Birthright Citizenship for the Children of Visitors
A National Security Problem in the Making?

By W.D. Reasoner

Amendment 14
Section 1. 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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Birthright citizenship” is shorthand for the right enshrined in the Fourteenth Amendment to the Constitution that persons born on American soil may claim United States citizenship. Sounds simple enough. So why is it in the news and what’s the controversy? Well, because it has gotten caught up in the larger, and oftentimes superheated, debate over illegal immigration.

This Backgrounder examines the issue of births to short-term visitors. The author estimates that nearly 200,000 children are born here annually to foreign women admitted as visitors; that is, tourists, students, guestworkers, and other non-immigrant categories. There is a national security dimension to this issue, as illustrated by the case of one individual in this category: Anwar al Awlaki, the American-born cleric and spiritual advisor to terrorists.

Observer have begun to focus on the fact that, with some frequency, pregnant women cross the border illegally with the specific intent to bear their children in the United States, thus gaining for the children the gift of citizenship and ultimately a legal foothold for the parents and siblings as well when the child is old enough (21 years of age) to file a petition on their behalf for permanent resident alien status. In addition, if the child marries a foreign national, then of course he or she is entitled to petition for the spouse without regard to age, providing the marriage is recognized as valid under the laws of the state or country where it occurred. And, once resident status has been gained, that spouse can then petition for her or his immediate relatives, ad infinitum.

There can be little doubt that illegal aliens giving birth to children in the United States is a frequent occurrence and is not a new phenomenon. A short conversation with any seasoned health care worker at a hospital in a border area such as El Paso, or a major metropolitan area such as Los Angeles, would confirm that beyond any reasonable doubt. But how frequent is frequent? What kind of numbers are we discussing? Jon Feere, in an exhaustive study of international citizenship laws published by the Center for Immigration Studies in August 2010, cites a number of sources estimating that between 300,000 to 400,000 such children are born each year to illegal aliens.1

Many Americans, including lawmakers at the federal and state level, consider this a distasteful, cynical misuse of the Fourteenth Amendment that was never intended by our forebears — one which is correctable, and which would put American law more on a par with the citizenship laws of other nations. In his study, Mr. Feere confirms that countries conferring birthright citizenship are, in fact, in a minority internationally. He found, among other things, that “the overwhelming majority of the world’s countries do not offer automatic citizenship

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to everyone born within their borders. Over the past few decades, many countries that once did so — including Australia, Ireland, India, New Zealand, the United Kingdom, Malta, and the Dominican Republic — have repealed those policies. Other countries are considering changes.\(^2\)

While at first blush, changing the status quo would appear to require a constitutional amendment, a number of legal scholars disagree, concluding that nothing in the plain language of the amendment requires the present, expansive interpretation of birthright citizenship, and noting that the peculiar phrase in Section 1 referring to persons who are “subject to the jurisdiction thereof…” would in fact seem to imply otherwise. Taking their cue from this, for more than 15 years various senators and members of Congress have periodically and unsuccessfully attempted to pass legislation clarifying the reach of the Amendment to exclude children unless they are born of United States citizens or resident aliens.

The failure of these measures to gain traction has contributed to the public’s reservoir of anger about the unwillingness or inability of the federal government to enact common-sense laws over matters of citizenship and border control, subjects that are fundamental expressions of our sovereignty and national identity. In reaction, state lawmakers — especially but not exclusively those in border states — have given vent to their deep-seated frustration through passage of illegal immigration control-related statutes, the most controversial being those in Arizona. However, lawmakers in five states have taken the next step and announced that they have introduced measures in their respective legislatures that would narrowly define citizenship. According to media reports, in doing so, they hope to force the matter into the judiciary and ultimately obtain review by the Supreme Court.\(^3\) In coverage of the announcement, the Washington Post stated, “civil rights groups denounced the move and said it was motivated by thinly disguised racism against Latino immigrants,”\(^4\) and the Los Angeles Times quickly weighed in, editorializing that the measures were motivated by “a simple and pernicious premise: that children born in this country aren’t citizens if their parents are illegal immigrants;” that they “muddy the legal waters in service of a mean-spirited campaign against the children of illegal immigrants;” and, finally, that they constitute “hysteria against ‘anchor babies.’”\(^5\)

It should be no surprise that the reaction to the lawmakers’ announcement was itself mean-spirited given today’s poisonous public climate. But questions of what it means to be an American citizen cut to the heart of our democracy and deserve to be treated with gravitas, candor, and serious discussion, and those bold or resolute enough to raise those questions deserve better than to be the subject of ad hominem attacks on their motives and character.

