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Debunking the Myth of the “Anchor Baby”:

Why Proposed Legislation Limiting Birthright Citizenship is not a Means of Controlling Unauthorized Immigration

Mariana E. Ormonde*

INTRODUCTION

“Anchor baby” has become a term used by anti-immigration proponents to evoke images of unauthorized immigrants crossing the American border solely to give birth, effortlessly providing those newborn children with constitutional rights and protections held by American citizens, only as a result of their birth on American soil.¹ The term is used to further convey the notion that non-American birth parents intentionally arrange to give birth on American soil so that those parents may themselves reap the

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1. See Louis Jacobson, *Fact-Checking the Claims about ‘Anchor Babies’ and Whether Illegal Immigrants ‘Drop and Leave’*, POLITIFACT (Aug. 6, 2010, 6:15 PM), <http://www.politifact.com/truth-o-meter/statements/2010/aug/06/lindsey-graham/illegal-immigrants-anchor-babies-birthright/>.

benefits of American citizenship while being undeportable due to the fact that their child, as an American citizen, has anchored them to the country.² This derogatory term has found its way into current American slang and is freely used to rile up anti-immigration sentiment, fueling the immigration reform movement and inspiring politicians to draft legislation limiting citizenship rights.³ After close examination, however, the perception that this term is designed to convey has no factual basis and through hate-mongering only encourages otherwise uninformed individuals to rally against the immigrant population in the United States.⁴

The first section of this Comment will examine the term “anchor baby,” briefly describing the history and usage of the term, focusing on the myth and notions that this charged term is meant to convey. Section II of this Comment will discuss in detail the history of birthright citizenship, or *jus soli*, in the United States. Special focus is given to the particular language of the Citizenship Clause of the Fourteenth Amendment and how this wording was interpreted by the ratifying Congress at its inception to apply in the context of immigration. This is followed by a comprehensive discussion of United States Supreme Court precedent in this area, which interprets the Citizenship Clause of the Fourteenth Amendment as granting American citizenship to those persons born on American soil regardless of the nationality of the birth parents.

Section III of this Comment discusses the most recent legislative efforts to curb immigration by restricting birthright citizenship to only chosen classes of individuals, and shows that such legislation would be invalid short of a constitutional amendment. Section IV then goes on to debunk the myth of the so-called “anchor baby,” explaining that even if lawmakers were

2. *See id.*

3. *See id.*

4. *See, e.g.,* Bryan Curtis, *The Killer on the Border*, NEWSWEEK, Feb. 20, 2011, at 10. Shawna Forde, leader of a paramilitary group in Arizona that “purport[s] to safeguard the state from an immigrant menace,” claimed to be a border patrol agent and invaded the home of a Latino family late at night, shooting the occupants and killing two American citizens, including a nine year old girl after she asked Forde why she shot her mom. *See also Jury Decides on Death Penalty for Woman Who Headed Vigilante Squad*, CNN (Feb. 22, 2011, 9:21 PM), <http://www.cnn.com/2011/CRIME/02/22/arizona.double.killing/index.html>.

successful in enacting legislation or amending the constitution to limit birthright citizenship, such changes would have little effect on the number of individuals immigrating to the United States. This Comment concludes by suggesting that those who travel to this country and give birth do so for reasons not related to gaining citizenship status for themselves or to secure their own place on American soil. This Comment will show that gaining citizenship through giving birth on American soil is a protracted and ineffectual manner of gaining citizenship status for the birth parent, and therefore any attempt to bring about a constitutional amendment or enact legislation eliminating birthright citizenship would not cure the issue it seeks to remedy.

I. A MYTH IS BORN: THE "ANCHOR BABY"

Since the United States grants birthright citizenship to all persons born on American soil,⁵ including children of unauthorized immigrants, sentiment has arisen that this right is being exploited to the detriment of America and its citizens:

The anchor baby fiasco must be stopped. It rewards illegal immigrants and encourages more illegal immigration. It costs law-abiding taxpayers a bundle. It makes it harder to control the border, reform immigration and rein in the runaway welfare state. And... it cheapens American citizenship and mocks those who play by the rules.⁶

The term "anchor baby" is often used to describe a child born in the United States to unauthorized immigrant parents, conveying the notion that through the child's birth the immigrant birth parents can "anchor" themselves to the United States and reap the benefits of American citizenship.⁷ While the exact origin of

5. See U.S. CONST. amend. XIV, § 1.

6. Allan Wall, *Anchor Babies*, FRONTPAGE MAG. (Apr. 26, 2001), <http://www.americanpatrol.com/REFERENCE/AnchorBabiesAllanWall.html>.

7. See Alan Gomez, *Dictionary's Definition of 'Anchor Baby' Draws Fire*, USA TODAY (Dec. 5, 2011, 4:34 PM), <http://content.usatoday.com/communities/ondeadline/post/2011/12/define-anchor-baby-american-heritage-dictionary/1#.T0nzSFzLwrU>. Until recently, the online version of the American Heritage Dictionary defined the term "anchor baby" as: "a child born to a noncitizen mother in a country that grants automatic citizenship to children born on its soil, especially such a child born to parents seeking to

the term is unclear, there is speculation that it stems from an analogous term used in the early 1980s to describe young Vietnamese asylum seekers who traveled to Hong Kong by boat, seeking refuge from their war-torn country, with the ultimate goal of reaching North America.⁸ These refugee immigrants, initially referred to as “boat people” because they often made the dangerous voyage from Vietnam to Hong Kong in small, ill-equipped boats, were later referred to as anchor children because they sought to sponsor their relatives for immigration in order to reunite with them on American soil.⁹ However, rather than sympathizing with the refugees’ plight to create a better life for their families in a stable country, sentiment instead arose that these individuals were opportunistic intruders, not deserving of the host country’s hospitality or even humane treatment.¹⁰

In more recent times, the term “anchor baby” has taken on a purely derogatory connotation, primarily used to de-humanize and create resentment towards infants born in the United States to unauthorized immigrants, purported by some as a calculated means of gaining citizenship for those parents.¹¹ Some American

secure eventual citizenship for themselves and often other members of their family.” *Id.* (internal quotation marks omitted). After a widespread backlash, the definition has been amended to note its disparaging nature and is prefaced as being offensive. *See id.*

8. See Nathan O’Neal, *‘Anchor Baby’ Phrase Has Controversial History*, ABC NEWS (July 3, 2010), <http://abcnews.go.com/Politics/anchor-baby-phrase-controversial-history/story?id=11066543#.T0n1jlzLwrU>; see also *A Profile of a Lost Generation*, L.A. TIMES MAG., Dec. 13, 1987, at 12, available at http://articles.latimes.com/1987-12-13/magazine/tm-28306_1 (“They are ‘anchor children,’ saddled with the extra burden of having to attain a financial foothold in America to sponsor family members who remain in Vietnam.”).

