

## Birthright Citizenship for Children of Foreign Diplomats? Limiting Language in the 14th Amendment's Citizenship Clause Has No Practical Effect

By Jon Feere

The intended scope of the 14th Amendment's Citizenship Clause has been hotly debated in the context of children born to illegal immigrants. While it appears unlikely that the intent of those who authored the 14th Amendment was to ensure automatic citizenship for children born to illegal and temporary immigrants, some argue that the amendment protects such grants of citizenship.<sup>1</sup>

Amid this debate, however, there is one area of solid agreement among advocates on all sides of the debate: In the least, children born to foreign diplomats are not “subject to the jurisdiction” of the United States and are therefore not to be granted U.S. citizenship.<sup>2</sup>

But even that low standard is not being met.

A lack of direction from Congress has resulted in children born to foreign diplomats on U.S. soil receiving U.S. birth certificates and Social Security numbers (SSNs) — effectively becoming U.S. citizens — despite the limiting language within the Citizenship Clause of the 14th Amendment.

Among the findings:

- Despite Congress's clear intent to not create a completely universal and automatic birthright citizenship policy, the current application of the Citizenship Clause is so lax that the United States has a *de facto* universal birthright citizenship policy that denies U.S. citizenship by birth to no one.
- There is no federal requirement that hospitals ask new parents if they are foreign diplomatic staff. State agencies do not instruct hospitals to differentiate between children born to diplomatic staff and those born to U.S. citizens or temporary or illegal aliens. Hospitals issue the same birth certificates to all newborns.
- The Social Security Administration (SSA) does not investigate whether SSN requests are for children of foreign diplomats. Although the agency does recognize that U.S.-born children of foreign diplomats are not eligible to receive SSNs, there is no mechanism in place for preventing such issuance.
- The State Department is currently rewriting the agency's guidelines on birthright citizenship, signaling a possibly significant departure from current 14th Amendment jurisprudence. The agency claims that children born to foreign diplomats are “entitled to birth certificates.”
- Children of diplomats who receive U.S. birth certificates and SSNs have greater rights and protections than the average U.S. citizen because they can enjoy all of the benefits of U.S. citizenship, but also invoke diplomatic immunity if they break a law. A lack of direction from Congress has created what one might consider a “super citizen” who is above the law.
- In order to end the practice of granting automatic U.S. citizenship to children of foreign diplomats, Congress could author regulations requiring declaration of parental diplomatic status on birth certificate request forms.



As an alternative, Congress could require parents to have SSNs before a U.S. birth certificate or SSN is issued to a newborn. While this latter proposal might create better results and be more easily administered, it would have the effect of ending automatic birthright citizenship not just for children of diplomats, but also for children of illegal aliens and temporary aliens — an outcome that is more aligned with the intended scope of the 14th Amendment than the outcome created by current practices.

## Background

The 14th Amendment's Citizenship Clause contains two requirements for obtaining U.S. citizenship by birth: (1) the birth must have occurred within the United States; and (2) the person born must be subject to the jurisdiction of the United States. The clause 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.”<sup>3</sup>

The intended scope of the Citizenship Clause has been the subject of much debate recently, particularly in the context of children born to foreign visitors and illegal aliens. While the history of the Citizenship Clause suggests that children born to visiting and illegal aliens should not be considered U.S. citizens, this topic was the focus of a recent Center for Immigration Studies *Backgrounder* and will not be repeated here.<sup>4</sup> Simply put, one side of the birthright citizenship debate asserts that children born to illegal aliens, temporary visitors, and foreign diplomats are not automatic U.S. citizens under the 14th Amendment, while advocates on the other side of the debate argue that the scope of 14th Amendment's limiting language is much more narrow and only bars grants of citizenship to children born to foreign diplomats. While there are differences of opinion as to who is entitled to claim U.S. citizenship under the Citizenship Clause, there is one thing that everyone engaged in the debate agrees on: Children born to foreign diplomats are not “subject to the jurisdiction” of the United States and are not to be granted U.S. citizenship.

