Primer: Ending Birthright Citizenship Is Imperative for Preserving the United States

By: Ken Cuccinelli

Synopsis

On January 20, 2025, President Donald Trump issued an executive order (EO) clarifying eligibility for United States citizenship within the context of the Fourteenth Amendment to the United States Constitution.[1] The EO instructed all federal agencies and departments to cease the issuance or acceptance of documents recognizing citizenship for two categories of individuals: those born to alien mothers unlawfully present inside the United States whose fathers are neither citizens nor lawful permanent residents (LPRs) of the United States at the time of birth and those born to alien mothers lawfully present inside the United States on a temporary visa whose fathers are neither citizens nor LPRs at the time of birth.[2]

Backlash from the political left was immediate and expected. Twenty-two Democrat state attorneys general filed lawsuits challenging the validity of the EO, and on January 23, 2025, a federal district court judge in Seattle issued a temporary restraining order enjoining the Trump administration's enforcement and implementation of the EO for fourteen days, with a claim that the EO is "blatantly unconstitutional."[3] On February 5, 2025, another federal district court judge in Maryland issued a nationwide injunction, which purports to block the Trump administration's enforcement and implementation of the EO pending final resolution of that lawsuit.[4]

The debate over the constitutionality of birthright citizenship is a long-running and contentious component of the broader policy discussion on immigration. The first-day actions undertaken by the Trump administration should be seen as the opening salvo in a renewed effort to restore the foundational purpose and value of citizenship, curb the flow of illegal aliens crossing the southern border, and, perhaps most importantly, deter future efforts by the radical left to implement mass amnesty at the expense of the American people's well-being.

---

[1]Executive Order (January 20, 2025). "Protecting the Meaning and Value of Citizenship," *The White House*. https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/

[2]*Ibid*.

[3]Barnes, D. (January 23, 2025). "Federal District Court Judge Temporarily Blocks Trump's Birthright Citizenship Order," *NBC News*. https://www.nbcnews.com/politics/immigration/trump-administration-defends-birthright-citizenship-order-court-first-rcna188851

[4]Kunzelman, M. and Catalini, M. (February 5, 2025). "Trump's Birthright Citizenship Order Is Put On Hold By Second Federal Judge," *Associated Press*. https://apnews.com/article/trump-birthright-citizenship-executive-order-3ac5d6dc51ee95dcccc647a8c080c3e3

The United States is, first and foremost, a *nation*. To that end, it is imperative that immigration policy and the acquisition of citizenship serve to benefit the citizens of that nation. Policies and practices such as birthright citizenship that fail to do so must be discarded without reservation or apology.

Background: Dismantling the Establishment Interpretation and Its Flaws

After the Civil War, three amendments to the Constitution were ratified. These amendments, collectively known as the Reconstruction Amendments, were designed to fulfill the promise of the American idea, making good on the Founding's novel recognition that all men are created equal by God and endowed with unalienable rights.[5] The Thirteenth Amendment was ratified in 1865 and finally abolished the evil and fundamentally un-American practice of slavery. Ratification of the Fourteenth Amendment came three years later, in 1868, conferring citizenship criteria for newly freed slaves and adopting specific representation requirements. The Fifteenth Amendment, ratified in 1870, recognized the right to vote for all citizens regardless of race, color, or previous status as a slave.[6]

In the context of the historical and current debate over birthright citizenship, it is the Fourteenth Amendment that is of primary interest. Proponents of unrestricted birthright citizenship argue that any individual born on U.S. soil, regardless of his or her parents' citizenship status or national affiliation, is automatically granted natural-born citizenship under Section 1 of the Fourteenth Amendment. The legal justification underpinning this establishment perspective derives from *United States v. Wong Kim Ark*,[7] which involved a child of Chinese nationals who was born in the United States. Following a trip to mainland China, Wong Kim Ark was denied entry back into the United States and subsequently sued the United States on grounds that he was a citizen. The Supreme Court ruled 6–2 in his favor.[8]

Yet what proponents do not acknowledge in this case is that Ark's parents were *permanently domiciled* (i.e., they had demonstrated allegiance to the U.S. government and possessed recognition to remain) and were not in the country unlawfully or even lawfully on a temporary basis.[9] Today, Ark's parents would be the equivalent of legal permanent residents, often called "green card" holders.

