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NAME

Birthright Citizenship - SCOTUS

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8 SPEAKERS

Nick Capodice
Felix Poon
Hannah McCarthy
Carol Nakano
Bethany Berger
Archive
Julie Novkov
Erika Lee

START OF TRANSCRIPT

[00:00:02] Nick Capodice
You're listening to Civics 101. I'm Nick Capodice. Today we are revisiting a topic that is at top of mind right now as on his first day in office, President Donald Trump has signed an executive order titled, quote, protecting the meaning and Value of American Citizenship. End quote. This order is designed to overturn the 14th amendment to the Constitution, which guarantees birthright citizenship. The relevant part of the 14th amendment, by the way, says, quote, 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. Now we will be doing an episode on executive orders. We're going to do another on birthright citizenship explicitly, and we're working on one about constitutional crises. So stay tuned for those. But today we are looking back at a At a critical moment in the history of birthright citizenship. It is the landmark Supreme Court case from 1898 that cemented the interpretation of the 14th Amendment, as we understand it today. The case also determined the fate of the man at its center, Wong Kim Ark. This episode was produced back in 2020 by Felix Poon, who is now a producer on the podcast Outside In. But at the time, he was an intern with us here on civics 101. With all the developing news around this executive order, including the many, many lawsuits that have already been filed to stop it. I'm not going to say the exact number here, because it's likely to have increased in the time between me saying these words and them getting to your ears. It seemed like a good time to replay this episode, because it provides some understanding of the rights held by the people born in this country, and how the Supreme Court has, at least in the past, affirmed Affirm those rights. So without further ado, here's the episode.

[00:02:06] Felix Poon
Hi, Nick. Hi, Hannah.

[00:02:07] Nick Capodice
Hey, Felix. Hello, Felix. Listeners, if you don't know who this is, this is Felix Poon. Felix has been an intern with civics for the last summer and has been a delight to work with. And we're very glad you're here today, Felix.

[00:02:17] Hannah McCarthy
Yeah. And, Felix, you are going to guest host today, right?

[00:02:20] Felix Poon
I am, because I've got a story for you. Ooh. And this story starts in 1895. A man named Wong Kim Ark is on a steamship returning to his hometown of San Francisco, the city where he was born. And when he lands, a customs agent says he can't enter the United States. He says You're Chinese, and there's a Chinese exclusion law, so you can't come in.

[00:02:45] Hannah McCarthy
But you said it was his hometown of San Francisco, right? So are you saying that someone born on U.S. soil was not allowed back into the country?

[00:02:54] Felix Poon
That's right. That's what I'm saying. And he wasn't the only one. This was actually pretty common at that time. Customs agents tried to keep as many Chinese Americans out as they could, but some Chinese Americans sued the US government to be granted entry. Wong Kim Ark sued, and his case went all the way to the Supreme Court. And it's his case that solidifies birthright citizenship. Nowadays, pretty much everybody knows about birthright citizenship, which is anybody born in this country is a US citizen, and that's the law. But not many people have ever heard of Wong Kim Ark and the landmark Supreme Court decision that decided his fate and the fate of US immigration policy that endures to this day. And that, my friends, is the story I'm going to tell you about today. I'm Felix Poon, and this is Civics 101, the podcast refresher course on the basics of how our democracy works. Today, the story of Wong Kim Ark, the man. The landmark Supreme Court case and the legacy of birthright citizenship. Before I tell you about Wong Kim Ark. I need to tell you about the America that he was born into. Chinese immigrants began arriving in significant numbers in the 1850s. Many came for the gold rush in California, and when the gold rush ended, they found jobs as railroad workers, miners, farmhands, laundry owners, and domestics. But hostility towards them had been growing in San Francisco.

[00:04:24] Carol Nakano
You have a labor organizer, Dennis Kearney, who was agitating that the Chinese were taking white jobs and and running a Chinese must go campaign.

[00:04:37] Felix Poon
This is Carol Nakano, professor of political science at Swarthmore College and coauthor of the forthcoming book, American by Birth. Wong, Kim. Ark and the battle for citizenship.

[00:04:46] Carol Nakano
In July of 1877, a mob formed and destroyed $100,000 in Chinese owned property, burning laundries and leaving for dead.

