



# Birthright Citizenship and Illegal Immigration

By Pawel Styrna | March 2020

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## The Issue

America's immigration and naturalization system is abused in many ways with one of the most egregious examples being the exploitation of birthright citizenship, or the **automatic American citizenship granted to nearly all individuals who are born in the U.S.** The roots of the controversy are found in the 14<sup>th</sup> Amendment to the U.S. Constitution, which 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."

Debate over the proper interpretation of the 14<sup>th</sup> amendment continues, but no one disputes that citizenship carries with it specific [benefits](#), such as the right to vote and eligibility for certain government benefits.

Therefore, securing birthright citizenship holds great value that can be viewed as an incentive by parents-to-be to enter the U.S. illegally in order to give birth. It can also enhance an illegal alien's chances of gaining permanent status if their child is an American.

While there have been attempts by lawmakers in both parties to scale back or even end birthright citizenship, those efforts have not been realized. According to the Center for Immigration Studies (CIS), it is estimated that every year approximately [300,000 children](#) gain birthright citizenship because they are born to illegal alien mothers in the United States. That accounts for roughly 7.5 percent of all live births every year. While this number may not seem significant, the cost to American taxpayers – \$2.4 billion – is quite significant. Because of our current overly-broad and abuse-incentivizing interpretation of birthright citizenship, all of these children receive automatic U.S. citizenship.

## Recent Controversy

Since birthright citizenship continues to be an incentive for illegal immigration, it remains an issue at the heart of the immigration debate both inside and outside of Congress. For example, former Senator Harry Reid (D-NV) [introduced legislation in 1993](#) that included a provision to end birthright citizenship, [describing](#) it as a "reward for being an illegal immigrant," and emphasizing that "no sane country would do that." The bill never made it to the Senate floor for a vote, and Reid would later reverse his position on the [issue](#).

Since then, bills to end or amend birthright citizenship have been introduced at the [state level](#), and [almost every year since 1993](#), including [in the current Congress](#), in the federal legislature as well.

The issue once again became front and center on October 29, 2018, when President Trump stated that he wanted to [put restrictions on birthright citizenship](#) – most likely through an executive order. Although the President did not specify the groups that would no longer receive automatic birthright citizenship under his plan, it appears that he was referring to the children of illegal and temporarily-present aliens. Trump floated the idea [again](#) in late August 2019, but no further action has been taken by the Administration.

## The 14<sup>th</sup> Amendment and Birthright Citizenship

The current controversies surrounding birthright citizenship stem from differing interpretations of the [14<sup>th</sup> Amendment](#), which was adopted in 1868 in the wake of the Civil War. Its main objective was to ensure that recently-emancipated slaves were allowed to vote and granted all of the legal protections due to citizens under the Constitution.

The 14<sup>th</sup> Amendment states 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.” Most of the debates focus on the meaning of one key phrase: “and subject to the jurisdiction thereof.”

Those in favor of maintaining birthright citizenship [argue](#) that the Amendment’s use of the term “jurisdiction” is purely geographic, meaning that foreign nationals are subject to U.S. jurisdiction while on its soil.

Critics of the current interpretation note that in 19<sup>th</sup> century parlance, “subject to the jurisdiction of the United States” meant “not subject to any foreign power.” And the latter formulation was, in fact, used in the Civil Rights Act of 1866, upon which the 14<sup>th</sup> Amendment was based. In other words, the amendment understood [jurisdiction](#) as *political* authority. Thus, illegally present aliens are not subject to U.S. jurisdiction.

Senator Jacob M. Howard (R-MI), who introduced the citizenship clause in 1866, [emphasized](#) that his understanding of birthright citizenship “will not, of course, include persons born in the United States who are *foreigners, aliens* [emphasis added], who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States (...).”

The U.S. Supreme Court weighed in on citizenship in the case of *United States v. Wong Kim Ark* in 1898. Wong Kim Ark was born in California in 1873 to parents who were Chinese subjects but also *legal permanent residents*. The court [ruled](#) that he was indeed a U.S. citizen based on the 14<sup>th</sup> Amendment. However, the Supreme Court never ruled on the controversial question of whether the Citizenship Clause requires a broad view of jurisdiction that extends birthright citizenship to children of illegal aliens or temporarily present aliens.

