Ct. 2438 (2026).

Undeterred, the President issued EO2, which purports to identify “certain categories of children of aliens” that “do not fall within the rule of birthright citizenship as announced by the Supreme Court.” EO2 § 1. In particular, it strips citizenship from any persons born in the United

States when “neither parent of that person is a citizen” and:

- a) “either parent of that person is an alien enemy, defined to include” a member of certain designated terrorist organizations;
- b) “either parent of that person is a foreign government employee,” including not only ambassadors but various other employees of foreign governments or international organizations;
- c) “either parent of that person engaged in a commercial transaction to purchase or access birthright citizenship for the person, or engaged in fraudulent activity to obtain citizenship”; or
- d) “the person is born in a territory or territorial waters of the United States where citizenship is not conferred by Federal statute.”

EO2 § 2.

Following the issuance of EO2, Plaintiffs moved to lift the stay of proceedings in this Court and moved the Court to clarify the existing preliminary injunction, to modify it, or to issue a new injunction making clear that, as to the existing class of children subject to EO1, Defendants are “enjoined and restrained from taking any actions to deny or infringe on the citizenship of class members,” ECF No. 80, at 6; *see also* ECF Nos. 79, 87-1, at 7 n.1. While that motion was pending, the court in the parallel *CASA v. Trump* litigation issued a preliminary injunction barring enforcement of EO2 as to the class of children subject to EO1 certified in that case. No. 25-cv-201, 2026 WL 2592706, at *1 (D. Md. Sept. 2, 2026). Defendants then issued an Interim Final Rule and agency guidance on September 4.

Plaintiffs now move to supplement the operative Complaint under Rule 15(d) and add additional plaintiffs, allegations, and claims with reference to EO2. In particular, Plaintiffs seek to include Plaintiffs Clara, Edward, Nathan, Beatrice, and Patricia as named class members to represent (alongside plaintiff Barbara) a class of all persons born in the United States, and the parents (including expectant parents) of those persons, who are subjected to the citizenship-stripping provisions of EO2. *See* Ex. A ¶¶ 88-91, 113. Plaintiffs reassert the same four causes

of action against EO2 as those that were alleged against the enforcement of EO1, and assert a new Notice and Comment claim. *See id.* ¶¶ 122-39.

LEGAL STANDARD

“On motion and reasonable notice” the Court may “permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d). Motions under Rule 15(d) are treated “liberally,” *U.S. ex rel. Gadbois v. PharMerica Corp.*, 809 F.3d 1, 7 (1st Cir. 2015), and should be “freely granted” in the absence of “undue delay, bad faith, dilatory tactics, undue prejudice to the party to be served with the proposed pleading, or futility[.]” *Tavares v. Macomber*, No. 18-cv-606, 2019 WL 2502933, at *2 (D.R.I. June 17, 2019) (citation modified).

ARGUMENT

This Court should grant Plaintiffs’ request to supplement the Complaint. The liberal policy guiding supplementation and each of the Rule 15(d) factors support granting this unopposed motion for leave to file a supplemental complaint.

The Supplemental Complaint is premised only on factual events that “happened after the date of” the original Complaint. Fed. R. Civ. P. 15(d). EO2 was issued “after the prior complaint was filed,” *Doe v. Comm’r, N.H. Dep’t of Health & Hum. Servs.*, 344 F.R.D. 57, 66 (D.N.H. 2023), and refers to the Supreme Court’s ruling in this case, *see* EO2 § 1 (stating that EO2 “identifies, non-exhaustively, and prescribes action concerning certain categories of children of aliens who[.]” in the President’s view, “do not fall within the rule of birthright citizenship as announced by the Supreme Court” in *Barbara*); *see also* 6A Wright & Miller, *Federal Practice and Procedure* § 1510 (3d ed. 2010) (stating that a supplemental pleading is proper when the supplemented materials could not have been included “before the filing of the original

pleading”).

Supplementation is also proper because the new allegations are deeply intertwined with issues presented by the original Complaint, such that litigating them in this action provides a “more efficient mechanism” for their resolution. *Gadbois*, 809 F.3d at 4. EO2 is a second “attempt[] by Defendants to effectuate the [same] polic[y] Plaintiffs have been challenging since filing their original complaint,” *Doe v. Noem*, No. 25-cv-10495, 2026 WL 686483, at *6 (D. Mass. Mar. 11, 2026)—namely, the President’s “efforts to abolish birthright citizenship for many Americans.” *CASA*, 2026 WL 2592706, at *1; *see also Doe*, 2026 WL 686483, at *4, 17 (granting motion for leave to supplement in light of “two new [executive] actions” that “affect[ed] grants of parole and the adjudication of immigration benefits requests in a similar manner” as actions challenged by the original complaint); *Comm’r, N.H. Dep’t of Health & Hum. Servs.*, 344 F.R.D. at 67-68 (granting leave to supplement to add plaintiffs to challenge the defendant’s implementation of “new procedures”).

Both EO1 and EO2 represent efforts to narrow the well-settled meaning of the Citizenship Clause’s language, namely “subject to the jurisdiction,” in order to strip U.S.-born children of citizenship beyond the exceptions set out in *Wong Kim Ark* and reiterated in *Barbara*. The original Complaint explained that the only exceptions to birthright citizenship are those elaborated in *Wong Kim Ark*: “children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes.” 169 U.S. at 693; *see also* ECF No. 1 ¶¶ 28-32, 34. EO1 added “categories of people” that “do not fit into those exceptions[,]” *N.H. Indonesian Cmty. Support v. Trump*, 765 F. Supp. 3d 102, 109 (D.N.H. 2025), and EO2 does exactly the same thing, *see*

CASA, 2026 WL 2592706, at *1. EO2 attacks the citizenship of children born to alleged “alien enem[ies],” *see* EO2 § 2(a), “foreign government employee[s],” *id.* § 2(b), and to parents assertedly “engaged in a commercial transaction to purchase or access birthright citizenship,” “or engaged in fraudulent activity to obtain citizenship,” *id.* § 2(c)—all of which “bear little to no resemblance to the ‘narrow exceptions’ to the rule of citizenship by birth recognized by the Supreme Court in *Barbara*, 146 S. Ct. at 2450, and *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898).” *CASA*, 2026 WL 2592706, at *1.

None of the factors weighing against supplementation are present here. Plaintiffs moved to clarify or modify this Court’s injunction (or issue a new injunction) on August 11, less than one week after the President’s issuance of EO2. In response, Defendants asserted that the meaning of EO2 could not be adjudicated until guidance was issued. *See* ECF No. 87-1, at 3, 10-12. Plaintiffs now move to supplement within days of the issuance of that guidance—foreclosing any assertion of undue delay or dilatory tactics. *See Gadbois*, 809 F.3d at 4. Nor will Defendants face any undue prejudice from the Supplemental Complaint. *See id.* Defendants have not filed an Answer or other responsive filing, and the parties agreed that their response date should remain stayed. *See* ECF No. 86, at 1; ECF No. 87-1, at 7 n.1; ECF No. 89, at 9 n.5.

Indeed, supplementation is in the interest of judicial economy. This Court has already addressed the meaning of “subject to the jurisdiction,” and its analysis has been affirmed by the First Circuit and Supreme Court. The causes of action alleged and the ultimate ruling requested in the Supplemental Complaint are essentially the same as those alleged and sought in the earlier Complaint (with the single addition of a new Notice and Comment claim), and the fundamental issues being litigated in this case are the same.

For similar reasons, supplementation is far from futile here. *See Glassman v. Computervision Corp.*, 90 F.3d 617, 623 (1st Cir. 1996) (explaining that a proposed supplemental complaint is considered futile only if it “would fail to state a claim upon which relief could be granted”). This Court and the Supreme Court have already rejected this Executive’s attempt to rewrite the Citizenship Clause, and Plaintiffs’ challenge to Defendants’ continuing attempt to accomplish the same result through a new order is far from futile.

CONCLUSION

This Court should grant Plaintiffs’ Motion for Leave to Supplement the Complaint pursuant to Rule 15(d).

Dated: September 9, 2026

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

“BARBARA;” “SARAH,” by guardian, parent,
and next friend “SUSAN;” “MATTHEW,” by
guardian, parent, and next friend “MARK;”
“NATHAN,” by guardian, parent, and next
friend “CLARA”; “PATRICIA”; “EDWARD;”
and “BEATRICE,” by guardian, parent, and
next friend Barbara, on behalf of themselves
and all those similarly situated,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States, in his official capacity; U.S.
DEPARTMENT OF HOMELAND
SECURITY; SECRETARY OF HOMELAND
SECURITY, in their official capacity; U.S.
DEPARTMENT OF STATE; SECRETARY
OF STATE, in their official capacity; U.S.
DEPARTMENT OF AGRICULTURE;
SECRETARY OF AGRICULTURE, in their
official capacity; CENTERS FOR MEDICARE
AND MEDICAID SERVICES;
ADMINISTRATOR OF THE CENTERS FOR
MEDICARE AND MEDICAID SERVICES, in
their official capacity,

Defendants.

