

# Made in America: The Constitutional Guarantee of Birthright Citizenship

By ANONYMOUS\*

“[W]e are a nation of immigrants. Unless you are one of the first Americans, a Native American, we are all descended from folks who came from someplace else . . . .”<sup>1</sup>

THE UNITED STATES WAS BUILT BY IMMIGRANTS, with its history deeply rooted in the diverse waves of people who have come from every corner of the world in search of new opportunities. Today, the children of undocumented parents continue this legacy, who, through their birth on U.S. soil, are guaranteed birthright citizenship by the Fourteenth Amendment.<sup>2</sup> These children, regardless of their parents’ immigration status, gain access to education, healthcare, and legal protections that facilitate their full participation in society.<sup>3</sup>

With President Donald Trump’s reelection in 2024, the attack on birthright citizenship continues, echoing his 2018 proposal to terminate the constitutional guarantee of citizenship for children born in the United States to undocumented parents through an executive order.<sup>4</sup> Trump’s efforts to end birthright citizenship stem from a desire to limit immigration, arguing that

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\* The Author decided to publish anonymously due to the fear the Trump administration has instilled in individuals criticizing its policies.

1. Barack Obama, U.S. President, Remarks by the President at Naturalization Ceremony (July 4, 2012), <https://obamawhitehouse.archives.gov/the-press-office/2012/07/04/remarks-president-naturalization-ceremony> [<https://perma.cc/W23N-R4QE>].

2. U.S. CONST. amend. XIV, § 1.

3. See *United States v. Wong Kim Ark*, 169 U.S. 649, 705 (1898); see also AM. IMMIGR. COUNCIL, U.S. CITIZEN CHILDREN IMPACTED BY IMMIGRATION ENFORCEMENT (Jun. 24, 2021), [https://www.americanimmigrationcouncil.org/sites/default/files/research/us\\_citizen\\_children\\_impacted\\_by\\_immigration\\_enforcement\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/us_citizen_children_impacted_by_immigration_enforcement_0.pdf) [<https://perma.cc/LS62-ULVQ>].

4. Nina Totenberg & Christina Gatti, *Supreme Court to Hear Challenge to Trump’s Birthright Citizenship Order in May*, NPR (Apr. 17, 2025), <https://www.npr.org/2025/04/17/g-s1-58221/supreme-court-birthright-citizenship> [<https://perma.cc/Z5SQ-AZHJ>]; Stephen Collinson, *Trump Slams ‘Crazy, Lunatic’ Constitutional Amendment in Midterm Endgame*, CNN POLITICS (Nov. 2, 2018), <https://edition.cnn.com/2018/11/02/politics/donald-trump-immigration-midterms-missouri/index.html> [<https://perma.cc/F3SP-GAVR>].

his policy would limit the exploitation of “birth tourism.”<sup>5</sup> He claims that immigrants are “exploit[ing] birth tourism in manners that threaten the security of the United States.”<sup>6</sup>

On his first day back in office, Trump issued an executive order to end birthright citizenship for children with undocumented parents.<sup>7</sup> This action challenged the long-standing constitutional principle that grants citizenship to anyone born on U.S. soil, as established by the Fourteenth Amendment.<sup>8</sup> The executive order states that “the Fourteenth Amendment has never been interpreted to extend citizenship universally to everyone born within the United States.”<sup>9</sup> However, the intent of the Fourteenth Amendment clearly *was* to ensure that anyone born in the United States received automatic citizenship.

This piece aims to address important aspects of the birthright citizenship debate. Part I provides a historical overview of the Fourteenth Amendment, focusing on its background and Congress’s clear intent in its ratification. Parts II and III highlight the differences between global approaches to citizenship by birth and the inconsistencies of denying birthright citizenship with U.S. jurisprudence and precedent. Part IV addresses the recent executive order issued to challenge birthright citizenship, analyzing the implications of these actions and assessing the responses from courts. Part V explores the impractical implications of repealing birthright citizenship and why that could create significant challenges for both the U.S. legal system and society at large.

