

JACKSON, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 25–365

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS *v.* BARBARA, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 30, 2026]

JUSTICE JACKSON, with whom JUSTICE SOTOMAYOR joins as to the introduction and Part I, concurring.

I join the Court’s opinion in full. I write separately to respond to some of the themes in the principal dissent. Despite his longstanding endorsement of a “colorblind” Constitution, JUSTICE THOMAS now surprisingly suggests that the Citizenship Clause was a race-conscious remedial measure, relating only to “freed slaves such as Dred Scott,” *post*, at 56, and those who shared with them certain characteristics, *post*, at 1 (“no other homeland”); *post*, at 21 (“called America home”). It is for this reason, he says, that “children who were born in the United States but [to parents] not domiciled here” are not entitled to claim birthright citizenship. *Post*, at 3–4. But that narrow vision of the Fourteenth Amendment bears little relationship to the history of its ratification. Even worse, JUSTICE THOMAS’s telling elides the entire point of the Second Founding: The Reconstruction Amendments were an anticaste, antistatist reset for the Nation, not a mere spot treatment for the dark stain of slavery.

I

It is common ground that the Fourteenth Amendment was “enacted . . . with the one pervading purpose of securing equal citizenship for the freed slaves.” *Post*, at 90

JACKSON, J., concurring

(internal quotation marks omitted). Also true is the fact that this Court “has time and again denied Americans that promise.” *Post*, at 90.¹ But consensus about the Fourteenth Amendment’s central motivation does not justify JUSTICE THOMAS’s myopic treatment of it. The Amendment caused a paradigm shift in the trajectory of our Nation; the teacher who scolds a student for bullying a classmate hopes the student learns the broader lesson of treating *everyone* with kindness, not just that one kid.

In the aftermath of the Civil War, those who championed the Fourteenth Amendment—both within and beyond Congress—understood the assignment. Their work product used “language that transcended race and region,” and thereby “changed and broadened the meaning of freedom for *all* Americans.”² Instead of the limited salve the principal dissent makes it out to be, the Citizenship Clause reflects this universalist approach.

A

Consider, first, the voices of those outside the chambers of the Senate and the House of Representatives, whose advocacy and organizing culminated in the Fourteenth

¹I suspect, though, that JUSTICE THOMAS and I disagree about when and how that promise has been denied by this Court. My list is long (and sadly only getting longer). For a sampling, consider: *Civil Rights Cases*, 109 U. S. 3 (1883); *Plessy v. Ferguson*, 163 U. S. 537 (1896); *De Lima v. Bidwell*, 182 U. S. 1 (1901) (otherwise known as the Insular Cases); *Downes v. Bidwell*, 182 U. S. 244 (1901) (same); *Korematsu v. United States*, 323 U. S. 214 (1944); *Milliken v. Bradley*, 418 U. S. 717 (1974); *McCleskey v. Kemp*, 481 U. S. 279 (1987); *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U. S. 701 (2007); *Shelby County v. Holder*, 570 U. S. 529 (2013); *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U. S. 181 (2023) (SFFA); *Louisiana v. Callais*, 608 U. S. ____ (2026).

²E. Foner, *Reconstruction: America’s Unfinished Revolution 1863–1877*, pp. 257–258 (1988) (emphasis added).

JACKSON, J., concurring

Amendment.³ First in the North (as States abolished slavery), and then in the South (after Emancipation and the Union’s victory in the Civil War), Black people who were generally not permitted at the polls or in the halls of power mobilized nevertheless to advance the universalist vision of belonging and citizenship that eventually won the day.

The odds were long and the stakes were high. Indeed, around the time they gained their freedom, former slaves faced a crisis similar in relevant respects to the American immigrant experience. With little in terms of possessions and even less in terms of opportunities to make a living for themselves and their families, freed Blacks were not ushered warmly into the broader community (with apologies or compensation), set up for success, or even given the rights and privileges others enjoyed. Though they’d tilled the soil for centuries and had labored to build every building, once freed, they were basically treated as “strangers” in a not-so-strange land.⁴

This was not for lack of trying to survive and belong on the freedmen’s part. They constructed churches, schools, and mutual-aid societies—safe zones amidst America’s racialized social and economic order.⁵ Outside those enclaves, however, freed Blacks were characterized as unassimilable and incapable of full civic participation.⁶

³ Cf. *Wolford v. Lopez*, 609 U. S. ___, ___, n. 15 (2026) (JACKSON, J., dissenting) (slip op., at 28, n. 15) (explaining the importance of ensuring that Black experiences and perspectives “are not (here again) excluded from” our analysis of the relevant history).

⁴ *African Methodist Episcopal Church v. City of New Orleans*, 15 La. Ann. 441, 443 (1860); see also *ante*, at 6–7 (majority opinion) (citing I. Berlin, *Slaves Without Masters* 136–137 (1974)). Regarding freedmen in the North prior to the Civil War, see also J. Horton & L. Horton, *In Hope of Liberty* 125–176 (1997).