Case No. 1:25-cv-244-JL-AJ

**[PROPOSED] SUPPLEMENTAL COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF;
CLASS ACTION LR 23.1**

Plaintiffs supplement their Complaint, ECF No. 1, pursuant to Federal Rule of Civil Procedure 15(d). This Supplemental Complaint is filed in addition to, and does not replace, Plaintiffs’ Complaint.

85. On June 30, 2026, the Supreme Court affirmed this Court’s preliminary injunction of Executive Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 29, 2025), entitled “Protecting the Meaning and Value of American Citizenship” (“EO1”). The Court confirmed that the only exceptions to universal birthright citizenship are those described in *Wong Kim Ark*, 169 U.S. 649 (1898). *See Trump v. Barbara*, 146 S. Ct. 2438 (2026).

86. Undeterred, the President issued a second executive order on August 6, 2026, that—like EO1—seeks to carve out new exceptions to the Citizenship Clause. *See* Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026) (“EO2”).

87. Both orders straightforwardly violate the Citizenship Clause, as well as the birthright citizenship statute, and should be enjoined.

SUPPLEMENTAL STATEMENT OF PARTIES

88. Plaintiff “Barbara” gave birth to “Beatrice” in New Hampshire in October 2025.¹ Barbara engaged in certain commercial transactions to come to the United States, including fares for public transportation between Honduras and Mexico, as well as food for the journey. She came to this country knowing that her future children would be U.S. citizens, and wanted them to have the protections and opportunities that go hand-in-hand with citizenship in this country.

89. Plaintiff “Clara” is a citizen of France. She resides in Washington, DC. She has lived in the United States for more than ten years, and has established strong ties to her community. Clara gave birth to her child, Plaintiff “Nathan,” in Washington, DC, in August 2026, after the issuance of EO2. Neither Clara nor her husband, Nathan’s father, is a U.S. citizen. Both are

¹ The newly joined Plaintiffs wish to proceed under pseudonym, and a motion is forthcoming.

employed by international organizations that possess international-organization immunity and are listed in 8 C.F.R. § 316.20(c), and both are present in the United States on G-4 visas.

90. Plaintiff “Edward” is a citizen of Australia. He currently resides in Australia with his wife, a cardiologist with whom he operates cardiology clinics, and his older daughter, a U.S. citizen born via surrogacy in the United States in 2021. He and his wife are currently expecting their second child through surrogacy to be born in the United States in October 2026. Edward and his wife engaged in a commercial transaction with a surrogate present in the United States to give birth.

91. Plaintiff “Patricia” is a citizen of a country in western Europe. She currently resides in the United States with her husband, “Robert.” Neither Patricia nor Robert are U.S. citizens. They are expecting a child, due around April 2027. They are both employed by international organizations that possess international-organization immunity and are listed in 8 C.F.R. § 316.20(c), and both are present in the United States on G-4 visas.

92. As with EO1, Defendants each have responsibility for overseeing enforcement and implementation of EO2.

SUPPLEMENTAL STATEMENT OF FACTS

93. On Plaintiffs’ motion, this Court provisionally certified a class of children subject to EO1. *Barbara v. Trump*, 790 F. Supp. 3d 80, 105 (D.N.H. 2025). The Court also issued an order providing that Defendants “are enjoined and restrained from enforcing” EO1. ECF No. 64.

94. Defendants sought certiorari before judgment in the U.S. Supreme Court, and the Supreme Court affirmed this Court’s injunction. *Trump v. Barbara*, 146 S. Ct. 2438 (2026).

95. In its ruling, the Supreme Court confirmed that the only exceptions to the *jus soli* rule are those listed in *Wong Kim Ark*: “children of foreign sovereigns or their ministers, or born

on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes[,]” 169 U.S. at 693. *See Barbara*, 146 S. Ct. at 2452-53.

96. On August 6, 2026, after the Court’s mandate, the President issued EO2.

97. Purporting to exercise “authority vested” “as President by the Constitution and the laws of the United States of America,” EO2 purports to “identif[y], non-exhaustively,” and prescribe “action concerning certain categories of children of aliens who,” the President opined, “do not fall within the rule of birthright citizenship as announced by the Supreme Court.” EO2 § 1.

98. EO2 directs executive agencies not to recognize the citizenship of an individual “when neither parent of that person is a citizen” and: a) “either parent of that person is an alien enemy, defined to include” a member of certain designated terrorist organizations; b) “either parent of that person is a foreign government employee,” including not only ambassadors but various other employees of foreign governments or international organizations; c) “either parent of that person engaged in a commercial transaction to purchase or access birthright citizenship for the person, or engaged in fraudulent activity to obtain citizenship”; or d) “the person is born in a territory or territorial waters of the United States where citizenship is not conferred by Federal statute.” EO2 § 2.

99. EO2 does not identify any temporal limit on its purported restriction of birthright citizenship. In contrast, EO1 provides that its statement of “policy” as to exclusion of individuals from birthright citizenship “shall apply only to persons who are born within the United States after 30 days from the date of this order.” EO1 § 2(b).

100. EO2 does not specify an effective date for the Order itself. EO2 directs agency heads to “take all appropriate measures” to implement EO2, and to issue public guidance within 30 days. EO2 § 3.

101. On September 4, 2026, the Department of Homeland Security issued an Interim Final Rule “amending its regulations to permit children born in the United States to ‘foreign government employees’ who are not U.S. citizens to register for permanent residence.” *Registration of Lawful Permanent Residence for Children Born to Foreign Government Employees in the United States* *7, DHS Doc. No. USCIS-2026-0496 (Sept. 9, 2026) (to be codified at 8 C.F.R. pts. 101, 264), <https://public-inspection.federalregister.gov/2026-18345.pdf> (“IFR”).

102. The IFR modifies the regulation published at 8 C.F.R. § 101.3, which previously reflected and recognized the principle that the only children excluded from birthright citizenship are those born to “a foreign diplomatic officer accredited to the United States,” meaning “a person listed in the State Department Diplomatic List, also known as the Blue List,” of those foreign ministers afforded full diplomatic immunity. 8 C.F.R. § 101.3(a) (2025); *see id.* § 101.3(b) (child of other government officials is a citizen).

103. The IFR, tracking EO2 § 2(b), states that the children of other employees of foreign governments are excluded from birthright citizenship. It adds several exceptions to this exclusion not enumerated in EO2 itself, including “[p]ersonal employees” of foreign officials, “[t]hird-country nationals working for a foreign government,” and “[f]oreign government employees visiting the United States in a personal rather than an official capacity.” IFR at *9-10. The IFR indicates that the parents of children excluded from birthright citizenship under EO2 “must

register” their children with federal authorities pursuant to 8 U.S.C. § 1302 or face criminal liability. *Id.* at *11.

104. The IFR was immediately effective. *Id.* at *1. To justify not engaging in Notice and Comment rulemaking, the IFR invokes the foreign affairs and good cause exceptions. *Id.* at *13-16. Both invocations are predicated on the assumption that the IFR “governs the registration of permanent resident status.” *Id.* at *13; *see id.* at *16. The IFR does not assert that, to the extent the IFR purports to strip birthright citizenship from any person, either the foreign affairs or good cause exception would excuse Notice and Comment rulemaking for such alteration of longstanding citizenship rules.

105. The IFR states that “[t]he IFR applies prospectively to children born in the United States on or after the effective date of the IFR,” and that “[c]hildren born in the United States before the effective date of this IFR are not subject to the requirements of this IFR.” *Id.* at *7. It does not identify or rely on any temporal limitation in EO2 itself. It further notes that “DHS will not take actions to implement the rule specifically to any member of the certified class [in *CASA v. Trump*], or otherwise conflict with the preliminary injunction, unless and until the government obtains relief from the injunction.” *Id.*

106. Also on September 4, the Department of State issued a “proposed Implementation Plan” for EO2. U.S. Dep’t of State, *Executive Order 14418: Continuing to Protect the Meaning and Value of American Citizenship* *1 (2026), <https://perma.cc/8JJJ-XD94>. The document does not explain who the plan is proposed to, or who will decide whether to approve it.

107. The State Department plan largely repeats the terms of EO2, while adding the same exceptions to EO2 § 2(b) as are set out in the IFR, “subject to individualized assessments of employment status, purpose of travel, and visa class[.]” *Id.* at *2.

108. It states that “[i]f neither parent of a minor applicant is a U.S. citizen, an attestation from each parent, under penalty of perjury, must be submitted as part of the determination whether either parent meets any of the EO conditions. Any misrepresentations made under penalty of perjury could subject the individual(s) to legal liability, including potential federal criminal prosecution.” *Id.*

109. It states: “NOTE: Because the EO is prospective only, this guidance is prospective only and will become effective upon publication subject to any legal obligations.” *Id.* at *1. It does not explain its assertion that “the EO is prospective only,” nor does it identify any particular date on which the EO takes effect.

