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Birthright Citizenship

“The universal right to a nationality should be recognized and duly certified for all children at birth.”

—Pope Francis, *Message for the 104th World Day of Migrants and Refugees*

What is “birthright citizenship”?

In the United States, a person may acquire citizenship “jus soli” (by right of birth on U.S. soil) or “jus sanguinis” (by right of blood via one’s parents). The term “birthright citizenship” is colloquially used to describe jus soli citizenship. Approximately 33 countries (primarily located in the Western Hemisphere) have an unconditional right to citizenship by birth while another forty nations bestow some form of jus soli citizenship with conditions.¹ Most other countries around the world operate according to the jus sanguinis principle.

Why is citizenship granted to all individuals born in the United States?

The Fourteenth Amendment’s Citizenship Clause specifies that “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 does not pertain to the children of foreign diplomats because they are not subject to the jurisdiction of the United States as a matter of settled law that was inherited from English common law.²

U.S. case law has maintained that citizenship should be granted according to the common law principle of jus soli since the landmark case of *United States v. Wong Kim Ark* was decided in 1898.³ In that case, the U.S. Supreme Court ruled that 21-year-old Wong Kim Ark, born in California to Chinese parents who resided in California, was in fact a U.S. citizen and could no longer be detained aboard a steamship and denied reentry upon his return from a visit to China. The Court ruled that “to hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.”⁴

¹ Law Library of Congress Global Legal Research Directorate, *Birthright Citizenship Around the World* (2020), <https://maint.loc.gov/law/help/birthright-citizenship/global.php>.

² *United States v. Wong Kim Ark*, 169 U.S. 649, 682 (1898).

³ CONGRESSIONAL RESEARCH SERVICE, THE CITIZENSHIP CLAUSE AND “BIRTHRIGHT CITIZENSHIP”: A BRIEF LEGAL OVERVIEW 2 (2018), <https://crsreports.congress.gov/product/pdf/LSB/LSB10214>.

⁴ *United States v. Wong Kim Ark*, 169 U.S. at 694.

Can birthright citizenship be ended?

President-elect Donald Trump has stated that, on his first day in office, he will ensure by executive action that children born in the United States to undocumented parents are not granted citizenship.⁵ The order would reason that the Fourteenth Amendment was not intended to apply to the children of undocumented individuals because those children are not truly subject to the jurisdiction of the U.S. government.⁶ Attempts have been made via legislation to codify similar interpretations in the past.⁷ No further details as to the incoming administration's plans for terminating birthright citizenship are available at this time. Such an order is very likely to be challenged in the courts.

If the Citizenship Clause itself were to be modified, the intensive constitutional amendment process—requiring both chambers of Congress to approve the amendment with a two-thirds majority and ratification by 38 out of the 50 states—would have to be pursued.

What are possible implications of an end to birthright citizenship?

An end to birthright citizenship could have several effects. The absence of a right to citizenship by birth would increase the susceptibility of children to statelessness if their parents lack a nationality or if the child is unable or ineligible to complete the requirements for citizenship in their parents' country of origin. Further, such an action would not decrease, but rather increase, the number of undocumented children in the United States. More children could find themselves in a situation not unlike that of “Dreamers” (those without status who were brought to the United States as children but know only this country as their home). It is important to note that an individual cannot file a family-based petition that would provide his or her parent(s) lawful status in the United States until the individual has reached 21 years of age. Undocumented parents who are physically present in the United States may also encounter bars to eligibility for this, depending on their method of entry to the country and other extenuating circumstances. Having a child in the United States does not, in itself, provide someone with a clear pathway to legal status or protect an individual from deportation.

Have the U.S. bishops taken a position on birthright citizenship?

The U.S. bishops have long been in favor of birthright citizenship. In their 2003 pastoral letter, *Strangers No Longer: Together on the Journey of Hope*, the Catholic bishops of the United States and Mexico offered the faithful a framework for responding to the phenomenon of migration in our time. They wrote, “family unity also is weakened when the children of immigrants are left unprotected. In the United States, birthright citizenship should be maintained as an important principle in U.S. immigration law. . . . Otherwise, their access to health, education, and other basic services may be denied later in life. Moreover, the right to an identity and nationality are enshrined in international covenants.”⁸ For these reasons, the U.S. bishops maintain that the *jus soli* principle imparts a just and fitting mechanism for preserving the right to a nationality, a right rooted in the God-given dignity of every person.

⁵ *Agenda47: Day One Executive Order Ending Citizenship for Children of Illegals and Outlawing Birth Tourism* (2023), <https://www.donaldjtrump.com/agenda47/agenda47-day-one-executive-order-ending-citizenship-for-children-of-illegals-and-outlawing-birth-tourism>.

⁶ *Id.*

⁷ See, e.g., Birthright Citizenship Act of 2021, H.R.140, 117th Cong. (2021).

⁸ *Strangers No Longer: Together on the Journey of Hope*, no. 67 (2003), <https://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/strangers-no-longer-together-on-the-journey-of-hope>.