

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 14, 2026

Lyle W. Cayce
Clerk

No. 25-10372

JORGE ANTONIO GUERRA QUEZADA,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA; MARKWAYNE MULLIN, *Secretary, U.S. Department of Homeland Security, in her official capacity*; TODD LYONS, *Acting Director of Immigration and Customs Enforcement, in his official capacity*; JOHN DOES; TODD WALLACE BLANCHE, *Acting U.S. Attorney General, in his official capacity*,

Defendants—Appellees,

CONSOLIDATED WITH

No. 25-10555

MANUEL SALVADOR GUERRA VASQUEZ,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA; TODD LYONS, *Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity*; MARKWAYNE MULLIN, *Secretary, U.S. Department of Homeland Security, in his official capacity*; TODD WALLACE BLANCHE, *Acting U.S. Attorney General, in*

his official capacity; JOHN DOES, *U.S. Immigration and Customs Enforcement Officer*,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 3:24-CV-564, 3:24-CV-629

Before SOUTHWICK, WILLETT, and HO, *Circuit Judges*.

LESLIE H. SOUTHWICK, *Circuit Judge*:

This case presents a variety of claims raised by an uncle and nephew, both born in Mexico, who assert they are citizens of the United States. They seek money damages, a declaratory judgment, an injunction, and *habeas* relief. The district court denied all relief.

These two consolidated appeals involve intertwined facts. Guerra-Vasquez and Guerra-Quezada appeal and contend that their respective citizenship flows from the same source, Cruz Rodriguez de Guerra, who is the grandmother of the former and the great-grandmother of the latter.

We start with family history. Cruz Rodriguez de Guerra was born in Kansas in 1924, making her an American citizen. *See Trump v. Barbara*, 146 S. Ct. 2438, 2453 (2026). An affidavit attached to the complaint makes no representations concerning how long she lived in the United States, but it does assert she attempted to re-enter the United States in 1940 after being in Mexico. She was denied entry because the officers at the border told her she could not enter because she had “abandoned her residence.” In 1981, the Immigration and Naturalization Service issued her a completed Form I-197, better known as a “U.S. Citizen Identification Card,” stating she “claimed under oath to be a citizen of the U.S. through birth in U.S.”

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Cruz Rodriguez de Guerra's husband and the father of her children, Benigno Guerra, was born in Mexico. In 1944, she gave birth to a son, Antonio Guerra-Rodriguez, in Mexico. That son was the father of Appellant Guerra-Vasquez, who was born in Mexico in 1962, and the grandfather of Appellant Jorge Antonio Guerra-Quezada, who was born in Mexico in 1993. Both of Guerra-Quezada's parents were born in Mexico. Appellant Guerra-Quezada is Appellant Guerra-Vasquez's nephew.

In December 2021, United States Citizen and Immigration Services (USCIS) issued a certificate of citizenship to Guerra-Quezada — according to the Government, erroneously — after he filed an N-600 application for such a certificate. The Government has commenced proceedings to cancel Guerra-Quezada's certificate, and those proceedings, to our knowledge, remain pending.

Both Guerra-Vasquez and Guerra-Quezada have been ordered to leave the country in the past. Guerra-Vasquez was a lawful permanent resident at one point but was issued a voluntary departure order in 2007; he re-entered the country illegally the next year, where he was detained and pled guilty to improper entry by an alien under 8 U.S.C. § 1325. He re-entered again but had remained undetected in Arlington, Texas. Guerra-Quezada was a long-time lawful permanent resident before he pled guilty to felony online solicitation of a minor. The Government subsequently removed him pursuant to 8 U.S.C. § 1227(a)(2)(E)(i). He later re-entered the country after being inspected.

Appellant Guerra-Vasquez filed this suit in the United States District Court for the Northern District of Texas, asserting claims under the Administrative Procedure Act (APA), the Federal Tort Claims Act (FTCA), the Antiterrorism and Effective Death Penalty Act (AEDPA),

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and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), seeking monetary, injunctive, and declaratory relief.

Appellant Guerra-Quezada filed his suit in the same court seeking the same relief. Guerra-Quezada likewise asserts claims under the APA, the FTCA, and *Bivens*.

All of these claims were dismissed below. Their appeals were timely.