110. Several other agencies issued guidance related to their programs. *See* Ctrs. for Medicare & Medicaid Servs., U.S. Dep’t of Health & Hum. Servs., *CMS Guidance on Continuing to Protect the Meaning and Value of American Citizenship (Executive Order 14418) for Medicaid and Children’s Health Insurance Program (CHIP) Verification Requirements Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and Other Federal Statutes* (Sept. 4, 2026), <https://perma.cc/94AH-PYKQ>; Admin. for Child. & Fams., U.S. Dep’t of Health & Hum. Servs., *ACF Guidance on Continuing to Protect the Meaning and Value of American Citizenship (Executive Order 14418) for Program Verification Requirements* (Sept. 4, 2026), <https://perma.cc/R3PG-LCEB>; Food & Nutrition Admin., U.S. Dep’t of Agric., *Guidance on Continuing to Protect the Meaning and Value of American Citizenship (Executive Order 14418) for Verification Requirements Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (Sept. 4, 2026), <https://perma.cc/ZDW2-XQZP>. Each likewise asserts that “the EO is prospective only” without further elaboration. *See id.*

111. Unlike EO1, neither EO2 nor the agency documents issued on September 4 exempts the children of lawful permanent residents. *See* EO1 § 2(c).

112. In Plaintiffs’ challenge to EO1, this Court provisionally certified a class of children subject to EO1 (the “EO1 Class”), represented by Sarah, by her guardian, parent, and next friend Susan; and Matthew, by his guardian, parent, and next friend Mark.

113. In Plaintiffs’ challenge to EO2, Plaintiffs Barbara, Beatrice, Clara, Nathan, Edward, and Patricia (together, “EO2 Class Representative Plaintiffs”), seek to certify a Class (the “EO2 Class”) of all persons, and the parents (including expectant parents) of those persons:

- (1) who are born in the United States as defined in 8 U.S.C. § 1101(a)(38);
- (2) who are not born to a foreign diplomatic officer accredited to the United States;
- (3) for whom neither parent is a U.S. Citizen; and
- (4) for whom either parent is or will be categorized by the government as falling within §§ 2(a)-(c) of Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026).

114. There is overlap between the EO1 Class and EO2 Class. The EO2 Class contains individuals not in the EO1 class, including those subject to EO2 whose parents are lawful permanent residents.

115. As with the EO1 Class, the EO2 Class satisfies the prerequisites of Rule 23(a) and the requirements of Rule 23(b)(2).

116. The EO2 Class satisfies the numerosity requirements of Fed. R. Civ. P. 23(a)(1) because the proposed class is so numerous that joinder of all members is impracticable. Relevant here, EO2 denies birthright citizenship to people born in the United States to parents who fall in any one of three different categories, and which individually and collectively contain sufficiently

numerous class members. In 2020 alone, for example, some 4,713 intending parents who are not U.S. residents utilized gestational surrogates in the United States. And the State Department “Office of Foreign Missions reports that the United States hosts more than 124,000 foreign mission members and dependents.” IFR at *18. Joinder is also impracticable because EO2 Class members are geographically dispersed across the country, and because membership in the EO2 Class will be constantly changing as more children are born every day under the conditions set forth in EO2.

117. The members of the EO2 Class are subject to a common practice, as required by Fed. R. Civ. P. 23(a)(2): the categorical denial of U.S. citizenship at birth under the terms of EO2. This suit also raises questions of law common to the proposed Class, including whether the Defendants’ attempt to create new exceptions to birthright citizenship violates the Citizenship Clause of the Fourteenth Amendment, 8 U.S.C. § 1401 *et seq.*, and the Administrative Procedure Act.

118. The EO2 Class meets the typicality requirements of Fed. R. Civ. P. 23(a)(3) because the claims of the EO2 Class Representative Plaintiffs are typical of the claims of the class. Each child and parent faces the same principal injury (denial of birthright citizenship), based on the same government practice (EO2’s categorical denial of citizenship), which is unlawful as to the entire class because it violates constitutional and statutory protections.

119. The EO2 Class meets the adequacy requirements of Fed. R. Civ. P. 23(a)(4). The EO2 Class Representative Plaintiffs seek the same relief as the other members of the class—among other things, a declaratory judgment that Defendants’ policy of denying birthright citizenship is unlawful and an injunction against that policy. In defending their rights, EO2 Class Representative Plaintiffs will defend the rights of all proposed class members fairly and adequately. The EO2

Class Representative Plaintiffs are members of the class, and their interests do not conflict with those of the other class members.

120. The EO2 Class is represented by the same experienced attorneys the Court determined were adequate as to the EO1 Class.

121. The extreme impacts of denial of citizenship are the same, whether under EO1, EO2, or any future executive effort to strip birthright citizenship.

SUPPLEMENTAL CLAIMS FOR RELIEF

FIFTH CLAIM FOR RELIEF Fourteenth Amendment to the United States Constitution (All Defendants)

122. All of the foregoing allegations, including in Plaintiffs' Complaint, are repeated and realleged as if fully set forth herein.

123. Like EO1, EO2 violates the Fourteenth Amendment's Citizenship Clause because it denies citizenship to the children of noncitizens who are born in the United States and subject to the jurisdiction of the United States.

124. Defendants are engaged in an ongoing, unlawful effort to carve out new exceptions to the Citizenship Clause that began with EO1 and continues with EO2. All actions that Defendants take to deny the rights, benefits, and privileges attendant on U.S. citizenship to people who would otherwise receive citizenship under the Clause are unlawful.

SIXTH CLAIM FOR RELIEF 8 U.S.C. § 1401 *et seq.* (All Defendants)

125. All of the foregoing allegations, including in Plaintiffs' Complaint, are repeated and realleged as if fully set forth herein.

126. Like EO1, EO2 violates 8 U.S.C. § 1401 *et seq.* because it denies citizenship to the children of noncitizens who are born in the United States and subject to the jurisdiction of the United States.

127. Defendants are engaged in an ongoing, unlawful effort to carve out new exceptions to 8 U.S.C. § 1401 that includes EO1 and EO2. All actions that Defendants take to deny the rights, benefits, and privileges attendant on U.S. citizenship to people who would otherwise receive citizenship under § 1401 are unlawful.

SEVENTH CLAIM FOR RELIEF
Administrative Procedure Act
(All Defendants except Defendant Trump)

128. All of the foregoing allegations, including in Plaintiffs' Complaint, are repeated and realleged as if fully set forth herein.

129. Like EO1, the actions of Defendants that are required or permitted by EO2, as set forth above, are contrary to constitutional right, power, privilege, or immunity, including rights protected by the Fourteenth Amendment to the U.S. Constitution, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(B).

130. Defendants are engaged in an ongoing, unlawful effort to carve out new exceptions to the Citizenship Clause that includes EO1 and EO2. All actions that Defendants take to deny the rights, benefits, and privileges attendant on U.S. citizenship to people who would otherwise receive citizenship under the Clause are unlawful.

EIGHTH CLAIM FOR RELIEF
Administrative Procedure Act
(All Defendants except Defendant Trump)

131. All of the foregoing allegations, including in Plaintiffs' Complaint, are repeated and realleged as if fully set forth herein.

132. Like EO1, the actions of Defendants that are required or permitted by EO2, as set forth above, violate 8 U.S.C. § 1401 *et seq.* and are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

133. Defendants are engaged in an ongoing, unlawful effort to carve out new exceptions to 8 U.S.C. § 1401 that includes EO1 and EO2. All actions that Defendants take to deny the rights, benefits, and privileges attendant on U.S. citizenship to people who would otherwise receive citizenship under § 1401 are unlawful.

NINTH CLAIM FOR RELIEF
Notice and Comment
(All Defendants except Defendant Trump)

134. All of the foregoing allegations, including in Plaintiffs' Complaint, are repeated and realleged as if fully set forth herein.

135. The Administrative Procedure Act, 5 U.S.C. § 553, requires that agencies provide public notice of, and opportunity to comment on, legislative rules before their promulgation. *See* 5 U.S.C. §§ 553(b), (c).

136. The IFR and guidance Defendants have issued in connection with EO2 are legislative rules within the meaning of the APA.

137. Defendants issued the IFR and guidance without prior notice and an opportunity for comment as required by the APA.

138. To the extent that the IFR and guidance purport to deny citizenship to any person, no "foreign affairs function of the United States" is involved that would excuse notice and comment. 5 U.S.C. § 553(a). And to the extent the IFR and guidance purport to deny citizenship

to any person, there is no good cause to excuse notice and comment because “delay caused by notice and comment would do [no] real harm.” IFR at *15.

