

**Statement of the Honorable Jamie Raskin for the Hearing on
“Subject to the Jurisdiction Thereof”: Birthright Citizenship and
the Fourteenth Amendment” Before the Subcommittee on the
Constitution and Limited Government
Tuesday, February 25, 2025 at 2:00 p.m.
2141 Rayburn House Office Building**

The first sentence of the Fourteenth Amendment to the Constitution states that any person born *in* the United States and subject to its laws is a citizen *of* the United States. The amendment was passed by two-thirds majorities in the House and Senate and ratified by three quarters of the states in 1868, three years after the end of the Civil War. It reflects our commitment to a Republic in which the rights and privileges of citizenship are shared by all people born in our country, not just people who fall within a certain hereditary classification by race or national origin.

In 1898, 30 years after passage, the Supreme Court closed the door on the argument being advanced by our colleagues today in an embarrassing outburst of nativism and constitutional amnesia. In 1898, the Court found in *United States v. Wong Kim Ark* that the Citizenship Clause concluded that *all* people born in the United States, including, yes, even the children of reviled non-citizen Chinese immigrants, were first-class equal citizens of our country. Our Colleagues have not shown why anything has changed in the facts or the law, even if their feelings have changed.

President Trump’s Executive Order purporting to curtail birthright citizenship is plainly unconstitutional. Look at all the judges who have struck it down. They were appointed by Presidents Ronald Reagan, George W. Bush, Barack Obama, and Joe Biden.

Look what they said:

U.S. District Judge John C. Coughenour of the Western District of Washington, nominated by President Ronald Reagan, said in granting a

preliminary injunction against the Trump Executive Order in *State of Washington, et al. v. Trump*:

- Quote, “Citizenship by birth is an unequivocal Constitutional right. It is one of the precious principles that makes the United States the great nation that it is. The President cannot change, limit, or qualify this Constitutional right by executive order. . . . I can't remember" a case that presented a question "as clear as this." End quote.
- Quote, “The rule of law is, according to [Trump], something to navigate around or simply ignore, whether that be for political or personal gain.” End quote.
- Quote, “And the fact that the government cloaked what is in effect a constitutional amendment under the guise of an executive order is equally unconstitutional. The Constitution is not something the government can play policy games with.” End quote.

Similarly, U.S. District Judge Joseph Laplante of the U.S. District Court for the District of New Hampshire, nominated by President George W. Bush, stated in granting a preliminary injunction against the Executive Order in *New Hampshire Indonesian Community Support v. Trump*:

- The plaintiffs, quote, “are likely to suffer irreparable harm if the order is not granted,” end quote.

U.S. District Judge Deborah Boardman, nominated by President Joe Biden to the U.S. District Court for the District of Maryland, stating in her order granting a preliminary injunction against the Executive Order in *Casa v. Trump*:

- Quote, “The Executive Order interprets the Citizenship Clause of the Fourteenth Amendment in a manner that the Supreme Court has resoundingly rejected and no court in the country has ever endorsed.” End quote.

And finally, U.S. District Judge Leo Sorokin, nominated to the U.S. District Court for the District of Massachusetts by President Barack Obama, who said, in granting a preliminary injunction against the Executive Order in *O. Doe, et al. v. Trump, et al.*:

- Quote, “The Fourteenth Amendment says nothing of the birthright citizen’s parents, and efforts to import such considerations at the time of enactment and when the Supreme Court construed the text were rejected.” End quote.

It’s not just judges. Republican House Members agree that the Executive Order is unconstitutional, including at least one who has said so on the record.

This is neither a hard case nor a close case. You don’t have to be a lawyer to see this Executive Order is unconstitutional. You just have to know how to read.

Citizenship stripping is, of course, a hallmark of authoritarianism. The “Reich Citizenship Law,” one of the Nazis’ Nuremberg Laws, stripped German Jews of their citizenship and robbed them of full political and civil rights in 1935. Following Hitler’s moves, Mussolini revoked the citizenship of tens of thousands of Italian Jews and ordered them to leave the country within 6 months. To this day, authoritarian countries deprive people of citizenship to punish them for political activism or dissent.

It’s haunting to see Republicans in the 21st Century try to drain the meaning out of the Fourteenth Amendment which Republicans fought for in the 19th Century. I know how proud you must be, Mr. Chairman,

of the great John Bingham, the Ohio Congressman and Radical Republican Member of this Committee who was a primary author of the first section of the Fourteenth Amendment. Supreme Court Justice Hugo Black described Bingham as the “14th Amendment’s James Madison” and the “Second Founder who most worked to realize the universal promise of Madison’s Bill of Rights and Jefferson’s Declaration [of Independence.]”

The first sentence, often called the Citizenship Clause, provides that “*All* persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” This language forcefully rejected and overturned the Supreme Court’s 1857 decision in the *Dred Scott* case, which held that neither freed slaves nor their children could ever become citizens. Bingham and Pennsylvania’s Thaddeus Stevens explicitly rejected a *racial* concept of citizenship, replacing it with a principle of *birthright* citizenship. Despite the tortured arguments I am hearing today, the meaning of the phrase, quote, “subject to the jurisdiction thereof,” is clear. A person born in the U.S. who is subject to the territorial authority thereof becomes a U.S. citizen at birth. Drafters of the Fourteenth Amendment carefully intended to enshrine the centuries-old English common law principle that a person acquires citizenship in a nation by virtue of birth in that nation.

