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Thank you, Chairman Gowdy, Ranking Member Lofgren and distinguished Members of the Subcommittee for the opportunity to testify on the issue of birthright citizenship.

Every year, 350,000 to 400,000 children are born to illegal immigrants in the United States. To put this another way, as many as one out of 10 births in the United States is now to an illegal immigrant mother. Despite the foreign citizenship and illegal status of the parent, the Executive Branch automatically recognizes these children as U.S. citizens upon birth, providing them Social Security numbers and U.S. passports. The same is true of children born to tourists and other aliens who are present in the United States in a legal but temporary status. It is unlikely that Congress intended such a broad application of the 14th Amendment's Citizenship Clause, and the Supreme Court has only held that children born to citizens or permanently domiciled immigrants must be considered U.S. citizens at birth. Some clarity from Congress would be helpful in resolving this ongoing debate.

While it is unclear for how long the U.S. government has followed this practice of universal, automatic "birthright citizenship" without regard to the duration or legality of the mother's presence, the issue has garnered increased attention for a number of reasons.

First, the mass illegal immigration this country has experienced in recent decades has raised the question of whether Congress intended that the 14th Amendment's Citizenship Clause would operate to turn children of illegal aliens into U.S. citizens at birth. The population of U.S.-born children with illegal alien parents has expanded rapidly in recent years from 2.7 million in 2003 to 4.5 million by 2010.¹ Under the immigration enforcement priorities of the Obama administration, illegal immigrants who give birth to U.S. citizens have become low priorities for deportation; furthermore, under the president's DAPA program (the Deferred Action for Parents of Americans and Lawful Permanent Residents program) — a program currently held up in court — would provide benefits to illegal immigrants who gave birth here and allow them to "stay in the U.S. without fear of deportation."² The broad interpretation of the Citizenship Clause forms the basis for these policies.

Second is the issue of chain migration. A child born to illegal aliens in the United States can initiate a chain of immigration when he reaches the age of 18 and can sponsor an overseas spouse and unmarried children of his own. When he turns 21, he can also sponsor his parents and any brothers and sisters. Family-sponsored immigration accounts for most of the nation's growth in immigration levels; approximately 2/3 of our immigration flow is family-based. This number continues to rise every year because of the ever-expanding migration chains that operate independently of any economic downturns

or labor needs. Although automatic and universal birthright citizenship is not the only contributor to chain migration, ending it would prevent some of this explosive growth.

Third, the relatively modern phenomenon of affordable international travel and tourism has increased the opportunity for non-citizens to give birth here, raising questions about the appropriate scope of the Citizenship Clause. According to the Department of Homeland Security, in 2013 there were 173 million nonimmigrant admissions to the United States.³ This includes people entering for tourism, business travel, and other reasons, but also those entering to engage in “birth tourism”, a growing phenomenon that has arisen in direct response to our government’s broad application of the Citizenship Clause. Birth tourism is the practice of people around the world traveling to the United States to give birth for the specific purpose of adding a U.S. passport holder to their family, while misrepresenting the true intention of their visit to the United States.

Birth tourism is becoming much more common with every passing year and Congress will have to address it. Part of that discussion will include a focus on birthright citizenship and whether children born to people in the country on a temporary basis should be considered U.S. citizens. An entire “birth tourism” industry has been created and the phenomenon has grown largely without any debate in Congress or the consent of the public. While many birth tourists currently making news are from China, it certainly is not limited to that country. Birth tourists come from all corners of the globe, from China to Turkey to Nigeria. The Nigerian media reported a few years back that the phenomenon of Nigerians traveling to the United States to give birth is “spreading so fast that it is close to becoming an obsession.” The article was in response to congressional legislation aimed at ending birth tourism; the article’s title: “American Agitations Threaten a Nigerian Practice.”

Birth tourism is also no longer just for the wealthy. The *Los Angeles Times* reports that “the practice has become particularly popular in recent years with the newly wealthy Chinese middle class.”⁴ Similarly, a Chinese news article associated with Time Magazine noted that “Giving birth to a child abroad is not a privilege reserved to the stars and the very wealthy. An increasing number of expectant middle-class parents also fancy giving their children passports that they can feel proud of.”⁵

Though the number is very difficult to calculate, we estimate that the number of birth tourists coming to the United States each year is very roughly around 35,000 to 36,000 people based on the limited governmental data available.⁶ If Congress does not address this, there is every reason to believe the number will grow.

Fourth is the issue of taxpayer-subsidized benefits. Most benefits Americans would regard as “welfare” are not accessible to illegal immigrants. However, illegal immigrants can obtain welfare benefits such as Medicaid and food stamps on behalf of their U.S.-born children. Many of the welfare costs associated with illegal immigration, therefore, are due to the Executive Branch’s current interpretation of the Citizenship Clause. Put another way, greater efforts at barring illegal aliens from welfare programs will not significantly reduce costs because their citizen children can continue to access the benefits.

Currently, 71 percent of illegal-alien headed households with children make use of at least one major welfare program. Of illegal-alien headed households with children where the household head is from

Mexico, 79 percent make use of at least one major welfare program. By comparison, of households with children headed by a native-born American citizen, 38.7 percent make use of at least one major welfare program.⁷

For these reasons and others, there has been a bipartisan effort to end birthright citizenship legislatively. Multiple legislative efforts to clarify the appropriate scope of the Citizenship Clause have been proposed by both Republican and Democrat politicians, as there remains much debate about who should be considered “subject to the jurisdiction” of the United States. In 1993, Sen. Harry Reid (D-Nev.) introduced legislation what would limit birthright citizenship to the children of U.S. citizens and legally resident aliens, and similar bills have been introduced by other legislators in nearly every Congress since.

