

Loomis Chaffee Debate Tournament 2019

Be it resolved that Birthright Citizenship in the United States of America should be abolished.

[Remark from the tournament organizer: Please note, this debate should not be about whether Birthright Citizenship is actually guaranteed in the constitution or not. While most constitutional scholars believe it is guaranteed, President Trump, as well as a few others who have his ear, believe that there is not a constitutional guarantee for Birthright Citizenship as currently practiced. This debate, however, is not over constitutional interpretation, but rather whether the practice of Birthright Citizenship as currently implemented (and constitutionally interpreted) is the correct policy for the USA – if a constitutional amendment is necessary to change the practice then, by fiat, that would be done to implement the change in policy advocated by the affirmative. I hope you gain some insights on this important topic and enjoy your day of debate.]

Alan Gomez, a *USA Today* Oct. 30, 2018 "US Birthright Citizenship Explained: What Is It, How Many People Benefit,"

"The principle of birthright citizenship is that anybody born on U.S. soil becomes a U.S. citizen. It was added to the Constitution in 1868 in the first sentence of the 14th Amendment, which 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.'

The amendment was designed to grant citizenship to freed slaves after the Civil War, overriding the Dred Scott v. Sandford decision by the Supreme Court that had forbidden African-Americans from ever gaining citizenship and the Naturalization Act of 1790 that conferred citizenship only on free white persons 'of good character.'

In practice, it has become a bedrock of U.S. immigration law that has allowed anybody born in the U.S. to become citizens. Congress also has passed laws extending birthright citizenship to people born in U.S. territories, including Puerto Rico, Guam and the U.S. Virgin Islands.

Citizenship was granted to about 275,000 babies born to undocumented immigrant parents in 2014, representing about 7 percent of all births in the country that year, according to an analysis by the nonpartisan Pew Research Center. Those numbers represented a drop from the peak years of illegal immigration, topped in 2006 when about 370,000 children were born to undocumented immigrants, or 9 percent of all births... 90 percent of undocumented immigrants who give birth in the U.S. arrived in the country more than two years before giving birth.

Those numbers do not include pregnant mothers who obtain visas to travel to the U.S. shortly before giving birth... the total number of babies born through birth tourism [is] about 36,000 a year." - Oct. 30, 2018 - [Alan Gomez](#) USA Today

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The Atlantic: America Isn't the 'Only Country' With Birthright Citizenship

The president incorrectly claims that America is the "only country" that gives citizenship to all babies born within its borders. [YASMEEN SERHANURI FRIEDMAN](#) OCT 31, 2018

"We're the only country in the world where a person comes in and has a baby, and the baby is essentially a citizen of the United States ... with all of those benefits." So [said Donald Trump](#) this week, in explaining why he may sign an executive order ending the right to citizenship for those born on U.S. soil even if their parents aren't citizens or permanent residents. It's part of the president's broader crackdown on unauthorized immigration.

Birthright citizenship—which is enshrined in the [Fourteenth Amendment](#) of the U.S. Constitution and therefore [likely to require](#) more than a presidential order to revoke—is not, in fact, unique to the United States. But the U.S. is in a small club of nations that offer it. Here's a rundown of how other countries navigate the tricky relationship between birth and citizenship.

Countries With Birthright Citizenship

More than 30 countries currently offer U.S.-style birthright citizenship that is largely unconditional, save for exceptions like the children of foreign diplomats. Most of these nations are in the Western Hemisphere and range from countries like the United States and Canada to Argentina and Brazil. The others are mainly in Latin America, though the policy crops up everywhere from Lesotho in sub-Saharan Africa to Pakistan in Asia.

Explanations for the concentration of birthright citizenship in the Americas range from European colonial powers establishing lenient laws to attract immigrants and displace native populations in the New World to Latin American independence movements that embraced a more expansive definition of citizenship as part of their rejection of slavery in the 19th century. (The Fourteenth Amendment, adopted in 1868, likewise conferred citizenship on freed slaves in the United States.)

The practice has at times come under assault in Latin America, where rates of immigration are relatively low; birthright citizenship was retracted in 1978 under Argentina's dictatorship, for example, only to be restored when democracy returned, in 1983. But it has proved more controversial in Canada and especially in the United States, which attract larger flows of immigrants and in recent decades have grappled with an influx of illegal immigration.

Just as Trump rails against undocumented immigrants having "anchor babies" in the United States that allow them to settle in the country through their citizen children, conservative politicians in Canada have condemned "birth tourism." The opposition Conservative Party vowed last summer to pursue legislation to eliminate birthright citizenship unless one of the parents of the child born in Canada is a citizen or permanent resident. Opponents of the move claimed that the birthright provision in the country's 1947 Citizenship Act is central to Canadian conceptions of equality and multiculturalism.

Countries That Used to Have Birthright Citizenship but Don't Anymore

The U.S. wouldn't be the first country to revoke jus soli, or the "right to the soil," as birthright citizenship is commonly known.

France did away with birthright citizenship in 1993, following the passage of the Méhaignerie Law. The law limited citizenship to those born to a French parent, or to a parent also born in France. As a result, those born in France to foreign-born parents must wait until they turn 18 to automatically acquire French citizenship (a process that can begin when they turn 13, if they apply).