139. Defendants’ failure to provide for notice and comment violates 5 U.S.C. §§ 553(b) and (c), 706(2)(D).

SUPPLEMENTAL PRAYER FOR RELIEF

WHEREFORE Plaintiffs request that the Court grant the following relief:

- a. Certify this matter as a Class Action, appoint the EO2 Class Representative Plaintiffs as Class Representatives for the EO2 class, and appoint the Class Representative Plaintiffs’ Counsel as Class Counsel for the EO2 class;
- b. Declare that EO2 is unconstitutional and unlawful as to the EO2 class, and that Defendants may not deny or infringe on the citizenship of members of the EO1 or EO2 classes;
- c. Preliminarily and permanently enjoin Defendants from enforcing EO2, and from taking any actions to deny or infringe on the citizenship of members of the EO1 or EO2 classes;
- d. Vacate and set aside the IFR and all guidance or implementation documents Defendants issue in connection with EO2;
- e. Require Defendants to pay reasonable attorneys’ fees and costs;
- f. Grant any other and further relief that this Court may deem just and proper.

Dated: September 9, 2026

/s/ SangYeob Kim

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

“BARBARA,” *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 1:25-cv-244-JL-AJ

**MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL;
REQUEST FOR EXPEDITED TREATMENT, LR 7.1(f)**

Last year, this Court provisionally certified a class of all the children subject to Executive Order No. 14,160 entitled “Protecting the Meaning and Value of American Citizenship” (“EO1”), and preliminarily enjoined the enforcement of EO1 against the class. *See* ECF Nos. 64, 65. After the Supreme Court affirmed that injunction, the President has tried again, issuing a new Executive Order again purporting to strip birthright citizenship. *See* Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026) (“EO2”). EO2 purports to strip the citizenship of a class of individuals that overlaps with those targeted by EO1, but also includes people outside of EO1; for example, EO1 exempted the children of lawful permanent residents, while EO2 does not. The Court should therefore provisionally certify an additional class of those born in the United States and subject to EO2, and preliminarily enjoin its enforcement as well.

The proposed class satisfies the requirements of numerosity, commonality, typicality, and adequacy in Rule 23(a). The proposed class likely includes numerous individuals and their parents, with many more to be born in coming months, which is sufficient to satisfy numerosity. The class raises common legal questions that will generate common answers, including whether Defendants’ attempt to create new exceptions to birthright citizenship violates the Citizenship Clause of the Fourteenth Amendment, 8 U.S.C. § 1401 *et seq.*, and the Administrative Procedure Act (“APA”). The class also raises common factual issues because proposed class representatives and class members are subject to the same Executive Order purporting to deny them or their children U.S. citizenship. Proposed class representatives’ constitutional and statutory claims are typical of those whom they seek to represent—that is, other individuals who are denied citizenship under EO2 and their parents. And as the Court already found, the proposed class representatives are also adequately represented by a team of attorneys with significant experience in immigrants’

rights issues and class action cases. Plaintiffs’ proposed class likewise satisfies Rule 23(b)(2) because Defendants have “acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

Accordingly, this Court should grant class certification, appoint proposed class representatives as Class Representatives, and appoint their counsel as Class Counsel. Pursuant to LR 7.1(f), Plaintiffs respectfully request that Defendants be directed to respond to this motion by September 15th, Plaintiffs be directed to reply by September 17th, and the Court issue its ruling by September 21st. Defendants have indicated that they oppose the relief sought and object to expedited treatment of Plaintiffs’ motion for preliminary injunction in light of the injunction currently in place in *CASA* and believe a normal briefing schedule is appropriate.

I. PROPOSED CLASS DEFINITION

All persons, and the parents (including expectant parents) of those persons:

- (1) who are born in the United States as defined in 8 U.S.C. § 1101(a)(38);
- (2) who are not born to a foreign diplomatic officer accredited to the United States;
- (3) for whom neither parent is a U.S. Citizen; and
- (4) for whom either parent is or will be categorized by the government as falling within §§ 2(a)-(c) of Exec. Order No. 14,418, *Continuing to Protect the Meaning and Value of American Citizenship*, 91 Fed. Reg. 51,991 (2026).

II. PROPOSED CLASS REPRESENTATIVES

1. Barbara and Beatrice

Plaintiff “Barbara” was one of the original named plaintiffs that filed this action last year. Barbara gave birth to her fourth child, “Beatrice,” in New Hampshire in October 2025. Suppl. Decl. of Barbara ¶ 5, ECF No. 80-1. Barbara engaged in certain commercial transactions to come to the United States, including fares for public transportation between Honduras and Mexico, as

well as food for the journey. *Id.* ¶ 4. She knew that if she had more children, they would be U.S. citizens, and she wanted them to have all the protections and opportunities of citizenship. *Id.* ¶ 6.

2. Clara and Nathan

Plaintiff “Clara” is a citizen of France. Decl. of Clara ¶ 2, Ex. A. She currently resides in Washington, DC. *Id.* She has lived in the U.S. for over ten years, and has established strong ties to the community. *See id.* ¶ 4. She first entered the United States on a student visa, but she is now on a G-4 visa. *Id.* Clara gave birth to her child, “Nathan,” in Washington, DC, in August 2026, after August 6, 2026. *Id.* ¶¶ 3, 6. Neither Clara nor her husband, Nathan’s father, is a U.S. citizen. *Id.* ¶ 7. Both Clara and her husband work for international organizations that possess international-organization immunity. *Id.* Both of their employers are listed in 8 C.F.R. § 316.20(c). *Id.* Clara fears for Nathan’s future. *Id.* ¶ 8. She worries that Nathan will be subject to immigration enforcement if he is not recognized as a U.S. citizen, because there would be no other pathway to lawful status for him. *Id.* She is also fearful that her family may be separated if they attempt to travel internationally to visit family. *Id.* ¶¶ 8-9. Finally, she worries that he will not have access to the same education and opportunities that she had in the United States. *Id.* ¶ 10.

3. Edward

Plaintiff “Edward” is a citizen of Australia. Decl. of Edward ¶ 2, Ex. B. Edward currently resides in Australia with his wife, a cardiologist with whom he operates cardiology clinics in Australia, and his older daughter, a U.S. citizen born via surrogacy in the United States in 2021. *Id.* ¶¶ 2-4, 11-15, 30-33. He and his wife are expecting their second child through surrogacy in October 2026 in the United States. *Id.* ¶¶ 5, 16. Edward and his wife turned to surrogacy to fulfill their hopes of having a family because his wife cannot carry a child, for medical reasons. *Id.* ¶ 6. They chose the United States for surrogacy because compensated surrogacy is illegal in Australia,

and because the United States provided an arrangement that was lawful, supervised by a court, and provided the best legal protections and resources for the gestational carrier. *Id.* ¶¶ 7-11. Edward and his wife are not U.S. citizens. *Id.* ¶ 21. They engaged in a commercial transaction with a surrogate present in the United States to give birth. *Id.* ¶¶ 16, 21. Edward worries that if the United States refuses to issue his soon-to-be-born child a passport, she will not be able to travel with them back to Australia until she receives an Australian passport. *Id.* ¶¶ 22-23. This could take months, and cause Edward and his wife to overstay the 90 days they are allowed in the United States pursuant to the Visa Waiver Program. *Id.* ¶¶ 23-27. This would subject Edward and his wife to immigration enforcement and bar them from traveling to the United States in the future. *Id.* ¶ 28. Furthermore, his soon-to-be-born child could be subject to immigration enforcement, and their family might be separated. *Id.* ¶¶ 29, 41. He also worries that his soon-to-be-born child will not be able to return to the United States, especially to reunite with her surrogate. *Id.* ¶¶ 34-38.

4. Patricia

Plaintiff “Patricia” is a citizen of a country in western Europe. Decl. of Patricia ¶ 2, Ex. C. She currently resides with her husband, “Robert,” in the United States. *Id.* They have lived in the U.S. for over six years, and they have established strong ties to their community. *See id.* ¶¶ 2-3. Neither Patricia nor Robert are U.S. citizens, and they are both on G-4 visas. *Id.* ¶¶ 2, 5. Patricia is pregnant with her second child. *Id.* ¶¶ 3, 6. Both Patricia and her husband work for international organizations that possess international-organization immunity. *Id.* ¶ 9. Both of their employers are listed in 8 C.F.R. § 316.20(c). *Id.* Patricia fears for her future child. *Id.* ¶ 11. She worries that her child will not have the same access to services as their peers, like scholarships and other opportunities. *Id.*

ARGUMENT

“By its terms, [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the

specified criteria to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Class certification is appropriate where the proposed class satisfies the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and at least one of the categories of Rule 23(b). *See id.* Here, all the requisite elements of Rule 23 have been met.

I. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23(a).

A. The proposed class satisfies the numerosity requirement.

Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Impracticability of joinder means only that it is difficult or inconvenient to join all class members, not that it is impossible to do so.” *Bond v. Fleet Bank (RI), N.A.*, No. CIV.A. 01-177 L, 2002 WL 31500393, at *4 (D.R.I. Oct. 10, 2002). The First Circuit has recognized that numerosity has a “low threshold.” *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009). “[T]he party seeking certification need not establish a precise number of putative class members.” *Barbara v. Trump*, 790 F. Supp. 3d 80, 91 (D.N.H. 2025) (quoting *Gomes v. Acting Sec’y, U.S. Dep’t of Homeland Sec.*, 561 F. Supp. 3d 93, 99 (D.N.H. 2021)). “Generally, if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” *Id.* (quoting *Garcia-Rubiera*, 570 F.3d at 460 (citation modified)). Here, there can be no question that the class far exceeds forty individuals.