Despite this agreement, and despite Congress's clear intent to not create a completely universal and automatic birthright citizenship policy, today's application of the Citizenship Clause is so lax that the United States has a *de facto* universal birthright citizenship policy that denies U.S. citizenship by birth to no one, including children born to foreign diplomats. Supporters of the

status quo argue that critics of the current application and interpretation of the Citizenship Clause are attempting to “rewrite” or “decimate the 14th Amendment,”<sup>5</sup> which suggests that such supporters believe the Citizenship Clause is actually functioning (i.e., actually barring some people from acquiring U.S. citizenship through birth). In reality, the limiting language in the 14th Amendment's Citizenship Clause has been effectively rendered a nullity as a result of a lack of regulations aimed at birth certificate and SSN issuance. If anyone is attempting to rewrite the Citizenship Clause, it is arguably those who seek to avoid any discussion of the current state of the 14th Amendment.

A discussion about the application of birthright citizenship is necessary if the 14th Amendment's Citizenship Clause is to retain any legal effect. This *Backgrounder* illustrates how all entities involved in the birthright citizenship process — (1) the National Center for Health Statistics; (2) hospitals and state health agencies; (3) the Social Security Administration; (4) the Department of State; and (5) U.S. Citizenship and Immigration Services — are failing to prevent grants of U.S. citizenship to children born to foreign diplomats, effectively erasing the limiting language found in the 14th Amendment's Citizenship Clause.

**1. National Center for Health Statistics Has Not Addressed Births to Diplomats.** The National Center for Health Statistics' (NCHS) Division of Vital Statistics is a federal agency under the Centers for Disease Control and Prevention and is responsible for standardizing birth certificate issuance.<sup>6</sup> States generally adopt the standard created by the NCHS and sometimes add additional questions. The goal is for the state and federal agency to “work together to build a uniform system that produces records to satisfy the legal requirements of individuals and their families and also to meet statistical and research needs at the local, state, and national levels.”<sup>7</sup> An interview with a head NCHS official revealed that the subject of issuing U.S. birth certificates to U.S.-born children of foreign diplomats is not one the agency has discussed.

While the NCHS has undertaken a standardization effort to improve statistical data, there remains a slight lack of standardization among the states. The agency continuously reviews the forms being used, making recommendations approximately every 10 to 15 years.<sup>8</sup> The agency is currently updating the “Model State Vital Statistics Act and Regulations,” the current version of which has been used since 1992.<sup>9</sup> The standard birth certificate was last updated in 2003. Although the NCHS cannot force a state to adopt the standards, most states

do so willingly because it allows states to compare their data against other states and national statistics.

Although the standard birth certificate form asks for the SSNs of each parent, parents can leave the space blank if they do not have one or have forgotten the number. One would expect the space to be blank if the parent is a foreign diplomat, illegal alien, or a certain type of temporary alien. The standard form also asks whether a parent wants a SSN for their newborn child. The parent is instructed to simply check “Yes” or “No.” There is no language instructing foreign diplomats to check “No.” Regardless of what box is checked, a birth certificate is still issued, and governmental agencies consider that document sufficient proof of U.S. citizenship.

The NCHS considers the U.S. birth certificate proof of U.S. citizenship. Yet one top NCHS official reports that there is no instance in which a hospital would deny a newborn child a birth certificate. In other words, at least on paper, a child born in a U.S. hospital to a foreign diplomat is considered a U.S. citizen from the perspective of the NCHS.

**2. State Health Agencies Do Not Direct Hospitals to Inquire about Diplomatic Status.** Within hours of a child’s birth it is standard for new parents to fill out forms to request both a birth certificate and SSN for the newborn. Responsibility for registration of births is left to the states and territories as is the creation of the forms used for such registration; most state forms are similar to the standard form created by the NCHS for reasons discussed above. Each state/territory has an agency that oversees birth certificate standardization, usually called the state Office of Vital Statistics.

