Zu Trumps *Executive Order*

Staatsangehörigkeit nur bei „total […] allegiance“ (totaler Treue)?

Überblick über die verschiedenen Gerichtsverfahren zum Streit über das US-Staatsangehörigkeitsrecht

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Trumps Executive Order

1. Als eine seiner ersten Amtshandlungen am ersten Tag seiner zweiten Amtszeit erließ US-Präsident Trump am Montag der vergangenen Wochen (20.01.2025) eine *Executive Order* mit dem Titel *Protecting the Meaning and Value of American Citizenship*.

2. In der *Order* wird in *Section* 2. a) – in Bezug auf Absatz 1 Satz 1 des 14. Zusatzes zur US-Verfassung – behauptet:

> „Among the categories of individuals born in the United States and not subject to the jurisdiction thereof, the privilege of United States citizenship does not automatically extend to persons born in the United States: (1) when that person’s mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person’s birth, or (2) when that person’s mother’s presence in the United States at the time of said person’s birth was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father

was not a United States citizen or lawful permanent resident at the time of said person's birth."
(https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/)

Die Staatsangehörigkeits-Regelung in der US-Verfassung

3. Absatz 1 Satz 1 des 14. Zusatzes zur US-Verfassung lautet:

> „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."
> (https://www.govinfo.gov/content/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf, S. 16 [gedruckte Seitenzählung] bzw. 22 [digitale Seitenzählung])
>
> „Alle Personen, die in den Vereinigten Staaten geboren oder eingebürgert sind und ihrer Gesetzeshoheit unterstehen, sind Bürger der Vereinigten Staaten und des Einzelstaates, in dem sie ihren Wohnsitz haben."
> (https://usa.usembassy.de/etexts/gov/gov-constitutiond.pdf, S. 10)

4. Der in der Hauptsache umstrittene Punkt ist die Auslegung der Formulierung *„subject to the jurisdiction thereof"* – also konkret die Frage, ob die beiden – in der *Executive Order* genannten – Kategorien von Personen tatsächlich nicht „subject to the jurisdiction" der Vereinigten Staaten sind.

Die **temporary restraining order** *(TRO) vom 23.01.2025*

5. Am Donnerstag der vergangenen Woche (23.01.2025) entschied ein US-Bundesrichter im Bundesstaat Washington – auf Antrag von vier Bundesstaaten (Washington, Arizona, Illinois und Oregon [alle haben *governors* der Demokratischen Partei]) – den Bundesbehörden, gegen die sich der Antrag richtete, und deren Bediensteten für zunächst 14 Tagen die Inkraftsetzung und Implementierung der *Executive Order* zu untersagen (*temporary restraining order* [TRO]) (siehe dazu bereits meinen taz-Blogs-Artikel vom 24.01.2025):

18 Now, therefore, it is hereby ORDERED that:
19 1. Defendants and all their respective officers, agents, servants, employees and
20 attorneys, and any person in active concert or participation with them who receive actual notice of
21 this order are hereby fully enjoined from the following:
22 a. Enforcing or implementing Section 2(a) of the Executive Order;
23 b. Enforcing or implementing Section 3(a) of the Executive Order; or
24 c. Enforcing or implementing Section 3(b) of the Executive Order.
25 2. This injunction remains in effect pending further orders from this Court.

Schaubild 1:
http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.43.0_3.pdf, S. 3

5. Der anzuwendende Entscheidungsmaßstab war nach Ansicht beider Seiten des Rechtsstreits sowie des Gerichts[1] folgender:

> „A temporary restraining order is warranted where the moving party establishes that (1) it is likely to succeed on the merits; (2) irreparable harm is likely in the absence of preliminary relief; (3) the balance of equities tips in the movant's favor; and (4) an injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1); Juarez v. Asher, 556 F. Supp. 3d 1181, 1187 (W.D. Wash. 2021); see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001)."
> (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.10.0_1.pdf, S. 12 [Schriftsatz der Bundesstaaten]; Hyperlinks hinzugefügt)
>
> „To obtain such extraordinary relief, a plaintiff must demonstrate ‚that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.' Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th 10 Cir. 2009)"
> (https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.36.0_4.pdf, S. 4 [Schriftsatz der Trump-Regierung])

Also

- *„likely to succeed on the merits"* (Wahrscheinlichkeit eines Erfolgs in der Hauptsache)
- *„irreparable harm is likely"* / *„likely to suffer irreparable harm"* (Wahrscheinlichkeit eines irreparablen Schadens, falls die TRO nicht ergeht)
- *„balance of equities"* (Angemessenheit / Abwägung der Beschwernisse[2], die für beide Seiten mit Erlaß oder Nicht-Erlaß der TRO verbunden sind)
- *„public interest"* (das öffentliche Interesse spricht für die TRO).

Die – auf die Hauptsache bezogene – Argumentation von den vier Bundesstaaten, die die TRO beantragten

6. a) Zu den *merits* hatten vier Bundesstaaten in ihrem TRO-Antrag, dem am Donnerstag stattgegeben wurde, dort:
http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.10.0_1.pdf
auf S. 8 (gedruckte Seitenzählung) bzw. 14 (digitale Seitenzählung) bis S. 15 bzw. 21 argumentiert.

b) Zur Bedeutung der Formulierung *„subject to the jurisdiction [of the United States]"* sagten die Bundesstaaten

- in positiver Hinsicht bloß:
  „The only individuals excluded are those who are not in fact subject to the jurisdiction of the United States at birth – the children of diplomats covered by diplomatic

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1 http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.43.0_3.pdf, S. 2 unten / 3 oben.

2 Das deutsche Wort „Billigkeit" (i.S.v. billig ≈ angemessen, gerecht[fertigt]), das vielleicht die genauste Übersetzung für engl. *equity* ist, hängt mit dem deutschen Wort „Unbill" zusammen (https://www.dwds.de/wb/etymwb/Unbill).

immunity and children born to foreign armies at war against the United States while on United States soil." (ebd., 9 bzw. 15 unten / 10 bzw. 16 oben)
und

- in negativer Hinsicht:
  „Not excepted are children born in the United States, even if their parents are undocumented. They must comply with U.S. law; so too must their parents. Undocumented immigrants pay taxes, must register for the Selective Service[3], and must otherwise follow – and are protected by – the law just like anyone else within the United States' territorial sweep. See, e.g., Plyler v. Doe, 457 U.S. 202, 211 (1982) (‚That a person's initial entry into a State, or into the United States, was unlawful ... cannot negate the simple fact of his presence within the State's territorial perimeter. Given such presence, he is subject to the full range of obligations imposed by the State's civil and criminal laws.'[4]); Sagana v. Tenorio, 384 F.3d 731, 740 (9th Cir. 2004) (‚Aliens who are in the jurisdiction of the United States under any status, even as illegal entrants or under a legal fiction, are entitled to the protections of the Fourteenth Amendment.')." (ebd., 10 bzw. 16 oben; Hyperlinks hinzugefügt)
  Diese Auffassung wurde mit weiteren Zitaten aus Rechtsprechung und Literatur belegt (siehe den hiesigen Anhang [S. 22 ff.]).

Die – auf die Hauptsache bezogene – Argumentation der Trump-Regierung

7. a) Die Trump-Regierung hatte ihrerseits dort:
http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf
auf S. 11 bis 14 zu den *merits* argumentiert.

Der Civil Rights Act *als Blaupause für den 14. Verfassungszusatz?*

b) Das Hauptargument auf S. 11 lautete:

> „Among the many reasons why Plaintiffs' position is incorrect, the term ‚subject to the jurisdiction thereof' in the Fourteenth Amendment harks to tandem language in the Civil Rights Act of 1866, ch. 31, 14 Stat. 27. The Supreme Court has interpreted the Act and the Amendment coterminously, explaining that the Act served as the ‚initial blueprint' for the Amendment, Gen. Bldg. Contractors Ass'n v. Pennsylvania, 458 U.S. 375, 389 (1982), and that the Amendment in turn ‚provide[d] a constitutional basis for protecting the rights set out' in the Act, McDonald v. City of Chicago, 561 U.S. 742, 775 (2010). The Act provided, as relevant here, that ‚all persons born in the United States and *not subject to any foreign power, excluding Indians not taxed*, are hereby declared to be citizens of the United States.' § 1, 14 Stat. at 27 (emphasis added). The phrase 'subject to the jurisdiction thereof' in the Fourteenth Amendment is best read to exclude the same individuals who were excluded by the Act – i.e., those who are 'subject to any foreign power' and ‚Indians not taxed'."
> (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 11; Hyperlinks hinzugefügt)

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3 Siehe dazu: https://www.sss.gov/register/immigrants/.

4 Das Zitat ist nicht auf S. 211, sondern auf S. 215 der gedruckten Seitenzählung (= S. 14 der Datei).

Dem (*„blueprint“*) und daß der *Supreme Court* in diesem Sinne entschieden hat, mag grundsätzlich zwar so sein; aber trotzdem hängt das Argument der Trump-Regierung bisher *doppelt* in der Luft:

aa) Selbst wenn der *Civil Rights Act* grundsätzlich die Blaupause für den 14. Verfassungszusatz ist, ist damit noch nicht gesagt, daß beide (*Civil Rights Act* und 14. Verfassungszusatz) auch *insoweit* das gleiche sagen, als sie einen *unterschiedlichen* Wortlaut haben – hier: „subject to the jurisdiction [of the United States]“ *versus* „not subject to any foreign power“:

14. Verfassungszusatz Absatz 1 Satz 1 (engl.; vgl. dt.)	***Civil Rights Act*, Sec. 1** (LoC und Wikisource)
„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.“	„all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; […].“

Auch der US-*Supreme Court* sagt an den beiden von der Trump-Regierung genannten Stellen dazu nichts. An der ersten genannten Stelle sagt er nur:

> „Our conclusion that [Title 42 U. S. C.] § 1981[5] reaches only purposeful discrimination is supported by one final observation about its legislative history. As noted earlier, the origins of the law can be traced to both the Civil Rights Act of 1866 and the Enforcement Act of 1870. Both of these laws, in turn, were legislative cousins of the Fourteenth Amendment. The 1866 Act represented Congress' first attempt to ensure equal rights for the freedmen following the formal abolition of slavery effected by the Thirteenth Amendment. As such, it constituted an initial blueprint of the Fourteenth Amendment, which Congress proposed in part as a means of ‚incorporat[ing] the guaranties of the Civil Rights Act of 1866 in the organic law of the land.‘ Hurd v. Hodge, 334 U. S., at 32[6]. The 1870 Act, which contained the language that now appears in § 1981, was enacted as a means of enforcing the recently ratified Fourteenth Amendment. In light of the close connection between these Acts and the Amendment, it would be incongruous to construe the principal object of their successor, § 1981, in a manner markedly different from that of the Amendment itself.“
> (https://tile.loc.gov/storage-services/service/ll/usrep/usrep458/usrep458375/usrep458375.pdf, S. 15 f. der Datei; Hyperlink hinzugefügt)

Es ging in der Entscheidung also um die Frage, ob „§ 1981 reaches only purposeful discrimination“ und nicht um die Frage, was die Formulierungen

- *„All persons within the jurisdiction of the United States“* (Title 42 U. S. C. § 1981)

5 „Title 42 U. S. C. § 1981 provides: ‚All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.‘“ (https://tile.loc.gov/storage-services/service/ll/usrep/usrep458/usrep458375/usrep458375.pdf, S. 375 der gedruckten bzw. S. 9 der digitalen Seitenzählung)

6 = Seite 9 der Datei.