9. Frances Kelly, *Sympathy for the Boat People is Wearing Thin*, THE TORONTO STAR, June 2, 1991, at H2 (“Known as ‘anchor’ children, aid workers say the youngsters are put on boats by families who hope they’ll be resettled in the United States or Canada and can then apply to have their families join them.”).

10. *See id.* With many of the refugees washing ashore in Hong Kong, costing that government millions to clothe, feed and provide shelter, a poll showed that most local residents “would rather see boat people pushed back out to sea, even if it meant they would drown.” *Id.*

11. Eric Zorn, *Sinking ‘Anchor Babies’*, CHI. TRIB. (Aug. 18, 2006, 2:45 PM), http://blogs.chicagotribune.com/news_columnists_ezorn/2006/08/sinking_anchor_.html. “They use it to make these children sound non-human.” *Id.* (quoting Doug Ravlin, spokesman for the National Immigration Forum).

lawmakers, unhappy with the current state of immigration in the United States and who seek to change existing immigration policies, freely use the term to garner support through rousing nationalist sentiment stemming from the apparent outrageousness of so easily granting American rights to those who have no allegiance to the United States.¹² These lawmakers point to the fact that over 300,000 children are born each year in the United States to unauthorized immigrants¹³ as proof of a conscious and calculated plan unauthorized immigrants execute to give birth on American soil and reap citizenship benefits for themselves. As further proof of this phenomenon, immigration reformists often describe the event of unauthorized immigrants giving birth in America as a "drop and leave," and point to "birth packages" sold by foreign companies to pregnant women as a way to facilitate their travel to America for the sole purpose of giving birth.¹⁴

With the spread of such alarming rhetoric, immigration reformists have increasingly fought to pass legislation limiting birthright citizenship in the United States.¹⁵ In fact, although such legislation has continually been proposed in the United States Congress since the early 1990s, none has yet been enacted into law.¹⁶ To determine whether such legislation would be effective even if enacted, a closer look must be taken at the history of birthright citizenship in the United States and the likely consequences of its regulation.

II. THE HISTORY OF BIRTHRIGHT CITIZENSHIP IN THE UNITED STATES

In the United States, a child is given automatic citizenship

12. See Jacobson, *supra* note 1 (quoting Senator Lindsey Graham from a July 28, 2010 Fox News interview, stating that "people come here to have babies. They come here to drop a child. It's called 'drop and leave.'").

13. See JEFFREY S. PASSEL & D'VERA COHN, PEW RESEARCH CTR., UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, at 1 (2011), available at <http://pewhispanic.org/files/reports/133.pdf>.

14. See Jacobson, *supra* note 1.

15. 'Drop and Leave?' Not So Fast, MSNBC FIRST READ BLOG (Aug. 20, 2010, 1:28 PM), http://firstread.msnbc.msn.com/_news/2010/08/20/4939155-drop-and-leave-not-so-fast. "The debate over the citizenship rights of children of illegal immigrants doesn't seem to be going away." *Id.*

16. See, e.g., Citizenship Reform Act of 1995, H.R. 1363, 104th Cong. (1995); see also *infra* notes 66-71 and accompanying text.

status by virtue of his or her birth on American soil.¹⁷ The basis for this country's application of *jus soli*,¹⁸ otherwise known as birthright citizenship, is grounded in the English common law doctrine conferring citizenship to anyone who is born within the territory.¹⁹ Incorporated early on as an American common law doctrine, historically birthright citizenship was widely accepted and rarely questioned.²⁰

In response to the landmark *Dred Scott* decision in 1857, which denied citizenship status to people of African descent born in the United States,²¹ Congress enacted The Civil Rights Act of 1866.²² The language of the Act, "[t]hat all persons born in the United States and not subject to any foreign power . . . are hereby declared to be citizens of the United States," ensured that freed slaves and people of African descent born on American soil were entitled to American citizenship.²³ Elevating the purpose of The Civil Rights Act to constitutional law status, the Fourteenth Amendment was enacted two years later, declaring that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."²⁴ The ratification of the Fourteenth Amendment overruled the infamous *Dred Scott* decision and firmly established the right to citizenship status for all individuals born in the United States.²⁵

While the Fourteenth Amendment was enacted primarily due to reconstruction efforts following the Civil War and the subsequent end of slavery in the United States,²⁶ the

17. See U.S. CONST. amend. XIV, §1.

18. See BLACK'S LAW DICTIONARY 942 (9th ed. 2009) (noting the Latin translation of *jus soli* is the "right of the soil," and defining the term as "[t]he rule that a child's citizenship is determined by place of birth").

19. See *United States v. Wong Kim Ark*, 169 U.S. 649, 658 (1898).

20. See *id.* at 658-59.

21. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

22. Civil Rights Act of 1866, ch. 31, § 1, 14 Stat. 27.

23. See *id.*

24. U.S. CONST. amend. XIV, §1.

25. See *In re Look Tin Sing*, 21 F. 905, 909 (C.C.D. Cal. 1884) ("The clause as to citizenship was inserted in the amendment not merely as an authoritative declaration of the generally recognized law of the country . . . but also to overrule the doctrine of the *Dred Scott Case*.").

26. "[The thirteenth, fourteenth, and fifteenth amendments] were welcomed by the friends of liberty throughout the world. They removed the race line from our governmental systems." *Plessy v. Ferguson*, 163 U.S. 537, 555 (1896) (Harlan, J., dissenting).

congressional debate leading up to the approval of the Fourteenth Amendment shows that lawmakers clearly contemplated the implications the Amendment would have in the context of immigration.²⁷ Senator Jacob Howard (R-MI) proposed the language that would incorporate the issue of citizenship into the text of the Fourteenth Amendment, stating:

This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. . . . It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States.²⁸

While the granting of unqualified birthright citizenship to all born on American soil was not without opposition, the congressional record leaves little doubt that all elected officials present at the time understood that approval of the Amendment would confer such citizenship to any and all individuals born in the United States.²⁹ In response to one lawmaker's opposition to granting such absolute rights to children born of immigrants, Senator John Conness (R-CA) stated:

The proposition before us . . . relates simply in that respect to the children begotten of Chinese parents in California, and it is proposed to declare that they shall be citizens. We have declared that by law; now it is proposed to incorporate the same provision in the fundamental instrument of the nation. I am in favor of doing so . . . to declare that the children of all parentage whatever, born [in a State], should be regarded and

27. CONG. GLOBE, 39th Cong., 1st Sess. 2890-2902 (1866).

28. *Id.* at 2890 (statement of Sen. Howard).

