Migration and Refugee Services/Office of Migration Policy and Public Affairs
The United States Conference of Catholic Bishops

Issue Briefing Series, Issue #2:
Birthright Citizenship: The Real Story

Under current law, U.S.-born children[i] of unauthorized immigrants are automatically considered U.S. citizens. Select states and certain Federal lawmakers are hoping to change that. In an effort to end birthright citizenship – which has its origins in English common law – for children of unauthorized immigrants born in the United States, state and federal lawmakers have proposed everything from state-level legislation to a constitutional amendment. They claim that by repealing birthright citizenship, the United States will deter immigrants from coming to the United States and giving birth to what they term "anchor babies" through who unauthorized family members allegedly then obtain legal status.

Background

Countries confer citizenship following one (or both) of two key principles: citizenship by descent (*jus sanguinis*) or citizenship by birth (*jus soli*).[ii] Citizenship by descent is obtained by an individual based on the citizenship of her parents. Citizenship by birth, on the other hand, is obtained by any individual born within the country's territory, irrespective of her parent's citizenship.

In the United States, like Canada and select other countries, citizenship is conferred by birth – meaning that any person born within the territory of the United States is a U.S. citizen.[iii] Birthright citizenship is guaranteed by the Fourteenth Amendment's Citizenship Clause, which states in pertinent part, that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."[iv]

The birthright citizenship controversy centers on the proper interpretation of the Citizenship Clause. The clause was intended to reverse the 1857 *Dred Scott v. Sandford* decision in which the Supreme Court held that U.S.-born persons of African descent were not citizens, thereby denying citizenship to slaves and freemen alike.[v] By passing the Amendment and its Citizenship Clause, a post-Civil War Congress restored and made constitutional the English common law doctrine of *jus soli*, which had been abrogated by the Supreme Court's *Dred Scott* decision.[vi]

Part of a series of immigration issue briefs authored by the Office of Migration Policy and Public Affairs at Migration and Refugee Services/U.S. Conference of Catholic Bishops, this issue brief provides a thumbnail sketch of applicable law governing birthright citizenship, a brief summary of current attempts to change the law, and the Conference's policy perspective on the issue.

JUSTICE FOR IMMIGRANTS
The United States Conference of Catholic Bishops
we are one family under God

Specifically, proponents of a repeal of birthright citizenship maintain that the Clause did not intend to cover individuals born to unauthorized immigrants in the United States. They argue that the language "subject to the jurisdiction thereof" was not intended to include unauthorized aliens.

However, a reading of the plain meaning of the language makes clear that an individual who is legally required to obey U.S. law is "subject to the jurisdiction" of the United States – meaning that foreign nationals, including unauthorized immigrants, living in the United States who therefore must obey U.S. laws are covered by the Clause. Further, and significantly, judicial precedent has reaffirmed this interpretation. In 1898, the U.S. Supreme Court held in *United States v. Wong Kim Ark* that the U.S.-born children of immigrants were entitled to birthright citizenship under the Fourteenth Amendment.[vii] In 1982, the Supreme Court unanimously held that the Fourteenth Amendment applies to the children of unauthorized immigrants in the United States.[viii] In *Plyler v. Doe*, the Court interpreted the Fourteenth Amendment's Equal Protection Clause to protect both lawful and unauthorized immigrants alike. In doing so, the Court concluded that unauthorized aliens are "subject to the jurisdiction" of the United States, and to the state in which they reside, and its laws.[ix] In 1985, in *INS v. Rios-Pineda*, the Supreme Court in a unanimous decision held that the children born in the United States to unauthorized immigrants are U.S. citizens.[x]

Some proponents of a repeal of birthright citizenship further argue that the Citizenship Clause only confers citizenship upon children who are able to give their allegiance to the United States, meaning that because foreign-born citizens still owe allegiance to another sovereign, their children born in the United States cannot owe full allegiance to the United States. But, the plain language of the Clause fails to support such an interpretation. Had the drafters of the Clause intended birthright citizenship to flow only to those children of U.S. Citizens, they arguably would have said so; or conversely, said that it was conferred on those able to give their full "allegiance" to the United States – in lieu of being "subject to the jurisdiction" of the United States, yet they did not. Further, the drafters at the time understood allegiance and citizenship to spring from a person's place of birth – not the place of birth of their parents.[xi]

Myths about repealing birthright citizenship

Among other efforts, proponents of a repeal of birthright citizenship are drafting state-level legislation to deny privileges of U.S. citizenship to the U.S.-born children of unauthorized aliens. Because citizenship is within the purview of the federal government, and not the states, the proponents hope that doing so will ultimately trigger a Supreme Court review of the law.