---

[5]The Declaration of Independence para. 2 (U.S. 1776).
[6]Civil War Article (December 6, 2023). "Reconstruction Amendments," *American Battlefield Trust*. https://www.battlefields.org/learn/articles/reconstruction-amendments
[7]169 U.S. 649 (1898).
[8]Eastman, J. (January 28, 2025). "Birthright Citizenship: Game On!," *The American Mind*. https://americanmind.org/features/the-case-against-birthright-citizenship-2/birthright-citizenship-game-on/
[9]*Ibid*.

The Supreme Court has *never* held that the children of illegal aliens are entitled to automatic citizenship simply by virtue of their birth on U.S. soil. Contrary to the existing narrative, there is no constitutional provision or binding judicial precedent proclaiming this policy of unrestricted birthright citizenship.

Further, contemporaneous records of the debate surrounding the Civil Rights Act of 1866 and the lead-up to the ratification of the Fourteenth Amendment reveal intentions diametrically opposed to those of the existing paradigm. For example, Senator Jacob Howard (R-MI) noted that the Citizenship Clause of the Fourteenth Amendment "*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."[10]

The full text of the Citizenship Clause reads as follows:

> 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.[11]

The phrase "subject to the jurisdiction thereof" sits at the heart of the debate over birthright citizenship. There are several types of jurisdiction relevant to the birthright citizenship debate. *Territorial jurisdiction* comprises the inherent jurisdiction of government over individuals who are physically present within the territorial boundaries. *Political jurisdiction* comprises the jurisdiction of the government over individuals who are currently citizens, not subject to any other foreign government, and owe their allegiance to that government. For purposes of analysis, *complete jurisdiction* is a combination of both territorial and political jurisdiction. At the time of the Fourteenth Amendment's ratification, Senator Lyman Trumbull (R-IL) clarified that to be "subject to the jurisdiction [of the United States]" meant "not owing allegiance to anybody else and being subject to the complete jurisdiction of the United States."[12]

For Senator Trumbull, complete jurisdiction was rooted in the statutory components of the Civil Rights Act of 1866, which he authored. That bill emphasized the distinction between political and territorial jurisdiction by specifying that "all persons born in the United States *and not subject to any foreign power*, excluding Indians not taxed, are hereby declared to be citizens of the United States."[13]

---

[10]Sen. Howard (May 30, 1866). "Floor Statements," *Congressional Globe*, 39th Cong., 1st Sess., 2895 (emphasis added).

[11]Fourteenth Amendment to the United States Constitution (ratified July 9, 1868) (emphasis added).

[12]Sen. Trumbull (May 30, 1866). "Floor Statements," *Congressional Globe*, 39th Cong., 1st Sess.

[13]Civil Rights Act of 1866 (April 9, 1866). "Congressional Record," 39th Cong., 1st Sess., Ch. 31. https://govtrackus.s3.amazonaws.com/legislink/pdf/stat/14/STATUTE-14-Pg27.pdf (emphasis added).

It is clear that such language would have swept all those born as slaves into the category of American citizens, and that was its primary purpose.[14]

The statutory language of the bill explicitly excludes numerous Indian tribes precisely because many were quite obviously not under the complete jurisdiction—specifically the political jurisdiction—of the United States government. Rather, they remained under the complete jurisdiction of their respective tribal nations. In 1884, the Supreme Court rendered a decision in *Elk v. Wilkins*[15] that further ensconced a legal precedent anathema to unrestricted birthright citizenship. In its opinion, the court determined that the claimant, John Elk, did not meet the requirements for U.S. citizenship because he "owed immediate allegiance" to his tribe and not the U.S. government.[16]

In fact, citizenship for members of all tribal members came through an explicit act of Congress in 1924 instead of flowing freely from the Fourteenth Amendment—an inconvenient datum for advocates of unrestricted birthright citizenship. This should not be surprising, however, as policymakers provided repeated distinctions with regard to territorial and political jurisdiction.