Few Countries Grant Automatic Citizenship to Children of Illegal Immigrants

Only 30 of the world’s 194 countries grant automatic citizenship to children born to illegal aliens.⁸

Of advanced economies, as rated by the International Monetary Fund, Canada and the United States are the only countries that grant automatic citizenship to children born to illegal aliens.

No European country grants automatic citizenship to children of illegal aliens.

The global trend is moving away from automatic birthright citizenship as many countries that once had such policies have ended them in recent decades. Countries that have ended universal birthright citizenship include the United Kingdom, which ended the practice in 1983, Australia (1986), India (1987), Malta (1989), Ireland, which ended the practice through a national referendum in 2004, New Zealand (2006), and the Dominican Republic, which ended the practice in January 2010.

The reasons countries have ended automatic birthright citizenship are diverse, but have resulted from concerns not all that different from the concerns of many in the United States. Increased illegal immigration is the main motivating factor in most countries. Birth tourism was one of the reasons Ireland ended automatic birthright citizenship in 2004.⁹ If the United States were to stop granting automatic citizenship to children of illegal immigrants, it would be following an international trend.

Some countries which currently recognize automatic birthright citizenship are considering changing the policy. For example, Barbados is struggling with large amounts of immigration (relative to its size), both legal and illegal, and is contemplating ending birthright citizenship for children of illegal aliens. The country initiated an illegal alien amnesty in 2009 which gave illegal aliens six months to legalize their status. Anyone still in the country illegally after December 1, 2009, faces deportation. The amnesty had a number of conditions, and any illegal alien with three or more dependents could not automatically qualify. Consequently, the question of what to do with children born to illegal aliens became central to political debate. A series of changes have been recommended by the nation’s immigration department, and one proposed change is the end of birthright citizenship.

Not too far from Barbados, a similar discussion has been taking place. Antigua and Barbuda, one of the few nations that currently grant automatic birthright citizenship to children of illegal aliens, in 2010

outlined a series of enforcement-minded recommendations aimed at tightening their citizenship, immigration, and work permit policies. In a government report, the authors note that “the so called ‘open door’ policy relative to immigration should be discontinued as there is a significant risk of Antigua and Barbuda nationals being displaced in the job market by ‘non-nationals’ whose willingness to work hard for low wages makes them attractive to prospective employers.” The authors also note that work visa issuance should “have as priority the ‘importing’ of skills needed in Antigua and Barbuda for the growth of the economy.” Although the report does not call for a change to birthright citizenship policies, it does note that the “citizenship of Antigua and Barbuda should be treated as a thing of value and worth.” Interestingly, when asked about Antigua and Barbuda ending birthright citizenship for illegal aliens, a consular officer with whom I spoke while investigating the issue stated, “probably they might look at it down the road.”¹⁰

There are varying approaches to citizenship throughout the world. Many countries require at least one parent to be a citizen of the country in order for their child to acquire the country’s citizenship. Some countries make a distinction between whether that citizen parent is the mother or father. There are other variations as well. In Australia, a country that does not recognize automatic birthright citizenship, a child born to illegal immigrant parents may obtain Australian citizenship at age 10 if he was born after 1986 and has lived in Australia for the entire 10 years.¹¹ An Australian official explained to me that the child must still petition the immigration minister, who conducts fact-finding to verify the claim. The official also added that it would be “extremely unlikely” that illegal aliens would be able to remain in Australia for the necessary ten-year period, meaning that the grant of citizenship rarely happens.¹²

It is important to remember that while a country may officially recognize birthright citizenship, it does not mean that the country is necessarily easy on illegal immigration. Paraguay, for example, has a birthright citizenship policy, but it has serious laws against illegal immigration which not only bar the employment of illegal aliens, but also prohibit owners of hotels and guesthouses from providing illegal aliens with accommodations.¹³

Mexico has a unique citizenship policy in that the country’s constitution grants automatic nationality to anyone born in Mexico, but not automatic citizenship. This is true even of children born to Mexican citizens. When a Mexican reaches the age of 18, they then acquire citizenship. Mexican government officials with whom I spoke were uncertain how often their country grants nationality or citizenship to children born to illegal immigrants. The effort Mexico makes to discourage immigration indicates that this may be a rare occurrence. For example, the Mexican Constitution, among other things, allows the government to expel any immigrant for any reason without due process.¹⁴ The constitution also severely limits the property rights of immigrants and requires immigrants to get permission from the government to own land; even if permission is granted, the immigrant can never own land within 100 kilometers of land borders nor land within 50 kilometers of the coasts.¹⁵ An immigrant wishing to change these rules will have difficulty as the Mexican Constitution states that only citizens are entitled to participate in Mexico’s political affairs.¹⁶ Even with Mexico’s form of birthright citizenship, any child born to illegal immigrants or even legal immigrants in Mexico is barred from becoming president of Mexico; not only must the Mexican president be born in Mexico, but so must at least one of his parents.¹⁷ While Mexico

may grant citizenship to children born to illegal aliens, the nation's constitution clearly imputes a second-class status on children of immigrants.

Additionally, many countries which do recognize birthright citizenship are not necessarily quick to grant citizenship to all people within their jurisdiction. Some countries are the focus of human rights groups because they do not grant citizenship to indigenous people. For example, Peru, a country with a birthright citizenship policy, has an indigenous population that makes up approximately 45 percent of the nation's total population, but the indigenous do not have access to Peruvian citizenship. Unlike the United States, some countries' birthright citizenship policies come with exceptions.

