No. 15-889

In the Supreme Court of the United States

JERMAINE AMANI THOMAS, AKA JERMAINE THOMAS,
PETITIONER

v.

LORETTA E. LYNCH, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Fourteenth Amendment's Citizenship Clause, which provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States," U.S. Const. Amend. XIV, § 1, Cl. 1, confers United States citizenship on an individual born on a United States military base located in Germany.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 796 F.3d 535. The opinions of the Board of Immigration Appeals (Pet. App. 18-27) and the immigration judge (Pet. App. 28-47) are unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 17) was entered on August 7, 2015. A petition for rehearing was denied on October 14, 2015 (Pet. App. 48-49). The petition for a writ of certiorari was filed on January 12, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Citizenship Clause of the Fourteenth Amendment to the United States Constitution provides: "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." U.S. Const. Amend. XIV, § 1, Cl. 1. "Persons not born in the United States acquire citizenship by birth only as provided by Acts of Congress." *Miller* v. *Albright*, 523 U.S. 420, 424 (1998).

Many persons become United States citizens or United States nationals by virtue of Acts of Congress, rather than by operation of the Citizenship Clause. Exercising its plenary authority over naturalization, see U.S. Const. Art. I, § 8, Cl. 4, Congress has conferred U.S. citizenship on children born to members of Indian Tribes, 8 U.S.C. 1401(b), and declared persons born in U.S. territories (or already living in the territories at the time of acquisition) to be U.S. citizens[1] or U.S. nationals.[2] Congress also has provided that children born abroad to U.S. citizen parents are U.S. citizens at birth under certain circumstances, depending on whether both parents are U.S. citizens or only one is a U.S. citizen, whether the parents were married at the time of the birth, and whether certain physical presence or residence requirements were met. 8 U.S.C. 1401(c)-(e) and (g), 1409.

2. The United States maintains military bases (also called military installations) in many countries around the world. A U.S. military base in a foreign country "is not sovereign territory of the United States." *Friedrich* v. *Friedrich*, 983 F.2d 1396, 1401 (6th Cir. 1993); see U.S. Dep't of State, 7 *Foreign Affairs Man-*

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[1] See, *e.g.*, 8 U.S.C. 1402 (Puerto Rico); 8 U.S.C. 1406 (U.S. Virgin Islands); 8 U.S.C. 1407 (Guam); 48 U.S.C. 1801 note (Act of Mar. 24, 1976, Pub. L. No. 94-241, §§ 301, 303, 90 Stat. 265-266) (Northern Mariana Islands).

[2] 8 U.S.C. 1408(1); see 8 U.S.C. 1101(a)(29); 48 U.S.C. 1662 (American Samoa).

ual § 1113(c) (2009), https://fam.state.gov. Rather, U.S. military installations abroad generally exist pursuant to agreements with foreign nations: the United States seeks permission from another nation to establish U.S. forces within foreign territory and negotiates how the host nation will accommodate those forces.[3] Because the U.S. military presence is allowed only with the consent of the host nation, to the extent that the United States exercises criminal or other jurisdiction on a U.S. military base in a foreign country, it does so in accordance with the terms of its agreement with the host nation.[4] At the conclusion of such an agreement, the land and improvements devoted to the base typically revert to the sole control of the host nation.[5]

3. Petitioner was born in August 1986 on a U.S. military base in Frankfurt, Germany. Pet. App. 2. At the time, petitioner's father, a U.S. citizen, was serv-

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[3] See Dieter Fleck, *The Handbook of the Law of Visiting Forces* 135-138 (2001) (*Handbook*) (providing examples of accommodation arrangements under which host nations make real estate available for use as U.S. military installations); see generally, *e.g.*, Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces with Respect to Foreign Forces Stationed in the Federal Republic of Germany, Aug. 3, 1959, 14 U.S.T. 531, 481 U.N.T.S. 262 (Supplementary Agreement).