According to U.S. Citizenship and Immigration Services, a “birth certificate provides proof of citizenship.”<sup>10</sup> The agency is careful to note that it “[does] not issue any kind of citizenship document to a person who is a citizen by birth in the United States.”<sup>11</sup> The agency then directs individuals to their state vital statistics office for birth certificate matters, effectively declaring such agencies to be the entities responsible for determining who amongst those born on U.S. soil is a U.S. citizen and who is not.<sup>12</sup> However, state vital statistics offices are not involved in the birthright citizenship policy debate. For these agencies, the issuance of birth certificates to newborns is formulaic and apolitical, and they direct hospitals within the state to treat birth certificate issuance as such.

It does not appear that any state vital statistics offices require hospitals within their jurisdiction to make an inquiry into whether or not a new parent is employed as a foreign diplomat. The standard birth certificate

form does not inquire about parental occupations, although a number of states have added the question to their version of the forms. Nevertheless, responses are not required as it is understood that some parents are unemployed.<sup>13</sup> Even if a parent were to state their profession as being that of a diplomat, such information is not routinely sent to the Social Security Administration when a request for a SSN is made. The SSA has no way of determining whether a request for a SSN comes from a child born to a foreign diplomat.<sup>14</sup>

Hospitals and state vital statistics offices also do not require new parents to provide their own SSNs on birth certificate application forms. As discussed above, the forms provide a space for a parent’s SSN since such an inquiry is part of the standard created by the NCHS, but parents are instructed to leave it blank if they do not have one or cannot remember the number.<sup>15</sup> Federal law requires state vital statistics agencies to collect a parent’s SSN “unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number.”<sup>16</sup> Apparently a parent’s decision to enter the United States illegally or overstay a visa is “good cause” to not require the furnishing of a SSN. The parent’s status as a foreign diplomat is also apparently “good cause” to not require such furnishing.

State agencies do not instruct hospitals to differentiate between children born to foreign diplomatic staff and those born to U.S. citizens or temporary or illegal aliens. Birth certificates are issued to all persons born on U.S. soil, and requests for SSNs are generally forwarded to the Social Security Administration without being second-guessed.

**3. Social Security Administration Does Not Inquire About Diplomatic Status.** The ultimate federal administrative arbiter of who is deserving of a grant of U.S. citizenship is the Social Security Administration. Every year, the SSA issues approximately five million unique SSNs. Although the agency has a working relationship with the Department of Homeland Security and the State Department, the shared focus is largely foreign worker programs and assisting U.S. diplomats serving overseas. The SSA is not tasked with the responsibility of preventing the issuance of SSNs to U.S.-born children of foreign diplomats, and consequently the agency does not have a system to prevent such issuance.

After a birth on U.S. soil, state vital statistics offices send the SSA information that includes the newborn’s name, date of birth, place of birth, and the names of the parents. Some of the information that may be collected by a hospital — for example, a parent’s occupa-

tion — is not sent to the SSA. The agency also does not keep track of the parents' place of birth. This is largely an automated process and it is the common way in which a parent acquires a SSN for their newborn.

The SSA website does acknowledge that a child born to a foreign diplomat is not to receive a SSN. On its "Frequently Asked Questions" webpage, the following question is posed:

"My child was born in the United States, but neither my husband nor I have Social Security numbers. Can our child get a Social Security number?"

The SSA responds:

"In most cases, yes. That is, unless the child was born to foreign sovereigns or diplomatic officers listed on the State Department Diplomatic List. If a child meets the other requirements, any child born in the United States can get a Social Security number."<sup>17</sup>

Despite this, the SSA does not determine whether a SSN request is for a child of a foreign diplomat. In speaking with the head of the department that oversees SSN issuance, it appeared that the agency is genuinely concerned that children born to diplomats receive SSNs. The SSA knows that it is happening and knows that it should not be happening, but the agency has not come up with a process to prevent such issuances. In years past, the issue was discussed by agency officials, but because of insufficient data and a lack of direction from Congress, the problem remains unresolved. As one high-ranking SSA official explained, "Unfortunately, although we recognize that the children of diplomats are not U.S. citizens, and our policy recognizes that, from a practical implementation perspective, we haven't been able to make that part of the process."<sup>18</sup>