Ireland was the last of the European Union countries to abolish birthright citizenship, in 2005. Through a referendum backed by nearly 80 percent of Irish voters, citizenship was limited to those born to at least one Irish parent. The decision was a response to a controversy surrounding birth tourism and the high-profile case of Man Levette Chen, a Chinese national who traveled to Northern Ireland so that her daughter would be born an Irish citizen. Chen sought residency rights in Britain, citing her child's Irish and EU citizenship. Though the United Kingdom Home Office rejected Chen's application, the decision was overturned by the European Court of Justice in 2004.

Other countries, including New Zealand and Australia, have also abolished their birthright-citizenship laws in recent years. The latest is the Dominican Republic, whose supreme court ruled to remove the country's birthright laws in 2013. The decision retroactively stripped tens of thousands of people born to undocumented foreign parents of their citizenship and rendered them "ghost citizens," according to Amnesty International.

Countries That Factor the Circumstances of Birth Into Citizenship

Many European nations grant citizenship based on jus sanguinis, or "right of blood," which refers to the nationality of the child's parents. Individuals born in the U.K. automatically become British citizens if at least one of their parents is a British national or is considered "settled" in the U.K., such as having permanent residency.

Germany boasts similar nationality laws. As of 2000, however, those born in the country to foreign-born parents were also made eligible for citizenship, so long as one of the parents was a lawful resident of the country for at least eight years.

Italy, like the U.K. and Germany, also restricts citizenship by birth to those born to at least one Italian parent. Under Italian law, however, those born in the country to foreign-born parents who meet certain requirements can apply for Italian citizenship within one year of their 18th birthday.

Countries That Couldn't Care Less Where You Were Born

Plenty of countries—China, Japan, Russia, South Korea—grant citizenship strictly on the basis of whether a baby has at least one parent who is a citizen of the country, as opposed to where the baby is born.

But Gulf countries boast some of the most arduous naturalization processes. In Qatar, where it's estimated that Qatari nationals make up less than 10 percent of the population, citizenship is inherited solely through the father. According to a new residency law passed last month, foreign-born residents who have lived in Qatar for at least 20 years will be permitted to apply for permanent residency.

Kuwait is similarly restrictive. Like in Qatar, Kuwaiti citizenship is also passed on through the father. According to the country's Nationality Law of 1959, those seeking citizenship must lawfully reside in Kuwait for at least 20 years (15 years if you are an Arab national). Applicants must speak Arabic and must be Muslim by birth (converts must wait five years before applying).

Citizenship in the United Arab Emirates also passes through the father, though a 2011 royal decree deemed that children born to Emirati women could apply for citizenship when they turn 18. Though Arab citizens from Bahrain, Oman, and Qatar can apply for Emirati citizenship if they have lawfully resided in the country for at least three years, others must reside in the country for at least 30 years.

Time Magazine: What the Constitution Really Says About Birthright Citizenship

By AKHIL REED AMAR and STEVEN G. CALABRESI

October 31, 2018

Akhil Reed Amar teaches constitutional law at Yale University. He is the author of The Constitution Today.

Steven G. Calabresi, the co-Founder of the Federalist Society, teaches constitutional law at Northwestern University.

Despite President Trump's recent efforts to muddy the waters — efforts that would likely be unanimously laughed out of court — the words of our Constitution and the relevant judicial rulings are emphatically clear when it comes to the issue of birthright citizenship.

If you're born in America under the American flag, you're an American citizen. It doesn't matter if you're male or female, rich or poor, black or white, gay or straight, the daughter of a president or the son of an undocumented immigrant. You're a free and equal citizen. This principle of equal citizenship formed the core of the constitutional vision of President Abraham Lincoln and his allies, who laid the foundations of both the Republican Party and our Constitution's most transformative amendment—the 14th.

In the infamous 1857 Dred Scott decision, Chief Justice Roger Taney declared that a black man generally couldn't be a United States citizen—that he had “no rights which the white man was bound to respect.” Candidate Lincoln campaigned against the decision in 1858 and 1860. Then, under President Lincoln, Attorney General Edward Bates took on Dred Scott in an 1862 legal opinion arguing that free blacks generally *could* be U.S. citizens. Finally, the Republican Congress enshrined the principle of birthright citizenship in America's first major civil rights law, the Civil Rights Act of 1866. Two months later, Congress included birthright citizenship in its proposed 14th Amendment.

At the simplest level, the 14th Amendment's Citizenship Clause was meant to repudiate Dred Scott and place the Civil Rights Act of 1866 on a firm legal foundation. However, it was also meant to root post-Civil War America in an inspiring Lincolnian reinterpretation of one of our nation's Founding truths, that we're *all* born free and equal.

Let's begin with the text of the Citizenship Clause: “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.” While the 15th Amendment explicitly mentions race, the 14th Amendment's text is more capacious—speaking not just of African Americans, but of “[a]ll persons.” This sweeping language grants U.S. citizenship to *everyone* born here and subject to our laws. The only relevant exception today (given that Native Americans no longer live in

the same kind of tribal regime that existed in the 1860s) is for those who owe their allegiance to another sovereign, such as the children of foreign diplomats.

