

The Honorable Judge John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

State of Washington, et al.,

Plaintiffs,

v.

Donald Trump, et al.,

Defendants.

Case No. 2:25-cv-00127-JCC

**INDIVIDUAL PLAINTIFFS’
SUPPLEMENTAL MOTION FOR
PRELIMINARY INJUNCTION**

Noting Date: February 4, 2025

ORAL ARGUMENT REQUESTED

Hearing Scheduled for:
February 6, 2025 at 10:00 a.m.

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I. INTRODUCTION

Individual Plaintiffs (hereinafter, “Plaintiffs”), on behalf of themselves and the class they seek to represent, ask the Court to enjoin implementation of a flagrantly unconstitutional executive order that purports to reinterpret the Fourteenth Amendment’s Citizenship Clause and strip persons born in the United States of citizenship by “mere executive fiat.” *Sterling v. Constantin*, 287 U.S. 378, 400 (1932). Plaintiffs Delmy Franco, Cherly Norales, and Alicia Chavarria are expectant mothers whose anticipated due date is on or after February 19, 2025. Because neither they nor the fathers of their children are lawful permanent residents (LPRs) or citizens of the United States, their children, once born—and despite being born in the United States—will not be recognized as U.S. citizens by operation of an executive order that President Trump signed shortly after his inauguration on January 20, 2025. *See* The White House, Executive Order, Protecting the Meaning and Value of American Citizenship, <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/> (Jan. 20, 2025) (hereinafter, “EO”).

The EO brazenly seeks to override the plain text of the Fourteenth Amendment, which affords citizenship to “[a]ll persons born . . . in the United States, and subject to the jurisdiction thereof.” U.S. Const. amend. XIV, § 1, cl. 1. The Citizenship Clause thus guarantees for *all* people born in the United States, regardless of race or parentage, the “priceless treasure” that is U.S. citizenship. *Fedorenko v. United States*, 449 U.S. 490, 507 (1981) (citation omitted).

While the EO claims that the excluded children are “not subject to the jurisdiction” of the United States, EO § 1, that assertion is baseless. The persons targeted by the EO are subject to the jurisdiction of the United States, as they remain bound by its laws. The history of the Fourteenth Amendment—including the tradition of *jus soli* prior to Reconstruction, the

1 legislative debates surrounding passage of the Fourteenth Amendment, and caselaw since the
2 Amendment’s adoption—has made clear that the phrase regarding jurisdiction exempts only a
3 narrow class of individuals. Indeed, the Supreme Court explicitly rejected the EO’s legal basis
4 long ago in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). As the Court explained there,
5 the classes of persons exempted by the Amendment include only people such as the children of
6 diplomats or of hostile foreign armies on U.S. soil. Thus, the EO is nothing more than a
7 transparent attempt to rewrite the Constitution.

8 Plaintiffs and putative class members face irreparable harm if the Court does not enjoin
9 this EO. The order’s directive to strip persons of birthright citizenship amounts to “the total
10 destruction of the individual’s status in organized society” and constitutes “a form of punishment
11 more primitive than torture.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958). As the Supreme Court has
12 recognized time and again, “[c]itizenship is a most precious right,” *Kennedy v. Mendoza-*
13 *Martinez*, 372 U.S. 144, 159 (1963), whose “value and importance” is “difficult to exaggerate,”
14 *Schneiderman v. United States*, 320 U.S. 118, 122 (1943). Without the protection of citizenship,
15 the babies that will be born to Plaintiffs—and others similarly targeted by the EO—will lack any
16 legal immigration status and accordingly will face the threat of removal and separation from
17 family.¹ They will also lose access to public benefits available to U.S.-citizen children, and, later

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20 ¹ Plaintiffs seek a preliminary injunction for themselves and for putative class members.
21 Temporary injunctive relief cannot be granted to a class before an order has been entered
22 determining that class treatment is proper. *Nat’l Center for Immigrants Rts., Inc. v. INS*, 743 F.2d
23 1365, 1371 (9th Cir. 1984). Thus, Plaintiffs request provisional class certification to allow the
24 Court to provide the preliminary injunctive relief required to protect the status quo and to prevent
irreparable harm to putative class members as well as named plaintiffs. While “granting such
provisional certification” still requires the Court to determine the Rule 23 requirements, “[i]ts
analysis is tempered . . . by the understanding that such certifications may be altered or amended
before the decision on the merits.” *Damus v. Nielsen*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018)
(internal quotation marks and citation omitted).

1 in life, will lack work authorization, access to federal financial aid for higher education, the
2 ability to vote or travel, and the other precious rights that U.S. citizenship affords.

3 Fundamental constitutional rights “in our society [can]not . . . be decided by executive
4 fiat or by popular vote.” *Patton v. Yount*, 467 U.S. 1025, 1054 (1984) (Stevens, J., dissenting).
5 The Constitution is clear in this case—and the consequences of the EO threaten Plaintiffs with
6 “the loss ‘of all that makes life worth living.’” *Bridges v. Wixon*, 326 U.S. 135, 147 (1945)
7 (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)). They accordingly request that the
8 Court enjoin any implementation of the EO to preserve the status quo while this case proceeds.

9 II. LEGAL BACKGROUND

10 This case centers on the Citizenship Clause of the Fourteenth Amendment. The
11 Amendment affirmed a Founding-era and antebellum legal consensus that *jus soli*—i.e.,
12 birthright citizenship—guaranteed U.S. citizenship to those born on U.S. soil. *See generally*
13 Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 *Geo. L. J.* 405, 410–16 (2020).
14 But in many cases, that right was denied to black people, both free and enslaved, as well as their
15 descendants. *See, e.g., id.* at 416–17. That racial limitation on *jus soli* reached its apex in the
16 Supreme Court’s infamous decision in *Dred Scott v. Sanford*, 60 U.S. 393 (1857).