⁵ *Ibid.*

⁶ See D. Nieman, *To Set the Law in Motion: The Freedmen’s Bureau and the Legal Rights of Blacks, 1865–1868*, p. 72 (1979) (Nieman); see also K. Stamp, *The Era of Reconstruction 1865–1877*, p. 12 (1965).

JACKSON, J., concurring

Their humanity was disregarded.⁷ Serious doubts about their claims to citizenship were also being sown.⁸ The reason was clear: “[A]n integrated, race-blind society under the rubric of ‘all men are created equal’—required a societal commitment to” antisubordination principles and practices, *i.e.*, “a well-resourced effort to undo the damage done to black people by slavery.”⁹ But “even the most ardent opponents of slavery recoiled” from that prospect.¹⁰

One solution that gained traction in the early 1800s was to physically separate the freedmen and other Black people from the general polity. Antislavery Northerners and pro-slavery Southerners found common cause in the idea that freed Blacks would surely “be happiest in a black-led republic, beyond the contempt of and competition with white

(Stampp) (“In the nineteenth century most white Americans, North and South, had reservations about the Negro’s potentialities—doubted that he had the innate intellectual capacity and moral fiber of the white man and assumed that after emancipation he would be relegated to an inferior caste”).

⁷See I. Wilkerson, *Caste: The Origins of Our Discontents* 153 (2020) (Wilkerson) (“The crimes of homicide, of rape, and of assault and battery were felonies in the slavery era as they are today . . . [b]ut the country allowed most any atrocity to be inflicted on the black body”); see also, *e.g.*, *id.*, at 147–148 (describing Alabama surgeon James Marion Sims, widely known as “the founding father of gynecology,” who pioneered procedures by operating on Black female slaves without anesthesia; Sims said the surgery was “‘not painful enough to justify the trouble’”); see generally D. Smith, *Less Than Human: Why We Demean, Enslave, and Exterminate Others* 119 (2012) (“The dehumanization of African Americans did not end with the creation of the new nation in 1776, or with the abolition of slavery in 1865. Books and pamphlets published during the latter part of the nineteenth and early twentieth centuries continued to assert that they were beasts”).

⁸See O. Power-Greene, *Against Wind and Tide: The African-American Struggle Against the Colonization Movement* 15–16 (2014).

⁹See N. Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* 247 (2016) (Guyatt).

¹⁰*Ibid.*

JACKSON, J., concurring

Americans.”¹¹ This vision of “paternal caste” prompted the creation of the American Colonization Society, which established the colony of Liberia and pushed for freed Blacks to relocate there voluntarily.¹² Once freed Blacks were out of sight, they would (thankfully) be out of mind, eliminating any need for a racial reckoning in America.

Meanwhile, many States pushed the envelope, passing “Black Laws” (in the pre-War North) and “Black Codes” (in the post-War South), intending to make it difficult for freed Blacks to live and work there.¹³ Violence, too, played a significant role in the isolation effort. Those who opposed abolition banded together with those who resented the extra competition in the job market to form marauding mobs,

¹¹M. Jones, *Birthright Citizens: A History of Race and Rights in Antebellum America* 37–38 (2018) (Jones); see also Guyatt 268–269.

By the middle of the century, colonization was so popular that it found favor with leading abolitionists, including President Abraham Lincoln. During an August 1862 meeting at the White House between Lincoln and a “committee of free Negroes,” Lincoln described a fund Congress had created “for the purpose of ‘colonizing people of African descent,’ a cause he had long favored.” C. Sandburg, *Abraham Lincoln: The Prairie Years and the War Years* 316 (1954). The problem, as Lincoln described it to his visitors, was that “[y]our race suffers very greatly, many of them, by living among us, while ours suffers from your presence.” *Ibid.* He continued: “Your race are suffering, in my judgment, the greatest wrong inflicted on any people. But even when you cease to be slaves, you are yet far removed from being placed on an equality with the white race.” *Ibid.* Colonization would allow free Blacks to thrive, without forcing Whites to accommodate their demands for equal treatment and legal protection. Interestingly, Lincoln held a universalist view of citizenship despite his support for the colonization movement. See *infra*, at 10–11.

¹²Jones 37; see also E. Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* 12 (2019) (Foner, *The Second Founding*); Guyatt 267, 271–272.

¹³For Black Laws, see, e.g., K. Masur, *Until Justice Be Done* 16–18, 230–231 (2021) (Masur); Foner, *The Second Founding* 13. For Black Codes, see, e.g., *id.*, 47–49; Nieman 72–76; Masur 309–310; *Wolford*, 609 U. S., at ____ (slip op., at 26–32) (JACKSON, J., dissenting) (discussing Black Codes).