For example, Senator Trumbull clearly articulated that the language within the Civil Rights Act of 1866 reflected the desire of lawmakers to "make citizens of all people born in the United States *and who owe allegiance to it*."[17] Contemporary lawmakers believed that allegiance to a nation and its government are what constitute complete jurisdiction—reflecting the critical component of political jurisdiction tethered to the broader meaning of natural-born citizenship. Those currently unlawfully present in the United States remain political citizens of their home countries and functionally owe their political allegiance to that nation. This reality is empirically demonstrated by illegal aliens who protest deportations while waving Mexican flags.

This understanding of natural-born citizenship is further reinforced by the floor statements of Senator Reverdy Johnson (D-MD) in the nineteenth-century debate: "All persons born in the United States *and not subject to some foreign Power*—for that, no doubt, is the meaning of the committee who have brought the matter before us—shall be considered citizens of the United States."[18]

---

[14] Slaves in America who were not born in the United States were not made citizens through ratification of the Fourteenth Amendment. Rather, their path to citizenship was opened by the Naturalization Act of 1870, which opened naturalization to those of African descent for the first time. Additionally, the Act Prohibiting Importation of Slaves of 1807 outlawed the international slave trade in America, effective January 1, 1808—the first date such a ban was permitted under the Constitution (Art. I, Sec. 9, Cl. 1). Thus, it is estimated that by the end of the Civil War only approximately 1 percent of American slaves were foreign born.

[15] 112 U.S. 94 (1884).

[16] Eastman, J. (January 28, 2025). "Birthright Citizenship: Game On!," *The American Mind*. https://americanmind.org/features/the-case-against-birthright-citizenship-2/birthright-citizenship-game-on/

[17] Sen. Trumbull (February 1, 1866). "Floor Statements," *Congressional Globe*, 39th Cong., 1st Sess., 572.

[18] Sen. Johnson (May 30, 1866). "Floor Statements," *Congressional Globe*, 39th Cong., 1st Sess., 2893.

This criterion, by definition and by design, excludes individuals born to parents under the political jurisdiction of another foreign power—which, in the context of the current debate, includes the children of illegal aliens. Complete jurisdiction is, therefore, properly understood to mean someone who owes his or her permanent allegiance to the government of the United States. Indeed, the Fourteenth Amendment's inclusion of the phrase "subject to the jurisdiction thereof" clearly harmonizes with the statutory parameters laid out in the Civil Rights Act of 1866. Yet, proponents of unrestricted birthright citizenship routinely ignore this historical and political context of the Citizenship Clause of the Fourteenth Amendment.

Some proponents of unrestricted birthright citizenship on the political right contend that "and subject to the jurisdiction thereof" is designed to exclude just three groups: the children of ambassadors, children born to troops in an invading army, and the children of tribal Indians.[19] There are several problems with this argument.

The first problem is that it ignores a critical portion of the very Supreme Court opinion it cites (*United States v. Wong Kim Ark*). In the ruling, Justice Horace Gray writes that *"*The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of *resident aliens*.[20] Yet, resident aliens are those who are *permitted to be in the country*. Illegal immigrants are, by definition, *not permitted*. So the court language used to justify birthright citizenship for the children of illegal immigrants does not do what proponents claim that it does.

Second, this argument fails to fully contend with the contemporary statements from lawmakers emphasizing both *subjection to a foreign power* and *lack of allegiance to the United States* as disqualifying components of obtaining citizenship. Illegal immigrants as individuals are those who are not permitted to be in the nation they have entered and de facto still owe their political allegiance to a foreign power: their country of origin. This is especially true of those who come into the United States seeking higher wages or a higher quality of life.