17 Following the Civil War, Congress passed, and the states ratified, the Fourteenth
18 Amendment. *See, e.g.,* Ramsey, *Originalism, supra*, at 417. The first section of that Amendment
19 includes the Citizenship Clause, which provides that “[a]ll persons born or naturalized in the
20 United States, and subject to the jurisdiction thereof, are citizens of the United States and of the
21 State wherein they reside.” U.S. Const. amend. XIV, § 1, cl. 1. The Clause repudiated *Dred Scott*
22 and ensured that *jus soli* applied to *all* people in the United States. That broad language is subject
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1 only to limited exceptions of people not “subject to the jurisdiction” of the United States—that
2 is, of those who are not subject to our laws, such as diplomats.

3 In 1940, Congress enacted a statute that mirrors the Citizenship Clause. This birthright
4 citizenship statute provides that “a person born in the United States, and subject to the
5 jurisdiction thereof” is a citizen of the United States. 8 U.S.C. § 1401(a). The language “[wa]s
6 taken . . . from the fourteenth amendment to the Constitution.” *To Revise and Codify the Nat’y*
7 *Laws of the United States into a Comprehensive Nat’y Code: Hearings Before the Comm. on*
8 *Immig. and Naturalization on H.R. 6127 Superseded by H.R. 9980, 76th Cong., 1st Sess., 38*
9 (1940).

10 III. STATEMENT OF FACTS

11 A. The Birthright Citizenship Executive Order

12 On January 20, 2025, President Trump issued “Protecting the Meaning and Value of
13 American Citizenship,” the executive order at issue here. *See* EO. The EO states that, beginning
14 thirty days after its signing, “no department or agency of the United States government shall
15 issue documents recognizing United States citizenship” to newborn children whose “father was
16 not a United States citizen or lawful permanent resident at the time of [the child’s] birth” and
17 mother was either “unlawfully present in the United States” or in a “lawful but temporary”
18 status. EO § 2(a). In short, the order attempts to redefine the Citizenship Clause of the Fourteenth
19 Amendment and restrict *jus soli* in the United States. The order only applies prospectively, so the
20 constitutional text means one thing for certain people, and the opposite for similarly situated
21 people born mere days apart.

22 Notably, the order fails to define who is “unlawfully present” or who has “temporary”
23 status. To Plaintiffs’ knowledge, Defendants have not provided any clarifying guidance. But the
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1 most natural reading is that the order sweeps in any child born to parents who are neither LPRs
2 nor U.S. citizens. This covers a wide range of immigration statuses, many of which allow
3 noncitizens to reside in this country for years and even decades, such as asylum, withholding of
4 removal, Temporary Protected Status, U status, and H-1B status. The order's arbitrary scope
5 reflects the widespread and devastating impact it will have on thousands of immigrant families in
6 this state. *See infra* Sec. IV, B.

7 **B. Plaintiffs' Pregnancies and the Harms They Will Face**

8 1. Plaintiff Delmy Franco

9 Ms. Franco is a noncitizen from El Salvador who currently resides in Lynnwood,
10 Washington. Dkt. 59, Franco Decl., ¶ 2. She is around seven months pregnant, and her due date
11 is March 26, 2025. *Id.* ¶ 9. Ms. Franco fled El Salvador in 2015 with her oldest daughter, who
12 was six years old at the time, to escape violence and threats. Her partner had already fled El
13 Salvador the year prior. *Id.* ¶¶ 6–7. An immigration judge (IJ) granted withholding of removal to
14 Ms. Franco and asylum to her daughter. *Id.* ¶ 7. She has lived in the state of Washington for
15 almost 10 years. *Id.* ¶ 3. Her brother and sister live in Washington, as does her immediate family,
16 including a U.S.-citizen son born in 2018. *Id.* ¶ 8. She considers Washington her and her family's
17 home. *Id.* Ms. Franco is also the primary caregiver for her niece and nephew, both of whom are
18 teenagers and live with her immediate family. *Id.* ¶ 4.

19 When Ms. Franco heard about the EO in January 2025, she was immediately fearful that
20 her child will be deemed undocumented at birth, as neither she nor her partner are U.S. citizens
21 or LPRs. *Id.* ¶¶ 11–12. Ms. Franco fears her child may become the target of immigration
22 enforcement, and that immigration agents could separate her and her family from her
23 undocumented child because of the EO and her family's mixed immigration status. *Id.* ¶ 13. She
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1 also fears that her child will lack educational opportunities and authorization to work legally in
2 the United States. *Id.* Without the assurance of citizenship, Ms. Franco is concerned her child
3 will feel unsafe and that she will have to live in hiding to protect the child and her family. *Id.* She
4 is distressed at the prospect that her child will face removal to a country that the family had to
5 flee due to persecution and violence. *Id.*

6 2. Plaintiff Cherly Norales

7 Ms. Norales is a noncitizen from Honduras who currently resides in Seattle, Washington.
8 Dkt. 60, Norales Decl., ¶ 2. She is around seven months pregnant, and her due date is March 19,
9 2025. *Id.* ¶ 9. Ms. Norales fled Honduras in 2023 with her son, who was two years old at the
10 time, to escape severe violence, abuse, and threats. *Id.* ¶ 6. Ms. Norales and her child have
11 applied for asylum before an IJ. *Id.* ¶ 8.