JACKSON, J., concurring

ransacking Black neighborhoods, homes, and stores.¹⁴ And local law enforcement? They did little to help. Before Emancipation, per the federal Fugitive Slave Act, state officers pursued and arrested Blacks suspected of having escaped slavery. Afterwards, the cavalry looked the other way when Black neighborhoods were terrorized by vigilante violence.¹⁵ The Ku Klux Klan would form, and then flourish, starting in 1866.¹⁶

¹⁴See D. Blight, *Frederick Douglass: Prophet of Freedom* 473 (2018) (Blight); Jones 95, 105; K. Lewis, *A Curse Upon the Nation: Race, Freedom, and Extermination in America and the Atlantic World* 176, 182–183 (2017). Frederick Douglass’s first-hand account from the Baltimore of 1834 provides insight into White resentment over freed Blacks’ entry into the labor market:

“The circumstance which led to [my being fired] was the committing of an outrage upon me, by the white apprentices of the ship-yard. The fight was a desperate one, and I came out of it shockingly mangled. I was cut and bruised in sundry places, and my left eye was nearly knocked out of its socket. The facts which led to this brutal outrage upon me illustrate a phase of slavery which was destined to become an important element in the overthrow of the slave system, and I may therefore state them with some minuteness. That phase was this—the conflict of slavery with the interests of white mechanics and laborers. In the country this conflict was not so apparent; but in cities, such as Baltimore, Richmond, New Orleans, Mobile, etc., it was seen pretty clearly. The slaveholders, with a craftiness peculiar to themselves, by encouraging the enmity of the poor laboring white man against the blacks, succeeded in making the said white man almost as much a slave as the black slave himself.” F. Douglass, *Life and Times of Frederick Douglass* 223–224 (1892).

¹⁵See Masur 234–235. The violence, of course, continued after the War and during Reconstruction. The Colfax, Louisiana, massacre of 1873, for example, was “[t]he bloodiest single instance of racial carnage in the Reconstruction era.” Foner, *Reconstruction*, at 437. Two hundred and eighty Black people were ruthlessly slaughtered on Easter Sunday. “[T]he Colfax massacre taught many lessons, including the lengths to which some opponents of Reconstruction would go to regain their accustomed authority.” *Ibid.*

¹⁶Foner, *Reconstruction*, at 342, 428–429; see also *id.*, at 430 (“[T]he Klan aimed to regulate blacks’ ‘station in society’”).

JACKSON, J., concurring

Still, most freed Blacks resisted the pressure to self-deport.¹⁷ Instead, many started organizing toward the creation of the kind of Nation the colonizationists opposed—one that guaranteed liberty and justice for all. In the decades leading up to the ratification of the Fourteenth Amendment, Black Americans organized and gathered at more than 600 local and national conventions across the country.¹⁸ There, delegates erected the political and intellectual scaffolding for the Fourteenth Amendment and, later, for the Black Civil Rights Movement more generally.¹⁹

Critically for present purposes, these visionaries already understood themselves to be American citizens. “The refrains ‘we are Americans’ and ‘we are citizens’ echoed in conferences throughout the North.”²⁰ Moreover, “[b]irth-right figured importantly” as “delegates frequently characterized their status as that of native-born citizens.”²¹ The

¹⁷See generally Brief for Historians Martha S. Jones et al. as *Amici Curiae* 11–16.

¹⁸See Colored Conventions Project, Conventions Records (Feb. 12, 2025), <https://www.coloredconventions.org/about-records/> (archived at <https://perma.cc/3ZD2-3WHS>) (collecting “minutes, proceedings, newspaper articles, speeches, letters, transcripts, and images”); see also M. Sinha, *The Rise and Fall of the Second American Republic: Reconstruction, 1860–1920*, p. 158 (2024); J. Fox, *The Constitution of Black Abolitionism: Reframing the Second Founding*, 23 U. Pa. J. Const. L. 267, 272–334 (2021).

¹⁹See E. Ball, *Performing Politics, Creating Community: Antebellum Black Conventions as Political Rituals in The Colored Conventions Movement: Black Organizing in the Nineteenth Century* (P. Foreman, J. Casey & S. Patterson eds., 2021), pp. 155–157.

²⁰Jones 63; see also Address of the Colored National Convention to the People of the United States, in *Proceedings of the Colored National Convention, Held in Rochester, July 6th, 7th, and 8th, 1853*, p. 8 (“We address you not as aliens nor as exiles, humbly asking to be permitted to dwell among you in peace; but we address you as American citizens asserting their rights on their own native soil”).

²¹Jones 63; see also *Proceedings of the National Convention of Colored Men, Held in the City of Syracuse, N. Y., Oct. 4, 5, 6, and 7, 1864*, p. 42

JACKSON, J., concurring

delegates argued that, as such, they had the requisite allegiance, so, at a minimum, the Federal Government owed them the duty of protection.²²

The famed orator Frederick Douglass was one of these delegates. Capturing the spirit of the moment, Douglass proclaimed that Chief Justice Taney—the author of the majority opinion in *Dred Scott v. Sandford*, 19 How. 393 (1857)—“[could] do many things, but he [could not] . . . change the essential nature of things.”²³ In the absence of the artificial evils of slavery and racial subordination, Douglass explained, “the glorious birthright of our common humanity, will become the inheritance of all the inhabitants of this highly favored country.”²⁴

Do note this: The citizenship thesis of the Colored Conventions was thus not that some *new* status should be created and conferred on freed Blacks. It was instead that

(Syracuse Convention) (“[H]ere were we born, for this country our fathers and brothers have fought, and here we hope to remain in full enjoyment of enfranchised manhood, and its dignities”).

