



## **U.S. Commission on Civil Rights Warns Against Attempts to End Birthright Citizenship, Continued Hostility to Immigrants**

**December 7, 2018**

The U.S. Commission on Civil Rights, by majority vote, strongly opposes the President’s announced intention to attempt to end citizenship for children born in the United States to non-citizens through executive order.<sup>1</sup> The President’s proposal continues a troubling pattern of statements expressing hostility and animus toward immigrants or their nations of origin<sup>2</sup> that this Commission has previously noted.<sup>3</sup> This attempt is just the latest manifestation of policies, such as the Muslim ban and the proposed expansion of public charge determinations to curtail immigration from marginalized communities, that threaten the dignity, well-being, and civil rights of immigrants and citizens in our country.

Attempts to end citizenship for children born in the United States would clearly violate the plain text of the Fourteenth Amendment, which states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States[.]”<sup>4</sup> The Supreme Court has been clear on this subject. In 1898, the Supreme Court held in *United States v. Wong Kim Ark* that a child born in the United States to Chinese nationals—who themselves were barred from becoming naturalized U.S. citizens—was entitled to citizenship under the Fourteenth Amendment.<sup>5</sup> In 1982, *all nine* Supreme Court justices agreed in *Plyler v. Doe*<sup>6</sup> that the Equal Protection Clause applies to undocumented immigrants physically within the jurisdiction of a state no less than it does to documented immigrants and U.S. citizens because they are “subject to the jurisdiction” of the United States.<sup>7</sup> Scholars across the ideological spectrum have also pointed out that the original intent of the drafters of the Fourteenth Amendment was for the amendment to be broad and sweeping with very limited exceptions.<sup>8</sup> More than 30 countries offer similar birthright citizenship.<sup>9</sup>

The President’s proposal is a violation of the civil rights and equal protection of native born children of non-citizens that diminishes the rule of law in our country. We strongly advise the President to reconsider and publicly disavow any further efforts to end such citizenship.

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*The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights matters and reporting annually on civil rights. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: In our 7th decade, a continuing legacy of influence in civil rights. For more information, please visit [www.usccr.gov](http://www.usccr.gov) and follow us on [Twitter](#) and [Facebook](#).*

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<sup>1</sup> Jonathan Swan & Stef W. Kight, *Exclusive: Trump Targeting Birthright Citizenship With Executive Order*, Axios (Oct. 30, 2018), <https://www.axios.com/trump-birthright-citizenship-executive-order-Ocf4285a-16c6-48f2-a933-bd71fd72ea82.html>.

<sup>2</sup> See Michael D. Shear & Julie Hirschfeld David, *Stoking Fears, Trump Defied Bureaucracy to Advancing Immigration Agenda*, New York Times (Dec. 23, 2017), <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

<sup>3</sup> See U.S. Comm'n on Civil Rights, *U.S. Commission on Civil Rights Decries Supreme Court Decision in Muslim Ban Case* (July 13, 2018), <https://www.usccr.gov/press/2018/07-13-18-Statement.pdf>.

<sup>4</sup> U.S. Const. amend. XIV, § 1.

<sup>5</sup> 169 U.S. 649 (1898).

<sup>6</sup> 457 U.S. 202 (1982).

<sup>7</sup> James C. Ho, *Defining "American" Birthright Citizenship and the Original Understanding of the 14th Amendment*, 9 Green Bag 2d 367, 376 (2006), available at <https://www.gibsondunn.com/wp-content/uploads/documents/publications/Ho-DefiningAmerican.pdf>.

<sup>8</sup> See John Yoo, *Settled law: Birthright citizenship and the 14th Amendment*, AEI (Oct. 25, 2018), <http://www.aei.org/publication/settled-law-birthright-citizenship-and-the-14th-amendment/> (“The original public meaning of the 14th Amendment—which conservatives properly believe to be the lodestar of constitutional interpretation—affirms birthright citizenship.”); Garret Epps, *The Citizenship Clause Means What it Says*, The Atlantic (Oct. 20, 2018), <https://www.theatlantic.com/ideas/archive/2018/10/birthright-citizenship-constitution/574381/> (“over and over in the Fourteenth Amendment debates, the framers of the amendment made clear that there would be no other exclusions” beyond limited exceptions at the time).

<sup>9</sup> Yasmeen Serhan & Uri Friedman, *America isn't the "Only Country" With Birthright Citizenship*, The Atlantic (Oct. 31, 2018), <https://www.theatlantic.com/international/archive/2018/10/birthright-citizenship-other-countries-trump/574453/>.