- *„All persons born or naturalized in the United States, and subject to the jurisdiction thereof,“* (14. Verfassungszusatz Absatz 1 Satz 1)
  bzw.
- *„such citizens“* / *„all persons born in the United States and not subject to any foreign power“* (*Civil Rights Act*, Sec. 1)

bedeuten. Die Frage, welche Personen von den fraglichen Normen begünstigt bzw. geschützt werden, ist von der Frage zu unterscheiden, worin die Begünstigung besteht bzw. wovor die geschützten Personen geschützt werden.

Title 42 U. S. C. § 1981 (siehe FN 5)	***Civil Rights Act*, Sec. 1** (LoC und Wikisource)
„All persons within the jurisdiction of the United States	„such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted,
shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence,	shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, inherit, purchase, lease, sell, hold, and convey real and personal property,
and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.“	and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.“

Kommen wir nun zu der zweiten von der Trump-Regierung genannten Stelle – sie ist hinsichtlich ihres konkreten Gegenstand (*„right to bear arms“*) noch weiter von der jetzt zur Debatte stehenden Frage entfernt und hinsichtlich des *Civil Rights Act* noch allgemeiner als die erstgenannte Stelle:

> „Southern resistance, Presidential vetoes, and this Court’s pre-Civil-War precedent persuaded Congress that a constitutional amendment was necessary to provide full protection for the rights of blacks. Today, it is generally accepted that the Fourteenth Amendment was understood to provide a constitutional basis for protecting the rights set out in the Civil Rights Act of 1866. See General Building Contractors Assn., Inc. v. Pennsylvania, 458 U. S. 375, 389 (1982)[7]; see also Amar, Bill of Rights 187[8]; Calabresi

7 Das ist wiederum die – oben zitierte – von der Trump-Regierung erstgenannte Stelle.

8 Gemeint ist dieses Werk: https://stabikat.de/Record/1003561748 von 1998; Inhaltsverzeichnis: https://www.gbv.de/dms/bowker/toc/9780300073799.pdf.

> & Fine, Two Cheers for Professor Balkin's Originalism, 103 Nw. U. L. Rev.[9] 663, 669–670 (2009).“
> (https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf, S. 34 der Datei; Hyperlink hinzugefügt)

bb) Die Trump-Regierung sagt (bisher) nicht, wie denn ihres Erachtens die Formulierung *„all persons born in the United States and not subject to any foreign power“* im *Civil Rights Act* interpretiert wurde (bzw. ihres Erachtens zu interpretieren war). Erst *dann* wäre es eventuell möglich, zu der Schlußfolgerung zu gelangen, zu der die Regierung auf S. 11 unten / 12 oben gelangt:

> „under Plaintiffs' view, the 1866 Civil Rights Act – which was governing law until 1940 – was apparently unconstitutional, because plenty of individuals born in the United States and subject to federal regulatory jurisdiction are also ‚subject to any foreign power' – a disqualifying condition under the 1866 Civil Rights Act.“
> (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 11)

Falls

- das *birth right* jedenfalls bis 1940 enger interpretiert wurde als es jetzt die vier Bundesstaaten machen, die sich gegen Trumps *Executive Order* wenden,
  und
- diese engere Interpretation als nicht im Widerspruch zum 14. Verfassungszusatz stehend angesehen wurde
- und Trumps *Executive Order* wiederum von dieser engeren Interpretation gedeckt ist,

dann wäre das ein ziemlich starkes Argument dafür, daß Trumps *Executive Order* verfassungsgemäß ist. Nur sind die drei Prämissen dieser möglichen Schlußfolgerung jedenfalls bisher nicht dargelegt. Wie gesagt, fängt die Lücke in der Argumentation der Regierung schon damit an, daß sie bisher nicht sagt, wie sie die Formulierung *„not subject to any foreign power“* aus dem *Civil Rights Act*, die sie als Synonym mit der hier entscheidenden Formulierung im 14. Verfassungszusatz „subject to the jurisdiction [of the United States]“ ansieht, interpretiert.

Trumps *master-mind*? Jurist John Eastman forderte schon 2008 *„total and exclusive allegiance“*

Es kann aber vermutet werden (vgl. FN 55, Absatz 2), daß sie sie so ähnlich interpretieren möchte, wie es John C. Eastman, dessen „legal memos proved central to Donald Trump's effort to illegally hold on to power following the 2020 election“ (*Lawfare* vom 04.04.2024[10]),

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9 = *Northwestern University Law Review* (https://northwesternlawreview.org/about/about/).
Der Aufsatz (oder eine Variante davon) ist frei zugänglich: https://dx.doi.org/10.2139/ssrn.1294787 / https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1294787_code337501.pdf?abstractid=1294787&mirid=1.

10 „The ranks of those who attempted to overturn the 2020 election include a striking number of lawyers, who leveraged their professional bona fides for anti-democratic ends – many, though not all, of whom are now facing disciplinary efforts from their respective state bars.
Of these, Eastman is among the most prominent. He emerged in the weeks and months after November 2020 as a regular media presence promoting claims of election fraud and representing Trump in court. He gave a stemwinder of a speech at the rally on the Mall that preceded the riot. But perhaps his most signifi-

2008 in einem juristischen Aufsatz (*Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, in: 42 *University of Richmond Law Review*, 955 - 968) machte. Er schrieb dort, „subject to the jurisdiction [of the United States]“ bedeute soviel wie „*not* owing allegiance[11] to another sovereign“:

> „mere birth on U.S. soil alone was insufficient to confer citizenship as a matter of constitutional right. Rather, birth, together with being a person subject to the complete and exclusive jurisdiction of the United States (i.e., *not* owing allegiance to another sovereign) was the constitutional mandate“.
> (ebd., S. 957 der gedruckten bzw. S. 4 der digitalen Seitenzählung; s.a. auch 960 bzw. 7 unten bis 962 bzw. 9 unten; Hv. i.O.)

Allerdings steht im 14. Verfassungszusatz gar nicht „complete and exclusive jurisdiction of the United States“, sondern „subject to the jurisdiction [of the United States]“…

Auf S. 561 bzw. 8 seines Aufsatzes bezieht sich Eastman auf die *Supreme Court*-Entscheidung 83 U.S. (16 Wall.) 36 (1873)[12] (*Slaughter-House Cases*). Dort heißt es auf S. 73 der gedruckten bzw. S. 38 der digitalen Seitenzählung:

> „The phrase, ‚subject to its jurisdiction‘ was intended to **exclude** from its operation **children of** ministers, consuls, and **citizens or subjects of foreign States** born within the United States.“ (Hv. hinzugefügt)

Diese Formulierung wurde aber in einer späteren Entscheidung (die gegen die Stimmen zweier dissentierender[13] Richter erging) – als *zuviel* Ausnahmen zulassend – wieder verworfen:

> „This was wholly aside from the question in judgment, and from the course of reasoning bearing upon that question. It was unsupported by any argument, or by any reference to authorities; and that it was not formulated with the same care and exactness, as if the case before the court had called for an exact definition of the phrase, is apparent from its classing foreign ministers and consuls together – whereas it was then well settled law […] that consuls, as such, and unless expressly invested with a diplomatic character in addition to their ordinary powers, are not considered as entrusted with authority to represent their sovereign in his intercourse with foreign States or to vindicate his prerogatives, or 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. […].
> In weighing a remark uttered under such circumstances, it is well to bear in mind the often quoted words of Chief Justice Marshall: ‚It is a maxim not to be disregarded, that

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cant role was as part of the pressure campaign against Vice President Pence to upend the electoral count on Jan. 6, for which he provided a series of legal memos setting out the justification.
This activity earned Eastman attention from a variety of institutions investigating Jan. 6. The California bar first announced that it had filed ethics charges against him in January 2023. In the middle of Eastman’s bar trial, which took place intermittently between June and November of that year, Fulton County District Attorney Fani Willis indicted him – along with Trump and 17 other defendants – for his efforts to overturn the 2020 election. Special Counsel Jack Smith’s federal indictment of Trump over his role in Jan. 6 also treats Eastman as an unindicted co-conspirator.“

11 = Untertanenpflicht, Treue, Ergebenheit (https://de.langenscheidt.com/englisch-deutsch/allegiance); vgl. zur Etymologie: https://www.etymonline.com/word/allegiance und https://www.etymonline.com/word/liege.

12 Vgl. https://www.supremecourt.gov/opinions/datesofdecisions.pdf, S. 110.

13 United States v. Wong Kim Ark, 169 U.S. 649 [1898], S. 705 der gedruckten bzw. 57 der digitalen Seitenzählung bis S. 732 bzw. 84.

> general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.‘ Cohens v. Virginia, (1821) 6 Wheat. 264[14], 399[15].
> […] neither Mr. Justice Miller [der die Begründung der *Slaugther-House*-Entscheidung schrieb], nor any of the justices who took part in the decision of The Slaughterhouse Cases, understood the court to be committed to the view that all children born in the United States of citizens or subjects of foreign States were excluded from the operation of the first sentence of the Fourteenth Amendment, […].“
> (United States v. Wong Kim Ark, 169 U.S. 649 [1898], S. 678 der gedruckten bzw. 30 der digitalen Seitenzählung bis S. 679 bzw. 31)

Durch die Staatsangehörigkeits-Voraussetzung *„subject to the jurisdiction [of the United States]“* seien (abgesehen vom Sonderfall der *native Americans*) ausschließlich *„children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign State“* ausgeschlossen – allein diese unterlägen tatsächlich nicht der *jurisdiction* der Vereinigten Staaten:

> „The real object of the Fourteenth Amendment of the Constitution, in qualifying the words, ‚All persons born in the United States,‘ by the addition, ‚and subject to the jurisdiction thereof,‘ would appear to have been to exclude, by the fewest and fittest words, (besides children of members of the Indian tribes[16], standing in a peculiar relation to the National Government, unknown to the common law,) the two classes of cases – children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign State – both of which, as has already been shown, by the law of England, and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country.“
> (ebd., 682 bzw. 34)

Wie dem auch sei – Eastman zieht in seinem Aufsatz von 2008 die ältere (Slaugther-House-)Entscheidung vor und schreibt über *Justice* Gray, der der Begründung der neueren Entscheidung schrieb, Gray scheine

> „not to have appreciated the distinction between partial, territorial jurisdiction, which subjects all who are present within the territory of a sovereign to the jurisdiction of its laws, and complete, political jurisdiction, which requires as well allegiance to the sovereign“
> (Eastman, a.a.O., S. 963 der gedruckten bzw. S. 10 der digitalen Seitenzählung).

Die Unterscheidung zwischen „complete and exclusive jurisdiction of the United States“ *einerseits* und ‚unvollständiger‘ und ‚nicht-ausschließlicher‘ „jurisdiction of the United States“ *andererseits* scheint für Eastman also eine Unterscheidung zwischen

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14 = 19 U.S. Cohens v. Virginia 264 (https://www.supremecourt.gov/opinions/datesofdecisions.pdf, S. 20): https://tile.loc.gov/storage-services/service/ll/usrep/usrep019/usrep019264/usrep019264.pdf.

15 = S. 136 (bis 400 oben) der Datei.

16 Siehe dazu unten in und bei FN 20.

- „*territorial* jurisdiction, which subjects all who are present within the territory of a sovereign to the jurisdiction of its laws," *andererseits*
  und
- „complete, *political* jurisdiction, which requires as well allegiance to the sovereign" *einerseits* (Hv. jeweils hinzugefügt)

zu sein. Dies zeigt sich ganz deutlich eine Seite weiter, wo Eastman leicht – abweichend formuliert – über Richter Gray schreibt, dieser habe

> „simply failed to appreciate […], that there is a difference between territorial jurisdiction and the more complete, allegiance-obliging jurisdiction that the Fourteenth Amendment codified".