²²This was, of course, an invocation of the principle of “*jus soli*,” see *ante*, at 4, which was well-known and widely accepted during this historical period. Delegates at the Colored Conventions drew upon its twin duties—allegiance owed and protection given—to demand not only that their rights as humans be honored, but also that “due attention should be given to our needs.” Syracuse Convention 42. The delegates pointedly observed that “[t]he laws which have made white men great, have degraded us, because we were colored, and because we were reduced to chattel slavery.” Proceedings of the Colored People’s Convention of the State of South Carolina, Held in Zion Church, Charleston, Nov. 1865, p. 23 (S. C. Convention). So, they argued, in slavery’s wake, the law needed to make things right: It had to provide “[e]quality—expressed in such language as equal liberty, equal justice, equal rights, and equal citizenship.” Foner, *The Second Founding*, at 13; see also *id.*, at 94 (“We claim exactly the same rights, privileges, and immunities as are enjoyed by white men—we ask nothing more, and will be content with nothing less” (quoting The Colored Mass Convention held in Mobile (1867))).

²³Speech on the *Dred Scott* Decision (May 1857), in *Two Speeches by Frederick Douglass* (1857) pp. 27–30, 31, 32–46.

²⁴*Id.*, at 46.

JACKSON, J., concurring

freed Blacks already had a rightful claim to citizenship *because they had been born on American soil*. After all, the Nation, from its founding, had “boldly proclaim[ed] that all men are born free and equal, and that consequently life, liberty, and the pursuit of happiness, are inherent in every individual, vested inalienably by natural birthright.”²⁵ No ideal was more inherently American. Now, “rest[ing their] cause on the republican standard of the revolutionary Fathers,” freed Blacks were “knock[ing] at the doors of the constitution and demand[ing] an entrance.”²⁶ And “[i]f . . . asked what evidence [they] bring to sustain [their] qualifications for citizenship, [they would] offer them certificates of . . . BIRTH and NATIVITY.”²⁷ Would the Nation live up to its promise?

Such universalist appeals were a conscious choice. Yes, Black Americans had suffered a singular wrong. And yes, they had “fought and bled” for the Union, paying a steep price for their freedom.²⁸ But the delegates did not rest on these laurels. Rather, they drew upon the moral and political force of the universal principles that were already core to the Nation’s identity.

That bears repeating: Freed Blacks did not advocate for a unique set of rules that catered only to their situation. Nor did they seek to advance their own position relative to, or at the expense and exclusion of, other marginalized groups. Instead, those whose gatherings helped galvanize

²⁵ Minutes of the State Convention of the Colored Citizens of the State of Michigan, Held in Detroit (Oct. 26–27, 1843), in 1 *The Proceedings of the Black State Conventions, 1840–1865* (P. Foner & G. Walker eds., 1979), p. 192; see also Foner, *The Second Founding*, at 94 (“The former slaves . . . self-consciously viewed themselves as individuals ‘newly invested with all the rights of an American citizen.’”).

²⁶ Minutes of the State Convention of the Coloured Citizens of Pennsylvania, Convened at Harrisburg (Dec. 13–14, 1848), p. 20.

²⁷ *Ibid.*

²⁸ *Post*, at 1 (THOMAS, J., dissenting) (quoting 2 *Life and Writings of Frederick Douglass* 256 (P. Foner ed. 1950)).

JACKSON, J., concurring

the push for full equality understood that “[a] diverse origin does not disprove a common nature, nor does it disprove a united destiny.”²⁹ The firmest foundation for freedom would require an anticaste reset—“both for his sake and for ours”³⁰—and would benefit all.

During his U. S. Senate candidacy, Abraham Lincoln developed a similar vision. In the lead-up to the now-famous Lincoln-Douglas debates, Lincoln explained that the promise of liberty and equality in the Declaration of Independence “was held sacred by all, and thought to include all.”³¹ Lincoln expressly and intentionally linked the fate of Black Americans and immigrant groups (“among us perhaps half our people who are not descendants at all” of the Founders), and noted that the Nation’s future hinged on a universal definition of citizenship that excluded neither.³² He explained that the Declaration’s promise that “all men are created equal” was the “electric cord . . . that links the hearts of patriotic and liberty-loving men together,” regardless of race or descent.³³

The case was made. First, there was war. And then, the delegates’ (and Lincoln’s) universalist view of citizenship made its mark on the Constitution.

²⁹ F. Douglass, *The Claims of the Negro Ethnologically Considered: An Address, Before the Literary Societies of Western Reserve College*, July 12, 1854, p. 34.

