

Our Generation's *Dred Scott*: The Dissents in *Trump v. Barbara*

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Today, the United States Supreme Court affirmed the 128-year-old precedent of *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). Indeed,

The Framers of the Fourteenth Amendment extended [citizenship] to ‘every free-born person in this land.’ Cong. Globe, 39th Cong., 1st Sess., at 600 (Sen. Trumbull). We keep that promise today,

Trump v. Barbara, 609 U.S. ___, 26, (slip op.) (2026) (opinion of Roberts, C.J.). While JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would like us to think otherwise, *Barbara* was not at all difficult to decide. The Fourteenth Amendment couldn't be clearer:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,

(United States Constitution, amend. XIV). For at least 128 years, the clause “subject to the jurisdiction of” has been interpreted as the narrowest of exclusions, meant only for children of foreign diplomats or of Native Americans, *United States v. Wong Kim Ark*, 169 U.S. 649; Indian Citizenship Act, Pub. L. No. 68-175, 43 Stat. 253 (1924). In *Barbara*, the government relied on a revisionist interpretation of the Fourteenth Amendment's history, text, and tradition that would revoke the Framers' promise of citizenship. The Court was unconvinced. Unfortunately, the Court was not unanimous.

It is important to understand the history and tradition of the Fourteenth Amendment. In 1857, the Supreme Court held that the Constitution did not provide citizenship to African Americans, *Dred Scott v. Sandford*, 60 U.S. 393 (1857), one of the worst decisions in the Court's history. So, during Reconstruction, the country resolved to repudiate the *Dred Scott* decision in the strongest possible terms. By passing the Fourteenth Amendment, Americans sought to protect Americans' citizenship, irrespective of their race, ethnicity, or national origin by placing “the great question of citizenship beyond the legislative power,” *Trump v. Barbara*, 609 U.S. at 9 (opinion of Roberts, C.J., internal quotes omitted).

From inception, the Fourteenth Amendment was designed to provide citizenship to *all* born on American soil, with few exceptions. Today though, JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would rather take us back to the 1850s. Their dissents rely on the same revisionist and racist analysis that the *Dred Scott* decision relied upon 169 years ago.

Dred Scott v. Sandford, 60 U.S. 393 (1857).

United States v. Wong Kim Ark, 169 U.S. 649 (1898).

Indian Citizenship Act, Pub. L. No. 68-175, 43 Stat. 253 (1924).

Trump v. Barbara, 609 U.S. ---, (slip op.) (2026).

United States Constitution, amend. XIV.