Die Staatsangehörigkeits-Regelung im 14. Verfassungszusatz soll also – nach Eastman –

- nicht nur die „jurisdiction, which subjects all who are present within the territory of a sovereign to the jurisdiction of its laws," meinen,
- sondern irgendeine „more complete, allegiance-obliging jurisdiction".

Das Ganze mündet dann auf der vorletzten Seite des Eastman-Aufsatzes in der These:

> „that only a complete jurisdiction, of the kind that brings with it a total and exclusive allegiance, is sufficient to qualify for the grant of citizenship to which the people of the United States actually consented".

Selbst wenn Eastmans Argumentation grundsätzlich zu akzeptieren *wäre* – wenn es also tatsächlich ein Staatsangehörigkeits-Ausschluß-Kriterium „owing allegiance to another sovereign" (Eastman) / „citizens or subjects of foreign States" (*Slaughter-House*-Entscheidung) gäbe –, dann wäre nicht klar, warum für dieses Kriterium

- der *Aufenthaltsstatus* der Eltern
  und
- nicht vielmehr die *Staatsangehörigkeit* der Eltern

ausschlaggebend sein soll. M.a.W.: Wenn der Ausgangspunkt von Eastman zu akzeptieren *wäre*, dann würde die verfassungsrechtliche Gewährung der Staatsangehörigkeit für noch *viel mehr* Person wegfallen, als es Trump jetzt durchzusetzen versucht. Das heißt: Trumps jetziger Vorstoß ist vielleicht nur ein Versuchsballon, dem – bei erfolgreichem Ballon-Flug – eventuell weitere Einschränkungen der US-Staatsangehörigkeit folgen sollen.

In der Variante, auf den Aufenthaltsstatus abzustellen, gab es (abgesehen von dem akademischen Eastman-Aufsatz von 2008) auch schon 2020 einen politischen Ballon-Test-Flug: Im damaligen Wahlkampf stellte Eastman in einem *Newsweek*-Artikel die Berechtigung von Kamala Harris als Vize-Präsidentin zu kandidieren, in Frage, denn deren Eltern seien bei Harris' Geburt wahrscheinlich ohne dauerhaftem Aufenthaltsstatus in den USA gewesen:

> „Were Harris' parents lawful permanent residents *at the time* of her birth? If so […] she should be deemed a citizen at birth – that is, a natural-born citizen – and hence eligible. Or were they instead, as seems to be the case, merely temporary visitors, perhaps on student visas issued pursuant to Section 101(15)(F) of Title I of the 1952 Immigration Act? If the latter were indeed the case, then derivatively from her parents, Harris was *not* subject to the *complete* jurisdiction of the United States at birth, but instead owed her allegiance to a foreign power or powers – Jamaica, in the case of her father, and

> India, in the case of her mother – and was therefore not entitled to birthright citizenship under the 14th Amendment as originally understood.“
> (https://www.newsweek.com/some-questions-kamala-harris-about-eligibility-opinion-1524483; Hv. hinzugefügt)

Ohne Staatsangehörigkeit *qua* Geburt sei sie aber – gem. 12. Verfassungszusatz und Artikel 2 der US-Verfassung – nicht als Vize-Präsidentin wählbar:

> „The 12th Amendment provides that ‚no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.‘[17] And Article II of the Constitution specifies that ‚[n]o person except a natural born citizen...shall be eligible to the office of President.‘[18]“
> (ebd.)

Story (1779 - 1845) und Miller (1816 - 1890) zum (US-)Staatsangehörigkeitsrecht

c) Wie dem auch sei – in dem Regierungs-Schriftsatz vom 22.01.2025 geht es dann wie folgt weiter:

> „Ample historical evidence shows that the children of non-resident aliens are subject to foreign powers – and, thus, are not subject to the jurisdiction of the United States and are not constitutionally entitled to birthright citizenship. For example, before the adoption of the Fourteenth Amendment, Justice Story wrote: ‚Persons who are born in a country are generally deemed to be citizens and subjects of that country. A reasonable qualification of the rule would seem to be that it should not apply to the children of parents who were *in itinere*[19] in the country, or who were abiding there for temporary purposes, as for health, or occasional business.‘ Joseph Story, Commentaries on the Conflict of Laws § 48, at 48 (1834).“
> (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 12)

Das Zitat sagt nur, daß es eine „reasonable qualification“ wäre – nicht, daß es in dieser Weise 1834 in den USA geregelt war. Das Buch von Story gibt es dort:
https://archive.org/details/commentariesonc17storgoog/page/48/mode/1up
als Digitalisat. Unmittelbar nach den beiden im Regierungs-Schriftsatz zitierten Sätzen schreibt Story: „It would be difficult, however, to assert, that in the present state of public law such a qualification is universally established.“ (ebd.)

d) Sodann setzt die Trump-Regierung folgendermaßen fort:

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17 https://www.govinfo.gov/content/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf, S. 15 der gedruckten bzw. S. 21 der digitalen Seitenzählung (vor der Zwischenüberschrift *„Proposal and Ratification“*) / „Wer […] nach der Verfassung nicht für das Amt des Präsidenten wählbar ist, darf auch nicht in das Amt des Vizepräsidenten der Vereinigten Staaten gewählt werden.“ (https://usa.usembassy.de/etexts/gov/gov-constitutiond.pdf, S. 10 [letzter Satz vor „Zusatzartikel XIII“]).

18 https://www.govinfo.gov/content/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf, S. 7 bzw. 13 (*Section 1 Clause 5*) / https://usa.usembassy.de/etexts/gov/gov-constitutiond.pdf, S. 5: „In das Amt des Präsidenten können nur in den Vereinigten Staaten geborene Bürger oder Personen, die zur Zeit der Annahme dieser Verfassung Bürger der Vereinigten Staaten waren, gewählt werden; […].“

19 = auf der Reise, auf dem Marsch, unterwegs; zu lat. *iter* = Weg, Gang, Reise usw. (http://www.zeno.org/nid/20002461439) zu lat. *eo* = ich gehe; lat. *īre* = gehen (http://www.zeno.org/nid/20002362937).

> „And after the adoption of the Amendment, Justice Miller wrote: ‚If a stranger or traveller passing through, or temporarily residing in this country, who has not himself been naturalized, and who claims to owe no allegiance to our Government, has a child born here which goes out of the country with its father, such a child is not a citizen of the United States, because it was not subject to its jurisdiction.‘ Samuel F. Miller, Lectures on Constitutional Law 279 (1891).“
> (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 12)

Auch dieses Buch gibt es online: https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t73t9kd4p&seq=307; aber auch dieses Zitat belegt nicht das, was die Trump-Regierung belegen möchte: „child born here *which goes out of the country* with its father“ ist ein anderer Fall als der Fall „das Kind bleibt mit seinen Eltern (wenn auch illegal) im Land“.

Die Supreme Court-*Entscheidungen* *Elk v. Wilkins* *sowie* *Cherokee Nation v. Georgia*

e) Es folgt dann in dem Schriftsatz der Trump-Regierung ein weiteres *Supreme Court*-Zitat:

> „The Supreme Court’s decision in Elk v. Wilkins, 112 U.S. 94 (1884), confirms that the children of non-resident aliens lack a constitutional birthright to citizenship. In Elk, the Court held that, because members of Indian tribes owe ‚immediate allegiance‘ to their tribes, they are not ‚subject to the jurisdiction‘ of the United States and are not constitutionally entitled to citizenship. Id. at 102. Indian tribes occupy an intermediate position between foreign States and U.S. States. See Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831) (Marshall, C.J.) (describing Indian tribes as ‚domestic dependent nations‘). The United States’ connection with the children of illegal aliens and temporary visitors is weaker than its connection with members of Indian tribes. If the latter link is insufficient for birthright citizenship, the former certainly is.“
> (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 12 f., Hyperlinks hinzugefügt)

Dem mag so sein, was die „Indian tribes“ (*native Americans*) anbelangt, aber es taugt auch nicht als Einwand gegen die Position der vier Bundesstaaten, die sich gegen Trumps *Executive Order* wenden. Denn auch die Bundesstaaten gestehen zu:

> „The Plaintiff States note that despite the original understanding for purposes of the Fourteenth Amendment that children born to tribal members are not subject to the United States’ jurisdiction at birth, it is well established under a federal statute passed in 1924 that such children are granted U.S. citizenship at birth. See 8 U.S.C. § 1401[20](b).“

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20 Die Norm bestimmt:
„The following shall be nationals and citizens of the United States at birth:
(a) a person born in the United States, and subject to the jurisdiction thereof;
(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;
(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;
(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a na-

(http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.10.0_1.pdf, S. 10 bzw. 16, FN 2)

Es ist also unumstritten, daß die Staatsangehörigkeit *insoweit* nicht im 14. Verfassungszusatz, sondern einfach-gesetzlich (siehe FN 20) geregelt ist. Dies scheint – was den 14. Verfassungszusatz anbelangt – nun in der Tat an die Formulierung „Indians not taxed“ im *Civil Rights Act* anzuknüpfen. Aber illegal eingereiste MigrantInnen unterliegen *sehr wohl* der Steuerpflicht. Jedenfalls unter diesem Gesichtspunkt ist die Behauptung der Trump-Regierung, *„The United States' connection with the children of illegal aliens and temporary visitors is weaker than its connection with members of Indian tribes“*, nicht plausibel.

Die Supreme Court-*Entscheidung United States v. Wong Kim Ark*

f) Schließlich der letzte Absatz zu den *merits* in dem Regierungs-Schriftsatz:

> „Plaintiffs rely[21] on the Supreme Court's decision in United States v. Wong Kim Ark, 169 U.S. 649 (1898), but they overread that case. Wong Kim Ark involved a person who was born in the United States to alien parents who, at the time of the child's birth, ‚enjoy[ed] a permanent domicile and residence‘ in the United States. Id. at 652. The Court explained that the ‚question presented‘ concerned the citizenship of ‚a child born in the

tional, but not a citizen of the United States;
(e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;
(f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;
(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 288 of title 22, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and
(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.“
(https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title8-section1401&num=0&edition=prelim)

21 Im Antrag der Bundesstaaten hieß es: „This understanding of the Citizenship Clause is cemented by controlling U.S. Supreme Court precedent which, more than 125 years ago, confirmed that the Fourteenth Amendment guarantees citizenship to the children of immigrants born in the United States. United States v. Wong Kim Ark, 169 U.S. 649, 654 (1898). As the Supreme Court explained: ‚*Every citizen or subject of another country*, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.” Id. at 693 (emphasis added). […]. Consequently, the Court held that a child born in San Francisco to Chinese citizens was an American citizen by birthright. Id. at 704. In reaching this conclusion, the Court reasoned that the Fourteenth Amendment ‚affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here *born of resident aliens*.‘ Id. at 693 (emphasis added).“ (https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.10.0_1.pdf, S. 12 [der gedruckten Seitenzählung bzw. 18 [der digitalen Seitenzählung]; Hyperlink hinzugefügt)

United States‘ to alien parents who ‚have a permanent domicile and residence in the United States.‘ Id. at 653. Answering that question, the Court held that ‚a child born in the United States‘ to alien parents who ‚have a permanent domicile and residence in the United States‘ ‚becomes at the time of his birth a citizen of the United States.‘ Id. at 705. Despite some broadly worded dicta[22], the Court's opinion thus leaves no serious doubt that its actual holding concerned only children of permanent residents. The EO is fully consistent with that holding. See, e.g., Citizenship EO § 2(c) (‚Nothing in this order shall be construed to affect the entitlement of other individuals, *including children of lawful permanent residents*, to obtain documentation of their United States citizenship.‘ (emphasis added)).“
(http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 13 f.; Hyperlinks hinzugefügt)

8. Die vier antragstellenden Bundesstaaten hatten keine Gelegenheit vor Erlaß der TRO auf den Regierungs-Schriftsatz zu antworten; auch der Richter hielt sich nicht mit den Regierungs-Argumenten auf, sondern schrieb – *ohne* auf den Regierungsvorwurf einzugehen, die antragstellenden Staaten würden die Entscheidung United States v. Wong Kim Ark überdehnt interpretieren, bloße Folgendes zu den Erfolgsaussichten in der Hauptsache:

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1 relief; (3) the balance of equities tips in the Plaintiffs' favor; and (4) an injunction is in the public
2 interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); Fed. R. Civ. P. 65(b)(1).
3 6. There is a strong likelihood that Plaintiffs will succeed on the merits of their claims
4 that the Executive Order violates the Fourteenth Amendment and Immigration and Nationality
5 Act. *See United States v. Wong Kim Ark*, 169 U.S. 649, 694–99 (1898); *Regan v. King*, 49 F. Supp.
6 222, 223 (N.D. Cal. 1942), *aff'd*, 134 F.2d 413 (9th Cir. 1943), *cert denied*, 319 U.S. 753 (1943);
7 *see also Gee v. United States*, 49 F. 146, 148 (9th Cir. 1892).