## **I. Background: U.S. Historical Foundation of Birthright Citizenship**

The Citizenship Clause of the Fourteenth Amendment guarantees birthright citizenship to “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof[.]”<sup>10</sup> The enactment of the Fourteenth Amendment was a direct response to the U.S. Supreme Court’s *Dred Scott v. Sandford* decision, which denied citizenship to formerly enslaved

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5. *President Donald J. Trump Is Taking Action to End Birth Tourism, Protect National Security, and Curb Abuse of Public Resources*, THE WHITE HOUSE (Jan. 23, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-taking-action-end-birth-tourism-protect-national-security-curb-abuse-public-resources/> [https://perma.cc/KC3C-S8NQ].

6. *Id.*

7. *Protecting the Meaning and Value of American Citizenship*, THE WHITE HOUSE (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/> [https://perma.cc/V3UP-SSSH].

8. *Id.*

9. *Id.*

10. U.S. CONST. amend. XIV, § 1.

African Americans.<sup>11</sup> The Court held that Dred Scott and individuals of African descent were not citizens under the U.S. Constitution and, thus, dismissed Scott's claim based on a failure to establish diversity of citizenship.<sup>12</sup>

In response to the *Dred Scott* decision and the conclusion of the Civil War, Congress moved to overturn the ruling by ratifying the Fourteenth Amendment in 1868, guaranteeing citizenship to all people born in the United States. The purpose of the Citizenship Clause was clear: to affirm that anyone born within the country and under its jurisdiction is recognized as a U.S. citizen.<sup>13</sup> The ratification of the Fourteenth Amendment highlights a commitment to correcting historical injustices, affirming that citizenship cannot be denied based upon race or parents' citizenship status.<sup>14</sup>

The Supreme Court's interpretation of the Fourteenth Amendment in the landmark case *United States v. Wong Kim Ark* reinforced the application of birthright citizenship to people born in the United States regardless of their parents' nationality.<sup>15</sup> In 1895, Wong Kim Ark was denied entry into the country after a short visit to China on the grounds that he was not a U.S. citizen.<sup>16</sup> The U.S. government argued that Wong Kim Ark was not a citizen because his parents were "persons of Chinese descent and subjects of the emperor of China" and, therefore, not U.S. citizens.<sup>17</sup> In analyzing the case, the Court noted that many children of European descent residing in the country had long been recognized as U.S. citizens and fortified that the Fourteenth Amendment's language, "subject to the jurisdiction thereof," supports the doctrine of *jus soli* enshrined in U.S. immigration law.<sup>18</sup> The *jus soli* doctrine states that a person's citizenship is determined by their place of birth.<sup>19</sup> The Court ultimately found that Wong Kim Ark should be recognized as a U.S. citizen regardless of his parents' nationality and immigration status.<sup>20</sup>

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11. Cristina M. Rodriguez, *The Citizenship Clause, Original Meaning, and Egalitarian Unity of the Fourteenth Amendment*, 11 U. PA. J. CONST. L. 1363, 1365 (2009); *Dred Scott v. Sandford*, 60 U.S. 393, 454 (1857).

12. *Id.* at 427.

13. *See Afroyim v. Rusk*, 387 U.S. 253, 263 (1967) (analyzing congressional records highlighting the intent of the Fourteenth Amendment to provide a clear, protected decision of citizenship to ensure that the government could not easily strip citizenship from individuals).

14. *See id.*

15. *See United States v. Wong Kim Ark*, 169 U.S. 649, 704 (1898).

16. *Id.* at 653.

17. *See id.* at 652–53.

18. *Id.* at 694.

19. *Id.* at 667.

20. *Id.* at 704.