It is also important to remember that some of the countries which do automatically grant citizenship to children of illegal immigrants may not have much illegal immigration at all. For this reason, comparing countries like Fiji to the United States, for example, may be somewhat disingenuous; Fiji has an estimated illegal immigrant population of 2,000 people, while the United States has an estimated illegal immigrant population of up to 12 million.¹⁸

Moreover, not all countries which recognize birthright citizenship allow the child to initiate chain migration by petitioning to have additional family members enter. Consequently, some countries are able to avoid some of the problems associated with birthright citizenship experienced in the United States.

Perhaps most instructive is the clarity with which most other nations have authored their respective citizenship laws. Most countries' citizenship laws contain very little ambiguity and do not require one to conduct a historical analysis or seek judicial clarification for the purpose of determining intent. For example, Brazil's constitution confers citizenship on "those born in the Federative Republic of Brazil, even if of foreign parents," Australia's statutory law declares a person born in Australia an automatic Australian citizen "if and only if a parent of the person is an Australian citizen, or a permanent resident, at the time the person is born," while the Dominican Republic's new constitution denies birthright citizenship to "foreigners who are in transit or who reside illegally in Dominican territory."¹⁹

To the extent there remains any debate over birthright citizenship, it would be helpful for Congress to clarify the scope of the Citizenship Clause of the 14th Amendment.

A Constitutional Amendment Is Not Necessary To Change the Scope of the Citizenship Clause

A constitutional amendment would likely be necessary if the 14th Amendment's Citizenship Clause clearly directed citizenship be granted to children of temporary aliens. However, there is no evidence that Congress intended that children of tourists or illegal aliens, for example, be included within the scope of the Citizenship Clause.

Some argue that Congress cannot pass legislation relating to matters addressed in the Constitution in an attempt to change the scope or interpretation of amendments. Of course, Congress routinely considers

legislation relating to constitutional amendments and a clear example would be any number of pieces of legislation aimed at the 2nd Amendment designed to clarify the appropriate scope of gun rights.²⁰

When it comes to the 14th Amendment's Citizenship Clause, there are volumes of writings on the meaning of "subject to the jurisdiction thereof", which would seem to open up the door to some legislative clarification. Furthermore, in the case of the Citizenship Clause, the Congress that authored the amendment had never contemplated the phenomenon of illegal immigration or birth tourism, making it hard to conclude that the Citizenship Clause was designed to include the children of such individuals.

Influential U.S. Court of Appeals Judge Richard Posner has spoken on this topic and included his thoughts on the matter in a case in 2003. He feels that a constitutional amendment would not necessarily be needed to end the practice in the United States and that legislation would be sufficient. He explained: "A constitutional amendment may be required to change the rule whereby birth in this country automatically confers U.S. citizenship, but I doubt it."²¹

Posner concluded: "Congress would not be flouting the Constitution if it amended the Immigration and Nationality Act to put an end to the nonsense." He reasoned that the policy is one that "Congress should rethink" and that the United States "should not be encouraging foreigners to come to the United States solely to enable them to confer U.S. citizenship on their future children."²²

In fact, there has been a bipartisan effort to end birthright citizenship legislatively. Multiple legislative efforts to clarify the appropriate scope of the Citizenship Clause have been proposed by both Republican and Democrat politicians, as there remains much debate about who should be considered "subject to the jurisdiction" of the United States. In 1993, Sen. Harry Reid (D-Nev.) introduced legislation what would limit birthright citizenship to the children of U.S. citizens and legally resident aliens, and similar bills have been introduced by other legislators in nearly every Congress since.

It may be the case that even legislation is not necessary to change birthright citizenship policy. It is arguable that the Executive Branch could change the way in which the 14th Amendment is applied, particularly in light of President Obama's recent unilateral actions on immigration. The current situation of children born to birth tourists and illegal aliens receiving citizenship has happened due to some past administration allowing agencies to treat these children like the children of U.S. citizens; federal agencies under the watch of the president have granted these children Social Security numbers and U.S. passports for many years. It is unclear whether this has happened by design or whether the agencies simply never gave the issue any consideration. But since Congress has never given any explicit direction on the issue of birthright citizenship as it relates to children of aliens temporarily in the country, it might be reasonable for a president who wants to narrow application of the Citizenship Clause to direct Executive Branch agencies to not consider such children U.S. citizens at birth. Though a president could argue that interpretation and application of the Constitution is part of the president's responsibilities, it is possible that such action would result in litigation which, in turn, would likely result in the Supreme Court weighing in on the matter.

I authored a detailed analysis of the history of birthright citizenship in the United States in a Center for Immigration Studies report titled, "Birthright Citizenship in the United States: A Global Comparison."²³

Birth Tourists, the Obama Administration's Policies, and Fraud

Birth tourists interpret the 14th Amendment as a means to obtain residency for anyone who travels to the United States on any type of visa. Obviously, our visa systems were not designed to operate in this manner, but there are two things to consider.

First, it has become the case under the Obama administration's immigration enforcement priorities that a person in the country illegally who has a U.S. citizen child is not a top priority for deportation, unless they commit some sort of violent crime. In an administrative and very real sense, giving birth on U.S. soil does allow non-citizens to ignore the parameters of their original visa. They can overstay and have a high level of confidence that they will not be deported.

