

April 2026

Barbara v. Trump - Citizenship in the Womb

Introduction

A groundbreaking immigration case in the U.S. Supreme Court may have profound consequences (intended or not) on the legal rights of the Unborn.

The case may even begin the end abortion in America.

Background

President Trump issued Executive Order 14,160 (“*Protecting the Meaning and Value of American Citizenship*”) on January 20, 2025.

EO 14,160 (“EO”) stripped birthright citizenship from children born within the United States to mothers with no lawful presence in the U.S. (or mothers whose presence is lawful but temporary) and fathers who are not U.S. citizens or lawful permanent residents.

Various individuals challenged the EO in various courts, including *Barbara*, a pregnant woman who is a citizen of Honduras, but who is present in the U.S. and applying for asylum. Barbara also has other children. The father is in the U.S. with no legal status.

The EO had the effect of potentially denying citizenship to Barbara’s unborn child.

Barabara claims her unborn child was conceived in the U.S. and will be born in the U.S. and therefore is and will be a citizen of the U.S., and is entitled to all U.S. benefits regardless of Barabara’s and/or the child’s father’s immigration status.

On July 10, 2025, the federal district court in New Hampshire ordered a preliminary injunction prohibiting enforcement of the EO, among other procedural matters.

In effect, this granted Barbara’s then-unborn child citizenship rights.

President Trump appealed and the U.S. Supreme Court granted certiorari (agreed to hear the case) on December 5, 2025. The Court heard oral argument on April 1, 2026 and the Court’s decision is expected in late June.

Law

Under the Fourteenth Amendment, Sec 1:

[a]ll 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.

The Trump Administration asserts that illegal aliens and temporary visitors are not “subject to [U.S.] jurisdiction” because they do not have sufficient “allegiance” to the U.S., are not “completely subject” to its political jurisdiction, and are not lawfully domiciled here. *See* Pet’rs Br. at 20, 29, 36.

Therefore, even if their children are conceived and/or born in the U.S., those children are not “subject to the jurisdiction thereof.”

Barbara, in contrast, takes a broad view of “jurisdiction” and argues that being subject to U.S. laws is sufficient to confer U.S. citizenship on any children born in the U.S. to noncitizen parents (with a few limited exceptions). *See* Resp. Br. at 10.

Why It Matters

In effect, if the Trump Administration prevails in this lawsuit, children born to illegal or temporary immigrants or visitors are no longer U.S. citizens by birth.

If Barabara prevails, *unborn children will be U.S. citizens.*

Although the case does not directly address the issue of fetal personhood or how the Unborn should be treated for purposes of citizenship, the result, unintended or not, may grant the Unborn citizenship.

The Pro-life Arguments

The two issues that matter to the pro-life movement are:

Do the Unborn, as a class of persons, have U.S. citizenship rights *before birth*?

Should unborn children have U.S. citizenship and, if so, under what circumstances?

U.S. Citizenship Rights for the Unborn

If children located in the womb are citizens, then they cannot be killed (aborted).

First, through medical advances and quickly evolving case law (the overturning of *Roe v. Wade*, for example), the Unborn are in fact “persons” under the law.

Second, Barbara’s and the federal court’s broad view of “*subject to the jurisdiction thereof*,” conveys that the Unborn within U.S. territory are subject to U.S. laws.

Third, although the Fourteenth Amendment only references “born or naturalized” persons, unborn children are already subject to U.S. laws and, by default, U.S. “jurisdiction.” As noted in the case: “[a]t the time of the Citizenship Clause’s ratification, as today, ‘jurisdiction’ meant ‘[t]he authority of government’ or ‘sway of a sovereign power.’”

Similarly, the jurisdictional requirement is satisfied if anyone is “subject to the laws and authority of the United States.”

The Unborn meet this definition easily—they are persons under the protection of U.S. authority, including through state laws that criminalize abusing drugs during pregnancy or consider this conduct child abuse (e.g., Tennessee, South Carolina), federal laws that prohibit the death penalty for pregnant women (18 U.S.C. section 3596(b)), laws that hold someone responsible for double homicide if they murder a pregnant woman, laws that criminalize coercing someone into an abortion, and more.