³⁰ F. Douglass, *Composite Nation*, Delivered in the Parker Fraternity Course, Boston, 1867, p. 21 (1867); see also *ibid.* (“I want a home here not only for the negro, the mulatto and the Latin races, but I want the Asiatic to find a home here in the United States, and feel at home here. . . . Right wrongs no man”).

³¹ Abraham Lincoln, *Speech at Springfield, Illinois* (June 26, 1857), in 2 *Collected Works of Abraham Lincoln*, p. 404 (1953).

³² Abraham Lincoln, *Speech at Chicago, Illinois* (July 10, 1858), in 2 *id.*, at 499 (1953).

³³ *Id.*, at 500.

JACKSON, J., concurring

B

The Civil Rights Act of 1866—the predecessor to the Citizenship Clause, see *ante*, at 8–9—was initially drafted as a spot treatment. Senator Lyman Trumbull’s first proposal homed in on the freedmen and provided merely that “all persons of African descent born in the United States are hereby declared to be citizens of the United States.”³⁴ If *that* language had prevailed, the view JUSTICE THOMAS asserts today might be well founded. See *post*, at 4–5 (finding birthright citizenship’s “feudal” origins inconsistent with Congress’s focus on “secur[ing] equal rights for the freed blacks”).

But Senator Trumbull changed his mind. The day after he submitted that first proposal, he requested to “withdraw [the original] and . . . offer another in lieu of it to the same purport, changing the phraseology.”³⁵

Consistent with the views espoused by activists, Trumbull’s new proposal adopted a distinctly universalist register: “All persons born in the United States, and not subject to any foreign power, are hereby declared to be citizens of the United States, without any distinction of color.”³⁶ This is the language Congress would eventually enact as part of the Civil Rights Act of 1866. And the Civil Rights Act of 1866 would go on to become the basis for the Fourteenth Amendment’s Citizenship Clause.

Senator Trumbull’s progression from specific to universal was more than mere word choice. In the face of the virulent anti-immigrant—and, in particular, the anti-Chinese and the anti-Romani—sentiment of that era, language targeting just freed former slaves would have been the path of least (or less) resistance. But Senator Trumbull, along with those colleagues who took up the same mantle during the

³⁴ Cong. Globe, 39th Cong., 1st Sess. 474 (1866).

³⁵ *Id.*, at 498.

³⁶ *Ibid.*

JACKSON, J., concurring

ratification debates, expressly rejected that narrow framing.

Do not miss this context. Throughout the mid-19th century, Chinese immigrants to America were often portrayed as “coolies,” a racist slur implying indentured servitude and allegiance to a Chinese master.³⁷ Some Members of Congress brought that sentiment to the Civil Rights Act’s citizenship-related debates. Notably focusing his attention beyond freed former slaves, Senator Edgar Cowan, for example, argued that German immigrants’ children born in Pennsylvania should be citizens, but Chinese immigrants’ children should not—because Germans and Chinese were different.³⁸ In response, Senator Trumbull emphasized that the law he had drafted drew no such distinctions.³⁹

Undeterred, Senator Cowan would warn again—this time during debates on the Fourteenth Amendment—that the Citizenship Clause would let Chinese immigrants “overrun” California and “double or treble the population” of that State.⁴⁰ Senator John Conness of California, where anti-Chinese sentiment was arguably most pronounced, responded that “the children begotten of Chinese parents in

³⁷J. Shugerman, *An Originalist Case for Birthright Citizenship* 77 U. C. L. J. (forthcoming 2026) (draft, at 3). When anti-Chinese sentiment reached a fever pitch decades later, Congress enacted the Chinese Exclusion Act and prohibited all Chinese immigration. See *id.*, at 26. Justice Harlan’s dissent in *Plessy v. Ferguson*—the “most celebrated Fourteenth Amendment opinion” according to the principal dissent, see *post*, at 37—did not rise above such prejudice. Justice Harlan described Chinese immigrants as a “race so different from our own that we do not permit those belonging to it to become citizens of the United States” and instead deem them “absolutely excluded from our country.” 163 U. S., at 561 (dissenting opinion). Justice Harlan thus drove a wedge between Black Americans and other non-Black minorities.

³⁸Cong. Globe, 39th Cong., 1st Sess., at 498 (“The children of German parents are citizens; but Germans are not Chinese”).

³⁹*Ibid.*; see also *ante*, at 9.

⁴⁰Cong. Globe, 39th Cong., 1st Sess., at 2891.

