

The Birthright Citizenship Debate: Will My Child Be a U.S. Citizen?



Immigration Blog

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The relevant words that will determine the answer to this question are “and subject to the jurisdiction thereof.” These words appear in the Fourteenth Amendment to the U.S. Constitution and are the qualifying phrase relating to those who can claim U.S. citizenship based on birth in the U.S.

It is a common belief that everyone born in the U.S. is and has always been a U.S. citizen, but that is not true. There have long been exceptions, based on the phrase “and subject to the jurisdiction thereof.” Children born to foreign nationals who have the highest diplomatic status or are heads of state are not U.S. citizens. Also, children born in the U.S. to women in or accompanying marauding invaders are not U.S. Citizens. Further, children born to non-U.S. citizens in several of the U.S. territories are generally nationals of the U.S., but not U.S. citizens.

The Trump administration has attempted to expand the meaning of the phrase “and subject to the jurisdiction thereof.” If it is found to be constitutional, Executive Order 14160 would deny U.S. citizenship due to birth in the U.S. (also called “jus soli” from the Latin for “law of the soil”) to those children born to parents with certain status.

Specifically, under this Executive Order, when a child's mother is unlawfully present in the U.S. and the father holds neither U.S. citizenship nor Lawful Permanent Residence (green card status), the child is not a U.S. citizen. Also, if the mother has lawful but temporary status and the father has neither U.S. citizenship nor Lawful Permanent Residence, that child is not a U.S. citizen.

The legal battle over the constitutionality of the Executive Order is raging. There have been multiple challenges, all of which have been successful, concluding that the interpretation of the Fourteenth Amendment by the Executive Order is not in keeping with the words and meaning of the Constitution.

When this case reached the Supreme Court on the limited issue of lower federal courts issuing temporary decisions that extended far beyond their jurisdictions, it determined that these courts could not issue nationwide injunctions in cases filed for specific plaintiffs, which impacts this specific issue and many others. As a result of this Supreme Court determination, a class action lawsuit has been filed to strike down the Executive Order, as the Supreme Court specifically permitted nationwide injunctions in class actions. In the class action suit *Barbara v. Trump*, 2025 U.S. Dist. LEXIS 130805, the federal court has provisionally blocked the Executive Order from being enforced. The federal government has not appealed or requested an emergency stay against this court decision.

A final decision by the U.S. federal judiciary on this topic has not yet been made, and it will likely be a long time before a final determination is reached. In the meantime, there is a nationwide block on the implementation of the Executive Order. This is likely the best temporary outcome while the challenge works its way through the court system. It would be difficult for families and for the government if the Executive Order were implemented and enforced in some areas of the country based on Federal Court decisions, and not in others.

Determination of U.S. citizenship is based on law, regulation, court cases, and policy. Someone who wants to explore a claim to U.S. citizenship should consult with an experienced attorney to determine the benefits of such a claim, and how to process it. Lippes Mathias LLP Immigration Team members Eileen M. Martin (emartin@lippes.com) and Elizabeth M. Klarin (eklarin@lippes.com), may be contacted regarding matters related to this topic and more.

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