1. As an initial matter, the class tracks EO2, and EO2 is not by its terms limited to persons born as of a certain date. EO1, by contrast, specified that it “‘shall apply only to persons who are born within the United States after 30 days from the date of this order,’ that is, babies born after February 19, 2025.” *CASA, Inc. v. Trump*, No. 25-cv-201, 2026 WL 2592706, at *9 (D. Md. Sept. 2, 2026) (quoting EO1 § 2(b)). But EO2 “says nothing like that”; “[n]owhere in the order does it indicate it does not apply to children already born.” *Id.* A retroactive application of EO2 would

sweep up numerous individuals who have lived their entire lives as citizens, easily satisfying numerosity.

In their various agency documents issued after EO2, Defendants have asserted that EO2 applies only prospectively. *See* Motion to Supplement the Complaint, Ex. A ¶¶ 101-10 (collecting documents). None of these documents attempt to justify this assertion or explain the glaring difference in this regard between EO1 and EO2. *See id.*; *CASA*, 2026 WL 2592706, at *9 (“Clearly, the President knows how to specify that an Executive Order on birthright citizenship applies only to children not yet born,” so “[t]he only fair reading of the plain language of the 2026 Executive Order is that it applies to any child who falls within any category in Section 2 of the order”). And, even assuming their assertion that EO2 applies only “prospectively” is correct, Defendants do not explain what they mean by that assertion—whether they mean a person must be born as of a certain date (and if so, what date and why), or whether the EO will simply not be *enforced* until a certain date (and if so, what date and why).¹

¹ DHS’s Interim Final Rule states that the “[t]he IFR applies prospectively to children born in the United States on or after the effective date of the IFR.” *Registration of Lawful Permanent Residence for Children Born to Foreign Government Employees in the United States* *7, DHS Doc. No. USCIS-2026-0496 (Sept. 9, 2026) (to be codified at 8 C.F.R. pts. 101, 264), <https://public-inspection.federalregister.gov/2026-18345.pdf> (“IFR”) (emphasis added). But whether the *regulation* is prospective, and as of what date, does not bear on which set of people *EO2* purports to strip citizenship from. *See id.* at *7 (“Children born in the United States before the effective date of this IFR are not subject to the *requirements of this IFR*.”) (emphasis added). And the IFR is clear that birthright citizenship is stripped by EO2, independently of the IFR. *See id.* at *15 (because under EO2 “children born to foreign government employees who do not have a U.S. citizen parent are not U.S. citizens[.]” DHS “is aiming to put in place a procedure for children born on or after the effective date of this rule to have the ability to voluntarily register as lawful permanent residents as soon as possible in order to ensure that they have a lawful status in the United States”); *id.* at *14 (“In the absence of a rule governing the status of these children, these children may . . . be subject to removal from the United States” because of EO2); *id.* at *10 (asserting that regulatory changes were needed because “absent the changes made by this IFR, a child born in the United States to certain foreign government employees who lacks birthright citizenship [i.e., because of EO2] would not have previously been eligible to register as a lawful permanent resident”).

2. Regardless, even assuming EO2 could be read to strip only the citizenship of babies born after its issuance (or after some other date or dates) who fall into its categories, numerosity is still easily satisfied.

Take, for example, the children of individuals employed by a foreign country or international organization with diplomatic immunity. EO2 § 2(b). As Defendants note, “the United States hosts more than 124,000 foreign mission members and dependents.” IFR at *18.² While that figure includes foreign ministers who are excluded from the class, the U.S. government issued 96,693 “A2” visas in 2024 alone.³ Those visas are issued to certain foreign government employees other than heads of state, ambassadors, and government ministers.⁴ Moreover, noncitizens who are already here in the United States, for example as lawful permanent residents, may obtain employment at foreign missions or international organizations. In other words, many tens of thousands of foreign government employees without full diplomatic immunity are in the United States at any given time.

Approximately “3.9% of women of reproductive age” are pregnant at any given time. *See*

² At least 185 foreign countries have missions to the United States. National Capital Planning Commission, *Embassies and Foreign Missions*, <https://www.ncpc.gov/topics/embassies> (last visited Sept. 7, 2026). And just one of those countries, Mexico, is estimated to employ some 400 consular workers in the United States. Isaías Alvarado, *Around 400 Employees of Mexican Consulates in the United States Face the Risk of Losing their Visas and Becoming Undocumented*, *El País* (Aug. 6, 2026), <https://perma.cc/G5E3-RYBP>. Likewise, some 59 international organizations have been designated as entitled to immunity under the International Organizations Immunities Act, 22 U.S.C. § 288, *et seq.* Just one of those organizations, the United Nations, employs some 15,890 people in New York alone. Stephanie Fillion, *The Big Picture Benefits of a UN Headquarters in New York*, Lowy Institute (Sept. 14, 2025), <https://perma.cc/JL9Q-DDN8>.

³ U.S. Dep’t of State, *Table XV(B): Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards), Fiscal Years 2020-2024*, in *Report of the Visa Office 2024* (2024), <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2024AnnualReport/Table%20XVB.pdf>.

⁴ U.S. Dep’t of State, *Visas for Diplomats and Foreign Government Officials*, <https://travel.state.gov/content/travel/en/us-visas/other-visa-categories/visas-diplomats.html> (last visited Sept. 7, 2026).

Penelope Strid et al., *A New Tool for Estimating the Number of Pregnant People in the United States*, 145 *Obstetrics & Gynecology* e11, e11-e13 (Jan. 2025). Even a very conservative estimate of 10,000 foreign government employees who are women of reproductive age or their partners in the United States would yield an estimated 390 pregnant at any given time. For many if not most of those, neither parent will be a U.S. citizen. That is enough to satisfy numerosity.

The same is true of children of noncitizens “engaged in a commercial transaction” such as compensated surrogacy in the United States. EO2 § 2(c). In 2020, some 4,713 intending parents who are not U.S. residents utilized gestational surrogates in the United States.⁵ This represented almost 32% of such surrogacies. *Id.* A third of all surrogacy births nationwide would doubtless satisfy numerosity. *See, e.g.,* Katlyn Ma, *State Lawmakers to Explore Banning Foreign Nationals from Using Texas Surrogates*, Tex. Trib. (July 7, 2026), <https://perma.cc/XW5Z-FHGF> (Texas Department of State Health Services indicated that “in 2025 there were 657 surrogacy births in total in Texas”).

Finally, there can be little doubt that numerous children of individuals the administration deems “alien enem[ies]” are born each year. EO2 § 2(a). This provision of EO2 purports to strip citizenship at least from children whose parents belong to a designated Foreign Terrorist Organization (“FTO”), *see* 8 U.S.C. § 1189, or are deemed Specially Designated Global Terrorists (“SDGTs”), *see* 50 U.S.C. § 1701 *et seq.*; Exec. Order 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001)—designations which, together, include at least *one thousand* entities.⁶

⁵ Alexandra Herweck et al., *International Gestational Surrogacy in the United States, 2014–2020*, 121 *Fertility & Sterility* 622, 622 (2024).

⁶ *See* U.S. Dep’t of State, *Foreign Terrorist Organizations*, <https://www.state.gov/foreign-terrorist-organizations/> (last visited Sept. 7, 2026) (99 organizations); U.S. Dep’t of State, *Executive Order 13224*, <https://www.state.gov/executive-order-13224> (last visited Sept. 7, 2026) (435 organizations); Off. of Foreign Assets Control, U.S. Dep’t of the Treasury, *Sanctions List Search*, <https://sanctionssearch.ofac.treas.gov> (last visited Sept. 7, 2026) (search for all SDGTs “return[s] too many results,” and SDGTs in China, Mexico, Pakistan, and Syria alone total 603).

The class includes not only children of bona fide members of these organizations, but also those categorized by the government as members, underscoring numerosity. In the past year, the current Administration has “hastily and without credible evidence attempt[ed] to remove people from the United States because of purported affiliations with groups deemed alien enemies.” *CASA*, 2026 WL 2592706, at *10 (collecting examples). Moreover, it has claimed broad, unfettered discretion to deem individuals or entities “alien enemies.” *See, e.g.*, Application to Vacate 18-19, 32, *Trump v. J.G.G.*, No. 24A931 (Sup. Ct. Mar. 28, 2025). Even before then, immigration authorities have long relied on tenuous evidence to allege membership in gangs (some of which, like MS-13, are designated as terrorist organizations).⁷ In *Diaz Ortiz v. Garland*, for example, the First Circuit found “[f]laws in [a Gang Assessment Database], including its reliance on an erratic point system built on unsubstantiated inferences,” noting a “shockingly wide-ranging” set of activities or characteristics could lead someone to be labeled as a gang member, and that the petitioner had been labeled a gang member due to “quintessential teenage behavior—hanging out with friends and classmates.” 23 F.4th 1, 3, 17, 19 (1st Cir. 2022) (en banc).