12 When she heard about the EO, Ms. Norales feared that her child will be deemed
13 undocumented at birth, as neither she nor her partner are U.S. citizens or LPRs. *Id.* ¶ 11. She
14 worries that the child will not have access to certain public benefits that critically impact their
15 well-being and, eventually, to access to higher education and work authorization. *Id.* ¶ 13. She
16 does not want her child to ever risk removal to a country the child has never known—a country
17 where she has suffered so much violence and abuse. *Id.*

18 3. Plaintiff Alicia Chavarria

19 Ms. Chavarria is a noncitizen from El Salvador who currently resides in Bothell,
20 Washington. Dkt. 61, Chavarria Decl., ¶ 2. She is around three months pregnant, and her due
21 date is July 21, 2025. *Id.* ¶ 8. Ms. Chavarria fled El Salvador in 2016 to escape violence and
22 abuse, because the Salvadoran police could not help or protect her. *Id.* ¶¶ 5–6. She has applied
23 for asylum with U.S. Citizenship and Immigration Services. *Id.* ¶ 6. She came to Washington,
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1 where her brother lived, and met her partner here. *Id.* ¶ 7. Their first child was born in 2019. *Id.*
2 Ms. Chavarria has now lived in Washington about eight years and considers this state her and her
3 family’s home. *Id.*

4 When she heard about the EO, Ms. Chavarria feared that her child will be deemed
5 undocumented at birth as neither she nor her partner are U.S. citizens or LPRs. *Id.* ¶ 10. She
6 worries that her expected child could be targeted for immigration enforcement and removed to a
7 country from which she was forced to flee. *Id.* ¶ 12. It is imperative to her that her family remain
8 united and safe in the United States. *Id.* She is also concerned for how difficult her child’s life
9 will be without proof of U.S. citizenship and the benefits it includes, like an unrestricted social
10 security number. *Id.* She worries that without work authorization, her child will face significant
11 barriers to educational and work opportunities. *Id.*

12 IV. ARGUMENT

13 To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to
14 succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary
15 relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest.
16 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Even if Plaintiffs raise only
17 “serious questions going to the merits,” the Court can nevertheless grant relief if the balance of
18 hardships tips “sharply” in Plaintiffs’ favor, and the remaining equitable factors are satisfied. *All.*
19 *For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

20 **A. Plaintiffs Franco, Norales, and Chavarria are likely to succeed on the merits of their**
21 **argument that the EO violates the Citizenship Clause of the Fourteenth Amendment**
22 **as well as 8 U.S.C. § 1401.**

23 Plaintiffs are likely to succeed on their claim that the EO is both unconstitutional and
24 illegal. The Citizenship Clause of the Fourteenth Amendment expressly provides that “[a]ll
persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

1 citizens of the United States.” U.S. Const. amend. XIV, § 1, cl. 1. The Immigration and
2 Nationality Act (INA) reinforces that constitutional directive, declaring that “a person born in
3 the United States, and subject to the jurisdiction thereof,” “shall be [a] national[] and citizen[] of
4 the United States at birth.” 8 U.S.C. § 1401(a). The text of both the Constitution and the INA
5 makes plain that someone born in the United States and subject to its jurisdiction is a U.S.
6 citizen. *See Amalgamated Transit Union Loc. 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*,
7 435 F.3d 1140, 1146 (9th Cir. 2006) (“As is oft said, the plain language of the statute is usually
8 the best indication of the drafters’ intent.”).

9 Moreover, the Supreme Court long ago ruled that children born in the United States to
10 noncitizens are U.S citizens. A few decades after the Citizenship Clause’s drafting, in the
11 seminal case *United States v. Wong Kim Ark*, the Supreme Court ruled that a child born to two
12 Chinese nationals acquired U.S. citizenship at birth under the Fourteenth Amendment. 169 U.S.
13 649. Examining the text and history of the Citizenship Clause, the Court explained that to
14 acquire citizenship at birth, a child must simply be “born in the United States, and subject to the
15 jurisdiction thereof.” *Id.* at 702. The Court clarified that the phrase “subject to the jurisdiction” of
16 the United States was intended “to exclude, by the fewest and fittest words,” the common law
17 exceptions to birthright citizenship: namely, children born to “alien enemies in hostile
18 occupation” and children of “diplomatic representatives of a foreign state.” *Id.* at 682. In line
19 with these common law exceptions, the Court noted that the Clause also excluded children born
20 aboard “foreign public ships” and those born to “members of the Indian tribes owing direct
21 allegiance to their several tribes”—groups who were then considered under the power of separate
22 sovereigns. *Id.* at 693.

1 Beyond these narrowly enumerated historical exceptions, the Court concluded that the
2 Citizenship Clause “in clear words and in manifest intent, includes the children born within the
3 territory of the United States, of all other persons, of whatever race or color, domiciled within the
4 United States.” *Id.* The Court explained that an individual’s physical presence in a country
5 inherently subjects an individual to the laws of that government, and thus to the jurisdiction
6 thereof. *Id.* at 693–96. Examining the Citizenship Clause in concert with the Equal Protection
7 Clause, the Court further reasoned that

8 [i]t is impossible to construe the words ‘subject to the jurisdiction thereof,’ in the
9 opening sentence, as less comprehensive than the words ‘within its jurisdiction,’ in
10 the concluding sentence of the same section; or to hold that persons ‘within the
jurisdiction’ of one of the states of the Union are not ‘subject to the jurisdiction of
the United States.’

11 *Id.* at 696; *see also, e.g.*, Christopher L. Eisgruber, *Birthright Citizenship and the Constitution*,
12 72 N.Y.U. L. Rev. 54, 65 (1997) (“[T]he children of illegal aliens are certainly ‘subject to the
13 jurisdiction of the United States’ in the sense that they have no immunity from American law.”);
14 James C. Ho, *Defining “American:” Birthright Citizenship and the Original Understanding of*
15 *the 14th Amendment*, 9 Green Bag 2d 367, 368 (2006) (“To be ‘subject to the jurisdiction’ of the
16 U.S. is simply to be subject to the authority of the U.S. government.”); Garrett Epps, *The*
17 *Citizenship Clause: A “Legislative History,”* 60 Am. U. L. Rev. 331, 370 (2010) (“Can ‘illegal
18 aliens’ be arrested, tried, and even executed? Can ‘illegal aliens’ buy and sell property? Can they
19 make contracts and incur liability for breach? Can they be sued in tort if they, for example, drive
20 unsafely and injure or kill other motorists? The answer to these questions is clear.”); Ramsey,
21 *Originalism, supra*, at 472 (“[T]he original meaning indicates that the [Citizenship] Clause does
22 not exclude U.S.-born children of temporary visitors or of persons not lawfully present in the
23 United States.”).

