



Written by [Joe Wolverton, II, J.D.](#) on June 27, 2025

The Myth of Birthright Citizenship: A Constitutional and Historical Refutation

Editors' Note: On Friday, June 27, 2025, in their decision in Trump v. CASA, the Supreme Court ordered a partial stay on district court injunctions blocking President Donald Trump's executive order limiting U.S. citizenship to those "subject to the jurisdiction" of the United States, as specified in the Constitution.

In response to this decision, we feel it is crucial to once again address the concept of "birthright citizenship."

This article by Joe Wolverton II, J.D., The John Birch Society's constitutional law scholar, is an important and cogent explanation of the issue. Originally published on May 9, 2025, at the beginning of the Supreme Court's consideration of the case, it is more relevant now than ever.



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For far too long, the American legal and political landscape has been distorted by a fundamental misunderstanding of the 14th Amendment: that merely being born on U.S. soil makes one a citizen. This misconception contradicts the original intent of the amendment's framers. Furthermore, it undermines the foundational principle that citizenship arises from allegiance, not geographic happenstance.

On May 15, the Supreme Court will take up three cases, consolidated under the name *Trump v. CASA*. It will address Donald Trump's bold and necessary attempt to end the unconstitutional practice of granting citizenship to anyone born on U.S. soil, regardless of parental allegiance. The fact that the Court has chosen to hear these cases in May — a rare occurrence typically reserved for matters of utmost urgency — underscores just how pivotal this issue is. The stakes couldn't be higher. At risk is the foundational principle that citizenship is rooted in allegiance, not mere geography. This is a principle that the Constitution clearly supports and that decades of judicial misinterpretation have dangerously eroded.

President Donald Trump's [executive order](#) is at the crux of this case, and marks a critical moment in the battle to restore constitutional integrity. This action, however, has rekindled debate over whether birthright citizenship is truly required by the 14th Amendment. A closer examination of the Constitution, its framers' intent, and relevant historical precedents reveals that birthright citizenship is neither constitutionally mandated nor consistent with the principles of American law and government.

The Crux of the Issue: Jurisdiction and Allegiance

The primary argument for birthright citizenship hinges on the Citizenship Clause of the Fourteenth



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Amendment, which reads:

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.

Advocates of birthright citizenship often isolate the phrase “born or naturalized in the United States,” disregarding the critical qualification that follows: “and subject to the jurisdiction thereof.” This latter phrase is not mere surplusage — it carries substantive legal meaning rooted in allegiance, not mere presence.

Senator Jacob Howard of Michigan, who introduced the Citizenship Clause in 1866, explicitly stated its intent:

This will not, of course, include persons born in the United States who are foreigners, aliens, [or] 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.

Senator Howard’s remarks make clear that the mere accident of birth within U.S. borders does not automatically confer citizenship if the individual’s allegiance lies with a foreign power. How can a person be both a citizen and an alien simultaneously if mere birth location were the sole determinant of citizenship?

Historical and Legal Foundations

The principle that allegiance determines citizenship, rather than mere nativity, predates the 14th Amendment. The American legal tradition, heavily influenced by English common law and principles of natural law, consistently rooted citizenship in the voluntary allegiance of an individual (or, in the case of minors, their parents).

Swiss legal scholar Emmerich de Vattel, whose treatise *The Law of Nations* profoundly influenced the Founding Fathers, defined citizenship as follows:

Natural-born citizens are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers and succeed to all their rights.

Vattel’s definition underscores that citizenship is inherited from one’s parents, not dictated by the location of birth. The society’s continuity depends on the transmission of allegiance from citizen parents to their offspring. This principle was fundamental to the understanding of citizenship at the time of the Constitution’s drafting.

To grasp just how influential Vattel was on the Founding Generation, consider this: In 1775, Benjamin Franklin wrote a letter to Charles Dumas in which he revealed that Vattel’s *The Law of Nations* “has been continually in the hands of the members of our Congress now sitting.” That’s right — the very men shaping our republic were not just familiar with Vattel’s work; they were steeped in it. They relied on his wisdom to guide their foundational decisions regarding citizenship and so many other fundamental constitutional concepts.



Judicial Misinterpretation: *Wong Kim Ark* and Its Limits

One of the most frequently cited cases in support of birthright citizenship is [United States v. Wong Kim Ark](#) (1898). In this case, the Supreme Court held that a child born in the United States to Chinese parents who were lawful permanent residents was a citizen. Yet, critical to this decision was the lawful and permanent resident status of Wong Kim Ark's parents, distinguishing it sharply from cases involving the children of illegal immigrants or temporary visitors.

Importantly, the ruling in *Wong Kim Ark* did not grant citizenship to the children of those unlawfully present. The Court's reasoning rested on the premise that the parents were subject to U.S. jurisdiction in the full sense of the term — meaning lawful presence and adherence to U.S. laws.

The Deception of Modern Interpretations

Proponents of birthright citizenship often point to the dicta in *Plyler v. Doe* (1982), where the Court discussed the rights of undocumented immigrants' children to public education. However, this dicta, suggesting an equivalence between lawful and unlawful presence under the 14th Amendment, lacks binding authority. It cannot serve as a constitutional justification for birthright citizenship.

The amendment's framers intended to secure the rights of freed slaves, not to grant citizenship indiscriminately to the children of illegal immigrants. As Representative John Bingham, a key architect of the 14th Amendment, declared:

Every human being born within the United States of parents not owing allegiance to any foreign sovereignty is ... a natural born citizen.

The language is unequivocal: Allegiance, not birthplace, is the linchpin of citizenship.

The Consequences of Misinterpretation

Misapplying the 14th Amendment to justify birthright citizenship incentivizes illegal immigration and undermines the principle of consent of the governed. If citizenship becomes a mere consequence of location, the social and legal bond essential to the American polity is dissolved.

This distortion of the 14th Amendment not only erodes national sovereignty but also disrespects the legislative power to regulate immigration. Allowing those who violate immigration laws to confer citizenship upon their offspring effectively nullifies Congress's authority over immigration policy.

Restoring Constitutional Sanity

President Trump's executive order represents a bold effort to correct this historic misinterpretation. By restoring the original understanding of the 14th Amendment, the order reaffirms that citizenship is not a reward for unlawful presence. It is a privilege of those whose allegiance lies with the United States.

Critics will undoubtedly claim that this executive order violates constitutional rights. Such claims are rooted in the modern judicial orthodoxy that perverts the intent of the 14th Amendment. The Supreme Court should seize the opportunity to clarify that birthright citizenship, as currently practiced, is a constitutional anomaly and not a guaranteed right.

Conclusion: Allegiance as the Cornerstone

To reduce citizenship to an accident of birth is to dismantle the very essence of the American social contract. The Constitution, properly understood, does not countenance the indiscriminate bestowal of



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citizenship based on mere geography. Rather, citizenship is a legal and social bond, fundamentally rooted in allegiance and voluntary association with the American nation.

To preserve the integrity of citizenship and to maintain the sovereignty of the United States, it is essential to reject the false doctrine of birthright citizenship. President Trump’s executive order marks the beginning of this necessary restoration of constitutional order. The American people must stand resolute in defense of the rule of law and the principle of allegiance as the foundation of citizenship.



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