The Citizenship Clause is one of the richest single sentences in the entire Constitution, rivaling the Preamble in both theoretical depth and breadth. Among other things, the Amendment constitutionalizes Lincoln's reinterpretation of Jefferson by making clear that Americans are created equal—*born* equal, in the key language of this key sentence. This birth equality idea clearly condemns a racial caste system in which light-skinned children are born lords and dark-skinned children are born serfs. Indeed, the sentence goes far beyond race by condemning all sorts of other systems that improperly exalt some and degrade others because of birth status. The sentence thus explains why certain types of birth-based governmental discrimination are suspect (laws based on race or sex or sexual orientation or illegitimacy) whereas most other kinds of governmental line-drawing (say, between wage income and dividend income) should not be viewed with comparable skepticism.

Critically, the sentence focuses our attention on place, not parentage. Unlike the law of many European countries, in America the key issue of constitutional citizenship is based on the law of the soil, not the law of blood. The issue is where one was born, not to whom.

Most relevant to Trump's most recent pronouncements, the sentence resoundingly affirms that constitutional birthright citizenship does not depend on the immigration status of one's biological parents. Anyone born in America under the American flag is a citizen, even if his parents are not citizens and indeed even if his parents are not here legally. In the 1860s, surely all American-born children of slaves were meant to be covered by the Amendment's citizenship clause, so as to completely repudiate the infamous *Dred Scott* case. Yet Reconstruction Republicans in Congress doubtless were aware that some antebellum slaves had been smuggled into America illegally, in violation of various 19th century congressional laws prohibiting transatlantic slave importation. This stubborn fact about the children of certain "illegal aliens" in the 1860s strongly suggests that American-born children of "illegal aliens" today are likewise birthright American citizens, regardless of the deficient immigration status of their parents.

In multiple cases decided in the late 19th and the late 20th century, the Supreme Court has recognized only three narrow exceptions to birthright citizenship: diplomatic children, tribal Indians and invading armies. The language and logic of these cases clearly suggest that children of "illegal aliens" are indeed birthright citizens; and the broad legislative backdrop of the Amendment and its intended application to all American-born slave children provide compelling support for this conclusion.

Thus, every generation, the constitutional clock resets; regardless of the lapses of a person's parents, the sins of the fathers and mothers are not visited upon the children. To repeat: Anyone born on American soil under the American flag is an American.

Edward J. Erler, PhD, Senior Fellow at the Claremont Institute, Aug. 19, 2015 article, "Trump's Critics Are Wrong about the 14th Amendment and Birthright Citizenship," available at the National Review website, stated:

"Those who defy the laws of the U.S. should not be allowed to confer such an advantage on their children. This would not be visiting the sins of the parents on the children, as is often claimed, since the children of illegal aliens born in the U.S. would not be denied anything to which they otherwise would have a right. Their allegiance should follow that of their parents during their minority. A nation that cannot determine who becomes citizens or believes that it must allow the children of those who defy its laws to become citizens is no longer a sovereign nation. No one is advocating that those who have been granted birthright citizenship be stripped of their citizenship. Equal protection considerations would counsel that citizenship once granted is vested and cannot be revoked; this, I believe, is eminently just."

Aug. 19, 2015 - [Edward J. Erler, PhD](#)

David Vitter, JD, US Senator (R-LA), in a Sep. 3, 2015 article, "Let's Get Real and End Birthright Citizenship for Illegal Immigrants," available at [thehill.com](#), stated:

"Every 93 seconds a beautiful baby is born in the United States . . . to illegal immigrant parents. Due to the current misinterpretation of the 14th Amendment, that child is immediately deemed a U.S. citizen--and given all the related

financial, legal, and social benefits, which includes opportunities for those illegal immigrant parents to cash in on many of the benefits.

We simply cannot continue to ignore this. 400,000 cases every year isn't a trivial distraction. It's a real part of our illegal immigration problem. We must face the fact that the current policy of birthright citizenship is a huge magnet for more illegal crossings into our country. And unfortunately, that's often at the hands of very dangerous people.

This magnet attracts women from Mexico and Central America to make the dangerous trek north, often in the hands of 'coyotes' or human smugglers and drug cartels. These women frequently put their lives into the hands of criminal gangs, some who make a living on human trafficking.

Then there's the growing birth tourism industry. Many foreign women, notably from China, pay huge amounts of money in order to travel to the United States and be housed, often in shady accommodations, while pregnant with the intent of birthing a child during their stay...

Isn't it time for us to make significant, real reforms to our immigration laws so that America – the world's melting pot – can welcome immigrants in a legal, organized, and safe way? Let's get serious about that. Let's control our borders and the process of granting citizenship, including by ending birthright citizenship for illegal immigrants.

AUGUST 2015 MIGRATION POLICY INSTITUTE NEWSLETTER

Repealing Birthright Citizenship: The Unintended Consequences By Michael Fix

Every few years, the issue of birthright citizenship flares briefly but brightly, unleashing a wave of news articles, pronouncements by politicians and pundits, and bills to repeal the guarantee of citizenship bestowed on virtually every single baby born on U.S. soil (those born to foreign diplomats being a notable exception). Thanks to Republican presidential candidate Donald Trump the re-energized debate has turned anew to the question of whether birthright citizenship, enshrined in the Constitution in 1868 with the 14th Amendment and endorsed in 1898 by the Supreme Court, would have to be repealed via constitutional amendment or could be undone by act of Congress.