## II. Global Perspectives on Birthright Citizenship

While the debate over birthright citizenship often turns the spotlight on the United States, it is important to recognize that this principle is not exclusively an American ideal. In a 2024 interview, Trump asserted, “Do you know we’re the only country in the world that has it? Do you know that? There’s not one other country.”<sup>21</sup> The reality is that several countries around the world, including Canada and many European nations, uphold similar policies granting citizenship to children born within their borders.<sup>22</sup> John Skrentny, a sociology professor at the University of California, San Diego, argues that global travel has made it easier for people to choose their citizenship: “We are now in an era of mass migration and easy transportation, even across oceans. Now, individuals also can be strategic about citizenship.”<sup>23</sup>

Many proponents of ending birthright citizenship in the United States often argue that European countries have already moved away from this practice, citing examples like France and the United Kingdom.<sup>24</sup> However, these claims are oversimplified and fail to consider the nuances behind changes in European laws. For instance, even though the United Kingdom altered its laws to deny birthright citizenship to children of undocumented immigrants in 1981, obtaining citizenship is still possible through registration for children with a parent who later gains citizenship.<sup>25</sup> Similarly, France’s changes to its laws in 1993 did not completely eliminate birthright citizenship, since children born to undocumented parents can still acquire citizenship at age eighteen.<sup>26</sup> Nonetheless, France’s laws continue to fluctuate with political shifts, revealing a history of racial discrimination in the decision-making process.<sup>27</sup> In contrast, Germany, historically a *jus sanguinis* country where citizenship was determined by parents’ citizenship, has shifted towards more inclusive policies, introducing some birthright citizenship principles to

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21. Sarah Fortinsky, *These Are the Countries with and Without Birthright Citizenship*, HILL (Dec. 9, 2024, 2:50 PM), <https://thehill.com/policy/international/5030514-trump-end-birthright-citizenship/> (last visited Apr. 14, 2025).

22. *See If You May Be a Citizen*, GOV’T OF CAN. (Feb. 3, 2025), <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-citizenship/become-canadian-citizen/eligibility/already-citizen.html> [<https://perma.cc/LAC4-KNFS>].

23. Luis Barrucho, *Trump Wants to End Birthright Citizenship. Where Do Other Countries Stand?*, BBC (Feb. 9, 2025), <https://www.bbc.com/news/articles/c983g6zpz28o> [<https://perma.cc/G3V3-V5FQJ>].

24. Brooke Huley, *Automatic Birthright Citizenship: How Europe Has Fallen and Why We Should Not Follow*, 19 SW. J. INT’L L. 351, 352 (2013).

25. *See* British Nationality Act 1981, c. 61 (UK); *British Citizenship by Birth*, IMMIGR. ADVICE SERV., <https://us.iasservices.org.uk/visas/settle-uk/british-citizenship/british-citizenship-by-birth/#how-can-you-obtain-british-citizenship-by-descent> [<https://perma.cc/64NB-N6QG>].

26. Huley, *supra* note 24, at 360–62.

27. *Id.* at 360.

integrate immigrants into German society more efficiently.<sup>28</sup> These examples illustrate that while some European countries have restricted birthright citizenship, their laws are far more complex and flexible than those recently proposed in the United States, which would deny children born within its borders any opportunity of obtaining U.S. citizenship.

### III. Inconsistency with Precedent

Denying birthright citizenship to children born in the United States would lead to inconsistent policy principles, both on the legal and practical levels. It would lead to unfair results, punishing children who did not choose their place of birth.

The U.S. Supreme Court has held that, generally, children of undocumented parents should not be prevented from accessing certain privileges, such as public education.<sup>29</sup> In *Plyler v. Doe*, the Court held that undocumented children “through no fault of their own” should not be denied a basic education.<sup>30</sup> The Court reasoned that these children were already present in the United States without a guarantee that they would be deported, and, therefore, they should be provided with tools that would allow them to give back to their communities.<sup>31</sup> The Court concluded that since the children of undocumented parents did not choose their place of birth, they should not be prevented from asserting the rights that are provided to other children born on the same soil.<sup>32</sup>

The proposed repeal of birthright citizenship stands in stark contrast to the pro-life rhetoric that has prioritized fetal protection. The recent *Dobbs v. Jackson Women’s Health Organization* decision, which overturned *Roe v. Wade*, abolished the constitutional right to abortion.<sup>33</sup> The Supreme Court emphasized the importance of “preserv[ing] prenatal life at all stages,” arguing that states have a legitimate interest in protecting the life of the unborn as well as the health and safety of mothers.<sup>34</sup> This decision reinforced the notion that the government has a special responsibility to safeguard life before birth.<sup>35</sup> If the government is expected to protect and value prenatal life, how can denying children their rightful place in society *after* they are born be justified? This inconsistency reflects a troubling disconnect between the professed value of

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28. *Id.* at 364.