1 Subsequent Supreme Court precedent supports the same understanding of what it means
2 to be subject to the jurisdiction of the United States. In *Plyler v. Doe*, the Court relied on *Wong*
3 *Kim Ark* in holding that undocumented immigrants are “within [the] jurisdiction” of any state
4 where they are physically present. 457 U.S. 202, 215 (1982). The Court stated that an unlawful
5 entry into the United States “cannot negate the simple fact of [a person’s] presence within the
6 State’s territorial perimeter.” *Id.* “Given such presence,” the Court continued, “he is subject to
7 the full range of obligations imposed by the State’s civil and criminal laws.” *Id.* Critically, the
8 Court explained that “no plausible distinction with respect to Fourteenth Amendment
9 ‘jurisdiction’ can be drawn between resident aliens whose entry into the United States was
10 lawful, and resident aliens whose entry was unlawful.” *Id.* at 211 n.10 (citing C. Bouvé,
11 *Exclusion and Expulsion of Aliens in the United States* 425–27 (1912)). Notably, the dissenting
12 judges in the case did not dispute the basic proposition that the Fourteenth Amendment
13 encompasses noncitizens, whether lawfully present or not. *Id.* at 243 (Burger, C.J., dissenting).

14 Consistent with this understanding, the Supreme Court has repeatedly recognized that all
15 children born within the United States to noncitizen parents are entitled to citizenship by birth,
16 without distinction as to those born to parents without lawful immigration status. *E.g.*, *Morrison*
17 *v. California*, 291 U.S. 82, 85 (1934) (holding that individual of Japanese ancestry was a citizen
18 “if he was born within the United States” even though he would not have been eligible to
19 naturalize if born abroad); *Perkins v. Elg*, 307 U.S. 325, 329 (1939) (holding that “at birth
20 [plaintiff] became a citizen of the United States” notwithstanding parents’ Swedish nationality);
21 *United States ex rel. Hintopoulos v. Shaughnessy*, 353 U.S. 72, 73 (1957) (recognizing that a
22 child born to two “illegal[ly] presen[t]” noncitizens was “of course, an American citizen by
23 birth”); *Nishikawa v. Dulles*, 356 U.S. 129, 138 (1958) (Black, J., concurring) (“Nishikawa was
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1 born in this country while subject to its jurisdiction; therefore American citizenship is his
2 constitutional birthright. What the Constitution has conferred neither the Congress, nor the
3 Executive, nor the Judiciary, nor all three in concert, may strip away.” (citation omitted)); *INS v.*
4 *Errico*, 385 U.S. 214, 215 (1966) (acknowledging that child “acquired United States citizenship
5 at birth” even though born to two noncitizens who entered the United States fraudulently); *INS v.*
6 *Rios-Pineda*, 471 U.S. 444, 446 (1985) (same, for child of two noncitizens who had entered
7 unlawfully and were unlawfully present in the United States). Circuit courts, including the Ninth
8 Circuit, have naturally adhered to the same understanding. *E.g.*, *Regan v. King*, 134 F.2d 413
9 (9th Cir. 1943) (per curiam) (affirming, on the basis of Fourteenth Amendment, district court’s
10 judgment that all persons of Japanese descent born in the United States are citizens by birth);
11 *United States v. Carvalho*, 742 F.2d 146, 148 (4th Cir. 1984) (child born to noncitizen parents
12 subject to deportation order was “citizen by virtue of her birth in the United States”); *Mariko v.*
13 *Holder*, 632 F.3d 1, 8 n.4 (1st Cir. 2011) (noting that asylum seekers’ daughter, “born in the
14 United States,” is a citizen).

15 Despite the plain text and well-established precedent on this issue, the EO attempts to
16 draw support for its unconstitutional action by claiming the language “subject to the jurisdiction”
17 has been misinterpreted. EO § 1. In interpreting the meaning of constitutional text, courts must
18 “interpret the words consistent with their ‘ordinary meaning . . . at the time’” of their enactment.
19 *Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (alteration in original) (quoting
20 *Perrin v. United States*, 444 U.S. 37, 42 (1979)); *see also, e.g., Tabares v. City of Huntington*
21 *Beach*, 988 F.3d 1119, 1122 (9th Cir. 2021) (analysis of constitutional text must be grounded “in
22 an understanding of the text’s original public meaning at ratification”). That is precisely what the
23 Supreme Court did when analyzing the text of the Citizenship Clause just three decades after its
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1 drafting. *See Wong Kim Ark*, 169 U.S. at 653–54 (declaring that ascertaining the Citizenship
2 Clause’s meaning required “regard . . . not only to all parts of the act itself, and of any former
3 act of the same lawmaking power, of which the act in question is an amendment, but also to the
4 condition and to the history of the law as previously existing”); *see also id.* at 654–99
5 (consulting, inter alia, common law sources, Attorney General opinions, early Republic caselaw,
6 and legislative debate over the Fourteenth Amendment to interpret and contextualize the
7 Citizenship Clause).

8 Indeed, the Fourteenth Amendment’s qualifying phrase—“subject to the jurisdiction”—
9 had an accepted meaning prior to its inclusion in that Amendment. The “use of particular phrases
10 and concepts [by the drafters of the Fourteenth Amendment] reflected legal meanings and ideas
11 that had emerged in antebellum judicial cases and legal commentary—both of which were
12 regularly quoted on the floor during debate.” Kurt T. Lash, *The Origins of the Privileges or*
13 *Immunities Clause, Part I: “Privileges and Immunities” As an Antebellum Term of Art*, 98 *Geo.*
14 *L.J.* 1241, 1246 (2010).