Despite over 140 years of constitutionally-enshrined birthright citizenship in the United States, opponents of lawful and unauthorized immigration push for its repeal, claiming that by doing so they will curtail unlawful immigration to the United States. They claim that unauthorized women are incentivized by the promise of birthright citizenship to enter the United States

unlawfully to give birth to what will be a U.S. citizen child. And, they maintain that through these "anchor babies," thousands of unauthorized parents and family members are automatically obtaining legal status.

However, the facts simply do not support these allegations. The fact is that most unauthorized immigrants come to the United States looking for jobs, not to give birth on U.S. soil.[xii] And, the argument that countless unauthorized immigrants are obtaining legal status through so-called "anchor babies" is erroneous; a U.S. Citizen cannot apply for a visa for an immediate family member—parent or sibling--until that U.S. Citizen is 21 years of age. And, even then, the wait for a visa is often years long.[xiii] Thus, the unlawfully present parent of a U.S.-born child would have to wait 21 years to apply for lawful status through her U.S.-born child and then often many years more before it is conferred upon her.

Perhaps most significantly, were birthright citizenship repealed, unauthorized immigration would not be significantly deterred. Instead, the numbers of unauthorized immigrants in the United States would increase dramatically – from the current 11 million to anywhere from 16 to 24 million or more -- and there would be thousands of U.S.-born children who would be rendered stateless – without citizenship – and unauthorized in the United States.[xiv] These children – who have done nothing wrong by being born in the United States to unauthorized immigrant parents – would be punished by relegating them to second or third-class members of U.S. society. And, it would place an undue burden on all Americans, eliminating easy proof of citizenship status through birth certificates, and replacing it with an onerous process of having to trace one's family heritage and produce documentation of blood relations.

Position of the U.S. Conference of Catholic Bishops (USCCB)

To address legitimate concerns surrounding immigration law enforcement in the United States, the USCCB believes that our country must pass immigration reform laws to ensure the rule of law, while simultaneously ensuring that the laws that rule are rooted in the reunification of family and respectful of the human dignity of the immigrants in our midst.

The USCCB opposes the repeal of birthright citizenship because it would render innocent children stateless, depriving them of the ability to thrive in their communities and reach their full potential. The USCCB believes that a repeal of birthright citizenship would create a permanent underclass in U.S. society, contravening U.S. democratic tradition; undermining the human dignity of innocent children who would be punished though they did nothing wrong; and ultimately weakening the family. Because of this, the USCCB opposes the current efforts underway for its repeal.

---

[i] Defined as born within the United States or its territories.

[ii] James C. Ho, "Defining 'American': Birthright Citizenship and the Original Understanding of the 14th Amendment," *The Green Bag* 9, no. 4 (Summer 2006): 366-378.

[iii] *Id.*

[iv] U.S. Const. amend. XIV.
[v] *Id.*, 60 U.S. 393 (1857).
[vi] *See* Ho, "Defining 'American': Birthright Citizenship and the Original Understanding of the 14th Amendment."
[vii] *Id*., 169 U.S. 649 (1898) (holding that the "fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes… to hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States").
[viii] *Plyler v. Doe,* 457 U.S. 202 (1982).
[ix] *Id.* (rejecting the argument that persons who have entered the United States unlawfully are not "within the jurisdiction of" a State even when they are present within a State's boundaries and subject to its laws and stating that neither "our cases nor the logic of the Fourteenth Amendment supports that constricting construction of the phrase 'within its jurisdiction.'")
[x] *INS v. Rios-Pineda,* 471 U.S. 444, 45-46 (1985).
[xi] Elizabeth B. Wydra, "Debunking Modern Arguments Against Birthright Citizenship," available at http://www.immigrationpolicy.org/perspectives/made-america-myths-facts-about-birthright-citizenship (last visited January 7, 2011).
[xii] *See, e.g*., Gordon H. Hanson, *The Economics and Policy of Illegal Immigration in the United States*, Migration Policy Institute (December 2009).
[xiii] *See, e.g*., http://travel.state.gov/visa/immigrants/types/types_1306.html#3 (last visited, January 11, 2010).
[xiv] Jennifer Van Hook and Michael Fix, *The Demographic Impacts of Repealing Birthright Citizenship*, Migration Policy Institute (September 2010), 2-5.

Prepared by Cynthia M. Smith, Esq., Policy Advisor, Office of Migration Policy & Public Affairs.