

Birthright Citizenship

Policy Brief

On May 15, 2025, the Supreme Court will hear arguments in three cases challenging the Trump administration's 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. In each case, the lower court has issued a nationwide injunction barring implementation of the Trump administration policy. Recognizing the weakness of its legal argument, the Trump administration has avoided asking the Supreme Court to address the policy's constitutionality; it wants the Court to invalidate the nationwide relief granted by the lower courts and allow the Trump policy to take effect for everyone other than the individual plaintiffs. But a decision by the Supreme Court limiting the scope of preliminary relief will be falsely portrayed by the Trump administration as a vindication of its unconstitutional policy and will have far-reaching consequences, creating chaos and uncertainty regarding babies' citizenship, encouraging the Trump administration and some states to launch harmful attacks on the children of immigrants and even on the children of U.S. citizens.

The Constitution is clear and the Court must be, too. Regardless of any ruling on the standards governing nationwide injunctions, 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.

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 these decisions, but courts of appeals have denied their requests for the injunctions to be lifted or narrowed.

Now the Trump administration is [asking the Supreme Court](#) to overrule the appeals courts, limit the injunctions to only those individuals named in the cases, and allow the government to implement its EO as to everyone else.

Limiting the injunctions without explaining the Trump policy's unconstitutionality would create chaos across the country

While all three cases involve the EO, the primary question before the Supreme Court involves the issuance of nationwide injunctions to stop the government from implementing it.

The Trump administration isn't even defending its radical constitutional theory in the Supreme Court—likely because it knows the argument would fail—and instead focuses on the legality of nationwide injunctions. Such injunctions have been at the [center of political debate](#) in recent years across a variety of policy areas. Proponents argue that these injunctions are necessary to give complete relief to the plaintiffs and also to prevent harm to individuals beyond those named in the cases, especially in cases involving the federal Constitution. Critics argue that such injunctions go beyond the appropriate authority of district court judges and unlawfully limit the authority of the Executive Branch.

Indeed, the Trump administration has attempted to avoid any ruling by the Court on the legality of the executive order by challenging only the scope of the injunctions. That way, if the Court ends up narrowing the injunctions in any respect, the administration can falsely claim a win. The Supreme Court should not be complicit in enabling such a blatant abuse of power.

It is perfectly reasonable for the Supreme Court to rule on the legal principles governing issuance of nationwide injunctions. But **limiting the relief in this case could result in nationwide chaos and enable the widespread infringement of core constitutional rights.**

It would leave no nationwide standard for citizenship, producing tremendous uncertainty for families. Birth certificates could become meaningless for many families, with no clear system in place to verify or confirm a child's citizenship. As [one court warned](#), "Existing administrative systems will fail, states and localities will bear the costs of developing new systems for issuing birth certificates and verifying citizenship, and anxious parents-to-be will be caught in the middle." If the Court limits the scope of relief so that it applies only to individual plaintiffs, some children born in a hospital would be entitled to citizenship but others born in the same hospital on the same day would not. Hospitals and state and local governments simply are not equipped to decide which newborns qualify as citizens and which do not.

This could also lead to children born in certain states being targeted for harassment by state and local law enforcement, and by the federal government, and denial of rights, protections, and benefits guaranteed to them—all based on a clearly unconstitutional theory about their citizenship status.

It could take years for the Supreme Court to fully consider and rule against this unconstitutional policy. In the meantime, there could be massive harm inflicted on U.S. citizens. A limited injunction would result in the precise evil the Clause is intended to prevent: it would divide similarly situated people into different classes, bestowing citizenship on babies whose parents have the resources and wherewithal to seek legal relief and withholding it from babies who are just as constitutionally entitled to birthright citizenship but whose parents are unable to pursue litigation. Such a result would fundamentally fracture the country. The Reconstruction Amendments were intended to prevent that sort of division from occurring again.

Even if the Court wishes to recognize limits on nationwide injunctions, it can and should affirm that nationwide relief is necessary here because of the serious constitutional violation, the need to provide complete relief to the plaintiffs, and the harm that would result from changing the long-standing status quo. The plaintiffs explain these reasons in detail in their Supreme Court filings, and [multiple amicus](#) filings by law professors provide further support. As [one conservative law professor](#) put it, “[n]ationwide lawbreaking by the federal government requires a nationwide remedy. And that’s especially true if the illegality affects the rights of large numbers of people, many of whom could not easily or quickly bring individual suits to challenge it. Justice delayed - in some cases indefinitely - is justice denied.” Multiple business trade associations also filed [an amicus brief](#) supporting the legality and importance of nationwide injunctions.

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. The total number of U.S. citizen children by birth of undocumented or temporary immigrant parents in the U.S. is likely much higher—our estimates do not reflect, for example, households where two undocumented or temporary status parents are living together but are unmarried, or adult children no longer living in their parent’s household. While they would not be subject to this EO, they exemplify how much birthright citizenship continues to enrich American families and communities.

A 2015 [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.”

Research shows that children of immigrants are generally [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.

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.