Milan Law Review – ISSN 2724-3273
VOL. 6 N. 2 (2025)
doi: 10.54103/milanlawreview/30257

Articoli

RECONFIGURING CITIZENSHIP: BETWEEN *IUS SANGUINIS* AND *IUS SOLI* IN ITALY AND THE UNITED STATES

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Abstract

This essay examines the current reshaping of birthright citizenship by comparing the divergent paths of Italy and the United States. Historically dominated by *ius sanguinis*, Western legal traditions maintained a blood-based criterion for centuries; yet both countries now display signs of structural change. Italy, long committed to unlimited transmission of citizenship abroad, has recently restricted the reach of *ius sanguinis* through Decree-Law No. 36/2025, signalling growing concern over citizens with no effective ties to the Republic. Conversely, in the United States – traditionally the strongest *ius soli* jurisdiction – President Trump's 2025 Executive Order introduces a restrictive reading of the Fourteenth Amendment, excluding from birthright citizenship the children of certain non-citizens. The ensuing judicial conflict reveals the fragility of a doctrine once considered settled. Together, these developments show that the balance between *ius soli* and *ius sanguinis* is undergoing a significant reconfiguration, whose long-term implications for political membership remain uncertain.

Keywords: birthright citizenship; *ius soli*; *ius sanguinis*; Fourteenth Amendment; citizenship reform

Questo contributo è stato sottoposto a referaggio anonimo (doppio cieco)
This paper has been subjected to double-blind peer review

Published online: 30/12/2025

Milano University Press

1. FROM ANTIQUITY TO MODERNITY: THE LONG HISTORY OF *IUS SANGUINIS* AND *IUS SOLI*

In defining the constitutional structure of a state, the rules governing the acquisition of citizenship – whether by birth or through naturalization – are of fundamental importance. Two principles apply to the case of birth: *ius sanguinis*, under which citizenship is transmitted from citizens to their descendants, and *ius soli*, under which citizenship is conferred on individuals born within the territory of the state. These criteria may coexist.

Historical and comparative analysis allows us to understand the multitude and variety of social and political factors that have caused the pendulum to swing at times toward *ius sanguinis*, at times toward *ius soli*, and at times toward mixed solutions.

At this point in history, one can observe a reorientation of some states traditionally oriented toward *ius sanguinis* shifting to *ius soli*, and vice versa. The issue is noteworthy because these movements are in fact subterranean and only rarely perceptible.

After briefly outlining the rationale behind the two systems, I will focus specifically on two case studies – Italy and the United States.

In general, the choice between one system and the other is made by states primarily on the basis of emigration and immigration. States whose citizens tend to emigrate seek to preserve the bond of citizenship, favoring *ius sanguinis*. This is the case of Italy, a land of emigrants since the 19th century. *Ius soli*, by contrast, has been preferred by states whose populations are largely composed of immigrant foreigners, with the aim of integrating them and enlarging the body of citizens. This is the case of the states of the New World, which were at first seen by Europeans as a chosen destination for their emigrants.

In the ancient history of the Western legal tradition, the criterion for the transmission of citizenship was that of bloodline. The ancient city-states of Europe, the Near East, and North Africa (e.g., Carthage) had no interest in increasing the number of citizens and therefore applied *ius sanguinis*. In Athens, Pericles' law of 451 BC established that anyone born to two citizen parents (*astoi*) was a citizen. Things appear to have been regulated in a similar way in Sparta. The rule of *ius sanguinis* was not abandoned even after the dissolution of the *poleis* and the transition to the Hellenistic age with the empire founded by Alexander the Great.