[4] See R. Chuck Mason, *Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?* 3 (Mar. 15, 2012), http://www.fas.org/sgp/crs/natsec/RL34531.pdf (explaining that the United States and the host nation typically enter into a "status of forces" agreement, which addresses the rights and privileges of U.S. personnel while in the foreign jurisdiction, including how the laws of the foreign jurisdiction apply to them).

[5] *Handbook* 136; see Supplementary Agreement art. 52, 14 U.S.T. 590-591, 481 U.N.T.S. 408-411.

ing in the U.S. Army, and his mother was a citizen of Kenya. *Id.* at 2, 28.[6] Petitioner's parents were married at the time of his birth. Administrative Record (A.R.) 247. They divorced in 1988, and his mother was granted full custody. Pet. App. 28. Petitioner came to the United States in 1989 with his mother, entering as a lawful permanent resident; his visa form stated that he was a Jamaican citizen. *Id.* at 2; A.R. 179-181.

Petitioner has been convicted of several crimes in the United States, including theft and domestic assault causing bodily injury. Pet. App. 29-32. Based on those convictions, the Department of Homeland Security (DHS) initiated removal proceedings against him. *Id.* at 29. Petitioner sought termination of those proceedings on the ground that he is a U.S. citizen. He argued: (1) that he obtained citizenship at birth by statute through his U.S. citizen father, and (2) that he obtained citizenship under the Citizenship Clause of the Fourteenth Amendment by being born on a U.S. military base abroad. *Id.* at 36. Petitioner conceded that, if he is not a U.S. citizen, his convictions render him removable. *Id.* at 2-3, 30-31.

After a hearing, an immigration judge (IJ) concluded that petitioner is not a U.S. citizen by operation of the Citizenship Clause or by statute. Pet. App. 28-47. First, the IJ rejected petitioner's argument that he was born "in the United States" within the meaning of the Citizenship Clause because he was born not "in the United States" but "in Germany." *Id.* at 37. The IJ explained that a U.S. military base in Germany is not part of "the United States" because the United States does not exercise sovereignty over

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[6] Petitioner's father was born in Jamaica but became a naturalized U.S. citizen in 1984. Pet. App. 2, 46.

U.S. military bases abroad: "[A]lthough the U.S. did exert some level of control over the military hospital, Germany retained *de jure* sovereignty." *Id.* at 41-42 (citing *Boumediene* v. *Bush*, 553 U.S. 723 (2008)). The IJ also noted that the only court to consider a claim that a person born on a U.S. military base abroad is a citizen under the Constitution rejected that claim. *Id.* at 42 (citing *Williams* v. *Attorney Gen. of the U.S.*, 458 Fed. Appx. 148 (3d Cir. 2012) (per curiam)). And the IJ observed that the State Department's *Foreign Affairs Manual* and its practices for certifying citizenship of children born abroad to U.S. citizen parents confirm that birth on a U.S. military installation abroad is not birth "in the United States." *Id.* at 37-40.

Second, the IJ concluded that petitioner did not obtain citizenship at birth based on his father's status as a U.S. citizen. Pet. App. 42-43. At the time of petitioner's birth, federal law provided that a child born abroad to one U.S. citizen parent and one alien parent was a U.S. citizen if the U.S. citizen parent had been physically present in the United States for ten years (with military service counting toward that requirement), at least five of which were after age 14. *Ibid.*; see 8 U.S.C. 1401(g) (1982).[7] The IJ explained that petitioner did not qualify under that provision because, at the time of petitioner's birth, his father had been physically present in the United States for only nine years. Pet. App. 43.

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[7] The IJ stated the law correctly, but cited the wrong statute; he should have cited 8 U.S.C. 1401(g), rather than its predecessor, 8 U.S.C. 1401(a)(7). Pet. App. 42-43. The Board of Immigration Appeals and the court of appeals cited the correct statute. See *id.* at 6 n.1, 24 n.3.

