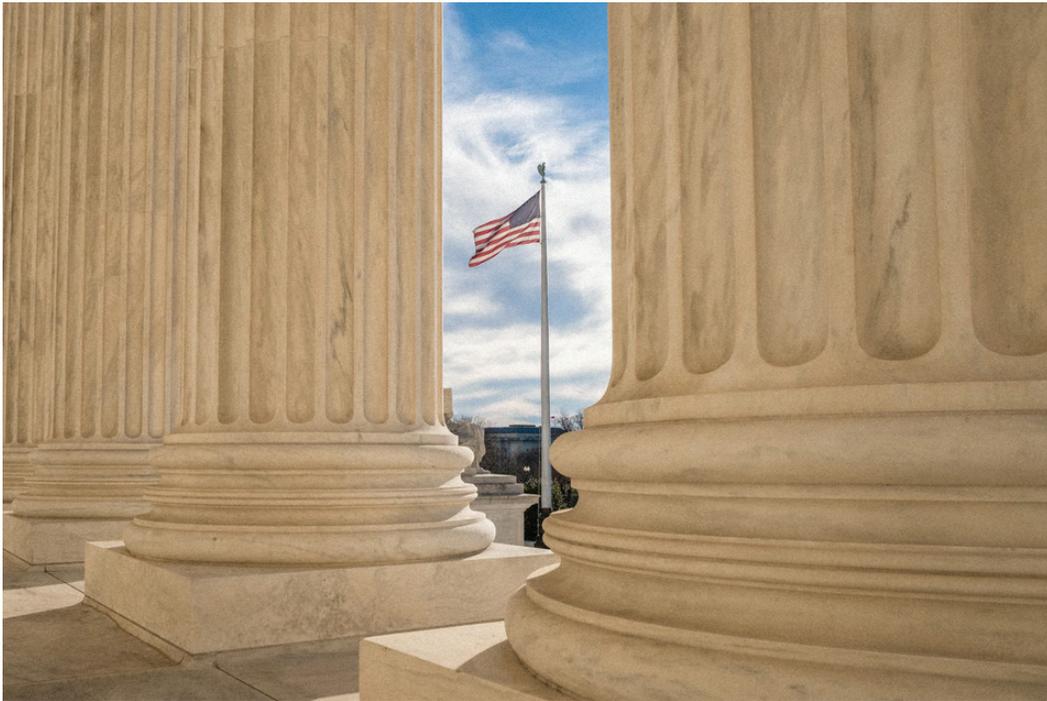


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Unconstitutional and Unworkable: Trump's Attack on Birthright Citizenship

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Donald Trump and his administration have already reshaped US immigration policy in significant ways. But among all those shifts, one effort stands apart for its extremism and its stakes: Trump's attempt to end birthright citizenship. More than a policy change, it is an effort to redefine who counts as American.

Birthright citizenship has been embedded in the Constitution for more than 150 years and repeatedly affirmed by the Supreme Court. Formally ending it would require either a constitutional amendment or a sweeping reinterpretation of the Fourteenth Amendment. Yet President Trump has attempted to suspend it by executive order—an approach that plainly conflicts with the Constitution. If allowed to take effect, it would grow the undocumented population in perpetuity, expand federal bureaucracy, and force far-reaching changes in how every American proves and understands citizenship.

The Executive Order

On January 20, 2025, President Trump issued an executive order to prohibit citizenship for the children of undocumented immigrants and for those born to parents with a *legal* temporary status. This order applies only to children born after its issuance, but with 255,000 children affected annually, this is significant. Fortunately, multiple federal courts blocked enforcement of this executive order and issued nationwide preliminary injunctions. Although the Supreme Court struck down those injunctions and the use of nationwide injunctions more broadly, a lower court quickly issued a narrow injunction that has kept the executive order from taking effect. Since then, the Supreme Court has agreed to hear a case on the legality of the actual order. The justices will hear oral arguments on April 1, with a decision to follow by late June or early July.

Pathways to Citizenship

Today, there are two main pathways to becoming a citizen in the United States: naturalization and birthright citizenship. Naturalization is the process through which a foreign national becomes a citizen. Each year, more than 800,000 people become naturalized United States citizens. To be naturalized, an applicant must meet stringent age, residency, character, and language requirements. Even with all conditions fulfilled, there is no guarantee of citizenship.

The other pathway, birthright citizenship, is the automatic granting of citizenship to a child based upon the circumstances of their birth. Within birthright citizenship, there are two categories: ancestry-based citizenship and place-based citizenship. Ancestry-based citizenship means that a child born abroad to at least one US citizen parent may be granted citizenship if they meet certain requirements, as guaranteed by the Immigration and

Nationality Act (INA). Place-based citizenship means that anyone born in the United States is automatically a citizen, regardless of the citizenship status of their parents, and is guaranteed by the Fourteenth Amendment. Donald Trump's plan to end birthright citizenship takes aim at place-based citizenship for children born to undocumented parents.