The only available data on diplomatic staff is maintained by the State Department. Known as the "Diplomatic List," it contains the names of all persons in the United States on a diplomatic visa, including spouses of diplomats and staff.<sup>19</sup> The list is quite lengthy, updated often, and is not automated in any form that could be of use to the SSA. The State Department also does not maintain an official count of the number of foreign diplomats in the country at any given time.<sup>20</sup> The list contains titles (e.g., "His Excellency;" "Brigadier General;" "Lieutenant Colonel;" "Captain;" "Sheikh;" "Dr.") that could make automation difficult, according to SSA officials. Furthermore, because the data is solely

name-based (i.e., it does not include any numerical data that could be used for identification purposes), agency officials are concerned that many false positives and unknown false negatives would result. Even if SSA were to cross-check against the list, a problem inherent to all solely-name-based systems would remain: difficulty with detecting fraud. To get around such a system, a diplomat would simply have to give a false name, nickname, or unique spelling at the hospital. A simple typo could also result in the diplomat's child receiving a SSN.

A parent can also acquire a SSN for his or her child by appearing, in person, at a SSA office. In fact, it seems the only instance in which the SSA would possibly deny a SSN to a diplomat's child is if a request was made in person and an administrator happened to stumble upon the fact that the person seeking a SSN for his or her child was a foreign diplomat. According to an agency official, in that instance, the SSA would explain to the diplomat that the child is not eligible for a SSN. Of course, the agency does not ask whether parents seeking a SSN in person are diplomats, and while there is a space on the SSN request form for a parent's SSN, the parent can leave the space blank if he or she "was never assigned a Social Security number" (e.g. he or she is an illegal alien or foreign diplomat).<sup>21</sup> If the parent does not have a SSN or if it is not known and the parent cannot obtain it, the parent is directed to simply check the "unknown" box.<sup>22</sup>

Interestingly, even if the SSA were to come up with a system that denies SSNs to U.S.-born children of foreign diplomats, each child would still have a birth certificate issued by a U.S. hospital. Conceivably, this means that if such a child were to return to the United States, say 15 years later, with his U.S.-issued birth certificate in hand, he might be able to apply for a SSN in person without difficulty. The Diplomatic List does not contain the names of children born to foreign diplomats. Additionally, the SSA does not maintain a list of rejected SSN applicants.

Ultimately, Congress must give the SSA some direction on this issue if the 14th Amendment's Citizenship Clause is to retain any legal significance.

**4. State Department Changing Guidelines, Complicating Issue.** A response from the State Department to an inquiry on the issue of children born to foreign diplomats revealed more evidence of inconsistency among federal agencies. The State Department is currently developing new rules that may further complicate the matter.

In 1995, the State Department's "Foreign Affairs Manual" (FAM) straightforwardly declared that

children born on U.S. soil to foreign diplomats are not to be considered U.S. citizens:

“Under international law, diplomatic agents are immune from the criminal jurisdiction of the receiving state. Diplomatic agents are also immune, with limited exception, from the civil and administrative jurisdiction of the state. The immunities of diplomatic agents extend to the members of their family forming part of their household. For this reason children born in the United States to diplomats to the United States are not subject to U.S. jurisdiction and do not acquire U.S. citizenship under the 14th Amendment or the laws derived from it.”<sup>23</sup>

While the reasoning attempts to push the idea that being “subject to the jurisdiction thereof” means the same thing as being susceptible to police force, such an interpretation is implausible, as explained in a recent Center for Immigration Studies *Background*.<sup>24</sup> Nevertheless, the conclusion is correct and no serious scholar or immigration advocacy organization has argued that children born to foreign diplomats should be granted citizenship.