Schaubild 2: http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.43.0_3.pdf, S. 3

Die von dem Richter – außer United States v. Wong Kim Ark – genannten vier Entscheidungen finden sich dort:

- Regan v. King, 49 F. Supp. 222 (N.D. Cal. 1942): https://www.courtlistener.com/opinion/1465947/regan-v-king/
- Regan v. King, 134 F.2d 413 (9th Cir. 1943): https://www.courtlistener.com/opinion/6988159/regan-v-king/[23]
  und

22 Lat. *obiter dicta* (Plural; obiter dictum [Singular]) = nebenbei Gesagtes; Äußerungen eines Gerichts in einer Entscheidung, die über die Beantwortung der Frage, die es zu entscheiden hat, hinausgeht. Vgl. https://www.law.cornell.edu/wex/obiter_dicta und https://jurawelt.com/rechtslexikon/o/obiter-dictum-vs-ratio-decidendi-bedeutung/.

- Regan v. King, Registar. May 17, 1943: https://tile.loc.gov/storage-services/service/ll/usrep/usrep319/usrep319decisionsdenying/usrep319decisionsdenying.pdf (S. 753 der gedruckten Seitenzählung ist S. 14 der Datei; siehe dort Nr. 986)
sowie
- Gee Fook Sing v. United States, 49 F. 146 (9th Cir. 1892): https://www.courtlistener.com/opinion/8857927/gee-fook-sing-v-united-states/.
In der zuletzt genannten Entscheidung heißt es:
„laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens, under the laws providing for the naturalization of aliens“ – und zwar sind solche Gesetze *deshalb* „inapplicable to a person born in“ den Vereinigten Staaten, weil eine Person, die in den USA geboren ist und deren *jurisdiction* unterliegt, – nach US-Recht – nicht chinesisch, sondern us-amerikanisch ist.

9. Bis Montag (27.01.2024) hatten die vier Bundesstaaten Gelegenheit, ihren Antrag zu begründen, die *Executive Order* auch nach Ablauf der o.g. 14 Tage-Frist (siehe Nr. 5) nicht in Kraft zu setzen (*Motion for Preliminary Injunction*).

Auch dort gehen die vier Bundesstaaten *nicht* auf die Quellen ein, auf die sich die Trump-Regierung beruft; vielmehr wiederholen sie – was die *merits* anbelangt – ihren TRO-Antrag fast wörtlich (siehe den Anhang). Das mag auf der Grundlage der Auffassung der vier Staaten, daß das *„Birthright Citizenship […] a Cornerstone of American Constitutional and Statutory Law“* ist, der *„Beyond Serious Dispute“* ist, konsequent sein. Daß das eine dauerhaft tragfähige (Prozeß-)Strategie ist, erscheint mir aber eher fraglich.

Die nächsten Verfahrensschritte

10. Wie dem auch sei – auch eine *Preliminary Injunction* wird – wie deren Name schon sagt – nicht die Hauptsache-Entscheidung des Gerichts erster Instanz, sondern bloß eine weitere vorläufige Entscheidung sein, die dann aber für länger als 14 Tage gilt.

11. Zu der beantragten *Preliminary Injunction* wird am Donnerstag, den 06.02.2025 eine mündliche Verhandlung stattfinden. Da dies genau 14 Tage nach Erlaß der TRO ist, dürfte mit einer schnellen Entscheidung des Richters zu rechnen sein.

Vorher hat die Trump-Regierung bis Freitag dieser Woche Zeit, auf den jetzigen *Preliminary Injunction*-Antrag der Bundesstaaten zu antworten; die vier Bundesstaaten haben dann bis Dienstag für eine Rückantwort Zeit (https://www.courtlistener.com/docket/69561931/state-of-washington-v-trump/#entry-44).

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23 Siehe aus den beiden vorgenannten Entscheidungen die bereits in meinen taz-Blogs-Artikel vom 24.01.2025 angeführten Zitate [siehe Abschnitt VI. 2. a) und b)].

12. Bis zur Hauptsache-Entscheidung des Gerichts erster Instanz wird es noch lange dauern – dafür hat das Gericht den Beteiligten erst einmal Folgendes aufgegeben:

> „All counsel and any pro se parties are directed to meet and confer and to provide the Court with a combined **Joint Status Report** (the Report) by the deadline set below. […]. If the parties are unable to agree on any part of the Report, they may answer in separate paragraphs; no separate reports are to be filed. In addition to the requirements articulated in FRCP[24] 26(f)(3), the Report must contain the following information: 1. An estimate of the number of days needed for trial; 2. **The date by which the case will be ready for trial**; and 3. Whether the parties intend to mediate per LCR[25] 39.1 and, if so, when the parties expect to complete mediation. The deadlines below may be extended only by court order. […]. The parties who have appeared in this matter must meet and confer before contacting the Court to request an extension. If this case involves claims that are exempt from the requirements of FRCP 26(a) and 26(f), please notify the Courtroom Deputy Clerk. Please note: Initial Disclosures are not to be filed. FRCP 26(f) Conference Deadline is 3/6/2025, Initial Disclosure Deadline is 3/13/2025, **Joint Status Report due by 3/20/2025**.“
> (https://www.courtlistener.com/docket/69561931/state-of-washington-v-trump/#entry-46)

Weitere Verfahren in gleicher Sache

11. Wegen Trumps *Executive Order* sind beim selben Gericht sowie weiteren Gerichten weitere Verfahren anhängig –

District Court *für den* Western District *des Bundesstaates Washington*

- (mindestens) eines beim selben Gericht; dieses Verfahren [Franco Aleman v. Trump (2:25-cv-00163)[26]] wurde am Montag mit dem Verfahren der vier Bundesstaaten verbunden; den Beteiligten[27] wurde folgendes aufgegeben:

  > „In light of the temporary relief already provided to the Plaintiff States, see C25-0127-JCC, Dkt. No. 43, and the pendency of a preliminary injunction hearing, scheduled for 2/6/2025, see C25-0127-JCC, Dkt. No. 44, the Court sets the following supplemental

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24 = *Federal Rules of Civil Procedure*.
Rule 26 gibt es dort: https://www.federalrulesofcivilprocedure.org/frcp/title-v-disclosures-and-discovery/rule-26-duty-to-disclose-general-provisions-governing-discovery/.

25 = *Local Civil Rules*.
Rule 39.1 gibt es dort: https://www.wawd.uscourts.gov/sites/wawd/files/042624%20WAWD%20Local%20Civil%20Rules%20-%20Clean.pdf, S. 67 (gedruckte Seitenzählung) bzw. 73 (digitale Seitenzählung) bis S. 75 bzw. 81.

26 Der 23-seitige verfahrenseinleitende Schriftsatz (*complaint*): https://storage.courtlistener.com/recap/gov.uscourts.wawd.344093/gov.uscourts.wawd.344093.1.0.pdf.

27 Das – mit dem von vier Bundesstaaten angestrengte Verfahren – verbundene Verfahren wurde von drei – namentlich auftretenden und durch AnwältInnen des *Northwest Immigrant Rights Project* vertretenen – Schwangeren ohne dauerhaften Aufenthaltsstatus angestrengt: „Plaintiff Delmy Franco Aleman is a noncitizen from El Salvador. She has withholding of removal. She is pregnant, and her due date is March 26, 2025. Plaintiff Cherly Norales Castillo is a noncitizen from Honduras. She is in removal proceedings and has filed an application for asylum before the immigration court. She is pregnant, and her due date is March 19, 2025. Plaintiff Alicia Chavarria Lopez is a noncitizen from El Salvador. She has filed an application for asylum before United States Citizenship and Immigration Services (USCIS). She is pregnant, and her due date is July 21, 2025.“ (https://storage.courtlistener.com/recap/gov.uscourts.wawd.344093/

deadlines: The Individual Plaintiffs may supplement the Plaintiff States' anticipated motion for a preliminary injunction, no later than 1/29/2025. The Individual Plaintiffs may file a supplemental reply to the Government's anticipated response (due 1/31/2025) on or before 2/4/2025. The Individual Plaintiffs shall appear at the preliminary injunction hearing set for 10:00 a.m. on 2/6/2025. The Plaintiff States and the Individual Plaintiffs are ORDERED to file a consolidated complaint no later than 2/10/2025.“ (https://www.courtlistener.com/docket/69561931/state-of-washington-v-trump/#entry-56; Hyperlinks hinzugefügt; die Ergänzung zu der *„motion for a preliminary injunction“* der Bundesstaaten ist gestern fristgemäß eingereicht worden: https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.74.0_1.pdf; um die Erfolgsaussichten in der Hauptsache geht es dort auf S. 8 unten bis 19; dazu vielleicht demnächst in einem weiteren Artikel)

und

District Court *Massachusetts*

- drei Verfahren vor dem *District Court* Massachusetts
  - State of New Jersey v. Trump (1:25-cv-10139)[28] (ein Verfahren das weitere 18 Bundesstaaten anstrengten[29])
  - Doe v. Trump (1:25-cv-1013**5**)[30] („Plaintiff O. Doe” ist eine anonyme Schwangere, „whose baby is due in March 2025“; auf deren Seite sind außerdem am Verfahren beteiligt: das *Brazilian Worker Center*, eine „non-profit corporation […] with a mission to empower immigrants and promote economic and social justice“, und *La Colaborativa*, eine „non-profit corporation […] with a mission to enhance the social, environmental, and economic health of the Chelsea community and its people. La Colaborativa represents a community largely composed on Latinx immigrants, including undocumented individuals and members of mixed-status families“[31])

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gov.uscourts.wawd.344093.1.0.pdf, S. 5 [Absatz 14 bis 16])

28 Der 50-seitige verfahrenseinleitende Schriftsatz (*complaint*): https://storage.courtlistener.com/recap/gov.uscourts.mad.279895/gov.uscourts.mad.279895.1.0_1.pdf. Die 8-seitige *Motion for Preliminary Injunction*: https://storage.courtlistener.com/recap/gov.uscourts.mad.279895/gov.uscourts.mad.279895.3.0_1.pdf. Das 31-seitige *Memorandum in Support re 3 MOTION for Preliminary Injunction*: https://storage.courtlistener.com/recap/gov.uscourts.mad.279895/gov.uscourts.mad.279895.5.0_2.pdf.