We AFFIRM for the following reasons:

1. Under 8 U.S.C. § 1252(g), there is no subject matter jurisdiction over Appellants' damages claims. Here is why. With certain inapplicable exceptions, Section 1252(g) states no court has jurisdiction when (1) the claimant is an "alien" (2) whose claim "aris[es] from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). Appellants claim they are not aliens because Cruz Rodriguez de Guerra passed her United States citizenship to them. They claim citizenship through the constructive presence of the ancestor we have identified.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a citizen is the statute in effect at the time of the child's birth." *Iracheta v. Holder*, 730 F.3d 419, 423 (5th Cir. 2013). Guerra-Vasquez was born in 1962. The statute that applied at that time required that — for a person with one United States citizen parent and one non-citizen parent — the citizen parent have resided in this country for a total of ten years prior to the child's birth, with at least five of those years coming after the parent was 14 years old. Immigration and Nationality Act of 1952, Pub. L. No. 82-414, tit. III, ch. 1, § 301(a)(7), 66 Stat. 235, 236 (codified at 8 U.S.C. § 1401(a)(7), codified as amended at 8 U.S.C. § 1401(g)). Guerra-Quezada was born in 1993. The statute to be applied to him stated that the United States citizen parent passes his or her citizenship to a child born outside this country only

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if that parent had been physically present in this country for a time totaling not less than five years prior to the child's birth, with at least two of those years coming after the parent became 14 years old. 8 U.S.C. § 1401(g).

The Board of Immigration Appeals adopted what is now labeled the “constructive-presence doctrine” as a means of satisfying a similar physical presence requirement when determining whether a person has retained their citizenship.¹ The requirement could be satisfied if “physical presence [was] prevented by circumstances beyond the individual's control, or by reliance upon erroneous information received from a United States official.” *Matter of Navarrete*, 12 I. & N. Dec. 138, 142 (BIA 1967). No circuit court of appeals has adopted the doctrine. Several have rejected its application in the citizenship-transmission context, which is the relevant context for us. *See Runnett v. Shultz*, 901 F.2d 782, 784–85 (9th Cir. 1990); *Drozdz v. INS*, 155 F.3d 81, 86–88 (2d Cir. 1998); *Tullius v. Albright*, 240 F.3d 1317, 1320–21 (11th Cir. 2001); *Madar v. USCIS*, 918 F.3d 120, 122–24 (3d Cir. 2019).

The Appellants agree that their claims to citizenship fail unless we revise the statutory requirements detailed above with a version of constructive presence that results in the father of the older Appellant, Guerra-Vasquez, being a United States citizen. The younger Appellant, Guerra-Quezada, would then have us forge ahead even further, extending the doctrine one generation more and through a different family line.

We reject the constructive-presence doctrine. The concurring opinion helpfully explains what exceptions to actual physical presence Congress has enacted. None of the statutory exceptions apply here, and we will not create judicial ones. That means neither Guerra-Vasquez nor

¹ This citizenship retention requirement that applied to persons born after 1952 has been repealed. Act of Oct. 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046.

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Guerra-Quezada is a United States citizen. Therefore, when analyzing the bar to jurisdiction set out in Section 1252(g), the first condition is satisfied — the Appellants are aliens and not American citizens.

Our jurisdiction further depends on whether the claim is one “arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). Appellants have not provided adequate briefing as to whether their claims arise from one of these three categories of decisions. Consequently, they forfeit that part of the necessary argument. *See Smith v. Sch. Bd. of Concordia Par.*, 88 F.4th 588, 594 (5th Cir. 2023).

The non-forfeited claims — namely, Guerra-Vasquez’s false arrest, wrongful imprisonment, and intentional infliction of emotional distress claims — are all challenges to the “decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). These claims all amount to repackaged challenges to the three discrete actions enumerated in the statute, specifically its decision to “commence proceedings” and to “adjudicate cases.” *See Duron v. Johnson*, 898 F.3d 644, 647–48 (5th Cir. 2018). Thus, we lack “jurisdiction to entertain” these claims. *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999).

2. We have no jurisdiction over the claims for a declaratory judgment under 8 U.S.C. § 1503(a) because Appellants failed to exhaust their administrative remedies. Plaintiffs must exhaust administrative remedies before bringing a Section 1503(a) declaratory judgment action. *See Rios-Valenzuela v. DHS*, 506 F.3d 393, 397 & n.4 (5th Cir. 2007). Our precedent

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has held this requirement is jurisdictional.² *Id.* Based on the record on appeal, Guerra-Vasquez has not commenced the appropriate procedures to exhaust administrative remedies at all. Guerra-Quezada’s application for a certificate of citizenship had been granted but was continuing to be adjudicated, as the grant was in the process of being cancelled at the time the Government’s brief was filed. Because Appellants have not shown that their declaratory judgment claims have been administratively exhausted as required by Section 1503(a), there is no jurisdiction over Appellants’ Section 1503(a) claims.