Third, to the extent that this line of argument does contend with contemporary statements, the reality is that statutory immigration restrictions did not occur in any meaningful sense until well after the passage of both the Civil Rights Act of 1866 and the Fourteenth Amendment. Immigration at the time of these debates was almost exclusively in the context of permitted residency. The current phenomena of mass illegal immigration across the United States' borders—wherein individuals are both *not permitted* and retain citizenship with their country of origin—was not something that would have occurred to the lawmakers debating the contours of the Citizenship Clause.

---

[19]Carroll, C. (February 3, 2025). "The Conservative Case for Birthright Citizenship," *Washington Examiner*. https://www.washingtonexaminer.com/in_focus/3308366/conservative-case-birthright-citizenship/

[20]169 U.S. 649 (1898). "*United States v. Wong Kim Ark*," *National Constitution Center*. https://constitutioncenter.org/the-constitution/supreme-court-case-library/united-states-v-wong-kim-ark-1898

Again, and for emphasis, the current debate is over the children of *illegal immigrants*. The executive order issued under President Trump is in alignment with the Supreme Court ruling in *United States v. Wong Kim Ark* because that case deals specifically with the child of *permanently domiciled* foreign nationals.

Another recent example, this time from the political left, is the position of Harvard Law School Professor Gerald Neuman, who obfuscates any delineation between territorial and political jurisdiction, instead claiming that illegal aliens are subject to the jurisdiction of the United States because they work a job or live inside the country.[21]

What Neuman leaves out of his argument is that while illegal aliens are indeed subject to the *territorial* jurisdiction of the United States (i.e., traffic laws, criminal laws, and other legal doctrines), they *cannot* be subject to the *political* jurisdiction of the United States because their citizenship or allegiance already resides with a *foreign* nation or country and, more importantly, because the United States has *not permitted* their presence in *this country*. There is a long-standing historical understanding of a definitive distinction between these two types of jurisdictions—which is why the textual qualification "subject to the jurisdiction [of the United States]" on natural-born citizenship was included within the Citizenship Clause of the Fourteenth Amendment in the first place.

Indeed, this distinction between territorial and political jurisdiction is exemplified by the contemporary floor statements of Senator George Williams (R-OR), wherein he explained that "in one sense, all persons born within the geographical limits of the United States are subject to the jurisdiction of the United States, but they are not subject to the jurisdiction of the United States *in every sense*."[22]

Scholars such as Neuman obfuscate this distinction presumably because recognizing it refutes the dubious notion that citizenship means nothing more than simply being born inside the physical territory of the United States (*jus soli*). Such a hollow and diminished view of citizenship is anathema to both the rationale and spirit of the American Revolution—a revolution ultimately oriented around the God-given rights of man and the purpose of a nation-state to secure those rights for its citizens.

Therefore, there are four key elements that undermine the arguments of proponents of the current view of birthright citizenship as based exclusively on birth on American soil:

---

[21]Reed, R. (January 24, 2025). "Can Birthright Citizenship Be Changed?," *Harvard Law Today*. https://hls.harvard.edu/today/can-birthright-citizenship-be-changed/

[22]Sen. Williams (May 30, 1866). "Floor Statements," *Congressional Globe*, 39th Cong., 1st Sess., 2897 (emphasis added).

1. **Historical Context:** Based on the clear-cut writings, speeches, and historical records of those who debated both the Civil Rights Act of 1866 and the Fourteenth Amendment, it is evident that the framers of the Citizenship Clause rejected a national policy of unrestricted birthright citizenship on the basis merely of one's birth on U.S. soil.

2. **Jurisprudence:** The Wong Kim Ark decision by the Supreme Court that is commonly cited as binding precedent justifying unrestricted birthright citizenship does not apply to a child born in the United States to illegal aliens or temporarily present legal aliens since it merely dealt with a case concerning a child born in the U.S. to *permanently domiciled* parents. There is no jurisprudence that purports to hold, as a matter of constitutional law, that the Fourteenth Amendment mandates unrestricted birthright citizenship on the basis merely of birth on U.S. soil.