Second, because of existing immigration law explained earlier, the birth tourist can become a permanent resident of the United States by having their U.S.-born child fill out a petition for them when the child turns 21. Oftentimes the parents will not return to the United States until they are planning on retirement. In a legal sense, engaging in fraud and becoming a birth tourist has become a means to obtaining U.S. citizenship. It is difficult to imagine that the Congress which authored the 14th Amendment and the States which ratified it intended this outcome.

What irks Americans about this situation is that birth tourists are effectively taking control over U.S. immigration and citizenship policy by turning a *grant of temporary admission* into a *permanent stay*. The practice of granting automatic birthright citizenship allows a seemingly temporary admission of one foreign visitor to result in a permanent increase in immigration and grants of citizenship that were not necessarily contemplated or welcomed by the American public.

The growth of the birth tourism industry illustrates how the executive branch's broad application of the Citizenship Clause can have the effect of transferring control over the nation's immigration policy from the American people to foreigners.

And there is broad agreement within the immigration debate that birth tourism does constitute fraud. My organization—which supports better enforcement and lower levels of immigration—considers birth tourism to be an act of fraud, as does the Center for American Progress, a group that generally holds positions on immigration that differ from ours.²⁴ "It's not necessarily illegal to come here to have the baby, but if you lie about your reasons for coming here, that's visa fraud," said Claude Arnold, special agent in charge of Homeland Security Investigations for Los Angeles.²⁵

While it is fraud for a person to travel here as a tourist and conceal their real purpose, namely to add a U.S. passport holder to their family, it is unclear whether the federal government has prosecuted such a crime in the case of birth tourism. In the recent case in California, there's no evidence that the

government is prosecuting the actual *birth tourists* for fraud. Instead, prosecution seems to be aimed entirely at those operating birth tourism centers.

The statutes that the U.S. could use to go after birth tourists include, but are not limited to:

Fraud and False Statements (18 U.S.C. § 1001). It is common for birth tourists to make false statements to immigration officials during investigations, and to misrepresent themselves and their travel intentions to the government, generally. Any false statement or fraudulent act may be prosecuted under 18 U.S.C. § 1001 as a felony. The falsification does not have to be made directly to a government official; it must simply relate to and affect a relationship “within the jurisdiction” of the federal government.²⁶ It is broad in scope, and as the courts have noted, §1001 is “intended to serve the vital public purpose of protecting governmental functions from frustration and distortion through deceptive practices, and it must not be construed as if its object were narrow and technical.”²⁷ A person faces a fine and up to five years imprisonment for knowingly and willfully violating this statute.

Fraud and Misuse of Visas, Permits, and Other Documents (18 U.S.C. § 1546). Illegal immigrants often use fraudulent documentation as a means to enter the United States, procure a job, or to obtain certain benefits. As such, this law is frequently used in immigration prosecutions. It may have applicability in birth tourism prosecutions as well since it contains a perjury provision that it applies to anyone who uses a false statement with respect to a material fact in any application or other document required under immigration laws. For example, it has been invoked where an alien has provided false information on an entry form.²⁸ A basic violation of this law can result in a 10-year jail sentence and/or fine, provided it does not involve terrorism or a drug trafficking.

Conspiracy to Commit Offense or to Defraud the United States (18. U.S.C. § 371). Oftentimes a birth tourist will work with others in order to enter the United States and commit fraud. In such an instance, each party might be violating a conspiracy offense related to defrauding the United States. Specifically, if two or more individuals “conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof” and one or more of the individuals makes even one small act in furtherance of the conspiracy, each can be fined and/or imprisoned up to five years.²⁹ This statute has been invoked where illegal aliens have conspired to falsify entry documents,³⁰ and in the context of illegal aliens transporting and harboring illegal aliens,³¹ for example. The government can charge the alien with both conspiracy and the underlying, substantive offense.

Birth Tourism Fraud Results in Additional Fraud

It is often the case that those engaging in illegal activity covered by one area of immigration law also commit other violations of law. In the case of the recent enforcement efforts at birth tourism centers in California, the government found evidence of tax evasion, false tax returns, and willful failure to report foreign bank and financial accounts. The government found that the organizers earned hundreds of

thousands of dollars in unreported income from the immigration fraud scheme. According to the affidavit, one organizer received more than \$500,000 in wire transfers and his partner received more than \$1.5 million from bank accounts in China.³²

But the actual birth tourists also are alleged to have defrauded hospitals and taxpayers. In one case, a birth tourist paid just \$4,080 of a \$28,845 hospital bill, taking advantage of health care meant for the indigent. Investigations revealed that their bank account had charges at Louis Vuitton, Rolex, and the Wynn Las Vegas hotel-casino.³³

The *Wall Street Journal* explained how some birth tourism operators advertised their services:

“The website touts the advantages of having a U.S.-born child, including free K-12 education, low tuition and low-interest loans ‘to save over 1 million Yuan in four years in college over a foreign student,’ government jobs reserved for U.S. citizens, legal immigration to the U.S. for family members who can later enjoy retirement benefits, and less pollution, among many others.”³⁴

These benefits is why one organizer of birth tourism told one of Time Magazine’s partner news agencies that “The return on investment is higher than robbing a bank.”³⁵ The article also detailed the methodologies that birth tourists use to sneak into the United States:

“When Liu Li boarded a plane for the United States, she had a little bit of makeup on, was wearing a loose dress, and had her hair up. She tried to hold her handbag in front of her belly in a natural way, just as the middleman had taught her. She was trying to look as calm as any wealthy Chinese lady would look when travelling abroad. But Liu Li couldn’t help feeling terribly nervous: she was six months pregnant when she left for the United States, where she wanted to give birth to an American citizen.

