

‘The Jurisdiction Thereof’: How the Ambiguity of a Single Phrase Defines the Citizenship  
Debate of the 21st Century

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On July 9, 1869, Congress passed the 14th Amendment to the Constitution of the United States. Written in response to post-Civil War reconstruction efforts, Section 1 Clause 1 of the Amendment became known as the ‘Citizenship Clause’<sup>1</sup> as it legally established the citizenship status of recently freed slaves<sup>2</sup>. The Amendment’s Citizenship Clause dictates baseline eligibility and standards for those who are considered citizens of the United States. As written the Citizenship Clause is ambiguous, and its history has been fraught with polemic judicial interpretation. Presently, the ambiguity revolves around a new type of immigrant and their children whose existence could not have been foreseen by the authors of the 14th Amendment.

The moniker ‘illegal immigrant’ is a present-day invention<sup>3</sup>. These undocumented workers and their families comprise over nine million people who claim to be a part of mixed status families in the United States of America<sup>4</sup>. The legality of children born *Jus Soli* are given citizenship status due to the 1898 judicial ruling of ‘*United States vs. Wong Kim Ark*’<sup>5</sup>; the Supreme Court ruling that took place just 30 years after the passing of the 14th Amendment. This ruling established the legal citizenship of children born *Jus Soli* to parents who fall under the jurisdiction of the United States.

With an increase of undocumented workers and their families establishing themselves within the territory of the United States, there is greater urgency to reevaluate who can claim citizenship. Those opposed to the influx of immigrants in the United States believe it necessary to disallow undocumented workers from claiming *Jus Soli* citizenship status for their children, while proponents of the cause claim that historical judicial rulings provide the legality necessary to bestow citizenship on *all* who are born *Jus Soli*. This increased political dissidence exemplifies the necessity for the United States’ judicial system to reevaluate, and concretely

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<sup>1</sup> U.S. Constitution, Amendment XIV. Sec.1 Clause 1; “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.”

<sup>2</sup> “Fourteenth Amendment and Citizenship.” *Fourteenth Amendment and Citizenship* | Law Library of Congress, 30 Apr. 2012, [www.loc.gov/law/help/citizenship/fourteenth\\_amendment\\_citizenship.php](http://www.loc.gov/law/help/citizenship/fourteenth_amendment_citizenship.php).

<sup>3</sup> Rodríguez, Cristina M., "The Citizenship Clause, Original Meaning, and the Egalitarian Unity of the Fourteenth Amendment" (2009).

<sup>4</sup> Kaye, Jeffery. “The Kids Are Citizens. The Parents Are Undocumented. What Now?” Los Angeles Times, Los Angeles Times, 10 Mar. 2017, [www.latimes.com/opinion/op-ed/la-oe-kaye-mixed-status-la-families-20170310-story.html](http://www.latimes.com/opinion/op-ed/la-oe-kaye-mixed-status-la-families-20170310-story.html).

<sup>5</sup> *United States v. Wong Kim Ark*, 169 U. S. 649 (1898) “...whether a child born in the United States, of parents of Chinese de scent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States . . . becomes at the time of his birth a citizen of the United States ...”

determine, who falls within the '*Jurisdiction*' of the United States and how the Citizenship Clause can support the legality of mixed status families..

A rise of nationalistic sentiment within the United States increases the likelihood of conservative dissent towards the Citizenship Clause's current interpretation. Upon drafting the 14th Amendment and its Citizenship Clause in 1869, Senator Jacob Howard<sup>6</sup> proclaimed that the term '*Jurisdiction*' umbrellas all people except for "person's born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers...."<sup>7</sup> Such claims can be interpreted by opponents of 'illegal immigration' to mean that undocumented workers do not fall within the jurisdiction of the United States and, as such, *Jus Soli* status cannot be granted to their children<sup>8</sup>. Such an interpretation has occurred as recently as 2011 when Representative Lamar Smith, a House Judiciary Committee chairman, used Senator Howard's words as a means to discredit the validity of children born to undocumented workers in a publicly printed letter in the LA Times<sup>9</sup>. Smith claims that "no Supreme Court case has dealt directly with the offspring of illegal immigrants", and that the "Constitution gives Congress the power to decide national immigration policies..."<sup>10</sup>. His letter points out the continued enigmatic nature of the Citizenship Clause and an increased need for an impartial judicial ruling on its original intent.

