



Written by [Joe Wolverton, II, J.D.](#) on January 23, 2025

Trump Ends Birthright Citizenship

On January 20, President Donald Trump signed an executive order declaring an end to the practice of birthright citizenship. This executive action marks a dramatic shift in U.S. immigration policy, with significant constitutional implications. It also reignites a debate over whether birthright citizenship is truly required by the 14th Amendment. A close examination of the Constitution, the intent of its framers, and relevant historical precedents reveals that birthright citizenship is neither constitutionally mandated nor consistent with the principles underlying American law and government.



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What the Fourteenth Amendment Actually Says

The argument for birthright citizenship primarily hinges on the citizenship clause of the 14th Amendment. It 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.”

The phrase “and subject to the jurisdiction thereof” is the crux of the issue. Advocates of birthright citizenship argue that this language simply requires physical presence within U.S. borders. However, such an interpretation ignores the historical and legal context of the 14th Amendment.

U.S. Senator Jacob Howard of Michigan introduced the citizenship clause in 1866. He explained its intent, emphasizing how his proposal should be interpreted: “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.”

Howard’s statement clearly indicates that “subject to the jurisdiction thereof” was understood to exclude individuals whose allegiance lay with a foreign power.

How could a person “born in the United States” be simultaneously a citizen and a “foreigner” or “alien” if the mere fact of nativity settled the question of citizenship?

This interpretation aligns with the principle of allegiance as the cornerstone of citizenship. Birthright citizenship, as it is understood today, effectively disregards this vital qualification.

The Supreme Court and Birthright Citizenship

The 1898 Supreme Court case *United States v. Wong Kim Ark* is often cited as establishing birthright citizenship. However, this case is frequently misunderstood. Wong Kim Ark was born in the United States to Chinese parents who were lawful permanent residents. The Court held that he was a U.S. citizen based on the 14th Amendment. Crucially, Wong Kim Ark’s parents were *not* illegal immigrants, nor were they merely temporary visitors. The decision, therefore, does not apply to children of individuals who are unlawfully present in the United States.



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In *Plyler v. Doe* (1982), the Supreme Court addressed the rights of undocumented immigrants' children but stopped short of declaring them citizens. Instead, the Court focused on equal protection rights for purposes of public education. The dicta in that case — suggesting equivalence between lawful and unlawful presence under the 14th Amendment — is not binding law and lacks the constitutional weight necessary to support the expansive claims made by birthright citizenship advocates.

Allegiance as the Basis of Citizenship

The American legal tradition is rooted in the principle that citizenship arises from allegiance. This is why the children of foreign diplomats born in the United States are not granted citizenship — they owe allegiance to their parents' home countries, not to the United States.

Swiss legal scholar Emmerich de Vattel defined the concept of citizenship in his 1758 treatise *The Law of Nations*, which, according to Benjamin Franklin, “had been continually in the hands of the members of our Congress.”

Book I, Chapter 19, Section 212 of *The Law of Nations* reads:

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. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent. We shall soon see, whether, on their coming to the years of discretion, they may renounce their right, and what they owe to the society in which they were born. I say, that, in order to be of the country, it is necessary that a person be born of a father who is a citizen; for if he is born there of a foreigner, it will be only the place of his birth, and not his country. [Emphasis added.]

De Vattel's definition of citizenship and the benefits derived therefrom were well known to our Founding Fathers.

Vattel's work was widely read and respected during the drafting of the Constitution. His definition underscores the idea that citizenship is a social and legal bond rooted in the allegiance of one's parents. The 14th Amendment, far from repudiating this principle, reaffirmed it. It limited birthright citizenship to those “subject to the jurisdiction” of the United States.

Historical Practice and Intent

Historical evidence further supports the conclusion that birthright citizenship is not constitutionally required. For example, during the debates over the 14th Amendment, Representative John Bingham of Ohio — a principal architect of the amendment — stated: “Every human being born within the United States of parents not owing allegiance to any foreign sovereignty is ... a natural-born citizen.”

This qualification reflects a consistent understanding among the framers of the 14th Amendment that citizenship is not conferred by the mere accident of birth location but by the allegiance of one's parents. It is also worth noting that the United States inherited its rejection of “birthplace citizenship” from



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English common law, which recognized allegiance as the foundation of subjectship.

The Misuse of the Fourteenth Amendment

The modern application of the 14th Amendment to justify birthright citizenship is a distortion of its original purpose. The amendment was intended to secure the rights of newly freed slaves, ensuring that they would be recognized as citizens despite state laws to the contrary. It was not designed to create an incentive for illegal immigration. Nor was it intended to grant citizenship to the children of those who disregard U.S. immigration laws.

Granting automatic citizenship to the children of individuals unlawfully present undermines the principle of consent of the governed. It extends the benefits of citizenship to individuals who have not been lawfully admitted into the national community. This practice erodes the distinction between legal and illegal entry, effectively nullifying Congress's authority over immigration policy.

Restoring Constitutional Citizenship

President Trump's executive order ending birthright citizenship is a bold and necessary step toward restoring the constitutional understanding of citizenship. It challenges the modern orthodoxy that misinterprets the 14th Amendment and disregards the framers' intent. While critics will undoubtedly argue that the executive order violates constitutional rights, the actual text and history of the 14th Amendment reveal otherwise.

The Supreme Court should seize the opportunity to revisit the issue and affirm that birthright citizenship is not constitutionally mandated. Until that happens, the executive order represents a return to the principle that citizenship is a privilege of those who owe allegiance to the United States. It is not a reward for those who violate its laws.

Conclusion

The concept of birthright citizenship has long been a source of controversy in American political discourse. However, a careful examination of the Constitution, historical precedent, and the intent of the framers demonstrates that it is neither required by the 14th Amendment nor consistent with the principles of American government. President Trump's executive order is a courageous move to uphold the rule of law and preserve the integrity of U.S. citizenship. The debate over birthright citizenship is far from over, but one thing is clear: the Constitution, properly understood, does not sanction it.



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