

Q97 – What amendment says all persons born or naturalized in the United States,

DOUGLAS GINSBURG, Federal Judge, U.S. Court of Appeals, D.C. Circuit:

The Fourteenth Amendment to the Constitution of the United States says all persons born or naturalized in the United States are citizens of the United States – with one exception. We'll get to that, but first, some background.

When adopted, the Constitution recognized the concept of citizenship but didn't define it. Article II says only a citizen may become president. But that's it. The question of citizenship came up in one of the Supreme Court's most infamous decisions.

The case was brought on behalf of Dred Scott – a slave whose master took Scott from a slave state to free soil, then back. Because Scott had set foot where slavery was outlawed, he sued for his freedom.

Chief Justice Roger Taney declared that members of "the enslaved African race", as he put it, were not citizens and therefore had no rights. Indeed, even freed Blacks had no rights. The Fourteenth Amendment undid Taney's damage by guaranteeing the citizenship of former slaves.

Now here's the exception I mentioned. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States..."

Children born here to foreign diplomats are not citizens, because their parents are not subject to our jurisdiction. They have diplomatic immunity from our laws.

What about children born here to parents who are not diplomats or U.S. citizens? What if those parents are not even here legally? As of now, not clear. But one day the courts may have to answer those questions.