

Putting the 14th Amendment to the Test

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About this Lesson

This lesson is a viewing guide to accompany the program, Putting the Fourteenth Amendment to the Test, which took place as part of the Peter Jennings Project for Journalists and the Constitution. The program focuses on the issue of immigration reform and birthright citizenship with varying perspectives from Fellows of the Peter Jennings Project and distinguished guests Dr. John C. Eastman, Daryl Metcalfe, Jorge Mursuli, Marjorie Rendell, Cecilia Wang. The panel was moderated by Jeff Greenfield. This program is available in its entirety at http://www.constitutioncenter.org/jennings/events/14th_Amendment.html. This lesson plan may be used with the full-length video. Participants must discuss a hypothetical situation regarding an illegal immigrant's entrance into the United States and the effect of a newly-adopted policy in Pennsylvania called "Attrition Through Enforcement" that strictly enforces illegal immigration laws.

Grade(s) Level

7-12

Classroom Time

Two 45-minute class periods, or one 90 minute class period

Handouts

Hypothetical Position Directions and Discussion Questions

Constitution Connections

Amendments IV and XIV

Background

The citizenship clause of the Fourteenth Amendment reads: "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." This language recently has come under attack by those who believe that, by giving birth to "anchor babies" who automatically have American citizenship, illegal immigrants are using the Fourteenth Amendment to gain a legal foothold in the U.S. *Putting the Fourteenth Amendment to the Test* explores whether the language of the Fourteenth Amendment should be modified, left in its present state, or reinterpreted to deny citizenship to the children of illegal immigrants.

Objectives

Students will:

- Examine the hypothetical law and its components in relation to the Constitution
- Assume a role in the discussion and research the opinions of that role
- Deliberate the discussion questions while representing their assigned roles
- Understand all perspectives on the immigration issue

Standards

From the National Council for the Social Studies: <http://www.socialstudies.org/standards/strands>

- **V: Individuals, Groups, and Institutions:** Social studies programs should include experiences that provide for the study of interactions among individuals, groups, and institutions.
- **VI: Power, Authority, and Governance:** Social studies programs should include experiences that provide for the study of how people create, interact with, and change structures of power, authority, and governance.
- **XI: Civil Ideals and Practices:** Social studies programs should include experiences that provide for the study of the ideals, principles, and practices of citizenship in a democratic republic.

The Activity

The Hypothetical

Roberto is a citizen of Mexico. He's in his 30s, and has a wife, two children and a very modest home. What he doesn't have is a job. He's been looking for a while and at this point, he's desperate. He's decided he is going to try to get into the United States, using the same guy who was able to get his cousin past the border, and get some work as a day laborer, landscaper, house painter – really, any work he can get. Now he has joined the 11 or 12 million undocumented immigrants living in the United States.

Pennsylvanians elected a new governor, Dan Metsteer, who has promised to put into effect a policy embraced in Arizona, called “Attrition Through Enforcement.” The idea is that, if the laws against illegal immigrants working in the United States were enforced at all levels of government, illegal immigrants would find making a living in the U.S. too difficult and return home. Thus, proponents argue, there will be no need to round up and deport 12 million people. So the Pennsylvania government passed a new law called the “Enforcement Assistance Guaranteeing Legal Employment,” or EAGLE, Act. According to the new Governor, it does exactly what the name says: allow the state to assist in enforcement of the immigration laws, thus helping guarantee that employment in the state is obtained legally. Here is a quick overview:

- Section 1 of the law requires that, in the course of a lawful stop, a state law enforcement official with a reasonable suspicion that a person is an illegal immigrant may attempt to determine the immigration status of that person;
- Sections 2 and 3 make it a violation of state law for an illegal immigrant to obtain a job, or a business to hire an illegal immigrant, through violation of the federal immigration law.

The Dissent

According to the Governor, the law doesn't create its own immigration requirements; it's just directing some state resources towards helping enforce the pre-existing federal immigration laws. But that's not stopping some local immigrant groups and business groups from planning a challenge to the new law as being unconstitutional. Even though they are legal residents or citizens, their looks or accents could cause police officers to inquire into their immigration status. The inquiry could be extended if a

citizen isn't carrying a birth certificate or passport. Moreover, the law could hamper effective police protection in their communities if community members (legal or illegal) become afraid to deal with the police. The Fellows' Business Group is against this law because the state is imposing additional penalties for the federal requirements.