3. Appellants’ claims under the APA fail because they do not identify final agency action to “hold unlawful and set aside,” nor any agency “action made reviewable by statute” that would allow a federal court to grant the relief sought. *See* 5 U.S.C. §§ 704, 706. “Final agency action . . . is a jurisdictional prerequisite of judicial review” under the APA. *Louisiana v. U.S. Army Corps of Eng’rs*, 834 F.3d 574, 584 (5th Cir. 2016). Accordingly, those claims are jurisdictionally barred.³

4. Guerra-Vasquez also seeks a writ of *habeas corpus* to attack his previous conviction under 28 U.S.C. § 2255, asserting that he is legally innocent of the charges of which he was convicted in 2008 — improper entry by an alien, 8 U.S.C. § 1325 — due to his being an American citizen at birth. The district court found that Guerra-Vasquez’s *habeas* claim does “not

² Recent Supreme Court precedent about “claims-processing rules” could have some relevance. *See Villegas v. Noem*, 149 F.4th 554, 562, 568 (5th Cir. 2025) (citing *Santos-Zacaria v. Garland*, 598 U.S. 411, 416–18 (2023)). We do not suggest that they do, and in the absence of any briefing, we simply make note of that caselaw.

³ On appeal, Appellants make the argument that the decision to cancel their certificates of citizenship should be set aside as arbitrary and capricious. This is the first time that Appellants make this argument. Because it was not raised below, we do not consider it here. *See Harris v. FedEx Corp. Servs., Inc.*, 92 F.4th 286, 296 (5th Cir. 2024).

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necessarily arise from [his] removal” but nevertheless dismissed the claim as barred by the relevant statute of limitations. We agree. Moreover, Guerra-Vasquez does not assert he is currently “in custody,” as he has been released from confinement. He alleges in his complaint that he is still subject to what he claims to be a wrongful conviction. *See* 28 U.S.C. § 2255(a). The court lacks jurisdiction over Guerra-Vasquez’s *habeas* claim because Guerra-Vasquez is not “in custody.”⁴ *Maleng v. Cook*, 490 U.S. 488, 490, 494 (1989) (*per curiam*).

5. Appellants’ due process claims also are forfeited. Appellants assert that the Government violated their substantive and procedural due process rights. Yet, Appellants have not adequately briefed these claims: They are completely unsubstantiated by citations to the record, and the case citations in the briefing are systematically defective. Accordingly, Appellants have forfeited these arguments. *See United States v. Scroggins*, 599 F.3d 433, 447–48 (5th Cir. 2010).

6. Troubling to the court is the fact that the briefs filed in both cases by Appellants’ counsel contain significant inaccuracies.

Both briefs quote *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922), for the proposition that “[N]o deportable alien may be expelled until it has first been determined . . . that he is in fact an alien.” This court’s research has failed to locate this quote in *Ng Fung Ho* or in any other opinion. Additionally, in Guerra-Vasquez’s opening brief, a parenthetical cites the correct part of *Ng Fung Ho* but misquotes the majority. Both briefs also attribute the phrase, “[i]t is wrong to deport a United States citizen,” to *Ng Fung Ho*, but that phrase does not appear in the opinion.

⁴ Guerra-Vasquez does not raise a collateral consequences argument on appeal.

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Further, the *Doe v. McAleenan* opinion that both opening briefs cite as a Fourth Circuit opinion to buttress *Ng Fung Ho* is, in reality, a Seventh Circuit decision that starts on a different page of the Federal Third Reporter. *See Doe v. McAleenan*, 926 F.3d 910 (7th Cir. 2019). Appellants' counsel also misattributes a quote to *Afroyim v. Rusk*, 387 U.S. 253 (1967); the quote really comes from a dissent in an opinion from nine years earlier, *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (WARREN, C.J., dissenting).

Federal Rule of Appellate Procedure 28 requires all filed briefs to contain arguments supported by “citations to the authorities,” disallowing citation to nonexistent or fabricated cases. FED. R. APP. P. 28(a)(8); *see also Garces v. Hernandez*, No. 25-50342, 2025 WL 2401001, at *2 (5th Cir. Aug. 19, 2025) (unpublished) (stating that citing fabricated authorities may also violate Federal Rules of Appellate Procedure 32 and 38).