15 Specifically, use of the word “jurisdiction” or “subject to the jurisdiction” conveyed the
16 idea that a person was subject to the authority or sovereign power of a country or government.
17 Dictionaries at the time defined the word “jurisdiction” not only in terms of a court’s power to
18 decide cases but also as the “power of governing or legislating; the right of making or enforcing
19 law; the power or right of exercising authority.” *Jurisdiction*, Noah Webster et al., *An American*
20 *Dictionary of the English Language* (1865). Indeed, Congress used the phrase this same way in
21 legislation in the antebellum period. *See Act of March 27, 1804, § 2, 2 Stat. 298, 299* (making
22 the Act applicable in all places that were “subject to the jurisdiction of the United States”). While
23 courts often used this phrase to reference their own jurisdiction, they also used it in this other
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1 sense—i.e., that of sovereign power. *See, e.g., The Schooner Exch. v. McFaddon*, 11 U.S. 116,
2 136 (1812) (Marshall, C.J.) (“The jurisdiction of the nation within its own territory is necessarily
3 exclusive and absolute. It is susceptible of no limitation not imposed by itself.”); *United States v.*
4 *Bailey*, 24 F. Cas. 937, 939 (C.C.D. Tenn. 1834) (asking if “Cherokee territory” was “subject to
5 the jurisdiction of” the United States). Legislators used the phrase in this sense too. *See, e.g.,*
6 Matthew Ing, *Birthright Citizenship, Illegal Aliens, and the Original Meaning of the Citizenship*
7 *Clause*, 45 Akron L. Rev. 719, 727–28 (2012) (chronicling uses of “jurisdiction” in this sense by
8 members of Congress during the 1860s).

9 Notably, the principle that “ambassadors were exempted from all local jurisdiction, civil
10 and criminal,” was widely accepted in pre-civil war cases and legal commentary. James Kent,
11 *Commentaries on American Law* 15 (9th ed. 1858); *see also, e.g., The Schooner Exch.*, 11 U.S.
12 at 138–39 (“The assent of the sovereign to the very important and extensive exemptions from
13 territorial jurisdiction which are admitted to attach to foreign ministers, is implied from the
14 considerations that, without such exemption, every sovereign would hazard his own dignity by
15 employing a public minister abroad.”); *see also id.* at 125, 127, 132 (argument of counsel for
16 both parties agreeing with this principle). This use of “jurisdiction”—and the principle that
17 ambassadors and foreign ministers were exempt from such jurisdiction—also provides important
18 context for the Fourteenth Amendment’s Citizenship Clause, which incorporated the principle in
19 its text.

20 The legislative history supports this established understanding of what the “subject to the
21 jurisdiction thereof” phrase refers to. *See D.C. v. Heller*, 554 U.S. 570, 584–615 (2008)
22 (consulting a wide range “founding-era sources” to understand the meaning of the Second
23 Amendment, including the ratification debates). When the language of the Citizenship Clause
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1 was first proposed by Senator Howard from Michigan, vigorous debate ensued over the meaning
2 of the “subject to the jurisdiction thereof” language. But that debate focused only on whether the
3 clause included “wild Indians” and Native Americans living in reservations. *See* Cong. Globe,
4 39th Cong., 1st Sess. Pt. 4, 2890–97 (1866). Senator Howard’s position—that “Indians born
5 within the limits of the United States, and who maintain their tribal relations, are not, in the sense
6 of this amendment, born subject to the jurisdiction of the United States. They are regarded, and
7 always have been in our legislation and Jurisprudence, as being *quasi* foreign nations”—
8 eventually won the day, and the proposal to add “excluding Indians not taxed” to the Citizenship
9 Clause to make the exclusion explicit was rejected. *Id.* at 2890, 2897.

10 Prior to that conversation, Senator Howard clarified one group of U.S.-born children
11 who, “of course,” were not granted birthright citizenship by the amendment: those born to
12 “foreigners, aliens, who belong to the families of ambassadors [sic] or foreign ministers.” *Id.* at
13 2890. Notably, Senator Howard then stated the amendment “will include every other class of
14 persons”—including, of course, those noncitizens not born to ambassadors. *Id.* Other exchanges
15 during the debates also reflected the common understanding that the Citizenship Clause applied
16 to noncitizens. Criticizing the Clause, Senator Cowan of Pennsylvania decried the idea that “the
17 child of the Chinese immigrant” and “the child of a Gypsy” would be considered citizens under
18 the clause, given that they, like “a sojourner,” “ha[ve] a right to the protection of the laws.” *Id.*;
19 *see also id.* (lamenting that “the mere fact that a man is born in the country” should be enough to
20 grant him citizenship).² Invoking the specter of an invasion by undesirable noncitizens, Senator

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23 ² As Professor Garrett Epps argues, “the discussion of Gypsies provides about the closest
24 thing we are likely to get to the issue of illegal immigration,” as they were described by Senator
Cowan with the same vitriol used to describe undocumented noncitizens today. Epps, *The
Citizenship Clause, supra*, at 361.

1 Cowan then questioned, “[I]s it proposed that the people of California are to remain quiescent
2 while they are overrun by a flood of immigration of the Mongol race? Are they to be immigrated
3 out of house and home by Chinese?” *Id.* at 2890–91. In response, Senator Conness of California
4 noted his support for the clause’s declaration “that the children of all parentage whatever, born in
5 California, should be regarded and treated as citizens of the United States.” *Id.* at 2891. No one
6 questioned that which was readily apparent—the children of Chinese (and other noncitizens)
7 were “subject to the jurisdiction” of the United States. Instead, the primary question regarding
8 the meaning of the “subject to the jurisdiction” language was with respect to Native Americans.
9 *See, e.g., id.* 2890, 2892–97.