Birthright Citizenship Is No Coincidence

The existence of place-based birthright citizenship is no coincidence. It has been enshrined in the Constitution for over 150 years, and it has been litigated numerous times before the Supreme Court. Its existence can be traced to the 1850s when an enslaved man named Dred Scott sued for his freedom after living in a free territory with his owner. Scott's case made its way to the Supreme Court, where the Court found that enslaved people were not citizens of the United States and therefore could not sue in federal court. The practical implication was that the millions of enslaved people born in the United States were denied citizenship and its many privileges, even in states that had abolished slavery.

After the end of the Civil War in 1865, the United States entered the Reconstruction Era, in which it grappled with how to reintegrate Confederate states and address the status of newly freed African Americans. Because of the Dred Scott decision, the legal status of African Americans was precarious. President Andrew Johnson took a hands-off approach to reconstruction, allowing southern states to establish state governments with little oversight. Some of these state governments enacted "Black Codes," which severely curtailed the freedoms of newly emancipated African Americans. Dissatisfied with Johnson's approach and the ensuing Black Codes, Congress passed the Thirteenth, Fourteenth, and Fifteenth Amendments, which came to be collectively known as the Reconstruction Amendments. Together, they addressed the issues of slavery, citizenship, and voting. And it is the first section of the [Fourteenth Amendment](#) that clearly establishes birthright citizenship:

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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

In passing the Fourteenth Amendment, Congress overturned the Dred Scott decision and eliminated a class of people who were subject to American laws but excluded from American rights. Put differently, birthright citizenship was a key tool in equalizing society for formerly enslaved people. Its inclusion in the Constitution marks a turning point in American history and our national identity. Proposals to ignore or eliminate this right must be viewed through this lens—as an erasure of a key pillar of American law.

Donald Trump and his allies are attempting to reinterpret the Fourteenth Amendment in ways that defy history and common sense. At the heart of their argument is the phrase “subject to the jurisdiction,” which they claim precludes the children of undocumented immigrants from birthright citizenship. But being “subject to the jurisdiction” has always meant being accountable to our laws, as the children of undocumented immigrants are. While the Fourteenth Amendment made a narrow exception for individuals who owed allegiance to another sovereign power—specifically, the children of foreign diplomats and members of Native American tribes—the children of undocumented immigrants have no such immunity.

The Supreme Court has also weighed in on the issue numerous times, clarifying exactly what the Fourteenth Amendment means and to whom it applies. The central case affirming birthright citizenship is *United States v. Wong Kim Ark* (1898). Wong Kim Ark was born in San Francisco to Chinese parents but was denied re-entry to the United States after a trip to China due to the Chinese Exclusion Act. Wong challenged the claim, arguing that the Fourteenth Amendment guaranteed his citizenship. The Supreme Court ruled in Wong’s favor with two crucial clarifications: (1) the Fourteenth Amendment grants citizenship to *all* persons born in the United States regardless of their parents’ nationality or race, and (2) this applies to the children of noncitizen parents who are permanent residents and “subject to the jurisdiction” of the United States. The Court made clear that being “subject to the jurisdiction” means being required to obey US law—as the children of undocumented immigrants are.

And in *Plyler v. Doe* (1982), the Supreme Court found that the children of undocumented immigrants have a right to free public education. Texas had passed a law permitting schools to prevent undocumented immigrant children from enrolling. A group of students then sued, and the Court ruled in their favor, finding that because undocumented immigrants are “persons within the jurisdiction of states,” they are protected by the

Fourteenth Amendment. When Donald Trump and his allies try to deny citizenship to these children, they are ignoring Congress's intention in drafting the Fourteenth Amendment, as well as 125 years of precedent established by the Supreme Court.

Harm to All

Not only is ending birthright citizenship unconstitutional and a dangerous policy that would create a permanent class of undocumented immigrants in the United States, but doing so would create a sprawling bureaucracy that would touch every family in America and fundamentally upend the citizenship system on which Americans have long relied. Currently, citizenship is straightforwardly established through birthright and documented with an individual's birth certificate. By upending this system, the Trump Administration would drastically complicate the process.

To better understand the potential consequences, we can look to Ireland, which ended birthright citizenship in 2004. This shift followed a news frenzy over an "immigration loophole," after a Chinese woman gave birth in Ireland and was later permitted to remain in Britain because her child had acquired Irish and EU citizenship. In response, 79% of Irish voters approved a constitutional amendment requiring that at least one parent be an Irish citizen, permanent resident, or legal temporary resident for a child to acquire citizenship at birth.

As a result, Irish parents must now take affirmative steps to verify a child's citizenship. The process involves confirming the child's birth was registered with the General Register Office; submitting the child's Personal Public Service Number (PPSN), which parents receive only after registering the birth in-person at any Office of Births, Marriages, and Deaths; and documentation proving the parent's own citizenship.