In addition, Guerra-Quezada's brief is devoid of record citations, another requirement of Rule 28(a)(8)(A). Fifth Circuit local rules require that “[e]very assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record . . . where the matter is found using the record citation form.” 5TH CIR. R. 28.2.2.

The Federal Rules of Appellate Procedure provide that a “court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule.” FED. R. APP. P. 46(c). The court takes no action now for the foregoing deficiencies, but counsel must take this obligation seriously in the future.

We AFFIRM the dismissal without prejudice in Guerra-Quezada's case. The dismissal in Guerra-Vasquez's case made no statement about prejudice. As to that judgment, we AFFIRM insofar as it dismisses the

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action but MODIFY the judgment to a dismissal without prejudice, as that is required when a court lacks jurisdiction. *See* 28 U.S.C. § 2106.

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JAMES C. HO, *Circuit Judge*, concurring:

The Constitution vests Congress—not the judiciary—with the power to “establish an uniform Rule of Naturalization.” U.S. CONST. art. I, § 8, cl. 4. And that basic principle dictates the correct result in this case. Federal courts may not confer U.S. citizenship on any individual who fails to comply with all of the conditions and requirements set forth in our naturalization laws—and that includes the requirement of physical presence in the United States. *See* 8 U.S.C. § 1401.

Yet that’s precisely what Plaintiffs urge us to do here: They ask us to grant them citizenship, despite the fact that they plainly fail to comply with the physical presence requirement.

Plaintiffs theorize that they’re exempt from the physical presence requirement, because the ancestor from whom they claim citizenship was “wrongly turned away at the border” due to “systemic barriers.” They invoke a doctrine of constructive presence, based on a series of atextual rulings from the Board of Immigration Appeals. *See Matter of Navarrete*, 12 I. & N. Dec. 138, 142 (BIA 1967); *see also Matter of Farley*, 11 I. & N. Dec. 51, 54 (BIA 1965); *Matter of Yanez-Carrillo*, 10 I. & N. Dec. 366, 369 (BIA 1963).

But the constructive presence doctrine plainly conflicts with the governing statutory text. A number of our sister circuits have so held. *See, e.g., Drozd v. I.N.S.*, 155 F.3d 81, 85–87 (2nd Cir. 1998); *Madar v. United States Citizenship & Immigr. Servs.*, 918 F.3d 120, 123 (3rd Cir. 2019); *Tullius v. Albright*, 240 F.3d 1317, 1318, 1320–21 (11th Cir. 2001).

And I’m grateful that our court today has agreed to so hold as well. I am very pleased to concur.

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I.

Under the Constitution, Congress may choose “not to grant a United States citizen the right to transmit citizenship by descent.” *Rogers v. Bellei*, 401 U.S. 815, 830 (1971). It may also “prescribe a period of residence in the United States as a condition precedent.” *Id.* at 831.

And federal courts may not alter the conditions set by Congress. “Neither by application of the doctrine of estoppel, nor by invocation of equitable powers, *nor by any other means* does a court have the power to confer citizenship in violation of these limitations.” *I.N.S. v. Pangilinan*, 486 U.S. 875, 885 (1988) (emphasis added).

These principles doom Plaintiffs’ claim of citizenship. Because Congress has made amply clear which individuals are exempt from the physical presence requirements enumerated in 8 U.S.C. § 1401. And it is telling—and binding on federal courts—that Congress has declined to do so under the circumstances presented here.

Federal law, for example, has long provided that “any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements.” Immigration and Nationality Act of 1952, Pub. L. No. 82-414, tit. III, ch. 1, § 301(a)(7), 66 Stat. 235 (codified at 8 U.S.C. § 1401(a)(7), codified as amended at 8 U.S.C. § 1401(g)).

And Congress has enacted additional exceptions over time. *See* 8 U.S.C. § 1401(g) (providing exceptions for those working with the United States Government abroad, those working for certain international organizations, and for spouses and dependent children of those who qualify for these exceptions).

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Yet Congress has not seen fit to enact an exception to the physical presence requirement due to an allegedly wrongful refusal of entry into the United States.

As our sister circuits have observed, the existence of other exceptions to the physical presence requirement “undermines the argument that this [c]ourt should add [another] ‘circumstances beyond control’ exception.” *Madar*, 918 F.3d at 123 (quoting *Tullius*, 240 F.3d at 1321) (cleaned up).

