To amend the Immigration and Nationality Act to clarify the application of birthright citizenship, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GAETZ introduced the following bill; which was referred to the Committee on

A BILL

To amend the Immigration and Nationality Act to clarify the application of birthright citizenship, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “End Birthright Citizenship Fraud Act of 2023”.

4 SEC. 2. PURPOSE.

5 The purpose of this Act is to recognize the principle of limited jus soli conveyed in the 14th Amendment and
codified in the Immigration and Nationality Act through the statement, “subject to the jurisdiction thereof”, and reform United States immigration law to be consistent with the statement’s original meaning by denying automatic citizenship at birth to children born in the United States to parents who are not United States nationals, aliens lawfully admitted to the United States as refugees, aliens lawfully admitted for permanent residence, or aliens performing active service in the United States Armed Forces.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Naturalization is an exclusive power of Congress, as stated in article I, section 8, clause 4 of the Constitution, “The Congress should have power . . . To establish an uniform Rule of Naturalization . . .”.

(2) The phrase “subject to the jurisdiction thereof” as stated in the Immigration and Nationality Act, references the same statement found in section 1 of the 14th Amendment, and carries the same meaning.

(3) The phrase “subject to the jurisdiction thereof” is a legal term of art, derived from concepts related to a limited jus soli, and understood by the
drafters of the 14th Amendment to have its basis in English common law, which in turn has its basis in Roman law.

(4) Bartolus de Saxoferrato, a 14th-century Italian and one of the first legal scholars to study the Roman concept of the acquisition of citizenship, civilitas civilatis, as deduced from the Corpus Juris Civilis, determined that a Roman citizen by birth, civis ab origine, was one who had been born within the territory of the state and to at least one parent who was already a citizen of the state.

(5) In the earliest known case to articulate jus soli in England, Calvin v. Smith (Calvin’s Case), it was agreed that the statuses of “subject” and “alien” were determined by whether a person was born owing allegiance to the sovereign, as indicated by the Latin phrase ad fidem regis.

(6) Sir Edward Coke, one of the judges deciding Calvin’s Case, extrapolated one exception to jus soli, writing, “But if enemies should come into any of the King’s dominions, and surprise any castle or fort, and possess the same by hostility, and have issue there, that issue is no subject to the King, though he be born within his dominions, for that he was not born under the King’s ligeance or obedience.
But the time of his birth us of the essence of a subject born; for he cannot be a subject to the King of England, unless at the time of his birth he was under the ligeance and obedience of the King.”.

(7) Whether a person at birth is under the ligeance and obedience to the sovereign is not determined by whether his foreign parent is subject to the territorial jurisdiction of prosecution, as any foreign enemy, marauder or bandit, would be subject to the law of the land when captured, but, instead, whether his parent is present in the territory lawfully and permanently, not only voluntarily availing himself to the jurisdiction thereof, but doing so with the consent of the sovereign.

(8) Senator Howard, when proposing language to be included in the 14th Amendment and making reference to English common law exceptions, clarified his intent that citizenship should not be conveyed to everyone born or present in the United States, when he stated, “This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons”.

(9) Senator Lyman Trumbull, a key figure in the adoption of the 14th Amendment, said that “subject to the jurisdiction” of the United States meant not owing allegiance to any other country.

(10) Owing allegiance to the United States and being subject to its complete jurisdiction means being “not subject to any foreign power” and excludes those only temporarily present in the country whether lawfully or unlawfully.

(11) The 14th Amendment’s framers intended to give citizenship only to those who owed their allegiance to the United States and were subject to its complete jurisdiction, primarily the newly freed slaves, who were lawful permanent residents.

(12) The 1866 Civil Rights Act further clarified that the 14th Amendment did not apply to temporary visitors or those who remained the citizen or subject of a parent’s home country when it stated, “All persons born or naturalized in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States.”

(13) American Indians and their children did not become citizens until Congress passed the Indian Citizenship Act of 1924, which would have been re-
dundant if the 14th Amendment extended citizenship to every person born in the United States, no matter what the circumstances of their birth or parentage.

(14) Since the inception of the 14th Amendment, the Supreme Court has never interpreted the 14th Amendment to extend birthright citizenship to the children of any class of individuals who are not citizens themselves, or lawful permanent residents.

(15) Congressional intent and understanding of its ability to legislate naturalization within the original public meaning of the 14th Amendment is clear and apparent as evidenced by legislation.

(16) The current concept of unqualified birthright citizenship is inconsistent with the history and meaning of the 14th Amendment and has been granted far too broadly in recent decades, enabling fraud and civilizational altering levels of immigration spurred by persons who have illegally crossed our borders to obtain citizenship for their children under the misinterpretation of the 14th Amendment.

(17) The United States is one of two developed nations that currently grants automatic citizenship so expansively to children born within its borders.
(18) Unqualified birthright citizenship provides a strong incentive for illegal immigrants to cross the southern border of the United States. When their child is born on United States soil, the family can return to their home country, and 21 years later, the family may return as a part of chain migration not subject to the numerical limitations by which we control most international migration.

(19) Illegal immigrants who crossed into the United States to give birth, often return to Mexico, sending their children across the border daily to attend American public schools, crowding out American students and taking advantage of American tax dollars.

(20) Apprehensions of persons attempting to enter the United States illegally at the southern border of the United States surpassed 2,300,000 in fiscal year 2022 and has been increasing exponentially since 2020, and steadily since 1980.

(21) Millions of illegal immigrants have at least one child who is deemed a citizen under the erroneous interpretation of the 14th Amendment. Estimates show that most children of unauthorized immigrants are citizens by birth, and the number has been increasing exponentially since 2003.
(22) Unqualified birthright citizenship has enabled an entire black market. Estimates show that birth tourism results in 33,000 births to women on tourist visas annually, and hundreds of thousands more are born to mothers who are illegal aliens or present on temporary visas, many of whom have misrepresented the purpose of their trip to avoid scrutiny.

(23) The birth tourism industry is rampant in the United States territories, with more annual births to foreign visitors than native residents in the Commonwealth of the Northern Marianas Islands.

(24) The Government Accountability Office has found the fiscal impact of providing public benefits to illegal aliens, noting that—

(A) illegal aliens and their United States children are eligible to receive emergency Medicaid services, primary and secondary education, school nutrition services, Aid to Families with Dependent Children (AFDC), and food stamp benefits;

(B) cost data are not readily available because illegal aliens are not required to reveal their eligibility to receive certain benefits, and
officials are often prohibited from inquiring about the status of illegal aliens;

(C) the total costs of providing benefits to illegal aliens is unknown due to Federal and State cost data limitations;

(D) the estimated cost of providing AFDC benefits to children of illegal aliens was $479,000,000 for 1992;

(E) of the 5 States that account for about 80 percent of the illegal immigrant population, California provided the most benefits totaling $2,900,000,000;

(F) the cost of providing benefits to illegal aliens is expected to increase some program costs; and

(G) the complete fiscal impact of providing benefits to illegal aliens cannot be determined, since government revenues attributable to illegal aliens are unknown.

SEC. 4. CLARIFICATION OF BIRTHRIGHT CITIZENSHIP.

Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following:

“(j) For purposes of section 301(a), the term ‘subject to the jurisdiction thereof’ means, with respect to a person
born in the United States, that the person was born to a parent who is, at the time of the person’s birth—

“(1) a national of the United States;
(2) a refugee;
(3) an alien lawfully admitted for permanent residence; or
(4) an alien performing active service in the armed forces (as defined in section 101 of title 10, United States Code).”.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to persons born on or after the date of the enactment of this Act.