



Written by [Selwyn Duke](#) on April 1, 2025

Constitutionally Granted Birthright Citizenship for Illegals? SCOTUS Says No

Imagine the following scenario: A pregnant woman goes into labor while passing your property and, in distress, stumbles onto your lawn. You take notice, offer aid, and EMT arrives and, with time short, she gives birth on the scene. Mother and baby turn out safe and healthy, though, and all's well that ends well, right? Except for one thing.

You're then told that because the infant was born on your land, he's now a member of your household.

Ridiculous, I know. But, of course, this is analogous to the situation in the United States under our "birthright citizenship" standard, supposedly based on the 14th Amendment.



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This issue has received much attention recently because President Donald Trump issued an executive order challenging birthright citizenship. The response has been predictable, too, with mainstream media pooh-poohing Trump's position. They apparently endorse the status quo in which an illegal alien — or a calculating pregnant tourist traveling to our nation right before her due date — will give birth on our soil, and "voila!" The joke is on us: The child is a U.S. citizen.

But did the 14th Amendment's framers really intend this outcome? It turns out they didn't. What's more, the Supreme Court already ruled on the matter — 127 years ago. Unfortunately, this "precedent" has been ignored.

A case in point is Trump's aforementioned executive order, which denies citizenship to children born in America to illegal-alien parents. Multiple lawsuits have been filed against it, and judges have blocked it in at least six instances. (Note: Some of the lawsuits have been consolidated.) In response, the administration has asked the Supreme Court to "allow" the order's enforcement while the case is adjudicated. And while we hope the High Court will look at the facts, let's do so ourselves.

What the Text and Common Sense Say

The constitutional provision in question, the 14th Amendment's Section 1, is very simple, [reading](#):

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.

Yet much as with the qualifier "[in Pursuance thereof](#)" in the [Supremacy Clause](#), some behave as if the "jurisdiction" requirement above doesn't exist. Just consider the following Associated Press line from a March 11 [article](#) on the matter:



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Trump's legal team argues the Amendment ... only confers citizenship to people born under the jurisdiction of the United States — and they say jurisdiction isn't always the same thing as being born on American soil.

Of course, anyone acquainted with logic knows that if "jurisdiction" were always the same as "born on American soil," the jurisdiction line wouldn't have been included. It's a qualifier — and qualifiers qualify.

What the Court Has Said

We don't have to guess *too* much as to the phrase's meaning, either. For starters, the Supreme Court already rendered a relevant judgment in the case *United States v. Wong Kim Ark* (1898). Not only is it a little-known case, however, but an illuminating aspect of the opinion is often obscured. Just consider a 2018 "fact check" by WKYC, in which the station [writes](#) of *Wong*:

Kim Ark was a United States citizen born to two Chinese immigrants living in the United States in the late 19th century. He left the country and was denied re-entry initially due to a law restricting Chinese immigration.

Kim Ark challenged the ruling and once at the Supreme Court, the Justices ruled that even though both his parents were foreigners, Kim Ark was born on U.S. soil and thus was a U.S. Citizen.

That's all WKYC says about it, too. So the ruling supports the anchor-baby status quo, right? Not exactly. And the Immigration Reform Law Institute (IRLI) told the rest of the story March 19. It [wrote](#) that on *Wong*, the Supreme Court held

that, because — and only because — his parents were legally residing in the United States when he was born here, he was a citizen at birth under the Fourteenth Amendment.

The IRLI then quoted [the actual ruling](#):

Chinese persons, born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here; and are "subject to the jurisdiction thereof...."

Obviously, this means that if you're residing in the U.S. *without permission*, the 14th Amendment *does not apply*.

Original Intent Has Been Bent

Of course, even more significant is the original intent of the 14th Amendment's framers. The Constitution is, after all, the only precedent that really matters. It turns out, too, that the Citizenship Clause's author, Senator Jacob Howard, goes beyond even the *Wong* ruling. While presenting the amendment to Congress in 1866, he first emphasized that he was only reiterating what he regarded to already be American law. He then [said](#) of the 14th that it



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will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.

In other words, whether abiding by the *Wong* decision or Howard's explanation, the result is the same. Illegal-alien children birthed on American soil are *not* citizens.

The only dispute is over whether children birthed in the U.S. by "foreigners" residing legally in our country are citizens. The 1898 Court said yes; the 14th Amendment's author apparently said no.

The Sophists Endure

So what do the defenders of the anchor-baby status quo say in response? Well, along with misrepresenting the *Wong* ruling, WKYC also sloughed off Howard's words, writing that the senator's

intent/beliefs were not added ino [sic] the text of the amendment itself and do not have any real legal power.

This is sophistry. Oh, the claim is technically true. But the "jurisdiction" line *does* have legal power — and Howard's words help explain its meaning.

The 14th Amendment's purpose is also instructive here, and this isn't some cryptic truth lost to the mists of time. The amendment was created, post-War Between the States, to ensure freed slaves wouldn't be denied citizenship and its attendant rights. It was not formulated to enable illegal aliens and birth-tourist con artists to game the system. This is obvious.

Yet whether the Supreme Court will rule for the obvious, or act oblivious and support a constitutional perversion most odious, is a different matter. It takes principle and guts, after all, to render decisions on facts and not fashions. And, lamentably, those qualities don't characterize too many of our judges.



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