

Donald Trump meet Wong Kim Ark, the Chinese American cook who is the father of 'birthright citizenship'

By **Fred Barbash** August 31, 2015

It was the fall of 1895, and Wong Kim Ark was puzzled and alarmed as he bided his time on the steamship Coptic in San Francisco Bay which had returned him from a visit to China. His papers were in order. He had seen to that. The required statement, certification from white men that he was born in the U.S. and therefore a citizen, were in order. He had traveled to China for a visit and had little trouble being readmitted.

On this occasion, however, authorities denied him entry, returning him to the ship on which he had arrived, and from there to another ship, the Gaelic, and then to the Peking. For four months, the only certainty to Wong's life was the tides on San Francisco Bay where he awaited word of his fate.

What he could not have known was that he was about to become a "test case" brought by the United States government, egged on by a wave of anti-Chinese sentiment, in an effort to undermine the 14th Amendment "birthright" provision which made Wong a citizen in the first place as the plain and simple language of the amendment said 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."

For the Chinese in America, this was the "exclusion era," a radical shift for the U.S., which for the most part, since its creation as a republic, had encouraged people to come to its shores. In the beginning, as America built its railroads, mined its gold and

farmed the valleys of Northern California, the Chinese were welcomed as well in America. They streamed in by the thousands.

But as the Depression of 1873 took its toll on white working men, they began to look for scapegoats. Mob violence, arson, and overt racist derision swept through California, powered by slogan “the Chinese must go.” Congress enacted the Chinese Exclusion Act of 1882, designed to put an end to the flow of Chinese into the U.S. But that was not enough for the building anti-Chinese wave.

Thousands of children had been born to Chinese in the U.S. and birthright citizenship was the next target, just as it is today for many Republicans, notably Donald Trump, in their campaign aimed at the children they call “anchor babies,” whose parents enter the U.S. illegally just to make sure their children enjoy the benefits of citizenship. The U.S. is “the only place just about that’s stupid enough” to do that, he has said, thus providing an incentive for illegal entry. Bills to do just what Trump is advocating have been around for years and have gone nowhere, and many, but not all, scholars believe such a change would need to confront the almost insurmountable task of amending the Constitution.

[The constitutional debate over birthright citizenship]

[Meet the conservatives making a stand for ‘birthright citizenship’]

Young men like Wong were not called “anchor babies” by critics then, but rather “accidental citizens,” said University of New Hampshire legal historian Lucy Salyer, “citizens by the accident of birth” as the dissenting justices in Wong Kim Ark’s Supreme Court case would put it.

What he did not know was that “they were looking for some poor chump,” Salyer told the Washington Post, to make an example of, at the nation’s highest court. And that “chump” was Wong Kim Ark. So there it was, the intimidating-sounding case of *The United States vs. Wong Kim Ark*, a cook.

Yet he won.

And in the annals of civil rights in America, it was a “huge” case, said Salyer. The justice who wrote the opinion for the court’s majority, was fully aware that its implications went far beyond the Chinese. As the justice who authored the majority opinion in *U.S. vs. Wong Kim Ark* wrote, “to hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries 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.” Had the decision gone the other way, Salyer said, instead of a nation of immigrants, America would have become “colonies of foreigners.”

For all its importance, it never became a famous landmark. There is *Dred Scott* and there is *Plessy*, there is *Brown* and there is *Bakke* and *Loving*. But *Wong Kim Ark* draws a blank with most Americans.

His case is so little known that even his own great-granddaughter was only dimly aware of its importance. Then, one day in

1998, having decided to research her family's history, the 20-year-old college student Alice Wong phoned the San Bruno regional office of the National Archives and Records Administration to say she was coming down to find out about her grandfather. When she arrived, she told the [SFWeekly](#) at the time, an archive employee who specialized in the history of the Chinese Exclusion Act, asked for her autograph and then introduced her to the entire staff. "This," he said, "is Wong Kim Ark's great-granddaughter."

They knew what that meant, but she didn't. "I was like, 'Oh my god, what have I gotten myself into,'" she told her interviewer, Lisa Davis. "I knew absolutely nothing about who the heck this guy was."

"I learned about Wong Kim Ark being a relative after my father died, at his funeral," Sandra Wong, his granddaughter said in a recently-released and powerful documentary about the 14th Amendment, aptly titled "[14: Dred Scott, Wong Kim Ark & Vanessa Lopez](#)", as she too examined Wong Kim Ark's documents at the archives. "You know, I became very interested but I knew nothing about it, my father never talked about it. And I had all these questions," she told the filmmakers, Portland-based [Graham Street Productions](#), which provided excerpts to the Post.