So our court today rightly rejects the constructive presence doctrine.

II.

Plaintiffs nevertheless ask us to override U.S. law and grant them citizenship because Executive Branch officials “wrongly turned away [their ancestor] at the border” due to “systemic barriers.”

But that misunderstands the limited role of the judiciary. Respect for the political branches commands us to accept their judgments about who shall be offered the profound privilege of United States citizenship.

Throughout our history, the American people have welcomed countless foreigners who seek to come to our shores to pursue the privileges of U.S. citizenship. I am one of them. I was not born a United States citizen, but I thank God every day that I will someday die a United States citizen.

But the generosity of the American people is a matter of political discretion—not duty. “I cannot imagine how enormously different (and considerably worse, I am sure) my life would have been had I not been *granted* resident alien status in America.” *Khan v. Garland*, 69 F.4th 265, 272 (5th Cir. 2023) (Ho, J., concurring in the judgment) (emphasis added). And that’s the point: It’s a *grant*, not a guarantee. I will never forget that it was “my exquisitely good *fortune*”—not some right I could force upon the

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American people over their wishes—“that I was admitted into this country as an alien—and later naturalized as a citizen.” *Id.* (emphasis added).

And this principle of generosity applies across the entire landscape of U.S. citizenship law—both statutory and constitutional.

A.

Congress has enacted various naturalization laws over the years. *See generally* 8 U.S.C. § 1401.

Moreover, our Constitution additionally provides that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. CONST. amend. XIV, § 1. *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2176 (2023) (Thomas, J., concurring) (“[A]ll persons born in the United States are citizens.”); *United States v. Vaello Madero*, 596 U.S. 159, 173 (2022) (Thomas, J., concurring) (“[A]ll persons—black or white—born in the United States were citizens and therefore entitled to equal civil rights.”); *id.* at 179 (“[The Fourteenth Amendment] gave citizenship to all born or naturalized in the United States.”) (quotations omitted); *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 80–81 (2015) (Scalia, J., dissenting) (“all persons born or naturalized in the United States are citizens of the United States”) (cleaned up).

Indeed, the court today invokes the Fourteenth Amendment and the Supreme Court’s recent decision in *Barbara* to confirm the U.S. citizenship of one of Plaintiffs’ ancestors. *See, e.g., Trump v. Barbara*, 146 S. Ct. 2438, 2504 (2026) (Thomas, J., dissenting) (“The Citizenship Clause was enacted for people who were born in this country and called it home.”).

But neither the Fourteenth Amendment nor *Barbara* changes the fact that the laws governing United States citizenship remain subject to alteration

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and oversight by the American people through their elected representatives. And not just through legislation or constitutional amendment—but also through the national security judgments of the political branches.

B.

It’s unfathomable that a federal judge would apply the Second Amendment right to keep and bear arms to alien enemies who invade our country. *See, e.g., Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950) (“irreconcilable enemy elements” cannot “require the American Judiciary to assure them . . . [the] right to bear arms”); *id.* at 785 (“the Constitution does not confer a right of personal security . . . upon an alien enemy”).

It’s likewise unfathomable that a federal judge would extend the precious privilege of U.S. citizenship under the Fourteenth Amendment to those born to alien enemies. *See, e.g., United States v. Wong Kim Ark*, 169 U.S. 649, 655–60, 664–65, 682 (1898) (excluding children of alien enemies from citizenship under the Fourteenth Amendment).

And it’s for political officials—not federal judges—to determine when (and with whom) we are in a state of war or under a state of invasion. *See, e.g., United States v. Abbott*, 110 F.4th 700, 726–30 (5th Cir. 2024) (Ho, J., concurring in the judgment in part and dissenting in part) (collecting authorities); *United States v. Texas*, 173 F.4th 659, 671 (5th Cir. 2026) (Ho, J., concurring) (same); *W.M.M. v. Trump*, __ F.4th __, __ (5th Cir. 2026) (Ho, J., concurring) (same).

So if the principles stated in the preceding paragraphs are sound (and they are), the logical result must be this: Courts may not grant citizenship by disregarding the national security determinations of the political branches. *See, e.g., Texas*, 173 F.4th at 674 n.2 (Ho, J., concurring) (declaration of state of invasion is sufficient to support Executive Order 14160 in full) (citing *Abbott*); *W.M.M.*, __ F.4th at __ n.1 (Ho, J., concurring) (same).

