

Trump order sparks Native American citizenship debate

Some call action assault on tribal sovereignty

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PHOENIX – Tribal citizens across the nation were taken aback when a recent article in an online publication said the Trump administration had questioned the legality of Native American peoples' birthright citizenship.

Several Native American people perceived passages in the U.S. Department of Justice's written defense of an executive order ending birthright citizenship for some as a direct assault on tribal sovereignty and an attempt to seize tribal lands, much of which holds the nation's largest remaining mineral and fossil fuel resources.

One poster suggested the administration was attempting to suppress the Native vote. "If Indigenous Peoples aren't 'American,' they can't vote."

The arguments were analyzed in a story on Salon, which was shared on social media platforms.

The outcry started after attorneys for the Justice Department responded to one of several lawsuits brought by 22 states, including Arizona, challenging President Donald Trump's executive order that sought to end U.S. citizenship extended to children born to parents who are not in the country legally.

The government's argument hinged on a clause in the 14th Amendment that 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." The clause "subject to the jurisdiction" of the United States meant that people in the country without documentation are not subject to the U.S.'s jurisdiction, the federal government's attorneys argued.

The Justice Department's written response referred to a time when Native Americans were not U.S. citizens. The attorneys said that because the Civil Rights Act of 1866 excluded "Indi-

ans not taxed" from the legislation, the 14th Amendment also was meant to exclude them.

Next, the Justice Department referred to an 1884 Supreme Court case, *Elk v. Wilkins*, in which a Winnebago tribal citizen was denied U.S. citizenship in the department's effort to convince a federal judge in Washington state that the 14th Amendment didn't apply to the children of people in the U.S. without proper documentation.

People debated what the language really meant: Was Trump attempting to steal lands, deport Native people or re-

turn Native America to the days of federal wardship?

One legal scholar said this was a case of a lack of understanding of what the case

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really was.

Stacy Leeds, dean and law professor at the Sandra Day O'Connor College of Law at Arizona State University, said in the era when the Supreme Court ruled in the *Elk v. Wilkins* case, if a person was born and lived on their own tribal lands they would be regarded as a tribal citizen and not an American citizen.

That case followed the 1866 Civil Rights Act and the 14th Amendment exempting "Indians not taxed" from birthright citizenship.

Over the decades, she said, the U.S. has engaged with tribes, and some Native people were made U.S. citizens through various pathways as tribal nations formalized their governmental relations with the federal government. One way was through treaties; another was through Congressional legislation.

The Snyder Act, also known as the Indian Citizenship Act, was enacted in 1924. "If there was a tribal citizen who wasn't already a U.S. citizen, they now are," she said.

Currently, Native people are considered to be dual citizens of their tribal nation and the United States.

"There's nothing to indicate anybody is taking away citizenship," Leeds said. "It's pretty straightforward."