More than Illegal Border Crossers

As is evident, much of the current and past controversy about birthright citizenship revolves around illegal aliens giving birth to children on American soil with the intent to impart citizenship. It is equally evident that there are any number of interest groups with varying “constituencies” who are anxious to bury any possibility of open dialogue about the subject. Yet, if anything, the discourse doesn’t go far enough, because it misses half of the point. We should be asking why a child born to two non-immigrant parents who are in our country legally for a temporary period, and who have no inherent allegiance or substantial ties to this country, should receive U.S. citizenship.

Not unexpectantly, there is no system in place to track births in the United States of children born to undocumented or even non-immigrant parents.\(^6\) With regard to non-immigrants, though, one might be able to come up with a rough estimate using available numbers. The Department of Homeland Security (DHS) Office of Immigration Statistics (OIS) informs us that in 2009, the last full year for which we have figures, there were 163 million admissions of non-immigrant aliens into the United States.\(^7\) Nor was 2009 an anomalous year. OIS reported the 2008 non-immigrant admissions figure as being even higher: 175 million.\(^8\)

However, to arrive at a reasonably credible gauge of children born in 2009 of non-immigrant parents, it is necessary to break the figures down further. Fortunately, OIS assists us by grouping non-immigrants who have been admitted into two sets: those admitted using the Form I-94 Arrival/Departure Record, and those admitted from the contiguous countries of Canada or Mexico without the I-94. Let’s take a look at those numbers.

Non-Immigrant I-94 Admissions

OIS further subdivides I-94 non-immigrant admissions into three broad categories: non-resident, short-term resident, and expected long-term resident. Use of the word “residence” in each of these categories should not be construed to mean “lawful permanent resident alien of the United States (LPRA).” The categories are intended only by OIS as a convenient short-hand for describing
the relative length of expected stay for each group of non-immigrants, none of whom have the right to remain in the United States to live and work indefinitely except the “expected long-term resident” category, as it consists of non-immigrants, such as fiancés, who are usually permitted to adjust to LPR status after admission. For this reason it is not particularly useful for our discussion and will be dropped, though the other two I-94 categories are of significant interest.

The “non-resident” non-immigrant category generally consists of visitors for business or pleasure (tourists) who are normally authorized to remain no longer than six months, although they may apply for extensions to remain an additional period of time. Due to the relative brevity of stay, childbirths among this category might be relatively low, but the raw admission numbers are extremely large.

The “short-term resident” non-immigrant category includes trainees, students, exchange visitors, treaty traders and investors, intra-company transferees, and other classes of non-immigrants who are likely to be in the United States for a longer period and thus may be more likely to give birth to a child while physically present inside our borders.

In calculating possible numbers of children born in the United States to non-immigrants, it is important to attempt to hone the figures in a meaningful way, most obviously by gender and by principal child-bearing years (ages 18 to 34 are used here, based on the breakdowns of collected DHS data, even though the Census bureau uses the larger 15-44 age range for its definition of child-bearing age), but also by the visitor’s likely duration of stay, which is an indicator of opportunity, and also a variable that OIS has attempted to track, giving us some further empirical basis for our calculations.

Non-Resident Non-Immigrants. OIS reports that there were 9,632,013 admissions in this category related solely to persons aged 18-34 in 2009. OIS also reports that 47.3 percent of the total “non-resident” non-immigrant admissions were women. If the percentage holds true for the specified age group, then we arrive at an estimated figure of 4,555,942 female admissions for that non-immigrant category in calendar year 2009. For the purposes of this analysis, we focus on visitors for pleasure, who comprise 85.4 percent of admissions, and set aside business visitors and those who are merely transiting U.S. airports. This leaves us with an estimated 3,890,774 female tourists of child-bearing age annually.

