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Declined to Extend by *Doe v. Trump*, 1st Cir.(Mass.), October 3, 2025

18 S.Ct. 456

Supreme Court of the United States.

UNITED STATES

v.

WONG KIM **ARK**.

No. 132.

|
March 28, 1898.**Opinion**

Mr. Justice GRAY, after stating the facts in the foregoing language, delivered the opinion of the court.

The facts of this case, as agreed by the parties, are as follows: Wong Kim Ark was born in 1873, in the city of San Francisco, in the state of California and United States of America, and was and is a laborer. His father and mother were persons of Chinese descent, and subjects of the emperor of China. They were at the time of his birth domiciled residents of the United States, having previously established and are still enjoying a permanent domicile and residence therein at San Francisco. They continued to reside and remain in the United States until 1890, when they departed for China; and, during all the time of their residence in the United States, they were engaged in business, and were never employed in any diplomatic or official capacity under the emperor of China. Wong Kim Ark, ever since his birth, has had but one residence, to wit, in California, within the United States and has there resided, claiming to be a **citizen** of the United States, and has never lost or changed that residence, or gained or acquired another residence; and neither he, nor his parents acting for him, ever renounced his allegiance to the United States, or did or committed any act or thing to exclude him *653 therefrom. In 1890 (when he must have been about 17 years of age) he departed for China, on a temporary visit, and with the intention of returning to the United States, and did return thereto by sea in the same year, and was permitted by the collector of customs to enter the United States, upon the sole ground that he was a native-born **citizen** of the United States. After such return, he remained in the United States, claiming to be a **citizen** thereof, until 1894, when he (being about 21 years of age, but whether a little above or a little under that

age does not appear) again departed for China on a temporary visit, and with the intention of returning to the United States; and he did return thereto, by sea, in August, 1895, and applied to the collector of customs for permission to land, and was denied such permission, upon the sole ground that he was not a **citizen** of the United States.

It is conceded that, if he is a **citizen** of the United States, the acts of congress known as the 'Chinese Exclusion Acts,' prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him.

The question presented by the record is whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a **citizen** of the United States, by virtue of the first clause of the fourteenth amendment of the constitution: '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.'

I. In construing any act of legislation, whether a statute enacted by the legislature, or a constitution established by the people as the supreme law of the land, regard is to be had, not only to all parts of the act itself, and of any former act of the same lawmaking power, of which the act in question is an amendment, but also to the condition and to **459 the history *654 of the law as previously existing, and in the light of which the new act must be read and interpreted.

The constitution of the United States, as originally adopted, uses the words '**citizen** of the United States' and 'natural-born **citizen** of the United States.' By the original constitution, every representative in congress is required to have been 'seven years a **citizen** of the United States,' and every senator to have been 'nine years a **citizen** of the United States'; and 'no person except a natural-born **citizen**, or a **citizen** of the United States at the time of the adoption of this constitution, shall be eligible to the office of president.' Article 2, § 1. The fourteenth article of amendment, besides declaring that '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,' also declares that 'no state shall make or enforce any law which shall abridge the privileges or immunities of **citizens** of the United States; nor shall any state deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’ And the fifteenth article of amendment declares that ‘the right of **citizens** of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.’

The constitution nowhere defines the meaning of these words, either by way of inclusion or of exclusion, except in so far as this is done by the affirmative declaration that ‘all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens** of the United States.’ Amend. art. 14. In this, as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the constitution. *Minor v. Happersett*, 21 Wall. 162; *Ex parte Wilson*, 114 U. S. 417, 422, 5 Sup. Ct. 935; *Boyd v. U. S.*, 116 U. S. 616, 624, 625, 6 Sup. Ct. 524; *Smith v. Alabama*, 124 U. S. 465, 8 Sup. Ct. 564. The language of the constitution, as has been well said, could not be understood without reference to the common law. 1 Kent, Comm. 336; Bradley, J., in *Moore v. U. S.*, 91 U. S. 270, 274.

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The interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history.’ 124 U. S. 478, 8 Sup. Ct. 569.

II. The fundamental principle of the common law with regard to English nationality was birth within the allegiance—also called ‘ligealty,’ ‘obedience,’ ‘faith,’ or ‘power’—of the king. The principle embraced all persons born within the king's allegiance, and subject to his protection. Such allegiance and protection were mutual,—as expressed in the maxim, ‘*Protectio trahit subjectionem, et subjectio protectionem*,’—and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were therefore natural-born subjects. But the children, born within the realm, of foreign ambassadors, or the children of alien enemies, born during and within their hostile occupation of part of the king's dominions, were not natural-born subjects, because not born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction, of the king.