3. **Post-Ratification History:** The *Elk v. Wilkins* decision by the Supreme Court, along with the passage of the Indian Citizenship Act of 1924, sometimes referred to as the Snyder Act, reflects the reality that in the half century that followed ratification of the Fourteenth Amendment neither the courts nor Congress understood the Citizenship Clause as conferring natural-born citizenship on the children of tribal nation populations who are born on U.S. soil. Congress's enactment of this statute in the Fourteenth Amendment's post-ratification period is yet another blow to the arguments of birthright citizenship proponents.

4. **Constitutional Language:** The Citizenship Clause of the Fourteenth Amendment provides a clear demarcation away from unrestricted birthright citizenship by including the textual qualification "subject to the jurisdiction [of the United States]" on the natural-born citizenship of an individual born on U.S. soil. If the Citizenship Clause confers what birthright citizenship proponents claim it confers, there would have been no need for the framers of the Fourteenth Amendment to include this textual qualification. It would have been entirely superfluous.[23]

<u>Analysis: The Ramifications of Ending Birthright Citizenship</u>

With this understanding of *political jurisdiction*, the raucous legal and political debate over unrestricted birthright citizenship takes on an entirely new context. While there will undoubtedly continue to be vigorous debate even on the political right about the best way to move forward regarding the establishment interpretation of birthright citizenship, there is no disputing that the

[23]It is the "'cardinal principle of statutory construction' . . . [that] [i]t is our duty 'to give effect, if possible, to every clause and word of a statute.'" *Bennett v. Spear*, 520 U.S. 154 (quoting *United States v. Menasche,* 348 U.S. 528, 538, 75 S.Ct. 513, 520, 99 L.Ed. 615 (1955) [quoting *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 30, 57 S.Ct. 615, 621, 81 L.Ed. 893 (1937), and *Montclair v. Ramsdell,* 107 U.S. 147, 152, 2 S.Ct. 391, 395, 27 L.Ed. 431 (1883)]). The principle applies to constitutional interpretation with equal force.

United States remains in the extreme minority of countries in following unconditional birthright citizenship as its presumptive policy.

Not a single European country takes an unrestricted approach to birthright citizenship.[24] Among developed nations, only the United States and Canada maintain a *jus soli* interpretation for birthright citizenship. The United Kingdom abandoned unrestricted birthright citizenship in 1983 under the British Nationality Act.[25] Ireland rescinded it in 2005.[26] New Zealand dropped its unrestricted birthright citizenship policy in 2006 following increasing concerns about "anchor babies."[27] And Pakistan, which until just a few months ago was the only country in Asia that maintained a policy of unrestricted birthright citizenship, implemented numerous restrictions to roll back *jus soli* practices in November 2024.[28]

While a multitude of political, economic, and cultural factors contribute to the mass illegal immigration from Central and South America across the southern border of the United States, the inherently diminished view of citizenship in the vast majority of these countries almost certainly plays a critical and under-examined role. If citizenship truly means nothing more than where one's mother was physically located at the time of birth, then citizenship is unmoored to any value, political system, or national allegiance. And if another country such as the United States were to adopt a similar mindset, yet offer magnitudes more in both welfare benefits and quality of living, it would be unsurprising when many would seek to trade one homeland for another.

Setting aside the convincing constitutional and historical context arrayed against the establishment interpretation of birthright citizenship, the United States simply cannot afford to continue to mirror the unrestricted birthright citizenship policies of failed states such as Mexico, Venezuela, and Cuba. This flawed interpretation serves as a central magnet for continued immigration chaos at the expense of the well-being of actual American citizens.

The ramifications of finally and formally abandoning the flawed establishment interpretation of birthright citizenship and restoring the proper constitutional and historical understanding are far-reaching and potentially transformative for the betterment of both the United States and the Western Hemisphere.