Who "the heck" was Wong Kim Ark

Wong Kim Ark was born in 1873, into the increasingly hostile environment of the exclusion era, a time of unvarnished racism, that made no effort to hide behind euphemisms. In 1877, [Erika Lee](#) writes in her chapter in [Immigration Stories](#), a congressional committee investigating Chinese immigration described the Chinese in America as an "indigestible mass in the community, distinct in language, pagan in religion," "inferior in mental and moral qualities," who therefore required exclusion "for the good of the public."

His father was a Chinatown merchant named Wong Si Ping; his mother was Wee Lee. By the time Wong was 9, however, thanks to hostility and the exclusion act, business for Chinese was on the verge of collapse, and the population of Chinese in America on the decline, from a high of about 101,000 to some 70,000. Wong Si Ping did what he had to do: He took his family, including young Wong Kim Ark, back to China.

But while his parents would remain in China, young Wong found his prospects for work in China limited, and returned to California in 1890, securing work as a cook in California's Sierra Mountains. Wong and other Chinese born in America lived and worked in a kind of twilight world, technically citizens, but citizens on a ledge, off of which they could easily be shoved. The tests would come whenever they risked visiting China, which they did in part to find wives and see relatives, and attempted to return, at which point they might be admitted or might be turned back.

The documentary, "14" captures this well. As archivist Marisa Louie, in the presence of Sandra Wong, sorts through thousands of files of men like her grandfather, she explains: "Any time anyone of Chinese descent left the U.S. during the exclusion period, they had to make some provision for themselves being able to get back into the U.S. So before they would leave, they would maybe go and get a document like this that was a sworn affidavit of some witnesses, some non-Chinese witnesses, mind you, so some white witnesses, typically. And they would attach a photo to the document and it would say yes, we have known Wong Kim Ark, we know that he was born here, we know his parents and we swear that he's a legally born U.S. citizen."

The case law was clear. A California circuit precedent in 1884, in the case of Look Tin Sing, established “that both the fourteenth amendment and the common law of the land compelled the conclusion that Look was indeed a citizen.” If Look Tin Sing was a citizen so was Wong Kim Ark. Birthright was their only route home as laws dating back to 1790 barred the naturalization of non-whites.

But there were no “immigration” officials as we know them today, but rather “collectors of customs,” Salyer explained, “a very lucrative position that until the exclusion laws were passed, were mainly concerned with collecting” tariffs on imported goods. After exclusion, the “collectors” effectively made up their own laws, infused by their own bias.

Indeed, “John Wise, the collector who refused to admit Wong, described himself as a ‘zealous opponent of Chinese immigration.’” writes University of Connecticut law professor Bethany Berger.

As Sandra Wong examined the documents describing the questions her grandfather was asked in the documentary, she read aloud from them.

“‘Okay, how old are you?’ the collector asked.

‘24 years old,’ replied Wong

‘Have you ever been to China before this time?’

‘Yes,’ Wong Kim Ark answered. “Once before.’

‘ ... What are you?’

‘Cook.’

‘Where were you born?’

‘Sacramento Street. My father kept a store: 751 Sacramento Street. I was born upstairs, third floor.’

‘Do you know any white men in San Francisco that know you were born here?’

‘Yes,’ Wong replied.” ‘Mr. Selenger. He knew me when I was little before I went to the country. Before I was ten.’”

Wong had made the round-trip once. While there, according to Berger, “Wong married a woman from a nearby village. Although the new couple conceived a son, Wong Yook Fun,” Wong had returned to America by the time he was born and had been readmitted.

In 1894, as he prepared for a second trip, he was careful to secure the documents he understood were necessary to get back in,

“a notarized affidavit with his photograph as a form of identification,” noting that Wong was a “citizen of the United States, born in the City and County of San Francisco.”

There was nothing sinister about Wong’s second trip. While in China, writes Berger, “he met his oldest son for the first time and conceived another, Wong Yook Thue.”

But upon his return, Lee writes, he was asked “You are sure you were born here?” the official asked. “Yes,” answered Wong. Nevertheless, he was returned to the Coptic.

Most immigrant communities in the U.S. had their own self-help organizations. Early Germans migrating to Pennsylvania in the 1700s had the German Society of Pennsylvania. Jewish emigrants from Imperial Russia had HIAS, the Hebrew Immigrant Aid Society, for example. The Chinese had the “Six Companies,” otherwise known as the Chinese Consolidated Benevolent Association in San Francisco.