It was another great Ohio Republican, U.S. Senator Benjamin Wade, who insisted on making the Citizenship Clause perfectly clear and categorical to avoid backsliding in times of high partisan emotion. Senator Wade said, quote:

I have always believed that every person, of whatever race or color, who was born within the United States was a citizen of the United States; but by the decisions of the courts there has been a doubt thrown over that subject; and if the Government should fall into the hands of those who are opposed to the views that some of us maintain, those who have been accustomed to take a different view of it, they may construe the provision in such a way as we do

not think liable to construction at this time, unless we fortify and make it very strong and clear. If we do not do so, there may be danger that when party spirit runs high, it may receive a very different construction from that which we would put upon it. . . .

There is no real legal controversy here, just smoke and mirrors designed to give political cover to President Trump's plainly unconstitutional Executive Order. The Supreme Court in *Wong Kim Ark* noted only a few discrete exceptions to the rule of birthright citizenship, specifically for the children of foreign diplomats, foreign military invaders, and, citing its earlier 1884 precedent in *Elk v. Wilkins*, Native Americans. Congress, of course, later granted Native Americans birthright citizenship statutorily through the Indian Citizenship Act of 1924.

This exception existed under English common law as well, as diplomats and soldiers were understood not to be subject to the territorial authority of the nation because they served a foreign nation *explicitly* either as a diplomat or as an invading soldier, whose very occupation was mobilized to contest the sovereign's territorial authority, and therefore their children were properly excluded from birthright citizenship. In the case of Native Americans, they were separately understood at the time to be subjects of domestic dependent nations.

The Supreme Court later confirmed this same view in 1982 in *Plyler v. Doe*, where it observed that "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful."

For Members who want to incorporate the original intent and understanding of the Framers of the Fourteenth Amendment and may even call themselves originalists, the original purposes of the Fourteenth Amendment's Framers remain inescapably clear. They wanted to prevent the government from reconstituting a racial or ethnic caste system based

on the inheritance of subordinate legal status from one's parents. In post-Reconstruction America, no person would ever become a slave, a serf, or a legal outcast at birth because every person born here would instantly attain citizenship. Just as the Framers of the original Constitution rejected the concepts of hereditary government, hereditary public office and hereditary criminal punishment when they abolished monarchy, titles of nobility and criminal taints of blood, the Reconstruction Constitution rejected hereditary subordination, hereditary exclusion and hereditary inequality by making equal citizenship the birthright of all, extending the concept that the degraded or outcast legal or social condition of their parents should never be visited on new generations of American children.

With this history in mind, Judge John Coughenour, who was appointed to the bench by President Reagan, called Trump's Order "blatantly unconstitutional." He also said that "the fact that the government cloaked what is in effect a constitutional amendment under the guise of an executive order is equally unconstitutional. The Constitution is not something the government can play policy games with." In fact, four district judges, including two Republican appointees, have so far blocked Trump's Executive Order.

Yet if President Trump succeeds in convincing the Supreme Court to uphold his unconstitutional Executive Order, a new caste system based on parentage will be the exact result, in direct contradiction of the Fourteenth Amendment's purpose.

A [Migration Policy Institute](#) study estimates that ending birthright citizenship for children born to two unauthorized immigrant parents would create multiple generations of American-born individuals who lack citizenship, with a population numbering 4.7 million people by 2050, 1 million of them being the children of two parents who themselves had been born in the United States. In short, ending birthright citizenship would result in stripping citizenship from millions

of Americans, spanning generations, who could face deportation from the only home they have ever known.

In the 150 years since birthright citizenship became the law of the land, the United States has thrived as the world's greatest multiracial immigrant democracy. We industrialized and became the largest economy in the world; we led the Allies to victory against fascism and Nazism; we overthrew Jim Crow apartheid. The dubious arguments our colleagues advance today about the supposed "allegiance" that American infants born here owe to the foreign nations where their parents were born, evokes the kind of racial superstition and ethnic tribalism that has divided America and that we have always ended up rejecting.

During World War II, the U.S. government forcibly evacuated and interned in detention camps tens of thousands of Japanese Americans, including those born in the U.S., because their parentage supposedly made their "allegiance" to the nation of their birth inherently suspect. Yet what was the response of many Japanese Americans to the racist actions of and policies that questioned their loyalty to America? It was to volunteer for military service, like the late U.S. Senator and Medal of Honor recipient Daniel Inouye, a Japanese American who lost his arm fighting for America.

Despite all the fashionable and vicious political rhetoric we hear today, immigrants and their American-born children are not poisoning the blood of our nation; they *are* part of our nation's political bloodstream. All of us in America today are the descendants of immigrants lawful or unlawful or somewhere in between, except for Native Americans whose roots long predate the Republic and the descendants of enslaved African-Americans who were brought here violently and unlawfully in the slave trade.

We are a great immigrant society and must never forget it. In 1798, at a time of anti-immigrant hysteria surrounding the Alien and Sedition Acts, Thomas Jefferson wrote a letter to his despondent friend John

Taylor in which he counseled patience to survive a moment not unlike this one: “A little patience and the reign of witches shall pass over, their spells dissolve and the people, recovering their true sight restore their government to its true principles.”

Thank you, Mr. Chairman. I yield back.