29 Da es insgesamt aber 23 Bundesstaaten mit demokratischen *governors* gibt, scheint sich einer dieser 23 Staaten nicht an dem juristischen Vorgehen gegen die *Executive Order* beteiligt zu haben. Auch zur Frage, warum überhaupt zwei verschiedene Verfahren von den Bundesstaaten angestrengt wurden, habe ich noch nichts gelesen – Vermutung ins Blaue hinein: vielleicht, weil angestrebt wird, verschiedene *Appeal Courts* mit der Angelegenheit zu befassen.

30 Der 22-seitige verfahrenseinleitende Schriftsatz (*complaint*): https://storage.courtlistener.com/recap/gov.uscourts.mad.279876/gov.uscourts.mad.279876.1.0_3.pdf. Das 25-seitige *Memorandum in Support re 10 MOTION for Preliminary Injunction*: https://storage.courtlistener.com/recap/gov.uscourts.mad.279876/gov.uscourts.mad.279876.11.0_1.pdf.

31 https://storage.courtlistener.com/recap/gov.uscourts.mad.279876/gov.uscourts.mad.279876.1.0_3.pdf, S. 4 f.

- ◦ Doe v. Trump (1:25-cv-10136)[32] (beteiligt sind ebenfalls eine anonyme Schwangere und die beiden vorgenannten NGO)

sowie

District Court *New Hampshire*

- eines vor dem *District Court* New Hampshire

  - ◦ New Hampshire Indonesian Community Support v. Trump (1:25-cv-00038)[33] (außer der vorgenannten NHICS sind an dem Verfahren die *League of United Latin American Citizens*, eine „nationwide, non-profit, non-partisan, membership-based organization founded in 1929. LULAC's mission is to improve the lives of Latino families throughout the United States and to protect their civil rights in all aspects", und *Make the Road New York*, eine „nonprofit, membership-based community organization with five offices in the New York area. MRNY's mission is to build the power of immigrant and working class communities to achieve dignity and justice"[34]; sie werden von der *American Civil Liberties Union* [ACLU] unterstützt)

und

District Court *Maryland*

- eines vor dem *District Court* Maryland

  - ◦ Casa Inc. v. Trump (8:25-cv-00201)[35] (*Casa Inc.* „is a nonprofit membership organization" mit der „mission […] to create a more just society by building power and improving the quality of life in working-class Black, Latino/a/e, Afro-descendent, Indigenous, and immigrant communities"; auf der gleichen Seite des Verfahrens sind beteiligt: mehrere – nur mit Vornamen benannte – schwangere *Casa*-Mitglieder sowie das *Asylum Seeker Advocacy Project* eine „nonprofit organization" mit der „mission […] to help its members – individuals seeking asy-

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32 Der 27-seitige verfahrenseinleitende Schriftsatz (*complaint*): https://storage.courtlistener.com/recap/gov.uscourts.mad.279877/gov.uscourts.mad.279877.1.0.pdf.

33 Der 17-seitige verfahrenseinleitende Schriftsatz (*complaint*): https://storage.courtlistener.com/recap/gov.uscourts.nhd.64907/gov.uscourts.nhd.64907.1.0_2.pdf.
Der 2-seitige Antrag für eine *Preliminary Injunction* mit 18-seitigem *Memorandum of Law*: https://storage.courtlistener.com/recap/gov.uscourts.nhd.64907/gov.uscourts.nhd.64907.24.0.pdf und https://storage.courtlistener.com/recap/gov.uscourts.nhd.64907/gov.uscourts.nhd.64907.24.1_1.pdf.

34 https://storage.courtlistener.com/recap/gov.uscourts.nhd.64907/gov.uscourts.nhd.64907.1.0_2.pdf, S. 3 f.

35 Der 38-seitige verfahrenseinleitende Schriftsatz (*complaint*): https://storage.courtlistener.com/recap/gov.uscourts.mdd.574698/gov.uscourts.mdd.574698.1.0.pdf.
Die 3-seitige *Motion for Temporary Restraining Order* mit *Memorandum in Support Brief in Support*: https://storage.courtlistener.com/recap/gov.uscourts.mdd.574698/gov.uscourts.mdd.574698.2.0_1.pdf und https://storage.courtlistener.com/recap/gov.uscourts.mdd.574698/gov.uscourts.mdd.574698.2.1_1.pdf.

lum – to build a more welcoming United States“ und mehrere – ebenfalls nur mit Vornamen benannte – schwangere ASAP-Mitglieder[36]).

In den beiden von Bundesstaaten angestrengten Verfahren wurden am Dienstag – knapp 30-Seiten lange, vermutliche inhaltsgleiche – *Briefs of Amici Curiae*[37] von „local governments and local government officials representing 72 jurisdictions across 24 states“ eingereicht (Massachusetts; Washington) und Mittwoch von den Gerichten zugelassen (Massachusetts; Washington).

Es kann sein, daß es weitere Verfahren zu Trumps *Executive Order* gibt, die mir entgangen sind.

Appeal Court-*Zuständigkeiten für die zweite Instanz*

12. Für die Verfahren in Massachusetts und New Hampshire wird als zweite Instanz der US-*Appeal Court* für den ersten US-Gerichtskreis zuständig sein; für das Verfahren in Maryland der *Appeal Court* des vierten Kreises und für die beiden verbundenen Verfahren im Bundesstaat Washington der *Appeal Court* des neunten Kreises.

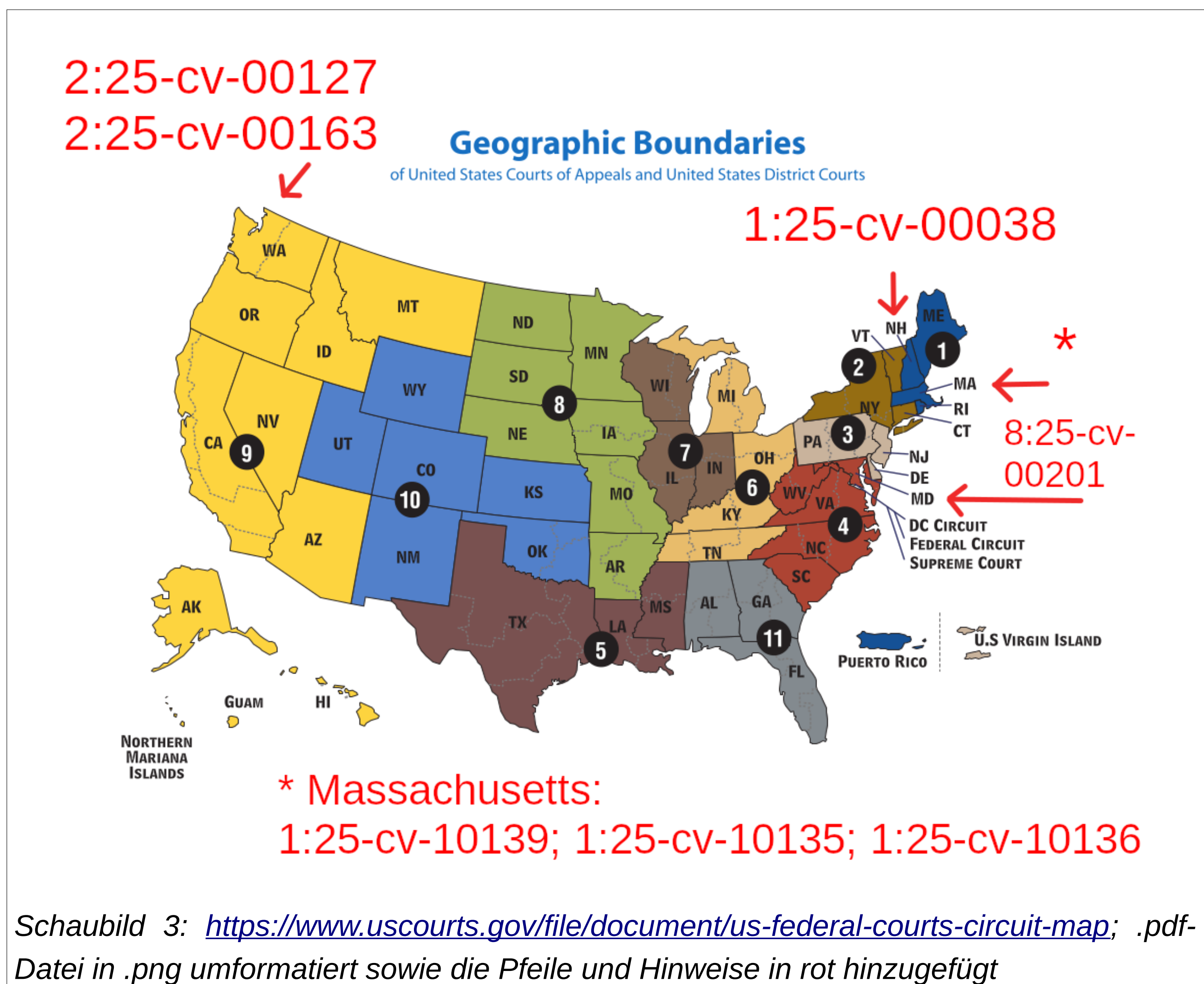

Schaubild 3: https://www.uscourts.gov/file/document/us-federal-courts-circuit-map; .pdf-Datei in .png umformatiert sowie die Pfeile und Hinweise in rot hinzugefügt

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36 https://storage.courtlistener.com/recap/gov.uscourts.mdd.574698/gov.uscourts.mdd.574698.1.0.pdf, S. 8 - 18.

37 wörtlich: *Freunde des Gerichts*.

Die wichtigsten Informationen

13. a) Am ersten Tag seiner zweiten Amtszeit erließ US-Präsident Trump eine *Executive Order*, die die Interpretation der Staatsangehörigkeits-Regelung in der US-Verfassung deutlich einengt.

b) Diese Verfassungsnorm lautet: „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."

c) Umstritten ist vor allem die Auslegung der Formulierung „subject to the jurisdiction thereof".

d) Deshalb sind inzwischen vor mehreren Bundesgerichten Verfahren anhängig – zwei wurden von insgesamt 22 US-Bundesstaaten angestrengt; die anderen von Schwangeren ohne dauerhaftem Aufenthaltsstatus sowie BürgerInnenrechts-/MigrantInnen-Organisationen.

e) Die Trump-Regierung ist der Ansicht, die Formulierung „subject to the jurisdiction [of the United States]" sei

- gleichbedeutend mit der Formulierung „*not subject to any foreign power*"
  und
- diese Formulierung schließe wiederum jedenfalls <u>Kinder ohne zumindest einem Elternteil mit amerikanischer Staatsangehörigkeit oder zumindest mit dauerhaftem Aufenthaltsstatus</u> von der – in der Verfassung geregelten – Staatsangehörigkeit *qua* Geburt aus (darüber hinausgehende Einbürgerungen sind einfach-gesetzlich geregelt).

