

President Donald Trump is reportedly considering an executive order to essentially rewrite the Citizenship Clause of the 14th Amendment to eliminate birthright citizenship. In an interview to be aired later this week, he explains that people are now telling him that he can do this “just with an executive order.” As constitutional scholars who have studied the 14th Amendment, we write to say in no uncertain terms that he is wrong.

The Citizenship Clause—enshrined as Section 1 of the 14th Amendment to the U.S. Constitution in 1868—states simply that “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.” The 14th Amendment, adopted in the immediate aftermath of a Civil War that very nearly ripped this country in two, established the foundational principle that all persons are entitled to due process and equal protection under the law. The Citizenship Clause contained therein was meant as a direct rebuke to the infamous decision in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), in which the Supreme Court held that that people of African descent born on our soil whose ancestors were slaves could not be citizens, even if they were free.

The Supreme Court 120 years ago in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), settled the very issue raised by the president. In that case, the Court held that with certain very limited exceptions, all children born in the United States are natural-born citizens regardless of the citizenship status of their parents. Many decades later in the case of *Plyler v. Doe*, 457 U.S. 202 (1982), in which the Court upheld the right of all children regardless of alienage to a free public education, the Court analogized its holding on Equal Protection Clause grounds to the settled law on the Citizenship Clause as declared in *Wong Kim Ark*. Specifically, the Court noted that just as undocumented immigrants are “subject to the jurisdiction of the United States” for purposes of the Citizenship Clause, they too are “within the jurisdiction” of a state for purposes of the Equal Protection Clause. *Id.* at 211 n.10.

There is today no serious scholarly debate about whether a president can, through executive action, contradict the Supreme Court’s long-standing and consistent interpretation of the Citizenship Clause of the 14th Amendment. Instead, as conservative legal scholar James Ho, now a federal judge on the U.S. Court of Appeals for the 5th Circuit nominated by President Trump, wrote more than a decade ago, “a constitutional amendment is ... the only way to restrict birthright citizenship.” The executive branch’s own lawyers have long agreed.

It took a Civil War—the bloodiest conflict in American history—to resolve a dispute about what it means to be an American—a person—in this country. The 14th Amendment, including the Citizenship Clause, is the rightly-cherished result of that American tragedy.

Muneer I. Ahmad
Clinical Professor of Law and Deputy Dean of Experiential Education
Yale Law School

Walter E. Dellinger III
Douglas B. Maggs Professor Emeritus of Law
Duke University School of Law

Lucas Guttentag
Professor of the Practice of Law, Stanford Law School
Lecturer and Distinguished Senior Research Scholar, Yale Law School

Harold Hongju Koh
Sterling Professor of International Law
Yale Law School

Stephen H. Legomsky
John S. Lehmann University Professor Emeritus
Washington University School of Law

Gerard N. Magliocca
Samuel R. Rosen Professor of Law
Indiana University Robert H. McKinney School of Law

David A. Martin
Warner-Booker Distinguished Professor of International Law Emeritus
University of Virginia School of Law

Michael W. McConnell
Richard and Frances Mallery Professor and Director of the Constitutional Law Center
Stanford Law School

Hiroshi Motomura
Susan Westerberg Prager Distinguished Professor of Law
School of Law, University of California, Los Angeles (UCLA)

Gerald L. Neuman
J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law
Harvard Law School

Cristina Rodríguez
Leighton Homer Surbeck Professor of Law
Yale Law School

Peter J. Spiro
Charles Weiner Professor of Law
Temple University Law School

Geoffrey R. Stone
Edward H. Levi Distinguished Service Professor of Law
The University of Chicago

Laurence H. Tribe
Carl M. Loeb University Professor and

Professor of Constitutional Law
Harvard Law School

Stephen I. Vladeck
A. Dalton Cross Professor in Law
The University of Texas at Austin Law School

affiliations noted for identification purposes only