Moreover, during the second half of the 19<sup>th</sup> century mass illegal immigration was not yet the major problem it would become during the past several decades. This is important to take into account when considering the original intent of the authors of the Fourteenth Amendment or the Supreme Court’s *Wong Kim Ark* ruling.

## Rewarding Illegal Immigration

Automatic citizenship for the children of illegal aliens is deeply problematic for several important reasons. First, it rewards people who have entered or remained in the country in violation of our laws. Second, once a citizen child reaches 21 years of age, they can sponsor their illegal alien parents for legalized immigrant status.

As David North of CIS points out, many illegal aliens believe that having a U.S.-born child can [help](#) them in some way. Moreover, as one illegal alien woman interviewed in 2008 [revealed](#) to CBS News, when asked if many women cross the border to give birth: “Yes. I know people who have done that. Things are much better here in the U.S. because they help children so much more.” She also admitted that her goal was to anchor her entire family in the U.S. According to FAIR’s 2019 calculations, the United States already has a large illegal alien population of [14.3 million](#). [Why not reduce](#) the number of pull factors encouraging illegal migration and presence?

There are also costs associated with giving birth. In the above-mentioned CBS report, the CEO of the McAllen Texas Medical Center – where about 40 percent of births were to illegal alien mothers – stated that “mothers about to give birth (...) walk up to the hospital still wet from swimming across the river in actual labor.” Once they deliver, their child is a U.S. citizen. The costs of the labor, as well as any medical treatment along the border, are picked up by the American taxpayer. A [study](#) by CIS found births to illegal alien mothers constitute 11 percent of all publicly funded births in the U.S. and cost taxpayers \$2.4 billion annually.

As FAIR has [pointed out](#), illegal aliens can receive benefits on behalf of their U.S.-born children. According to our [report](#) on the fiscal costs of illegal immigration, American taxpayers pay \$6.7 billion annually in Medicaid spending on the U.S.-born children of illegal aliens. All of this is part of the total cost of illegal migration, which we estimate at [\\$132 billion a year](#), and which may rise to \$200 billion by 2025.

In addition, birthright citizenship for the children of illegal aliens has the potential to create a growing constituency of U.S. citizens, many of whom presumably have an emotional and vested interest in supporting policies that undermine our immigration laws. According to the Pew Research Center, in 2016 there were [5 million](#) U.S.-born children under 18 living with at least one illegal alien parent, and almost another million individuals over 18 living with at least one unlawfully present parent.

Furthermore, it is unfair to legal immigrants who must endure a long and painstaking process to become naturalized U.S. citizens, including being a permanent resident for at least five years, submitting to a ten-step naturalization [process](#) and numerous [requirements](#), and paying a [steep fee](#) (\$640-\$725).

## Globally, Birthright Citizenship is Increasingly Rare

Fewer than [forty countries](#) recognize birthright citizenship as law and most of those are located in the Western Hemisphere.

Of developed democracies, only the United States and Canada grant automatic birthright citizenship (with the exception of the children of diplomats). And, like in the United States, members of both political wings in [Canada](#) have called to reform and limit birthright citizenship to no avail.

France, New Zealand, Australia, and, most recently, Ireland, have [restricted](#) the practice to varying degrees in recent years.

## **The Solution**

The abuse of birthright citizenship by illegal aliens has been a problem for decades. It is high time that we reform and clarify it by ensuring that those who are in the country illegally are not rewarded by giving their U.S.-born children automatic citizenship. In practice, the only way to truly settle the question of which interpretation of the 14<sup>th</sup> Amendment is correct is for the Supreme Court to weigh in on the matter. Any legislative or executive action likely would be challenged in court, and hopefully appealed up to the higher court, thereby granting it an opportunity to rule on the issue directly.

For more information, please see FAIR's issue brief on birth tourism.