---

[24]Rubin, A. (January 25, 2025). "Mapped: Birthright Citizenship Around the World," *Axios*. https://www.axios.com/2025/01/25/birthright-citizenship-world-map-trump

[25]British Nationality Act of 1981 (October 30, 1981). "UK Public General Acts," *The National Archives*. https://www.legislation.gov.uk/ukpga/1981/61/enacted

[26]Staff Report (November 2018). "Birthright Citizenship Around the World," *Law Library of Congress*. https://maint.loc.gov/law/help/birthright-citizenship/birthright-citizenship-around-the-world.pdf

[27]*Ibid*.

[28]Staff Report (November 11, 2024). "NA Committee Passes Bill to Restrict Citizenship for Children of Foreigners," *Pakistan Today*. https://www.pakistantoday.com.pk/2024/11/11/na-committee-passes-bill-to-restrict-citizenship-for-children-of-foreigners/

Notable Policy Impacts

1. **Ends the "Anchor Baby" Phenomenon:** The elimination of unrestricted birthright citizenship puts an end to the so-called "anchor baby" paradigm, wherein illegal immigrants cross into the United States and give birth to a child who is then afforded automatic U.S. citizenship due to the de facto *jus soli* policy. That child then becomes a basis for the parents not to be deported, not under law but as a matter of practice.

    a. **Key Data Point:** A 2018 Pew study revealed that nearly 1 in 10 babies in the United States were born to illegal immigrant parents—close to 250,000 per year.[29] More recent estimates suggest similar overall numbers, with the heavy caveat that the full impact of the record-setting illegal entries under the Biden border crisis remains to be seen.[30]

2. **Resolves Chain Migration Concerns Within the DACA Population:** The elimination of unrestricted birthright citizenship clarifies the debate over the roughly 1.7 million illegal immigrants granted reprieves from deportation through the Deferred Action for Childhood Arrivals (DACA) policy. The repeal of birthright citizenship helps close off future avenues for the DACA population and their children to advance "chain migration," which continually provides for family members to be sponsored for entry into the United States. This action provides lawmakers with clearer next policy steps for a population that has remained in limbo since President Barack Obama's unconstitutional memorandum was issued on June 15, 2012.[31]

    a. **Key Data Point:** Some estimates suggest that DACA recipients are parents to roughly 300,000 children who are presumed to have U.S. citizenship.[32] While it remains to be seen what ultimately becomes of the DACA population as a whole, the end of birthright citizenship mitigates future DACA-style reprieves for mass numbers of illegal immigrants and removes the greatest incentive for both having and bringing children illegally across the U.S. border.

3. **Eliminates Child Separation Concerns:** The elimination of unrestricted birthright citizenship neutralizes concerns over family separations for deportations and removals because children of illegal immigrants are no longer conferred citizenship. This change ensures families stay together as illegal immigrants are returned or self-deport to their

[29]Passel, J., Cohn, D., and Gramlich, J. (November 1, 2018). "Number of U.S.-Born Babies With Unauthorized Immigrant Parents Has Fallen Since 2007," *Pew Research Center*. https://www.pewresearch.org/short-reads/2018/11/01/the-number-of-u-s-born-babies-with-unauthorized-immigrant-parents-has-fallen-since-2007/
[30]Richwine, J. and Camarota, S. (January 24, 2025). "How Many Births to Illegal Immigrants? A Preliminary Estimate," *Center for Immigration Studies*. https://cis.org/Richwine/How-Many-Births-Illegal-Immigrants-Preliminary-Estimate
[31]President Barack Obama (June 15, 2012). "Remarks by the President on Immigration," *The White House*. https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration
[32]Svajlenka, N. and Truong, T. (November 24, 2021). "The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition," *Center for American Progress*. https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/

respective countries of origin and are placed back under the appropriate political jurisdiction.

4. **Incentivizes Change in Central and South America:** The elimination of unrestricted birthright citizenship signals to the rest of the Western Hemisphere that the United States is taking its sovereignty and security seriously again. This drastically alters the domestic politics of Central and South American countries since they know that future mass illegal migrations to the United States are far less likely, that remittances are no longer viable economic strategies, and that there are increased expectations to prioritize the well-being of their own citizens.

