

# Birthright Citizenship and the 14<sup>th</sup> Amendment

It looks like the President has brought the question of “birthright” citizenship front and center. It is now on a path to the Supreme Court of the United States. During that journey many a court at different levels will weigh in. The discussion is now in earnest since President Trump issued an Executive Order that presented a different “view” of just what the 14 amendment says.

First to note it was an Executive Order. Normally the courts do not pass judgement on executive orders because they originate from the Executive branch and only apply to executive departments, employees and their agents, not the general population. However, when the issues raise a constitutional question, the courts do and will enter the discussion. This one will eventually be resolved with SCOTUS, and the sole issue will rest on contemporary interpretation verses original intent.

First some light on the background of the 14<sup>th</sup> amendment. After the civil war was coming to an end, several States enacted laws that prohibited blacks (slave) from being recognized as citizens of their States. These post war state laws were known at the time as Black Code laws. The legitimacy of States to enforce such laws bubbled up to the Supreme Court in 1857 case Dred Scott. Essentially the Dred Scott court declared states had the right to determine if blacks or post war returning black slaves were in fact citizens of their states ruling “*States retain a right never delegated to the general government to make their own citizens, but the right to make aliens into U.S. citizens belongs to Congress*”.

In 1859 A US senator from Michigan called John Bingham proposed section I of the 14<sup>th</sup> amendment to cure to this tragedy, and to right the wrong inflicted upon existing American blacks. Are we sure that was the intent?

As argued and debated by Brigham and many others back in 1866, section I of the 14<sup>th</sup> amendment was to assure “blacks and their children” residing in country since the 1778, were in fact American citizens. During those (well documents) senate floor debates, Brigham declared the 14<sup>th</sup> amendment qualifier “under the jurisdiction of” to exclude foreign visitors and dignitaries. Here is what Brigham said on the Senate floor as he presented section I of the 14<sup>th</sup> amendment.

*“This amendment which I have offered is simply declaration of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the United States.”*

Brigham was reciting existing “law of the land”. Birthright citizenship did not apply to foreigners or aliens. What was the difference he talks about? A foreigner is an approved visitor to the United States, an alien is not.

His reasoning was common sense. If you are a visitor from a foreign land, you are under that foreign jurisdiction, not American jurisdiction. The amendment was passed and ratified. The

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United States congress then codified that understanding and declared children born in American were not citizens if neither parent were American. That law went further saying the child could be American if one of the parents were American and had resided (domicile) within the United States for at least 7 years prior to the birth.

All was well until 1898, when SCOTUS issued a decision in a case called “Wong”. In a nutshell, two Chinese nationalists, living and working in San Francisco as a permanent resident (green card), had a child. The Supreme court ruled that the child was an American citizen because his parents were legal domiciles and working for several years under the permission of the of the United States. (defining jurisdiction). However, this caveat has been totally ignored by the left and lower courts. Professing instead a different standard that ignored how the mother got onto US soil and declare her child was an American citizen because of birth. The left branded this to be “Birth Right Citizenship”. That is correct. Birth Right Citizenship has never been mentioned in any laws of the United States or its Constitution. It is simply a term, not a law. The same holds true for the 1<sup>st</sup> amendment, which never mentions the words “Church” or “State”.

Now back to the contemporary interpretation verses original intent. Today many read the 14<sup>th</sup> amendment and completely ignore its qualifier “under the jurisdiction thereof”. Our current Supreme Court will not do anything like that. Many of our current Supreme Court members are originalist ideologists. Meaning, they look at the original intent behind the words used by our constitutional framers. Again, evoking common sense by assuming if they meant something else, they would have said it.

When the current SCOTUS looks at the original intent of 14<sup>th</sup>, they will read what Brigham and others were intending. Their sole purpose was to afford blacks and their children, living in the United States since 1778, citizenship.

Now on to the question of jurisdiction. It’s a legal question. In layman terms, it means one who has authority. A concept engrained with our founding fathers and all the way back to English law. For example. When a court rules it has jurisdiction, it means it has the authority to preside and rule in the matter. During the 2020 election disputes you heard many courts saying they could not hear a voter dispute because of “Lack of Jurisdiction Standing”. Again, saying they did not have the legal authority to hear the dispute or approve the request. Back in the 1770’s Jurisdiction meant Legal Authority, as it does today as it did in King Henry’s time.

“Under the jurisdiction” does not equate to “subject to the laws” of the United States. This is another misnomer by many. Simply obeying the laws of the U.S. does not mean you are afforded the same rights as a citizen.

Reread the 14<sup>th</sup> amendment with its qualifier in that light. When Brigham wrote, “Under the Jurisdiction thereof” means the same as “Under the legal authority of the United States”.

When a foreigner comes into the United States as a visitor, visa holder, foreign resident etc. that permission was granted under the authority of the United States. Proof of that

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jurisdiction, authority and permission is verified by the US immigrations officer when he stamps the “Emblem of the United States “on your passport. You are now documented.

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