

# A look at the 14th Amendment's 'anchor baby' clause

 [dailymail.co.uk/news/fb-6333411/A-look-14th-Amendments-anchor-baby-clause.html](https://www.dailymail.co.uk/news/fb-6333411/A-look-14th-Amendments-anchor-baby-clause.html)

President Trump says he wants to order the end of automatic citizenship for babies of illegal immigrants born in the United States.

The U.S. government has traditionally held that section 1 of the 14th Amendment to the U.S. Constitution, which contains the Citizenship Clause, guarantees that right for all children born on American soil.

## WHAT DOES THE CITIZENSHIP CLAUSE SAY?

'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 sentence that follows specifies citizen rights: 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'

## HOW DID IT GET IN THE CONSTITUTION?

Congress passed the Fourteenth Amendment in 1866. It was ratified on July 9, 1868 by three-fourths of the states.

The amendment effectively nullified an 1857 Supreme Court decision – Dred Scott v. Sandford – which had held that people descended from slaves could not be citizens.

The amendment's opening sentence, which served to define its vocabulary, has become among the most controversial clauses in the entire Constitution.

## WHAT WAS THE GOAL OF REPUBLICANS IN CONGRESS?

The Fourteenth Amendment was proposed and ratified to help blacks, especially emancipated former slaves, have a chance to integrate into society after the American Civil War. Congress wanted to prevent the U.S. states where they lived from sidestepping the efforts of Abraham Lincoln and other Republicans to guarantee their rights to 'life, liberty and property.'

By 1868 Lincoln's Emancipation Proclamation had freed slaves in southern U.S. states, but they still didn't have the same constitutional rights as citizens. That legal limbo led to the formation of 'Colonization Societies' that sought to remove them from the nationcountry and send them either to Caribbean islands or to Africa.

Some southern states also enacted 'Black Code' laws in a bid to preserve the rights of slave-owners by calling their slaves 'apprentices' who couldn't be removed from their 'service.'

Ohio Republican Rep. John A. Bingham, a friend of President Lincoln, proposed the amendment to remedy these problems, writing specific language to guarantee that any slave

born on American soil would retractively be declared a citizen.

Bingham wrote at the time that his text wasn't intended to create any new legal rights, but was 'simply a proposition to arm the Congress with the power to enforce the Bill of Rights as it stands in the Constitution today. It hath that extent – no more.'

#### WHY DO SOME THINK IT EXCLUDES ILLEGAL IMMIGRANTS' BABIES?

While the amendment was being debated, Michigan Republican Senator Jacob Howard, who drafted the amendment along with Bingham, said that was never his intention.

'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 Government of the United States, but will include every other class of persons,' he said.

'It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States,' Howard added.

#### WAS THERE ANOTHER SIDE?

California Republican Sen. John Conness was concerned that U.S.-born children of the large number of Chinese immigrants in his state would end up with out American citizenship.

Conness declared in a debate that the amendment 'proposed to declare that they shall be citizens,' adding that 'I am in favor of doing so.'

That point wasn't debated, but Howard also didn't object to Conness's interpretation, which twenty-first century immigration advocates often cite as proof that birthright citizenship is constitutional.

#### WHAT HAS THE SUPREME COURT SAID?

In 1873 the Supreme Court ruled that the phrase 'subject to its jurisdiction' was intended to exclude children of non-citizen immigrants.

That decision answered a narrow question, establishing that the 14th Amendment only guaranteed rights to people who were U.S. citizens, and didn't cover anyone who was only granted 'citizenship' by an individual U.S. state.

The majority opinion includes a note that 'the phrase 'subject to its jurisdiction' was intended to 'exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States born within the United States.'

Two years later the high court ruled that immigrants can only have automatic citizenship for their children when they – the adults – owe 'allegiance' to the U.S. and not to a foreign nation.

In 1898 the Supreme Court ruled that a specific Chinese immigrant's child was a citizen of the United States, citing the 14th Amendment's text. That decision has stood for 120 years, but it was decided decades before the concept of 'illegal aliens' was part of Americans' vocabulary.

More recently, at a dinner party in 2010, then-Justice Antonin Scalia said he believed Howard's original view was right – but for an unrelated reason.

He told his fellow guests that purposely including the words 'and subject to the jurisdiction thereof' suggested that people born in the U.S. weren't automatically citizens, especially if they were 'subject to the jurisdiction' of some other nation. He thought the words were included to rule out a large number of people.

Scalia, who died in 2016, allowed at the time that the way the modern U.S. interprets dual citizenships could also mean many people are be 'subject to the jurisdiction of' more than one country.

#### WHAT COULD HAPPEN IF TRUMP SIGNS AN EXECUTIVE ORDER?

If the president orders that the federal government must treat children of illegal immigrants born in the U.S. as noncitizens, two things would likely happen.

States where Democrats control the legislatures and that have Democratic governors would quickly enact laws doing the opposite. And civil rights groups would sue U.S. Citizenship and Immigration Services in federal court.

Whichever reaches a full boil first – the lawsuits or the question of the federal government's 'supremacy' over state laws – the whole thing will likely end up at the Supreme Court.

Trump has already appointed two justices, creating what some observers believe will be a 5-4 conservative majority. If that holds, Trump will win the debate and his order will stand.

A future Democratic president, however, could undo it – unless the Supreme Court were to declare that Trump's interpretation of the Constitution is correct, and not just that he had the legal right to issue the order.