The drafters did not appear to contemplate the citizenship status of unborn children. However, when the Fourteenth Amendment was drafted and ratified in 1866-1868, Congress did not have the window into the womb that we do now—ultrasounds, fetal cardiac monitoring, prenatal screening and gender identification, and so forth—nor was abortion on-demand readily available at that time. Having the optic we do now into an unborn child’s development, the adopters of the Fourteenth Amendment would have understood the Unborn to have the same scope of constitutional rights as anyone else. *Cf. District of Columbia v. Heller*, 554 U.S. 570, 634–35 (2008) (“Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.”).

U.S. Supreme Court case law from this period establishes that the Unborn have legal rights.

As a July 28, 2021 amicus brief submitted to the Fifth Circuit in the *Dobbs v. Jackson’s Women’s Health* case articulated, even before the Fourteenth Amendment was ratified, the state of Mississippi, for example, would postpone the execution of a pregnant woman until her child was born or convert her sentence to life in prison. Likewise, in *Knotts v. Stearns*, 91 U.S. 638, 641 (1875) and *Gaines v. Hennen*, 65 U.S. 553, 592 (1860), the U.S. Supreme Court held that unborn children could be represented or have legal interests in property.

Therefore, it is not a huge leap that unborn children—as persons subject to U.S. jurisdiction—should have citizenship rights too.

Moreover, Congress proposed and the states ratified the Fourteenth Amendment to solidify the rights of newly freed slaves granted in the Civil Rights Act. See Br. of Amici Curiae Senator Eric Schmitt and Rep. Chip Roy in Supp. of Pet’rs at 20. Unborn children deserve the same protection under the law and should be equally granted U.S. citizenship after years of gross dehumanization under *Roe v. Wade* (the same type of systematic dehumanization and devaluation of an entire people group that made slavery possible).

Impact

Granting an unborn person citizenship at conception, even in the context of immigration laws, would have a profound impact.

If an unborn child is considered a U.S. citizen at conception, for example, then that child's rights as a U.S. citizen must be considered in immigration proceedings.

And other rights, such as the right to life, must exist.

If an immigration judge can suspend deportation of that child's mother (or father) before birth when deportation directly affects the rights of the U.S. citizen unborn child, then the right to life must be present.

The amicus brief of Members of Congress emphasizes that in 1940, "Congress gave the Attorney General discretion to suspend a noncitizen's deportation if 'deportation would result in serious economic detriment' to the noncitizen's minor U.S. citizen child." Br. of Members of Congress as Amici Curiae in Supp. of Resp. at 27. This discretionary immigration relief should also be available when the U.S. citizen child is still in the womb and the child would benefit—emotionally, physically, and financially—from the presence of both parents.

"Schizophrenia" in the Law

This case emphasizes the "schizophrenia" in U.S. law relating to the Unborn.

An unborn child can be a "person" in the sense of protection of U.S. laws—including the right to life—without being a U.S. citizen (even if they remain in a stateless position until birth, they should still receive equal protection of the laws under the Fourteenth Amendment).

Barabara asserted her unborn child's rights - indeed, referring to "her child" in utero three times in the June 27, 2025 Complaint.

But no right is as fundamental as the right to life—indeed, it is the backbone of all other rights.

Although the abortion industry may not have intended this result, the ACLU's arguments on behalf of Barbara that showcase unborn children are indeed "child[ren]" cannot be used only when it serves their narrative.

It appears that pro-abortion interest groups like the ACLU do not understand what is at stake when advocating for the rights of "future persons" or the complexities of citizenship for the Unborn. But the fact remains.

Advocating for all unborn children within U.S. soil to have U.S. citizenship significantly expands the scope of U.S. citizenship to include any unborn children of mothers here even on a temporary basis.

Conclusion

Whatever one's position is on immigration, if the U.S. Supreme Court agrees with Barbara that an unborn baby has rights to U.S. citizenship, that should solidify personhood for the Unborn and abortion should be over.