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"Birth tourism" has dangerous security implications

Steve Bakke  April 14, 2026



"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." - the "Citizenship Clause" of the 14th Amendment.

The 14th Amendment was enacted soon after the Civil War. It reversed the "Dred Scott decision" which denied citizenship to people of African descent, including freed slaves and their offspring. Over time, and without further legislation, the Amendment's interpretation quietly evolved to include virtually all non-citizen's children born in the U.S. We call this Birthright Citizenship.

During his first day as our 47th President, Donald Trump issued an Executive Order ending Birthright Citizenship for children born in the U.S. without either parent being a citizen or lawful permanent resident. The Order was not retroactive. Lawsuits multiplied and soon the issue was headed to the Supreme Court, with arguments heard on April 1st.

During those arguments, the government's Solicitor General defended Trump's E.O. by arguing, among other things, the Amendment was intended to apply only to children of parents who were legally present in the U.S. at the time of birth. In other words, it wasn't intended to apply to children of undocumented immigrant parents. He offered examples to support his argument.

The ACLU attorney argued that Amendment 14 reflects "British Common Law." Stare decisis, meaning strict reliance on precedent, also was emphasized as conclusively supporting the constitutionality of Birthright Citizenship.

The ACLU attorney also argued that the 1898 Wong Kim Ark decision is "deeply rooted" in British Common Law. This would imply that it doesn't matter whether a newborn's parents are in the U.S. illegally.

Those arguments supporting Birthright Citizenship are flawed. Looking to British Common Law for support makes no sense to many experts because the concept of "subject to the jurisdiction thereof" is contradictory to British Common Law citizenship rules and wouldn't be used to express a such an argument. Additionally, the parents in the Ark case were legally residing in the U.S. which doesn't match the facts of the case now being decided.

The validity of the ACLU's "valid precedent" argument is suspect because in the years following the Amendment's passage, we find several other interpretations being expressed or applied. For example: Michigan Senator Lyman Trumbull, a 14th Amendment author, explained the Senate's intentions by stating, "subject to the jurisdiction thereof" means "not owing allegiance to anybody else," i.e. another country; a law professor's written opinion

similarly defined “jurisdiction”; State Department action denied citizenship to a child of a non-citizen Irish mother; and a Justice Department ruling denied citizenship to a man born to parents who returned to Germany soon after his birth.

We find no examples of Supreme Court decisions dealing squarely with children of illegal or non-permanent residents.

Finally, and significantly important, there’s a national security concern that doesn’t receive much attention. Birthright Citizenship is significant and growing. According to Pew Research Center, approximately 9% of U.S. births in 2023 were to unauthorized or temporary legal immigrant mothers.

Guess what! Chinese citizens are proving to be successful opportunists. As many as 100,000 Chinese “anchor babies” are born annually. There are now an estimated \$1.5 million Chinese “anchor babies” soon to reach voting age.

China’s “birth tourism” industry has grown to about 500 agencies scheduling expensive, deluxe “birthing vacations” to the U.S. or its territories. Chinese Communist Party (CCP) elite are common customers. The Chinese also dabble aggressively in surrogacy contracts to enhance their “inventory” of offspring with U.S. citizenship now living in China.

Some of those Chinese “anchor babies” will eventually move “home” to be U.S. citizen residents. Their parents can qualify for “green cards” and may soon follow. What could be better for China than having agents in America with the privileges of American citizenship? This is a serious security challenge.

Summarizing, arguments can always be made supporting the status quo in our “birthright” rules. But mistakes, such as Chinese birth tourism, will occur. Quoting Justice Thomas when asked if stare decisis “doesn’t hold much for him,” he said, “Oh, it sure does. But not enough to keep me from going to the Constitution.”

America must start solving this security issue and bring common sense to laws defining citizenship.