10 The legislative history also makes clear that the framers intended to enshrine the concept
11 of birthright citizenship. When Senator Howard first introduced the language of the Citizenship
12 Clause, he affirmed that it was “simply declaratory of what I regard as the law of the land
13 already, that every person born within the limits of the United States, and subject to their
14 jurisdiction, is by virtue of natural law and national law a citizen of the United States.” *Id.* at
15 2890. This is because the Fourteenth Amendment’s guarantee of birthright citizenship for *all*
16 people born in the United States (with limited exceptions) was not a novel concept at the time it
17 was drafted. Prior to the passage of the amendment, courts and legal commentators already
18 generally understood that the doctrine of *jus soli*, that is, citizenship by birth, made people born
19 in the United States citizens. *See, e.g., Lynch v. Clarke*, 1 Sand. Ch. 583, 663 (N.Y. Ch. 1844);
20 *see also, e.g., Gardner v. Ward*, 2 Mass. (1 Tyng) 244 (1805) (“I take it, then, to be established,
21 with a few exceptions not requiring our present notice, that a man, born within the jurisdiction of
22 the common law, is a citizen of the country wherein he is born.”); *Kilham v. Ward*, 2 Mass. (1
23 Tyng) 236, 264–65 (1806) (opinion of Sewall, J.) (“The doctrine of the common law is, that
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1 every man born within its jurisdiction is a subject of the sovereign of the country where he is
 2 born”); *State v. Manuel*, 20 N.C. (3 & 4 Dev. & Bat.) 144, 151 (1838) (“[A]ll free persons
 3 born within the State are born citizens of the State.”); *Barzizas v. Hopkins*, 23 Va. (2 Rand.) 276,
 4 278 (1824) (“The place of birth, it is true, in general, determines the allegiance.”).³

5 Notably, the question of whether *jus soli* applied to children born to noncitizens arose
 6 prior to Reconstruction, and there too courts applied the doctrine to hold that such children were
 7 U.S. citizens. For example, in *McCreery’s Lessee v. Somerville*, the Court’s decision observed
 8 that the U.S.-born daughters of an Irish citizen were “native born citizens of the United States.”
 9 22 U.S. 354, 354 (1824). Several other cases around the time of the Civil War held or observed
 10 the same. *See, e.g., Munro v. Merchant*, 28 N.Y. 9, 40 (1863) (assuming that plaintiff “born in
 11 this state of non-resident alien parents . . . is *prima facie* a citizen”); *Ludlam v. Ludlam*, 26 N.Y.
 12 356, 371 (1863) (“[B]y the law of England the children of alien parents, born within the
 13 kingdom, are held to be citizens.”). The Department of Justice held the same view at the time.
 14 *See* *Citizenship of Children Born in the United States of Alien Parents*, 10 Op. Att’y Gen. 328,
 15 328 (1862) (“I am quite clear in the opinion that children born in the United States of alien
 16 parents, who have never been naturalized, are native-born citizens of the United States, and, of
 17 course, do not require the formality of naturalization to entitle them to the rights and privileges
 18 of such citizenship.”); *Citizenship of Children Born Abroad of Naturalized Parents*, 10 Op.
 19 Att’y Gen. 329, 330 (1862) (similar); *Citizenship*, 9 Op. Att’y Gen. 373, 374 (1859) (similar).

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 22 ³ Of course, prior to the Fourteenth Amendment, this principle had a racial component:
 23 enslaved people born in the United States were not considered citizens. The citizenship status of
 24 free black people prior to the Civil War is a complex one that was determined by state law, *see, e.g.,* Martha S. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* 25–34 (2018), and also federal law, *see, e.g., Dred Scott*, 60 U.S. 393.

1 Indeed, the Constitution in 1789 assumed people obtained citizenship at birth. For
2 example, Article II requires that the President be a “natural born citizen” to hold that office. U.S.
3 Const. art. II, § 1, cl. 5. That the Constitution assumes some people are “born citizens” reflects
4 that the Founders assumed *jus soli* would apply on U.S. soil.

5 Leading legal commentators agreed. As one stated:

6 Therefore every person born within the United States, its territories or districts,
7 whether the parents are citizens or aliens, is a natural born citizen in the sense of
8 the constitution Under our constitution the question is settled by its express
9 language, and when we are informed that, excepting those who were citizens,
(however the capacity was acquired,) at the time the Constitution was adopted, no
person is eligible to the office of president unless he is a natural born citizen, the
principle that the place of birth creates the relative quality is established as to us.

10 William Rawle, *A View of the Constitution of the United States of America* 80–81 (1825); *see*
11 *also* Ramsey, *Originalism, supra*, at 414 (citing additional founding-era legal commentators
12 agreeing with these principles).

13 These sources reflect the common law background that the Founders inherited. English
14 law applied *jus soli*, including as to noncitizens residing in English territory. In 1608, English
15 courts held in *Calvin’s Case* that birthright citizenship made “subjects” of all people born within
16 territories held by the English crown. *See Calvin v. Smith*, 77 Eng. Rep. 377, 382 (K.B. 1608).
17 Specifically, the case “determined that all persons born within any territory held by the King of
18 England were to enjoy the benefits of English law as subjects of the King. A person born within
19 the King’s dominion owed allegiance to the sovereign and in turn was entitled to the King’s
20 protection.” Polly J. Price, *Natural Law and Birthright Citizenship in Calvin’s Case* (1608),
21 9 Yale J.L. & Humans. 73, 73–74 (1997). A century and a half later, Blackstone’s *Commentaries*
22 continued to reflect that this remained the law of the land, including as to noncitizens. As
23 Blackstone explained, allegiance was due to the King by all people born on English soil.
24 1 William Blackstone, *Commentaries on the Laws of England* 354–62 (1765). And as a result,

1 the same people were also considered “subjects.” Indeed, Blackstone explicitly noted that
2 because of the “natural allegiance” everyone born on English soil owed to the monarch, “[t]he
3 children of aliens, born here in England, are, generally speaking, natural-born subjects, and
4 entitled to all the privileges of such.” *Id.* at 362.