Setting aside the legal and political feasibility—and indeed most legal experts are clear that repeal would require a constitutional amendment—there are deeply important, and troubling, aspects to this proposal that have received scant attention.

The reality is this: Repealing birthright citizenship would create a self-perpetuating class that would be excluded from social membership for generations. Working with researchers at Pennsylvania State University, the Migration Policy Institute (MPI) has found that ending birthright citizenship for U.S. babies with two unauthorized immigrant parents would increase the existing unauthorized population by 4.7 million people by 2050. Crucially, 1 million would be the children of two parents who themselves had been born in the United States. Under a scenario denying U.S. citizenship to babies with one parent who is unauthorized, our analysis finds that the unauthorized population would balloon to 24 million in 2050 from the 11 million today.

This last finding alone should give pause. Touted by its supporters as a solution to reduce illegal immigration, repeal in fact would have the completely opposite effect.

More crucially, the idea that the U.S.-born children, grandchildren, great-grandchildren, etc. of people born in the United States would themselves inherit their forefathers' lack of legal status would have deep implications for social cohesion and the strength of the democracy itself. This perpetuation of hereditary disadvantage based on the legal status of one's ancestors would be unprecedented in U.S. immigration law. It also would be contrary to the American sense of fair play that has rejected visiting the sins of the parents on the children, thereby perpetuating the kind of hereditary disadvantage as practiced in many countries in Europe.

How many children in the United States today have parents who are unauthorized? By our estimate there are 5.1 million of them, with 4.1 million having U.S. citizenship at birth and another 100,000 holding a green card. The remaining 900,000 are themselves unauthorized.

Repealing birthright citizenship would double the unauthorized share of the under-18 child population from its current 2 percent by 2050 under our most conservative scenario. The hardest hit? Mexicans and Central Americans, who account for nearly three-quarters of all unauthorized immigrants. That finding should be a sobering one for both political parties, which have made pursuit of the growing Hispanic vote a priority.

But beyond issues of politics, equity, and values lies one of national self-interest. Study after study makes clear the gains to the U.S. economy and civic fabric that result from the full integration of immigrants into society—integration that is well underway by the second generation. Birthright citizenship has been crucial to this civic and social integration. Repeal would not only have the unintended effect of swelling the size of the unauthorized population, it would also represent an insurmountable barrier to this intergenerational progress that has been at the heart of the nation’s immigration story and success.

Birthright citizenship is not what drives illegal immigration. Surveys have found that people come for jobs and to better their lives. Where problems arise, such as birth tourism by foreigners who come solely to give birth and then leave, existing policy and law enforcement offer the right solution.

So why would we alter a hard-fought, 147-year-old constitutional principle that addressed one of the darkest chapters in our history and has served the country so well? We should not: there is nothing about eliminating birthright citizenship that is in the national interest.

Michael Fix is President of the Migration Policy Institute, an independent, nonpartisan, nonprofit think tank in Washington, DC dedicated to analysis of the movement of people worldwide.

New York Post: Trump cites Harry Reid quote in bid to end birthright citizenship By Mark Moore

October 31, 2018

President Trump on Wednesday reached back 25 years to Democratic Sen. Harry Reid’s comments that “no sane country” would support birthright citizenship to bolster his effort to strip that guarantee from the 14th Amendment. “Harry Reid was right in 1993, before he and the Democrats went insane and started with the Open Borders (which brings massive Crime) ‘stuff.’ Don’t forget the nasty term Anchor Babies. I will keep our Country safe. This case will be settled by the United States Supreme Court!,” Trump wrote on his Twitter account.

But Reid, who reversed his position in 1999, later said Trump is “profoundly wrong.” “Around the time Donald Trump was gobbling up tax-free inheritance money from his wealthy father and driving several companies into bankruptcy, I made a mistake” by proposing a bill to remove birthright citizenship, he said in a statement to Politico.

In a 1993 speech on the Senate floor, Reid, of Nevada, deplored the fact that the US rewards people who enter the country illegally and have a child. “If making it easy to be an illegal alien isn’t enough, how about offering a reward for being an illegal immigrant? No sane country would do that, right? Guess again. If you break our laws by entering this country without permission and give birth to a child, we reward that child with US citizenship.”

Trump also doubled down on his intention to issue an executive order to halt birthright citizenship, which is enshrined in the Constitution.

“So-called Birthright Citizenship, which costs our Country billions of dollars and is very unfair to our citizens, will be ended one way or the other,” the president said in a posting. “It is not covered by the 14th Amendment because of the words ‘subject to the jurisdiction thereof.’ Many legal scholars agree.”

Trump initially raised the issue in a snippet of an interview with Axios released Tuesday, injecting another contentious immigration issue into next Tuesday’s midterm elections. “We’re the only country in the world where a person comes in and has a baby, and the baby is essentially a citizen of the United States ... with all of those benefits,” Trump said. “It’s ridiculous. It’s ridiculous. And it has to end.”