JACKSON, J., concurring

California . . . shall be citizens.”⁴¹ In fact, he said, the Civil Rights Act had already declared “that the children of all parentage whatever . . . should be regarded and treated as citizens of the United States.”⁴² No Senator rose to agree with Senator Cowan or dispute what Senator Conness had said.⁴³ And no Senator said what the principal dissent says today: that the text at issue conferred citizenship only on freed Blacks and those in analogous situations.⁴⁴

The debates went similarly with respect to the Roma people, who were referred to at the time as “gypsies.”⁴⁵ When asked whether native-born Romani children would be birthright citizens of the United States under the proposed Civil Rights Act, Senator Trumbull replied: “Undoubtedly.”⁴⁶ President Andrew Johnson apparently agreed. In his message vetoing the Act, Johnson noted with disapproval that, under the law, “the Chinese of the Pacific States, Indians subject to taxation, the people called gypsies, as well as the

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ See *id.*, at 2891–2897.

⁴⁴ See Shugerman, 77 U. C. L. J. (draft, at 26). In response to this history, the principal dissent notes that Francis Wharton, a late-1800s legal scholar and State Department official, posited that because foreigners “‘born in the United States’ of ‘parents not being here domiciled’” are not subject to the jurisdiction of the United States, Chinese children born in this country “‘are not citizens.’” *Post*, at 39 (quoting Conflict of Laws 41 (2d ed. 1881)). But JUSTICE THOMAS leaves out the motivation behind Wharton’s contention: not the Constitution, but that the Chinese were insufficiently “civiliz[ed]” and that “[t]o admit such rights to an emigrating nation, would be not merely to establish a foreign sovereign, but a foreign barbarism, within our national domain.” Conflict of Laws 26 (1872).

⁴⁵ William Blackstone called the Roma people “Egyptians” and branded them “outlandish.” See 4 Commentaries on the Laws of England 165 (1770). (He did not exclude them from the common-law rule of birthright citizenship, however. See *id.*, at 166.) The proper term for this group today is “Romani” or the “Roma people.” See Brief for Gerard N. Magliocca as *Amicus Curiae* 1, n. 2.

⁴⁶ Cong. Globe, 39th Cong., 1st Sess., at 498.

JACKSON, J., concurring

entire race designated as blacks,” would be birthright citizens.⁴⁷ Without making any changes to the bill or responding that Johnson was mistaken in his understanding of it (or otherwise capitulating to Johnson’s views in any respect), Congress overrode that presidential veto.⁴⁸

During the ratification debates, Senator Cowan took aim at the Roma people too, characterizing them as undeserving of birthright citizenship because they “wander[ed] in gangs,” “infest[ed] society,” and “impos[ed] upon the simple and weak everywhere.”⁴⁹ And again, Senator Conness dismissed Senator Cowan’s prejudices: “The only invasion of Pennsylvania within my recollection was an invasion very much worse and more disastrous to the State, and more to be feared and more feared, than that of Gypsies. It was an invasion of rebels [at Gettysburg].”⁵⁰

When ratified, the Citizenship Clause thus vindicated the universalist vision of the delegates at the Colored Conventions and their allies in Congress. Far from the principal dissent’s representations, freed Blacks did not receive citizenship as a reward for their military service or for having, through no choice of their own, “no other homeland [and] no allegiance to any foreign power.” *Post*, at 1. Instead, the Amendment recognized their rightful claim to birthright citizenship simply and solely by virtue of their having been born on American soil. John Bingham—one of the Amendment’s principal architects—said this clearly: The “rights

⁴⁷ A. Johnson, Veto Message (Mar. 27, 1866), in 6 *Compilation of the Messages and Papers of the Presidents* 405 (J. Richardson, ed. 1897); see Foner, *Reconstruction*, at 247–248.

⁴⁸ E. Maltz, *Civil Rights, the Constitution, and Congress, 1863–1869*, p. 70 (1990).

⁴⁹ Cong. Globe., 39th Cong., 1st Sess., at 2891.

⁵⁰ *Id.*, at 2892.

JACKSON, J., concurring

of citizenship” are universal because they are the “sacred rights of person[hood].”⁵¹

With this recognition, the U. S. Constitution finally got an anticaste engine. And with it, the Nation gained a new font of legitimacy and vitality.

II

Fast forward 150 years, to 2026. Section One of the Fourteenth Amendment still contains that same universalist language, consistent with its origins and the ratifiers’ intent. So, respondents say, our Constitution confers citizenship upon almost anyone and everyone who is born on American soil—to include the children of immigrants and temporary sojourners not domiciled in the United States—just as it did at the time of the Fourteenth Amendment’s ratification.⁵²

But the Government’s view (which the principal dissent adopts) rejects this. Its argument focuses on the fact that the Citizenship Clause had a particular purpose: to reverse *Dred Scott*’s holding that Black Americans were not entitled to citizenship. See Brief for Petitioners 13–14; *post*, at 1–2. The reasoning is, in essence, that the Fourteenth Amendment recognized freed Blacks as citizens because they had “‘fought and bled’” in the Civil War, “‘had no other homeland, owed no allegiance to any foreign power, and were subject to no other authority.’” *Post*, at 1; see also Brief for Petitioners 16–18. Thus, the argument goes, the

⁵¹ *Id.*, at 1090. Bingham “believed the liberation of the slaves had forced the United States to federalize the Bill of Rights and apply it to all Americans.” Blight 479.