The Six Companies, Berger writes, kept lawyers on retainer for just such occasions, among them Thomas Riordan of San Francisco. Riordan filed a petition for habeas corpus in response to which, Berger writes, “Judge William Morrow opined that having citizenship follow that of one’s parents was ‘undoubtedly more logical, reasonable, and satisfactory,’ but the law of the circuit required him to uphold birthright citizenship. He declared Wong a citizen and ordered him released upon payment of a \$250 bond.”

That merely gave the government its opening for an appeal.

Meanwhile, the government moved forward with its test case. In the brief U.S. Solicitor General Holmes Conrad filed, Berger writes in the the Cardozo Law Review, Conrad conceded, that “the opinions of the Attorneys-General, the decisions of the Federal and State courts, and, up to 1885, the rulings of the State Department all concurred in the view that birth in the United States conferred citizenship.”

But he argued that they were all wrong, in part, he explained, because it departed from the laws of other nations and for that matter of ancient Rome, where the citizenship of the child was bound not to the birthplace but to the blood of the parent. Besides, he argued “the exclusion laws showed that the U.S. did not want Chinese to be citizens anyway.”

For Justice Horace Gray it was an open and shut case. The majority opinion was issued on March 28, 1898.

History and law, he wrote, “irresistibly lead us to these conclusions: the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliensThe Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States.”

The dissent, written by Justice Melville Fuller and joined by John M. Harlan, challenged the premise that children like Wong

Kim Ark were in fact, “subject to the jurisdiction” of the United States at all. “They seem in the United States to have remained pilgrims and sojourners, as all their fathers were,” he wrote.

“‘The true bond which connects the child with the body politic is not the matter of an inanimate piece of land,’ they wrote, ‘but the moral relations of his parentage. . . . The place of birth produces no change in the rule that children follow the condition of their fathers, for it is not naturally the place of birth that gives rights, but extraction ... To what nation a person belongs is by the laws of all nations closely dependent on descent; it is almost an universal rule that the citizenship of the parents determines it — that of the father where children are lawful, and, where they are bastards, that of their mother, without regard to the place of their birth, and that must necessarily be recognized as the correct canon, since nationality is, in its essence, dependent on descent.’”

While this feudal principle was common in other countries, the dissenting argument was an extraordinary claim for the nation of immigrants, that the citizenship of the child followed “descent,” a concept known as “jus sanguinis,” or right of blood, rather than the soil on which the child was born, a principle known as “jus soli,” or “right of the soil. And it never saw the light of day again at the Supreme Court.

The decision in *U.S. vs. Wong Kim Ark* drew little attention at the time, it merited just a single paragraph in the *New York Times*. Perhaps few cared. Or perhaps there was other, bigger, news that day like the official report of the supposed attack on the U.S. warship, “The Maine,” which would become the justification for the U.S. to declare war on Spain.

What became of Wong Kim Ark

The decision, while a major precedent, did not materially improve the life of Chinese citizens living in the U.S. Despite the court’s declaration, they were not treated like citizens until modern times, with the Chinese Exclusion Act and its extensions remaining in force until 1943, limiting immigration and denying naturalization to Chinese immigrants. They were, as one study in 1931 concluded, “American by birth, but not in fact.” Indeed, “little Chinese immigration was permitted until the Immigration and Nationality Act of 1965 overhauled the U.S. immigration system and significantly expanded migration opportunities for non-European immigrants,” according to the [Migration Policy Center](#).

Eventually, Wong Kim Ark went back to China, never to return. There is no record of why. And it is said that he spoke little about his case in the years after. That may explain why his son, Yook Jim Wong, who did settle in America, had little memory of his father’s story when asked about it by author and columnist William Wong.

“I didn’t know it was that important,” Wong quotes him as saying in *“Yellow Journalist: Dispatches from Asia America.”* And he apparently passed only a fragment of the story to his daughter and granddaughter, which may explain why Alice Wong seemed so surprised to be greeted as a hero at the San Bruno office of the National Archives on that day in 1998 and why Sandra Wong could say “I knew nothing about it...”

Who was Wong Kim Ark? She knows now. “He was just a regular guy,” Sandra Wong says in the documentary, after viewing all the documents. “He just wanted to do what he thought was right. He wanted to fight for what he thought was his right. And

so you just do what you have to do.”

Want to know more about the argument over birthright citizenship?

[The Citizenship Clause: A “Legislative History”](#)

[Citizenship Without Consent: Illegal Aliens in the American Policy](#)

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