

118TH CONGRESS
1ST SESSION

H. R. 4864

To amend the Immigration and Nationality Act to clarify the application of birthright citizenship, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2023

Mr. GAETZ (for himself, Mr. GOSAR, Mr. SANTOS, and Mr. BIGGS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to clarify the application of birthright citizenship, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “End Birthright Citi-
5 zenship Fraud Act of 2023”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to recognize the principle
8 of limited jus soli conveyed in the 14th Amendment and
9 codified in the Immigration and Nationality Act through
10 the statement, “subject to the jurisdiction thereof”, and

1 reform United States immigration law to be consistent
2 with the statement’s original meaning by denying auto-
3 matic citizenship at birth to children born in the United
4 States to parents who are not United States nationals,
5 aliens lawfully admitted to the United States as refugees,
6 aliens lawfully admitted for permanent residence, or aliens
7 performing active service in the United States Armed
8 Forces.

9 **SEC. 3. FINDINGS.**

10 Congress finds the following:

11 (1) Naturalization is an exclusive power of Con-
12 gress, as stated in article I, section 8, clause 4 of
13 the Constitution, “The Congress should have power
14 . . . To establish an uniform Rule of Naturalization
15 . . .”.

16 (2) The phrase “subject to the jurisdiction
17 thereof” as stated in the Immigration and Nation-
18 ality Act, references the same statement found in
19 section 1 of the 14th Amendment, and carries the
20 same meaning.

21 (3) The phrase “subject to the jurisdiction
22 thereof” is a legal term of art, derived from concepts
23 related to a limited jus soli, and understood by the
24 drafters of the 14th Amendment to have its basis in

1 English common law, which in turn has its basis in
2 Roman law.

3 (4) Bartolus de Saxoferrato, a 14th-century
4 Italian and one of the first legal scholars to study
5 the Roman concept of the acquisition of citizenship,
6 *civitas civilatis*, as deduced from the *Corpus Juris*
7 *Civilis*, determined that a Roman citizen by birth,
8 *civis ab origine*, was one who had been born within
9 the territory of the state and to at least one parent
10 who was already a citizen of the state.

11 (5) In the earliest known case to articulate *jus*
12 *solus* in England, *Calvin v. Smith* (*Calvin's Case*), it
13 was agreed that the statuses of “subject” and
14 “alien” were determined by whether a person was
15 born owing allegiance to the sovereign, as indicated
16 by the Latin phrase *ad fidem regis*.

17 (6) Sir Edward Coke, one of the judges decid-
18 ing *Calvin's Case*, extrapolated one exception to *jus*
19 *solus*, writing, “But if enemies should come into any
20 of the King's dominions, and surprise any castle or
21 fort, and possess the same by hostility, and have
22 issue there, that issue is no subject to the King,
23 though he be born within his dominions, for that he
24 was not born under the King's ligeance or obedience.
25 But the time of his birth us of the essence of a sub-

1 ject born; for he cannot be a subject to the King of
2 England, unless at the time of his birth he was
3 under the ligeance and obedience of the King.”.

4 (7) Whether a person at birth is under the
5 ligeance and obedience to the sovereign is not deter-
6 mined by whether his foreign parent is subject to the
7 territorial jurisdiction of prosecution, as any foreign
8 enemy, marauder or bandit, would be subject to the
9 law of the land when captured, but, instead, whether
10 his parent is present in the territory lawfully and
11 permanently, not only voluntarily availing himself to
12 the jurisdiction thereof, but doing so with the con-
13 sent of the sovereign.

14 (8) Senator Howard, when proposing language
15 to be included in the 14th Amendment and making
16 reference to English common law exceptions, clari-
17 fied his intent that citizenship should not be con-
18 veyed to everyone born or present in the United
19 States, when he stated, “This will not, of course, in-
20 clude persons born in the United States who are for-
21 eigners, aliens, who belong to the families of ambas-
22 sadors or foreign ministers accredited to the Govern-
23 ment of the United States, but will include every
24 other class of persons”.

1 (9) Senator Lyman Trumbull, a key figure in
2 the adoption of the 14th Amendment, said that
3 “subject to the jurisdiction” of the United States
4 meant not owing allegiance to any other country.

5 (10) Owing allegiance to the United States and
6 being subject to its complete jurisdiction means
7 being “not subject to any foreign power” and ex-
8 cludes those only temporarily present in the country
9 whether lawfully or unlawfully.

10 (11) The 14th Amendment’s framers intended
11 to give citizenship only to those who owed their alle-
12 giance to the United States and were subject to its
13 complete jurisdiction, primarily the newly freed
14 slaves, who were lawful permanent residents.

15 (12) The 1866 Civil Rights Act further clarified
16 that the 14th Amendment did not apply to tem-
17 porary visitors or those who remained the citizen or
18 subject of a parent’s home country when it stated,
19 “All persons born or naturalized in the United
20 States, and not subject to any foreign power, exclud-
21 ing Indians not taxed, are hereby declared to be citi-
22 zens of the United States.”.