“Liu Li knew that going through customs would be a lot easier than obtaining a U.S. visa. In order to obtain the tourist visa that enabled her to go to America for the delivery, she had to carefully choose her clothes, and spend a lot of time practicing her walking and interview techniques. She memorized a host of details about her hotel booking and about famous sight-seeing spots so as to convince the Embassy officer that she was just another Chinese woman going shopping in the States.”³⁶

In other words, the birth tourist was deceiving U.S. officials and engaging in fraud. These techniques are often taught to intending birth tourists by the organizers of the practice. In the recent enforcement effort in California, for example, Chinese birth tourists were told to travel through Hawaii before arriving in Los Angeles so as to give the appearance of tourism travel.

The government’s affidavit explains more detail of the recent enforcement effort and is available online.³⁷ It also notes that several of the birth tourists discovered in the recent effort are employed by the Chinese government.

The question of assimilation and whether Children of Birth Tourists Consider Themselves American

It is very important for people we allow in on a permanent basis who obtain citizenship to think of themselves as Americans. It is equally important for Americans to think of them as Americans. Assimilating new U.S. citizens is a critical part of our immigration system as it helps maintain the social fabric of America. But a broad interpretation of our nation's birthright citizenship clause is creating situations that threaten to break down the nation's social cohesion.

Meet Jennifer Shih, a UC Davis college student born in New York who tells the *Sacramento Bee*, "I'm Taiwanese more than American."³⁸ Back in 1989, Shih's mother boarded a jet bound for New York, tourist visa in hand. She didn't arrange her travel in order to take in Broadway show, however; she was eight months pregnant and the goal was to add a U.S.-passport holder to her family. In other words, she was engaging in fraud as admitted by Mr. Shih, who cited the quality of American schools as the impetus. Two months after giving birth Mrs. Shih "returned to Taiwan with her U.S. passport-bearing daughter in tow".

In 2004, when Jennifer reached the age of 15, she returned to the United States to take advantage of U.S.-taxpayer subsidized high schools in Idaho, Utah, and college in California. Understandably, Jennifer — who didn't speak English when she arrived — describes the United States as a "foreign country". The reporter who interviewed her notes that "even after eight years", Jennifer says she still "thinks about Taiwan every day" and visits nearly every year. Jennifer's honesty highlights the absurdity of a lax birthright citizenship policy and raises significant questions of allegiance and assimilation.

Jennifer's father has since moved to the United States, presumably as a result of chain migration, which allows individuals to sponsor parents and siblings upon turning 21 years of age. Jennifer says she is interested in having kids of her own who will go to college in America. This is a perfect example of how one instance of fraud from a temporary alien can result in a permanency that was never welcomed by the American public. Birth tourism effectively puts U.S. citizenship policy into the hands of foreigners.

Despite the fact that no one in Jennifer's family has been paying taxes to support the University of California system, she will be treated like every other California student whose parents have been subsidizing the system for decades. As a result of her mother's fraud, Jennifer will pay a tuition rate that is much less than she otherwise would have as a foreign student. And every social welfare program available to Americans will also be available to Jennifer and her father.

Congress should consider whether birth tourists gaming our tourist system in this manner harms the concept of citizenship.

There are Possibly 36,000 Birth Tourists Per Year

It is difficult to estimate the total number of birth tourists who arrive in the United States each year. There are a few different ways one might come to an estimate, however.³⁹

One potential source of data on birth tourism is birth certificate records. The data contained on the forms is based on self-reporting of parents while at the hospital shortly after the baby is born. The data includes their place of birth and their address. No agency verifies the mother's place of birth, address, or any other information on the birth certificate form.

The Centers for Disease Control and Prevention (CDC) reports that 896,363 women who gave birth in 2012 indicated that they were born outside of the United States. If only 2 or 3 percent of these births were to women who are engaging in birth tourism, it would mean the United States sees 18,000 to 27,000 births annually. While this number would be less than 1 percent of the roughly four million annual births in the United States, the aggregate number of birth tourists babies would still be large, especially the cumulative effect over a number of years.

One source of information often cited in the birth tourism debate is likely less helpful than it first appears: the address mothers provide when giving birth. This is the address where mothers want the birth certificate mailed.

In 2012, the government reports that 7,955 women gave an overseas address when filling out their birth certificate paperwork. This number is not helpful for a couple of reasons.

First, it is not at all clear that those engaging in birth tourism provide an overseas address. It is important to remember that those engaging in birth tourism typically stay in the United States with friends, family, or in some other residential setting arranged by those "selling" birth tourism services immediately before and after they have their babies. There is some anecdotal evidence that birth tourist mothers provide the address they stay at before or after giving birth, rather than an address in the mother's home country. The reason for this is that mothers generally seek a U.S. passport for the child and they need the birth certificate to obtain one. This seems to be a common occurrence. In March 2015, CNN reported that one birth tourist used an address in "a high-end Irvine, Calif., apartment complex where one birth tourism company had rented a number of homes" for her newborn's passport application.⁴⁰ A *USA Today* report on the investigation notes that the birth tourists were "promised Social Security numbers and U.S. passports for their babies before flying back home."⁴¹ On page 76 of the warrant used in the recent enforcement effort, the government lists "California birth certificates" as one of the items to be seized.⁴² While there is evidence that birth tourists provide local addresses to obtain birth certificates, we simply do not know what share of birth tourist mothers provide a U.S. address instead of their overseas address.