5. **Removes Long-Term Magnet for Illegal Immigration:** The elimination of unrestricted birthright citizenship removes a central beacon drawing illegal immigration inside the United States. This greatly increases the likelihood of long-term stability at the southern border and frees up taxpayer resources within federal agencies as the burden of combating illegal immigration diminishes.

6. **Improves National Security:** The elimination of birthright citizenship removes an increasingly concerning vector of espionage from hostile powers like China that encourage their citizens to engage in "birth tourism" while inside the United States in order to secure a foothold from a child granted automatic citizenship. Many Chinese nationals' political loyalties still lie with Beijing, and American citizenship policy greases the skids for espionage efforts that benefit the Chinese Communist Party.[33]

7. **Damages Violent International Drug Cartels:** The elimination of unrestricted birthright citizenship strikes a severe blow to the finances of violent international drug cartels that operate inside Mexico. These narco-terrorists profit from the misery and chaos of illegal immigration and mass human trafficking. At one point during the Biden administration, cartels were making $14 million a day from human trafficking across the U.S. southern border.[34]

8. **Refocuses National Debate on the Purpose of Citizenship:** The elimination of unrestricted birthright citizenship propels a national conversation over citizenship, its meaning, and its purpose within our republic. This debate is long overdue and is among the core issues underpinning the increasing angst among the American people. Restoring the privileges and benefits of citizenship is vital for renewing the consensus of the United States as a nation under God with unique interests and a unique purpose for its people.

---

[33]Swearer, A. (September 6, 2019). "The Political Case for Confining Birthright Citizenship to Its Original Meaning," *Heritage Foundation*. https://www.heritage.org/the-constitution/report/the-political-case-confining-birthright-citizenship-its-original-meaning

[34]La Jeunesse, W. (March 22, 2021). "U.S.-Mexico Border Traffickers Earned As Much as $14 Million A Day Last Month: Sources," *Fox News*. https://www.foxnews.com/politics/us-mexico-border-traffickers-million-february

Policymakers seeking to end birthright citizenship should welcome the desperate legal challenges from progressive attorneys general with confidence in the strength of their multifaceted arguments. Even apart from the looming legal challenges ahead, the political fight over birthright citizenship is long overdue and worth having.

Correcting the Record and Shutting Down Birth Tourism

Some of the initial blowback against the Trump administration's executive order ending birthright citizenship focuses on the alleged "unconstitutional" nature of the action. For example, the far-left American Immigration Council has suggested that ending unrestricted birthright citizenship would require either a constitutional amendment or a divergence from "centuries of established precedent and legal principles that date back to before the founding of this country."[35]

This is simply incorrect and nonsensical. If the view within the Trump administration is that the plain text of the Fourteenth Amendment negates the validity of the existing policy for unrestricted birthright citizenship, then it is not unconstitutional for the executive to issue an order clarifying this understanding. Further, there is no statutory language providing for unrestricted birthright citizenship, much less for illegal immigrants and their children.

As highlighted above, the Supreme Court opinion in *Elk v. Wilkins* recognized a distinction between territorial and political jurisdiction with regard to citizenship. And *United States v. Wong Kim Ark* dealt solely with a child of permanently domiciled immigrants, not children of temporary or illegal immigrants. Neither of these opinions does what many open-borders progressives claim that it does. In fact, *Elk v. Wilkins* may be said to support President Trump's interpretation of the Fourteenth Amendment.

Regardless, policymakers should consider some additional measures as part of the larger policy approach for ending birthright citizenship. Key among them is the issue of surrogacy and "birth tourism." The advancement of new reproductive technologies has enabled a new form of birth tourism in which noncitizens can travel to the United States and have a child through an American surrogate.