His plan to stop birthright citizenship by executive order was quickly criticized by House Speaker Paul Ryan. “Well, you obviously cannot do that. You know, as a conservative, I’m a believer in following the plain text of the Constitution, and I think in this case the 14th Amendment is pretty clear, and that would involve a very, very lengthy constitutional process,” the Wisconsin Republican told Kentucky radio station WVLK.

The 14th Amendment says in part: “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.” Many legal scholars said the wording is not open to interpretation because the language clearly states that except for diplomats, noncitizens are “subject to the jurisdiction” of American laws.

BREAKING NEWS FROM NPR AMERICA

3 Things You Should Know About Birthright Citizenship August 18, 2015

EYDER PERALTA

Every few years, the common law concept of *jus soli* -- or birthright citizenship — comes back into the news. This time, it was thrust onto the stage by Republican presidential candidate Donald Trump, who just unveiled an immigration plan. One of his proposals is to stop automatically giving citizenship to most people born on U.S. soil. Rival GOP candidate Scott Walker issued a similar call.

The concept of *jus soli* has a storied history in the United States that dates to the late 1800s. Here are three things that will bring you up to speed on the issue:

1. It's in the Constitution

The issue of citizenship was brought into focus by a Supreme Court ruling in 1857 that essentially declared that blacks — even the daughters and sons of freed slaves — were not U.S. citizens.

In 1868, the U.S. ratified the 14th Amendment to the U.S. Constitution. The first sentence 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."

That language made it clear the Supreme Court's ruling in the Dred Scott case was overturned and that black Americans would enjoy U.S. citizenship.

2. It still left some big, open questions

As we've explained in the past, there's one key clause in that sentence from the 14th Amendment — "subject to the jurisdiction thereof" — that left wiggle room for interpretation.

As a Congressional Research Service report from 2010 puts it, what that clause means has been the subject of great debate. Did it mean that the children born to Chinese immigrants — who were once under law not permitted to become naturalized citizens — conferred birthright citizenship? Did it include Native Americans born on sovereign reservations? All those questions were eventually settled in the 1898 Supreme Court case United States v. Wong Kim Ark.

Essentially, the court said the common law concept of *jus soli* should be applied to the 14th Amendment. Congressional Research Service explains:

"The Court held that the Fourteenth Amendment affirmed the traditional *jus soli* rule, including the exceptions of children born to foreign diplomats, to hostile occupying forces or on foreign public ships, and added a new exception of children of Indians owing direct allegiance to their tribes. It further held that the 'Fourteenth Amendment ... has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship' and that it is 'throughout affirmative and declaratory, intended to allay doubts and settle controversies which had arisen, and not to impose any new restrictions upon citizenship.'"

In other words, the 14th Amendment excludes children born to diplomats or hostile occupying forces and those born on foreign public ships.

Those are some very narrow restrictions that most legal scholars agree do not exclude the children of illegal immigrants from receiving automatic citizenship. To be clear, it means that current jurisprudence indicates the U.S.-born children of undocumented immigrants are given citizenship by the 14th Amendment.

As for Native Americans, the court ruled that the amendment did not confer birthright citizenship to those born on reservations, because they are not technically subject to U.S. jurisdiction. As Congressional Research Service reports, the Nationality Act of 1940 "finally and unambiguously declared all Native Americans born in the United States to be U.S. citizens."

3. Birthright citizenship is a New World philosophy

As University of California, San Diego sociologist John Skrentny told NPR in 2010, the U.S. is an anomaly in the world when it comes to this issue.

Most of the rest of the world, for example, gives people citizenship based on a concept known as *jus sanguinis*, literally "by right of blood."

"The idea there is that the nation, the people are bonded together through ancestry," Skrentny said. "The other notion of nationhood is generally understood as a civic notion of nationhood. And this is the idea that folks are bonded together by where they are, by locality and by the ideas that they might share. And that's what we have in the United States. There are folks who say that, you know, to be an American is to embrace an idea."

It is, Skrentny added, a philosophy that works well for countries made up of immigrants, such as the U.S. and Canada.

In 2012, the Law Library of Congress took a comprehensive look at France, Germany, Greece, Italy, Portugal, Spain and the U.K. and found that none of those countries automatically give citizenship to children born to undocumented immigrant parents.

The Center for Immigration Studies, which tends to favor more restrictive immigration policies in the U.S., took a worldwide look at the issue in 2010 and found that "only 30 of the world's 194 countries grant automatic citizenship to children born to illegal aliens."

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Birthright Citizenship: An Overview Report (from the Center for Immigration Studies) November 5, 2018

By [Andrew R. Arthur](#), *resident fellow in law and policy at the Center for Immigration Studies*, former Counsel on the House Judiciary Committee where he performed oversight of immigration issues, former Immigration Judge for York Pennsylvania

Costs of Birthright Citizenship:

Assuming that Congress could amend this interpretation of the Fourteenth Amendment by statute, or that the president could change it by executive order, there would be strong arguments in favor of doing so.

