



Written by [Joe Wolverton, II, J.D.](#) on August 3, 2010

## Senators Call for Hearings on 14th Amendment Citizenship Clause

Several key GOP senators are calling for congressional hearings into the 14th Amendment's supposed grant of citizenship to children born in the United States whose parents are illegal aliens.

A spokesman for Senate Minority Leader Mitch McConnell (R-Ky.) told reporters that his boss supports the idea of a congressional inquiry into the matter. McConnell himself said in an interview with [The Hill](#): "I think we ought to take a look at it — hold hearings, listen to the experts on it. I haven't made a final decision about it, but that's something that we clearly need to look at. Regardless of how you feel about the various aspects of immigration reform, I don't think anybody thinks that's something they're comfortable with."



McConnell, while the highest-ranking Republican lawmaker to advocate investigation into what is and is not granted by the 14th Amendment, is not the first. Senator Jon Kyl of Arizona has spoken out against the notion that the 14th Amendment casts a blanket of citizenship over all babies born in the United States to parents illegally present in the country.

"The question is, if both parents are here illegally, should there be a reward for that?" Kyle asked during an interview on CBS's Sunday morning *Face the Nation* program.

Kyl claims to have broached the subject of hearings on the citizenship of children of illegal immigrants with fellow Senator Lindsey Graham (R-S.C.), a proponent of "comprehensive immigration reform."

The issue of who is or is not a citizen has percolated to the surface of popular attention chiefly because of the controversy swirling around Arizona's recent enactment (and partial enforcement) of S.B. 1070, the law making it a state crime to be illegally present in the Grand Canyon State. The law also contains a provision, temporarily enjoined from enforcement by a federal district judge, allowing state and local law enforcement to investigate the immigration status of anyone lawfully detained and reasonably suspected of being in violation of federal immigration law.

Just as a majority of Americans support the efforts by Arizona lawmakers to staunch the flood of illegal immigrants into their state, a recent Rasmussen poll reveals that a similarly large bloc of Americans (67 percent) believes citizenship should not be automatically conferred upon American-born children of illegals.

The core of the issue of the legal status of illegal immigrants' children is the clause of the 14th Amendment that reads: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."



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The question was put before the Supreme Court in 1898 in the case of *U.S. v. Wong Kim Ark*. In that case, Mr. Ark was the child of Chinese immigrants who themselves were subject to the Chinese Exclusion Act then in force (that law prohibited Chinese nationals from immigrating to the United States and from seeking naturalization). Lawyers representing Ark argued that the language of the 14th Amendment granted automatic and irrevocable citizenship to Ark as he did not fall within any of the exceptions carved out in the Amendment.

Lawyers for the United States, on the other hand, asserted that babies born to immigrants did not deserve the status of citizen merely through the accident of the location of their birth — a concept known as *jus soli*.

The Court held in *Wong Kim Ark* that under the 14th Amendment, a child born in the United States of parents of immigrant parents who, at the time of the child's birth are subjects of a foreign power but who are living permanently in the United States and are carrying on business in the United States, and are not employed in any diplomatic or official capacity, and are not members of foreign forces in hostile occupation of United States territory, becomes a citizen of the United States at the time of birth.

It is relevant to note that the parents of Ark were not illegal aliens, but *legally present* non-citizen residents of the United States.

The precedent established by the Supreme Court in *Wong Kim Ark* was challenged most recently by the case of [Plyler v. Doe](#). In that case, the Supreme Court distinguished the facts of *Wong Kim Ark* from those of *Plyler* as it concerned the rights of undocumented alien children, that is to say, children who are brought into this country illegally by parents immigrating without proper permission.

In *Plyler*, the Court held that the 14th Amendment's phrases "subject to the jurisdiction thereof" and "within its jurisdiction" were essentially equivalent and that both referred primarily to physical presence. It held that illegal immigrants residing in a state are "within the jurisdiction" of that state, and added in a footnote that "no plausible distinction with respect to Fourteenth Amendment 'jurisdiction' can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful."

The principle argument against the instant and irrevocable bestowal of citizenship upon the children of those illegally living or working in the United States is that the U.S. Constitution does not grant citizenship at birth to a child simply because he was born within the borders of the United States. Those advocating this interpretation of the 14th Amendment insist that it is the allegiance (complete jurisdiction) of the child's parents at the time of birth that governs the issue of the child's citizenship, not his geographical location at the time of birth.

Given the caldron of issues bubbling over in the country since the fires of immigration policy were stoked by the Arizona legislature, it is likely that the precise meaning of key phrases of the 14th Amendment will be strongly debated by those on both sides of the issue. This debate could perhaps culminate in a hearing before Congress, as advocated by Senators Kyl and McConnell, or, as some hope, before the nine justices of the Supreme Court.

*Photo: Mitch McConnell*



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