⁵² Brief for Respondents 7–23. At this point, the “almost” caveat pertains mainly to “the ‘children of ambassadors’ and other representatives of foreign sovereigns.” *Ante*, at 15 (quoting *United States v. Wong Kim Ark*, 169 U. S. 649, 675 (1898)). Congress addressed the founding-era exclusion of “those born in the ‘alien nations’ of Indian tribes,” *ante*, at 15 (quoting *Wong Kim Ark*, 169 U. S., at 681), in 1924, with its enactment of the Indian Citizenship Act, ch. 233, 43 Stat. 253.

JACKSON, J., concurring

Amendment’s guarantees are for only Black Americans and those who fit their fought-and-bled-for-country, no-other-homeland, domiciled mold. *Post*, at 1–3, 90.

That contention is ahistorical for the reasons laid out in Part I, *supra*, and those explained in the Court’s opinion. In my view, it is also difficult to square with the notion of a “color-blind” Constitution, which has loomed large in the Court’s Fourteenth Amendment jurisprudence.⁵³ The Court’s conception of a color-blind Constitution and the Government’s (and principal dissent’s) cramped, group-specific reading of the Citizenship Clause are two sides of the same coin, stemming from a basic misunderstanding of the

⁵³ See *Allen v. Milligan*, 608 U. S. ___, ___, ___ (2026) (*per curiam*) (slip op., at 1, 3) (concluding, in light of “our colorblind Constitution,” that it is likely unconstitutional for States to be ordered to draw maps that provide fair electoral opportunities for Black Americans, no matter the race-conscious, remedial origin of the Fourteenth Amendment that made the Voting Rights Act possible); *SFFA*, 600 U. S., at 213 (declaring that race-conscious university admissions programs that promote diversity violate the Fourteenth Amendment); see also *Parents Involved*, 551 U. S., at 747–748 (plurality opinion) (rejecting efforts to defend race-conscious public-school placements against claims of unconstitutional discrimination brought by White students).

There are myriad ways in which the Court’s adherence to color-blindness is mistaken, some of which I have addressed in other opinions. See *SFFA*, 600 U. S., at 385 (JACKSON, J., dissenting); see also, *e.g.*, *id.*, at 206, 208 (majority opinion) (conflating “[e]liminating racial discrimination” with eliminating all “[d]istinctions between citizens solely because of their ancestry” (internal quotation marks omitted)); *Callais*, 608 U. S., at ___ (slip op., at 17–18) (similar); *Parents Involved*, 551 U. S., at 747–748 (declaring that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race,” including by ceasing any race-conscious action designed to remediate the consequences of deeply entrenched housing segregation). My concern now is that a fleeting nature is among its many flaws. One wonders how the outcomes in the above cases might have differed had the Court, like the Government and the principal dissent today, relied upon the fact that the Fourteenth Amendment was enacted to ensure that Black Americans are not treated as second-class citizens, or had it at least acknowledged the connection between the Amendment’s historical context and its remedial purpose.

JACKSON, J., concurring

relevant history. As I have shown in this opinion, the Fourteenth Amendment is *not* color-blind; rather, its core principle is that our Nation does not tolerate racial caste—*i.e.*, the systemic subordination that many (even some who opposed slavery) had wished to perpetuate after the Civil War.⁵⁴ So, the architects of the Second Founding did not think or pretend that race didn’t matter. Quite to the contrary, they understood that race made an enormous difference to the lived experiences of all concerned—and to the fate of our union. Indeed, it is for that very reason that a radical restructuring was required.⁵⁵ The Citizenship Clause applies universally precisely because such universal application was necessary to achieve the Amendment’s own race-conscious remedial purposes.

Putting a finer point on this: When colonizationists objected to changing their norms to accommodate the equal citizenship and rights of freedmen, freed Blacks and their allies organized to push for a Constitution that would bring their own antisubordination vision to fruition. See *supra*, 7–10. That kind of ambitious transformation—nothing less than the remaking of the soul of a Nation beset by rank, entrenched race-based prejudice and inequity—did not come for free, or purely by the say-so of those who claimed to be “color-blind.” It required heavy lifting, a fundamental shift—the very thing for which the Fourteenth Amendment

⁵⁴“A caste system is an artificial construction, a fixed and embedded ranking of human value that sets the presumed supremacy of one group against the presumed inferiority of other groups on the basis of ancestry and often immutable traits, traits that would be neutral in the abstract but are ascribed life-and-death meaning in a hierarchy favoring the dominant caste whose forebears designed it. . . . [T]hroughout human history, across time and space, [at least] three caste systems have stood out to this day. The tragically accelerated, chilling, and officially vanquished caste system of Nazi Germany. The lingering, millennia-long caste system of India. And the shape-shifting, unspoken, race-based caste pyramid in the United States.” Wilkerson 17.

⁵⁵ Stampp 12.