Second, some share of those providing an overseas address for the mailing of the birth certificate are U.S. citizens living abroad who returned home to have their child on U.S. soil. These are people who obviously would not be considered birth tourists.

Another way to possibly estimate the prevalence of birth tourism is to compare administrative data and Census Bureau data. The American Community Survey (ACS), collected annually by the Bureau asks women if they had a child in the prior 12 months. The survey is designed to reflect the U.S. population as of July 1 of the year the survey was taken, so the survey is recording the number of women living in

the country at mid-year who had a child in the last half of the prior year and the first half of the year of the survey.

The public-use file of the 2012 ACS shows that there were 863,407 foreign-born women who indicated that they had a child in the prior 12 months.

In the second half of 2011 and the first half of 2012, the CDC reports 898,975 births to foreign-born mothers.

The difference between these two numbers is 35,568 and implies that about 36,000 foreign-born women gave birth in the United States in the 12 months before July 1, 2012, but were no longer in the country. While there are a number of important caveats about this number, this comparison provides some idea of the possible number of babies born to birth tourist mothers.

Some of the caveats to consider include: (1) it is unknown what share of births are not recorded in state birth records compiled by the CDC; (2) there is both a margin of error in the ACS and some undercount of foreign-born women in that data; (3) some foreign-born women may have had a child and left the country, but they did so after many years of residence and perhaps would not be considered birth tourists; (4) a person who comes as a birth tourist but has a miscarriage is not included in the birth records as only live births are included in the state birth data collected by the CDC. However, such a person should still be considered a birth tourist.

Birthright Citizenship for Children of Foreign Diplomats?

Amid the debate over the proper scope of the 14th Amendment's Citizenship Clause, there is one area of solid agreement among advocates on all sides: 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 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 in the eyes of some government agencies— despite the limiting language within the Citizenship Clause of the 14th Amendment.

It may be the case that the limiting language in the Citizenship Clause has nearly no practical effect. This issue was the focus of two of my reports, "Birthright Citizenship for Children of Foreign Diplomats?" and "Why the Citizenship Clause Should Be Taken More Seriously."⁴³

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, and although they admit it should not be happening, there is no mechanism in place for preventing such issuance.

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 arguably more aligned with the intended scope of the 14th Amendment than the outcome created by current practices.

The birth certificate and SSN are so critical to verifying identification in the United States that it behooves Congress to direct federal agencies to be a little more careful in issuing documents that, when combined, create the appearance of U.S. citizenship. If children born to foreign diplomats are, as the State Department told me, “entitled” to U.S. birth certificates, then Congress should consider requiring use of different birth certificates for those not born “subject to the jurisdiction” of the United States. Better regulation of SSN issuance is also necessary.

The State Department appears to have some difficulty keeping track of children born on U.S. soil to foreign diplomats. I have spoken with a number of attorneys and other officials at the State Department (in a number of offices), and they explained that they do not keep track of children born to foreign diplomats. An official at the Office of Foreign Missions (OFM), which some researchers have argued keeps track of children born to foreign diplomats, explained that his office has not been tasked with maintaining a database of children born to foreign diplomats. The official explained that there are data sets that may contain the names of children born to foreign diplomats on U.S. soil, but that it would be completely dependent on the parent alerting the State Department’s Office of Protocol to the fact that the diplomat had a child. The OFM official explained, “We all share the same data system, but we [the OFM] don’t input that data and we don’t directly have authority over that issue.”

Officials at the Office of Protocol, which seemed to have the most information on the subject (and an office to which I was directed a number of times while researching the matter), explained that a list of children born to foreign diplomats would be “impossible to compile.” I pressed again, asking whether there was any kind of list maintained by that office. The official's response:

“No, no, no. We don't keep a list. What we do is register any employee working at an embassy or consulate... But when it comes to dependents, like in this case when the children are born here, we send a memo to the Office of American Citizen Services, they follow up with our case, they are the ones who make the determinations.”

I asked, “I guess it also depends whether or not the foreign diplomat even alerts you to them having a child, right?”

The official's response: "Exactly."

I spoke with Office of American Citizen Services, which directed me to a section of their department called the Office of Overseas Citizenship. That office was surprised that the inquiry had been directed to them and felt that it was the Protocol Office that might be compiling a list of children born to foreign diplomats: "I believe, my strong suspicion is that that is the Office of Protocol. If someone from the Office of Protocol told you that, that would be interesting." And later: "I have to say it would be Protocol making that list. It would not be us. I'm quite sure. If someone told you to come to us, and if I'm telling you to go to them, I wonder if there is such a list, and I'm dubious."

Multiple officials in this office shared the same sentiment. From my research, it does not seem that any government agency is keeping track of children born to foreign diplomats. The question, then, is whether the limiting language in the 14th Amendment's Citizenship Clause has any practical effect.

A key issue is that some government agencies consider U.S. birth certificates and SSNs to indicate U.S. citizenship, despite the fact that children of foreign diplomats are receiving them. According to the U.S. Citizenship and Immigration Services, a "birth certificate provides proof of citizenship."

I spoke with the Office of Personnel Management (OPM) which oversees employment for government jobs requiring U.S. citizenship. In an e-mail, the agency explained, "OPM does not utilize the Department of State for verification of U.S. citizenship for persons born in the United States." The problem, of course, is that some people born in the United States are not to be considered U.S. citizens — children born to foreign diplomats (if not others), and the State Department seems to be the only agency that might begin to have the capacity to keep track. Since children born to foreign diplomats have U.S. birth certificates and validly-issued SSNs, they do not raise any red flags for the OPM, even though they certainly should. If the children were issued birth certificates that read, "Not Evidence of U.S. Citizenship" and if they were not automatically granted SSNs, they would not be able to acquire a job reserved for U.S. citizens as easily as they may be able to do so today.