29. *See id.* at 2891. Senator Cowan (R-PA), speaking against the proposal, claimed

It is utterly and totally impossible to mingle all the various families of men, from the lowest form . . . up to the highest Caucasian, in the same society. . . . If the mere fact of being born in this country confers that right, then [all] will have it; and I think it will be mischievous.

Id.

treated as citizens of the United States, entitled to equal civil rights with other citizens of the United States.³⁰

Such language contained within the congressional record demonstrates that the framers of the Fourteenth Amendment contemplated the fact that the Amendment would confer birthright citizenship to all persons born on American soil, not just former slaves.

However, following the ratification of the Fourteenth Amendment by the states, the Citizenship Clause faced opposition in its practical application to children born on American soil to parents who had immigrated to the United States from foreign countries. In the case of *In re Look Tin Sing*,³¹ a man who was born in California to Chinese nationals attempted to reenter the United States after having traveled to China and having been outside of the United States for a number of years.³² Since the petitioner had clearly been born in the United States, the court reasoned that any question as to the validity of his citizenship status must be based upon a misunderstanding of the term "subject to the jurisdiction thereof" contained in the language of the Citizenship Clause of the Fourteenth Amendment.³³ The court explained that the deliberate inclusion of the language "subject to the jurisdiction thereof" effectively exempted from citizenship those children born in the United States to diplomats and foreign ministers, "whose residence, by a fiction of public law, is regarded as part of their own country."³⁴

The court further noted that such language also exempted from citizenship those persons who, although born in the United States, "have renounced their allegiance to our government, and thus dissolved their political connection with the [United States]."³⁵ While the court acknowledged that although "[t]here is no mode of renunciation prescribed," such repudiation of allegiance to the United States would be evident in a situation where a citizen "emigrates, carries his family and effects with him, manifests a plain intention not to return, takes up his

30. *Id.* at 2891.

31. 21 F. 905 (C.C.D. Cal. 1884).

32. *Id.* at 905-06.

33. *Id.* at 906.

34. *Id.*

35. *Id.*

permanent residence abroad, and assumes the obligation of a subject to a foreign government."³⁶ Recognizing that the petitioner was not within any class exempted from citizenship stemming from the court's interpretation of the words "subject to the jurisdiction thereof" found in the text of the Citizenship Clause, the court concluded that the United States had exclusive jurisdiction over him due to his birth on American soil.³⁷ The court ordered that the petitioner be granted entry to the United States, noting that "no citizen can be excluded from this country except in punishment for crime. Exclusion for any other cause is unknown to our laws, and beyond the power of [C]ongress."³⁸

Despite being recognized at common law and substantiated through the Fourteenth Amendment, birthright citizenship was nonetheless challenged by lawmakers as waves of immigration have swept the United States. The Chinese Exclusion Act, passed in 1882 and amended in 1884, was the first significant law restricting immigration to the United States.³⁹ The Act effectively barred all Chinese persons from entering and becoming citizens of the United States, whether through birth or naturalization.⁴⁰ In *United States v. Wong Kim Ark*, a man of Chinese descent born in San Francisco to parents who had since returned to China was denied reentry to the United States by virtue of the Chinese Exclusion Act after visiting China.⁴¹ The United States Supreme Court found that irrespective of Congress' enactment of the Chinese Exclusion Act, "the American citizenship which Wong Kim Ark acquired by birth within the United States has not been lost or taken away by anything happening since his birth."⁴² In rendering its decision in this seminal case, the Court meticulously detailed not only the extensive case law leading up to its decision, but also provided an in-depth history of the common law foundation and understanding of the Citizenship Clause so as to

36. *Id.* at 907.

37. *Id.* at 908-09.

38. *Id.* at 910-11.

39. The Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882), amended by Act of Jul. 5, 1884, ch. 220, 23 Stat. 115, provisions invalidated by *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), repealed by Act of Dec. 17, 1943, ch. 344, 57 Stat. 600.

40. *See id.*

41. 169 U.S. at 652-53.

42. *Id.* at 704.

leave no doubt that birthright citizenship is the rule of the United States,⁴³ subject to only limited exceptions:

The [F]ourteenth [A]mendment 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.⁴⁴

Furthermore, in an attempt to dispel any arguments brought against birthright citizenship under the guise that those born in the United States to parents who are nationals of other countries hold no allegiance to the United States, the Court noted:

The [A]mendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, *is within the allegiance* and the protection, and consequently subject to the jurisdiction, of the United States. *His allegiance to the United States is direct and immediate . . .* continuing only so long as he remains within our territory⁴⁵

Moreover, the Court in *Wong Kim Ark* took the opportunity to emphasize the limitations on Congress imposed by the Supremacy Clause, namely that although Congress holds the power to determine the means by which citizenship may be attained

43. *See id.* at 654-702.

44. *See id.* at 693. The Court further noted that considering the history of immigration to and settlement of the United States, “[t]o [now] 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.” *Id.* at 694.

45. *Id.* (emphasis added).

through the naturalization process, neither Congress nor the President has the power to enact laws in opposition to the provisions of the Constitution.⁴⁶ "The [F]ourteenth [A]mendment, while it leaves the power, where it was before, in [C]ongress, to regulate naturalization, has conferred no authority upon [C]ongress to restrict the effect of birth, declared by the [C]onstitution to constitute a sufficient and complete right to citizenship."⁴⁷ Therefore, the Court determined that "[t]he acts of [C]ongress, known as the 'Chinese Exclusion Acts,' the earliest of which was passed some 14 years after the adoption of the constitutional amendment, cannot control its meaning, or impair its effect, but must be construed and executed in subordination to its provisions";⁴⁸ thus, any "statutes enacted by [C]ongress, as well as treaties made by the [P]resident and [S]enate, must yield to the paramount and supreme law of the [C]onstitution."⁴⁹

Although the Court's reasoning in *Wong Kim Ark* seemingly resolved any doubts that birthright citizenship is an enumerated right granted by the Fourteenth Amendment, attempts to deny rights to immigrants and their children have implicated the Citizenship Clause and led the Supreme Court to review the significance of the Fourteenth Amendment in more recent times. In *Plyler v. Doe*,⁵⁰ a Texas law denying public school enrollment to undocumented children was challenged by undocumented school age children as a violation of the Equal Protection Clause of the Fourteenth Amendment.⁵¹ Acknowledging that unauthorized entry into the United States is a crime, and that "those who have entered unlawfully are subject to deportation,"⁵² the Court specifically rejected the notion that illegal entry into the United States determined that such individuals were somehow not "persons" "within the jurisdiction" of a State, as understood in the context of the Fourteenth Amendment.⁵³ The Court found that

46. *Id.* at 701.

