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The Rutherford Institute Statement on the Trump Administration’s Proposed Executive Order Denying Birthright Citizenship

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CHARLOTTESVILLE, Va. — President Trump’s announcement that he intends, through issuance of an Executive Order, to terminate birthright citizenship, which confers citizenship to children of noncitizens who are born in the U.S., is in direct conflict with the plain terms of the United States Constitution, namely the Fourteenth Amendment, which states: “*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.*”

No reputable legal authority supports the idea that a President may, through the fiat of an Executive Order, abolish and ignore the unmistakable language of the Constitution granting citizenship to all persons born in the United States. Moreover, the idea that Congress may enact a law with the effect of amending the Constitution to terminate birthright citizenship, as Sen. Lindsey Graham has suggested, is only slightly less implausible. “The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship.” *Afroyim v. Rusk*, 387 U.S. 253, 267-68 (1967).

“Any attempt to terminate birthright citizenship through issuance of an Executive Order or legislative act is a craven act of defiance against the Constitution and laws of the United States,” declared constitutional attorney John W. Whitehead, president of The Rutherford Institute. “As a nation, we must reject and denounce this kind of naked abuse of power, especially when it endangers the fundamental guarantees set forth in the Constitution.”

The Fourteenth Amendment, enacted in 1868, arose in response to the Supreme Court’s *Dred Scott* decision, which had held that freed slaves were not U.S. citizens. Not long after the Fourteenth Amendment was enshrined as part of the nation’s fundamental guiding principles, the principle of birthright citizenship was affirmed by the U.S. Supreme Court in *United States v. Wong Kim Ark*, which declared that the citizenship granted thereby applies to persons of all races, and “[w]hatever considerations, in the absence of a controlling provision of the constitution, might influence the legislative or the executive branch of the government to decline to admit persons of [a particular] race to the status of citizens of the United States, there are none that can constrain or permit the judiciary to refuse to give full effect to the peremptory and explicit language of the fourteenth amendment” granting birthright citizenship. *United States v. Wong Kim Ark*, 169 U.S. 649, 694 (1898).

Despite President Trump’s assertion that the United States is the only country to provide birthright citizenship is blatantly inaccurate. In fact, 33 other countries, including all of the European nations and many of the United States’ neighbors in North and South America, including Brazil, Canada and Mexico, have birthright citizenship laws.