The same can be said for Rome, for Italy, and for the rest of the Roman world, from the founding of the city to the Justinian era. The only criterion for acquir-

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ISSN 02724-3273– vol. 6 n. 2 (2025)

ing citizenship by birth was *ius sanguinis*. Anyone born to two Roman spouses was considered Roman.[1] A child born outside of marriage followed the status of the mother, according to *ius gentium*. This remained the case at least until a Lex Minicia of uncertain date (probably from the 3rd century BC),[2] which established that in every case the child of a Roman woman and a foreigner without *conubium* would be born a foreigner, on the principle that in such situations the child had to acquire the status of the parent of inferior condition.[3] It should also be recalled that citizenship in Rome carried far greater importance than it does today. For example, in the Republican era only citizens could avail themselves of the *provocatio ad populum* against certain penalties imposed by magistrates; similarly, when Rome acquired new territories through war, it was Roman citizens who primarily benefited from agricultural concessions, while allocations in favor of the communities of *socii* remained contingent and subordinate. The Romans were always careful and selective guardians of citizenship, which they granted sparingly, even collectively. This occurred primarily after the Social War (also for utilitarian reasons connected with the conflict) and with the Edict of Caracalla.

In the Middle Ages, during the feudal era, under the authority of the Holy Roman Empire and the first absolute monarchies of Western Europe, *ius sanguinis* remained the only rule, albeit in a context in which the rights of citizens – by then subjects – had been notably weakened.

Despite its Latin name, which might suggest ancient origins, *ius soli* only appeared in 1515, at the dawn of the modern era, in the Kingdom of France.[4] The 1515 *arrêt* of the Parlement de Paris established that anyone born in the kingdom – even to foreign parents – would acquire French citizenship. The rule was created as a manifestation of the power of the absolute state. However, *ius sanguinis* was not abolished, and from 1515 onwards it coexisted with *ius soli* in France. The latter was abolished

1 Ulpian, 27th book *ad Sabinum*, Digest 1.5.24.

2 L. Gagliardi, *I diritti dei Latini delle colonie sine novis colonis (con una proposta di datazione della lex Minicia)*, in *Seminarios Complutenses de Derecho Romano*, 2023, vol. 36, p. 145-166; L. Peppe, *Riflessioni intorno al topos della cittadinanza. L'esperienza giuridica romana*, in *Annali del Seminario Giuridico dell'Università di Palermo*, 2023, vol. 66, p. 293-334; L. Peppe, *Sulla cittadinanza nell'esperienza giuridica romana*, in M. Bianchini, C. Lanza (eds.), *Seminari 'Giuliano Crifò' 2018-2023*, Giuffrè, Milano, 2025, p. 273-297.

3 The expression is drawn from the so-called *Tituli ex corpore Ulpiani* 5.8; see also Gaius, *Institutes* 1.78 (as reconstructed).

4 V. Marotta, *Ius sanguinis, ius soli: una breve nota sulle radici storiche di un dibattito contemporaneo*, in *Periodica De Re Canonica*, 2014, vol. 103, n. 4, p. 663-694.

by the *Code civil* in 1804.[5] The decision was made by Napoleon's legal advisors,[6] who based it on Roman law. The principle then passed from the *Code civil* into modern continental legal systems. In some states, although primarily based on *ius sanguinis* in accordance with this tradition, a so-called 'tempered' *ius soli* also applies. This is the case in France, where the principle has its roots in the *Loi du 26 juin 1889 sur la nationalité française*, which for the first time introduced, in a general sense, a mechanism for granting citizenship to the children of foreigners born on French soil. This regulation was reformulated and clarified by *Ordonnance n° 45-2441 du 19 octobre 1945*, which established the current rule that anyone born in France to foreign parents is French if at least one of them was born in France.[7] Similar legislation can be found in Luxembourg,[8] the Netherlands[9] and Spain.[10] In Germany,[11] Belgium,[12] Ireland[13] and Portugal,[14] the tempering of *ius soli* consists in requiring that, for a newborn to acquire the citizenship of the state, his or her parents must have resided there legally for a certain number of years. Over the last thirty years, Italian law has been among the strictest in rejecting *ius soli* – according to Law 91/1992 it applies only in marginal cases, such as children of unknown parents or of stateless persons.[15]

The country where Napoleonic codification was not adopted was England. In 1608, in the absence of a civil code, the Court of Exchequer Chamber – applying the principles of Common Law – established that, while the *ius sanguinis* regime continued to apply, anyone born in the realm to foreign parents would become a subject of the king and an English citizen.[16] This principle still forms the basis of

5 Art. 8. The principle was preserved in subsequent reform statutes (June 26, 1889, and August 10, 1927).

6 J.M. Rainer, *Das Römische Recht in Europa*, 2ª ed., Manzsche, Vienna, 2020, at 386 et seq., offers a particularly thorough examination of their work.