23 (13) American Indians and their children did
24 not become citizens until Congress passed the Indian
25 Citizenship Act of 1924, which would have been re-

1 dundant if the 14th Amendment extended citizen-
2 ship to every person born in the United States, no
3 matter what the circumstances of their birth or par-
4 entage.

5 (14) Since the inception of the 14th Amend-
6 ment, the Supreme Court has never interpreted the
7 14th Amendment to extend birthright citizenship to
8 the children of any class of individuals who are not
9 citizens themselves, or lawful permanent residents.

10 (15) Congressional intent and understanding of
11 its ability to legislate naturalization within the origi-
12 nal public meaning of the 14th Amendment is clear
13 and apparent as evidenced by legislation.

14 (16) The current concept of unqualified birth-
15 right citizenship is inconsistent with the history and
16 meaning of the 14th Amendment and has been
17 granted far too broadly in recent decades, enabling
18 fraud and civilizational altering levels of immigration
19 spurred by persons who have illegally crossed our
20 borders to obtain citizenship for their children under
21 the misinterpretation of the 14th Amendment.

22 (17) The United States is one of two developed
23 nations that currently grants automatic citizenship
24 so expansively to children born within its borders.

1 (18) Unqualified birthright citizenship provides
2 a strong incentive for illegal immigrants to cross the
3 southern border of the United States. When their
4 child is born on United States soil, the family can
5 return to their home country, and 21 years later, the
6 family may return as a part of chain migration not
7 subject to the numerical limitations by which we
8 control most international migration.

9 (19) Illegal immigrants who crossed into the
10 United States to give birth, often return to Mexico,
11 sending their children across the border daily to at-
12 tend American public schools, crowding out Amer-
13 ican students and taking advantage of American tax
14 dollars.

15 (20) Apprehensions of persons attempting to
16 enter the United States illegally at the southern bor-
17 der of the United States surpassed 2,300,000 in fis-
18 cal year 2022 and has been increasing exponentially
19 since 2020, and steadily since 1980.

20 (21) Millions of illegal immigrants have at least
21 one child who is deemed a citizen under the erro-
22 neous interpretation of the 14th Amendment. Esti-
23 mates show that most children of unauthorized im-
24 migrants are citizens by birth, and the number has
25 been increasing exponentially since 2003.

1 (22) Unqualified birthright citizenship has en-
2 abled an entire black market. Estimates show that
3 birth tourism results in 33,000 births to women on
4 tourist visas annually, and hundreds of thousands
5 more are born to mothers who are illegal aliens or
6 present on temporary visas, many of whom have
7 misrepresented the purpose of their trip to avoid
8 scrutiny.

9 (23) The birth tourism industry is rampant in
10 the United States territories, with more annual
11 births to foreign visitors than native residents in the
12 Commonwealth of the Northern Marianas Islands.

13 (24) The Government Accountability Office has
14 found the fiscal impact of providing public benefits
15 to illegal aliens, noting that—

16 (A) illegal aliens and their United States
17 children are eligible to receive emergency Med-
18 icaid services, primary and secondary education,
19 school nutrition services, Aid to Families with
20 Dependent Children (AFDC), and food stamp
21 benefits;

22 (B) cost data are not readily available be-
23 cause illegal aliens are not required to reveal
24 their eligibility to receive certain benefits, and

1 officials are often prohibited from inquiring
2 about the status of illegal aliens;

3 (C) the total costs of providing benefits to
4 illegal aliens is unknown due to Federal and
5 State cost data limitations;

6 (D) the estimated cost of providing AFDC
7 benefits to children of illegal aliens was
8 \$479,000,000 for 1992;

9 (E) of the 5 States that account for about
10 80 percent of the illegal immigrant population,
11 California provided the most benefits totaling
12 \$2,900,000,000;

13 (F) the cost of providing benefits to illegal
14 aliens is expected to increase some program
15 costs; and

16 (G) the complete fiscal impact of providing
17 benefits to illegal aliens cannot be determined,
18 since government revenues attributable to ille-
19 gal aliens are unknown.

20 **SEC. 4. CLARIFICATION OF BIRTHRIGHT CITIZENSHIP.**

21 Section 101 of the Immigration and Nationality Act
22 (8 U.S.C. 1101) is amended by adding at the end the fol-
23 lowing:

24 “(j) For purposes of section 301(a), the term ‘subject
25 to the jurisdiction thereof’ means, with respect to a person

1 born in the United States, that the person was born to
2 a parent who is, at the time of the person's birth—

3 “(1) a national of the United States;

4 “(2) a refugee;

5 “(3) an alien lawfully admitted for permanent
6 residence; or

7 “(4) an alien performing active service in the
8 armed forces (as defined in section 101 of title 10,
9 United States Code).”.

10 **SEC. 5. EFFECTIVE DATE.**

11 The amendments made by this Act shall apply to per-
12 sons born on or after the date of the enactment of this
13 Act.

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