Proponents of providing citizenship status to children born to undocumented workers cite the 1898 *United States vs. Wong Kim Ark* ruling as evidence for the constitutionality of *Jus Soli* children born to undocumented workers. Caution should be used, however, with relying on the 1898 ruling as the means to support this claim. The *United States vs. Wong Kim Ark* ruling officially dictated the legality of *Jus Soli* citizenship status, though at the time it did not have the means to address the topic of undocumented workers and their children. The official ruling by

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<sup>6</sup> Howard, Jacob Merritt (1805 - 1871); Representative and Senator from Michigan; Served the United States Congress from 1862 - 1871.

"HOWARD, Jacob Merritt." *HOWARD, Jacob Merritt - Biographical Information*, Library of Congress, [bioguide.congress.gov/scripts/biodisplay.pl?index=h000839](http://bioguide.congress.gov/scripts/biodisplay.pl?index=h000839).

<sup>7</sup> Elbel Consulting Services. "Original Intent of the 14th Amendment." The 14th Amendment to the United States Constitution - Fourteenth Amendment - Anchor Babies and Birthright Citizenship - Interpretations and Misinterpretations - US Constitution, [www.14thamendment.us/birthright\\_citizenship/original\\_intent.html](http://www.14thamendment.us/birthright_citizenship/original_intent.html).

<sup>8</sup> Elbel Consulting Services, *Original Intent of the 14th Amendment*

<sup>9</sup> Smith, Lamar. "Birthright Citizenship; Cuba, the U.S. and Terrorism; Unrest in Tunisia." *Articles.latimes.com*, 18 Jan. 2011, [articles.latimes.com/2011/jan/18/opinion/la-le-0118-tuesday-20110118](http://articles.latimes.com/2011/jan/18/opinion/la-le-0118-tuesday-20110118).

<sup>10</sup> Smith, *Birthright Citizenship; Cuba, the U.S. and Terrorism; Unrest in Tunisia*, 2011

the courts specifically referenced the importance of parental status in dictating citizenship to their children<sup>11</sup>. This condition has provided grounds to those dissenting from the ruling to perhaps one day deny citizenship to children of immigrants not considered under the jurisdiction of United States. This was made clear in Chief Justice Fuller's dissent of the 1898 ruling, when he publicly declared the importance of jurisdiction when claiming *Jus Soli* citizenship for children of immigrants<sup>12</sup>, stating:

*"[T]he Fourteenth Amendment does not ... arbitrarily make citizens of children born in the United States of parents who, according to the will of their native government and of this Government, are and must remain aliens."*<sup>13</sup>

At the moment, a more modern interpretation of the *United States vs. Wong Kim Ark* case has not been made<sup>14</sup>, which might allow future conservatively minded judges and justices to impress their interpretation of '*Jurisdiction*', and thus the status of parents, onto the Citizenship Clause of the Constitution. Using a 120 year- old Supreme Court case as a means to support the legality of mixed status families leaves them vulnerable to more conservative, modern-day interpretations of the Citizenship Clause and its use of the term '*Jurisdiction*'.

The historic Citizenship Clause of the 14th Amendment continues to have modern day relevancy while relying on historical interpretation for its validity. The ambiguity of the phrase "*[T]he Jurisdiction thereof*", and its impact on future court case rulings involving the 14th Amendment, makes it necessary for an impartial definition to be passed by the courts. Careful decisions must be made in order to provide stability for future citizens of the United States concerning their eligibility status. A rash interpretation of the clause could have dire consequences for millions of individuals living within the United States; therefore, it is necessary to determine an objective clarification of the century old amendment and its use of the term '*Jurisdiction*'.

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<sup>11</sup> Lollman, Justin. "The Significance of Parental Domicile Under the Citizenship Clause." *Virginia Law Review*, vol. 101, no. 2, Apr. 2015, pp. 455–500. *JSTOR* [*JSTOR*], [www.jstor.org/stable/24363229](http://www.jstor.org/stable/24363229). 456

<sup>12</sup> Lollman, *The Significance of Parental Domicile Under the Citizenship Clause*, 468

<sup>13</sup> Lollman, *The Significance of Parental Domicile Under the Citizenship Clause*, 467

<sup>14</sup> Lollman, *The Significance of Parental Domicile Under the Citizenship Clause*, 460