7 C. Nicolet, *Citoyenneté française et citoyenneté romaine: essai de mise en perspective*, in *La nozione di 'Romano' tra cittadinanza e universalità. Atti del II Seminario internazionale di studi storici 'Da Roma alla terza Roma', 21-23 aprile 1982*, Università La Sapienza, Naples, 1984, p. 145-173; also in S. Berstein, O. Rudelle (eds.), *Le modèle républicain*, Presses Universitaires de France, Paris, 1992, p. 19-56; P. Weil, *Qu'est-ce qu'un Français? Histoire de la nationalité française*, Gallimard, Paris, 2005, p. 60 et seq.

8 *Code de la nationalité luxembourgeoise* (Law of 8 March 2017, consolidated), Art. 3 (as amended in 2022).

9 *Rijkswet op het Nederlanderschap*, Art. 3(1)(c).

10 *Código Civil*, Art. 17(1)(c).

11 *Staatsangehörigkeitsgesetz*, § 4(3).

12 *Code de la nationalité belge*, Art. 12, § 1, no. 2.

13 *Irish Nationality and Citizenship Act 1956* (as amended by the *Irish Nationality and Citizenship Act 2004*), sec. 6A.

14 *Lei da Nacionalidade* (Law No. 37/81), art. 1, no. 1, al. f) (as amended in 2020).

15 Art. 1, para. 1, letts. b) and c).

16 *Calvin's Case* (1608) 7 Co. Rep. 1a, 77 Eng. Rep. 377.

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British law and is now codified in the British Nationality Act 1981,[17] which provides for the acquisition of citizenship by those born in the United Kingdom, provided that at least one of their parents is a British citizen or is permanently resident there and not "merely temporarily" in the country. From England the principle passed to the United States of America, where, however, it was not initially considered applicable to African Americans[18] and Native Americans. It was extended to the former in 1868 with the Fourteenth Amendment to the Constitution[19] – and to the latter only in 1924.[20] The United States also applies *ius sanguinis* under the Immigration and Nationality Act,[21] but under restricted conditions: the child of an American citizen born abroad acquires U.S. citizenship only if the parent has resided in the United States for a certain number of years before the child's birth. *Ius soli* is widespread in about 80% of the other countries of the American continent, including Latin American states that do not follow common law but have civil codes inspired by the French model.[22] In total, it applies in about thirty countries worldwide.

Adherence to one or the other of the two models is enshrined in the various legal systems, and only rarely – and after particularly long periods of maturation – are changes to the law recorded.

2. ITALY: FROM A NATION OF EMIGRANTS TO A LAND OF IMMIGRATION

The first contemporary country in which we observe the initial phase of an oscillation between *ius sanguinis* and *ius soli* is Italy. Article 1 of Law 91/1992 provides that the child of a father or mother who is an Italian citizen is Italian by birth – thereby confirming the centrality of *ius sanguinis*.[23]

17 Section 1(1).

18 *Dred Scott* v. *Sandford*, 60 U.S. (19 How.) 393 (1857).

19 Section 1(1). Ratified on July 9, 1868, by the last of the then 37 states.

20 *Indian Citizenship Act* (Snyder Act), Pub. L. No. 68-175, 43 Stat. 253 (1924). For Native Americans, the Fourteenth Amendment was not considered automatically applicable because they were not deemed subject to full federal jurisdiction as members of "sovereign tribal nations."

21 § 301(g), codified in 8 U.S.C. § 1401(g) (1952).

22 Argentina (*Const.* art. 75); Brazil (*Const.* art. 12); Chile (*Const.* art. 10); Colombia (*Const.* art. 96); Ecuador (*Const.* art. 7); Mexico (*Const.* art. 30); Peru (*Const.* art. 52); Uruguay (*Const.* art. 74); Venezuela (*Const.* art. 32).

