

Birthright Citizenship

Policy Brief

On April 1, 2026, the Supreme Court will hear oral arguments in *Barbara v. Trump*, a case challenging the Trump administration's executive order on citizenship. This order is an effort to overturn the 160-year-old constitutional principle that everyone born in America is a citizen—an effort that violates the citizenship guarantee explicitly set forth in the Fourteenth Amendment, as interpreted by long-standing Supreme Court precedent.

The Constitution is clear and the Court must be, too. The Court must affirm the constitutional rights guaranteed in the Fourteenth Amendment and plainly recognize that the Trump administration's citizenship order is illegal.

The Constitution guarantees birthright citizenship to virtually all people born in the United States

The guarantee of birthright citizenship is laid out in the [Fourteenth Amendment to the Constitution](#), which establishes 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.”

Following the abolition of slavery more than 150 years ago, Congress and the States adopted the Fourteenth Amendment as the centerpiece of an effort to guarantee equality for those born on U.S. soil, a matter critical to formerly enslaved people and their children in the aftermath of the Civil War. The Fourteenth Amendment also ensured that children born in the U.S. to parents who settled here from abroad would be recognized as citizens.

More than 125 years ago, in *United States v. Wong Kim Ark*, the Supreme Court [affirmed](#) a straightforward reading of the Fourteenth Amendment's guarantee of citizenship to anyone born in the U.S., even if their parents are immigrants who are present without authorization. Congress codified that Supreme Court determination when it enacted the very same language in 8 U.S.C. 1401(a) -- language, the Administration concedes, everyone would have understood at the time of the statute's enactment to foreclose the Executive Order.

Some anti-immigrant advocates have pushed a radical interpretation of the Amendment's text—supported neither by history nor the plain text—positing that people born outside of the U.S. owe “allegiance” to another country, and therefore their children are not “subject to the jurisdiction” of the United States. This theory is wrong; it has never been adopted by the courts, finds very little support in the historical record, and would lead to illogical outcomes, including the conclusion that undocumented individuals and their children are therefore not subject to U.S. law.

As Justice Horace Gray wrote in *Wong Kim Ark*, “The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.”

President Trump's executive order is an unlawful attempt to rewrite and limit the constitutional right to citizenship by birth

On January 20, 2025, President Trump issued an [executive order](#) (EO) titled, “Protecting the Meaning and Value of American Citizenship.” The order asserts, in direct contradiction and defiance of clear Supreme Court precedent, that children born in the United States who don't have at least one parent who is a citizen or lawful permanent resident are “not subject to the jurisdiction” of the United States and are therefore ineligible for citizenship. This includes children whose parents are on lawful temporary visas like H-1Bs.

This is an unconstitutional attempt to rewrite the 14th amendment by executive order. The meaning and scope of the 14th Amendment's language has been assessed by courts at every level many times and this interpretation has been upheld consistently, including by every court that has assessed the merits of challenges to the executive order. Despite this, the Trump administration is asking the Supreme Court to overturn more than a century of constitutional, statutory, and legal precedent and to adopt a brand new, radical interpretation of the 14th Amendment, one that is directly contrary to the Court's own previous decisions and to the interpretations that informed Congress' drafting and passage of the 14th Amendment in the 1860s and additional lawmaking in the mid-1900s.

Beyond the clear violations of the Constitution and a century of precedent, a decision from the Court that allows any part of the President's executive order to go into effect would be practically devastating for American communities and the economy. It would create [extraordinary administrative burdens](#) and complications at every level of government and for all U.S. citizens, sacrifice trillions in [economic contributions](#), and create a permanent underclass of American families.

Since the EO was issued, multiple lawsuits have been filed against the administration, and every court to consider the policy's merits has ruled it unconstitutional. In three cases—Trump v. State of Washington, Trump v. CASA, Trump v. State of New Jersey—the courts issued nationwide injunctions preventing the implementation of the EO anywhere in the country. The Trump administration appealed, leading the Supreme Court to invalidate the injunctions. However, the Supreme Court never considered the actual merits of the order, only the legality of the injunctions. After the Court's ruling, a new class-based lawsuit (Barbara v. Trump) was filed and won another court-ordered pause on the implementation of the order.

Now the Supreme Court is set to hear the case, consider the merits, and issue a decision about the legality of the executive order.

Birthright citizenship is a longstanding principle that enriches America and facilitates assimilation and integration.

Birthright citizenship is a core part of what it means to be American, guaranteeing that all children born here are equal under the law.

Millions of Americans' citizenship is rooted in and protected by the Fourteenth Amendment. FWD.us [estimates](#) that there are at least 1.8 million U.S. citizen children with two married parents who are undocumented or have a temporary status, and as many as 4.8 million children who have at least one parent who is undocumented or in temporary status. While they would not be subject to this EO, they exemplify the far-reaching impact of birthright citizenship on American families and communities.

A [report](#) by the National Academy of Sciences found that “[b]irthright citizenship is one of the most powerful mechanisms of formal political and civic inclusion in the United States; without it, the citizenship status of 37.1 million second-generation Americans living in the country (about 12% of the country's population), and perhaps many millions more in the third and higher generations, would be up for debate.”

In general, children of immigrants [are very successful in the U.S.](#), surpassing their parents and matching or exceeding their peers with citizen parents in key markers of integration like education, earnings, and home ownership. Roughly 71% of adults who are beneficiaries of birthright citizenship are in the labor force and working.

Citizenship by birth has also been a major economic driver. Over the past 50 years, beneficiaries of birthright citizenship have [contributed \\$1.5 trillion to the U.S. economy](#), and, if the policy remains in place, are projected to contribute an additional \$6.5 trillion over the next 50 years.

On the other hand, eliminating the constitutional right of citizenship by birth would have devastating consequences, including [increasing the population of unauthorized immigrants](#) in the U.S. by 5.4 million over the next 50 years, with an average of 255,000 babies being born each year without legal status. This would also mean [sacrificing up to \\$1 trillion](#) in economic contributions and a loss of 400,000 potential college-educated workers.

Birthright citizenship is a hugely positive feature of American society that allows new generations to be completely welcomed as Americans, to [more fully integrate](#) into and participate in civic and community life across the United States. The promise of birthright citizenship embodies the core principles of the American promise and the American dream—it is a rejection of a caste or legacy system in favor of inclusion and equal opportunity.

No president has the power to amend the Constitution through executive order.

The president has no power to amend or subvert the Constitution through executive order, and such a proposal is a dramatic overreach that should be completely rejected. Article V of the Constitution explicitly [describes](#) the process for amending the Constitution by Congress and the States—there is no role for the president in this process.

As Assistant Attorney General Walter Dellinger [testified in 1995](#), “[B]ecause the rule of citizenship acquired by birth within the United States is the law of the Constitution, it cannot be changed through legislation, but only by amending the Constitution....The amendment’s purpose was to remove the right of citizenship by birth from transitory political pressure.”

Ending birthright citizenship would make our immigration system even more chaotic, excluding millions of U.S. born children from the American Promise and further [expanding the undocumented population](#). This policy wouldn’t solve any immigration problem, it would only fuel confusion, discrimination, and deep harm to families and communities.

FWD.us believes that providing a [pathway to citizenship](#) for people who are undocumented and have been living in the United States for decades is the commonsense solution to keep families together and make our country and communities stronger.