29. *Plyler v. Doe*, 457 U.S. 202, 230 (1982).

30. *Id.* at 226.

31. *Id.* at 223, 226.

32. *Id.* at 226.

33. *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2241 (2022).

34. *Id.* at 301.

35. *Id.*

life before birth and the actual treatment of life after birth, particularly when it comes to immigrant children. To withhold birthright citizenship is to deny children the fundamental right to be recognized as full members of society, further marginalizing them and exposing the selective nature of policies that claim to defend life.<sup>36</sup>

#### IV. Challenges Facing Birthright Citizenship

Anti-immigrant groups argue that birth tourism provides immigrant parents with a loophole to obtain citizenship through their children, but this argument is fundamentally flawed because the naturalization process for parents of U.S. citizen children poses significant hurdles.<sup>37</sup> To begin, the child must be over the age of twenty-one and meet a certain income requirement to petition for the family member.<sup>38</sup> The parents of the child may even face certain barriers upon re-entry to the country for having previously entered without inspection.<sup>39</sup> Therefore, the idea that birth tourism automatically provides an easy path to citizenship for immigrant parents is a misconception. The process is complex, long, and full of legal and financial obstacles.

Recent legal challenges to Trump's executive order also addressed the clear misinterpretation of the Fourteenth Amendment's language, and the judges who reviewed the order were quick to recognize its constitutional flaws:<sup>40</sup> "What the Constitution has conferred neither the Congress, nor the Executive, nor the Judiciary, nor all three in concert, may strip away."<sup>41</sup> This order remains on hold due to injunctions issued by multiple courts, but it is scheduled to be heard by the Supreme Court on May 15, 2025.<sup>42</sup>

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36. See generally Lauren A. Varga, *Does Fear of Immigration Trump Love for Fetal Life? How Trump's Policies Quietly Endanger Migrant Fetuses in Spite of the Administration's Pro-Life Agenda*, 35 GEO. IMMIGR. L.J. 631 (2021).

37. See IMMIGR. POL'Y CTR., AM. IMMIGR. COUNCIL, *ELIMINATING BIRTHRIGHT CITIZENSHIP WOULD NOT SOLVE THE PROBLEM OF UNAUTHORIZED IMMIGRATION 1* (2011), [https://www.americanimmigrationcouncil.org/sites/default/files/research/Eliminating\\_Birthright\\_Citizenship\\_Would\\_Not\\_Solve\\_the\\_Problem\\_010411.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/Eliminating_Birthright_Citizenship_Would_Not_Solve_the_Problem_010411.pdf) [<https://perma.cc/HU67-MV37>].

38. *Id.*; *Affidavit of Support*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Apr. 24, 2025), <https://www.uscis.gov/green-card/green-card-processes-and-procedures/affidavit-of-support> [<https://perma.cc/YY3A-C75V>].

39. *Unlawful Presence and Inadmissibility*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Jan. 25, 2025), <https://www.uscis.gov/laws-and-policy/other-resources/unlawful-presence-and-inadmissibility> [<https://perma.cc/4KE2-SNG9>].

40. Nate Raymond, *Trump's Order Curtailing US Birthright Citizenship Blocked by 4th Judge*, REUTERS (Feb. 13, 2025, 2:29 PM), <https://www.reuters.com/legal/government/trumps-order-curtailing-us-birthright-citizenship-blocked-by-4th-judge-2025-02-13/> (last visited Apr. 15, 2025).

41. *Doe v. Trump*, No. CV 25-10135, 2025 WL 485070, at \*2 (D. Mass. Feb. 13, 2025).