23 The acquisition of citizenship from the mother alone is possible only for those born after January 1, 1948, the date of entry into force of the Republican Constitution (Constitutional Court, Judgment No. 30/1983; Court of Cassation, Civil Section I, Nos. 6297/1996 and 4466/2009). The

Until March 28, 2005, under this law, citizenship was automatically passed down through generations without limits.[24] The only requirements were that the emigrant ancestor had not acquired foreign citizenship before the birth of the descendant, and that none of the intermediate descendants had renounced Italian citizenship before the birth of the next generation. In this way, it was demonstrated that the chain of legal transmission had not been broken.

This application of *ius sanguinis* created distortions and acquisitions of citizenship that were instrumental in securing rights. Citizenship was claimed by individuals born abroad and settled for generations in distant countries, while the same status continued to be denied to young people born in Italy to foreign parents who had been legally resident in the country for many years.

The Meloni government promoted an initial, partial solution to these concerns about the system by adopting Decree-Law No. 36 of March 28, 2025. I quote a passage from the preamble to the decree, which clearly sets out its rationale: *"Considering that the provisions subsequently adopted on citizenship since national reunification have so far been interpreted as granting persons born abroad the right to apply for citizenship without any temporal or generational limits and without the burden of proving the existence or maintenance of effective ties with the Republic; Considering that this regulatory framework results in the continuous and exponential growth in the number of potential Italian citizens residing outside the national territory who, also by reason of holding one or more citizenships other than Italian, are predominantly bound to other States by deep ties of culture, identity, and allegiance; Considering that the possible absence of effective ties with the Republic on the part of a growing number of citizens – which could reach a figure equal to or greater than the population residing in the national territory – constitutes a serious and current risk factor for national security and, by virtue of Italy's membership in the European Union, for the other Member States thereof and for the Schengen Area; etc. etc. (The President of the Republic) issues the following decree-law."*[25]

In its original version, the Decree-Law inserted a new Article 3-bis into Law 91/1992, in which paragraph 1 – by way of derogation from various provisions[26] – provided that *"anyone born abroad, even before the date of entry into force of this article, and*

Ministry of the Interior continues to recognize citizenship only following judicial verification.

[24] Except for the time limit on transmission through the mother (see above).

[25] Similar requests appear in the explanatory report accompanying the bill for the conversion of the decree-law into statute (Senate Acts, No. 1432, XIX Legislature).

[26] Articles 1, 2, 3, 14, and 20 of Law No. 91/1992; Article 5 of Law No. 123/1983; Articles 1, 2, 7, 10, 12, and 19 of Law No. 555/1912; Articles 4, 5, 7, 8, and 9 of the Civil Code of 1865.

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in possession of another citizenship shall be considered as never having acquired Italian citizenship, unless one of the following conditions applies: …". We are concerned here with the condition set out in letter (c): *"a parent or adoptive parent who is a citizen was born in Italy."*

During parliamentary conversion into law,[27] the overall structure of the Decree-Law was not changed, but the wording of the special derogation in paragraph 1, letter (c) was modified by removing the requirement of birth in Italy: in the final version, the provision now requires only that, at the time of the birth of the person concerned, *"a first- or second-degree ascendant possesses, or has possessed at the time of death, exclusively Italian citizenship."* As explained in a circular from the Ministry of the Interior: *"If, on that date, a parent or grandparent possesses exclusively Italian citizenship, the exception referred to in letter (c) applies; if a parent or grandparent died before the birth of the person concerned, it must be verified whether they had exclusively Italian citizenship at the time of death."*[28]

Overall, Decree-Law limited the enjoyment of *ius sanguinis* to the second generation of those born abroad. The amendment introduced during conversion, however, significantly expanded the scope of the provision by broadening the category of descendants eligible to claim Italian citizenship: it is no longer necessary for the ascendant to have been born in Italy – it is sufficient that he or she possesses, or has possessed at the time of death, exclusively Italian citizenship, regardless of place of birth.