[00:04:58] Felix Poon
That's millions of dollars of damage in today's money. That's a lot. But more importantly, that's lost life and a lost sense of safety and belonging. And this racially motivated violence happened not just in San Francisco, but all along the West Coast, including Seattle, Tacoma and Los Angeles, where more than half the victims were publicly lynched.

[00:05:19] Hannah McCarthy
That's horrifying. And I feel like this is a moment in American history that we really don't hear about. At least I didn't learn about in school, did you, Nick?

[00:05:28] Nick Capodice
No, not at all.

[00:05:29] Felix Poon
Yeah, I didn't even learn about it until college. And I was kind of shocked to hear about it, especially that, like, I'd never learned about it before. And this is when Congress began excluding Chinese immigrants. They passed the country's first immigration act, the Page Act, in 1875, barring Chinese women from entering the country. And then in 1882, the Chinese Exclusion Act barred all Chinese people from entering the country. So that's the hostile environment that Wong Kim Ark was born into. Around 1871, in San Francisco. He grew up in Chinatown. He was five foot seven tall. His father was Wang Xiaoping and his mother was Li Mei. His parents came to the US from Toisan, China. So Public Record listed them as merchants. But like, what does that actually mean?

[00:06:19] Carol Nakano
They ran a store that's considered a merchant, which was in the city directory listed in 1879 and 1880 as a butcher and provisioner.

[00:06:31] Felix Poon
Wong Kim Ark didn't have much formal education.

[00:06:33] Carol Nakano
From age 11, he was listed as a cook.

[00:06:37] Felix Poon
And that's about all we know about his life in the US. There are records of four trips he took to China. The first was in 1889 with his parents. He gets married on this trip to a woman named Yishi from his ancestral town of Toisan. His second trip is in 1894 to 1895 to visit his wife and family. And it's coming back to San Francisco on this second trip that the that the customs agent says he can't enter the United States.

[00:07:03] Bethany Berger
And so he was detained and he said, hey, I was born here. I'm a citizen. You have to let me in.

[00:07:10] Felix Poon
This is Bethany Berger, professor of law at the University of Connecticut.

[00:07:14] Bethany Berger
Not only did he say that he had served, he had papers with him to prove that. And the customs officer says, I don't care. Chinese cannot become citizens by being born in the United States.

[00:07:28] Felix Poon
One of those papers is a notarized letter.

[00:07:30] Archive
We, the undersigned, do hereby certify that the said Wong Kim Ark is well known to us.

[00:07:35] Felix Poon
A witness statement.

[00:07:36] Carol Nakano
Anybody else traveling? A white American traveling abroad didn't have to have anything in the way of documents.

[00:07:45] Felix Poon
This is Carol Nakano again.

[00:07:47] Carol Nakano
And so the Chinese had a far more rigorous documentation, uh, regime than anybody else. They had to have witnesses that attested to, you know, where they lived and that they knew them?

[00:08:02] Felix Poon
These witnesses couldn't be Chinese. They had to be white.

[00:08:05] Nick Capodice
Wait, was that written in? Was that was that a stipulation of it? Like they had to be white?

[00:08:10] Felix Poon
I don't think they said it was like a written requirement, like, you must make sure you get a white person. It was just kind of like an unspoken rule that they wouldn't trust Chinese people. And so it was just kind of like, they can't be Chinese. In practice, it was find a white person, write.

[00:08:25] Carol Nakano
And they would go through an interview, get this certificate that allowed them to return, go and return. And it was a single use document.

[00:08:35] Felix Poon
Even with this documentation in hand, the customs agent denies Wong Kim Ark entry. And so basically, he has nowhere to go. So he gets back on the boat.

[00:08:45] Hannah McCarthy
Seriously, did he have to go back to China?

[00:08:47] Felix Poon
We'll get to that part. But first, I have to tell you about those who came before him and what happened to them. There are a lot of Chinese men traveling back and forth to visit family in China at this time, and many are getting denied reentry to the United States. Some of them just give up and make the trip back to China a trip that takes 33 days, according to an old newspaper clipping. But others fought their detentions in court with the help of the six companies.

