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## Anchor babies: Is that what Congress intended?

By Steve Bakke  February 24, 2025



*"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."* – from the 14<sup>th</sup> Amendment to the U.S. Constitution.

America's original Constitution provided little direction regarding citizenship. Following the Civil War, the 14<sup>th</sup> Amendment reversed the 1857 "Dred Scott decision" which denied citizenship to people of African descent, even freed slaves.

That clause has become the basis for "Birthright Citizenship," which includes what has become known as "anchor babies." This means any child born within the U.S. border is automatically a citizen, even if born to undocumented aliens.

What was the intent of the Amendment's framers? What would have motivated them to assure citizenship to anyone, without exception, born within our borders? Did they intend to create benefits for those violating our laws by being in the U.S.? In any case, the practice seems to make a mockery of, or at least cheapens, the concept of citizenship.

Solving this puzzle requires understanding what was meant by the qualifying statement "subject to the jurisdiction thereof." Unfortunately, Supreme Court rulings related to the Amendment haven't dealt with the issue of anchor babies.

We do have some hints, however. In 1866, Michigan Senator Jacob Howard, a 14<sup>th</sup> Amendment author, stated: *"This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to families of ambassadors or foreign ministers."*

Children of government officials and diplomats have been excluded from "birthright" citizenship. Why aren't there court decisions or clear statements clarifying the status for documented vacationing aliens, for example?

And there's no mention of illegal aliens. Perhaps that's because, when the Amendment was enacted, there were few if any immigration laws, so there was no significance to the concept of "illegal aliens." Inconsistencies and invalid assumptions have added to the confusion.

Illinois Senator Lyman Trumbull, another Amendment author, commented on the jurisdiction phrase: That means "subject to the complete jurisdiction thereof," or "not owing allegiance to anybody else." Most illegal immigrants probably still owe allegiance to another country. Again, helpful, but not determinative.

In 1982, Supreme Court Justice Brennan created more confusion. In a footnote to his 5-4 opinion in *Plyler v. Doe*, he wrote 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.”

The meaning of Brennan’s obscure comment has been magnified to imply that “anchor baby rules” are solidly entrenched as legal precedent. That’s simply not true. Confusion, along with inaccurate assumptions, are piled high around this issue.

How significant is the anchor baby population? The numbers are large and growing. The Center for Immigration studies estimated the total anchor babies born in America in 2024 to be nearly 400,000. An extreme example is Stockton, California. Seventy percent of the 2,300 babies born in 2003 in the San Joaquin General Hospital were anchor babies.

The President entered the fray by issuing an executive order eliminating Birthright Citizenship. The timing is right because all of our policies and procedures are under review. Multiple lawsuits were filed against Trump’s EO. A preliminary injunction and a restraining order were issued to block Trump’s initial EO. Following a challenge by the government, a three-judge panel later upheld that ruling.

It’s become virtually certain that the Supreme Court will have an opportunity rule on Trump’s EO and provide clarification and direction. But whatever its decision, Congress must act to clarify citizenship requirements, limitations, and privileges, and Congress must reduce incentives for entering America illegally.

Asylum rules must be objective, precise, fair, and provide a clear process for decision making. Existing anchor baby rules and procedures, if left intact, would essentially be a “sloppy” substitute for fair and objective asylum rules. All future immigration policies dealing with asylum issues must be clear regarding the treatment of offspring of illegal aliens.

It’s a shame that decisions about granting Birthright Citizenship are being made based on a Judge’s poorly researched, obscure footnote, the basis for which appears to be nothing much more than word-of-mouth and hearsay.