42. Steve Vladeck, *Four Questions in the Supreme Court Arguments in Birthright Citizenship Cases*, CNN

Trump’s order challenging birthright citizenship hinges on the interpretation of the phrase “subject to the jurisdiction thereof” in the Fourteenth Amendment.<sup>43</sup> Some defenders of the order argue that “jurisdiction” should only apply to children who owe “direct,” “immediate,” and “complete” allegiance to the United States—meaning that children of undocumented immigrants, who defenders claim owe allegiance to the parents’ home countries, would not qualify.<sup>44</sup> This interpretation is incorrect, as it fails to account for the broader and more inclusive understanding of “jurisdiction” historically upheld by U.S. courts.<sup>45</sup> The Supreme Court’s decision to place an injunction on the executive order finds that, if such interpretation were correct, children of dual citizens or lawful permanent residents would also be deprived of birthright citizenship under the Fourteenth Amendment, a scenario that conflicts with long-standing precedent.<sup>46</sup>

Anti-immigrant groups continue to push for the executive order’s implementation, and the Trump administration has expressed an intention to appeal the decisions issued by courts.<sup>47</sup> Nonetheless, various legal scholars argue that it would take a constitutional amendment to do away with birthright citizenship, even for the children of undocumented parents.<sup>48</sup>

## V. The Impracticality of Repealing Birthright Citizenship

The implications of denying birthright citizenship to children of undocumented parents could lead to immediate inhumane consequences. For example, parents, fearing legal consequences or even deportation, may avoid registering their children at hospitals or seeking medical care altogether. This

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POLITICS (Apr. 30, 2025, 6:00 AM), <https://edition.cnn.com/2025/04/30/politics/birthright-citizenship-supreme-court-vladeck-analysis> [<https://perma.cc/74BL-9FQ8>]; Totenberg & Gatti, *supra* note 4.

43. *Id.* at \*7.

44. *Id.* at \*11.

45. *See* *Benny v. O’Brien*, 58 N.J.L. 36, 39 (1895) (holding that a person born in the country to Scotch parents who were domiciled, but not naturalized, there was “subject to the jurisdiction of the United States” under the Fourteenth Amendment); *see also* *Boumediene v. Bush*, 553 U.S. 723, 754–55 (2008) (holding that detainees at Guantanamo Bay were subject to the jurisdiction of the United States).

46. *See Benny*, 58 N.J.L. at 39.

47. Gene Johnson & Mike Catalini, *Justice Department Appeals as Second Judge in 2 Days Blocks Trump’s Birthright Citizenship Order*, AP NEWS (Feb. 6, 2025, 5:26 PM), <https://apnews.com/article/birthright-citizenship-court-case-immigration-49e46d49b9e5d9f7caf14e8c5322c8b0> [<https://perma.cc/DX3H-7PTH>].

48. *See* Rachel Reed, *Can Birthright Citizenship Be Changed?*, HARV. L. TODAY (Jan. 24, 2025), <https://hls.harvard.edu/today/can-birthright-citizenship-be-changed/> [<https://perma.cc/XLE4-FMQK>]; *see also* Kristin Hommel, *Big Words, Questionable Legality: Constitutional Impediments to Restricting Birthright Citizenship*, IMMIGR. L. BLOG 1, 9 (2025), <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1012&context=ilsblog> [<https://perma.cc/2GFA-YYEK>].

could result in new babies being born without a formal birth certificate, leaving them in a state of legal limbo. Without this essential documentation, children would be excluded from accessing numerous rights and protections, including access to healthcare, education, and social services.

This situation would force children to live “in the shadows,” effectively denying them the rights and opportunities that should be afforded to all individuals born in the country. Children would grow up in fear, isolated from the benefits of citizenship and subject to constant discrimination. Their lack of a clear legal status would make it extremely difficult for them to fully participate in society and, thereby, contribute to the United States.

### **Conclusion**

The United States has a long history rooted in immigration, and birthright citizenship has been a foundational element of that tradition. Any proposal to alter or repeal this principle would mark a significant shift in how the country defines citizenship and identity. As a nation largely made up of individuals with immigrant backgrounds—aside from Native Americans—this issue touches nearly every American family in some way. Questions about restricting birthright citizenship raise important legal and ethical considerations, especially in light of the Fourteenth Amendment, which has long been interpreted to guarantee citizenship to those born on U.S. soil and subject to its jurisdiction.