[00:09:12] Nick Capodice
Wait. The six companies? What's that?

[00:09:14] Felix Poon
Well, companies is probably a misnomer. There are really six prominent Chinese associations in San Francisco, and they came together as one to provide social support, but also to provide legal support to Chinese Americans. Here's Bethany Berger again.

[00:09:31] Bethany Berger
In the first year of the exclusion laws, they brought 7000 cases challenging Chinese exclusion. And they were so successful in doing this that Congress and the customs officials kept trying to amend the laws to make it harder for them to win these cases.

[00:09:53] Hannah McCarthy
That's actually very cool.

[00:09:59] Felix Poon
So the six companies are there for Wong Kim Ark. They file for habeas corpus.

[00:10:03] Nick Capodice
Habeas corpus, that little Latin phrase that means bring the unlawfully detained person before the court.

[00:10:10] Felix Poon
Yep. That's it. It's a right to a trial. Meanwhile, Wong Kim Ark is still off the coast of San Francisco on a ship, and that ship is about to sail back to China.

[00:10:20] Bethany Berger
So we put on to another ship, and then that ship wants to go back, and he's put on to another ship. And so this is a period of months in which he's confined, looking over at his hometown, but unable to set foot there.

[00:10:36] Nick Capodice
So is he granted habeas?

[00:10:38] Felix Poon
They do grant him habeas. But what's interesting here is that the judge actually agrees in principle with the U.S. government that Wong Kim Ark is not a citizen. But he says he has to go by legal precedent that was set by earlier court cases. And so he rules that Wong Kim Ark is a U.S. citizen because of the citizenship clause of the 14th Amendment.

[00:11:00] Hannah McCarthy
So this judge makes explicitly clear that he has a racist idea here, and that he is only making this decision based on precedence. He basically says, this is against my better judgment, but I'm going to do this anyway. And so just as a reminder that citizenship clause of the 14th amendment says 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. So Felix Wong Kim Ark won.

[00:11:35] Felix Poon
Yeah. He won. Woo! I mean, he was still unlawfully detained on three different boats for five months, but at least he won his court case.

[00:11:51] Nick Capodice
So is that it, Felix? Like, is this happily ever after for Wong Kim Ark?

[00:11:55] Felix Poon
Um, no. Not quite.

[00:11:57] Julie Novkov
Uh, the government immediately appeals. Yields. So they take it all the way up to the US Supreme Court.

[00:12:04] Felix Poon
This is Julie Novkov. She's a professor of political science at the University at Albany and coauthor with Carol on their book, American by Birth. Wong, Kim. Ark in the battle for citizenship.

[00:12:14] Julie Novkov
The majority opinion is written by Justice Horace Gray, and his response is that if people are in the United States and they're following the laws of the United States, and basically they're not in some sort of special category like that of a diplomat, um, they are living under the sovereignty of the United States, and therefore, children who are born to them in the United States are born under that sovereign power and therefore, according to common law principles, going back to England, uh, they are entitled to citizenship on the basis of the 14th Amendment.

[00:13:01] Felix Poon
In writing the majority opinion, Justice Gray did reaffirm that there are exceptions to the Citizenship clause. Diplomats are not subject to the jurisdiction of the US. If they commit a crime, they don't face the justice system the same way that we do. So their children that are born here, not US citizens, children born here of a foreign occupying force. Hasn't happened yet. Knock on wood. But if it did happen, not U.S. citizens. So what the majority opinion boils down to is that Wong Kim Ark does not fall into any of these exempt categories, so he is indeed a US citizen.

[00:13:36] Nick Capodice
But hold on. If this case was decided the other way, wouldn't you then have to revoke the citizenship of millions of children born to European immigrants?

[00:13:46] Felix Poon
I mean, basically. And Justice Gray wrote this in his opinion that to deny Wong Kim Ark his citizenship 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. This ruling is a big deal. It solidifies a path to citizenship for all immigrants that is based on the 14th amendment. But then there were some unintended consequences in the aftermath of the ruling. Like what? So there's this phenomenon of paper sons.

[00:14:24] Nick Capodice
Paper sons. I actually know about these. Do you Hannah?