4. The Board of Immigration Appeals (Board) dismissed petitioner's appeal. Pet. App. 18-27. The Board first concluded that petitioner was not a U.S. citizen at birth under the Citizenship Clause because he was "born in a United States army base hospital in Germany," not "in the United States," as the Clause requires. *Id.* at 22; U.S. Const. Amend. XIV, § 1, Cl. 1. The Board explained that a place can be "subject to the jurisdiction" of the United States but not be "in the United States," and the Clause applies only if both conditions are met. Pet. App. 21-22. Thus, the Board continued, the U.S. military base in Germany was not "in the United States" despite the fact that it "was subject to the *de facto* jurisdiction of the United States." *Id.* at 22. The Board noted the consensus view in the courts of appeals that unincorporated U.S. territories are not considered to be "in the United States" for purposes of the Clause. *Id.* at 21-22 (citing cases). The Board also cited *Williams* v. *Attorney General of the United States*, *supra*, where the Third Circuit held that a U.S. military base abroad is not "in the United States" for purposes of the Clause, Pet. App. 23, and recognized that State Department publications and procedures confirm that view, *id.* at 22-23 & n.2. The Board then agreed with the IJ that petitioner did not obtain citizenship at birth by statute because his father had not resided in the United States for the period required by statute before petitioner's birth. *Id.* at 23-26.

5. The court of appeals denied the petition for review. Pet. App. 1-16. The court first noted that it was "undisputed" that petitioner did not obtain U.S. citizenship at birth by statute because he did not meet the conditions applicable to children born abroad to a

married couple comprised of one U.S. citizen parent and one alien parent. *Id.* at 6 & n.1.

The court of appeals then concluded that birth on a U.S. military base is not birth "in the United States" within the meaning of the Citizenship Clause. Pet. App. 6-15. The court explained that not every place "subject to the jurisdiction" of the United States is covered by the Clause, because the Clause also requires that the birth be "in the United States." *Id.* at 7-10 (citing, *inter alia*, *Downes* v. *Bidwell*, 182 U.S. 244 (1901), and *Nolos* v. *Holder*, 611 F.3d 279, 282 (5th Cir. 2010) (per curiam)). The court reasoned that a U.S. military base abroad is not "in the United States" because it is not part of the sovereign territory of the United States, even though the United States exercises some jurisdiction there. *Id.* at 10-11 (citing *Friedrich*, 983 F.2d at 1401). The court noted that its conclusion is consistent with the Third Circuit's decision in *Williams* v. *Attorney General of the United States*, *supra*, Pet. App. 11 n.5, and with the consensus view of legal scholars, *id.* at 12-13, and the court rejected petitioner's reliance on *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898), because that case did not involve a child born outside the United States, but rather one born in San Francisco, Pet. App. 13-14.

6. The court of appeals denied petitioner's petition for rehearing en banc, with no judge calling for a vote on the petition. Pet. App. 48-49.

ARGUMENT

Petitioner contends (Pet. 21-27) that he obtained United States citizenship under the Citizenship Clause of the Fourteenth Amendment when he was born on a U.S. military base in Germany. The court of appeals correctly rejected that contention, and its decision

does not conflict with any decision of this Court or any court of appeals. No court has held that birth on a U.S. military base in a foreign country constitutes birth "in the United States" within the meaning of the Citizenship Clause; the only other court that has considered such a claim rejected it in an unpublished opinion. Further, petitioner's claim is contrary to Congress's longstanding practice of addressing by statute the citizenship of persons born in a foreign country to U.S. citizen parents. Further review therefore is unwarranted.

1. The Fourteenth Amendment's Citizenship Clause provides that "[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." U.S. Const. Amend. XIV, § 1, Cl. 1. The question in this case is whether a person born on a U.S. military base in a foreign country (Germany) is born "in the United States" within the meaning of the Clause.