Even if cautiously and with uneven outcomes, Italian law is undergoing a profound transformation marked by the restriction of *ius sanguinis*. The conditions are not yet ripe for the recognition of *ius soli* within the legal order, but it is reasonable to expect that, with the steady rise in immigration and the corresponding decline in citizens by birth – compounded by an aging population – the state will sooner or later be compelled to introduce some form of it, albeit in a tempered form.[29]

[27] Law No. 74/2025.

[28] Circular No. 26185 of May 28, 2025. The following was added: "*It is up to the applicant to prove that one of the parents or grandparents was exclusively an Italian citizen at the time of the birth of the person concerned (or at the time of the death of the ascendant, if it occurred before the birth of the person concerned). The evidence provided must be verified*."

[29] Although not strictly concerning *ius soli*, a telling sign of the times is that referendums were held in Italy on June 8–9, 2025. One of these sought, *inter alia*, to repeal Art. 9(1)(f) of Law No. 91/1992, which requires ten years of continuous legal residence in Italy for non-EU foreigners to apply for citizenship. Its repeal would have restored the previous five-year requirement, which had been in force until 1992. Turnout was about 30% (with a quorum set at 50%), and votes in favor of repeal (approximately 35%) were about twenty points lower than in the other consultations held on the same days.

3. THE UNITED STATES: THE CHALLENGE TO THE FOURTEENTH AMENDMENT

Turning to the United States, where the governing principle is *ius soli*, enshrined in the Fourteenth Amendment to the Constitution (1868), we encounter a trend in the opposite direction. On the very day of his inauguration – January 20, 2025 – President Donald Trump issued a series of executive orders emblematic of the ideological and institutional imprint he intended to give his administration.[30] Among them is Executive Order No. 14160, entitled *Protecting the Meaning and Value of American Citizenship*,[31] by which Trump inaugurated a restrictive interpretation of Section 1 of the Fourteenth Amendment.

The latter, adopted in the aftermath of the Civil War, was intended as a response to the notorious *Dred Scott* v. *Sandford* (1857) decision, in which the Supreme Court held that people of African descent could not be American citizens on account of their 'race.' Dred Scott, an enslaved man, had petitioned for freedom for himself and his family after living in states that had abolished slavery. The Court denied his claim, treating Black people as property and tying any protection to property rights under the Fifth Amendment.

Following the abolition of slavery by the Thirteenth Amendment (1865), the Fourteenth Amendment, ratified in 1868, declared in Section 1: *"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*[32]

Starting from the premise that "the privilege of United States citizenship is a priceless and profound gift," President Trump declared in Executive Order No. 14160[33] that the constitutional provision does not automatically confer citizenship on everyone born on American soil, but only on those fully subject to U.S. jurisdiction. This is the interpretation he gave to the phrase "subject to the jurisdiction

30 A. Baraggia, D. Camoni, *Gli 'Executive Orders' nella seconda Presidenza Trump: verso un nuovo equilibrio nella separazione dei poteri?, in Diritto Pubblico Comparato ed Europeo, 2025, vol. 27, n. 2, p. 241-270.*

31 The entry into force was scheduled for February 19, 2025.

32 The rule is reiterated in Title 8 U.S. Code § 1401 ("Nationality at Birth").

33 The preceding and following quotations are taken from this provision.

thereof." The order states: *"But the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States. The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof.'"*

According to the President, this exclusion covers: *"persons born in the United States: (1) when that person's mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of the person's birth; or (2) when that person's mother's presence in the United States at the time of the person's birth was lawful but temporary… and the father was not a United States citizen or lawful permanent resident at the time of the person's birth."*

Trump's reasoning rests on a narrow reading of the concept of jurisdiction and reduces to a merely technical issue what, for purposes of interpreting the Fourteenth Amendment, should be understood as having a broader and more comprehensive scope.

Is this interpretation legitimate? The constitutionality of Trump's measure was soon contested in the federal courts by several states and by various associations advocating for the protection of migrants' rights.