5 In sum, the EO flatly contravenes the Citizenship Clause’s plain text, legislative history,
6 historical context, and binding judicial precedent. All these sources demonstrate that the Clause’s
7 grant of birthright citizenship encompasses the children of noncitizens, irrespective of their
8 parents’ immigration status. And no provision of the Constitution gives the Executive the right to
9 restrict the birthright citizenship recognized in the Citizenship Clause. *See generally* U.S. Const.
10 art. II; *see also Wong Kim Ark*, 169 U.S. at 703 (explaining that the government has “no authority
11 . . . to restrict the effect of birth, declared by the constitution to constitute a sufficient and
12 complete right to citizenship”).⁴

13 **B. Plaintiffs will suffer irreparable harm absent an injunction.**

14 Parties seeking preliminary injunctive relief must also show they are “likely to suffer
15 irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is
16 harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream*
17 *Act Coal. v. Brewer (Ariz. D)*, 757 F.3d 1053, 1068 (9th Cir. 2014).

18 The implementation of the EO violates the Citizenship Clause, and such “deprivation of
19 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695

20 _____
21 ⁴ Similarly, the EO contravenes the plain text of the INA. *See* 8 U.S.C. § 1401 (stating that
22 the following “shall be nationals and citizens of the United States at birth: (a) a person born in
23 the United States, and subject to the jurisdiction thereof”). As noted above, Congress lifted this
24 language directly from the Fourteenth Amendment. *Supra* p. 4. Moreover, Congress’s use of
“shall” imposes a “discretionless obligation[.]” *Lopez v. Davis*, 531 U.S. 230, 241 (2001). The
EO’s directive that “no department or agency of the United States government shall issue
documents recognizing United States citizenship” to Plaintiffs’ expected children and putative
class members, EO § 2(a), therefore violates the INA.

1 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also, e.g.*,
2 *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) (“We have stated that an
3 alleged constitutional infringement will often alone constitute irreparable harm.” (quoting
4 *Associated Gen. Contractors v. Coal. for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)).
5 Accordingly, the Ninth Circuit has explained that where a plaintiff establishes “that the
6 government’s current policies are likely unconstitutional . . . Plaintiffs have also carried their
7 burden as to irreparable harm.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *see*
8 *also, e.g., Matsumoto v. Labrador*, 122 F.4th 787, 816 (9th Cir. 2024) (holding that
9 “[i]rreparable harm is a given” where plaintiffs established “a colorable First Amendment
10 claim”); *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (“If a plaintiff bringing . . . a
11 [constitutional] claim shows he is likely to prevail on the merits, that showing will almost always
12 demonstrate he is suffering irreparable harm as well.”). Here, Plaintiffs have amply demonstrated
13 that they are likely to succeed on the merits of their claim that the EO violates the Fourteenth
14 Amendment and have thus established irreparable harm. *See supra* Sec. IV, A.

15 The loss of citizenship under the EO will result in “severe and unsettling consequences.”
16 *Fedorenko*, 449 U.S. at 505; *see also, e.g., Kennedy*, 372 U.S. at 160 (“Deprivation of citizenship
17 . . . has grave practical consequences.”); *Trop*, 356 U.S. at 101 (noting that “denationalization”
18 results in “total destruction of the individual’s status in organized society”); *Schneiderman*, 320
19 U.S. at 122 (explaining that deprivation of citizenship is “more serious than a taking of one’s
20 property, or the imposition of a fine or other penalty”). Deprivation of citizenship signifies a
21 denial of fundamental rights, as citizens at birth are “entitled . . . to the full protection of the
22 United States, to the absolute right to enter its borders, and to full participation in the political
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1 process.” *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 67 (2001). No adequate legal remedy exists for
2 the loss of “priceless benefits that derive from [citizenship].” *Schneiderman*, 320 U.S. at 122.

3 Citizenship also affords full protection from deportation—“the loss of all that makes life
4 worth living.” *Bridges*, 326 U.S. at 147 (quotation marks omitted). Serious and irreparable injury
5 is imminent, as Plaintiffs’ children and putative class members targeted by the EO will not only
6 be stripped of citizenship but they will be deemed to be without any legal status, for the INA
7 provides no alternative legal status to persons born in the United States. Accordingly, Plaintiffs’
8 children face the prospect of detention and removal to countries they have never known and, in
9 some instances, separation from their family members with lawful status. Dkt. 59, Franco Decl.,
10 ¶ 13; Dkt. 60, Norales Decl., ¶ 13; Dkt. 61, Chavarria Decl., ¶ 12. This prospect of detention and
11 removal constitutes irreparable harm. *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
12 (W.D. Wash. 2019). Moreover, such uncertainty subjects Plaintiffs and proposed class members
13 to “ever-increasing fear and distress,” *Trop*, at 356 U.S. at 102, further supporting a finding of
14 irreparable harm, *see, e.g., Moreno Galvez*, 387 F. Supp. 3d at 1218 (finding that “feelings of
15 stress, devastation, fear, and depression arising from” the challenged immigration policy
16 constitute irreparable harm because “[s]uch emotional and psychological harms will not be
17 remedied by an award of damages”).

18 Even if they are not removed, the individuals targeted by the EO will grow up and live
19 undocumented, forced to remain in the legal shadows of the country where they were born. Most
20 will have no pathway to legal status throughout the course of their lifetime. For example, none of
21 the parents of persons targeted by the EO are eligible to file family visa petitions for their
22 newborn children, as only U.S. citizens and LPRs are eligible to do so. 8 U.S.C.
23 §§ 1151(b)(2)(A)(i); 1153(a). Nor are employment visas an option. Even if they eventually
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1 graduate from college with a specialized skill and are offered qualifying employment, they still
2 lack key eligibility requirements. Specifically, persons targeted by the EO would be ineligible to
3 obtain LPR status through employment visa petitions because they were never “inspected and
4 admitted or paroled” into the United States. *Id.* § 1255(a). Moreover, they would be
5 independently barred by 8 U.S.C. § 1255(c), which renders a person ineligible “who is in
6 unlawful immigration status on the date of filing the application for adjustment of status.”