Petitioner does not identify any court that has held that a person born on a U.S. military base outside the United States and its territories acquires citizenship at birth under the Constitution. So far as the government is aware, only one other court of appeals has addressed a claim that birth on a U.S. military installation abroad confers citizenship under the Citizenship Clause, and that court also rejected the claim. In *Williams* v. *Attorney General of the United States*, 458 Fed. Appx. 148 (2012) (per curiam), the Third Circuit held that a person born at the U.S. Naval Station at Guantanamo Bay, Cuba, was not born "in the United States" for purposes of the Citizenship Clause. *Id.* at 152. The court explained that, as a

general matter, military installations abroad "are not part of the United States within the meaning of the Fourteenth Amendment." *Ibid.* The court also explained that Guantanamo Bay, in particular, is not "in the United States" because "Cuba retains de jure sovereignty over Guantanamo Bay." *Ibid.*

The courts of appeals also have addressed the meaning of "in the United States" in the Citizenship Clause in the context of persons born in United States territories. As an initial matter, U.S. territories are meaningfully different from U.S. military bases abroad, because the United States exercises sovereignty over U.S. territories. See, *e.g.*, *Simms* v. *Simms*, 175 U.S. 162, 168 (1899); *Shively* v. *Bowlby*, 152 U.S. 1, 48 (1894). But in any event, the circuit decisions addressing U.S. territories do not aid petitioner, because every court of appeals that has considered the issue has held that the Citizenship Clause does not apply to unincorporated territories of the United States (meaning territories that are not destined for statehood). See *Valmonte* v. *INS*, 136 F.3d 914, 917-920 (2d Cir.) (Citizenship Clause does not apply to individuals born in the Philippines while it was a U.S. territory), cert. denied, 525 U.S. 1024 (1998); *Lacap* v. *INS*, 138 F.3d 518, 519 (3d Cir. 1998) (per curiam) (same); *Nolos* v. *Holder*, 611 F.3d 279, 282-284 (5th Cir. 2010) (per curiam) (same); *Rabang* v. *INS*, 35 F.3d 1449, 1451-1453 (9th Cir. 1994) (same), cert. denied, 515 U.S. 1130 (1995); *Tuaua* v. *United States*, 788 F.3d 300, 301-302 (D.C. Cir. 2015) (Citizenship Clause does not apply to individuals born in American Samoa), petition for cert. pending, No. 15-981 (filed Feb. 1, 2016).

Petitioner contends (Pet. 8-13) that there is disagreement in those decisions warranting this Court's review. He is mistaken: every court of appeals to consider the question has reached the same conclusion, namely, that birth in an unincorporated U.S. territory is not birth "in the United States" under the Citizenship Clause. And even if there were disagreement about the application of the Citizenship Clause to persons born in U.S. territories, this would not be an appropriate case in which to address that issue, because petitioner was not born in a U.S. territory.[8]

2. The court of appeals correctly concluded that a person born on a U.S. military base in Germany does not obtain citizenship at birth under the Citizenship Clause. The Clause confers citizenship at birth on persons who are "born or naturalized in the United States" and "subject to the jurisdiction thereof." U.S. Const. Amend. XIV, § 1, Cl. 1. Even assuming that a person born on a U.S. military base in a foreign country is "subject to the jurisdiction" of the United States within the meaning of the Citizenship Clause, such a person does not meet the first condition for U.S. citizenship at birth under that Clause, namely, that he be "born * * * in the United States."

a. Under the plain text of the Citizenship Clause, a U.S. military base in a foreign country—Germany—is

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[8] Contrary to petitioner's contention (Pet. 7), the court of appeals below did not "acknowledge[]" that it had "created a conflict with the D.C. Circuit"; rather, the court of appeals declined to rely on part of the reasoning used by the D.C. Circuit to decide a different issue (application of the Citizenship Clause in a U.S. territory) because the court of appeals below already had concluded that "in the United States" should not be read to mean "in Germany." Pet. App. 14-15.

not "in the United States." The phrase "the United States" generally refers to the 50 States and the District of Columbia. See, *e.g.*, *Black's Law Dictionary* 1769 (10th ed. 2014) (defining "United States of America" as a republic comprised of the 50 States and the District of Columbia). That meaning reflects the constitutional design: at the time the Constitution was adopted, "the United States" consisted of the 13 States, and the Constitution contemplated creation of a district carved out of those States to "become the Seat of the Government of the United States." U.S. Const. Art. I, § 8, Cl. 17.