47. *Id.* at 703.

48. *Id.* at 699.

49. *Id.* at 701.

50. 457 U.S. 202 (1982).

51. *See id.* at 205.

52. *Id.*

53. *See id.* at 210-11. "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, *even aliens whose presence in this country is unlawful*, have long been recognized

“no plausible distinction with respect to Fourteenth Amendment ‘jurisdiction’ can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful.”⁵⁴ Instead, the Court endorsed the proposition earlier stated in *Wong Kim Ark* that “[e]very citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.”⁵⁵ Otherwise,

To permit a State to employ the phrase ‘within its jurisdiction’ in order to identify subclasses of persons whom it would define as beyond its jurisdiction, thereby relieving itself of the obligation to assure that its laws are designed and applied equally to those persons, would undermine the principal purpose for which the Equal Protection Clause was incorporated in the Fourteenth Amendment. The Equal Protection Clause was intended to work nothing less than the abolition of all caste-based and invidious class-based legislation. That objective is fundamentally at odds with the power the State asserts here to classify persons subject to its laws as nonetheless excepted from its protection.⁵⁶

As such, the Court clarified that the rights intended and embodied in the Equal Protection Clause of the Fourteenth Amendment are for the protection of all people within the jurisdiction of the United States, not just citizens.⁵⁷ While conferring equal protection of the laws to all *persons* within the jurisdiction of the United States, the Court in *Plyler* left no doubt that the enumerated rights of the Constitution, particularly the Citizenship Clause of the Fourteenth Amendment and its identical wording, also applies in the same manner.⁵⁸

Furthermore, recognizing that the law at issue in *Plyler* stemmed from Texas’ desire to reduce illegal immigration, the

as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Id.* at 210 (emphasis added).

54. *See id.* at 211 n.10.

55. *Id.* (quoting *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898)) (internal quotation marks omitted).

56. *Id.* at 213.

57. *See id.* at 214.

58. *See id.* at 211 n.10.

Court conceded that due to the magnitude and complexity of illegal immigration in the United States, strong arguments can be made that a state "may withhold its beneficence from those whose very presence within the United States is the product of their own unlawful conduct."⁵⁹ The Court noted, however, that the method chosen by the state did not affect the individuals who made the choice to enter the country illegally, but rather punished their minor children who themselves could not control their circumstances.⁶⁰ As such, "[e]ven if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice."⁶¹ The Court questioned the means chosen by the legislature to further the state's legitimate interest:

[V]isiting . . . condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual—as well as unjust—way of deterring the parent.⁶²

Although pertaining to the right of undocumented children to attend public school, the Court's equal protection reasoning in *Plyler* would likely be substantiated against the analogous arguments currently being made to limit birthright citizenship.⁶³

59. *Id.* at 219. "[U]ndocumented status is not irrelevant to any proper legislative goal. Nor is [it] an absolutely immutable characteristic since it is the product of conscious, indeed unlawful, action." *Id.* at 220.

60. *See id.* at 219-20.

61. *Id.* at 220.

62. *Id.* (alterations in original) (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)) (internal quotation marks omitted).

63. *See id.* "Legislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish." *See id.* at 216 n.14.

III. RECENT LEGISLATIVE ATTEMPTS TO LIMIT BIRTHRIGHT CITIZENSHIP

Citizenship *is* man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. He has no lawful claim to protection from any nation, and no nation may assert rights on his behalf. His very existence is at the sufferance of the state within whose borders he happens to be. . . . This government was not established with power to decree this fate.⁶⁴

The inherent meaning of the Citizenship Clause of the Fourteenth Amendment has been applied in light of American common law principals and extensive case law to the point of conferring near absolute citizenship rights to those born on American soil. However, in recent years birthright citizenship has increasingly come under attack as lawmakers call for immigration reform and look for creative ways to control the flow of unauthorized immigrants into the United States.⁶⁵

Since the early 1990's Congressional lawmakers have continuously introduced bills to either limit birthright citizenship or reinterpret the wording of the Citizenship Clause of the Fourteenth Amendment so as to not confer citizenship by mere birth on American soil.⁶⁶ The most recent measure, the Birthright Citizenship Act of 2011,⁶⁷ seeks to do both by "clarify[ing] those classes of individuals born in the United States who are nationals and citizens of the United States at birth."⁶⁸ The substance of the bill, found in Section 2, titled "Citizenship at birth for certain

64. *Perez v. Brownell*, 356 U.S. 44, 64-65 (1958) (Warren, C.J., dissenting) (rejecting that a native born American may lose citizenship simply by voting in a foreign election), *overruled by Afroyim v. Rusk*, 387 U.S. 253, 267-68 (1967) ("[W]e agree with the Chief Justice's dissent in the *Perez* case . . . *Perez v. Brownell* is overruled.").

65. *See, e.g.*, Birthright Citizenship Act of 2011, H.R. 140, 112th Cong. (2011).

66. *See, e.g.*, H.R. 3605, 102d Cong. (1991) (a bill "[t]o amend the Immigration and Nationality Act to limit citizenship at birth, merely by virtue of birth in the United States, to persons with legal resident mothers"); *see also* Citizenship Reform Act of 1995, H.R. 705, 104th Cong. (1995).

