

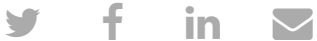
CONSTITUTIONAL LAW

About That Right-Wing Argument That Kamala Harris Isn't A Citizen

It makes perfect sense. Until you read the 14th Amendment!

By LORELEI LAIRD

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Vice President-elect Kamala Harris (Photo by Ethan Miller/Getty Images)

Way back at the beginning of December, you may recall that Donald Trump intervened in the [laughable](#) and [quickly rejected](#) lawsuit from Texas seeking to invalidate election results Ken Paxton didn't like. Trump was represented in that intervention by a Chapman University law professor named John Eastman.

Eastman's prior claim to fame was writing an op-ed in Newsweek last August arguing that Kamala Harris is not really a U.S. citizen. This was widely viewed as racist — because it is — and Newsweek had to tack a long semi-apology onto [the piece](#) saying they were shocked, shocked that the piece was being “used to perpetuate racism and xenophobia.”

immigrant part of the right wing has been trying unsuccessfully to promote it for years. I first ran across it in an [amicus brief in a largely unrelated case](#) about American Samoa, filed by the Immigration Reform Law Institute, the legal arm of a cluster of anti-immigrant organizations that includes the Center for Immigration Studies. It's been promoted in at least one other op-ed, [taken down here](#) by Elie Mystal. It's probably the basis for Trump's [recent chatter](#) about ending birthright citizenship by executive order.

And, as a matter of law, it is hot garbage. Because in order to believe it, you have to believe that the Fourteenth Amendment does not mean what it says, and then disregard a Supreme Court precedent that directly says the children of immigrants are citizens. I really think the right wing, circa 2020, is incapable of feeling embarrassment.

The Fourteenth Amendment to the United States says 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." Eastman concedes that in practice, the U.S. confers citizenship at birth, but claims that the "subject to the jurisdiction thereof" clause makes this legally incorrect. I would like to illuminate exactly why, but I find I cannot. Eastman says that Harris and others in her shoes are not subject to the *complete* jurisdiction of the U.S., but the closest he comes to explaining why is saying Harris owed allegiance to her parents' countries if they were not naturalized citizens at her birth.

Eastman then goes on to say that his position is not contradicted by the Supreme Court's holding in *U.S. v. Wong Kim Ark*, which said a native-born son of Chinese immigrants was a citizen. Sure, the case directly said "The fourteenth amendment ... includ[es] all children here born of resident aliens," but Eastman says this was dicta. He doesn't provide any evidence for that, but who are you going to believe, a white man or your own eyes? (You actually don't need to choose, because another white man, UCLA con law professor Professor Eugene Volokh, [rebutted Eastman](#).)

The other arguments for this belief are equally bad. The amicus brief in the American Samoa case is mostly aimed at the children of undocumented immigrants, so it doesn't apply to Harris, but does make the delightfully self-contradictory argument that such people aren't subject to the jurisdiction of the United States because they can be deported. [The op-ed](#)

lineage, and appears to rely on a word the author inserted into an 1866 Congressional debate.

The Obama era taught me that when people passionately defend arguments that are obviously nonsense, it's time to look for the racism. But in the course of writing this, I did find evidence for another explanation. [Eastman's bio at Chapman](#) notes that he took time off from the university to run for California Attorney General in 2010. He didn't win that race, or even get past the primary, but guess who did?

[Kamala Harris](#).

Lorelei Laird is a freelance writer specializing in the law, and the only person you know who still has an "I Believe Anita Hill" bumper sticker. Find her at wordofthelaird.com.



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