

Unrestricted Birthright Citizenship?

What is meant by “birthright citizenship”?

- Jus soli (the law of the soil) is a rule under which the place of a person’s birth determines citizenship; the practice is colloquially known as Birthright Citizenship in the United States.
 - Jus sanguinis (the law of blood), by contrast, bases a child’s citizenship upon the status of his or her parents.¹
- Under current practice, anyone born in the United States is considered an American citizen regardless of whether the parents are U.S. citizens, legal residents, temporary visitors, or illegal aliens.

A Rare Policy

- The United States and Canada are the only developed nations in the world to still offer Birthright Citizenship to tourists and illegal aliens, regardless of whether the parents are U.S. citizens, legal residents, temporary visitors, or illegal aliens in the United States.²
- By the end of the 20th century, most developed countries around the world had rejected unconditional birthright citizenship. Recently, Ireland (2005) and New Zealand (2006) abolished the practice.³

¹ The Birthright Citizenship Act of 2023 limits birthright citizenship to children of a parent who is a citizen, lawful permanent resident, or alien with lawful status in active service in the armed forces.

<https://www.congress.gov/bill/118th-congress/house-bill/6612>

²The Law Library of Congress, 2018, "Birthright Citizenship Around the World," <https://tile.loc.gov/storage-services/service/l1/lglrd/2018655070/2018655070.pdf>

³ Ibid.

By the Numbers

- Approximately 250,000 babies are born each year to parents who are in the United States illegally.⁴
- Approximately 350,000 babies are born each year to at least one parent who is in the U.S. illegally.⁵
- Approximately 40,000 babies are born each year to women in the United States on a travel visa.⁶
- U.S.-born children of illegal aliens and tourists not only represent additional U.S. population growth themselves, but are eligible to sponsor extended family members into the country legally once they turn 21.

An entire “birth tourism” industry has built up around unconditional birthright citizenship.

- Giving birth is typically not grounds for admission to the U.S. on a temporary basis; the birth tourism industry coaches clients on how to lie to immigration officers and commit immigration fraud.⁷
- Underground maternity centers and birth tourism packages range from the luxurious (high-end shopping and trips to SeaWorld)⁸ to the dangerous.⁹
- Birth tourism packages can cost up to six figures.¹⁰
- Chinese listings show several hundred “maternity hotels” in Southern California alone.¹¹

⁴ Jeffrey Passel, D'Vera Cohn, and John Gramlich, 2018, "Number of U.S.-born babies with unauthorized immigrant parents has fallen since 2007," Pew Research Center. <https://www.pewresearch.org/short-reads/2018/11/01/the-number-of-u-s-born-babies-with-unauthorized-immigrant-parents-has-fallen-since-2007/>

⁵ Jeffrey Passel, and D'Vera Cohn, 2011, "Unauthorized Immigrant Population: National and State Trends, 2010," Pew Research Center. <https://www.pewresearch.org/hispanic/2011/02/01/unauthorized-immigrant-population-national-and-state-trends-2010/#about-this-report>

⁶ Andrew Blankstein, Anna Schechter and Tracy Connor, "Feds Raid California 'Maternity Hotels' for Birth Tourists," NBC News, January 9, 2018. <https://www.nbcnews.com/news/us-news/feds-raid-l-maternity-hotel-birth-tourists-n315996> Birth tourism organizers tout "the benefits of a child with U.S. citizenship: 13 years of free education, low-cost college financial aid, less pollution, and a path for the entire family to emigrate when the child becomes an adult." See also: Camarota, Steven, 2019, "There Are an Estimated 39,000 Births Annually to Foreign Students, Guestworkers, and Other Long-Term Temporary Visitors" Center for Immigration Studies. <https://cis.org/Report/Birthright-Citizenship-Overview>

⁷ Blankstein, et. al, "Feds Raid California 'Maternity Hotels'"

⁸ Susan Berfield, "Chinese Maternity Tourists and the Business of Being Born American," Bloomberg, May 12, 2015. <http://www.bloomberg.com/news/articles/2015-05-13/chinese-maternity-tourists-and-the-business-of-being-born-american>

⁹ Kerry J. Byrne and Dean Balsamini, "Years after savage attack on newborns, birth tourism schemes thrive in NYC," New York Post, May 26, 2021. <https://nypost.com/2021/05/15/years-after-savage-attack-birth-tourism-schemes-thrive-in-nyc/>

¹⁰ Ibid.

¹¹ Frank Shyong, "Why birth tourism from China persists even as U.S. officials crack down," Los Angeles Times, December 30, 2016. <http://www.latimes.com/local/lanow/la-me-ln-birth-tourism-persists-20161220-story.html>

Guaranteed by the Constitution or Not?

- Birthright citizenship is defined in Chapter One of the [Immigration and Nationality Act](#) (1964)¹² and originally derived from Section One of the **Fourteenth Amendment** to the United States Constitution (1868), 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.”¹³
- The 14th Amendment was primarily aimed at enfranchising freed slaves and their descendants; not all children born to people with foreign allegiances.¹⁴
- Congress has not passed legislation clarifying the language in the Immigration and Nationality Act. Nor has the Executive Branch contested the practice of unrestricted birthright citizenship. The debate is unlikely to be settled until the Supreme Court has ruled on the interpretation of “subject to the jurisdiction thereof.”

¹² Chapter One, Section 301 of the Immigration and Nationality Act reads: “The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof;” [8 U.S.C. 1401] <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>

¹³ Amendment XIV, Section 1 to the U.S. Constitution 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.” <https://constitution.congress.gov/browse/amendment-14/>

¹⁴ Amy Swearer, "Does the Constitution Mandate Universal Birthright Citizenship? Here's the Answer," The Heritage Foundation, May 24, 2019. <https://www.heritage.org/the-constitution/commentary/does-the-constitution-mandate-universal-birthright-citizenship-heres>