67. H.R. 140.

68. *Id.*

persons born in the United States" suggests amending the language found in Section 301 of the Immigration and Nationality Act⁶⁹ by inserting the following stipulation:

Acknowledging the right of birthright citizenship established by section 1 of the 14th amendment to the Constitution, a person born in the United States shall be considered 'subject to the jurisdiction' of the United States . . . if the person is born in the United States of parents, one of whom is— (1) a citizen or national of the United States; (2) an alien lawfully admitted for permanent residence in the United States whose residence is in the United States; or (3) an alien performing active service in the armed forces.⁷⁰

In essence, the bill aims to confer citizenship upon only distinct groups of individuals born in the United States.⁷¹ Ironically, while the plain language of the act recognizes that birthright citizenship is a right established by the Constitution, supporting lawmakers nonetheless seek passage of a bill that would award that right to chosen classes of individuals while denying the right to all others. The act's wording seemingly acknowledges this contradiction to the plain language and historical understanding of the Citizenship Clause,⁷² suggesting that the proposed legislation is meant to redefine current Constitutional interpretation of the Citizenship Clause. However, such language that is at odds with the Constitution and creates clear distinctions between individuals would undoubtedly arouse the egalitarian protections against caste-based distinctions conferred by the Equal Protection Clause,⁷³ as well as the restrictions against Congress to make laws contradictory to the Constitution imposed

69. Section 301 of the Immigration and Nationality Act codifies the Citizenship Clause of the 14th Amendment, declaring "person[s] born in the United States, and subject to the jurisdiction thereof" "shall be nationals and citizens of the United States at birth." 8 U.S.C. § 1401 (2006).

70. H.R. 140.

71. *Id.*

72. U.S. CONST. amend. XIV, §1; *see also supra* notes 17-49 and accompanying text.

73. U.S. CONST. amend. XIV, §1; *see also supra* notes 50-63 and accompanying text.

by the Supremacy Clause.⁷⁴

IV. DEBUNKING THE MYTH OF THE “ANCHOR BABY”

Considering that legislation aimed at limiting birthright citizenship has been continually introduced since the early 1990s and national news media coverage increasingly reports on excitable issues surrounding immigration and “anchor babies,”⁷⁵ it seems likely that lawmakers will continue to seek passage of legislation that targets birthright citizenship in an effort to curb immigration.⁷⁶ However, even if legislators are successful in their attempts to restrict or eliminate birthright citizenship, it is likely that it will have little, if any, effect on the number of children born to unauthorized immigrants in the United States, since the propaganda they seek to disseminate pertaining to loaded terms such as “anchor baby” has little factual foundation.

According to a recent study by the Pew Research Center, 350,000 children were born in the United States to at least one unauthorized immigrant parent between March 2009 and March 2010,⁷⁷ a seemingly large number that immigration reformists tout in an effort to provoke support. However, in reality these births represent only eight percent of the more than four million total U.S. births for that period.⁷⁸ While eight percent of the total births in the United States may still seem like a relatively high percentage considering unauthorized immigrants comprise only four percent of the total United States population,⁷⁹ this statistic can be attributed to the relatively young age of most immigrants,

74. U.S. CONST. art. VI, § 2; see also *supra* notes 46-49 and accompanying text.

75. See, e.g., Reynolds Holding, ‘Anchor Babies’: No Getting Around the Constitution, TIME (Feb. 1, 2011), <http://www.time.com/time/nation/article/0,8599,2045617,00.html>; Miriam Jordan, et al., U.S. Immigration Fight Widens to Native-Born, WALL ST. J. (July 30, 2010), <http://online.wsj.com/article/SB10001424052748703578104575397561487059370.html>.

76. Since its introduction on January 5, 2011 support for the Birthright Citizenship Act of 2011 has increased from three original co-sponsors to eighty-seven co-sponsors as of May 23, 2012. *Bill Summary & Status - 112th Congress (2011-2012) - H.R. 140*, LIBR. OF CONGRESS, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.140>: (last visited May 23, 2012).

77. PASSEL & COHN, *supra* note 13, at 12.

78. *Id.*

79. *Id.* Notably, unauthorized immigrants comprise 5.2% of the labor force in this country. *Id.* at 17.

as more younger, childbearing-aged individuals tend to immigrate than older individuals.⁸⁰ As such, it is hardly surprising that immigrants who travel to the United States for the purpose of making this country their new home become parents while on American soil, as it is an accurate reflection of the natural progression of life for a person of childbearing age.

Research also shows that births of children to unauthorized immigrants are not likely the product of immigrants drawn into traveling to the United States solely for the purpose of giving birth. A study of the children born to unauthorized immigrant parents in 2009 indicates that sixty-one percent of those parents arrived in the United States before 2004, thirty percent between 2004 and 2007, and nine percent between 2008 and 2010.⁸¹ Such figures, showing that more than half of the children were born to unauthorized immigrants who had made their home in America for at least five years, dispel any notions of pregnant women crossing the American border for the sole purpose of giving birth and attaining American citizenship for their infants. Moreover, since such births occurred long after the birth parents traveled to and settled in the United States, any contention that such a birth was a conscious and calculated means by the birth parents of creating an "anchor" lacks validity.

Furthermore, according to a birth report from the Centers for Disease Control and Prevention, in 2007 a total of 7775 U.S. births were to parents who did not reside in the United States, a category including temporary visitors, individuals with student and work visas, as well as government personnel.⁸² Comprising less than two-tenths of one percent of all births nationwide, this number is far from the out of control issue that immigration reformists would have everyone believe.⁸³

80. See JEFFREY S. PASSEL & PAUL TAYLOR, PEW RESEARCH CTR., UNAUTHORIZED IMMIGRANTS AND THEIR U.S.-BORN CHILDREN, 3 (2010), available at <http://www.pewhispanic.org/files/reports/125.pdf>; see also PAUL TAYLOR ET AL., PEW RESEARCH CTR., UNAUTHORIZED IMMIGRANTS: LENGTH OF RESIDENCY, PATTERNS OF PARENTHOOD 5 (2011), available at <http://www.pewhispanic.org/files/2011/12/Unauthorized-Characteristics.pdf>.

81. See PASSEL & COHN, *supra* note 13, at 12. Notably, more than two-thirds of adult unauthorized immigrants who reside in the United States have done so for more than ten years. TAYLOR ET AL., *supra* note 80, at 3.

82. 'Drop and Leave?' Not So Fast, *supra* note 15.