Section 2(a)’s text also likely blocks citizenship from numerous children of individuals fleeing persecution. Individuals who flee organizations like those included as FTOs or SDGTs—either because they are disavowing membership, or were formerly partnered with someone who remains a member—may arrive to the United States and seek asylum on the basis of their “membership in a particular social group” or “political opinion.” *See* 8 U.S.C. § 1101(a)(42)(A); *see also, e.g., Oliva v. Lynch*, 807 F.3d 53, 59-60 (4th Cir. 2015) (remanding asylum application filed by a former member of MS-13 where “MS-13 extorted [the petitioner] on account of his leaving the gang”); *Benitez Ramos v. Holder*, 589 F.3d 426, 428-29 (7th Cir. 2009) (granting

⁷ *See* U.S. Embassy in Chile, *Terrorist Designations of International Cartels* (Feb. 20, 2025), <https://cl.usembassy.gov/terrorist-designations-of-international-cartels>.

petition for review filed by a former member of MS-13 who had refused to re-join). In recent years, the United States has received some 400,000 affirmative asylum applications annually, *see* Off. of Homeland Sec. Statistics, *Asylees: 2024*, <https://perma.cc/B8CU-RCJU> (last updated Aug. 10, 2026), and persecution on the basis of political opinion or membership in a particular social group accounted for 80 percent of the total number of asylum grants between 2020 and 2023, Andorra Bruno, *What is Affirmative Asylum?* 10 (CRS Rep. No. R48249) (Oct. 24, 2024). If even just 10 percent of these asylum grants are filed by individuals who are deemed alien enemies, and half of those petitioners have children on U.S. soil, about 500 additional children born annually in the United States will have their citizenship denied by virtue of section 2(a) of the Order.

Moreover, “more children will continuously populate the class as they are born, and, where ‘an influx of future members will continue to populate the class . . . at indeterminate points in the future, joinder becomes not merely impracticable but effectively impossible,’” *Barbara*, 790 F. Supp. 3d at 92 (quoting *Gomes*, 561 F. Supp. 3d at 99).

B. The proposed class representatives present issues of fact and law in common with the class.

Rule 23(a)(2) requires that “questions of law or fact” be “common to the class.” “[A] single question of law or fact common to the members of the class will satisfy the commonality requirement.” *Clough v. Revenue Frontier, LLC*, No. 17-cv-411, 2019 WL 2527300, at *3 (D.N.H. June 19, 2019) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011)). All that is required is that the “claims must depend upon a common contention” that “is capable of classwide resolution.” *Dukes*, 564 U.S. at 350. Accordingly, courts in this Circuit have recognized that, like numerosity, the commonality requirement is a “low bar.” *See, e.g., Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193, 202 (D.N.H. 2021) (citation modified).

“Each class member . . . will suffer the common injury of denial of citizenship and would

receive the same relief,” namely an injunction protecting their constitutional and statutorily guaranteed birthright citizenship. *Barbara*, 790 F. Supp. 3d at 93. Just as with the last class certification motion, Plaintiffs “raise several common questions of law, including whether their citizenship is guaranteed by the Constitution and § 1401,” and also “a common factual connection—the denial of citizenship and its associated benefits.” *Id.* Plaintiffs thus “have shown that a class action in this instance will ‘generate common *answers* apt to drive the resolution of the litigation.’” *Id.* (quoting *Dukes*, 564 U.S. at 350).

In its prior certification Order, the Court narrowed the class Plaintiffs had proposed from children subject to EO1 and their parents, to a children-only class. *See Barbara*, 790 F. Supp. 3d at 91. Plaintiffs respectfully request that the Court provisionally certify a parents and children class in this instance. *First*, while parents may suffer “diverse” harms, *id.*, each parent in the putative class ultimately suffers the same harm—the denial of their child’s constitutionally and statutorily guaranteed right to citizenship. Moreover, Defendants make clear that each parent in the class is now (in the government’s view) under the obligation to register their U.S.-born child with federal authorities pursuant to 8 U.S.C. § 1302 *et seq.*⁸ The differences among the various harms to parents downstream of the basic shared violation are not relevant to any of the claims in this case, and therefore defeat neither commonality nor typicality (discussed below).

Second, the Court noted that the “claims in the complaint” focused on the violation of the *children’s* constitutional and statutory rights. *See id.* But there can be no real question that these

⁸ *See* IFR at *11 (person stripped of citizenship under EO2 “must register as an alien when required to do so by” § 1302 *et seq.*); 8 U.S.C. § 1302(b) (parent or guardian has obligation to register minor under fourteen). Even apart from the obvious harm of choosing between conceding that one’s U.S.-born child is an “alien” for purposes of registration and exposing oneself to criminal enforcement, *id.* § 1306(a) (failure to comply is a misdemeanor), Defendants note that registration itself imposes costs. They estimate the average time to register represents an opportunity cost of \$122.43 for completing the form and \$340.15 for completing biometrics. IFR at *19-20.

parents can invoke the constitutional and statutory rights of their newborn children. After all, “the relationship between parent and child is obviously close . . . [a]nd there are probably few individuals less able to protect their own interests than newborn children.” *Lewis v. Thompson*, 252 F.3d 567, 585 (2d Cir. 2001) (holding noncitizen women had third-party standing to invoke the citizenship rights of their expected babies).⁹

Plaintiffs recognize that the Court may view a child-only class as more streamlined. *See Barbara*, 790 F. Supp. 3d at 91. Streamlining may come with a cost here, however. Defendants have resisted injunctive relief to date by asserting that EO2 is prospective only—even though, unlike EO1, it says nothing about any effective date—and by claiming the need to await the now-issued guidance. But if the Court narrows the class to children only, Defendants may argue that in effect *no one* can challenge EO2 at this point (because, in their view, all babies already born are too late, and all expected babies are too early). There is no reason to entertain such legal sophistry.

C. The class representatives’ claims are typical of those of the class.

Where commonality looks to the relationship among class members generally, typicality under Rule 23(a)(3) “focuses on the relationship between the proposed class representative and the rest of the class.” *See George v. Nat’l Water Main Cleaning Co.*, 286 F.R.D. 168, 176 (D. Mass. 2012) (citing 1 William B. Rubenstein, *Newberg on Class Actions* § 3:26 (5th ed. 2012)). In practice, however, the analysis of typicality and commonality “tend to merge.” *Levy v. Gutierrez*, 448 F. Supp. 3d 46, 68 (D.N.H. 2019) (quoting *In re Credit Suisse-AOL*, 253 F.R.D. 17, 22 (D.

⁹ *Lewis* rejected on the merits the plaintiffs’ effort to challenge “prebirth injury” on equal protection grounds. 252 F.3d at 586. The Court distinguished such an impermissible prebirth claim from a challenge to harm that is “suffered only upon birth.” *Id.* at 587. That is the case here. Even the expecting parents in the putative class allege harms that will arise only when their child is born; however, that harm can, of course, be imminent (and thus subject to present litigation and injunction) before birth.

Mass. 2008)). To satisfy Rule 23(a)(3), “a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.” *George*, 286 F.R.D at 177 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997)).

Typicality is established when the claims of the named plaintiffs and the class “involve the same conduct by the defendant . . . regardless of factual differences.” *Hawkins v. Comm’r of N. H. Dep’t of Health & Human Servs.*, No. CIV. 99-143, 2004 WL 166722, at *3 (D.N.H. Jan. 23, 2004) (quoting *Johnson v. HBO Film Mgt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001)). “For purposes of demonstrating typicality, ‘[a] sufficient nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.’” *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 69 (D. Mass. 2005) (quoting *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla. 2004)).

Here, “the respondents’ conduct and the petitioners’ injuries would be the same in all cases.” *Barbara*, 790 F. Supp. 3d at 95. The proposed class representatives are members of the class and have suffered the same injury as the proposed class members, namely that the Defendants seek to strip them and their children of citizenship and the rights and duties that come with citizenship. Because any differences among class members “outside of the exceptions enumerated in *Wong Kim Ark* have no bearing on whether a child should receive United States citizenship under the Fourteenth Amendment or § 1401, factual differences” among class members’ circumstances do not defeat typicality. *Barbara*, 790 F. Supp. 3d at 95 (citation and footnote omitted).

D. The proposed class representatives and class counsel can adequately represent the class.

Finally, the named plaintiffs and their counsel will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Two factors must be satisfied to fulfill this

prerequisite: “(1) the absence of potential conflict between the named plaintiff and the class members and (2) that counsel chosen by the representative parties is qualified, experienced and able to vigorously conduct the proposed litigation.” *Adair v. Sorenson*, 134 F.R.D. 13, 18 (D. Mass. 1991) (citation modified).

Here, there is no conflict—much less anything close to a conflict fundamental to the suit that would prevent a plaintiff from meeting the adequacy requirement. *Cf. Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012). The proposed class representatives have alleged the same injuries, arising from the same Executive Order, and they seek the same injunctive and declaratory relief, which will apply equally to the benefit of all class members.