How do we know how many of these visitors are likely to remain in the United States long enough to have a child? The United States currently lacks a formal exit recording system that would provide firm data, but in the past DHS did attempt to collect the I-94 arrival/departure forms and analyze the travel patterns of temporary visitors. One such analysis was published in 2005, and serves as the basis for some of our estimates.

According to this report, most foreign tourists stay for a brief period of about two weeks or less, but a significant number stay longer. The average regular tourist visit is 48 days, with 8 percent staying more than six months. From the OIS departure data, we estimate that about 20 percent of tourists are here for three months or longer, a time period that would provide the opportunity for a pregnant visitor to give birth and recover. Applying this percentage to our total population of younger adult female tourists, that suggests that annually about 780,000 women are legally present visiting here long enough to have a child.

How do we take the next step and reasonably calculate what percentage of these women might in fact give birth? One way is to look at the fertility of recently arrived foreign-born women. According to U.S. Census data, in 2009, 5 percent of all foreign-born women aged 18 to 35 who arrived within the last year reported giving birth during the year. If we apply this fertility rate to the tourist population, we find that there could be as many as 39,000 births annually to women who have arrived as tourists.

Short-Term Resident Non-Immigrants. There were 2,006,385 admissions in this category related to persons aged 18-34, and OIS reports that 38.4 percent of the total of “short-term resident” non-immigrant admissions were women. Using the same methodology as was used above with “non-resident” non-immigrants, we derive an estimated figure of 770,452 admissions of women in the specified age range in calendar year 2009. As before, we want to focus on those who tend to remain in the United States longer, so we will set aside news media representatives and those who arrive as visitors of “extraordinary ability” like artists, entertainers, athletes, and their entourages, because according to departure records, visitors in these categories tend to make shorter visits. These comprise 5 percent of short-term resident admissions, so we will reduce the figure above to 732,000.

By definition, virtually all of these visitors are able to stay for long visits. However, the number of admissions is not the same as the number of individuals; some may come and go several times during the year. The average length of time before departure (and usually return) is six months at a time, meaning the average visitor...
in this category would have two admissions per year. We therefore estimate that the number of individual visitors is somewhere close to half the number of admissions. This would put the estimated population of short-term resident women of child-bearing age at 366,000. Using the birth rate for recently arrived foreign-born women of 5 percent, this would mean that 18,300 children might have accrued U.S. citizenship at birth for this non-immigrant subset.

Another way to estimate the number of annual births to this group is to apply the birth rate for recently arrived foreign-born women to the DHS estimates of the stock short-term resident population. Using this method, we find that there are an estimated 1,180,000 resident non-immigrants aged 18-34, of whom 43 percent are estimated to be women, leaving a potential child-bearing population of 507,400. Using our estimated fertility rate, that would suggest births to this population of about 25,370 per year. But we are not yet done with our calculations.

Non-Immigrants without I-94s

According to the Congressional Budget Office, “The total number of [non-immigrant] admissions in 2009 includes roughly 126 million admissions of Canadians and Mexicans who could enter the United States without a visa and who did not have to fill out an Arrival/Departure Record (an I-94 form) when they entered. That figure includes Canadian nationals traveling for business or tourism and certain Mexican nationals with Border Crossing Cards. (Because there is no form to count, DHS estimates the number of those types of legal temporary admissions to the United States on the basis of its workload.)”

Those 126 million admissions constitute a substantial number of aliens with direct access to the United States by means of one of the many northern and southern land ports of entry, particularly for those with a predisposition to give birth to their child inside our borders.

Once again we must recognize that admissions don’t equal persons, and that border proximity facilitates multiple departures and returns within the same calendar year, although those facts cut in both directions where our northern and southern border neighbors are concerned. For example, a woman with a border-crossing card may routinely enter and depart from the United States even while pregnant — and then return at the critical moment to give birth to the child inside the United States.