83. *Id.*

Nevertheless, “birth packages”—pricey all-inclusive packages that include travel, hotel, and hospital costs, which are offered to pregnant women from other countries—have been touted by immigration reformists as evidence of international schemes to secure American citizenship.⁸⁴ However, a closer look at these packages tells a different story. Such birth packages fall within the scope of international medical travel, or medical tourism, which involve traveling from one’s home country to another country for the purpose of receiving medical care, hardly a new phenomenon.⁸⁵ Historically, affluent American and European patients often traveled to other countries in order to receive medical care, many times for the cost savings involved or special services not available in their home countries.⁸⁶ Medical tourism packages, including birth packages, are currently advertised not only in the United States but throughout the world, in an effort to attract wealthy individuals to leave their home countries for the purpose of having particular medical procedures performed.⁸⁷

Many of the birth packages offered in the United States are geared to attract wealthy individuals living in less urbanized countries, who choose to travel to more developed countries in order to have medical procedures done, most often for the level of care they will receive or for particular services not available in their own country.⁸⁸ These birth packages are often advertised to wealthy individuals as an alternative to giving birth in their own country, and are offered at a price that is unrealistic to most individuals.⁸⁹ Packages often include not only the cost of the

84. Jacobson, *supra* note 1.

85. C. Virginia Lee & Victor Balaban, *Medical Tourism*, CTRS. FOR DISEASE CONTROL AND PREVENTION (July 1, 2011), <http://wwwnc.cdc.gov/travel/yellowbook/2010/chapter-2/medical-tourism.aspx> (detailing why individuals travel seeking medical care and the procedures commonly traveled for); see also Michael D. Horwitz et al., *Medical Tourism: Globalization of the Healthcare Marketplace*, MEDSCAPE GEN. MED. (Nov. 13, 2007), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2234298/>.

86. See generally Kate Pickert, *A Brief History of Medical Tourism*, TIME (Nov. 25, 2008), <http://www.time.com/time/health/article/0,8599,1861919,00.html>.

87. See *id.*

88. See *id.*

89. See Anna Schecter, *Born in the U.S.A.: Birth Tourists Get Instant U.S. Citizenship for Their Newborns*, ROCK CTR. (Oct. 28, 2011, 2:04 AM), http://rockcenter.msnbc.msn.com/_news/2011/10/28/8511587-born-in-the-usa-birth-tourists-get-instant-us-citizenship-for-their-newborns?lite.

medical procedure and hospital stay, but also luxury hotel accommodations, spa services, and gourmet food room service for periods of time spanning anywhere from one week to several months.⁹⁰ While the agencies that offer such packages are often willing to assist in facilitating their clients' travel needs, the individual traveler is usually required to secure any necessary travel documents such as visas or passports prior to traveling to the United States.⁹¹ Given the exorbitant expenses associated with such programs, it is clear that birth packages in reality do not epitomize safe havens provided solely for unauthorized immigrant women to give birth after illegally crossing the border into the United States.⁹²

While giving birth on American soil undoubtedly confers citizenship on the child of an unauthorized immigrant, it does not in any way impute citizenship on anyone else. Nor will the American citizenship of a child stop an unauthorized immigrant parent from being deported with the child to the home country.⁹³ According to a recent study published by the United States Department of Homeland Security, 2,199,138 aliens were deported from the United States between the years 1998 and 2007.⁹⁴ Of these individuals removed from the United States, 108,434 were parents of children born on American soil (U.S. citizens).⁹⁵

90. *See id.*

91. *See id.*

92. "[A]ttacks on birth tourism are simply red herrings designed to mask a larger assault on immigrants in this country." Hugh Ryan, *Birth Tourism: The Newest Red Herring in the Anti-Immigration Arsenal*, GLOBAL COMMENT (July 23, 2010), <http://globalcomment.com/2010/birth-tourism-the-newest-red-herring-in-the-anti-immigration-arsenal/>.

93. *See* 8 U.S.C. § 1229b(b) (2006) (governing the cancellation of removal proceedings against unauthorized immigrants and allowing for a subsequent adjustment of status for certain nonpermanent residents if such persons can show that they have been physically present in the United States for a continuous period of ten years immediately preceding the date of application, that they have been of good moral character while residing in the United States, that they have not been convicted of certain crimes, and that removal of the alien "would result in exceptional and extremely unusual hardship" to a "spouse, parent, or child, who is a citizen of the United States").

94. DEP'T OF HOMELAND SEC., REMOVALS INVOLVING ILLEGAL ALIEN PARENTS OF UNITED STATES CITIZEN CHILDREN 1 (2009), *available at* http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_09-15_Jan09.pdf.

95. *Id.* Notably, 40,260 of these parents, comprising 37.1% of the total number of parents removed, had returned to the United States after having been removed once and were subsequently removed on another occasion

Reasons for the deportation of alien parents generally consisted of immigration violations, including being in the United States without authorization or committing criminal violations that affect immigration status.⁹⁶ While an unauthorized immigrant removed for committing an aggravated felony is subsequently barred from reentering the United States,⁹⁷ aliens who have committed less serious crimes may be granted a waiver to return to the United States⁹⁸ or stop removal proceedings if they are able to establish the criteria outlined in title eight of the United States Code § 1229b, which includes proving that removal of the alien would “result in exceptional and extremely unusual hardship” to that alien’s American citizen child, spouse, or parent.⁹⁹ However, proving “exceptional and extremely unusual hardship” is a difficult burden to meet, and, furthermore, is left entirely to the discretion of the Attorney General.¹⁰⁰ The fact that an alien subject to deportation proceedings has a child that is a United States citizen is not, by itself, enough to meet the “exceptional and extremely unusual hardship” burden for possible

during the ten year period studied; as a result, the total number of parent removals for this ten year period was actually 180,466. *Id.* at 5.

96. *Id.* at 8. “Most final charge types refer to an immigration issue directly, such as being present without authorization or attempting entry without proper documentation. Some final charge types relate to other issues that affect immigration status, such as criminal violations, national security grounds, or health reasons.” *Id.*; see also 8 U.S.C. § 1227(a) (2006) (enumerating the grounds for deportation of aliens within the United States).

97. See 8 U.S.C. § 1182(a)(9)(A), (2006) (stating that any alien previously removed for committing an aggravated felony is ineligible for admission into the United States, with any exception vested solely in the discretion of the Attorney General).

98. See, e.g., *id.* § 1182(h) (Attorney General has discretion to allow an alien’s application for readmission to the United States if the prior removal was solely based on “simple possession of 30 grams or less of marijuana” and “the alien’s denial of admission would result in extreme hardship to the United States citizen . . . son, or daughter of such alien”).

99. See 8 U.S.C. § 1229b (2006) (allowing the Attorney General the discretion to cancel the removal proceedings of a deportable alien, if that alien establishes, among other criteria, “that removal would result in exceptional and extremely unusual hardship” to the alien’s citizen child.)