Die Gegenseite ist der Auffassung, die einzigen von der Verfassungsregelung ausgeschlossenen Personen seien „those who are not in fact subject to the jurisdiction of the United States at birth – the children of diplomats covered by diplomatic immunity and children born to foreign armies at war against the United States while on United States soil."

f) Bereits vergangene Woche hatte ein Bundesrichter die Trump-Verordnung zunächst bis zum Donnerstag der kommenden Woche auf Eis gelegt (*temporary restraining order*). An besagtem kommenden Donnerstag wird mündlich über eine nunmehr beantragte *Preliminary Injunction* verhandelt, die dann nicht befristet, aber auch nur vorläufig sein wird.

g) Bis zur Hauptsache-Entscheidung des Gerichts erster Instanz wird es noch lange dauern; diesbezüglich hat der Richter den Beteiligten erst einmal nur aufgegeben, sich bis zum 20.03.2024 auf einen „Joint Status Report" zu verständigen.

h) Die *Executive Order* kommt nicht aus heiterem Himmel: Zwar ist die Auffassung, daß es für die Staatsangehörigkeit *qua* Geburt nicht auf den Aufenthaltsstatus (oder die Staatsange-

hörigkeit) der Eltern ankomme, seit langem herrschende juristische Meinung und Staatspraxis. Aber die *herrschende* Meinung ist *nicht* die *allgemeine* und der US-*Supreme Court* hatte im 19. Jahrhundert auch schon mal anders entschieden, als es später die herrschende Meinung wurde: „The phrase, ‚subject to its jurisdiction‘ was intended to **exclude** from its operation **children of** ministers, consuls, and **citizens or subjects of foreign States** born within the United States." (83 U.S. 36 [1873], S. 73 der gedruckten bzw. S. 38 der digitalen Seitenzählung; Hv. hinzugefügt)

i) 25 Jahre später hieß es dann in einer anderen *Supreme Court*-Entscheidung u.a.:

> „The real object of the Fourteenth Amendment of the Constitution, in qualifying the words, ‚All persons born in the United States,‘ by the addition, ‚and subject to the jurisdiction thereof,‘ would appear to have been to exclude, by the fewest and fittest words, ([…][38]) the two classes of cases – children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign State – both of which, as has already been shown, by the law of England, and by our own law, from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country."
> (United States v. Wong Kim Ark, 169 U.S. 649 [1898], S. 682 der gedruckten bzw. 34 der digitalen Seitenzählung)

j) Auch diese Entscheidung betraf aber *nicht* den Fall eines Kindes von Eltern mit ungesichertem Aufenthaltsstatus, sondern mit gesichertem Status. Darauf beruft sich die Trump-Regierung jetzt: „Despite some broadly worded dicta[39], the Court's opinion thus leaves no serious doubt that its actual holding concerned only children of permanent residents. The EO is fully consistent with that holding. See, e.g., Citizenship EO § 2(c) (‚Nothing in this order shall be construed to affect the entitlement of other individuals, *including children of lawful permanent residents*, to obtain documentation of their United States citizenship.' (emphasis added))." (http://blogs.taz.de/theorie-praxis/files/2025/01/gov.uscourts.wawd_.343943.36.0_1.pdf, S. 13 f.; Hyperlink hinzugefügt)

k) Vorlage für die Argumentation scheint ein Aufsatz des US-Juristen John C. Eastman, dessen „legal memos proved central to Donald Trump's effort to illegally hold on to power following the 2020 election" (*Lawfare* vom 04.04.2024), aus dem Jahre 2008 zu sein:

Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11, in: 42 *University of Richmond Law Review*, 955 - 968.

Der Aufsatz endet mit der These,

> „that only a complete jurisdiction, of the kind that brings with it a total and exclusive allegiance, is sufficient to qualify for the grant of citizenship to which the people of the United States actually consented".

38 Siehe dazu unten in und bei FN 20.

39 Siehe FN 22.

Das heißt: Trumps jetziger Vorstoß ist vielleicht nur ein Versuchsballon, dem – bei erfolgreichem Ballon-Flug – eventuell weitere Einschränkungen der US-Staatsangehörigkeit folgen sollen.

l) Für deutschen Anti-Amerikanismus besteht aber kein Anlaß. Denn Artikel 116 Absatz 1 Grundgesetz lautet immer noch: „Deutscher im Sinne dieses Grundgesetzes ist vorbehaltlich anderweitiger gesetzlicher Regelung, wer die deutsche Staatsangehörigkeit besitzt oder als Flüchtling oder Vertriebener deutscher Volkszugehörigkeit oder als dessen Ehegatte oder Abkömmling in dem Gebiete des Deutschen Reiches nach dem Stande vom 31. Dezember 1937 Aufnahme gefunden hat.“
Auch einfach-gesetzlich setzt der Erhalt der BRD-Staatsangehörigkeit durch Geburt im Inland (die BRD-Staatsangehörigkeit eines Elternteils [dann genügt auch Geburt im Ausland] oder) einen rechtmäßigen Aufenthalt *seit mindestens fünf Jahren* voraus (§ 4 Absatz 3 Satz 1 Nr. 1 Staatsangehörigkeitsgesetz).
Verglichen mit Artikel 116 Absatz 1 Grundgesetz ist also Trumps Interpretation der US-Verfassung geradezu inklusiv; und verglichen mit dem BRD-Staatsangehörigkeitsgesetz etwas inklusiver (Trump: rechtmäßiger – nicht nur besuchsweise – Aufenthalt *beliebiger Dauer*; BRD: *mindestens fünf Jahre* rechtmäßiger Aufenthalt).

Anhang:
Die Anträge von Washington, Arizona, Illinois und Oregon vom 21. und 27.01.2025

Die Hyperlinks und die Fußnoten (soweit nicht im Einzelfall anders angegeben) sind im folgenden von mir hinzugefügt.

Der TRO-Antrag vom 21.01.2025 Abschnitt B.	**Der *Preliminary Injunction*-Antrag vom 27.01.2025** Abschnitt B.
B. The Plaintiff States’ Claims Are Likely to Succeed on the Merits Because Birthright Citizenship Is a Cornerstone of American Constitutional and Statutory Law That Is Beyond Serious Dispute	B. The Plaintiff States’ Claims Are Likely to Succeed on the Merits Because Birthright Citizenship Is a Cornerstone of American Constitutional and Statutory Law That is Beyond Serious Dispute
The Plaintiff States will succeed on the merits because the Citizenship Stripping Order unlawfully attempts to rob individuals born in the United States of their constitutionally conferred citizenship. A wall of Supreme Court, Ninth Circuit, and Executive Branch authority	The Plaintiff States will succeed on the merits because the Citizenship Stripping Order unlawfully attempts to rob individuals born in the United States of their constitutionally conferred and statutorily protected citizenship. A wall of Supreme Court, Ninth Circuit, and Executive Branch authorities, as well as the

all make clear that children born in the United States in the coming weeks are citizens—just like all children born in the United States for more than 150 years.	INA[40], make clear that children born in the United States in the coming weeks are citizens—just like all children born in the United States for more than 150 years. The Court recognized this in issuing a TRO and should do so again by issuing a preliminary injunction.
1.[41] Birthright Citizenship Is Enshrined in the Constitution and Federal Statute	1.[42] Birthright Citizenship Is Enshrined in the Constitution
The Citizenship Stripping Order is unlawful because its limited view of birthright citizenship is contrary to the Fourteenth Amendment's text and history, century-old Supreme Court precedent, and longstanding Executive Branch interpretation, as well as the Immigration and Nationality Act (INA). Section 1 of the Fourteenth Amendment to the Constitution states: "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." U.S. Const. amend. XIV, § 1. This provision is known as the Citizenship Clause, and it contains no exceptions for children born to non-citizens or undocumented immigrants. Likewise, the INA faithfully tracks the Citizenship Clause's language, stating: "The following shall be nationals and citizens of the United States at birth:[] a person born in the United States, and subject to the jurisdiction thereof[.]" 8 U.S.C. § 1401[45](a). Any violations of the Citizenship Clause likewise violate the INA	The meaning of the Fourteenth Amendment begins with the text. As the Supreme Court has explained, "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." District of Columbia v. Heller, 554 U.S. 570[43], 576[44] (2008). The text is expressly broad: "*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." U.S. Const. amend. XIV, § 1 (emphasis added). The Citizenship Clause contains no exceptions based on the citizenship, immigration status, or country of origin of one's parents. Rather, its only requirements are that an individual be born "in the United States" and "subject to the jurisdiction thereof."

40 = *Immigration and Nationality Act*.

41 Es gibt in dem Schriftsatz in Abschnitt B. keine 2. Unterabschnitt.

42 Es gibt auch in diesem Schriftsatz in Abschnitt B. keine 2. Unterabschnitt.

43 https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554570/usrep554570.pdf.

44 = S. 7 der vorgenannten Datei.

45 Siehe oben FN 20.

because Congress adopted identical language.	
The meaning of the Fourteenth Amendment begins with the text. As the Supreme Court has explained, "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." District of Columbia v. Heller, 554 U.S. 570, 576[46] (2008). And the text is expressly broad: "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." U.S. Const. amend. XIV, § 1 (emphasis added). The Citizenship Clause contains no exceptions based on the citizenship, immigration status, or country of origin. Rather, the Citizenship Clause's only requirements are that an individual be born "in the United States" and "subject to the jurisdiction thereof."	
The only individuals excluded are those who are not in fact subject to the jurisdiction of the United States at birth—the children of diplomats covered by diplomatic immunity and children born to foreign armies at war against the United States while on United States soil.[47] Not excepted are children born in the United States, even if their parents are undocumented. They must comply with U.S. law; so too must their parents. Undocumented immigrants pay taxes, must register for the Selective Service, and must otherwise follow—	The only U.S.-born individuals excluded are those who are not subject to the jurisdiction of United States' law at birth—the children of diplomats covered by diplomatic immunity and children born to foreign armies at war against the United States on U.S. soil. Not excepted are children born in the United States, even if their parents are undocumented or here lawfully but on a temporary basis. They must comply with U.S. law; so too must their parents. Undocumented immigrants pay taxes, must register for the Selective Service, and must otherwise follow—

46 Siehe FN 43 und 44.

47 „The Plaintiff States note that despite the original understanding for purposes of the Fourteenth Amendment that children born to tribal members are not subject to the United States' jurisdiction at birth, it is well established under a federal statute passed in 1924 that such children are granted U.S. citizenship at birth. See 8 U.S.C. § 1401(b)." (FN im Original)

and are protected by—the law just like anyone else within the United States' territorial sweep. See, e.g., Plyler v. Doe, 457 U.S. 202, 211 (1982) („That a person's initial entry into a State, or into the United States, was unlawful ... cannot negate the simple fact of his presence within the State's territorial perimeter. Given such presence, he is subject to the full range of obligations imposed by the State's civil and criminal laws.'[48]); Sagana v. Tenorio, 384 F.3d 731, 740 (9th Cir. 2004) ("Aliens who are in the jurisdiction of the United States under any status, even as illegal entrants or under a legal fiction, are entitled to the protections of the Fourteenth Amendment.").	and are protected by—federal and state law just like anyone else within the United States' territorial sweep. See Plyler v. Doe, 457 U.S. 202, 211 (1982) ("That a person's initial entry into a State, or into the United States, was unlawful ... cannot negate the simple fact of his presence within the State's territorial perimeter. Given such presence, he is subject to the full range of obligations imposed by the State's civil and criminal laws."[49]). Indeed, it is absurd to suggest that undocumented immigrants are somehow not subject to the jurisdiction of the United States. They may be arrested and deported precisely because they are subject to the jurisdiction of the United States.
The history of the Citizenship Clause confirms this longstanding, recognized meaning of its plain language. Birthright citizenship stems from English common law's principle of jus soli—citizenship determined by birthplace. See Michael H. LeRoy, The Labor Origins of Birthright Citizenship, 37 Hofstra Lab. & Emp. L.J.[50] 39, 66–67[51] (2019). The American colonies accepted and relied on that common law principle until Dred Scott denied citizenship to descendants of enslaved individuals in 1857. See id. at 74; Dred Scott, 60 U.S. at 417-18.	The history of the Citizenship Clause confirms this longstanding, well-recognized meaning of its plain language. Birthright citizenship stems from English common law's principle of jus soli—citizenship determined by birthplace. James C. Ho, Defining "American" Birthright Citizenship and the Original Understanding of the 14th Amendment, 9 Green Bag 367, 369[52] (2006).