[00:14:27] Hannah McCarthy
I don't. I would imagine it's someone claiming someone as their their son or daughter, but it would be son in this case.

[00:14:35] Nick Capodice
So since the only way you could be a legal Chinese immigrant to the United States was if you were a family member of somebody who had been born here, a child of somebody who had been born here. So you have all these people claiming, right? So all new Chinese immigrants to the US are claiming that they are the children of people already here on paper. Therefore, paper sons.

[00:14:53] Julie Novkov
Some of these paper sons were maybe not necessarily the sons of citizens, but they were close relatives. Maybe they were brothers, maybe they were nephews. But because there's an awareness among immigration officials that that this is happening, uh, they become far, far more suspicious. What evolves out of this is that you you wind up with kind of a cat and mouse game between Chinese who are trying to get into the United States, and immigration officials who are trying to keep as many out as possible.

[00:15:31] Felix Poon
And exclusion laws only get worse.

[00:15:34] Julie Novkov
By the time we get to 1924. Legislation is basically excluding almost all Asian immigration and denying, uh, immigrants from Asia any possibility of gaining citizenship. Um, this actually goes as far in the 1920s as denying citizenship to, uh, to to Japanese who had served.

[00:16:02]
In World War One.

[00:16:09] Nick Capodice
Civics 101 is going to be right back after a quick break.

[00:16:17] Archive
We have called the Congress here this afternoon not only to mark a very historic occasion, but to settle a very old issue that is in dispute.

[00:16:28] Felix Poon
It's not until the Immigration and Nationality Act of 1965 that immigration bans and quotas are completely lifted.

[00:16:35] Archive
With my signature. This system is abolished.

[00:16:40] Felix Poon
And finally, you have greater numbers of Asians immigrating to the US.

[00:16:44] Archive
Never again shadow the gate to the American nation.

[00:16:58] Felix Poon
Soon after that, public scrutiny over immigration shifts. And beginning around the 1980s, you have some people using the term birthright citizenship pejoratively against the children of undocumented Mexican Americans. They call for doing away with birthright citizenship.

[00:17:14] Archive
Immigration. President Trump is starting to challenge a 150 year old constitutional standard that anyone born in America is an American citizen. The president.

[00:17:24] Hannah McCarthy
But the president can't just unilaterally do away with something that was decided in the Supreme Court. Right. I mean, the Wong Kim Ark ruling means that they can't just get rid of birthright citizenship.

[00:17:37] Felix Poon
Well, some would argue that the Wong Kim Ark ruling doesn't apply here because Wong Kim's parents were here legally, while undocumented immigrants are here illegally.

[00:17:47] Nick Capodice
So what did the people you talked to think about that?

[00:17:51] Felix Poon
They don't think this argument would be very convincing in court. Basically, they say that there was no distinction back then between documented and undocumented. If you made it to US shores, you were a citizen. But given the exclusion laws, it was clear the government wanted to exclude Chinese people from this country. So they're in consensus that the Wong Kim Ark ruling does apply, and therefore, the only way to do away with birthright citizenship is to amend the Constitution. Which, by the way, is not an easy process. It would need to pass through both the House and the Senate with two thirds majorities, and then it needs to be approved by three quarters of state legislatures. So birthright citizenship is probably here to stay. And our guests all agree that's a good thing. Here's Julie Novkov.

[00:18:38] Julie Novkov
Well, I think birthright citizenship is important simply because it provides an additional layer of protection for some of the most vulnerable residents of our country. And it also, I think, telegraphs a message of equality of of being born an American, regardless of where you're coming from or what your situation is, there's a kind of moral valence to birthright citizenship that is entangled in a protective and good way with American ideals.

[00:19:24] Hannah McCarthy
Felix, I'm so curious what happened in the end to Wong Kim Ark.

[00:19:30] Felix Poon
Well, we don't really know much beyond his third and fourth trips to China to visit his family. Remember, his wife was back in China in that fourth trip in 1931 was Wong Kim Ark last. He didn't come back to the US, and we know that he died sometime in the 1940s.

[00:19:47] Nick Capodice
So do you know if, like, he died without ever knowing what his legacy was?

