



the common law” which had included as subjects virtually all native-born children, with very few exceptions: those born to foreign rulers or diplomats; on foreign public ships; to enemy forces engaged in hostile occupation; and “Indian tribes not taxed.” This understanding has been reaffirmed by innumerable court decisions since then and the 14th Amendment language has been written into the immigration statutes verbatim.

While there have been some scholarly debates since the mid-1990s about whether the Wong Kim Ark decision applies to the undocumented noncitizens of today, the clear consensus is that the logic and underlying principles of the 19th-century precedent is still compelling. Moreover, Trump’s executive order would also seem to violate

recognized that “exigent circumstances” could override such general protections, a position widely regarded as representing a sensible, legally legitimate balance (supervisor approval was also required in such cases). The new policy—published quickly and without public input or comment—eliminates all such standards and safeguards and suggests (rather blithely, in my view) that agents in the field rely on “common sense.”

Courts will closely examine the chilling effects of the new policy and the way it was promulgated as potentially violative of United States “administrative” legal norms. I think that some of these claims are strong, though courts are unlikely to preclude enforcement in protected areas entirely.

At least 22 states and other organizations have sued over Trump’s executive order to end birthright citizenship; three federal judges have ordered a freeze on the order. What is birthright citizenship and can the president stop it via executive action?

Birthright citizenship, originally grounded in English Common Law, was later given constitutional status in the 14th Amendment, adopted in 1868 following the Civil War. A main goal was to overrule the explicitly racist reasoning of the so-called Dred Scott case in which the Supreme Court had ruled that the Constitution did not grant American citizenship to people of black African descent—even if they were born in the U.S. They were thus denied all the “rights and privileges” of American citizenship.

The language of the 14th Amendment is quite expansive and simple: “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.”

However, the question of how to interpret the phrase “subject to the jurisdiction thereof” immediately arose. It was litigated in a major Supreme Court case in 1898 involving Wong Kim Ark, a person born on U.S. soil of Chinese parents during a time when virtually all Chinese immigration was prohibited by law and Chinese people were prohibited from naturalizing. The court held that “subject to the jurisdiction thereof” should be interpreted “in the light of

Religious groups have sued the federal government to stop Immigration and Customs Enforcement (ICE) agents from conducting enforcement in places of worship, a policy they say infringes on congregants’ right to freedom of religion and expression. Is their argument legitimate?

The Trump administration’s change of enforcement guidelines regarding places of worship has already inspired great uncertainty, fear, consternation, and resistance. There are several such lawsuits already filed, and more being contemplated by many religious groups, including Christian and Jews but also Sikhs, Quakers, and many others. As one legal complaint filed in Maryland puts it: “Allowing armed government agents wearing ICE-emblazoned jackets to park outside a religious service and monitor who enters or to interrupt the service and draw a congregant out during the middle of worship is anathema to plaintiffs’ religious exercise.”

The essential legal claims highlight that the government has for decades recognized the sensitivity and dangers of enforcement actions in “protected areas,” including houses of worship and places of religious ceremonies such as weddings and funerals.

This longstanding prior policy was grounded in moral, political, and pragmatic considerations as much as legal ones, including First Amendment constitutional protections of religious freedoms to worship and to associate and statutory rules embodied in the Religious Freedom Restoration Act.

The basic Department of Homeland Security (DHS) enforcement model has long