48 Das Zitat ist nicht auf S. 211, sondern auf S. 215 der gedruckten Seitenzählung (= S. 14 der Datei).

49 Siehe FN 48.

50 = *Hofstra Labor & Employment Law Journal*.

In response to Dred Scott and the Civil War, Congress and the States adopted the Fourteenth Amendment to once again make clear that birthright citizenship is enshrined in the United States with only narrow exceptions for the limited group of individuals who are truly not subject to United States law. See Elk v. Wilkins, 112 U.S. 94, 101 (1884) ("The main object of the opening sentence of the fourteenth amendment was to settle the question ... and to put it beyond doubt that all persons ... born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the state in which they reside."[53]).	In response to Dred Scott and the Civil War, Congress and the States adopted the Fourteenth Amendment to reaffirm birthright citizenship as the law and "guarantee citizenship to virtually everyone born in the United States," with only narrow exceptions. James C. Ho, Birthright Citizenship, The Fourteenth Amendment, and State Authority, 42 U. Rich. L. Rev.[54] 969, 971[55] (2008);
The Fourteenth Amendment's ratification history makes clear that the Citizenship Clause's universal nature was known—and indeed was the motivation for its passage.	

51 https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1659&context=hlelj, S. 29 f. der Datei; mit weiteren Nachweisen.

52 „The Citizenship Clause was no legal innovation. It simply restored the longstanding English common law doctrine of jus soli, or citizenship by place of birth. Although the doctrine was initially embraced in early American jurisprudence, the U.S. Supreme Court abrogated jus soli in its infamous Dred Scott decision, denying birthright citizenship to the descendents of slaves Congress approved the Citizenship Clause to overrule Dred Scott and elevate jus soli to the status of constitutional law." (https://www.gibsondunn.com/wp-content/uploads/documents/publications/Ho-DefiningAmerican.pdf, S. 4 der Datei; mit weiteren Nachweisen)

53 Der vollständige Absatz lautet: „By the Thirteenth Amendment of the Constitution slavery was prohibited. The main object of the opening sentence of the Fourteenth Amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in this court, as to the citizenship of free negroes (Scott v. Sandford, 19 How. 393); and to put if beyond doubt that allpersons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the State in which they reside. Slaughter-House Cases, 16 Wall. 36, 73; Strauder v. West Virginia, 102 U.S. 303, 306." (https://tile.loc.gov/storage-services/service/ll/usrep/usrep112/usrep112094/usrep112094.pdf)

- Die Entscheidung Strauder v. West Virginia ist in Wirklichkeit in Band 100 U. S. Reports: https://tile.loc.gov/storage-services/service/ll/usrep/usrep100/usrep100303/usrep100303.pdf.
- Scott v. Sandford, 19 How. 393 = 60 U.S. 393 (https://www.supremecourt.gov/opinions/datesofdecisions.pdf, S. 68): https://tile.loc.gov/storage-services/service/ll/usrep/usrep060/usrep060393a/usrep060393a.pdf.
- Slaughter-House Cases, 16 Wall. 36 = 83 U.S. 36 (https://www.supremecourt.gov/opinions/datesofdecisions.pdf, S. 110): https://tile.loc.gov/storage-services/service/ll/usrep/usrep083/usrep083036/usrep083036.pdf. Dort heißt es auf S. 73 der gedruckten bzw. S. 38 der digitalen Seitenzählung: „The phrase, ‚subject to its jurisdiction' was intended to **exclude** from its operation **children of** ministers, consuls, and **citizens or subjects of foreign States** born within the United States." (Hv. hinzugefügt; siehe dazu oben S. 8)

54 = *University of Richmond Law Review*.

See, e.g., Gabriel J. Chin & Paul Finkelman, Birthright Citizenship, Slave Trade Legislation, and the Origins of Federal Immigration Regulation, 54 U.C. Davis L. Rev.[56] 2215, 2227[57] (2021) ("Congress had indeed identified a category of people who were not allowed to be here, and who could be deported under federal law if found in the United States. Nevertheless, through the Fourteenth Amendment, Congress made the children of illegally imported slaves and free blacks U.S. citizens if born in the United States."); Christopher L. Eisgruber, Birthright Citizenship and the Constitution, 72 N.Y.U. L. Rev. 54, 65[58] (1997) ("[T]he children of illegal aliens are certainly 'subject to the jurisdiction of the United States' in the sense that they have no immunity from American law."	see also Gabriel J. Chin & Paul Finkelman, Birthright Citizenship, Slave Trade Legislation, and the Origins of Federal Immigration Regulation, 54 U.C. Davis L. Rev. 2215, 2227[59] (2021) ("Congress had indeed identified a category of people who were not allowed to be here, and who could be deported under federal law if found in the United States. Nevertheless, through the Fourteenth Amendment, Congress made the children of illegally imported slaves and free blacks U.S. citizens if born in the United States.");
James C. Ho, Defining "American:" Birthright Citizenship and the Original Understanding of the 14th Amendment in Made in America, Myths & Facts About Birthright Citizenship, Imm. Pol'y Ctr.[60], Sept. 2009, at 12[61] ("[N]othing in text or his-	Ho, Defining "American" Birthright Citizenship, supra at 369-72 (detailing ratification debate and concluding that

55 https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2742&context=lawreview, S. 4. Dort heißt es außerdem: „I would submit that the plain meaning of ‚subject to jurisdiction' is rather straightforward. It simply means that one must have a duty to obey U.S. law. When a person is ‚subject to the jurisdiction' of a court of law, that person is required to obey the orders of that court. When a company is ‚subject to the jurisdiction' of a government agency, that company is required to obey the regulations promulgated by that agency. The meaning of the phrase is simple: One is ‚subject to the jurisdiction' of another whenever one is obliged to obey the laws of another."
In FN 12 weist Ho auf die Gegenposition von John C. Eastman, *Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, in: 42 *University of Richmond Law Review*, 955 - 968 (2008) hin.

56 = *UC Davis Law Review* (https://lawreview.law.ucdavis.edu/about).

59 Siehe FN 56 und 57.

57 https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/54-4_Chin_Finkelman.pdf, S. 13. Dort heißt es außerdem noch: „Accordingly, any statutory or regulatory attempt to deny citizenship to the children of unauthorized migrants would be unconstitutional because of the decision of the enactors of the Fourteenth Amendment to grant citizenship to the children of foreign born people who were illegally in the United States in 1868." (Hv. hinzugefügt)
Das entsprechende gilt *auch für später* illegal Eingereiste bzw. Anwesende, da der 14. Verfassungszusatz keine irgendwie befristete (z.B. auf die bereits 1868 schon Geborenen beschränkte), sondern eine generelle Regelung zur Erlangung der US-Staatsangehörigkeit ist.

58 https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-72-1-Eisgruber_0.pdf, S. 12.

60 = *Immigration Policy Center*.

tory suggests that the drafters intended to draw distinctions between different categories of aliens. To the contrary,	
text and history confirm that the Citizenship Clause reaches all persons who are subject to U.S. jurisdiction and laws, regardless of race or alienage."). All involved in passage of the Citizenship Clause understood its breadth and bright-line nature. See, e.g., Amanda Frost, Paradoxical Citizenship, 65 Wm. & Mary L. Rev.[62] 1177, 1187[63] (2024) ("[T]he 39th Congress initially toyed with a birthright citizenship provision that would maintain a race-based citizenship standard, granting citizenship at birth only to Blacks and Whites, but then chose instead to adopt universal birthright citizenship.");	"[t]ext and history confirm that the Citizenship Clause reaches all persons who are subject to U.S. jurisdiction and laws, regardless of race or alienage"[64]);
Garrett Epps, The Citizenship Clause: A "Legislative History," 60 Am. Univ. L. Rev. 331, 352–59 (2010) (detailing congressional debate); see also Plyler, 457 U.S. at 214 ("Although the congressional debate concerning § 1 of the Fourteenth Amendment was limited, that debate clearly confirms the understanding that the phrase 'within its jurisdiction' was intended in a broad sense.").	Garrett Epps, The Citizenship Clause: A "Legislative History," 60 Am. Univ. L. Rev. 331, 352-59 (2010) (detailing ratification debate); see also Plyler, 457 U.S. at 214 ("Although the congressional debate concerning § 1 of the Fourteenth Amendment was limited, that debate clearly confirms the understanding that the phrase 'within its jurisdiction' was intended in a broad sense.").
This understanding of the Citizenship Clause is cemented by controlling U.S. Supreme Court precedent which, more than 125 years ago, confirmed that the Fourteenth Amendment guarantees citizenship to the children of immigrants born in the United States. United States v. Wong Kim Ark, 169 U.S. 649, 654 (1898). As the Supreme Court explained: "Every citizen or subject of another country, while domiciled	This understanding of the Citizenship Clause is cemented by controlling U.S. Supreme Court precedent which, more than 125 years ago, confirmed that the Fourteenth Amendment guarantees citizenship to the children of immigrants born in the United States. United States v. Wong Kim Ark, 169 U.S. 649, 704 (1898). As the Supreme Court explained: "Every citizen or subject of another country, while domiciled

61 https://www.americanimmigrationcouncil.org/sites/default/files/research/Birthright%20Citizenship%20091509.pdf, S. 13 der digitalen Seitenzählung.

62 = *William & Mary Law Review* (https://wmlawreview.org/about-the-law-review).

63 https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=4029&context=wmlr, S. 12 der Datei.

64 https://www.gibsondunn.com/wp-content/uploads/documents/publications/Ho-DefiningAmerican.pdf, S. 374 der gedruckten bzw. S. 9 der digitalen Seitenzählung.

here, is within the allegiance and the protection, and consequently *subject to the jurisdiction*, of the United States." Id. at 693 (emphasis added). Consequently, the Court held that a child born in San Francisco to Chinese citizens was an American citizen by birthright. Id. at 704.	here, is within the allegiance and the protection, and consequently *subject to the jurisdiction*, of the United States." Id. at 693 (emphasis added). Consequently, the Court held that a child born in San Francisco to Chinese citizens, who could not themselves become citizens, was an American citizen. Id. at 704.
In reaching this conclusion, the Court reasoned that the Fourteenth Amendment "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here *born of resident aliens*." Id. at 693 (emphasis added). The Court noted that only three groups are excluded by the Citizenship Clause because they were not subject to U.S. jurisdiction: children of Indian tribes, as well as "children born of alien enemies in hostile ccupation, and children of diplomatic representatives of a foreign state—both of which ... from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country." Id. at 682. And	In reaching this conclusion, the Court reasoned that the Fourteenth Amendment "affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here *born of resident aliens*." Id. at 693 (emphasis added). The Court noted that the only exclusions involved individuals who were not, in fact, subject to U.S. jurisdiction: "children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state[]—both of which … had been recognized exceptions to the fundamental rule of citizenship by birth within the country."[65] Id. at 682.
in language that remains apt to today's dispute, the Court explained that the Citizenship Clause "is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and not to impose any new restrictions upon citizenship." Id. at 688.	In language that remains apt, the Court explained that the Citizenship Clause "is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and not to impose any new restrictions upon citizenship." Id. at 688.
In addition to Wong Kim Ark, the Supreme Court has separately made clear that undocumented immigrants are "subject to the	In addition to Wong Kim Ark, the Supreme Court has separately made clear that undocumented immigrants are "subject to the

