

Case 6: Children of Illegal Immigrants

Children of illegal immigrants to the United States often find themselves in some interesting places on the crossroads of culture and politics. As concern over illegal immigration has become a hot topic in U.S. politics, some have begun to question the wisdom of automatic citizenship for anyone born on U.S. soil.

The 14th Amendment to the United States Constitution states in part 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." Thus, all children born on U.S. soil (other than the children of foreign diplomats), are United States citizens, regardless of the nationality of their parents, with all the rights and duties thereof.

The original thought behind the 14th Amendment was to make the children of slaves, whose parents may not have been born in the United States, into U.S. citizens.¹ However, it also opened the door for foreign nationals to come to the U.S., give birth on U.S. soil, and claim U.S. citizenship for their newborns. Along with citizenship, of course, children would earn the right to public education and public assistance in healthcare, retirement, and so on. Often these benefits exceed the benefits available to citizens of the foreign nationals' home countries. U.S. citizenship for a child can also lead to future opportunities for naturalized citizenship of the parents through family reunification programs. Thus, millions of people who have not paid into the U.S. tax system could wind up benefiting from programs paid for by taxes. Amending the 14th Amendment to prohibit citizenship by birth location alone could certainly curb this practice.

Opponents of the citizenship-by-birth provisions in the Constitution argue that these measures increase illegal immigration because it creates a back-door to the regular immigration procedures. It may encourage pregnant women to undertake risky journeys across the border in the hopes of securing a better future for their children. Further, these protections create an incentive for already present illegal immigrants to expand their families, which essentially compounds an already present problem of foreign-born individuals flouting the legal immigration process. They argue that such rights and privileges should not be awarded to families whose members have already violated law. Finally, they argue that these families are less likely to have contributed to the tax system that supports the benefits, and therefore they do not deserve a share in such resources.

However, proponents of the citizenship-by-birth protections argue that punishing children for illegal acts committed by their parents is both unwise and unjust. Children have no say in where they are born, and returning to their parents' home country may be difficult or impossible. Thus, to deprive these children of education, healthcare, and the other benefits of citizenship in what to them has always been their home threatens to create a population of second-class people. Due to deportation or other circumstances, children of illegal immigrants are somewhat more likely to grow up without a stable family or become orphaned.² Removing citizenship provisions would jeopardize these children's protection from social services organizations. If children of illegal immigrants born in the U.S. were not

¹ Alexander Tsesis, "The Inalienable Core of Citizenship: From Dred Scott to the Rehnquist Court," 39 *Arizona State Law Journal* 1179 (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1023809.

² Office of the Inspector General, "Removals Involving Illegal Alien Parents of United States Citizen Children," Department of Homeland Security, Jan. 12, 2009, http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_09-15_Jan09.pdf.

automatically afforded citizenship, the State would be in the rather awkward position of keeping and protecting young non-citizens within its borders or deporting them to a country which has never had anything to do with them. Neither option holds out much hope for the orphan's future.

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