In addition, there are factors that might make it more or less likely that certain visitors would seek to have a child in the United States. For example, we believe that women from Canada would be less likely to travel to the United States to have a child, because the cost of the birth would not be covered by Canada’s health care system, and because U.S. citizenship is not generally perceived to offer any additional advantages or privileges.

Projected Totals

Table 1 reflects the potential number of children born to the three categories of non-immigrants outlined above for 2009 admissions.

In the context of our overall population, 192,100 children born to non-immigrant entrants in a single year may not seem overly large, but it must be added to
the estimated number of children born of illegal aliens (300,000–400,000) yearly. And the question of whether children born in the United States of foreign students, tourists, exchange visitors, and casual border crossers should have bestowed on them so freely and casually the gift of citizenship, with all its attendant rights and privileges, is not simply an intellectual-cum-statistical exercise.

The National Security Perspective
Real consequences can attach to birthright citizenship. By way of example, Anwar al Awlaki, the “fiery American cleric in Yemen,” as he is often described by the media and pundits, is a product of our current lax birthright citizenship rules, even though he is clearly antagonistic to Western standards generally, and to the United States particularly, and has no interest in his citizenship-by-birthright, except perhaps as a tool to be used against us. Al Awlaki was born April 22, 1971, in Las Cruces, N.M., of non-immigrant Yemeni parents while his father was studying in the United States as a foreign student. He left the United States to go to Yemen with his parents when they returned, but he reentered the United States later, using his identity as an American citizen, to pursue his own studies before deciding to go back again to Yemen.

Those who follow such matters may recall that al-Awlaki acted as a spiritual advisor to three of the 9/11 hijackers; was in communication with Nidal Malik Hassan, the Army major who later went on a killing spree at Ft. Hood, Texas; counseled the “Christmas Day Underwear Bomber,” Umar Farouk Abdulmutallab, who attempted to blow up an aircraft before landing in Detroit; and served as inspiration for Faisal Shahzad, perpetrator of the failed 2010 Times Square car bombing attempt. In the most recent episode of the ongoing saga, al Awlaki has been arrested, tried, convicted, and sentenced to 10 years in prison in Yemen, which cooperates with the United States in the war on terror. A large part of al Awlaki’s undoing, if it can be called that, is attributable to his decision to take on a public persona and put his anger, contempt, and hatred for all things American on display for everyone to see, with the intention of influencing potential followers to a path of violent action — something he clearly was successful at doing.

But it is easy to envision an entirely different and chilling scenario. Imagine a young man born in the United States of non-immigrant parents and taken away at a very early age, reared in Waziristan, educated in Islamist madrassas and trained in the fundamentals of terror at one of the many camps in Southwestern Asia; someone who has flown under the radar of U.S. and foreign intelligence agencies and is therefore unknown to them. He would be entitled to walk into any American embassy or consulate worldwide, bearing a certified copy of his birth certificate and apply for — indeed, demand — a U.S. passport. That passport would entitle him to enter and reside in the United States whenever and wherever he chose, secretly harboring his hatred, an unknown sleeper agent of al Qaeda or any of the other multitude of terrorist organizations with an anti-Western bias and a violent anti-American agenda, waiting for the call to arms.

Nor is the potential damage limited only to the American homeland. A U.S. passport is the gold standard for would-be international terrorists, giving them ready access to virtually any country on earth where they may elect to set up operations — say against American diplomats, corporate interests, or even tourists.

What is more, it is entirely likely that such individuals would be dual nationals and thus carry with them two legitimate passports (in addition to any they may have acquired of a false or fraudulent nature). Selective use of those passports in passing through different countries makes it exceedingly difficult for U.S. and allied intelligence, military, or border security agencies to track such persons’ global travels and thus put them on the radar, because they

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<td>Non-Immigrant Category</td>
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<td>Short-Term Non-residents (Tourists)</td>
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will go out of their way to keep the U.S. passport clean of visas or entry and exit stamps from countries which would act as a red flag and cause further examination of the person’s travels, background or views.