In Ireland in the years following the end of birthright citizenship, the country has seen a major expansion in the layers of bureaucracy required to navigate systems that now demand additional proof of citizenship. Residents describe a situation in which citizens and even their children who have international-sounding names are frequently required to provide documentation of citizenship every time they apply for public benefits, childcare, or university admission. Citizens who have lived abroad for extended periods and later return to Ireland may find that they no longer meet residency requirements and are unable to access certain social services. Irish citizens are even asked to provide documentation of citizenship for routine banking purposes.

Ending birthright citizenship in Ireland introduced a level of administrative arbitrariness that would be hard to accept in the United States, where verifying citizenship for millions would require even more extensive bureaucratic hurdles. Scaling such a framework to the

United States would require the largest expansion of bureaucracy in recent history. Ireland, with a population of 5.4 million, registered roughly 54,000 births in 2023. In contrast, the United States, with a population of 340 million, saw nearly 3.5 million births in the same year. Additionally, while passports are more commonly held documentation in Ireland, as of 2024, approximately 50% of Americans hold a valid US passport, meaning hundreds of millions of Americans lack any documentation to prove citizenship beyond their birth certificate. Thus, from the moment implementation of the administration's executive order begins, potentially hundreds of millions of Americans could need alternative documentation to prove citizenship, with each new annual birth cohort adding to the burden. Despite the overwhelming and costly bureaucratic infrastructure this would require, as of the last Supreme Court hearing, the administration had yet to determine how the order would be implemented by hospitals, states, and federal agencies.

The President's executive order would create an expensive and complicated system requiring parents to prove their citizenship each time they have a child while government agencies determine every newborn's citizenship. The change would impose new red tape on American families, require expanded federal oversight and infrastructure, and drive significant costs for taxpayers. It would overwhelm already strained administrative systems, delay the documentation that has long been granted automatically at birth, and force a sweeping overhaul of government processes without any clear implementation plan.

Beyond dismantling a hallmark of the US Constitution, ending birthright citizenship would have far-reaching consequences for how every American establishes and maintains their citizenship status.

Conclusion

Any attempt to end birthright citizenship—whether by executive order or legislation—is plainly unconstitutional. The Citizenship Clause of the Fourteenth Amendment was written to ensure that people born in the United States would not be relegated to a subordinate class, and the Supreme Court settled more than a century ago that this protection extends broadly to those born on American soil and subject to American law. Donald Trump and his allies may pretend otherwise, but this is not a gray area in our constitutional tradition; it is settled by law. And beyond violating that tradition, ending birthright citizenship would force the creation of a vast new bureaucracy to monitor parents, verify newborns, and demand new proof of citizenship from millions of Americans. This is not a restoration of constitutional order. It is an attack on a foundational guarantee of American life—and a warning of how much damage can be done when settled rights are treated as optional.

Talking Points

- The Constitution takes a clear, black and white position on birthright citizenship: if you are born in the US, you are guaranteed citizenship and all the freedoms it entails.
- Birthright citizenship is a cornerstone of our democracy and our Constitution, and it shouldn't be undone at the whim of one president or administration.
- Trump's drawn-out attacks on birthright citizenship are a clear threat to our democracy and should be seen for what they are. This is just the latest Project 2025 box that Republicans are attempting to check off.
- Depriving US-born children of birthright citizenship would have a host of consequences, effectively barring them from full participation in society, and resulting in fewer overall contributions and less economic growth for our country.
- Ireland ended birthright citizenship in 2004. After a nine-year-old child was almost forcibly deported to China—a country he had never stepped foot in—it led to public uproar and many in the country have sought to restore birthright citizenship. There is a clear lesson here.
- An end to birthright citizenship would create an underclass of stateless individuals. That means the grandchildren of people who are currently undocumented, or those in mixed-status families, could remain stateless generations after this decision.
- Advocates argue that an end to birthright citizenship would solve the problem of birth tourism. But there are other, less sweeping and less expensive ways to address this issue, such as stricter visa enforcement or airport screenings. A complete overhaul of birthright citizenship would create far more harm than solutions.

Effects on US Citizens

- Revoking birthright citizenship wouldn't just affect immigrants—it would affect Americans. For most Americans, a birth certificate is their only proof of citizenship. Is this Administration ready for the bureaucracy, costs, and confusion that would come with forcing millions of Americans to prove their citizenship?
- **This change would impose new red tape on American families, require expanded federal oversight and infrastructure, and drive significant costs for taxpayers.** It would overwhelm already strained administrative systems, delay the documentation that has long been granted automatically at birth, and force a sweeping overhaul of government processes without any clear implementation plan.
- It took the federal government nearly 20 years to implement REAL ID—a policy that only standardized driver's licenses. Ending birthright citizenship would require the government to verify parents' status for every child born in America and redesign how citizenship is documented nationwide. **If something as narrow as REAL ID took two decades, this proposal would create a bureaucratic nightmare.**

- Despite the enormous bureaucracy this policy would require, the administration admitted at the last Supreme Court hearing that it still had no plan for how hospitals, states, or federal agencies would implement it. **They're proposing a sweeping change to Americans' lives without even bothering to figure out how it would work.**
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