The Constitution distinguishes between "the United States" and its territories and "foreign Nations," "[f]oreign State[s]," or "foreign Power[s]." See, *e.g.*, U.S. Const. Art. I, § 8, Cl. 3; U.S. Const. Art. I, § 9, Cl. 8; U.S. Const. Art. I, § 10, Cl. 3; U.S. Const. Art. III, § 2, Cl. 1; U.S. Const. Amend. XI. And the Constitution recognizes the sovereignty of foreign nations when it empowers the President (with the advice and consent of the Senate) to make treaties with them and to receive their ambassadors. U.S. Const. Art. II, § 2, Cl. 2. Nothing in the Constitution suggests that when the Framers of the Fourteenth Amendment referred to "the United States," they meant to include an area within "foreign Nations" where a U.S. military installation is located.

Moreover, the Constitution grants Congress broad authority over naturalization, U.S. Const. Art. I, § 8, Cl. 4, and empowers Congress to create, maintain, and regulate the armed forces, U.S. Const. Art. I, § 8, Cls. 12-14; see also U.S. Const. Art. II, § 2, Cl. 1 (President's Commander-in-Chief authority). The constitutional provisions entrusting naturalization and regula-

tion of the armed forces to the political Branches demonstrate that Congress is responsible for making rules for the acquisition of U.S. citizenship by persons born on U.S. military installations outside the United States, whether to citizen or alien parents.

Indeed, Congress has long exercised its authority to specify when persons born outside of the United States acquire U.S. citizenship. See pp. 18-19, *infra.* That longstanding congressional practice confirms that the Constitution does not automatically confer U.S. citizenship on a person born on a U.S. military base in a foreign country. See also 7 *Foreign Affairs Manual* § 1113(c) (noting that "U.S. military installations abroad and U.S. diplomatic or consular facilities abroad are not part of the United States within the meaning of the 14th Amendment," and "[a] child born on the premises of such a facility is not born in the United States and does not acquire U.S. citizenship by reason of birth").

b. A U.S. military installation abroad is not "in the United States" under the Citizenship Clause because it is not part of the sovereign territory of the United States. The courts of appeals have uniformly held that unincorporated U.S. territories[9] are not "in the United States" for purposes of the Citizenship Clause,

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[9] The U.S. territories that are permanently inhabited are Puerto Rico, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa; they are all unincorporated territories, because Congress has not currently provided a path to statehood for any of them. See U.S. Gen. Accounting Office, *U.S. Insular Areas: Application of the U.S. Constitution* 6-10, 39-40 (Nov. 1997), http://www.gao.gov/archive/1998/og98005.pdf.

and that is consistent with this Court's teachings[10] and with longstanding congressional practice of conferring citizenship or nationality at birth in those territories by statute.[11] But even if the Citizenship Clause were read to include an incorporated territory of the United States, the Clause still would not encompass a U.S. military base in Germany. That is because the Citizenship Clause would at least require that an individual be born in U.S. sovereign territory, and as the court of appeals correctly recognized, the United States does not exercise sovereignty over a U.S. military base in Germany.

When the United States and a foreign nation agree that the United States may place a military installation within the foreign nation's territory, that does not make the United States "sovereign" over that territory. Rather, the host nation retains sovereignty, and the extent to which the United States exercises jurisdiction on the land depends on terms of the agreement with the host nation. This Court has long recognized

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[10] In *Downes* v. *Bidwell*, 182 U.S. 244 (1901), all Justices in the majority agreed that it is for Congress to decide whether persons in newly acquired territories become U.S. citizens. See *id.* at 279-280 (opinion of Brown, J.); *id.* at 306 (White, J., concurring); *id.* at 345-346 (Gray, J., concurring). The Court has continued to assume that persons born in U.S. territories obtain citizenship only by Act of Congress, not through the Constitution. *Barber* v. *Gonzales*, 347 U.S. 637, 639 n.1 (1954); see *Miller* v. *Albright*, 523 U.S. 420, 467 n.2 (1998) (Ginsburg, J., dissenting); see also *Rabang* v. *Boyd*, 353 U.S. 427, 432 (1957) (reiterating Congress's power to "prescribe upon what terms the United States will receive [a territory's] inhabitants, and what their status shall be" (emphasis and citation omitted)).