According to the Pew Research Center, "[a]bout 275,000 babies were born to unauthorized-immigrant parents in 2014, or about 7 [percent] of the 4 million births in the U.S. that year."⁵⁰ A recent CIS *Backgrounder* suggests that the number of children born to undocumented parents that year was actually higher, 297,000, or 7.5 percent of all births in the United States that year.⁵¹

While either of these figures represents a decline from the 330,000 births to illegal alien parents in 2009, it is still a significant number of children.⁵² In addition, Pew has reported that:

*About 11.1 million unauthorized immigrants lived in the U.S. in 2014. ... They made up 3.5 [percent] of the nation's total population, but accounted for a higher share of births because the immigrant population overall (lawful and unauthorized) includes a higher share of women in their childbearing years and has higher birthrates than the overall U.S. population.*⁵³

All told, according to Pew, "there were 4.7 million U.S.-born children younger than 18 living with unauthorized-immigrant parents."⁵⁴

As *National Review* reported in 2015, the costs of children born to illegal immigrants are "not negligible."⁵⁵ It noted:

*Inflation-adjusted figures from the U.S. Department of Agriculture projected that a child born in 2013 would cost his parents \$304,480 from birth to his eighteenth birthday. Given that illegal-alien households are normally low-income households (three out of five illegal aliens and their U.S.-born children live at or near the poverty line), one would expect that a significant portion of that cost will fall on the government.*⁵⁶

Those expectations are borne out by the findings of my colleague at CIS, Steven Camarota. In a September 2015 report, he concluded that almost 87 percent of illegal immigrant households with children used at least one welfare program, compared to almost 72 percent of legal immigrant households and 52.4 percent of native households.⁵⁷

CIS concludes that it is possible to estimate the net fiscal costs of illegal immigrants and their children based on new research done by the National Academies of Sciences, Engineering, and Medicine, which estimates the fiscal impact of immigrants based on their education level. Based on the Academies' work, CIS estimates that the average illegal immigrant and his or her progeny create a net fiscal drain of \$82,290 in their lifetimes, taking into account all the taxes they will pay and all the services they will use.⁵⁸

Those costs begin at birth. CIS has determined: "Illegal immigrants account for 11 percent (198,000) of all publicly funded births. ... We estimate that the cost to taxpayers for births to immigrants (legal and illegal) is roughly \$5.3 billion — \$2.4 billion of which is for illegal immigrants."⁵⁹

And, interestingly, as my colleague David North has explained, at least one healthcare system figured out a way to pass along to U.S. taxpayers the costs of deliveries of children to illegal alien mothers in the United States. As he reported in October 2016:

The Justice Department has announced a financial settlement of a complicated civil and criminal case against Tenet Healthcare Corporation in which the company was forced to pay back to the feds more than a half a billion dollars that it had received for providing fraud-related maternity services to illegal alien mothers giving birth to thousands and thousands of instant U.S. citizens over a period of many years.

Half a billion dollars.

Birth Tourism:

Birthright citizenship has also resulted in an unusual (but hardly unexpected) phenomenon known as "birth tourism", whereby foreign nationals travel on valid visas to the United States to give birth, thus conveying the benefits of U.S. citizenship to their children. In April 2015, CIS estimated that there were possibly as many as 36,000 birth tourists coming to the United States each year.⁶¹

As Jon Feere explained in August 2015, while "[t]here is not any breakdown of the nationality of birth tourists, in large part because the practice is largely clandestine ... there are media reports (both American and international) that shed some light on the origins of birth tourists."⁶² Specifically, Feere recounted reports of birth tourism from China, Taiwan, South Korea, Nigeria, Turkey, Russia, and Mexico.⁶³

With respect to China, Feere stated:

It has been reported that there are "at least 500 companies" offering birth tourism services in China. A Chinese news article titled "China's 'Born in the USA' Frenzy" details the efforts one Chinese birth tourist took to conceal her fraud and quoted an organizer of birth tourism who explained that "The return on investment is higher than robbing a bank."

The article also notes that "Giving birth to a child abroad is not a privilege reserved to the stars and the very wealthy. An increasing number of expectant middle-class parents also fancy giving their children passports that they can feel proud of."

Rolling Stone ... published a lengthy expose on Chinese birth tourists, noting that "birth tourism has become extremely popular in China."

In 2011, city officials in southern California uncovered a makeshift maternity ward described by the media as one "that primarily caters to Chinese and Taiwanese" birth tourists. City officials shut the operation down after a resident complained about traffic, density, and building code issues. A city official noted that he had seen makeshift maternity homes in cities throughout Los Angeles County over his 13 years working for the city of San Gabriel, but that this operation was the largest he had ever encountered.