7 Furthermore, by rendering Plaintiffs’ children undocumented, the EO threatens to deprive
8 the children of access to federally-funded public benefits that are critical to their well-being and
9 stability. Only “qualified” noncitizens enumerated under 8 U.S.C. § 1641(b) are eligible to
10 receive “any retirement, welfare, health, disability, public or assisted housing, postsecondary
11 education, food assistance, unemployment benefit, or any other similar benefit for which
12 payments or assistance are provided . . . by an agency of the United States or by appropriated
13 funds of the United States.” *Id.* § 1611(c)(1)(B); *see also id.* § 1612 (limiting eligibility for
14 Supplemental Security Income and Supplemental Nutritional Assistance Program (food stamps)).
15 While Washington state provides food and cash assistance to certain noncitizens who do not
16 qualify for similar federal benefits, the state’s eligibility requirements exclude most noncitizens
17 without *any* lawful status. *See* WASH. ADMIN. CODE § 388-424-0030 (defining eligibility for food
18 assistance program); *id.* § 388-400-0010 (defining eligibility for state family assistance).
19 Notably, the State Medicaid Director for the Washington State Health Care Authority anticipates
20 that the EO will “result in direct loss of federal reimbursements to the State for [healthcare]
21 coverage” for children that will be deemed noncitizens without lawful status. Dkt. 14, Fotinos
22 Decl., ¶ 24. The EO thus “poses a direct threat to the ability of the State to provide meaningful
23 healthcare to all in need without interruption.” *Id.* While Washington State currently provides
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1 healthcare coverage to all pregnant women without respect to their immigration status, the
2 removal of birthright citizenship will result in “substantial uncertainty and administrative
3 burdens” that jeopardize “streamlined coverage to women in need.” *Id.* ¶ 25.

4 The EO will severely limit the educational opportunities of the children in the proposed
5 class, including rendering them ineligible for federal financial aid. *See* 20 U.S.C. § 1091(a)(5);
6 34 C.F.R. § 668.33(a)–(b). Thus, putative class members will face significant limitations in their
7 education and career opportunities. Such “loss of opportunity to pursue one’s chosen profession
8 constitutes irreparable harm.” *Ariz. Dream Act Coal. v. Brewer (Ariz. II)*, 855 F.3d 957, 978 (9th
9 Cir. 2017); *see also Medina v. U.S. DHS*, 313 F. Supp. 3d 1237, 1251 (W.D. Wash. 2018)
10 (finding Deferred Action for Childhood Arrivals recipient’s potential loss of opportunity to
11 pursue his profession constituted irreparable harm).

12 Finally, the EO’s purported stripping of citizenship has cascading effects on other civil
13 rights protected by the Constitution. Most notably, it eliminates the right of those targeted to vote
14 upon turning eighteen. As noted above, the loss of this constitutional right, *see* U.S. Const.
15 amend. XV, § 1, constitutes irreparable harm, *supra* pp. 18–19; *see also, e.g., Elrod*, 427 U.S. at
16 373 (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably
17 constitutes irreparable injury.”).

18 In sum, Plaintiffs will suffer numerous and irreparable harms absent an injunction. The
19 grave nature of these harms underscores “the basic function of a preliminary injunction”: “to
20 preserve the status quo ante litem.” *L.A. Mem’l Coliseum Comm’n v. Nat’l Football League*, 634
21 F.2d 1197, 1200 (9th Cir. 1980).

22 **C. The balance of hardships and public interest weigh heavily in Plaintiffs’ favor.**

23 The final two factors for a preliminary injunction—the balance of hardships and public
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1 interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418,
2 435 (2009). As with the irreparable harm analysis, “in cases involving a constitutional claim, a
3 likelihood of success on the merits . . . strongly tips the balance of equities and public interest in
4 favor of granting a preliminary injunction.” *Baird*, 81 F.4th at 1048.

5 The violation of the Fourteenth Amendment that will result absent a preliminary
6 injunction strongly favors Plaintiffs, as “it is always in the public interest to prevent the violation
7 of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (internal quotation marks and
8 citation omitted); *see also, e.g., Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
9 (“Generally, public interest concerns are implicated when a constitutional right has been
10 violated, because all citizens have a stake in upholding the Constitution.”); *Moreno Galvez*, 387
11 F. Supp. 3d at 1218 (concluding that because “the government’s . . . policy is inconsistent with
12 federal law, . . . the balance of hardships and public interest factors weigh in favor of a
13 preliminary injunction”). Similarly, the balance of hardships also favors ensuring that Plaintiffs’
14 children and putative class members are not deprived of their birthright U.S. citizenship and its
15 accompanying benefits. *See supra* pp. 19–22. The balance tips further in Plaintiffs’ favor when
16 “consider[ing]. . . the indirect hardship to their friends and family members.” *Hernandez*, 872
17 F.3d at 996 (alteration in original) (quoting *Golden Gate Rest. Ass’n v. City & Cnty. of S.F.*, 512
18 F.3d 1112, 1126 (9th Cir. 2008)). Defendants, by contrast, cannot allege that they will suffer any
19 hardships absent a preliminary injunction, as all they are being required to do is maintain the
20 status quo and follow the law.

21 Accordingly, the balance of hardships and the public interest overwhelmingly favor
22 injunctive relief to ensure that Defendants comply with the Constitution and federal law.

V. CONCLUSION

For the foregoing reasons, Plaintiffs Franco, Norales, and Chavarria respectfully request the Court to grant their motion for a preliminary injunction.

Respectfully submitted this 29th of January, 2025.

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
glenda@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

Counsel for Individual Plaintiffs

WORD COUNT CERTIFICATION

I certify that this memorandum contains 7762 words, in compliance with the Local Civil Rules.

s/ Leila Kang
Leila Kang, WSBA No. 48048
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 816-3847
leila@nwirp.org