And the Court has already concluded “that proposed class counsel, lawyers from the ACLU Immigrants’ Rights Project, the ACLUs of New Hampshire, Maine, and Massachusetts, the Asian Law Caucus, the NAACP Legal Defense and Educational Fund, and the Democracy Defenders Fund have sufficient experience and qualifications to serve as class counsel.” *Barbara*, 790 F. Supp. 3d at 96. Accordingly, the Court should once again appoint them as class counsel.

II. The Proposed Class Meets the Requirements of Rule 23(b)(2).

Finally, “[i]n addition to meeting the four requirements of Rule 23(a),” the plaintiffs “must show that the proposed class falls into one of the three defined categories of Rule 23(b).” *Reid v. Donelan*, 297 F.R.D. 185, 192 (D. Mass. 2014). Here, the relevant category is Rule 23(b)(2), which applies when “the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.” *Id.* (citation modified).

As with the last certification, “the petitioners seek ‘a single injunction or declaratory judgment [that] would provide relief to each member of the class.’” *Barbara*, 790 F. Supp. 3d at 98 (quoting *Dukes*, 564 U.S. at 360). “The petitioners request the same, un-

individualized remedy,” *id.*: A declaration and injunction that Defendants may not deny or abridge their (and their children’s) birthright citizenship. And because every member of the class is entitled to relief from this unconstitutional and otherwise unlawful Executive Order, an appropriate injunction or declaration will provide relief on a classwide basis. “The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.” *Dukes*, 564 U.S. at 360 (citation modified).

CONCLUSION

Plaintiffs respectfully request that the Court grant this Motion and enter an order certifying the proposed class under Rule 23(b)(2); appoint proposed class representatives as Class Representatives; and appoint their counsel from the ACLU Immigrants’ Rights Project; the ACLUs of New Hampshire, Maine, and Massachusetts; the Asian Law Caucus; NAACP Legal Defense and Educational Fund; and the Democracy Defenders Fund as Class Counsel.

Dated: September 9, 2026

/s/ SangYeob Kim

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DECLARATION OF CLARA

I, Clara, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Clara. I am over the age of 18 and am competent to testify regarding the matters described below. I am a putative class member in this case.
2. I am a citizen of France. I currently live in Washington, D.C.
3. I live with my husband and newborn son, Nathan. My son was born in August 2026 in Washington, D.C.
4. I have lived in the United States for over ten years. I first came to the United States as a student. Eventually, I switched from a student visa to the G-4 visa. Our whole life is here, my immediate family, friends, and community.
5. My husband and I learned in or around December 2025 that we were expecting our child.
6. My husband and I heard about the president's August 6, 2026 executive order regarding birthright citizenship a few days after it was issued, but before my son was born. We were immediately panicked and scared.
7. I understand that, because neither my husband nor I are U.S. citizens, and because we are both employed by international organizations that possess international-organization immunity, as listed in 8 C.F.R. § 316.20(c), the government will not recognize my child's U.S. citizenship by birthright. This is despite the fact that, based on my understanding, my husband and I have functional immunity in the context of our official duties, but we do not have diplomatic immunity and are therefore subject to U.S. jurisdiction.
8. Above all else, I fear our family could be at risk of separation. My son is in a legal limbo and vacuum. My understanding is that my son cannot be added to my G-4 visa, or the G-4 visa my husband has through his employment. If he is also not a U.S. citizen, then he

will have no lawful status in the United States. I am worried about how my son will stay with my husband and me in the United States. We would like to travel abroad to visit family. But we are scared that he will not be allowed back into the United States. We are also scared that he will be subject to immigration enforcement or even deportation. I understand the government has said that the parents of babies subject to the EO have to register their babies as “aliens” or face criminal prosecution. My baby is a citizen; I don’t want to register him as an “alien.” But if I don’t, I could be prosecuted. And filling out the form and taking the baby to be fingerprinted will take time, especially because I will need to consult with attorneys about how to answer the registration questions given that my child is a citizen.

9. My husband and I plan to apply for a Social Security Number and U.S. passport for our son. The passport would be the only photo identification we have for our son. We fear that the Order will prevent our son from getting his U.S. passport.
10. The United States has given me so many opportunities. I received an education here, and I work here. It has been the land of opportunity. Because of that, I want my child to be a U.S. citizen. I want him to have access to a U.S. education and opportunities.
11. I want to be a named plaintiff in this case. I understand that, if the Court grants the motion for class certification, I would represent a large number of people who are affected by the August 6 Executive Order.
12. I understand that, as a class representative, it would be my responsibility to represent the interests of all the class members in this lawsuit, and not just my own personal interests. I also understand the need to stay informed about what is happening in the case.

13. I understand that I am agreeing to represent many other families like ours. I believe it is important to help families like ours.

14. I am scared about my identity and participation in this lawsuit being made public because I fear for my and my family's safety and wellbeing. I fear that people would retaliate against us because of my participation in the lawsuit. I have heard about the current Administration or supporters retaliating against people who sue or speak out against the Administration, by for example not granting their visa renewals or terminating their statuses. I also have particular concerns regarding my employment. I am participating in litigation against a member state of the organization for which I work, and that state is also my host state. Because of that relationship, I fear that public disclosure of my involvement in this lawsuit could result in adverse employment consequences, including the loss of my employment. My ability to remain lawfully in the United States is connected to my employment, so the loss of my employment could also jeopardize my ability to remain in the United States and affect future career opportunities.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Clara

Clara

Executed on September 6, 2026, in Washington, D.C.

DECLARATION OF EDWARD

I, Edward, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Edward. I am over the age of 18 and am competent to testify regarding the matters described below. I am a putative class member in this case.
2. I am a citizen of Australia, and I live in Australia with my wife and our older daughter.
3. My wife is a cardiologist. She owns and operates cardiology clinics in Australia, where she is the only cardiologist. I manage the business side of the practice.
4. Our older daughter was born in 2021 via surrogacy in the United States and is a U.S. citizen.
5. Our younger daughter is due to be born in October 2026 in the United States.

How our family came to surrogacy

6. My wife and I turned to surrogacy because she cannot carry a child, for medical reasons. It was the only way for us to have the family we hoped for.
7. We could not do this at home. Compensated surrogacy is unlawful in every Australian State and Territory. An Australian couple who needs a gestational carrier and wants to compensate her fairly must go overseas.
8. Before we began, we watched Australian television reporting about overseas surrogacy. Those programs concerned surrogacy arrangements in Thailand and in India involving Australian intended parents. What we saw troubled us deeply.
9. We decided then that we would not build our family that way. We did not want our child to come into the world through an arrangement in which the woman who carried her had been taken advantage of.

10. We chose the United States because we wanted an arrangement that was lawful, supervised by a court, and in which the woman carrying our child had her own lawyer, chosen by her. We understood this would cost considerably more than the alternatives. We accepted that cost deliberately, and we would make the same decision again.

Our older daughter's citizenship

11. Our surrogate for our older daughter selected and was represented throughout the process by her own attorney. Our journey was compliant with all relevant code sections in the state in which it was carried out and our parentage was established by order of a U.S. state court. We have paid all of the costs of the surrogacy, including our surrogate's compensation and her expenses, in the amounts and at the times set out in the written agreement she signed and notarized with the benefit of her own legal advice. A proper and valid birth certificate was issued with my and my wife's names on it as the sole legal parents.

12. Our older daughter was issued a U.S. passport shortly after her birth, before she travelled to Australia. We applied for that passport on Form DS-11, the application used for a child under sixteen. My wife and I both appeared in person with her, as that form requires.

13. In support of that application we presented her U.S. state-issued birth certificate as evidence of her citizenship and of our relationship to her. As her parents, we each presented our own photo identification. The identification we presented was our Australian passports.

14. Her U.S. passport was renewed earlier this year, before the Executive Order was signed, at the U.S. Consulate General in Melbourne. Because she is under sixteen, that

application also had to be made in person on Form DS-11, and we again presented our Australian passports as our identification.

15. On both occasions the Department of State had before it a U.S. birth certificate for our daughter and two Australian passports belonging to her parents. It knew that neither of us is a U.S. citizen. On both occasions it issued our daughter a U.S. passport.

Our younger daughter's citizenship

16. We signed and notarized our current surrogacy agreement for our younger daughter in May 2025. The embryo transfer was performed in January 2026. Like before, the surrogacy arrangement is fully compliant with all relevant statutes and both parties are represented by independent legal counsel.
17. When we made those commitments, we understood that a child born in the United States is a U.S. citizen. That was not an assumption. It was our experience: the Department of State had already recognised our older daughter's citizenship, knowing exactly who her parents were.
18. In late June 2026 I learned that the Supreme Court of the United States had confirmed that children born in the United States to parents temporarily present in the country are citizens at birth. That decision confirmed the position we had relied upon from the beginning.
19. We first learned of the President's executive order of August 6, 2026, a few days after it was issued. By then our surrogate was in her third trimester. Every arrangement had been made, and nothing could be undone.
20. Before August 6, 2026, I was not aware of any executive order that applied to children born through surrogacy, and I had no reason to think our younger daughter's U.S. citizenship was in any doubt.