Since the U.S. is granting documents that give the appearance of U.S. citizenship to anyone and everyone at birth, the only option for OPM (and underlying agencies seeking employees) at this point would be to run the names of all job applicants through the State Department before clearing a person as an authorized U.S. citizen. Of course, this would be a significant undertaking, and it would depend on the State Department having a complete list of all children born to foreign diplomats — something that does not appear to be happening. Multiple officials at the State Department explained that they have never heard of the OPM coming to their agency for vetting purposes. Stopping such careless issuance of documents at the outset might be the best way to make sure non-citizens are not acquiring jobs that require U.S. citizenship.

There are more problems with this lack of focus on the birthright citizenship issue as it relates to children of foreign diplomats and they are detailed in the reported mentioned earlier, but one more point is worth noting: USCIS considers children born to foreign diplomats to be Legal Permanent Residents (LPR) at birth, though that was not always the case (8 § C.F.R. 1101.3). A couple of unpublished, decades-old court decisions made this so, and it is a questionable grant, not just because it

raises plenary power issues (i.e. the right of the political branches to set immigration policy), but also because it seems to go against the intent of the 14th Amendment. Prior to these decisions, the government considered these children non-immigrants. As LPRs, these children become eligible for naturalization after five years.

The State Department is currently rewriting the agency's guidelines on birthright citizenship, signaling a possibly significant departure from current 14th Amendment jurisprudence. 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."⁴⁴

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.⁴⁵

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 has been 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.'"⁴⁶

An inquiry into the status of Appendix J made mid-2011 revealed that the State Department was expecting to publish the changes by the end of 2011. However, it appears as if the Appendix was never created or at least never made available to the public.

¹ Jeffrey S. Passel and D'Vera Cohn, "A Portrait of Unauthorized Immigrants in the United States," Pew Hispanic Center, Apr. 14, 2009, www.pewhispanic.org/files/reports/107.pdf. "A Nation of Immigrants: A Portrait of the 40 Million, Including 11 Million Unauthorized," Jan. 29, 2013. <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/> Note: These figures do not include children who are 18 years of age or older nor those who are married, meaning the actual figure is somewhat larger.

² “Executive Actions on Immigration”, U.S. Citizenship and Immigration Services.
<http://www.uscis.gov/immigrationaction>

³ Katie Foreman and Randall Monger, “Nonimmigrant Admissions to the United States: 2013”, Dep’t of Homeland Security, Office of Immigration Statistics, July 2014.
http://www.dhs.gov/sites/default/files/publications/ois_ni_fr_2013.pdf

⁴ Victoria Kim and Frank Shyong, “‘Maternity tourism’ raids target California operations catering to Chinese,” Los Angeles Times, Mar. 3, 2015. <http://www.latimes.com/local/lanow/la-me-ln-birth-tourism-schemes-raids-20150303-story.html#page=1>

⁵ Jon Feere, “Birth Tourism Fraud from China: ‘The return on investment is higher than robbing a bank’,” Center for Immigration Studies, June 16, 2011. <http://cis.org/feere/birth-tourism-fraud-from-china>

⁶ Steven Camarota, “There Are Possibly 36,000 Birth Tourists Annually”, Center for Immigration Studies. April 2015. <http://www.cis.org/camarota/there-are-possibly-36000-birth-tourists-annually>

⁷ Steven Camarota, “Welfare Use by Immigrant Households with Children,” Center for Immigration Studies, Apr. 2011. <http://cis.org/immigrant-welfare-use-2011>

⁸ Jon Feere, “Birthright Citizenship in the United States: A Global Comparison,” Center for Immigration Studies, Aug 2010. <http://cis.org/birthright-citizenship>

⁹ See, e.g., “Citizenship tourists,” The Economist, Jun. 3, 2004. <http://www.economist.com/node/2734580>

¹⁰ Ms. E. Ann Henry et al., *Report on Review of Matters Pertaining to Immigration, Work Permits, Citizenship and Electoral Reform*, Gov’t of Antigua and Barbuda, Feb. 9, 2010, www.ab.gov.ag/gov_v3/pdf/immigration_report.pdf

¹¹ Automatic acquisition of citizenship on 10th birthday “A child born in Australia on or after 20 August 1986, who did not acquire Australian citizenship at birth, automatically acquires it on their 10th birthday if they have been ordinarily resident in Australia for 10 years from birth. This provision operates regardless of the parent/s immigration or citizenship status,” www.immi.gov.au/media/fact-sheets/17nz.htm.

¹² Conversation with Rose Lacey, Citizenship and Migration Officer, Australian High Commission, May 31, 2010.

¹³ Para. Const. art. 69.

¹⁴ Mex. Const. tit. I, ch. III, art. 33, <http://info.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf>.

¹⁵ Mex. Const. tit. I, ch. I, art. 27.

¹⁶ Mex. Const. tit. I, ch. I, art. 9.

¹⁷ Mex. Const. tit. III, ch. III, art. 82.

¹⁸ Kalinga Seneviratne, “Islanders welcome Chinese cash, but not Chinese,” Asia Times Online, Sept. 17, 2002, <http://www.atimes.com/atimes/China/DI17Ad04.html>.