**Conclusion**

The scenarios described immediately above may seem fanciful, but they are not. Incognito travel is the lifeblood of international terrorist organizations, and passports and visas and the use of nationality as a means of misdirection are prime weapons of those organizations, as has been investigated and reported by the staff of the 9/11 Commission.19

Anwar al Awlaki is a sobering reminder of the dangers that reach out to find us in a world fraught with asymmetrical perils and rampant anti-Americanism. He is the viper who nested in the bosom of our nationality, and who turned on us with uncommon rabidity.

It would be easy to dismiss the threat by pointing to the likely predominant ethnic and national background of a birthright child’s parents — quite possibly Hispanic, quite possibly Mexican or Canadian — and to assert therefore that the chance that such a child will become a terrorist is small. Doing so would be dangerous and fundamentally inaccurate. Al Qaeda, the Taliban, and other international terrorist organizations actively proselytize and recruit across all racial, ethnic, religious, economic, and nationality divides. It is in their interest to do so. One need only consider the cases of John Walker Lindh and Jose Padilla, among others, to recognize their skill in winning converts among the disaffected.

Whatever the number of birthright children born each year of undocumented immigrants, border crossers, and nonimmigrant visitors, we must ask ourselves: is it reasonable to assume that those individuals will share our societal values or our worldview, or appreciate the accident of birth that accords them the right to come and go through American borders and among American communities as they choose, as “one of us”? Or is doing so an example of American hubris and naiveté of the worst sort, one which may come back to bite us in the long run? And if so, will we then mistakenly view the terrorist acts and attempts committed by such persons to be “homegrown” when they were absolutely avoidable?

While such extreme examples as al Awlaki may be rare, we should remember that it only took 19 fanatics bent on mass murder to instigate two wars and to fundamentally alter American domestic security, foreign policy — even our notion of ourselves as a society.

It would be easy, but mistaken, to cast the debate about the benefits and deficits of all-inclusive birthright citizenship, or its consequences, in partisan terms and ascribe the narrow view to conservatives and “the right.” Harry Reid, Democratic Leader of the Senate, was one of those to previously introduce legislation to limit citizenship. And who could have imagined a circumstance in which the Obama presidency would be the first administration known to sign a presidential finding authorizing the targeted killing of a U.S. citizen?

In an open and honest discussion we as a society should begin by asking ourselves, do we as Americans undervalue our own citizenship by giving it away so freely, and is the generosity of spirit with which we have chosen to interpret the Fourteenth Amendment truly in our national interest and security? This is a conversation that deserves to be held — soon — without rhetoric, devoid of vitriol, and with more light than heat.
End Notes


2 Ibid.


6 This would seem to be a ripe area of exploration for statisticians and demographers, although the methodology for achieving an accurate result is unclear.


8 Note that “admissions” does not equal “individual entrants” because one person may depart the U.S. and return in a single year, thus counting as two admissions.

9 Randall Monger and MacReadie Barr, op. cit.

10 Currently, this information is collected for some visitors through an automated system known as the Arrival and Departure Information System (ADIS), but DHS has yet to publish any analysis of arrivals and departures based on this data.


12 Most news media accounts of the birth tourism phenomenon report that the typical woman who purchases a birth tourism package stays two to three months. For example, see http://abcnews.go.com/Politics/birth-tourism-industry-markets-us-citizenship-abroad/story?id=10359956.

13 Figures are based on an analysis of the 2009 public-use file of the Census Bureau’s American Community Survey. The survey asks women if they had a child during the year, if they are foreign-born, and when they came to the United States.


18 One of the chapters in this byzantine story is fit for Bizarro World — numerous credible media outlets report that after considerable internal government wrangling over the legality and ethics of targeting an American citizen for assassination, Barack Obama signed a Presidential Finding authorizing U.S. intelligence and military authorities to hunt down and kill him as a clear and present danger to the American people and their interests worldwide. The American Civil Liberties Union promptly filed suit in U.S. District Court to challenge the finding, which suit was dismissed only last month. None of this would have arisen if a more reasoned interpretation of the Fourteenth Amendment prevailed.

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