[11] See *Boumediene* v. *Bush*, 553 U.S. 723, 757-758 (2008); see also *Downes*, 182 U.S. at 318 (White, J., concurring).

that a U.S. military base in a foreign country is "beyond the limits of national sovereignty." *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377, 390 (1948) (applying federal labor law to a U.S. military base in Bermuda even though the base was in "foreign territory"); see *Johnson* v. *Eisentrager*, 339 U.S. 763, 777-778 (1950) (prisoners of U.S. military forces held at Landsberg Prison in Germany "at no relevant time were within any territory over which the United States is sovereign"); *United States* v. *Spelar*, 338 U.S. 217, 221-222 (1949) (recognizing that placement of U.S. military base in Newfoundland "effected no transfer of sovereignty" and that base was in a "foreign country" for purposes of Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*). Like the court below (Pet. App. 11-12), the courts of appeals have recognized that U.S. military bases in foreign countries are not part of the sovereign territory of the United States.[12] And as this Court has recognized, the "determination of sovereignty over an area is for the legislative and executive departments." *Vermilya-Brown*, 335 U.S. at 380; see *Boumediene* v. *Bush*, 553 U.S. 723, 753 (2008) ("[Q]uestions of sovereignty are for the political branches to decide.").

Petitioner relies (Pet. 26) on *Boumediene*, but that decision does not establish that a U.S. military instal-

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[12] See, *e.g.*, *Al Maqaleh* v. *Gates*, 605 F.3d 84, 98 (D.C. Cir. 2010) (holding that the United States does not exercise *de facto* or *de jure* sovereignty over Bagram Airfield military base in Afghanistan); *Holder* v. *Holder*, 392 F.3d 1009, 1020 n.10 (9th Cir. 2004) (recognizing that the Sembach Air Force Base in Germany is not under U.S. sovereignty); *Friedrich* v. *Friedrich*, 983 F.2d 1396, 1401 (6th Cir. 1993) (explaining, with respect to a U.S. Army base in Germany, that "a United States military base is not sovereign territory of the United States").

lation in Germany is "in the United States" under the Citizenship Clause. In *Boumediene*, the Court held that aliens detained at the U.S. Naval Station at Guantanamo Bay, Cuba, could challenge their detention through habeas corpus, in part because of the particular degree of control the United States exercised over that base. 553 U.S. at 739-771. But the Court recognized that "Guantanamo Bay is not formally part of the United States," and that under the lease between the United States and Cuba, "Cuba retains ultimate sovereignty over the territory while the United States exercises complete jurisdiction and control." *Id.* at 753 (internal quotation marks omitted); see *id.* at 755 ("Cuba, and not the United States, retains *de jure* sovereignty over Guantanamo Bay.").

Further, the text of the Citizenship Clause itself demonstrates that United States jurisdiction or control in a foreign country is not sufficient to confer citizenship, because the Clause requires *both* that a person be "born * * * in the United States" and be "subject to [its] jurisdiction." U.S. Const. Amend. XIV, § 1, Cl. 1. While the Citizenship Clause of the Fourteenth Amendment is thus confined to individuals born "in the United States, *and* subject to the jurisdiction thereof," *ibid.* (emphasis added), the Thirteenth Amendment prohibits slavery "within the United States, *or* any place subject to their jurisdiction," U.S. Const. Amend. XIII, § 1 (emphasis added). The Thirteenth Amendment's broader language demonstrates that "there may be places subject to the jurisdiction of the United States but which are not incorporated into it, and hence are not within the United States in the completest sense of those words." *Downes* v. *Bidwell*, 182 U.S. 244, 336-337 (1901)

(White, J., concurring); see *id.* at 251 (opinion of Brown, J.); see also Pet. App. 9.