¹⁹ Braz. Cont. tit. II, ch. III, art. 12, <http://www.v-brazil.com/government/laws/titleII.html>; Australian Citizenship Act 2007, pt. II, div. 1 (2007), <http://www.comlaw.gov.au>; Dom. Rep. Const. ch. V, § 1, art. 18, <http://www.jmarcano.com/mipais/politicos/title1.html>.

²⁰ Pete Kasperowicz, "Ten gun bills on Congress's first day," The Hill, Jan. 3, 2013. <http://thehill.com/blogs/floor-action/house/275587-10-gun-bills-introduced-in-first-day-of-the-house> (citing a number of pieces of legislation, including Rep. Sheila Jackson Lee's (D-Texas) proposed H.R. 65, which would raise the eligibility age to carry a handgun from 18 to 21.).

²¹ *Oforji v. Ashcroft*, 354 F.3d 609, 620-1 (2003).

²² *Id.*

²³ Jon Feere, "Birthright Citizenship in the United States: A Global Comparison," Center for Immigration Studies, Aug. 2010. <http://www.cis.org/birthright-citizenship>

²⁴ CNN Debate, "The Maternity Tourism Business," Apr. 19, 2011. <http://cis.org/Videos/KrikorianDebatesBirthrightCNN>

²⁵ Andrew Blankstein, Anna R. Schechter and Tracy Connor, "Feds Raid California 'Maternity Hotels' for Birth Tourists," NBC News, Mar. 3, 2015. <http://www.nbcnews.com/news/us-news/feds-raid-california-maternity-hotels-birth-tourists-n315996>

²⁶ *See United States v. Munoz*, 392 F. Supp. 183 (E.D. Mich. 1974).

²⁷ *Ogden v. United States*, 303 F.2d 724, 742 (9th Cir. 1962). *See also United States v. Rodgers*, 466 U.S. 475 (1984) (upholding a broad interpretation of the scope of § 1001); *see also Brogan v. United States*, 522 U.S. 398 (1998).

²⁸ *See, e.g., United States v. Wiggan*, 673 F.2d 145 (6th Cir. 1982).

²⁹ 18 U.S.C. § 371 (2013). Note: If the offense toward which the conspiracy is aimed is a only a misdemeanor, the punishment for such conspiracy will not exceed the maximum punishment provided for such misdemeanor.

³⁰ *See, e.g., Shimi Miho v. United States*, 57 F.2d 491 (9th Cir. 1932).

³¹ *See, e.g., Matter of Roman*, Interim Decision #3095, A-37431891, December 16, 1988.

³² Miriam Jordan, "Federal Agents Raid Alleged 'Maternity Tourism' Businesses Catering to Chinese," Wall Street Journal, Mar. 3, 2015. <http://www.wsj.com/articles/us-agents-raid-alleged-maternity-tourism-anchor-baby-businesses-catering-to-chinese-1425404456>

³³ Michael Winter, "Feds raid Chinese 'birth tourism' rings in California," USA Today, Mar. 3, 2015. <http://www.usatoday.com/story/news/2015/03/03/california-chinese-birth-tourism-raids/24338087/>

³⁴ Miriam Jordan, "Federal Agents Raid Alleged 'Maternity Tourism' Businesses Catering to Chinese," Wall Street Journal, Mar. 3, 2015. <http://www.wsj.com/articles/us-agents-raid-alleged-maternity-tourism-anchor-baby-businesses-catering-to-chinese-1425404456>

³⁵ Jon Feere, "Birth Tourism Fraud from China: 'The return on investment is higher than robbing a bank'," Center for Immigration Studies, June 16, 2011. <http://cis.org/feere/birth-tourism-fraud-from-china>

³⁶ *Id.*

³⁷ <http://i2.cdn.turner.com/cnn/2015/images/03/03/birth.tourism.pdf>

³⁸ Jon Feere, "Birth Tourism Baby Calls United States a "Foreign Country", Center for Immigration Studies, Sept. 28, 2012. <http://cis.org/feere/birth-tourism-baby-calls-united-states-foreign-country>

³⁹ Steven Camarota, "There Are Possibly 36,000 Birth Tourists Annually", Center for Immigration Studies, Apr. 2015. <http://www.cis.org/camarota/there-are-possibly-36000-birth-tourists-annually>

⁴⁰ Sophia Yan, "How far Chinese moms will go to have U.S. babies," CNN, Mar. 30, 2015. <http://money.cnn.com/2015/03/30/news/china-moms-birth-tourism-fraud/>

⁴¹ Michael Winter, "Feds raid Chinese 'birth tourism' rings in California," USA Today, Mar. 3, 2015. <http://www.usatoday.com/story/news/2015/03/03/california-chinese-birth-tourism-raids/24338087/>

⁴² <http://i2.cdn.turner.com/cnn/2015/images/03/03/birth.tourism.pdf>

⁴³ Jon Feere, "Birthright Citizenship for Children of Foreign Diplomats? Limiting Language in the 14th Amendment's Citizenship Clause Has No Practical Effect," Center for Immigration Studies, July 2011. <http://cis.org/birthright-citizenship-diplomats> & Jon Feere, "Why the Citizenship Clause Should Be Taken More Seriously: A Response to Margaret Stock", Center for Immigration Studies, Oct. 30, 2011. <http://www.cis.org/feere/response-to-margaret-stock>

⁴⁴ "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

⁴⁵ Jon Feere, "Birthright Citizenship in the United States: A Global Comparison," Center for Immigration Studies, Aug. 2010. <http://www.cis.org/birthright-citizenship>

⁴⁶ "'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.