65 „Although the original understanding of the Fourteenth Amendment was that children born to tribal members are not subject to the United States' jurisdiction at birth, it is well established under a federal statute passed in 1924 that such children are granted U.S. citizenship at birth. See 8 U.S.C. § 1401(b).“ (FN im Original)

jurisdiction" of the United States. In Plyler v. Doe, 457 U.S. 202 (1982), the Court interpreted the Fourteenth Amendment's Equal Protection Clause—the sentence immediately following the Citizenship Clause— and explained that the term "within its jurisdiction" makes plain that "the Fourteenth Amendment extends to anyone, citizen or stranger, who is subject to the laws of a State, and reaches into every corner of a State's territory." Id. at 215. As the Court explained, "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful." Id. at 211 n.10. The Court further confirmed that the phrases "within its jurisdiction" and "subject to the jurisdiction thereof" in the first and second sentences of the Fourteenth Amendment have the same meaning. Id.	jurisdiction" of the United States. In Plyler v. Doe, the Court interpreted the Equal Protection Clause and explained that the term "within its jurisdiction" makes plain that "the Fourteenth Amendment extends to anyone, citizen or stranger, who is subject to the laws of a State, and reaches into every corner of a State's territory." 457 U.S. at 215. As the Court explained, "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful." Id. at 211 n.10. The Court expressly confirmed that the phrases "within its jurisdiction" and "subject to the jurisdiction thereof" in the first and second sentences of the Fourteenth Amendment have the same meaning. Id.
These are merely the most notable examples of the judiciary's steadfast protection of the Fourteenth Amendment's birthright citizenship guarantee. The Supreme Court, the Ninth Circuit, and other courts have repeatedly confirmed that individuals born in this country are citizens subject to its jurisdiction regardless of their parents' status or country of origin. See, e.g., INS v. Rios-Pineda, 471 U.S. 444, 446 (1985) (recognizing that child of two undocumented immigrants "was a citizen of this country" by virtue of being "born in the United States"); Perkins v. Elg, 307 U.S. 325, 328 (1939) ("[A] child born here of alien parentage becomes a citizen of the United States"); Morrison v. California, 291 U.S. 82 (1934) (recognizing a child born here is a U.S. citizen even when racial bars would have rendered them ineligible to be	These are merely the most notable examples of the judiciary's steadfast protection of the Fourteenth Amendment's birthright-citizenship guarantee. The Supreme Court, the Ninth Circuit, and other courts have repeatedly confirmed that individuals born in this country are citizens subject to its jurisdiction regardless of their parents' status or country of origin. See, e.g., INS v. Rios-Pineda, 471 U.S. 444, 446 (1985) (recognizing that child of two undocumented immigrants "was a citizen of this country" by virtue of being "born in the United States"); Perkins v. Elg, 307 U.S. 325, 328 (1939) ("[A] child born here of alien parentage becomes a citizen of the United States."). Indeed,

naturalized if they had been born abroad). During World War II, the Ninth Circuit affirmed a district court's rejection of an attempt to strike from voter rolls 2,600 people of Japanese descent who were born in the United States. Regan v. King, 49 F. Supp. 222, 223 (N.D. Cal. 1942), aff'd, 134 F.2d 413 (9th Cir. 1943), cert denied, 319 U.S. 753 (1943)[66] (internal citations omitted). As the district court explained, it was "unnecessary to discuss the arguments of counsel" that challenged those individuals' citizenship because it was "settled" that a child born "within the United States" is a U.S. citizen. Id. And even before Wong Kim Ark, the Ninth Circuit had confirmed the same. Gee v. United States, 49 F. 146, 148 (9th Cir. 1892) (Chinese exclusion laws "are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens").[67]	during World War II, the Ninth Circuit affirmed a district court's rejection of an attempt to strike from voter rolls 2,600 people of Japanese descent who were born in the United States. Regan v. King, 49 F. Supp. 222, 223 (N.D. Cal. 1942), aff'd, 134 F.2d 413 (9th Cir. 1943), cert. denied, 319 U.S. 753 (1943)[68]. As the district court explained, it was "unnecessary to discuss the arguments of counsel" challenging those individuals' citizenship because it was "settled" that a child born "within the United States" is a U.S. citizen. Id. Even before Wong Kim Ark, the Ninth Circuit confirmed the same. Gee v. United States, 49 F. 146, 148 (9th Cir. 1892) (Chinese exclusion laws "are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens").
The Executive Branch, too, has long endorsed this understanding of the Citizenship Clause. When the U.S. Department of Justice's Office of Legal Counsel (OLC) was asked in 1995 to assess the constitutionality of a bill that would deny citizenship to children unless a parent was a citizen or a permanent resident alien, OLC reasoned that "[t]his legislation is unquestionably unconstitutional." Legislation Denying Citizenship at Birth to Certain Children Born in the United States, 19 Op. O.L.C. 340, 1995 WL	The Executive Branch, too, has long endorsed this understanding of the Citizenship Clause. When the U.S. Department of Justice's Office of Legal Counsel (OLC) was asked in 1995 to assess the constitutionality of a bill that would deny citizenship to children unless a parent was a citizen or permanent resident alien, OLC concluded that the "legislation is unquestionably unconstitutional." Legislation Denying Citizenship at Birth to Certain Children Born in the United States, 19 Op. O.L.C. 340, 341[71] (1995).

66 Siehe wie Nachweise oben auf S. 14.

67 „See also Louie v. United States, 238 F.75, 76 (3d Cir. 1916) (concluding it was ‚conclusively established that a child born in the United States of Chinese parents domiciled in the United States, becomes, at the time of his birth, a citizen of the United States'); Chin v. United States, 43 App. D.C. 38, 42 (D.C. App. Ct. 1915) (‚If it be true that Chin Wah was born of Chinese parents domiciled in California, and not employed in any diplomatic or official capacity, he became at his birth a citizen of the United States'); Moy Suey v. United States, 147 F. 697, 698 (7th Cir. 1906) (‚Nativity gives citizenship, and is a right under the Constitution. It is a right that congress would be without constitutional power to curtail or give away.')." (FN im Original)

68 Siehe wie Nachweise oben auf S. 14.

1767990 at *2[69] (1995) ("My office grapples with many difficult and close issues of constitutional law. The lawfulness of this bill is not among them.").	
As recognized by OLC, "Congress and the States adopted the Fourteenth Amendment in order to place the right to citizenship based on birth within the jurisdiction of the United States beyond question." Id. at *1. By enshrining the right in the Constitution, "the text and legislative history of the citizenship clause as well as consistent judicial interpretation make clear that the amendment's purpose was to remove the right of citizenship by birth from transitory political pressures."[70] Id. at *5.	As OLC recognized, "Congress and the States adopted the Fourteenth Amendment in order to place the right to citizenship based on birth within the jurisdiction of the United States beyond question." Id. at 340. The phrase "subject to the jurisdiction thereof," OLC explained, "was meant to reflect the existing common law exception for discrete sets of persons who were deemed subject to a foreign sovereign and immune from U.S. laws," such as "foreign diplomats." Id. at 342. OLC concluded: "Apart from these extremely limited exceptions, there can be no question that children born in the United States of aliens are subject to the full jurisdiction of the United States." Id. Thus, "as consistently recognized by courts and Attorneys General for over a century, most notably by the Supreme Court in United States v. Wong Kim Ark, there is no question that they possess constitutional citizenship under the Fourteenth Amendment." Id.
Executive agencies have accordingly accepted this foundational understanding and built daily government functions around the Citizenship Clause's plain meaning. For example, the U.S. Department of State is granted the authority under federal law to issue U.S. passports. 22 U.S.C. § 211(a). As explained in the State Department's Foreign Affairs Manual, "[a]ll children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S.	The Executive Branch has accepted this foundational understanding and built daily government functions around the Citizenship Clause's plain meaning. For example, the U.S. Department of State is granted the authority under federal law to issue U.S. passports. 22 U.S.C. § 211a. As explained in the State Department's Foreign Affairs Manual, "[a]ll children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S.

69 https://www.justice.gov/file/147026-0/dl?inline, S. 2 der Datei = S. 341 der gedruckten Seitenzählung.

70 Das Zitat ist vielmehr auf S. 8 der Datei = S. 347 der gedruckten Seitenzählung.

71 Vgl. FN 69.

citizenship at birth even if their parents were in the United States illegally at the time of birth." Compl. ¶ 40[72]; Polozola Decl., Ex. 4[73]. The State Department's Application for a U.S. Passport confirms that for "Applicants Born in the United States" a U.S. birth certificate alone is sufficient to prove one's citizenship. Compl. ¶ 40[74]; Polozola Decl., Ex. 5[75]. And USCIS, likewise, confirms in public guidance that "[i]f you were born in the United States, you do not need to apply to USCIS for any evidence of citizenship. Your birth certificate issued where you were born is proof of your citizenship." Compl. ¶ 40[76]; Polozola Decl., Ex. 6[77].	citizenship at birth even if their parents were in the United States illegally at the time of birth[.]" Polozola Decl., Ex. 4[78]. The State Department's Application for a U.S. Passport confirms that for "Applicants Born in the United States" a U.S. birth certificate alone is sufficient to prove one's citizenship. Id., Ex. 5[79]. And U.S. Citizenship and Immigration Services (USCIS) likewise confirms in public guidance that "[i]f you were born in the United States, you do not need to apply to USCIS for any evidence of citizenship. Your birth certificate issued where you were born is proof of your citizenship." Id., Ex. 6.
In short, with the stroke of a pen, the Citizenship Stripping Order seeks to overrule 150 years of consensus among government officials from all three branches of government as to the citizenship Clause's established meaning. But the Constitution does not confer upon the President the authority to condition or	In short, with the stroke of a pen, the Citizenship Stripping Order seeks to overrule 150 years of consensus as to the Citizenship Clause's established meaning. But the Constitution does not confer upon the President the authority to deny birthright

72 https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.1.0_2.pdf, S. 40 - 48 (41)

73 Vgl. https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.12.0_2.pdf, S. 3, Nr. 8: „Attached hereto as Exhibit 4 is a true and correct copy of the State Department's Foreign Affairs Manual, 8 FAM 301.1. This document was accessed on January 21, 2025, at https://fam.state.gov/FAM/08FAM/08FAM030101.html."

74 Vielmehr: https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.1.0_2.pdf, S. 50 - 55 (57): „Your birth certificate issued where you were born is proof of your citizenship."

75 Vgl. https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.12.0_2.pdf, S. 3, Nr. 9: „Attached hereto as Exhibit 5 is a true and correct copy of the U.S. Department of State's Application for A U.S. Passport Form, DS-11 04-2022 copy. This document was last accessed on January 21, 2025, at https://eforms.state.gov/Forms/ds11_pdf.pdf."

76 Vielmehr: https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.1.0_2.pdf, S. 57 - 58 (57).

77 Vgl. https://storage.courtlistener.com/recap/gov.uscourts.wawd.343943/gov.uscourts.wawd.343943.12.0_2.pdf, S. 3, Nr. 10: „Attached hereto as Exhibit 6 is a true and correct copy of I am a U.S. citizen: How do I get proof of my U.S. citizenship?, U.S. Citizenship and Immigration Services, M-560B (October 2013) N copy. This document was last accessed on January 21, 2025, at https://www.uscis.gov/sites/default/files/document/guides/A4en.pdf."

78 Siehe FN 73.

79 Siehe FN 75.

deny birthright citizenship to children born on American soil. The Citizenship Stripping Order is unlawful, and the Plaintiffs are overwhelmingly likely to succeed on the merits of their claims.	citizenship to children born on American soil. The Citizenship Stripping Order is unconstitutional, and the Plaintiff States are overwhelmingly likely to succeed on the merits of their Fourteenth Amendment claim.