The court of appeals therefore correctly concluded that a U.S. Army base in Germany is not "in the United States" for purposes of the Citizenship Clause. Pet. App. 9-12. Germany, not the United States, possesses sovereignty over that area. The United States is able to operate the installation because of an agreement with Germany.[13] At the end of the agreement, the area of the base would revert to Germany's sole control. And even while the agreement remains in effect, Germany retains jurisdiction over the base to enforce certain of its own laws in accordance with the terms of the agreement.[14]

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[13] U.S. military installations in Germany are subject to a status of forces agreement applicable to members of the North Atlantic Treaty Organization. See Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67 (Agreement). The Agreement provides that the host nation assumes "sole responsibility" for making available real estate that the guest nation requires for its forces. *Id.* art. IX, § 3, 4 U.S.T. 1810, 199 U.N.T.S. 90. The Agreement also grants the guest nation the right to exercise within the host nation criminal and disciplinary jurisdiction over the guest nation's personnel and their dependents and establishes means for determining which nation may exercise jurisdiction over an individual who commits an offense punishable under the laws of both nations. *Id.* art. VII, 4 U.S.T. 1798-1803, 199 U.N.T.S. 76-83. There also is a supplementary agreement specific to the forces of six nations stationed in Germany, including the United States. See Supplementary Agreement, 14 U.S.T. 531, 481 U.N.T.S. 262.

[14] See Agreement art. VII, 4 U.S.T. 1798-1803, 199 U.N.T.S. 76-83; see also Supplementary Agreement arts. 17-27, 14 U.S.T. 551-559, 481 U.N.T.S. 354-367. For that reason, a U.S. Army base in Germany is unlike the U.S. Naval Station at Guantanamo Bay, Cuba. Cf. *Boumediene*, 553 U.S. at 755 (concluding that the United

c. None of petitioner's other arguments justifies reading "the United States" in the Citizenship Clause to include Germany. Petitioner contends that he is entitled to citizenship under the Citizenship Clause based on a common-law principle of *jus soli*, under which anyone "born within the King's domain" is a citizen. Pet. 25 (citations and internal quotation marks omitted); see Pet. 24-27. But the Constitution specifies what is required for citizenship at birth; that issue is not resolved by reference to the common law. Further, petitioner apparently defines the common-law principle as recognizing that a person born on land within a nation's sovereign territory is considered a citizen, see Pet. 26-27, but U.S. military bases abroad are not part of the sovereign territory of the United States. Petitioner is mistaken in asserting (Pet. 26) that the United States exercises "complete dominion" over U.S. Army bases in Germany and that "everyone allowed on site owe[s] the United States their undivided obedience and allegiance." Both the United States and Germany exercise jurisdiction there, as spelled out in their agreement. See note 13, *supra*. And foreign citizens often work on U.S. military bases, but that does not make them U.S. nationals. See, *e.g.*, *Friedrich* v. *Friedrich*, 983 F.2d 1396, 1398 (6th Cir. 1993) (noting that child was born to a U.S. citizen mother stationed at a U.S. military base and a German father who was employed on the base).

Petitioner also relies (Pet. 12, 21 n.5, 24-25) on *United States* v. *Wong Kim Ark*, 169 U.S. 649 (1898), and *Reid* v. *Covert*, 354 U.S. 1 (1957), but neither decision suggests that a U.S. military base in a foreign

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States has "complete jurisdiction and control over the [Guantanamo Bay naval] base").

country is "in the United States" for purposes of the Citizenship Clause. In *Wong Kim Ark*, the Court held that the Citizenship Clause conferred citizenship at birth on a child born in California whose parents were citizens of China. 169 U.S. at 705. The Court had no occasion to consider application of the Citizenship Clause in a foreign country, because it was undisputed that the plaintiff in *Wong Kim Ark* was born in a State, and therefore in the United States. *Id.* at 652. In *Reid* v. *Covert*, *supra*, a plurality of the Court held that U.S. citizens who were civilians living on a U.S. military installation abroad could not be tried by court-martial. 354 U.S. at 18-19; see *id.* at 49 (Frankfurter, J., concurring in the result); *id.* at 77-78 (Harlan, J., concurring in the result). The case did not address the Citizenship Clause at all; the question was the application of part of the Bill of Rights to persons who were U.S. citizens. *Id.* at 3-6 (plurality opinion).