This "rent-a-womb" industry has grown in prominence, with Chinese nationals dominating the clientele. A report from the American Society for Reproductive Medicine found that 41 percent of international birth tourism clients (that is those looking for surrogates) hail from communist China.[36] A California couple was recently found guilty of international money laundering for

---

[35]Treisman, R. (January 23, 2025). "Trump Wants to End Birthright Citizenship. That's Easier Said Than Done," *National Public Radio*. https://www.npr.org/2025/01/23/nx-s1-5270572/birthright-citizenship-trump-executive-order

[36]Herweck, A., DeSantis, C., Shandely, L., Kawwass, J., and Hipp, H. (July 2023). "International Gestational Surrogacy in the United States, 2014–2020," *Fertility and Sterility*, Vol. 120, Issue 1, https://www.fertstert.org/article/S0015-0282(23)00392-8/fulltext

running a scheme that brought pregnant Chinese women to the United States to give birth in an effort to provide automatic citizenship to their children.[37] As a state, a recent report found that 75 percent of birth tourism clients use facilities in California.[38]

Additional Considerations

As the inevitable legal and policy battles play out, policymakers should aggressively move to open up new fronts.

1. **Ending "Birth Tourism" Surrogacy:** The most recent executive order clarifying citizenship still potentially leaves this particular surrogacy loophole open because the language defines the mother as the "immediate female biological progenitor," which could allow for this form of birth tourism to continue. One possible way to prevent this outcome is to provide clarifying language that tags citizenship considerations to the intended parents when it comes to surrogacy. The Trump administration should consider separate language that closes off this loophole, and congressional lawmakers should consider statutory solutions.

2. **Investigating California Facilities:** The Department of Justice (DOJ) should take a harder look at the practices of surrogacy facilities in California that are making possible such large numbers of foreign nationals' attempts to anchor citizenship through surrogacy. In particular, the DOJ should ascertain whether there is a concerted effort to violate U.S. immigration law. This will become particularly critical after prospective legal victories regarding the end of unrestricted birthright citizenship.

The birthright citizenship battle should be leveraged into a broader public debate on what it currently means to be an American citizen and what it *should* mean. The United States has been mired in a form of identity crisis for decades. Public policy has often elevated the needs of noncitizens and foreign powers over those of American citizens. This paradigm has facilitated endless wars overseas, weaponized government at home, and transformed the United States into a taxpayer-funded welfare dispensary for the global populace. This state of affairs has benefited the well-connected political elite while inflicting increasing harm upon the citizens whose lives, labor, and fortunes make America the exceptional nation that she has always been.

The endurance of our nation requires that citizenship once again has meaning for the American people. This cannot occur so long as the existing paradigm of birthright citizenship remains intact.

---

[37]Press Release (September 13, 2024). "Rancho Cucamonga Man And Woman Found Guilty of Federal Criminal Charges in Connection With 'Birth Tourism' Scheme," *United States Attorney's Office*.
https://www.justice.gov/usao-cdca/pr/rancho-cucamonga-man-and-woman-found-guilty-federal-criminal-charges-connection-birth
[38]Waters, E. (November 28, 2022). "California's New Handmaid's Tale," *The American Mind*.
https://americanmind.org/salvo/california-new-handmaids-tale/

Conclusion

In recent decades, the political elite in Washington, D.C., have diminished and diluted the benefits that citizenship confers. Repeated efforts to implement mass amnesties, progressive states' efforts to provide voting rights and welfare benefits to noncitizens, and the self-destructive actions of the Biden administration's open-borders policies that have resulted in cascading crises of drug overdoses, human trafficking, and rampant crime in American communities all prove the undeniable animus that the political elite has toward American citizens.

Depriving the failed establishment of its core policy magnet for facilitating unending illegal immigration chaos is imperative for the preservation of the republic. Whether birthright citizenship is curbed through executive action, statutory reforms, an additional constitutional change, or some combination thereof, it must be addressed because the current flawed interpretation of the policy undermines both the spirit and purpose of citizenship. If the republic is to endure, unrestricted birthright citizenship must be abolished.