100. See, e.g., *Martinez v. U.S. Att’y Gen.*, 446 F.3d 1219, 1221 (11th Cir. 2006) (rejecting an unauthorized alien’s appeal from order denying application for cancellation of removal proceedings, and holding that the petitioner did not meet § 1229b(b)(1)(D)’s hardship requirement simply by having two teenaged U.S. citizen children, such that any waiver was within the sole discretion of the Attorney General and not subject to judicial review).

cancellation of removal proceedings, nor will it bar that child from being deported with the alien parent that is subject to removal.¹⁰¹

Furthermore, giving birth to a child on American soil does not confer any additional rights to the parent of that child, nor can a child assert citizenship rights for his or her parent.¹⁰² A child born in the United States must to attain the age of twenty-one before he or she can sponsor a parent or immediate relative for residency in the United States.¹⁰³ Even then, the sponsored relative could be excluded unless he or she meets certain qualifications, including passing health and criminal record inquiries.¹⁰⁴ The sponsoring American citizen must also provide an affidavit of support, attesting to his or her ability to support the alien should he or she be unable to financially provide for him or herself.¹⁰⁵ If, after all these measures, the American citizen is

101. See *In re Monreal-Aguinaga*, 23 I. & N. Dec. 56, 65 (BIA 2001) (clarifying that an applicant for cancellation of removal must demonstrate that such removal would cause hardship to his or her qualifying relatives that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here"); see also, *Immigration & Naturalization Serv. v. Wang*, 450 U.S. 139, 142, 145 (1981) (holding that the Attorney General has the authority to construe the "extreme hardship" requirement narrowly, dismissing the claim that liquidation of assets and deportation would result in hardship to a married couple and their two American born children); *In re Andazola-Rivas*, 23 I. & N. Dec. 319, 322 (BIA 2002) (finding an unmarried mother of two American citizen children, ages eleven and six, ineligible for cancellation of removal under § 1229b, because although she met the other requirements, she could not establish that deportation to Mexico would result in "exceptional and extremely unusual hardship" to her children).

102. See, e.g., *Moreno v. Gonzales*, 219 F. App'x. 647, 648-49 (9th Cir. 2007) ("Citizen family members—including citizen children—cannot challenge the removal of an otherwise removable alien based on their own constitutional rights as citizens. A contrary rule 'would permit a wholesale avoidance of immigration laws if an alien were to be able to enter the country, have a child shortly thereafter, and prevent deportation.'" (citations omitted)).

103. See 8 U.S.C. § 1151(b)(2)(A)(i) (2006) (specifying that any American citizen petitioning for a parent's legal residence in the United States must be at least twenty-one years old).

104. See generally 8 U.S.C. § 1182 (2006) (reciting numerous health, criminal, security, and foreign policy grounds for denying an alien admission to the United States).

105. See 8 U.S.C. § 1183a (2006). This section requires a sponsor to provide an affidavit establishing that the sponsored "alien is not excludable as a public charge" and promising to financially support the sponsored alien at an annual income level of at least 125% of the Federal poverty line. *Id.*

successful in sponsoring a relative, it will confer only authorized residency rights on that individual, not complete American citizenship.¹⁰⁶ Notably, unauthorized immigrants who enter the United States without inspection are subsequently barred from adjusting their status and being admitted for permanent residence, despite their American citizen children petitioning otherwise.¹⁰⁷ As such, giving birth on American soil is hardly an “anchor,” never mind a quick route to American rights and citizenship for unauthorized immigrants, as some lawmakers would have the public believe.

Notably, recent studies show that immigration to the United States has declined for the first time in years. According to a recent study, in 1990 there were 3.5 million unauthorized immigrants living in the United States, a number that grew to 8.4 million by the year 2000.¹⁰⁸ This increase in population continued until its peak in 2007, with twelve million unauthorized immigrants living in the United States.¹⁰⁹ However, between 2007 and 2009, and for the first time in decades, the population of undocumented immigrants living in the United States shrank by eight percent.¹¹⁰ Such a decrease in immigration would be out of place if the opportunity to have a child on American soil were a primary factor driving immigrants to the United States. However, analyzing these figures against the backdrop of the national economy, it seems more likely that the reduction in unauthorized immigration to the United States instead correlates with the financial decline of the United States economy and the number of job opportunities available to such immigrants.¹¹¹

Moreover, if giving birth solely to confer American citizenship on a child was indeed an influential factor compelling

Such affidavit is legally enforceable against the sponsoring relative who makes the promise, by either the sponsored alien, the Federal Government, or a state. *Id.*

106. See 8 U.S.C. § 1153 (2006). Nor does passing these hurdles in any way entitle an alien, as an immediate relative or otherwise, to admittance to the United States. 8 U.S.C. § 1154(e) (2006).

107. See 8 U.S.C. § 1255 (2006) (governing the adjustment of status for those admitted for permanent residency to the United States). The only exception to this general rule is found in § 1255(i).

108. See PASSEL & COHN, *supra* note 13, at 2.

109. *Id.* at 1.

110. *Id.* at 9.

111. See *id.* at 3; see also TAYLOR ET AL., *supra* note 80, at 4.

unauthorized immigration, it is likely that this would be evidenced by a considerably higher number of female immigrants traveling into the United States.¹¹² As the population of unauthorized immigrants is sixty percent male and forty percent female,¹¹³ it would be unrealistic to surmise that unauthorized immigrants come to the United States for the sole purpose of giving birth on American soil.

While it is reasonable to conclude that unauthorized immigrants often travel to the United States for employment opportunities and a better quality of life, it should be noted that unauthorized immigrants are generally ineligible to collect federal, state, and local welfare benefits.¹¹⁴ Newborn children, as American citizens, may qualify for Medicaid or other independent state initiatives, however, such programs help with the costs associated with taking care of children and cannot realistically support a family.¹¹⁵ Given the stipulations surrounding many immigration laws, unauthorized immigrants are not eligible to receive many state and government benefits,¹¹⁶ and often underutilize benefits that may be available to them, due to general misunderstanding or fear of deportation. Furthermore, individualized studies conducted recently by state legislatures

112. See *'Drop and Leave?' Not So Fast*, *supra* note 15 (quoting Jeffrey Passel, author of the Pew Hispanic Center's report on immigration).

113. JEFFREY S. PASSEL & D'VERA COHN, PEW RESEARCH CTR., A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES 4 (2009), available at <http://pewhispanic.org/files/reports/107.pdf>.