What the Order means for our family

21. I understand that, because neither my wife nor I is a U.S. citizen—we are both Australian citizens—and because we engaged in a commercial transaction with a surrogate present in the United States to give birth, the government takes the position that it will not recognize our younger daughter's U.S. citizenship at birth, even though every step we have taken has been legally sound and fully compliant with relevant statutes.
22. We did not enter this arrangement simply to obtain U.S. citizenship for our younger daughter. We live in Australia, our work and our older daughter's school are here, and we intended to return home with our newborn as soon as she is issued her U.S. passport to travel.
23. However, this Order raises a lot of complications for the entire family. If the Department of State refuses to issue our younger daughter a U.S. passport, we cannot take her home until she receives an Australian passport, but this could take months and cause us to overstay.
24. We will enter the United States later this month. We are allowed to be in the United States for up to 90 days under the U.S. Visa Waiver Program, for which we applied for and received an approved Electronic System for Travel Authorization (ESTA). Our admission will expire on or about December 24, 2026. I understand that admission under the Visa Waiver Program cannot be extended and that there is no application we can make to remain lawfully.
25. A visitor visa was not available to us in time. The estimated wait for a B1/B2 interview appointment in Australia is four months. Even if we had applied on the day the

Executive Order was signed, we would not have obtained an appointment before our admission expired.

26. If our younger daughter is not issued a U.S. passport, we will have to choose between leaving the United States without her and remaining beyond the expiry of our lawful admission.

27. But we will not leave without her. We have no one with whom we could leave our younger daughter in the United States, and we would not leave her in any case.

28. I understand that if we overstay, we will lose the ability to travel to the United States under the Visa Waiver Program, and that we may face bars of three or ten years on returning, depending on how long we remain.

29. My wife and I are also at risk of being detained or removed while we are here. Both of our daughters are U.S. citizens. If we were detained, they would be separated from their parents in the country of their birth. Our newborn will hold a U.S. state-issued birth certificate naming my wife and me as her parents, but the Executive Order directs federal agencies not to accept it as evidence of her citizenship. So we are worried about our younger daughter being subject to immigration enforcement as well.

Our patients

30. Remaining in the United States will require us to close our clinics for months longer than we planned, at great cost, because my wife is the only cardiologist in the practice. She performs all of the diagnostic testing herself.

31. I am also informed and believe that under Australian law Medicare benefits are payable only for services rendered in Australia, and that both the practitioner and the patient must be physically located in Australia. This applies to telehealth and to remote supervision alike. While she is in the United States my wife cannot treat, report on, or

supervise the care of a single Australian patient. Our clinics do not run at reduced capacity while we are away. They close.

32. For the past twelve years our patients have not been charged any out-of-pocket fee. My wife cares for and treats thousands of patients a year, all of them under Medicare. Many could not afford to see a cardiologist elsewhere, and if our clinics close they will join public hospital waiting lists.

33. We are very committed to this work. My wife is currently seeing patients seven days per week in anticipation of our trip. But we will do whatever is necessary to protect our family.

Our older daughter's reunion

34. We are travelling to the United States earlier than we otherwise would so that our older daughter can meet her surrogate on her birthday, the anniversary of the day that woman gave birth to her. It will be the first time they have seen one another since.

35. It mattered to us that our children would never have to hide how they came into the world. Our older daughter knows her story. She knows a woman in the United States carried her. In our family we call that woman her surro fairy. She knows her name.

36. What will make the reunion even more special is that the surrogate's youngest daughter, who spoke to my older daughter while she was in the womb, will also be there.

37. We are doing this before we travel on to meet our current surrogate, so that our older daughter understands where she comes from before her sister arrives. In October, she will welcome her sister knowing both of their stories.

38. I want my younger daughter to be able to visit her surrogate one day, and to travel freely to the country of her birth.

What we will do, and what we fear

39. My wife and I plan to apply for our younger daughter's U.S. passport as soon as we receive her state-issued birth certificate once she is born. We fear that the Order will prevent her from receiving it.
40. Our younger daughter will be born in the United States in October, and she will hold a U.S. state-issued birth certificate naming me and my wife as her parents, issued in accordance with a pre-birth parentage order granted by a U.S. state court after independent legal representation for everyone involved, and we are being told this will not be enough for her own government to acknowledge who she is.
41. What frightens me most is what would happen to her if my wife and I were detained or removed. She would be a newborn in the country of her birth, holding a birth certificate her own government has been instructed not to accept. I have read about families held with their children in immigration detention, and about children taken into state care when their parents are detained. I do not know which of those would happen to my daughters, but either would be a nightmare.
42. She cannot be removed, because she is a United States citizen. But the government says she is not one. That frightens me.

Serving as a class representative

43. I want to be a named plaintiff in this case. I understand that, if the Court grants the motion for class certification, I would represent a large number of people affected by the August 6 Executive Order.
44. I understand that, as a class representative, it would be my responsibility to represent the interests of all the class members in this lawsuit, and not just my own personal

interests. I also understand the need to stay informed about what is happening in the case.

45. I understand that I am agreeing to represent many other families like ours. I believe it is important to help families like ours.

Proceeding under a pseudonym

46. I am scared about my identity and participation in this lawsuit being made public because I fear for my and my family's safety and wellbeing. I have heard that the Administration and/or people who support it have retaliated against people for suing the Administration or speaking out against it, including by terminating their immigration status or denying immigration applications.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Edward

Edward

Executed on September 3, 2026, in Melbourne, Australia.

DECLARATION OF PATRICIA

I, Patricia, pursuant to 28 U.S.C. § 1746, declare as follows:

1. My name is Patricia. I am over the age of 18 and am competent to testify regarding the matters described below. I am a putative class member in this case.
2. I live with my husband, “Robert,” in the United States. Neither my husband nor I are U.S. citizens. We are both citizens of countries in western Europe.
3. We have lived in the United States for six years. Our lives are based in this country. We have our son, our friends, our community, and our home in the United States.
4. We are both employed by international organizations that possess international-organization immunity, as listed in 8 C.F.R. § 316.20(c).
5. We both have current G-4 visas through our employment. My husband has been on his G-4 visa for six years. For the first five years, I was here as a G-4 visa dependent, authorized to work. For the last year, I have been on my own G-4 visa.
6. In August 2026, my husband and I learned that we are expecting our second child.
7. Our child will be born around April 2027, in the United States.
8. On August 6, 2026, my husband and I heard about the President’s executive order regarding birthright citizenship. On September 4, 2026, we learnt that DHS had issued an interim final rule regarding the implementation of the executive order.
9. I understand that, under these new rules, because neither my husband nor I are U.S. citizens and because we are employed by international organizations that possess international-organization immunity, as listed in 8 C.F.R. § 316.20(c), the government will not recognize my child’s U.S. citizenship by birthright.
10. This is despite the fact that, based on my understanding, my husband and I have functional

immunity in the context of our official duties, but we do not have diplomatic immunity and are therefore fully subject to U.S. jurisdiction. When we took our jobs, my husband and I pledged to act solely in the interest of the organizations we work for. We do not represent our countries of citizenship. We do not report to our diplomatic missions or home country governments. We are not, in any way, their employees or agents.

11. The new rules are extremely concerning for me. Unlike other nonresident visa holders, G-4 visa holders do not have a path for becoming permanent residents or citizens. Yet, many of us live in this country all their life, raising their families. If my child is not a U.S. citizen, then they will grow in this country but will not be able to access the same services as their peers, including scholarships and other opportunities.
12. I want to be a named plaintiff in this case. I understand that, if the Court grants the motion for class certification, I would represent a large number of people who are affected by the August 6 Executive Order.
13. I understand that, as a class representative, it would be my responsibility to represent the interests of all the class members in this lawsuit, and not just my own personal interests. I also understand the need to stay informed about what is happening in the case.
14. I understand that I am agreeing to represent many other families like ours. I believe it is important to help families like ours.
15. I do not want my identity and participation in this lawsuit to be made public. My identity becoming public in this suit makes me fear for the safety and wellbeing of my family. I worry that if my identity is made public, people will retaliate against me and my family because of my participation in the lawsuit. I worry, for example, that my public participation in this lawsuit could result in my visa not getting renewed, my family's

statuses in the United States being terminated, or other adverse immigration consequences.

16. I also worry about my employment. My participation in this litigation means that I am joining a suit that is brought against a member state of the organization for which I work, and that state is also my host state. That relationship makes me worry that my participation in this lawsuit being made public could result in adverse employment consequences, including the loss of my employment, or other negative consequences at work. My lawful status in the United States is tied to my employment, so the loss of my employment could affect my ability to stay in the country and affect my career opportunities, the career opportunities of my husband, and educational opportunities for my son and future child.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Patricia

Patricia

Executed on September 9, 2026, in the United States.