Despite the clarity of this guideline, the Obama administration is developing new rules on the issue of children born to foreign diplomats. The most recent FAM has eliminated the language above and replaced it with a promise of new guidelines:

“Children of Foreign Diplomats: 7 FAM 1100 Appendix J (under development) provides extensive guidance on the issue of children born in the United States to parents serving as foreign diplomats, consuls, or administrative and technical staff accredited to the United States, the United Nations, and specific international organizations, and whether such children are born ‘subject to the jurisdiction of the United States.’”<sup>25</sup>

An inquiry into the status of Appendix J revealed that the State Department is expecting to publish the changes by the end of 2011.

Possibly foreshadowing changes to come, the State Department claimed (in an e-mail to the Center for Immigration Studies) that birth to a foreign diplomat may not necessarily bar an individual from being considered a U.S. citizen at birth. The agency explains:

“Whether a child born to a foreign diplomat acquires U.S. citizenship at birth requires a fact based analysis to determine whether he/she was born subject to the laws of the United States.”

Again, putting aside the effort to conflate “subject to the jurisdiction” with “subject to the laws” of the United States, the State Department’s response indicates that the agency believes it is possible for a child born to foreign diplomats to be considered a U.S. citizen at birth. If this is to become the State Department’s official position in the forthcoming guidelines, it will be a very significant departure from the generally accepted interpretation of the Citizenship Clause, namely that children born on U.S. soil to foreign diplomats are not to be considered U.S. citizens.

The State Department did not explain what agency it believes is responsible for conducting the “fact based analysis,” although one would expect USCIS, rather than the State Department, to be the proper agency to make determinations on citizenship eligibility.

Perhaps most problematic, in the same e-mail, the State Department claimed that children born to foreign diplomats “are entitled to birth certificates issued by the Vital Statistics Bureau of the state (or district) in which the child was born.” As explained earlier, USCIS considers a U.S. birth certificate proof of U.S. citizenship. If all children born to foreign diplomats are “entitled” to a U.S. birth certificate at birth, it seems that either the suggested post-birth, “fact based analysis” on a child’s citizenship status is too late in the process (unless the State Department is in the business of revoking birth certificates), or the State Department does not consider a U.S. birth certificate proof of U.S. citizenship.

## **5. USCIS Is Not Tasked with Preventing Issuance.**

U.S. Citizenship and Immigration Services (USCIS) does not seem to have addressed the issue of citizenship grants to children of foreign diplomats. The agency has produced seemingly conflicting information on births to diplomats, a likely result of Congress’ failure to provide direction on the subject.

On a USCIS webpage titled, “Green Card for a Person Born in the United States to a Foreign Diplomat,” the agency explains that a child born in the United States to a foreign diplomat “cannot be considered a U.S. citizen at birth under the 14th Amendment to the United States Constitution.”<sup>26</sup> The agency explains that the child “may, however, be considered a permanent resident at birth and able to receive a green card through creation of record.”<sup>27</sup>

To be eligible, the person must (1) be born in the United States to a foreign diplomat; (2) have had residence in this country continuously since birth; and (3) have not abandoned his residence in the United States.<sup>28</sup>

The person must also fill out an “Application to Register Permanent Residence or Adjust Status” (I-485) form. USCIS requires a number of pieces of supporting evidence with the application, one of which is a copy of the person’s birth certificate — which, for reasons already explained, might be a U.S. birth certificate.<sup>29</sup> Oddly, USCIS, may be issuing green cards to people holding U.S. birth certificates, a condition that according to USCIS makes the holder a U.S. citizen.<sup>30</sup>

USCIS adds the following: “Note: The provisions of permanent residency will not apply to you until you relinquish (give up) your rights, privileges, exemptions, or immunities which are available to you as the child of a foreign diplomatic officer. Your registration for this provision is entirely voluntary.”<sup>31</sup> This raises a significant question: If it means relinquishing privileges, why would a diplomat’s child with a U.S. birth certificate and SSN bother to apply for a green card? His existing status is *better* than U.S. citizenship: he is a *de facto* U.S. citizen who is immune from U.S. prosecution (provided his parents remain employed as diplomats). Similarly situated individuals can enjoy all of the benefits of U.S. citizenship as a result of the paperwork received at birth, but then claim diplomatic immunity if they violate a law. A lack of direction from Congress on this issue has arguably created citizens who are above the law.