From a formal standpoint, it has been argued that Trump's order rests on a restrictive reading of a constitutional provision, without passing through the procedures for constitutional amendment set forth in Article V of the Constitution. These procedures require – if pursued through Congress – the approval of at least two-thirds of the members of both Houses, and – if pursued through the state legislatures (a path never taken in U.S. history) – a request from two-thirds of the states (currently 34 out of 50) followed by the convening of an ad hoc constitutional convention, with the further requirement that any amendment be ratified by at least three-quarters of the states (currently 38 out of 50). An executive order, by contrast, is a subordinate source of law: it ranks below not only the Constitution but also statutes enacted by Congress, administrative regulations, judicial interpretations of federal law, and the U.S. Code.[34]

From a substantive standpoint, it has been argued that the presidential measure rests on an incomplete understanding of the history of the Fourteenth Amendment,

[34] The legal nature of executive orders within the U.S. separation of powers is examined by M. Bassini, *Executive orders e ruolo presidenziale: la sfida di Trump alla separazione dei poteri*, in *Osservatorio sulle fonti*, 2025, vol. 17, n. 2, p. 9-28, which highlights their ambiguous normative status and the historical tensions they generate between the executive and legislative branches.

reducing it to a tool for post-slavery emancipation only. The Amendment, however, drew on the tradition of English Common Law, under which birth on the territory was a sufficient condition for acquiring citizenship, regardless of the parents' legal status.[35] Reference is often made in this regard to the precedent *United States* v. *Wong Kim Ark* (1898),[36] which addressed the question under the Fourteenth Amendment of whether a child born in the United States to Chinese parents lawfully and permanently residing in the country acquired U.S. citizenship under the constitutional provision. Drawing on the ancient principle of Common Law, the Supreme Court held that the only exceptions were the children of foreign diplomats, enemies present in the United States during a hostile occupation, those born on foreign ships, and (at the time) those born to members of sovereign Native American tribes. An instructive passage from the Court's opinion reads: *"As appears upon the face of the amendment, as well as from the history of the times, this was not intended to impose any new restrictions upon citizenship, or to prevent any persons from becoming citizens by the fact of birth within the United States who would thereby have become citizens according to the law existing before its adoption. It is declaratory in form, and enabling and extending in effect. Its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free Negroes, which had been denied in the opinion delivered … in Dred Scott* v. *Sandford … But the opening words, 'All persons born,' are general, not to say universal, restricted only by place and jurisdiction, and not by color or race."*

The federal judges hearing the challenges consistently blocked the enforcement of Executive Order No. 14160, sometimes relying on established case law and in all cases finding violations of both the Constitution and the Immigration and Nationality Act. The first ruling, in a case filed on January 21, 2025,[37] was a temporary restraining order issued on January 24, 2025, by Judge J.C. Coughenour of the U.S. District Court for the Western District of Washington (appointed by President Ronald Reagan). This was followed on February 6, 2025, by a preliminary injunction from the same judge, which suspended the order's operation with *ultra partes* effect. Two additional suits (in Maryland and New Jersey) resulted in further universal injunctions. The government's applications for a stay to the Supreme Court[38] were denied. The government's appeals

[35] S.L. Rierson, *From Dred Scott to Anchor Babies: White Supremacy and the Contemporary Assault on Birthright Citizenship*, in *Georgetown Immigration Law Journal*, 2023, vol. 38, p. 3-69.

[36] 169 U.S. 649.

[37] *State of Washington, et al.* v. *Donald J. Trump, et al.*, No. 2:25-cv-00127 (W.D. Wash. Jan. 21, 2025).

[38] No. 24A884, *Trump, President of the United States, et al.* v. *CASA, Inc., et al.*; No. 24A885, *Trump, President of the United States, et al.* v. *Washington et al.*; No. 24A886, *Trump, President of the United States, et al.* v. *New Jersey et al.*

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were unsuccessful in all three jurisdictions concerned – the Fourth Circuit (Maryland), the Third Circuit (New Jersey), and the Ninth Circuit (Washington).