JACKSON, J., concurring

stands: a repudiation of the notion that there is a “superior, dominant, ruling class of citizens,” *Plessy*, 163 U. S., at 559 (Harlan, J., dissenting), and a willingness to see, and strive to eliminate, all remaining vestiges of historical subjugation.

So the principal dissent is wrong to complain that the Court “has repurposed the Fourteenth Amendment to protect . . . rights that the Reconstruction Congress never contemplated.” See *post*, at 91. Delegates to the Colored Conventions drew upon their own experiences to successfully argue for a new Constitution—one that protected fundamental human rights, including an individual’s “right to own his body and mind” and “the right of personal security and protection against injuries to our bodies or good name.”⁵⁶ Thus, even in cases where the protagonist was not a Black American, this Court’s Fourteenth Amendment cases have focused, at bottom, on the same universal liberty and equality interests that motivated the Fourteenth Amendment itself. The question is (and always has been): Does the affected individual or group enjoy equal dignity? And the correct answer is (and has always been) to heed the Fourteenth Amendment’s universalist, antistatist command. Our Nation did not undergo something as profound and world-shifting as “Reconstruction” for naught.

* * *

After the Civil War, Frederick Douglass frequently reflected on the events of the time through the lens of biblical stories. In one speech, Douglass described how God leveled Sodom and Gomorrah on account of sin, and how, in the aftermath, Abraham stood atop a nearby mountain to survey what remained. “[T]he orator used the image of Abraham

⁵⁶S. C. Convention 27; see also *ibid.* (asserting that “our bodies have been outraged with impunity”); Syracuse Convention 41 (“As a people, we have been denied ownership of our bodies, our wives, homes, children, and the products of our own labor”).

JACKSON, J., concurring

looking down upon the destroyed landscape to demand that Americans look down upon their own recent self-destruction, and all but unjustified survival, and *remember*.”⁵⁷ Douglass declared that his own aim was to “show that nations should have memories.”⁵⁸

In the time since Douglass’s prescient observation, Americans have come to learn that fading memories are not the only danger. The distortion of historical facts—retellings that reimagine and repurpose past events to lend credence to misbegotten aims—may be an even greater threat.

Yet here we are. The Government, the principal dissent, and a handful of revisionist commentators now vigorously promote an interpretation of the Citizenship Clause that diverges sharply not only from what the text says, but also from the historical record as interpreted by the keepers of “the call of remembrance” (trained historians).⁵⁹ What is more, this alternative account pitches Black Americans against immigrants when the advocates who promoted the Fourteenth Amendment did no such thing. Freed Blacks fought for the shared humanity of *all* people. And the Great Emancipator eventually foresaw that the only path forward that could prevent a return—in any form—to slavery and race-based subordination was to link the fates of all.

⁵⁷ Blight 482.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*; see Brief for Historians Martha S. Jones et al. as *Amici Curiae*; Brief for Race Law Scholars as *Amici Curiae* 4–12; Brief for Originalist Scholars Evan D. Bernick et al. as *Amici Curiae*; Brief for Gerard N. Magliocca as *Amicus Curiae* 4–7. A substantial amount of scholarly work has been done to unearth historical truths about the facts and circumstances that gave rise to the Reconstruction Amendments. In addition to the sources I have cited throughout this opinion, see, for example, D. Faust, *This Republic of Suffering: Death and the American Civil War* (2008); E. Mathisen, *The Loyal Republic: Traitors, Slaves, and the Remaking of Citizenship in Civil War America* (2018); K. Stampp, *America in 1857: A Nation on the Brink* (1990).

JACKSON, J., concurring

Ultimately, then, it is the Government and JUSTICE THOMAS who have “repurposed the Fourteenth Amendment.” *Post*, at 91. By ignoring that our Constitution stands firmly against caste and subjugation—on all axes and in all manners—they deny the clear, universalist vision shared and proclaimed by the Fourteenth Amendment’s Framers: to “rebuild a shattered empire . . . to plant deep and solid the corner-stone of eternal justice, and to erect thereon a superstructure of perfect equality of every human being before the law.”⁶⁰

Of course, the ultimate irony is that for all the talk about the detestable *Dred Scott* decision, the Government and the principal dissent propose a return to its core tenet. Their bottom line is that, for certain people, being born on American soil will not suffice to confer citizenship. It is that odious conclusion that the Citizenship Clause plainly rejects, as the Court explains. *Ante*, at 26. I add only that the Fourteenth Amendment’s universalist aims should forever be the death knell for this kind of claim—one that seeks to make bloodline the marker of birthright. The America that was reborn from the rubble of the Civil War simply does not countenance that inequitable result. Thankfully, a majority of the Court *remembered* this today, and has dutifully preserved the most basic animating principle of our Nation’s founding—that all human beings are created equal—once more.

⁶⁰ Address by Congressman Thaddeus Stevens, Bedford, Pa., Sept. 4, 1866, in *Cincinnati Commercial*, Sept. 11, 1866, p. 2, col. 1.