114. See 8 U.S.C. §§ 1611, 1621 (2006) (noting special exceptions such as emergency medical care, and non-cash, short-term disaster relief).

115. Medicaid requires that all applicants be U.S. citizens, or in limited cases, legal residents for at least five years. *Medicaid Eligibility: Overview*, CTRS. FOR MEDICARE & MEDICAID SERVS., https://www.cms.gov/MedicaidEligibility/02_AreYouEligible_.asp (last modified Dec. 14, 2005); see also Nura Bennis, *Medicaid and WIC Rules for Babies*, EHOW, http://www.ehow.com/list_6880476_medicaid-wic-rules-babies.html (last visited Mar. 7, 2012) ("In the past a signed affidavit was enough to prove U.S. citizenship; however, since The Deficit Reduction Act of 2005 (DRA), applicants must provide documented proof of citizenship. The DRA stipulates that babies born to immigrant or illegal mothers will only be determined eligible for Medicaid once an application with proof of citizenship documentation is submitted and processed by state agencies.")

116. See 8 U.S.C. § 1601 (insisting that "[s]elf-sufficiency has been a basic principle of United States immigration law" and "[i]t continues to be the immigration policy of the United States that . . . the availability of public benefits not constitute an incentive for immigration to the United States").

show that while unauthorized immigrants incur costs associated with education and healthcare, the contribution by those individuals to the state economy through taxes and purchasing power far outweighs any consumption of resources.¹¹⁷

Finally, despite reports to the contrary,¹¹⁸ the United States is currently one of thirty-three countries that offer birthright citizenship to individuals born on native soil.¹¹⁹ While some lawmakers claim that the United States is the only country that offers such citizenship, in actuality *jus soli* is recognized throughout the world and is hardly a unique or unusual doctrine.¹²⁰ By propagandizing that the United States is the only country that follows the doctrine, immigration reformists further a political agenda against so-called “anchor babies” based on fear mongering rather than factual grounds.¹²¹ Urging a constitutional amendment based on ignorance and inflammatory misinformation, thereby transforming the strong immigration history and equal protection ideals of the United States, is what Americans should truly fear.

117. *A Summary of State Studies on Fiscal Impacts of Immigrants*, NAT'L CONF. OF ST. LEGISLATURES (March 17, 2009), <http://www.ncsl.org/default.aspx?tabid=16867>. Each of the states listed provides an individualized fiscal summary showing that spending, taxes, and labor contributions by unauthorized immigrants far exceed any costs associated with education, healthcare, law enforcement, or otherwise, resulting in net income to the state. *Id.*

118. See Robert Farley, *Glenn Beck, on Anchor Babies, Claims U.S. is Only Country with Automatic Citizenship*, POLITIFACT (June 19, 2009, 1:50 PM), <http://www.politifact.com/truth-o-meter/statements/2009/jun/19/glenn-beck/glenn-beck-claims-us-only-country-automatic-citize/> (quoting TV host Glenn Beck as saying, “Why do we have automatic citizenship upon birth? . . . We’re the only country in the world that has it.”).

119. The other countries that grant birthright citizenship include: Antigua and Barbuda, Argentina, Azerbaijan, Barbados, Belize, Bolivia, Brazil, Canada, Dominica, Dominican Republic, Ecuador, El Salvador, Fiji, Grenada, Guatemala, Guyana, Honduras, Jamaica, Lesotho, Mexico, Nicaragua, Pakistan, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Uruguay, and Venezuela. *Nations Granting Birthright Citizenship*, NUMBERSUSA, <http://www.numbersusa.com/content/learn/issues/birthright-citizenship/nations-granting-birthright-citizenship.html> (last visited Mar. 7, 2012).

120. See Farley, *supra* note 119; see also *Nations Granting Birthright Citizenship*, *supra* note 120.

121. See, e.g., Ryan, *supra* note 92.

CONCLUSION

Birthright citizenship, or *jus soli*, is indeed the rule of the United States, stemming from American common law principles, and substantiated through the Citizenship Clause of the Fourteenth Amendment and extensive United States case law precedent. Clearly, a constitutional amendment would be needed in order to impose any limitation on birthright citizenship as it is currently understood and applied in the United States.

However, urging further legislation or a constitutional amendment is an ineffective means of impacting immigration to the United States. Despite the increasing spread of anti-immigration rhetoric and the use of loaded terms such as "anchor baby," studies associated with immigration trends show that birthright citizenship is not a significant reason why persons immigrate to the United States in the first place. Having a child who is a U.S. citizen confers little benefit to the unauthorized immigrant, and any benefit stemming therefrom is delayed at best, as a citizen child may not sponsor a parent for citizenship until that child is twenty-one. Additionally, since a child born in the United States to an unauthorized immigrant does not provide a bar to that immigrant being removed from this country with his or her American citizen child in tow, describing such a child as an anchor is completely illusory and deceptive.

Studies on immigration trends illustrate that individuals who immigrate to the United States do so for employment opportunities or for a better quality of life than is available in their home countries, and not to have children. Rather, the phenomenon of unauthorized immigrants having children while in the United States appears to be attributed to natural lifetime progressions, as individuals who immigrate to the America are relatively young and will likely marry and start a family while in the United States. Since such unauthorized immigrants contribute extensively to state and national economies through spending, taxation, and their presence in the labor force, unauthorized immigrants and their American citizen children do not present the disproportionate drain on state and federal resources that immigration reformists proclaim.

Employing hate mongering to gain support for limiting birthright citizenship in the United States is deceptive and

effectively increases prejudice towards individuals who seek only a better life for their families. Furthermore, purposely focusing such outrage towards a newborn infant solely due to his or her birth on American soil is not only repugnant to American ideals but also contrary to human nature. Legislators who are unsatisfied with the current laws surrounding immigration would be better served by focusing their energy on reform efforts based on factual trends that will have a realistic impact on immigration.

Limiting birthright citizenship in the United States, a country developed and inhabited by immigrants from every corner of the globe, would be detrimental to the fundamental values upon which the United States was built and to the Constitution which exemplifies the same. The current argument surrounding children born in this country to unauthorized immigrants seeks to conjure many of the same prejudices that resulted in past legislative acts and court decisions that are now viewed as tarnishing the proud history of the United States. Only through awareness of all the facts surrounding a particular policy and appreciation of America's strong foundation in immigration can any effective immigration policy be proposed that will both benefit the United States and comport with notions of equal protection for all persons within its territory.