This fundamental principle, with these qualifications or or *656 explanations of it, was clearly, though quaintly, stated in the leading case known as ‘Calvin's Case,’ or the ‘Case of the Postnati,’ decided in 1608, after a hearing in the exchequer chamber before the lord chancellor and all the judges of England, and reported by Lord Coke and by Lord Ellesmere. *Calvin's Case*, 7 Coke, 1, 4b–6a, 18a, 18b; Ellesmere, *Postnati*, 62–64; s. c. 2 How. St. Tr. 559, 607, 613–617, 639, 640, 659, 679.

The English authorities ever since are to the like effect. Co. Litt. 8a, 128b; Lord Hale, in Harg. Law Tracts, 210, and in 1 Hale, P. C. 61, 62; 1 Bl. Comm. 366, 369, 370, 374; 4 Bl. Comm. 74, 92; *Lord Kenyon, in Doe v. Jones*, 4 Term R. 300, 308; Cockb. Nat. 7; Dicey, *Confl. Laws*, pp. 173–177, 741.

.... It thus clearly appears that by the law of England for the last three centuries, beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, and the jurisdiction of the English sovereign; and therefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born.

III. The same rule was in force in all the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the constitution as originally established.

....

The words ‘in the United States, and subject to the jurisdiction thereof,’ in the first sentence of the fourteenth amendment of the constitution, must be presumed to have been understood and intended by the congress which proposed the amendment, and by the legislatures which adopted it, in the same sense in which the like words had been used by Chief Justice Marshall in the wellknown case of *The Exchange*, and as the equivalent of the words ‘within the limits and under the jurisdiction of the United States,’ and the converse of the words ‘out of the limits and jurisdiction of the United States,’ as habitually used in the naturalization acts. This presumption is confirmed by the use of the word ‘jurisdiction,’ in the last clause of the same section of the fourteenth amendment, which forbids any state

to 'deny to any person within its jurisdiction the equal protection of the laws.' It is impossible to construe the words 'subject to the jurisdiction thereof,' in the opening sentence, as less comprehensive than the words 'within its jurisdiction,' in the concluding sentence of the same section; or to hold that persons 'within the jurisdiction' of one of the states of the Union are not 'subject to the jurisdiction of the United States.'

These considerations confirm the view, already expressed in this opinion, that the opening sentence of the fourteenth *688 amendment is throughout affirmative and declaratory, intended to allay doubts and to settle controversies which had arisen, and not to impose any new restrictions upon citizenship.

By the civil rights act of 1866, 'all persons **472 born in the United States, and not subject to any foreign power, excluding Indians not taxed,' were declared to be **citizens** of the United States. In the light of the law as previously established, and of the history of the times, it can hardly be doubted that the words of that act, 'not subject to any foreign power,' were not intended to exclude any children born in this country from the citizenship which would theretofore have been their birthright; or, for instance, for the first time in our history, to deny the right of citizenship to native-born children or foreign white parents not in the diplomatic service of their own country, nor in hostile occupation of part of our territory. But any possible doubt in this regard was removed when the negative words of the civil rights act, 'not subject to any foreign power,' gave way, in the fourteenth amendment of the constitution, to the affirmative words, 'subject to the jurisdiction of the United States.'

This sentence of the fourteenth amendment is declaratory of existing rights, and affirmative of existing law, as to each of the qualifications therein expressed,—'born in the United States,' 'naturalized in the United States,' and 'subject to the jurisdiction thereof'; in short, as to everything relating to the acquisition of citizenship by facts occurring within the limits of the United States. But it has not touched the acquisition of citizenship by being born abroad of American parents; and has left that subject to be regulated, as it had always been, by congress, in the exercise of the power conferred by the constitution to establish a uniform rule of naturalization.

The effect of the enactments conferring citizenship on foreign-born children of American parents has been defined, and the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents, has been affirmed, in well-considered opinions of the executive

departments of the government, since the adoption of the fourteenth amendment of the constitution.

The foregoing considerations and authorities irresistibly lead us to these conclusions: The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance **474 and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes. The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every **citizen** or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory, is yet, in the words of Lord Coke in Calvin's Case, 7 Coke, 6a, 'strong enough to make a natural subject, for, if he hath issue here, that issue is a natural-born subject'; and his child, as said by Mr. Binney in his essay before quoted, 'If born in the country, is as much a **citizen** as the natural-born child of a **citizen**, and by operation of the same principle.' It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides, seeing that, as said by Mr. Webster, when secretary of state, in his report to the president on Thrasher's case in 1851, and since repeated by this court: 'Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance, or of renouncing any former allegiance,—it is well known that by the public law an alien, or a stranger *694 born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason or other crimes as a native-born subject might be, unless his case is varied by some treaty stipulations.' Executive Documents H. R. No. 10, 1st Sess. 32d Cong. p. 4; 6 Webster's Works, 526; U. S. v. Carlisle, 16 Wall. 147, 155; Calvin's Case, 7 Coke, 6a; Ellesmere, Postnati, 63; 1 Hale, P. C. 62; 4 Bl. Comm. 74, 92.

To hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of **citizens** or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as **citizens** of the United States.

VI. Whatever 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 the Chinese 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, which declares and ordains that ‘all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are **citizens** of the United States.’

Chinese persons, born out of the United States, remaining subjects of the emperor of China, and not having become **citizens** of the United States, are entitled to the protection of and owe allegiance to the United States, so long as they are permitted by the United States to reside here; and are ‘subject to the jurisdiction thereof,’ in the same sense as all other aliens residing in the United States. *Yick Wo v. Hopkins* (1886) 118 U. S. 356, 6 Sup. Ct. 1064; *Lau Ow Bew v. U. S.* (1892) 144 U. S. 47, 61, 62, 12 Sup. Ct. 517; *Fong Yue Ting v. U. S.* (1893) 149 U. S. 698, 724, 13 Sup. Ct. 1016; *Lem Moon Sing v. U. S.* (1895) 158 U. S. 538, 547, 15 Sup. Ct. 967; *Wong Wing v. U. S.* (1896) 163 U. S. 228, 238, 16 Sup. Ct. 977.

The fourteenth amendment of the constitution, in the declaration that ‘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,’ contemplates two sources of citizenship, and two only,—birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a **citizen** of the United States, and needs no naturalization. A person born out of the jurisdiction of the United States can only become a **citizen** by being naturalized, either by treaty, as in the case *703 of the annexation of foreign territory, or by authority of congress, exercised either by declaring certain classes of persons to be **citizens**, as in the enactments conferring citizenship upon

foreign-born children of **citizens**, or by enabling foreigners individually to become **citizens** by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts.

The power of naturalization, vested in congress by the constitution, is a power to confer citizenship, not a power to take it away. ‘A naturalized **citizen**,’ said Chief Justice Marshall, ‘becomes a member of the society, possessing all the rights of a native **citizen**, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize congress to enlarge or abridge those rights. The simple power of the national legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual. The constitution then takes him up, and, among other rights, extends to him the capacity of suing in the courts of the United States, precisely under the same circumstances under which a native might sue.’ *Osborn v. Bank*, 9 Wheat. 738, 827. Congress having no power to abridge the rights conferred by the constitution upon those who have become naturalized **citizens** by virtue of acts of congress, a fortiori no act or omission of congress, as to providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birthright, by virtue of the constitution itself, without any aid of legislation. **478 The fourteenth amendment, while it leaves the power, where it was before, in congress, to regulate naturalization, has conferred no authority upon congress to restrict the effect of birth, declared by the constitution to constitute a sufficient and complete right to citizenship.

No one doubts that the amendment, as soon as it was promulgated, applied to persons of African descent born in the United States, wherever the birthplace of their parents might have been; and yet, for two years afterwards, there was no statute authorizing persons of that race to be naturalized. If the omission or the refusal of congress to permit certain *704 classes of persons to be made **citizens** by naturalization could be allowed the effect of correspondingly restricting the classes of persons who should become **citizens** by birth, it would be in the power of congress, at any time, by striking negroes out of the naturalization laws, and limiting those laws, as they were formerly limited, to white persons only, to defeat the main purpose of the constitutional amendment.

The fact, therefore, that acts of congress or treaties have not permitted Chinese persons born out of this country to become **citizens** by naturalization, cannot exclude Chinese persons born in this country from the operation of the broad and clear words of the constitution: ‘All persons born in the United

States, and subject to the jurisdiction thereof, are **citizens** of the United States.’

VII. Upon the facts agreed in this case, the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth. No doubt he might himself, after coming of age, renounce this citizenship, and become a **citizen** of the country of his parents, or of any other country; for by our law, as solemnly declared by congress, ‘the right of expatriation is a natural and inherent right of all people,’ and ‘any declaration, instruction, opinion, order or direction of any officer of the United States, which denies, restricts, impairs or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic.’ Rev. St. § 1999, re-enacting Act July 27, 1868, *c. 249, § 1* (15 Stat. 223, 224). Whether any act of himself, or of his parents, during his minority, could have the same effect, is at least doubtful. But it would be out of place to pursue that inquiry, inasmuch as it is expressly agreed that his residence has always been in the United States, and not elsewhere; that each of his temporary visits to China, the one for some months when he was about 17 years old, and the other for something like a year about the time of his coming of age, was made with the intention of returning, and was followed by his actual return, to the United States; and ‘that said Wong Kim Ark has not, either by himself or his parents acting ***705** for him, ever renounced his allegiance to the United States, and that he has never done or committed any act or thing to exclude him therefrom.’

The evident intention, and the necessary effect, of the submission of this case to the decision of the court upon the facts agreed by the parties, were to present for determination the single question, stated at the beginning of this opinion, namely, whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a **citizen** of the United States. For the reasons above stated, this court is of opinion that the question must be answered in the affirmative.

Order affirmed.