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I’ve repeatedly explained how Administrations of both parties have warned for decades that foreign governments use illegal immigration as a weapon to invade and weaken other countries. *See, e.g., Abbott*, 110 F.4th at 734 (Ho, J., concurring in the judgment in part and dissenting in part); *Texas*, 173 F.4th at 668–72 (Ho, J., concurring); *W.M.M.*, __ F.4th at __ (Ho, J., concurring).

So it’s not surprising that “constitutional scholars, Supreme Court litigators, U.S. Senators, and state attorneys general all agree” that the “discussion of invasion and hostile occupation in *Abbott*” “firmly supports President Trump’s executive order,” because “birthright citizenship indisputably does not apply in cases of war or invasion.” Ted Cruz, *North Is Still North, Right Is Still Right, Even If You Stand By Yourself*, 30 TEX. REV. L. & POL. 1, 16–17 n.84 (2026). *See, e.g.,* Jim Banks, *To fix birthright citizenship, declare a foreign invasion*, THE HILL (July 29, 2026) (discussing S. 4954 (119th Cong.) (citing *Abbott*)); Ashley Brasfield, *GOP Rep. Brandon Gill Unveils Legislation Ending Birthright Citizenship For Children Of Illegal Aliens During Declared ‘Invasion’*, DAILY CALLER (July 22, 2026) (discussing H.R. 9854 (119th Cong.) (citing *Abbott*)); Eric Wessan, *How Congress Can Fix SCOTUS’s Disastrous Birthplace Citizenship Error*, THE FEDERALIST (July 22, 2026) (citing *Abbott*); Josh Blackman, *Four Questions and Few Answers About the Invasion Clause*, CIVITAS (Feb. 13, 2025) (same); Daniel Whitehead, *Securitization: A Solution to the Migration Crisis in the United States*, THE NEW DIGEST (Nov. 28, 2024) (same).

These arguments were presented by numerous amici in *Barbara*. *See, e.g.,* Amicus Curiae Brief of U.S. Senator Ted Cruz, Representative Jim Jordan, and Other Members of Congress in Support of Petitioners, at 21 & n.9, in *Trump v. Barbara*, No. 25-365 (Jan. 28, 2026) (citing *Abbott*); Amicus Curiae Brief of Tennessee, Iowa, 23 Other States, and Guam in Support of Petitioners, at 29–30, in *Trump v. Barbara*, No. 25-365 (Jan. 27, 2026) (same);

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see also Amicus Curiae Brief of Iowa and 19 Other States in Support of Applicants, at 14, in *Trump v. CASA, Inc.*, No. 24A884 (Mar. 28, 2025) (same).

But the Supreme Court did not ultimately address these arguments in *Barbara*. So it remains an open question in future cases and controversies.

Moreover, Justice Alito explicitly invoked national security concerns in his dissent in *Barbara*. *See* 146 S. Ct. at 2545 (Alito, J., dissenting) (discussing “national-security implications”); *id.* (“Suppose that a person’s only connection to this country is that he was born here to a mother who was present just long enough to give birth and then quickly returned to her native country. Suppose that country is a strategic adversary or enemy of the United States. Suppose the child never visited the United States while growing up and was inculcated with hatred of this country.”).

Justice Thomas likewise noted “the consensus that citizenship would not have been granted to the children of foreign invaders.” *Id.* at 2508 (Thomas, J., dissenting). *See also id.* at 2521 (“The Court . . . excludes from citizenship the children of . . . enemy invaders.”).

C.

These same principles that govern citizenship under the Fourteenth Amendment naturally govern naturalization by Congressional enactment. These principles readily explain why the court today is right to categorically reject the constructive presence doctrine.

Just as federal courts have no business overriding the national security determinations of Executive Branch officials in order to grant citizenship under the Fourteenth Amendment, we likewise have no business granting citizenship by statute on the ground that Executive Branch officials “wrongly turned away” Plaintiffs’ ancestor due to “systemic barriers.”

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* * *

“United States citizenship is one of the greatest privileges this world has ever known.” *Khan v. Garland*, 69 F.4th 265, 271 (5th Cir. 2023) (Ho, J., concurring in the judgment). And “as with anything of great value, the privilege of citizenship must be vigorously protected.” *Lopez v. Pompeo*, 923 F.3d 444, 447 (5th Cir. 2019) (Ho, J., concurring).

That is precisely what we do today. I am pleased to concur.