The executive branch then filed a joint appeal (*Trump* v. *CASA*)[39] before the Supreme Court against the three courts of appeals' decisions, and the Court granted a writ of certiorari. On June 27, 2025, without addressing the merits of the constitutionality of the executive order, the Court, by a 6–3 majority, delivered what it termed a requiem for the challenged injunctions, finding them incompatible with the Judiciary Act of 1789 and with the historical tradition of the courts of equity,[40] and partially stayed them on the ground that they exceeded what was necessary to ensure complete relief for each plaintiff with standing. The Court remanded the cases to the lower courts, instructing them to reformulate the injunctions within the limits of "complete relief." At the same time, it recognized the possibility of bringing class actions in this area. One such action (*Barbara* v. *Trump*) was filed on June 27, 2025, before the U.S. District Court for the District of New Hampshire,[41] and on July 10, 2025, Judge J. Laplante (appointed by President George W. Bush) issued a further preliminary injunction that indefinitely enjoined enforcement of the executive order in question.

Subsequently, on July 23, 2025,[42] the Ninth Circuit Court of Appeals (San Francisco), hearing the appeal in *Washington* v. *Trump*, rejected the government's claims and upheld Judge Coughenour's preliminary injunction, modifying its scope in light of the Supreme Court's decision in *Trump* v. *CASA*. In fact, after *Trump* v. *CASA*, the Ninth Circuit could not have maintained a "true" universal injunction. Thus, the court of appeals upheld the suspension of the order with substantially nationwide effect, on the ground that, given the large number and geographic dispersion of the plaintiffs – states, associations, and individuals – a subjective or territorial limitation would not have provided them with complete relief, an approach the court characterized as an application of the exception recognized by the Supreme Court. The fact that the first case on the matter was resolved on appeal suggests, at the time of writing,[43] that it is likely to reach the Supreme Court.

[39] 606 U.S. ___ (2025).
[40] L. Serafinelli, *Un requiem per le universal injunction: Trump v. CASA*, in *Diritti Comparati*, July 15, 2025.
[41] No. 25-244 – *Barbara, et al v. Trump, et al.*
[42] *Washington, et al.* v. *Trump, et al.,* No. 25-15213 (9th Cir. July 23, 2025).
[43] This article was submitted in September 2025.

What lies ahead? Serious doubts remain as to the legitimacy of employing an executive order to recast the Fourteenth Amendment. Yet, from a purely textual standpoint, the reading is not indefensible, resting on the amendment's plain language. It is also worth recalling that even British common law – its original model – has since been reshaped, most notably through the British Nationality Act 1981.

Taking into account the current composition of the Supreme Court, I cannot rule out that the restrictive interpretation of citizenship may be upheld, should the Court grant the forthcoming petition for a writ of certiorari and proceed to a decision on the merits.[44]

Even in the American context, we are witnessing the first seismic tremors in the law of birthright citizenship, the trajectory of which is, for now, impossible to predict.

4. CONCLUSION: CITIZENSHIP BETWEEN CONTINUITY AND TRANSFORMATION

The traditional balance between *ius soli* and *ius sanguinis* – which for centuries has marked the boundary between different legal cultures – is now undergoing a profound reconfiguration. The United States, long anchored to *ius soli*, is beginning, under the pressure of shifting perceptions of migration, to tilt toward *ius sanguinis*. Italy, conversely, a state historically committed to *ius sanguinis*, has recently curtailed its scope, weakening a model once considered immutable.

Because reforms in this domain are exceptionally rare, the present moment must be seen as one of extraordinary significance. It is not merely a technical adjustment in the law of citizenship, but a turning point that compels reflection on the deeper historical-legal dynamics shaping the relationship between states, individuals, and the very meaning of political belonging. What is unfolding on both sides of the Atlantic are not isolated legal controversies, but the incipient shifts of a transformation whose trajectory remains uncertain – yet whose implications for the future of citizenship are profound.

[44] I concur with G. Romeo, *Ridefinire l'America: il XIV Emendamento tra storia e politica*, in *Diario di Diritto Pubblico*, March 6, 2025.

MLR – Milan Law Review
ISSN 02724-3273– vol. 6 n. 2 (2025)

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