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Everyone born in the United States is a U.S. citizen. Here's why.

From birthright freedom to birthright citizenship



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Wong Kim Ark in a photograph from a federal immigration investigation case conducted under the Chinese Exclusion Acts. (Department of Justice/National Archives)

\n On Tuesday, the nation will celebrate the 125th anniversary of the Supreme Court’s decision in *United States v. Wong Kim Ark*, which affirmed that all people born in the United States are U.S. citizens. Yet birthright citizenship remains vulnerable to attack. Hostile members of Congress regularly propose legislation that would deny citizenship to the children of unauthorized immigrants. President Donald Trump also railed against citizenship for the children of immigrants who “walk over the border” and “have a baby,” describing it as “frankly ridiculous.”

The court’s flawed rationale for its decision 125 years ago may be one reason birthright citizenship is still questioned today. Then, the court primarily defended birthright citizenship as a common-law rule inherited from England, under which all born on territory controlled by the Crown were “natural-born subjects” who “owe obedience” to the King.

By framing citizenship as a relic of feudalism, the court overlooked a far more compelling backstory for this constitutional right: the antebellum battles between free and slavery states over the fate of enslaved people who reached free soil. Freedom for all, not compelled allegiance to a king, is the foundation for the constitutional right that made Wong Kim Ark a citizen of the United States. And its egalitarian roots remain a potent justification for birthright citizenship today.

In 1866, a Congress familiar with the frequent clashes between free and slavery states over slavery drafted the Constitution's Citizenship Clause.

Decades before the Civil War, many Northern states had abolished slavery based on birth within their borders. New York, for example, enacted a law in 1799 declaring: "[A]ny Child born of a slave within this State after the fourth day of July next, shall be deemed and adjudged to be born free." New Jersey, Pennsylvania, Connecticut, Illinois and Rhode Island did the same, proclaiming all born within these states' borders to be automatically free. These "birthright freedom" laws cut to the core of hereditary slavery, which perpetuated itself through the ironclad rule that the children of enslaved women were born enslaved.

Some Northern states went even further, declaring the children of fugitive enslaved people to be free. In 1816, the Pennsylvania Supreme Court held that the 2-year-old daughter of a fugitive enslaved person was "born free" in Pennsylvania and had the right to remain, even though her mother was recaptured and taken back to the slavery state of Maryland. A dozen federal and state courts in at least six free states adopted a similar rule in the decades that followed.

Perhaps inspired by these laws, some enslaved women escaped to free states to give birth. Enslavers tried to track them down, offering a "handsome reward" for the return of enslaved people in a "pregnant state."

By crossing borders, these women could ensure freedom for their future children — a status that they could never guarantee for themselves under the Constitution's Fugitive Slave Clause, which gave their enslavers the right to recapture them. As one legal commentator observed at the time: "It is the good fortune of th[ese] Children that they were born here, the misfortunes of their Mother ought not and cannot prejudice them." The free states' hope of eroding slavery through state law ended with the Supreme Court's 1857 decision in *Dred Scott v. Sandford*, which prevented Northern states from freeing Black people born or residing within their borders once they returned or were forcibly removed to slavery states. Chief Justice Roger Taney also declared that no Black person, enslaved or free, was a citizen of the United States entitled to the "rights and privileges" of citizenship. That decision precipitated the Civil War and led to the abolition of slavery in 1865.

This was the context in which the Reconstruction Congress gathered in 1866 to debate whether to add birthright citizenship to the U.S. Constitution. Its members expressly intended to overrule *Dred Scott's* holding barring Black people from citizenship, as well as to incorporate the Declaration of Independence's principle that "all men are created equal" into the U.S. Constitution. They did so by linking borders, birth and status — the same combination that Northern states had adopted to guarantee birthright freedom in the antebellum era.

The result was the first sentence of the Fourteenth Amendment, known as the Citizenship Clause, which declares: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.” Thirty years later, Wong relied on the Citizenship Clause to defend his right to remain in the United States. Wong was born in San Francisco around 1870, the son of Chinese immigrants who were barred by federal law from naturalizing based on their race. He lived in the United States most of his life, working as a cook and a laborer. Wong knew he was an American at birth.

But when Wong tried to return home after a visit to China in August of 1895, his government barred him from entering, denying his citizenship despite conceding his birth in the United States.

U.S. government officials considered citizenship claims by native-born children of Chinese immigrants to be an end run around the 1882 Chinese Exclusion Act, the racist federal law that barred most Chinese immigrants from entering the United States. Wong became the government’s “test case” — chosen with the goal of defeating birthright citizenship for the children of “undesirable” immigrants.

Solicitor General Holmes Conrad argued the case on behalf of the U.S. government. It was no coincidence that Conrad was born into a family of prominent Virginia enslavers, or that he had served as an officer in the Confederate Army during the Civil War. Wong’s case was Conrad’s chance to attack the egalitarian impetus behind the Fourteenth Amendment by denying citizenship to the children of non-White immigrants.

But the Fourteenth Amendment’s Citizenship Clause was written in race-neutral terms. Conrad was forced to argue against citizenship for the children of *all* noncitizen parents on the ground they were not “subject to the jurisdiction” of the United States, as that Clause requires. This breathtaking claim would have stripped citizenship from hundreds of thousands of people born in the United States to immigrant parents.

It was also wrong. As members of the Reconstruction Congress explained in 1866, the narrow exception to birthright citizenship applied only to the children of diplomats and those born into Native American tribes, who were under the “jurisdiction” of a separate sovereign and did not need to comply with all U.S. laws. In contrast, immigrants and their children living in the United States were and are required to follow all federal and state laws or face criminal and civil penalties and so are fully “subject” to the nation’s “jurisdiction.”

After deliberating for over a year, on March 28, 1898, the Supreme Court rejected the government’s argument and held that the native-born children of immigrants are citizens at birth. Wong’s victory was a surprise coming from a court that two years earlier had upheld “separate but equal” in *Plessy v. Ferguson*, and that frequently ruled against a group it referred to as the “obnoxious Chinese.”

But it did so by ignoring the Citizenship Clause's grounding in the antebellum battles over freedom and equality, appealing instead to the feudal rulemaking English subjects of all those born on territory controlled by the king. In passing, the court also explained the real reason for ruling in Wong's favor: It could not "deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage" — that is, to White people.

Had Wong lost, it would have divided the country into two castes: citizens entitled to full political and civil rights on the one hand, and a growing percentage of noncitizens whose descendants would be denied those same rights on the other. That was what the Fourteenth Amendment was intended to prevent. Despite its flawed reasoning, the Supreme Court's decision ensured citizenship for the children of immigrants born in the United States, putting an end to formal hereditary second-class status.

Birthright citizenship has served the nation well. It is an important reason the United States integrates immigrants more successfully into its economy and society than do most European countries that limit access to citizenship. And it has prevented many immigrant families from becoming a perpetual underclass of exploited workers.

To protect this constitutional right against attack, we must remember its true origins. Birthright citizenship was forged by a nation that sought to free itself from the legacy of hereditary slavery with the most American of ideas: Regardless of our lineage, we are all born equal.