“For any lawful stop, detention or arrest made by a law enforcement official . . . in the enforcement of any other law . . . , where reasonable suspicion exists that the person is unlawfully present in the United States, a reasonable attempt shall be made . . . to determine the immigration status of the person, except if the determination may hinder an investigation. An officer may not consider race, color, or national origin in implementing this provision, except as allowed by the United States Constitution.”

Some believe that the law would lead to racial profiling, because an identical provision in Arizona included a claim that it would inevitably lead to racial profiling and that it would target the speech of anyone with less-than-perfect English. The law could create an additional state enforcement mechanism requiring that any alien – or anyone that might be suspected of being an alien – carry papers proving his/her legal right to be in the United States. It creates a significant new burden that is very different from the balance struck by federal immigration laws.

Proponents

Federal law requires in most cases that when a person starts a new job, the employer obtain proof that the new employee is a legal resident of the United States, and it requires that the new employee provide non-fraudulent documents to prove they're here legally. The EAGLE Act simply states that employers and employees are required to comply with those federal provisions. It doesn't deviate from them in any way – it just cites the federal provisions.

If an employee is found to have violated the federal provisions by submitting no documentation or false documentation, under the EAGLE Act federal officials are notified, and the employee is subject to a state fine of \$500. If an employer is found to have violated the federal provisions, once again federal officials are notified, and the employer loses his license to do business in the state until he pays a \$5,000 re-licensing fee.

The state law simply requires local law enforcement to make reasonable inquiries if they have good reason to suspect a violation of federal immigration law. It does not conflict with the federal law. Moreover, the state law explicitly prohibits racial profiling.

After reading and discussing the basic facts of the hypothetical situation, assign students to the following groups and have them answer the questions below from their assigned perspective.

Immigrants Group – This group will be seated together and will be addressed as one group, but actually will contain two subgroups. One-third of this group will be given information about and will research the stories of illegal immigrants. The other two-thirds will be given information about and will research the experiences and concerns of immigrants who are legal residents or citizens.

Strict Immigration Laws Group – This group will be given information on and will research the regular folks who have made these strict immigration laws into a crusade. They should be able to articulate the passion supporters have for these provisions.

Business People Group – This group will be given information on and will research the business perspective on Arizona-style strict immigration laws. They should be able to explain why the business community opposes these laws.

Law Enforcement Group – Like the immigrants group, this will be treated as one group but will have two parts. One-third of this group will receive information on and will research the positions of local law enforcement officers who support Arizona-style legislation. The other two-thirds of this group will receive information on and will research the positions of police chiefs who oppose the legislation.

Questions to Consider

1. How does one enter the United States legally?
2. How important is it that Roberto not succeed in getting into the United States, and why?
3. How high a priority should it be for this nation to get him, and all the other illegal immigrants, to go back? To aide in this discussion, access the National Constitution Center's *The Exchange* lesson resources on immigration at http://constitutioncenter.org/ncc_edu_Past_Topics.aspx and http://constitutioncenter.org/ncc_edu_Videos.aspx
4. Should children of illegal immigrants be granted full citizenship? Watch a panel of experts discuss this issue during the panel "Putting the 14th Amendment to the Test" at http://www.constitutioncenter.org/jennings/events/14th_Amendment.html

and read “Diplomats, ‘anchor babies’ and the 14th amendment” at [http://
blog.constitutioncenter.org/diplomats-anchor-babies-and-the-14th-amendment/](http://blog.constitutioncenter.org/diplomats-anchor-babies-and-the-14th-amendment/)

5. **Application Exercise:** You’re at the scene of a three-way traffic accident, taking statements of those involved. In one of the cars are two brown-skinned individuals who are speaking Spanish to each other. They answer your questions in accented English. In the second car are two people -- one looks white and the other looks Asian – and they both have accents that you can’t quite place. The third car has two white teenagers who, when you can get them to stop texting, answer your questions in as few words as possible. Lawyers may have written this law, but it’s up to you to apply it. So, do you have a “reasonable suspicion” requiring you to make a “reasonable attempt” to determine the immigration status of any of these people?

Further Resources

- Immigration Law: Title 8 Aliens and Nationality [http://www.law.cornell.edu/uscode/html/
uscode08/usc_sup_01_8.html](http://www.law.cornell.edu/uscode/html/uscode08/usc_sup_01_8.html)
- Congressional Immigration Hearings (1923-)
<http://www.loc.gov/law/find/hearings/immigration.php>