Earlier [in 2015], federal agents investigated 37 locations in southern California involved with birth tourism. The federal affidavit notes that Chinese government sources have reported that Chinese nationals had 10,000 babies in the United States in 2012, up from 4,200 in 2008.⁶⁴

There are strong incentives for aliens, both illegal and nonimmigrant, to have children in the United States. The parents of a U.S. citizen who is at least 21 years old are "immediate relatives" for purposes of applying for lawful permanent residence,⁶⁵ meaning that they "have special immigration priority and do not have to wait in line for a visa number to become available for them to immigrate because there are an unlimited number of visas for their particular category."⁶⁶ In addition, U.S. citizens can also petition for their siblings to immigrate.⁶⁷

Other Consequences of Birthright Citizenship:

Birth tourism is not the only negative consequence of birthright citizenship, however. Another is the prospect that an individual who is born in the United States to a parent or parents remaining briefly or simply transiting the country, would, nonetheless, be entitled to all of the rights and privileges of citizenship, including the full protection of the Constitution and access to a U.S. passport.⁶⁸

As Feere stated in 2015 testimony before the House Judiciary Committee's Subcommittee on Immigration and Border Security:

It is very important for people we allow in on a permanent basis who obtain citizenship to think of themselves as Americans. It is equally important for Americans to think of them as Americans. Assimilating new U.S. citizens is a critical part of our immigration system as it helps maintain the social fabric of America. But a broad interpretation of our nation's birthright citizenship clause is creating situations that threaten to break down the nation's social cohesion.⁶⁹

Not only is the possibility that there would be such "attenuated Americans" not as farfetched as it might sound, but it is likely more common than most would think. In fact, even individuals who never touch dry ground in this country may be considered "citizens" under prevailing law. Notably, 7 Foreign Affairs Manual (FAM) 1100, which is captioned "Acquisition and Retention of U.S. Citizenship and Nationality",⁷⁰ contains guidance for State Department and other government employees on assessing whether an individual is a citizen or national of the United States.⁷¹ Under 7

FAM 1114(a), "[p]ersons born on ships located within U.S. internal waters ... are considered to have been born in the United States."⁷² The only exceptions to this rule are those born on "[f]oreign warships, naval auxiliaries, and other vessels or aircraft owned or operated by a State and used for governmental non-commercial service."⁷³ Similarly, "a child born on a plane in the United States or flying over its territory would acquire United States citizenship at birth."⁷⁴

The most notorious "attenuated citizen" is Yaser Esam Hamdi. As then-Chairman John Hostettler of the House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims explained at a 2005 subcommittee hearing: "Hamdi ... was born in Louisiana to Saudi parents who were in the U.S. on temporary visas. He returned to Saudi Arabia as a small child and maintained little connection to the United States."⁷⁵ Hamdi was subsequently captured "by the U.S.-allied Northern Alliance in Afghanistan in December 2001," and after he was detained by the U.S. government, "he became the central figure in a landmark terrorism case before the Supreme Court."⁷⁶

More benign figures also fall into this category, however. The aforementioned testimony of Feere included the story of "Jennifer Shih, a UC Davis college student born in New York," who had told the *Sacramento Bee*: "I'm Taiwanese more than American."⁷⁷

As Feere explained it:

Back in 1989, Shih's mother boarded a jet bound for New York, tourist visa in hand. She didn't arrange her travel in order to take in Broadway show, however; she was eight months pregnant and the goal was to add a U.S.-passport holder to her family. In other words, she was engaging in fraud as admitted by Mr. Shih, who cited the quality of American schools as the impetus. Two months after giving birth Mrs. Shih "returned to Taiwan with her U.S. passport-bearing daughter in tow."

In 2004, when Jennifer reached the age of 15, she returned to the United States to take advantage of U.S.-taxpayer subsidized high schools in Idaho, Utah, and college in California. Understandably, Jennifer — who didn't speak English when she arrived — describes the United States as a "foreign country". The reporter who interviewed her notes that "even after eight years", Jennifer says she still "thinks about Taiwan every day" and visits nearly every year. Jennifer's honesty highlights the absurdity of a lax birthright citizenship policy and raises significant questions of allegiance and assimilation.

Jennifer's father has since moved to the United States, presumably as a result of chain migration, which allows individuals to sponsor parents and siblings upon turning 21 years of age. Jennifer says she is interested in having kids of her own who will go to college in America. This is a perfect example of how one instance of fraud from a temporary alien can result in a permanency that was never welcomed by the American public.

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These Countries Show Why Losing Birthright Citizenship Could Be A Disaster

Some Republicans want to change the 14th Amendment. That would have major consequences.

By Charlotte Alfred, Elise Foley, and Roque Planas

A significant portion of the GOP presidential field wants to end birthright citizenship for the children of undocumented immigrants, either by amending the Constitution or by denying altogether that it confers that right. One of their central arguments is that other countries don't give everyone who is born there automatic citizenship — so why should we?

"We're the only place just about that's stupid enough to do it," businessman and GOP presidential candidate Donald Trump said last week.

Other countries do have birthright citizenship, although most do not. While the U.S. confers citizenship based on jus solis, or "right of the soil," many others base it on jus sanguinis, or "right of blood." But that doesn't mean the U.S. needs to follow their example.

Supporters of birthright citizenship say there are a number of reasons it should be maintained. It's part of the Constitution. Attempts to restrict it have historically been motivated by racist fears of immigrants and their children. Ending it would be a bureaucratic nightmare. The most extreme consequence would be a massive group of stateless people — neither citizens in the U.S. nor in foreign countries.

It's true that many other countries don't have birthright citizenship. But those countries have problems of their own.