## Recommendations

Congress must clarify the scope of the 14th Amendment’s Citizenship Clause and pass legislation aimed at ensuring federal agencies follow constitutional standards when granting U.S. citizenship and issuing documents that constitute U.S. citizenship. Congress should direct the National Center for Health Statistics to address the topic of children born to foreign diplomats during the agency’s next conference on birth certificate standardization. Requiring foreign diplomats to note their profession on birth certificate forms under penalty of law should be considered.<sup>32</sup> This would necessarily require state vital statistics offices to forward information on parental occupations to the Social Security Administration so that a determination on citizenship can be made by federal authorities.

Congress must also consider whether to direct state vital statistics agencies to stop issuing birth certificates to children born to diplomats or, in the alternative, direct the NCHS to create distinct birth certificates specifically for such children. While it seems prudent to provide all new parents with paperwork after a birth, the fact is that U.S. agencies (and Americans generally) consider a U.S.-issued birth certificate proof of U.S. citizenship. If children born to foreign diplomats are not to be considered U.S. citizens, they should not be issued birth certificates identical to those issued to U.S. citizens.

Congress must also consider tasking the Social Security Administration with creating a system that checks the names of parents requesting SSNs on behalf of their children against the names on the State Department’s Diplomatic List. This would require the State Department to provide the relevant data to the SSA in an automatable format that is regularly updated. But whereas name-based verification systems can be easily overcome either intentionally, by use of a fake name, or unintentionally, as the result of typo, it may be that the only way SSN issuance can be brought into accordance with the 14th Amendment is by making parental SSN declarations on birth certificate forms mandatory rather than optional, as they are currently. Of course, foreign diplomats are not the only aliens without SSNs; illegal and temporary aliens also do not have SSNs.<sup>33</sup> Preserving the 14th Amendment’s Citizenship Clause and preventing grants of citizenship to children born to foreign diplomats may therefore necessitate ending the current practice of granting citizenship to children born to illegal and temporary aliens. Requiring at least one parent to have a valid SSN before a child can be considered a U.S. citizen by birth would end grants of citizenship to children born to foreign diplomats, visiting/temporary aliens, and illegal aliens, resulting in a policy that is arguably commensurate with the intended scope of the 14th Amendment.<sup>34</sup>

Considering widespread agreement that children born to foreign diplomats should not be considered U.S. citizens, advocates of both high and low immigration should encourage the federal government to take measures to ensure that the limiting language in the 14th Amendment’s Citizenship Clause is not administratively eliminated.

