Trump threatens to abolish birthright citizenship

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In a flagrant attack on the US Constitution and basic democratic rights, President Trump revealed in an interview made public Tuesday morning that he plans to issue an executive order to put an end to birthright citizenship. He gave no details of when he would issue the order or how it would be enforced, telling "Axios on HBO" only that White House lawyers have already given their approval.

Such an order would apply immediately to the nearly 300,000 children born to undocumented immigrants in the United States each year. If applied retroactively, it would deprive millions of young people of citizenship rights. By one estimate, such a move would double the "illegal immigrant" population overnight, increasing to 24 million the number facing the terror raids, detention and mass deportation carried out by Immigration and Customs Enforcement (ICE).

Trump's threat, whether or not he carries it out, is a significant step towards a presidential dictatorship in America. It is the first time that a president has claimed the right to rewrite the text of the Constitution to suit his political preferences. It flies in the face of the plain language of the Constitution itself, which reserves the right to amend the Constitution to Congress, by a two-thirds majority of each house, followed by ratification in two-thirds of the states.

If a president can rewrite the Fourteenth Amendment, claiming that immigration poses a threat to US national security, why not the First Amendment, guaranteeing freedom of speech, assembly and the press, under conditions where the president has defined the press as "the enemy of the people?" Why not tear up the Fourth Amendment protection against illegal searches or the Fifth Amendment guarantee of due process and protection against self-incrimination, in the name of supporting "our great police officers," as Trump would put it?

Despite Trump's claim that his own lawyers in the White House Counsel's office support his right to "re-interpret" the Fourteenth Amendment, there is no genuine legal dispute over whether the Fourteenth Amendment provides for birthright citizenship. The Supreme Court found that it did in the 1898 case of *United States v. Wong Kim Ark*. Every subsequent decision of the court has reinforced that precedent, while explicitly extending the language of "due process" and "equal protection of the law," also found in the Fourteenth Amendment, to undocumented immigrants.

The Fourteenth Amendment was ratified in 1868, three years after the end of the Civil War and the ratification of the Thirteenth Amendment, which formally abolished slavery. The amendment was needed to suppress efforts by the former Confederate states to deny citizenship and other political and legal rights to the former slaves, and to reverse the legal precedent of the notorious Supreme Court decision in *Dred Scott v. Sandford* (1857), ruling that black people had no legal or citizenship rights, regardless of whether they were slaves or free.

The first sentence of the Fourteenth Amendment defines what is called birthright citizenship: "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."

The words "subject to the jurisdiction thereof" made an exception for the children of foreign envoys, who enjoyed diplomatic immunity and therefore were not subject to US laws. All other children born on American soil were citizens with full legal rights from the moment of their birth. The intention of Congress in enacting the amendment, to apply it to the children of immigrants as well as the children of former slaves, was made clear in the congressional debates, in which senators explicitly declared that the children of Chinese laborers in California would be covered.

Birthright citizenship has come under attack in the last two decades from ultra-right and anti-immigrant groups, primarily but not exclusively in the orbit of the Republican Party.

Former Senate Majority Leader Harry Reid, one of the most powerful Democrats in Washington, introduced the Immigration Stabilization Act in 1993 with the declaration that "no sane country" would permit birthright citizenship

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because it provided an "incentive for pregnant alien women to enter the United States illegally… for the purpose of acquiring citizenship for the child and accompanying federal financial benefits."

In 2010, a number of Republican senators voiced their support for putting an end to birthright citizenship, or at least holding hearings on the subject, including then-Minority Leader Mitch McConnell, 2008 presidential candidate John McCain, Lindsey Graham, and Jeff Sessions, now Trump's attorney general.

In 2015, Trump made repeal of birthright citizenship a major part of his campaign for the Republican presidential nomination, which he launched with a racist diatribe against Mexican immigrants, vilifying them as rapists and murderers. In the course of the campaign, many of his Republican rivals came over to that position, including Texas Senator Ted Cruz and Ben Carson, now Trump's housing secretary.

But in both 2010 and 2015-2016, there was no suggestion that birthright citizenship could be abolished through executive order. It was generally accepted, both by supporters and opponents, that such a clear and dramatic change in the Fourteenth Amendment was possible only through passage of a further constitutional amendment.

As is typically the case with Trump, he surrounded his claim of presidential authority to amend the Constitution with a series of lies, declaring, "We're the only country in the world where a person comes in and has a baby, and the baby is essentially a citizen of the United States for 85 years, with all of those benefits."

Actually, 29 out of the 34 nations in the Western Hemisphere, which emerged and developed through mass immigration, grant automatic citizenship to all those born within their borders. Besides the United States, the list includes Canada, Mexico, Brazil, Argentina, Peru, Venezuela, Chile, Cuba and the Central American countries whose citizens are now fleeing to escape violence, repression and poverty, the results of US imperialist intervention and oppression.

All of these countries' independence followed in the historical wake of the American Revolution, which established a republic based not on race, religion, ethnicity or even geography, but on enlightenment ideals. This democratic heritage is what Trump is seeking to end with his calls for an American nationalism defined by bristling hostility to enemies foreign and domestic. This reeks of the "blood and soil" nationalism espoused above all by the Nazis and illuminates why Trump's nationalism is intrinsically bound up with authoritarianism.

The media reaction to Trump's proposal for a massive, fundamental attack on the entire constitutional structure of the United States—redefining the nature of citizenship and greatly expanding the powers of the chief executive—has been superficial and unserious.

The *New York Times*, as usual, set the tone with a "news analysis" dismissing Trump's threat to issue an executive order, saying, "The statement sounded more like a political stunt than a reasoned legal argument, and its timing, coming a week before the midterm elections, was suspect. Nor was it clear what the executive order would say, or how it could change the meaning of the Constitution."

By Tuesday evening, television news broadcasts had relegated the president's proposal to rewrite the US Constitution to just one among many news items, while ABC News prominently featured the rebuttal by House Speaker Paul Ryan, who told a talk-radio station, "You cannot end birthright citizenship with an executive order. As a conservative, I'm a believer in following the plain text of the Constitution, and I think in this case the 14th Amendment is pretty clear, and that would involve a very, very lengthy constitutional process."

Ryan, however, is retiring, in large measure because of his lack of influence in the Trump administration. Other congressional Republican leaders were either silent, like Majority Leader Mitch McConnell, or openly supportive.

Senate Judiciary Chairman Charles Grassley (R-Iowa) said that birthright citizenship applies to legal immigrants, but claimed, falsely, that there is "a debate among legal scholars about whether that right extends to the children of illegal immigrants." Grassley most recently spearheaded the confirmation of Supreme Court Justice Brett Kavanaugh, who would be part of any high court review of legal challenges to a Trump executive order.

There is no doubt an electoral component to the timing of Trump's announcement, which follows a series of highly publicized attacks on immigrants, including the dispatch on Monday of 5,200 heavily armed troops to the US-Mexico border, more than the Pentagon presently deploys in Iraq or Syria, to block the entry of the caravan of Central American refugees that is still weeks away from US soil.

But there is far more to this announcement than a last-minute effort to arouse Trump's "base" of racists and chauvinists. Trump has spent the past two years laying the basis for a fascistic movmement. These efforts will only be intensified in the aftermath of the November 6 elections.

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