Germany:

Germany's stringent citizenship laws created a vast underclass of second- and third-generation Turkish migrants, who still struggle today for equal opportunities and protection from racism.

Germany invited hundreds of thousands of foreigners into the country as part of its guest worker program in the 1960s, including an estimated 750,000 people from Turkey. It was meant to be a temporary measure to address labor shortages, and the workers did not receive German citizenship. But around half of the Turkish workers stayed and had children and grandchildren in the country. Today, around 2.5 million of Germany's population of 82 million have Turkish heritage.

The lack of birthright citizenship left some deep-rooted problems. Germany was initially slow to integrate its Turkish workers, never expecting them to stay. Second-generation students are more likely to go to worse schools, and foreign-born workers have lower median incomes. German Turks fear mounting racism and Islamophobia as the far-right movement PEGIDA, or the Patriotic Europeans against the Islamization of the West, has increased in prominence in some German cities.

In recent years, Germany has relaxed some of its barriers to citizenship. In 2000, Germany began allowing children born in the country to become citizens if one of their parents has stayed in the country legally for eight years. In 2014, Germany removed another obstacle for second-generation migrants by lifting a ban on dual citizenship for people from non-EU countries, as long as they had spent eight years in the country.

Dominican Republic:

Traditionally, most people born in the Dominican Republic have claimed citizenship in that country. But as tensions rose following widespread migration from neighboring Haiti, the Dominican government eliminated birthright citizenship with a series of legal changes dating back to 2004. The new standard is enshrined in the 2010 Constitution, and a 2013 decision by the country's Constitutional Court obliged the government to apply the standard retroactively. The changes prompted a flood of international criticism and the creation of a stateless population estimated by some human rights groups to be as high as 200,000 people — including 60,000 children. The vast majority of these people are of Haitian descent and black, fueling suspicions that racism played a role in prompting the changes.

Without proper citizenship documents, many children can't attend public high schools, and adults have trouble working in the formal economy. Some people who have worked in the country for decades — oftentimes in some of the most onerous jobs available, like cutting sugar cane or working as a home servant — now face the risk of deportation, separation from their families and the forfeiture of their pensions. The Dominican government implemented a national "regularization plan" to help undocumented immigrants and Dominican-born people of Haitian descent normalize their status, but international human rights groups have widely criticized its effectiveness.

Japan:

Hundreds of thousands of Koreans have lived for decades without citizenship rights in Japan because of the country's strict nationality laws.

Following Japan's annexation of Korea in 1910, an estimated 2 million Koreans moved to the island nation, seeking economic opportunities and due to forced conscription during World War II. After the war ended in 1945, around 600,000 Koreans remained in Japan out of both choice and economic necessity. Japan revoked their citizenship, and the Koreans became known as the "Zainichi," Japanese for "residing in Japan." They lost their voting rights, faced mandatory fingerprinting and were barred from most jobs.

The Korean community never had much chance to integrate. Because Japan's nationality laws are based on parentage rather than place of birth, their children faced the same patterns of exclusion. Very few Koreans tried to naturalize as Japanese citizens, which would have required them to take on Japanese names and renounce their right to South Korean citizenship. Zainichi Koreans fought long battles to gain access to Japan's national health insurance and state pensions. Korean language schools are underfunded, and until the late 1990s their pupils could not take the university entrance exam. Koreans also faced widespread discrimination, causing some to hide their Korean heritage for decades.

In the 1980s and 1990s, Japan gave Zainichi Koreans permanent resident status and rolled back some of the discriminatory measures — opening up some jobs, recognizing Korean schools and allowing Koreans who want to become citizens to keep their names. Increasing numbers of Koreans are becoming Japanese citizens, although over 565,000 registered Korean residents remain non-citizens, according to official figures from 2010. Many Koreans still face discrimination in jobs and housing, and are concerned by the rise of far-right anti-Korean groups.

Kuwait:

More than 100,000 people living in Kuwait are denied citizenship, even if they were born in the country and even if their mothers are Kuwaiti citizens. The country's problem dates back to its independence in 1961. At that time, some residents were either unable or failed to register with the government because they didn't know they needed to, lacked documentation or had another issue. The country also only allows fathers to pass on citizenship, so even if someone was born in the country and their mother is a citizen, they are not eligible unless their father is as well.

The government claims that most people in the Bidoon group, so-named because they are without nationality, are foreign nationals who want to claim citizenship to receive government benefits. In reality, most of the Bidoon are stateless.

The government began to call the Bidoon "illegal residents" in the 1980s and put limits on their ability to work or receive benefits. Bidoon have been denied certificates for births, marriages and deaths, along with the education and health care benefits afforded to Kuwaiti citizens. Their access to benefits remained poor even after the government broadened citizenship eligibility amid civil unrest in 2011.

Last year, the government came up with a potential solution that would help Bidoon people register for citizenship — just not in Kuwait. Instead, the country set up a deal with Comoros, which would offer passports to Bidoon in exchange for money from the Kuwaiti government. The plan comes with a major catch for the Bidoon, perhaps considered a benefit to the Kuwaiti government. Officials say they have no plans to deport all of the Bidoon people, but giving them citizenship elsewhere would make doing so much easier.