## End Notes

- <sup>1</sup> For a detailed analysis of the birthright citizenship debate, see: Jon Feere, *Birthright Citizenship in the United States: A Global Comparison*, Center for Immigration Studies (2010). [www.cis.org/birthright-citizenship](http://www.cis.org/birthright-citizenship).
- <sup>2</sup> See, e.g., Linda Chavez, *The Case For Birthright Citizenship*, WALL STREET JOURNAL, August 11, 2010 (Defending automatic birthright citizenship to children of illegal aliens, arguing, “the only persons Congress intended to exclude from birthright citizenship under the 14th Amendment were children born to diplomats.”). [online.wsj.com/article/SB10001424052748704164904575421222258065684.html](http://online.wsj.com/article/SB10001424052748704164904575421222258065684.html).
- <sup>3</sup> U.S. CONST. amend. XIV, § 1.
- <sup>4</sup> Feere, *supra* note 1.
- <sup>5</sup> *Bill Introduced to Rewrite 14th Amendment*, Democracy Now!, January 7, 2011. [www.democracynow.org/2011/1/7/headlines/bill\\_introduced\\_to\\_rewrite\\_14th\\_amendment](http://www.democracynow.org/2011/1/7/headlines/bill_introduced_to_rewrite_14th_amendment); see also, Press Release, National Council of La Raza, NCLR Calls Assault on Constitution’s Citizenship Clause Inflammatory, Impractical, and Immoral (January 5, 2011). [www.nclr.org/index.php/about\\_us/news/news\\_releases/nclr\\_calls\\_assault\\_on\\_constitutions\\_citizenship\\_clause\\_inflammatory\\_impractical\\_and\\_immoral/](http://www.nclr.org/index.php/about_us/news/news_releases/nclr_calls_assault_on_constitutions_citizenship_clause_inflammatory_impractical_and_immoral/)
- <sup>6</sup> National Center for Health Statistics, Center for Disease Control and Prevention. [www.cdc.gov/nchs](http://www.cdc.gov/nchs).
- <sup>7</sup> Website, *Preface, Model State Vital Statistics Act and Regulations, Center for Disease Control and Prevention*, National Center for Health Statistics, 1992 Revision. [www.cdc.gov/nchs/data/misc/mvsact92b.pdf](http://www.cdc.gov/nchs/data/misc/mvsact92b.pdf).
- <sup>8</sup> Report of the Panel to Evaluate the U.S. Standard Certificates, Division of Vital Statistics, National Center for Health Statistics, April 2000. [www.cdc.gov/nchs/data/dvs/panelreport\\_acc.pdf](http://www.cdc.gov/nchs/data/dvs/panelreport_acc.pdf).
- <sup>9</sup> Website, *2011 Model Law Revision*, Centers for Disease Control and Prevention. [www.cdc.gov/nchs/nvss/model\\_law\\_revision.htm](http://www.cdc.gov/nchs/nvss/model_law_revision.htm).
- <sup>10</sup> Website, *Proof of U.S. Citizenship and Identification When Applying for a Job*, USCIS. [www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01110952c80c1210VgnVCM1000004718190aRCRD&vgnnextchannel=a2ec6811264a3210VgnVCM100000b92ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=01110952c80c1210VgnVCM1000004718190aRCRD&vgnnextchannel=a2ec6811264a3210VgnVCM100000b92ca60aRCRD) (Viewed February 25, 2011).
- <sup>11</sup> *Id.*
- <sup>12</sup> *Id.*
- <sup>13</sup> See, e.g., Certificate of Live Birth, State of California, (Note: The latest version was sent to the Center for Immigration Studies from the California Dept. of Public Health. The Privacy Notification states that parents do not have to respond to inquiries about their occupation or Social Security numbers.) An older version is online at: [www.avss.ucsb.edu/layouts/vs10d.htm](http://www.avss.ucsb.edu/layouts/vs10d.htm).
- <sup>14</sup> Telephone Interview with New York State Dept. of Health (March 2, 2011).
- <sup>15</sup> *Id.*, see also, n.9 (Note: This was also confirmed by hospitals from states other than California.)
- <sup>16</sup> 42 USCS § 405(c)(2)(B)(ii): “The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual. With respect to an application for a social security account number for an individual who has not attained the age of 18 before such application, such evidence shall include the information described in subparagraph (C)(ii).” See also, (C)(ii): “In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers,
- if the parent has more than one such number) issued to the parent unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number.”
- <sup>17</sup> Website, *Effect of Parents Not Having a Social Security Number on Children*, Social Security Admin. [http://ssa-custhelp.ssa.gov/app/answers/detail/a\\_id/470](http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/470).