[00:19:51] Felix Poon
That's a really good question, Nick. And I think the best person to answer that is Erika Lee. She's a professor of American history at the University of University of Minnesota. She said the reason why he wouldn't have known is because of his lived experience. Remember those notarized witness statements Wong Kim Ark had to get? Erica went to see the originals at the National Archives at San Francisco, and she saw that by his third and fourth trips to China, the US government standardized them into a templated form.

[00:20:19] Erika Lee
It was called application of alleged American citizen of the Chinese race for pre-investigation of status. This is a government form that means that someone typeset it. Someone put it through the printer, someone ordered thousands of copies to be printed and then sent to immigration offices around the country. Having that that term alleged citizen shows just how deeply rooted and institutionalized this racism was. So? So no matter if you won the Supreme Court case on a daily basis, you're still going to be suspect. I also remember, you know, flipping through the file and wondering, where's the copy of the Supreme Court case? Like, shouldn't this be, like in monopoly? Shouldn't this be your get out of jail free card? Like, shouldn't he have just, like, gotten walked off the ship? Hey, it's Wonka, Mark. You know, come on in. That didn't happen.

[00:21:19] Hannah McCarthy
Felix, this is something that we encounter a lot when it comes to people who win their Supreme Court cases in the names of civil rights. And that's that. It just takes so long for whatever it is they've won to be implemented across the United States. Right? That that that person, ostensibly the beneficiary, isn't practically the beneficiary. They don't get to reap the reward of that decision. And it sounds like that's how it went down for Wong Kim Ark, right?

[00:21:49] Felix Poon
Oh, definitely. But there is one last thing to this story. What this landmark ruling does do for Wong Kim Ark is that it allows his sons to immigrate to the US and become naturalized citizens. So guess what? Wong Kim Ark has descendants here in the US. And I just think that's amazing, because the US government tried so hard to prevent Chinese immigrants from establishing families here. But here they are, the family of Wong Kim Ark.

[00:22:16] Hannah McCarthy
Felix, does this end up being this proud family story that gets passed down?

[00:22:21] Felix Poon
Actually, no. Erika says nobody in the family really knew about it until 1998. There was a 100 year anniversary celebration in San Francisco. And Wong Kim Ark, youngest son, just happened to see it reported in the Chinese language newspaper.

[00:22:35] Erika Lee
And this is where, for the first time, those of us who had researched Wong Kim Ark realized that his son was still living in San Francisco, and that when the reporter interviewed him, he expressed a great deal of You'll a surprise that he had never heard his father talk about his struggle. He had no recollection that this Supreme Court case and the right of birthright citizenship was based on his father's efforts. And it was just such a, I think, tragedy of how we choose which stories, which struggles get remembered and which ones we allow to get forgotten. It was a double tragedy, you know, not just for the Wong family, but for all of us who care about our our country. One would think that when you win a Supreme Court case and that it establishes such a broad base of citizenship It's, um, the right of birthright citizenship that your name would be well known, celebrated, that there would be streets named after you, that there would be a, um, a statue, that there would be, uh, a way that every school child would know who this person was and the importance of his struggle for equality.

[00:24:36] Nick Capodice
I just want to say, I think it's interesting that the three of us are talking about learning or not learning about this in school, because we've been talking a lot about exclusion and the idea of like the Chinese Exclusion Act. But exclusion doesn't end in 1965. There's still this exclusion of what stories we tell and don't tell.

[00:24:55] Hannah McCarthy
I feel like after today, I have a much clearer sense of this time in Time in American history. So thanks for sharing, Felix.

[00:25:03] Felix Poon
Yeah, thank you for having me host today. It's been an honor to be able to tell you this story.

[00:25:15] Nick Capodice
This episode of civics 101 was written and produced by Felix Poon, Hannah McCarthy, and me Nick Capodice. Our executive producer is Rebecca LaVoy. Our producer, Marina Heinke. And our senior producer, Christina Phillips. Music. In this episode from Epidemic Sound. Sarah, the instrumentalist and the Tower of Light. Special thanks to our colleague and friend Taylor Quimby for his voiceover work in this episode. You can listen to more civics 101 all of civics 101 at our website, civics101podcast.org. Civics 101 is a production of NHPR New Hampshire Public Radio.

END OF TRANSCRIPT