Petitioner also makes arguments (Pet. 13-17, 19) about whether a person born in the Panama Canal Zone would be eligible to be a U.S. President. That issue does not depend on interpretation of the Citizenship Clause, but on interpretation of a different constitutional provision governing eligibility for the Presidency. See U.S. Const. Art. II, § 1, Cl. 5 (requiring the President to be a "natural born Citizen"). Petitioner's argument is that a person born in U.S. sovereign territory is qualified to become President. Pet. 16-17. But petitioner was not born in U.S. sovereign territory, and he is not seeking the presidency, and so there is no need here to address hypothetical constitutional questions about eligibility for the Presidency.

3. Finally, there is no need for the Court's review for the additional reason that Congress has compre-

hensively addressed the citizenship of persons born abroad to U.S. citizen parents. Since the Founding, Congress has legislated to address citizenship of persons born abroad. See, *e.g.*, Nationality Act of 1940, ch. 876, § 201, 54 Stat. 1138-1139; Citizenship Act of 1907, ch. 2534, § 6, 34 Stat. 1229; Act of Feb. 10, 1855, ch. 71, § 1, 10 Stat. 604; Act of Apr. 14, 1802, ch. 28, § 4, 2 Stat. 155; Act of Jan. 29, 1795, ch. 20, § 3, 1 Stat. 415; Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103-104. Congress's longstanding practice provides powerful confirmation that the Citizenship Clause was not intended to address the citizenship of persons born in foreign countries, whether or not on a U.S. military base. See *Jackman* v. *Rosenbaum Co.*, 260 U.S. 22, 31 (1922) (Holmes, J.) ("If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it.").

Congress's framework has been revised over time and remains in place today. As relevant here, it provides that whether a person born abroad to a U.S. citizen parent is a U.S. citizen depends on the nationality of the other parent, the parents' marital status, and whether certain physical presence and residence requirements are met. See 8 U.S.C. 1401(c)-(e) and (g), 1409. And even if a person does not obtain U.S. citizenship at birth, Congress has provided means for automatic acquisition of citizenship after birth. For example, Congress has provided that a person born outside of the United States who has a U.S. citizen parent and who has been lawfully admitted for permanent residence automatically obtains citizenship if the person resides in the United States in the legal and physical custody of the citizen parent before age

18. See, *e.g.*, 8 U.S.C. 1431 (Supp. II 2014). Congress also has provided a process for a child who has a U.S. citizen parent but who did not automatically obtain citizenship at birth or after birth to become a U.S. citizen if the person applies for citizenship before age 18 and meets certain conditions. See 8 U.S.C. 1433.[15]

The rules Congress enacted are designed to ensure that persons who are granted U.S. citizenship have, through their U.S. citizen parent or parents, what Congress determined to be a sufficient connection to the United States to warrant conferral of U.S. citizenship. The Citizenship Clause does not divest Congress of its authority to make those judgments with respect to persons born on U.S. military installations in foreign countries, by instead automatically granting U.S. citizenship at birth to any person born on a U.S. military base anywhere around the world. There is no basis for disturbing the firmly established understanding that Congress is responsible for making rules for the acquisition of U.S. citizenship by persons

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[15] Petitioner now concedes that he did not obtain citizenship at birth under 8 U.S.C. 1401(g) (1982) because his father did not have the necessary period of physical presence in the United States. Pet. App. 6 n.1. DHS reports that in June 2014, petitioner sought a certificate of citizenship from U.S. Citizenship and Immigration Services. The application was denied in February 2016 because petitioner's mother, who is not a U.S. citizen, obtained full custody of him when his parents divorced. See Pet. App. 28. Petitioner therefore did not meet the statutory requirement that he resided "in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence" before age 18. 8 U.S.C. 1431(a)(3) (Supp. II 2014). The IJ noted that petitioner is a citizen of Jamaica and has a Jamaican passport. Pet. App. 46.

born in foreign countries. For that reason as well, further review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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