- <sup>18</sup> Telephone Interview with Social Security Administration (March 8, 2011).
- <sup>19</sup> Website, *Diplomatic List*, Dept. of State. [www.state.gov/s/cpr/rls/dpl](http://www.state.gov/s/cpr/rls/dpl).
- <sup>20</sup> E-mail from U.S. Dep’t of State, June 1, 2011 (“The Department does not maintain an official count of the number of foreign diplomats in the country at a given time.”).
- <sup>21</sup> Website, *Application for a Social Security Card*, Social Security Admin. (“If you are applying for an original Social Security Card for a child under age 18, you MUST show the mother’s and father’s Social Security numbers unless the mother and/or father was never assigned a Social Security number. If the number is not known and you cannot obtain it, check the ‘unknown’ box.”). [www.ssa.gov/online/ss-5.pdf](http://www.ssa.gov/online/ss-5.pdf).
- <sup>22</sup> *Id.*
- <sup>23</sup> “Officers and Employees of Foreign Embassies and Consulates and their Families,” U.S. Department of State Foreign Affairs Manual, 7 FAM 1116.2-2, November 30, 1995. [www.docstoc.com/docs/8389457/Us-Citizen-By-Birth](http://www.docstoc.com/docs/8389457/Us-Citizen-By-Birth)
- <sup>24</sup> Feere, *supra* note 1.
- <sup>25</sup> “‘Blue List’ Cases – Children of Foreign Diplomats,” U.S. Department of State Foreign Affairs Manual, 7 FAM 1111(d)(3), August 21, 2009. [www.state.gov/documents/organization/86755.pdf](http://www.state.gov/documents/organization/86755.pdf).
- <sup>26</sup> Website, *Green Card for a Person Born in the United States to a Foreign Diplomat*, USCIS. <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac8-9243c6a7543f6d1a/?vgnextoid=5c1d3a4107083210VgnVCM100000082ca60aRCRD&vgnnextchannel=5c1d3a4107083210VgnVCM100000082ca60aRCRD>. See also, 8 C.F.R. § 101.3 (2011), “Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.”
- <sup>27</sup> *Id.* Ultimately, the fact that the U.S. will sometimes grant legal permanent residency to children born to foreign diplomats does not, in itself, render the 14th Amendment obsolete since the Citizenship Clause is focused on grants of citizenship at birth. But the practice does tend to weaken Congress’s intent in authoring the clause because of the fact that such individuals can easily acquire U.S. citizenship soon after birth.
- <sup>28</sup> *Id.*
- <sup>29</sup> *Id.*
- <sup>30</sup> USCIS, *supra* note 10.
- <sup>31</sup> USCIS, *supra* note 26.
- <sup>32</sup> For example, penalties could include revocation of diplomatic visas and/or reducing admissions from the diplomat’s country for a set period of time.
- <sup>33</sup> The SSA explains that “noncitizens authorized to work in the United States by the Department of Homeland Security (DHS) can get a Social Security number.” If similarly-situated aliens are to be considered legally incapable of giving birth to a U.S. citizen under the 14<sup>th</sup> Amendment, SSA will have to work closely with USCIS in order to differentiate these SSNs from the list of “citizen SSNs” (ie. individuals capable of giving birth to a U.S. citizen under the 14<sup>th</sup> Amendment). “Social Security Numbers For Noncitizens,” SSA Pub. No. 05-10096, June 2009. [www.ssa.gov/pubs/10096.html](http://www.ssa.gov/pubs/10096.html).
- <sup>34</sup> Feere, *supra* note 1.



## Birtheright Citizenship for Children of Foreign Diplomats? Limiting Language in the 14th Amendment's Citizenship Clause Has No Practical Effect

By Jon Feere

The intended scope of the 14th Amendment's Citizenship Clause has been hotly debated in the context of children born to illegal immigrants. While it appears unlikely that the intent of those who authored the 14th Amendment was to ensure automatic citizenship for children born to illegal and temporary immigrants, some argue that the amendment protects such grants of citizenship.

Amid this debate, however, there is one area of solid agreement among advocates on all sides of the debate: In the least, children born to foreign diplomats are not "subject to the jurisdiction" of the United States and are therefore not to be granted U.S. citizenship.

But even that low standard is not being met.

Center for Immigration Studies  
1522 K Street, NW, Suite 820  
Washington, DC 20005-1202  
(202) 466-8185 • (202) 466-8076  
center@cis.org • www.cis.org

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